
**State of Illinois**

# PROPERTY TAX APPEAL BOARD

## SYNOPSIS OF REPRESENTATIVE CASES

## DECIDED BY THE BOARD

*During Calendar Year 2008*

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PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
Printed by Authority of the State of Illinois

***www.state.il.us/agency/ptab***

or

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# State of Illinois
# PROPERTY TAX APPEAL BOARD

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## *2008 FORWARD*

In the following pages, representative decisions of the Property Tax Appeal Board are reported. An index is also included. The index is organized by subject matter, and is presented in alphabetical sequence. Section 16-190(a) of the Property Tax Code (35 ILCS 200/16-190(a)) requires the Board to publish a volume of representative cases decided by the Board during that year.

Should the reader wish to become more completely informed about an appeal than is permitted by a reading of this volume, he or she need only access the Property Tax Appeal Board's website at www.state.il.us/agency/ptab or www.ptabil.com and click on the link that says "Appeal Status Inquiry." Access to Board records is addressed in Section 1910.75 of the Official Rules of the Property Tax Appeal Board.

The reader should note that a docket number is created as follows: the first two digits indicate the assessment year at issue; the digits following the first hyphen identify the particular case; the letter following the second hyphen indicates the kind of property appealed ("R" for residential, "F" for farm property, "C" for commercial property, and "I" for industrial property), and the number which follows the final hyphen indicates the amount of assessed valuation at issue ("1" indicates less than $100,000 in assessed valuation is at issue, "2" indicates between $100,000 and $300,000 is at issue, and "3" indicates $300,000 or more is at issue). Thus, a docket number might appear as: 03-01234.001-I-3.

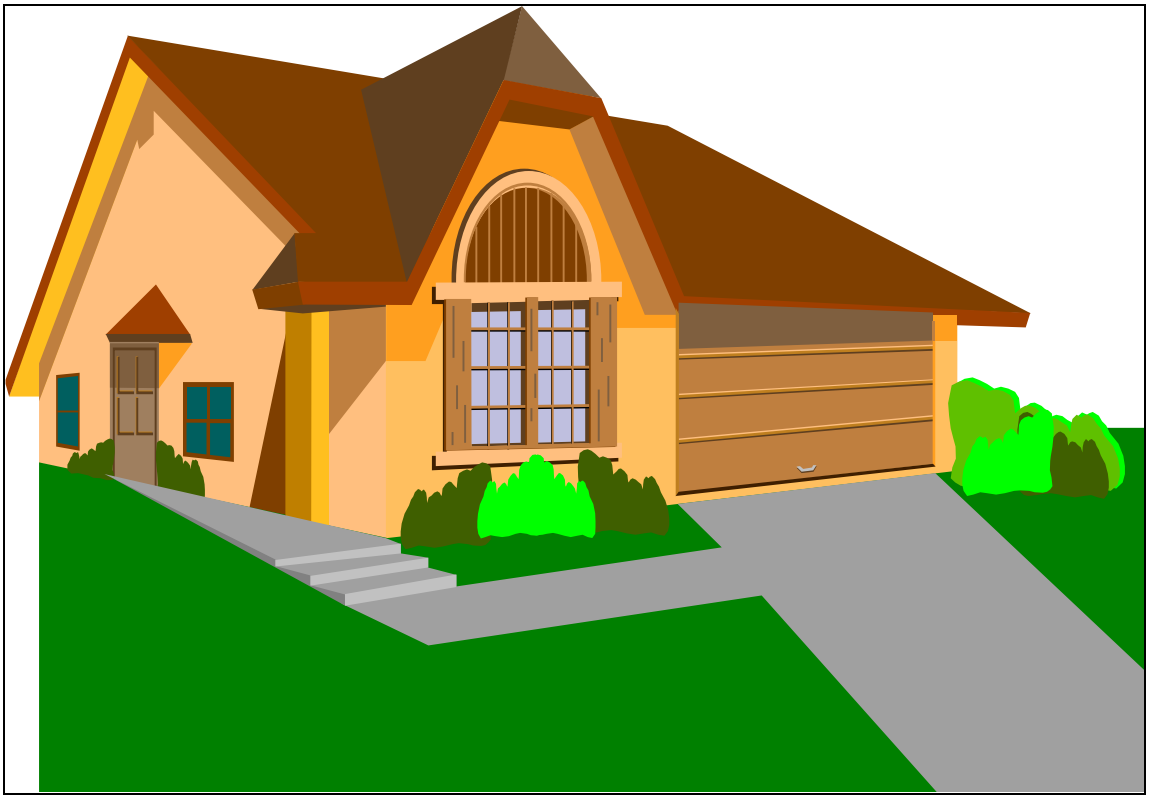
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial facility might have a letter in the docket number that is inconsistent with the actual property type in the appeal.

The Property Tax Appeal Board anticipates this volume of the 2008 Synopsis will continue to aid in the understanding of the issues confronted by the Board, and the kinds of evidence and documentation that meet with success.

# PROPERTY TAX APPEAL BOARD

# SYNOPSIS OF REPRESENTATIVE CASES

# 2008 RESIDENTIAL DECISIONS



**PROPERTY TAX APPEAL BOARD**
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## 2008 RESIDENTIAL CHAPTER

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| **APPELLANT:** | **John Miller and Clifford Anderson** |
| **DOCKET NUMBER:** | **05-00574.001-R-1** |
| **DATE DECIDED:** | **May, 2008** |
| **COUNTY:** | **Will** |
| **RESULT:** | **No Change** |

The subject property consists of a split-level frame dwelling built in 1976 that contains 1,932 square feet of living area. Amenities include a partially finished lower-level, a partial concrete slab foundation, central air conditioning and an integral garage.

The appellant, Clifford Anderson, appeared before the Property Tax Appeal Board claiming both overvaluation and unequal treatment in the assessment process as the bases of the appeal. The subject's land assessment was not contested. The appellant's wife, Julie Anderson was also present at the hearing. John Miller was not present at the hearing.

At the commencement of the hearing, the board of review made a motion to dismiss the appeal with prejudice for lack of standing. The board of review argued county records indicate the subject property has been owned by John M. Miller since 1978. The board of review argued that since Mr. Anderson was not the owner of record for the subject property, he therefore has no standing to pursue an appeal of its assessment. A copy of a warranty deed and a Will County real estate parcel inquiry was submitted in support of this position. These documents list John Miller as owner of the subject property. The board of review representative further argued Anderson misrepresented himself as Miller in multiple board of review hearings.

In response to the motion, Anderson presented a quit claim deed dated September 27, 2003. The front page of this instrument conveys the subject property from John Miller to Clifford Anderson. It was not filed with the Will County Recorder until March 30, 2007. The front page was purportedly signed by John Miller. The second or back page of the instrument revealed Matt Zeri prepared the document in Albuquerque, New Mexico. The document was notarized on September 27, 2003, in Bernalillo County, New Mexico. Anderson also submitted photocopies of three bank checks written to the Will County Treasurer referencing the subject's parcel number in the memo line. One check showed the account holder name of Clifford Anderson; another check showed the account holder names of Clifford Anderson, John Miller and David McPartlin; and last check showed the account holder names of Clifford Anderson, E. Ryan and T. Chandler. Clifford Miller appeared to be the signatory of all the checks. Anderson also submitted the taxpayer's copy of the Will County Receipt from the Will County Treasurer showing the 2005 property taxes for the subject property were paid by check(s) in two installments from J. Miller and C. Anderson. The tax bill receipt matches the amounts on the checks.

At the hearing, Anderson testified he "just didn't bother to record it (the quit claim deed)". Anderson testified he paid "$10 dollars and other goods and services" for the subject property, but could not recall what comprised the other goods or services. Anderson testified the other names that appear on the aforementioned checks are friends or associates. Anderson testified he has lived in the subject dwelling for approximately 30 years. Finally, Anderson testified the subject property was both his and Miller's primary residence.

After hearing the testimony and considering the evidence, the Property Tax Appeal hereby denies the board of review's motion to dismiss due to the appellant's lack of standing. The Board recognizes the board of review concerns regarding the ownership interest in the subject property by Anderson and the murky circumstances surrounding the quit claim deed. However, the evidence in this record shows Anderson paid real estate taxes in 2006 resulting from the subject's 2005 assessment. Section 16-160 of the Property Tax Code provides in pertinent part:

> any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, . . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review, . . . appeal the decision to the Property Tax Appeal Board. . . Such taxpayer or taxing body, hereinafter called the appellant, shall file a petition with the clerk of the Property Tax Appeal Board, setting forth the facts upon which he or she bases the objection, together with a statement of the contentions of law which he or she desires to raise, and the relief requested. (35 ILCS 200/16-160).

In addition, Sections 1910.10(c) and 1910.60(a) of the Official Rules of the Property Tax Appeal Board states:

> Only a taxpayer or owner of property dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes, or a taxing body that has a tax revenue interest in the decision of the board of review on an assessment made by any local assessment officer, may file an appeal with the Board. (86 Ill.Adm.Code §1910.10(c)).

> Taxpayer/Owner of Property: Any taxpayer or owner of property dissatisfied with a decision of the board of review as such decision pertains to the assessment of his or her property may appeal that decision by filing a petition with the Property Tax Appeal Board within 30 days after the postmark date or personal service date of written notice of the decision of the board of review or the postmark date or personal service date of the written notice of the application of final, adopted township equalization factors by the board of review. If the taxpayer or owner of property files a petition within 30 days after the postmark date or personal service date of the written notice of the application of final, adopted township equalization factors, the relief the Property Tax Appeal Board may grant is limited to the amount of the increase caused by the application of the township equalization factor. (86 Ill.Adm.Code §1910.60(a)).

In reviewing the Property Tax Code and the Administrative Code, the Board finds property assessment appeals may be filed by an owner or taxpayer of a property dissatisfied with the decision of the board of review. Since this record shows Anderson paid the property taxes for the subject property, Anderson has standing before this Board to appeal the subject's assessed valuation. See Hartley v. Will County Board of Review, 106 Ill.App.3d 950 (3rd Dist. 1982) and Dozoretz v. Frost, 145 Ill.2d 325 (1991).

In support of the inequity claim, the appellant submitted property record cards, photographs and a spreadsheet detailing five suggested comparables. The appellant indicated two comparables are located across the street and ½ mile from the subject while three comparables are located approximately six miles from the subject. None of the comparables are located within the subject's subdivision. The comparables are comprised of two, one-story and three, split-level or bi-level dwellings of frame, stone, or frame and brick construction that were built from 1960 to 1990. Features include central air conditioning and attached, detached or integral garages ranging in size from 286 to 880 square feet. Comparable 1 has two garages. One comparable has a partial unfinished basement, one comparable has a full finished basement, one comparable has a full unfinished basement, and two comparables have concrete slab foundations. Property record cards indicate the dwellings range in size from 1,092 to 1,726 square feet of living area and have improvement assessments ranging from $27,348 to $50,776 or from $20.62 to $30.62 per square foot of living area. The subject property has an improvement assessment of $75,668 or $39.17 per square foot of living area.

The appellant testified the assessor miscalculated the dwelling sizes for the subject and comparables. For example, the appellant argued the assessor incorrectly included the subject's finished lower-level in the total amount of living area whereas the comparables with finished lower-levels are not included in their overall square footage of living areas. Anderson pointed to photographs of the three comparables showing curtains in the lower level windows. Anderson argued he had been inside many raised ranch dwellings like the subject and has never seen lower-levels that were not finished. Anderson claimed the subject's lower-level is used for storage and not living space. The appellant agreed the lower-level area has paneling and drywall, but does not constitute a family room. By deducting the subject's 476 square feet of finished lower-level from the 1,932 square feet of living area based on its corrected property record card, the appellant contends the subject dwelling contains 1,456 square feet of living area.

The appellant also complained comparable 3, which is owned by a former township assessor, was only assessed at a rate of $29.42 per square foot of living area and its total assessment is half of similar properties within the subject's subdivision. The appellant reluctantly acknowledged comparable 3 is a dissimilar one-story stone dwelling that is older than the subject.

The appellant also claimed the subject's assessment is not reflective of its fair market value. In support of this contention, the appellant submitted an undated letter from Daniel A. Laniosz of Mainstreet Builders, Inc., Yorkville, Illinois. The letter is not addressed to any particular person. The letter states in part that "in response to your inquires of current home pricing, pricing is as follows. These prices are for home construction with basic 2x4 construction, 3-tab shingles, partial brick front, and unfinished basement. Our basic package, without plan review, is around $70 per square foot. An additional $7 a square foot if you would like a basement finished. Keep in mind our fair pricing plan falls in with the raised ranch plan. . . ." Daniel A. Laniosz was not present at the hearing for direct or cross-examination regarding the specific details of the reported home pricing and the effective date of the pricing. The appellant next presented a quote proposal for home owners insurance from MetLife Auto and Home for the subject property. The proposal was addressed to John Miller. The proposal indicates policy coverage of the subject dwelling is limited to $142,000.

The appellant next argued the assessor did not consider the subject's condition when calculating its assessment. The appellant complained the subject's lower-level has outdated orange and black carpeting, a lime green toilet and old paneling. The appellant argued that in order to sell the subject property, he would have to replace these items at a cost of $3,332, but presented no corroborating evidence to support this claim. To show the subject's poor condition, the appellant submitted photographs of the subject dwelling showing its poorly maintained exterior condition. In addition, the photographs depict the subject's dated décor and clutter throughout its lower-level. Based on this evidence, the appellants requested a reduction in the subject property's assessment.

Under cross-examination, the appellant agreed the subject property is located in a subdivision commonly known as "The Lake". The appellant agreed none of his suggested comparables are located in this subdivision. However, the appellant argued the subject's subdivision was singled-out in the re-assessment process and the entire subdivision was over assessed by 15%.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $128,288 was disclosed. The subject's assessment reflects an estimated market value of $385,829 or $199.71 per square foot of living area including land using Will County's 2005 three year median level of assessments of 33.25%.

In support of the subject's assessment, the board of review submitted property record cards, an equity analysis of three suggested comparables located in the subject's subdivision, eight suggested comparable sales of properties located in the subject's subdivision, and a comparative sales analysis of properties that sold in the subject's subdivision in relation to properties that sold in three other nearby subdivisions. Furthermore, testimony from Erin Kljaich, Chief Deputy Assessor of Plainfield Township was presented. The assessor prepared the evidence on behalf of the board of review.

Kljaich testified the appellants' comparable 1 is located in a different township than the subject; the appellant's comparable 2 is located in Peerless subdivision; the appellant's comparable 3 is located in the Naperville/Plainfield Road subdivision; and the appellant's comparables 4 and 5 are located in Crystal Lawns Addition subdivision. Sixty one properties located in Crystal Lawns Addition subdivision sold from January 2003 to July 2005 for prices ranging from $100,000 to 259,900, with a median sale price of $157,500. Nineteen sales occurred in Peerless subdivision and sold from March 2003 to July 2005 for prices ranging from $130,000 to $258,000, with a median sale price of $200,000. Two sales occurred in Naperville/Plainfield Road subdivision in November 2003 and January 2005 for prices of $232,000 and $289,000, reflecting a median sale price of $260,000. The assessor indicated seven sales occurred in the subject's subdivision from July 2003 to June 2005 for prices ranging from $452,000 to $650,000, with a median sale price of $475,000. Kljaich argued this evidence clearly shows properties located in the subject's subdivision have much higher values than properties located in the different subdivisions where the appellants' comparables are located.

Kljaich next discussed the assessment comparables. They consist of split-level frame or frame and masonry dwellings that were built from 1975 to 1977. Features include full or partial walkout basements, central air conditioning, one fireplace, and garages. The dwellings range in size from 2,492 to 2,904 square feet of living area and have improvement assessments ranging

from $97,786 to $113,964 or from $37.91 to $39.24 per square foot of living area. The subject property has an improvement assessment of $75,668 or $39.17 per square foot of living area. The assessor acknowledged the comparables are larger than the subject, thus, one would expect their assessments on a per square basis foot would be lower than the subject. Kljaich argued that despite the comparables larger size, the subject's per square foot improvement assessment falls within the range of the comparables.

The assessor testified she included the lower-level finished space as living area in both the subject and comparables. She also noted a portion of the subject is not finished. She calculated the subject's lower-level as containing 756 square feet, of which 476 square feet is finished. The subject's lower-level size determination was based in part on conversations with Anderson. In response, Anderson did not dispute the amount of finished lower-level space, but argued it should be viewed as an amenity and not included in the square footage of living area. Under questioning, Kljaich provided testimony regarding the methodology used in determining living area sizes for split-level or bi-level dwellings in Plainfield Township. She testified all lower-levels are considered finished and included in the overall amount square footage unless otherwise informed by a homeowner.

Kljaich next provided a list of sales that occurred within the subject's subdivision. Limited descriptive information was provided. They consist of three, split-level style; two, one-story style; a one and one-half story style; and two, two-story style dwellings. The dwelling were built from 1975 to 1990 and range in size from 1,750 to 3,270 square feet of living area. The suggested comparables sold from March 2002 to May 2005 for prices ranging from $452,000 to $650,000 or from $143.61 to $271.43 per square foot of living area including land. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

Under cross-examination, it was discovered comparable 1 (parcel number 03-03-201-022-0000) had an incorrect description and assessment. In 2005 comparable 1 was described as a split-level style dwelling containing 2,492 square feet. In 2006, it was corrected and described as a one-story style dwelling containing 1,671 square feet of living area with a finished basement. As a result, its 2005 improvement assessment of $97,786 was reduced to $84,575 in 2006.

In rebuttal, the appellant re-submitted information on three suggested comparables, two of which had been submitted by the board of review. The appellant argued the assessments of these comparables, which are located within the subject's subdivision, reflect market values higher than their most recent sales prices. These properties consist of two, one and one-half story dwellings and a split-level style dwelling that were built from 1977 to 1979 and range in size from 2,008 to 3,875 square feet of living area. They sold from June 2005 to July 2006 for prices ranging from $459,900 to $529,000. The appellant argued these properties had 2006 total assessments, prior to board of review action, ranging from $163,775 to $183,246, which reflects estimated market values ranging from $491,325 to $549,738. Based on this analysis, the appellant argued these properties are over-assessed by 7% to 31% in comparison to their sale prices. The appellant also indicated example comparable 1, which sold for $529,000, had its assessment decreased in 2006 from $180,734 to $138,466 or an estimated market value of $415,398 due to its poor condition that was not disclosed at the time of its sale. In addition, the appellant indicated example comparable 3 is a quad-level style dwelling.

With respect to condition, the appellant argued the high property taxes prevent homeowners from properly maintaining a property. The appellant acquiesced that the subject property is in poor condition; therefore the subject property's assessment should be lowered resulting in lower property taxes. Based on the rebuttal comparables, the appellants contend the entire subdivision is over-assessed.

In response, the board of review objected to the appellants' rebuttal evidence as new evidence, new comparables, and a new level of assessment argument that was not raised by the taxpayer in his original submission of evidence. In addition, the board of review noted the 2005 three-year median level of assessments for Will County was 33.25%.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The first issue the Property Tax Appeal Board must resolve is the subject's correct dwelling size. The Board finds Erin Kljaich, Chief Deputy Assessor of Plainfield Township, provided credible testimony regarding the methodology used in determining sizes for split-level or bi-level dwellings in Plainfield Township. She testified lower-level finished spaces are included in square footage of living space, unless otherwise informed by a homeowner. She also indicated a portion of the subject is not finished and it was not included in the overall amount of living area, based in part on conversations with Anderson. Anderson did not dispute and actually agreed on several occasions during the hearing as to the amount of finished lower-level space, but argued it should be viewed as an amenity because it is used for storage. Although Anderson may not use the lower-level finished area as living space due to the amount of clutter (see photographs), the Property Tax Appeal Board finds the lower-level of the subject dwelling is finished and can be utilized as living space, no matter the dated décor. The Property Tax Appeal Board finds this area was uniformly accounted for in the overall amount of living area by the township assessor. As a result of this analysis, the Property Tax Appeal Board finds the subject dwelling contains 1,932 square feet of living area.

The appellants' first argument was unequal treatment in the assessment process or a lack of uniformity in the subject's assessment. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have not overcome this burden.

The parties submitted eight suggested assessment comparables for the Board's consideration. The Board gave diminished weight to all five assessment comparables submitted by the appellants. Notwithstanding their similar and dissimilar physical characteristics when compared to the subject, the Property Tax Appeal Board finds the board of review submitted credible market evidence that demonstrates residential properties, no matter their physical make-up, located in different subdivisions than the subject do not share similar markets. For example, the market analysis submitted by the board of review indicates the assessment comparables submitted by the appellants are located in subdivisions that had median sale prices ranging from

$157,500 to $260,500 between 2003 and 2005. In contrast, the median sale price of properties within the subject's subdivision from 2003 to 2005 was $475,000.

When an appeal is based on assessment inequity, the appellant has the burden to show the subject property is inequitably assessed by clear and convincing evidence. Proof of an assessment inequity should consist of more than a simple showing of assessed values of the subject and comparables together with their physical, locational, and jurisdictional similarities. There should also be market value considerations, if such credible evidence exists. In this context, the Supreme Court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent level. Kankakee County Board of Review, 131 Ill.2d at 21. The Property Tax Appeal Board finds this record is clear that the comparables identified by the appellants are located in areas that are inferior in terms of their fair market values when compared to the subject's location.

Furthermore, the Board finds comparables 1, 2, 3 and 5 submitted by the appellants are older in age than the subject; comparables 2 and 3 are of a dissimilar one-story design when compared to the subject's split-level design; and comparable 3 is of stone exterior construction, dissimilar to the subject's frame construction. The Property Tax Appeal Board also gave less weight to one assessment comparable submitted by the board of review. The evidence and testimony clearing indicate the board of review's comparable 1 is a one-story style dwelling, dissimilar to the subject's split-level design. Thus, all six of these suggested comparables submitted by both parties received reduced weight in the Board's analysis.

The Property Tax Appeal Board finds the remaining two comparables submitted by the Board of review to be most representative of the subject in location, age, design and features. The Property Tax Appeal Board fully recognizes these two comparables are somewhat larger in size and are better maintained than the subject based on the photographic evidence depicting the subject dwelling's poorly maintained cosmetic condition. These most similar assessment comparables have improvement assessments of $99,400 and $113,964 or $37.91 and $39.24 per square foot of living area. The subject property has an improvement assessment of $75,668 or $39.17 per square foot of living area. The Board finds the subject's improvement assessment is lower than these two most similar comparables' improvement assessments and falls between the comparables' improvement assessments on a per square foot basis. After considering adjustments to the most similar comparables for difference when compared to the subject, such as size and condition, the Board finds the subject's improvement assessment is supported and no reduction is warranted.

The Supreme Court in Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769, discussed the constitutional requirement of uniformity. The court stated that "[u]niformity in taxation, as required by the constitution, implies equality in the burden of taxation." (Apex Motor Fuel, 20 Ill.2d at 401) The court in Apex Motor Fuel further stated:

> "the rule of uniformity ... prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. [citation.]

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables disclosed that properties located in varying geographic areas are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellants have not proven by clear and convincing evidence that the subject property is inequitably assessed.

The appellants also argued the subject property's assessment is not reflective of its fair market value. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). After an analysis of the evidence, the Board finds the appellants have not met this burden.

The appellant submitted an undated letter from Daniel A. Laniosz of Mainstreet Builders, Inc., Yorkville, Illinois. The letter is not addressed to any particular person. The letter states in part that in response to your inquires of current home pricing, the basic package, without plan review, is around $70 per square foot. An additional $7 per square foot is added for basement finish. The Board finds Daniel A. Laniosz of Mainstreet Builders, Inc. was not present at the hearing for direct or cross-examination regarding the credibility and specific details of the reported home pricing plan or the effective date of the pricing plan. Thus, this valuation estimate is tantamount to hearsay and was given little weight in the Board's analysis. Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill.App.3d 474 (1979); Russell v. License Appeal Com., 133 Ill.App.2d 594 (1971). With respect to these decisions, the Property Tax Appeal Board has consistently found that the absence of corroborating testimony, the weight and credibility of the evidence and opinion of value is significantly diminished.

Similarly, the Property Tax Appeal Board gave little weight to the quote proposal for home owner's insurance premium limiting policy coverage of the subject dwelling to $142,000. The Board finds the person whom prepared the quote was not present at the hearing to provide corroborating testimony or be cross–examination regarding the method and details the $142,000 amount of insurance coverage was determined. A homeowner can purchase as much or as little real property insurance as he or she wishes, given that a willing entity is available for acceptance based on the specific terms of that particular policy and agreement. Regardless, the policy coverage amounts may or may not be indicative of a particular property's fair market value depending on the prevailing market conditions in that market area.

Furthermore, the Board finds the subject parcel consists of real property including both land and improvements thereon, however, the appellant claims the improvement is overvalued based in part on the basic pricing package from Mainstreet Builders, Inc. and quote proposal for home owner's insurance premium limiting policy coverage of the subject dwelling to $142,000. In

Showplace Theatre Company v. Property Tax Appeal Board, 145 Ill.App 3d. 774 (2nd Dist. 1986), the court held an appeal to the Property Tax Appeal Board includes both land and improvements and together constitute a single assessment in this market value case. In Showplace, although the appellant only disputed the subject's land value based on a recent allocated sale price, the Appellate Court held the Property Tax Appeal Board jurisdiction was not limited to a determination of the land value alone. In accordance with Showplace, the Property Board Tax Appeal Board analyzed the subject's total assessment in making the determination on whether its assessment is reflective of its fair cash value.

The Property Tax Appeal Board finds this record contains detailed descriptive information for nine suggested comparable sales, eight submitted by the board of review and one submitted by the appellant. Two properties are common to both parties. One comparable sold twice. The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d, the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach.

The Property Tax Appeal Board gave less weight to seven suggested comparable sales submitted by the parties. Six comparables are one-story, one and one-half story, or two story style dwellings, dissimilar to the subject's split-level design. One comparable sold in July 2002, and is considered less indicative of the subject's fair market value as of the January 1, 2005, assessment date at issue in this appeal. As a result, these comparables received reduced weight in the Board's analysis.

The Property Tax Appeal Board finds the remaining two comparables to be more representative of the subject in location, age, size, design and amenities. These two comparables are located in close proximity within the subject's subdivision. One comparable is a common comparable to both parties and sold twice. The common property consists of a split-level frame dwelling that was built in 1977 and contains 2,008 square feet of living area. Amenities include a finished lower-level, central air conditioning and a large garage. The property sold in October 2003, for $452,000O or $225.10 per square foot of living area including land and again in July 2006, for $459,900 or $229.04 per square foot of living area including land. The second most similar comparable property consists of a split-level frame dwelling that was built in 1977 and contains 2,904 square feet of living area. Amenities include a finished lower-level, central air conditioning and a garage. This comparables sold in July 2003, for $475,000 or $163.57 per square foot of living area including land. The subject's 2005 assessment reflects an estimated market value of $385,829 or $199.71 per square foot of living area including land, which is lower than the two most similar comparables' actual sale prices and falls between the comparables' sale prices on a per square foot basis.

The Property Tax Appeal Board recognizes one of the two most similar comparables is larger in size than subject and both most similar properties are better maintained than the subject based on the photographic evidence submitted by the appellant. After considering adjustments to the most similar comparable sales for differences when compared to the subject, such as size and

condition, the Board finds the subject's estimated market value as reflected by its assessment is supported. The Board finds the most similar sale in this entire record sold in 2003 and 2006 for prices of $452,000 and $459,900 or $225.10 and $229.04 per square foot of living area including land. Again the subject's assessment reflects an estimated market value of $385,829 or $199.71 per square foot of living area including land. Accepted real estate theory provides that all factors being equal, as the size of a property increases, its per unit value decreases, which is accordance with the sales data in this record. Based on this analysis, the Board finds the Will County Assessment Officials properly accounted for the subject's poor condition. Therefore, no reduction in the subject's assessment is warranted.

Based on this analysis, the Property Tax Appeal Board finds the appellants have not demonstrated a lack of uniformity in the subject's assessment by clear and convincing evidence or overvaluation by a preponderance of the evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Rosemary and Jerry E. Byerly** |
| **DOCKET NUMBER:** | **05-00400.001-R-1** |
| **DATE DECIDED:** | **March, 2008** |
| **COUNTY:** | **Will** |
| **RESULT:** | **No Change** |

The subject property consists of a split-level brick and frame dwelling that was built in 1977 and contains 1,476 square feet of living area. Amenities include a full unfinished basement, central air conditioning, a fireplace, a deck, a 240 square foot enclosed sunroom, and a 545 square foot attached garage.

The appellants appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellants submitted documentation detailing the remodeling costs of $12,008 including labor to convert a screened porch to a sunroom.

The appellants argued the board of review unjustly increased the subject's 2005 assessment from $76,620 to $82,806 based on misinformation. The appellants submitted Exhibit 1, the board of review's final decision regarding the subject property, indicating the subject's assessment was changed due to remodeling of an existing structure, completely or partially. However, the appellants contend the assessment increase was a result of Exhibit 2, which is a document that was prepared by the Homer Township Assessor's Office. This document indicates the assessor's office was updating records and the subject parcel was surveyed on June 2, 2004, for an addition permit noting the sunroom. The appellants argued the converted sunroom was not an addition, but was actually constructed as a screened patio in 1981. The appellants submitted a building and use permit and a certificate of occupancy and compliance from 1981 to support this testimony. The appellants next presented the subject property's assessment history showing its assessment increased from $17,300 in 1981 to $22,515 in 1982. The appellants contend the assessment increase between 1981 and 1982 was for the construction of the screened patio. Thus, the appellants argued the increase in assessed value of the structure had already been realized between 1981 and 1982. Therefore, the appellants contend that the subject's converted sunroom had been improperly assessed twice as an addition.

The appellants argued the sunroom has the same 2 x 4 construction, roof, ceiling, exterior gutters and remains unheated, as in 1981. In 2004, the exterior siding and interior paneling was replaced. Additionally, the structure was stabilized and new thermal glass insulated windows and flooring were installed. The appellants acknowledged while this activity could be construed as an improvement, it is not an addition since there was no change in square footage. Furthermore, the appellants contend the remodeling is not likely to increase the value of the property. Based on this evidence, the appellants requested a reduction in the subject property's assessment to the amount prior to board of review action, or a total assessment of $76,620.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $82,806 was disclosed. The subject's assessment reflects an estimated market value of $249,040 using Will County's 2005 three-year median level of assessments of 33.25%.

In support of the subject's assessment, the board of review representative for this appeal, Chief Deputy Assessor for Homer Township, Dale B. Butalla, submitted a letter addressing the appeal and the subject's property record card. The board of review also submitted property record cards and a grid analysis of four suggested comparables.

Butalla testified he disagreed with the appellants' contention that the screened patio was assessed in 1982 and simply remodeled in 2004 and therefore should not be assessed. Butalla argued the appellants submitted no corroborating evidence showing the subject's assessment increase in 1982 was due to the addition of the screened patio and not as a result application of an equalization factor or revaluation of the subdivision. Butalla testified he researched the township assessor records found no documentation revealing the screened patio had ever been assessed, noting four different assessors have held office since 1981.

To demonstrate the sunroom had not been previously assessed, the assessor compared the subject dwelling's assessment (prior to its increase by the board of review) to the assessments of other comparable homes located in the subject's subdivision to determine if a difference in assessed value existed. (Exhibit B).
The comparables consist of split-level brick and frame dwellings that were built from 1975 to 1978. Features include full unfinished basements, central air conditioning, and 542 square foot garages. Comparables 2 and 3 have a fireplace. None of the comparables have a sunroom like the subject. The comparables have improvement assessments ranging from $63,239 to $66,531 or from $42.84 to $45.08 per square foot of living area. The subject property had an improvement assessment of $61,606 or $41.74 per square foot of living area prior to its increase by the board of review, which is less than any of the comparables. Based on this analysis coupled with the aforementioned research, the assessor and board of review determined the screened patio/sunroom had never been previously assessed.

The board of review further pointed out the subject's increased assessment reflects an estimated market value increase of $18,558. While the estimated market value increase is greater than the remodeling cost of approximately $12,000 as reported by the appellants, the remodeling cost does not include the value of the existing roof and support structure, which are generally the larger cost items.

The board of review next presented Exhibit C, which is an analysis of the same previously mentioned comparable properties. The board of review argued this evidence demonstrates the subject property is equitably assessed and supports its estimated market value as reflected by its assessment. The comparables have improvement assessments ranging from $63,239 to $66,531 or from $42.84 to $45.08 per square foot of living area. The subject property has a final 2005 improvement assessment of $67,792 or $45.93 per square foot of living area. Comparables 1 and 4 sold for prices of $254,000 and $380,000 or $172.09 and $257.45 per square foot of living area including land, respectively. The transactions occurred in January 2004 and October 2005. The subject's total assessment of $82,806 reflects an estimated market value of $249,040 or $168.73 per square foot of living area including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellants argued the subject property is overvalued because the board of review unjustly increased its assessment for an addition that had already been assessed in 1982. By increasing its assessment in 2005, the appellants contend that the subject's converted sunroom had been improperly assessed twice as an addition. Furthermore, the appellants argued while the remodeling could be classified as an improvement, it is not an addition since there was no change in square footage. Finally, the appellants contend the remodeling is not likely to increase the value of the subject property. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). After an analysis of the evidence, the Board finds the appellants have not met this burden.

The Property Tax Appeal Board finds the appellants' arguments are irrelevant with respect to the subject's sunroom being assessed twice, once in 1982 and again in 2005. The Board finds this record is void of conclusive documentary evidence showing the subject's assessment increase in 1982 was the result of the newly constructed screened patio. Furthermore, Butalla testified he researched the township assessor's records found no documentation revealing the screened patio had ever been assessed, noting four different assessors have held office since 1981. In addition, the market value evidence contained in this record does not support the appellants' assertion that remodeling and conversion of the screened patio to a sunroom is not likely to increase the value of the subject property.

The Property Tax Appeal Board finds Showplace Theatre v. Property Tax Appeal Board, 145 Ill. App. 3d 774 (2nd Dist. 1986), provides some guidance in appeals of this nature. In Showplace, the appellant only appealed the land value. The basis for judicial review was whether Showplace could appeal only the land valuation, thereby limiting the Property Tax Appeal Board's jurisdiction. The Appellate Court affirmed the Property Tax Appeal Board's decision of reducing the subject's land assessment, but increasing the improvement assessment based on its recent sale. The Appellate Court found assessments are based on real property consisting of both land and improvements. An appeal to the Property Tax Appeal Board includes both the land and improvements and together they constitute a single assessment. The appellants in this appeal put at issue the valuation of a small portion of the property rather that the entire property. Under the holdings of Showplace, the Property Tax Appeal Board finds the appellants' failure to present evidence of value of the property as a whole substantially diminishes the merits of the appeal. In other words, the construction costs supplied by the appellants to convert a screened patio to an enclosed sunroom in 2004 do not demonstrate the subject's estimated market value as reflect by its total assessment, both land and improvements together, is incorrect.

The Property Tax Appeal Board finds this record contains two sales of similar properties located within the subject's subdivision. These split-level properties are identical to the subject in size and most features with slight variances in age, but they do not have a sunroom like the subject. They sold for prices of $254,000 and $380,000 or $172.09 and $257.45 per square foot of living area including land, respectively. The transactions occurred in January 2004 and October 2005. The subject's total assessment for 2005 of $82,206 reflects an estimated market value of

$249,040 or $168.73 per square foot of living area including land, which is less than the similar comparable sales without sunrooms. Therefore, the Property Tax Appeal Board finds the subject's assessed valuation is well supported.

Based on this analysis, the Property Tax Appeal Board finds the appellants have not demonstrated overvaluation by a preponderance of the evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Mats Carenback** |
| **DOCKET NUMBER:** | **04-20814.001-R-1** |
| **DATE DECIDED:** | **May, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **No Change** |

The subject property consists of a 39,797 square foot parcel of unimproved, vacant land located in Inverness. At hearing, the appellant's attorney argued that there was unequal treatment in the assessment process of this vacant land in comparison to residential land as the basis of this appeal.

The appellant's pleadings included a brief as well as data, descriptions and a map of nine suggested comparables located within the subject's immediate neighborhood. The appellant also submitted a black and white photograph of the subject property depicting vacant land. The appellant's brief stated that a comparison of vacant land located in the area reflected land assessments at $4.50 per square foot similar to the subject's land. The statement was further supported with data reflecting the same assessment per square foot accorded to the subject's adjacent, vacant parcel. Whereas a second comparison of neighboring land comprising eight properties around the subject, reflected land assessments of $1.75 per square foot for residential land. However, the brief as well as the data and descriptions including property characteristic printouts from the assessor's database indicate that these eight properties are a different class of property, residential, and are improved with single-family dwellings, unlike the subject property.

At hearing, the appellant's attorney argued that land should be assessed at an equal value despite its usage. On the basis of this comparison, the appellant's attorney requested an assessment reduction to reflect a $1.75 per square foot assessment.

The board of review submitted "Board of Review Notes on Appeal" wherein the board's final assessment decision was presented reflecting a land assessment of $39,398 or $4.50 per square foot. The board of review also submitted a memorandum and copies of CoStar comparable printouts for five suggested comparables. The memorandum asserted that the subject contained a market value of $246,238 or $6.25 per square foot of land without further explanation. The printouts reflect land sales in an unadjusted range from $5.50 to $11.38 per square foot. The printouts further stated that information reflected thereon was obtained from sources deemed reliable, but not guaranteed. In addition, the board submitted copies of its file from the board of review's level appeal.

At hearing, the board's representative testified that the assessor's office determines that any land without an improvement thereon is characterized as vacant land. Further, he stated that he had no personal knowledge of which methodology was used in determining the land assessment of the properties in the subject's subdivision or reflected on the appellant's map. However, he did indicate that the non-improved land parcels are assessed at $4.50 per square foot of land, while the improved parcels are assessed at $1.75 per square foot of land. Moreover, as to the board's suggested properties, he testified that no adjustments were made to the raw assessment data and

that the properties did not appear to be located within the subject's subdivision. As a result of its analysis, the board requested confirmation of the subject's assessment.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d l (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. The PTAB finds that the appellant has not met this burden and that a reduction in the subject's assessment is not warranted.

In totality, the appellant submitted assessment data and argument regarding the subject's vacant land assessment which currently stands at $4.50 per square foot. In contrast, the appellant's brief disclosed that similarly classified and sited vacant land was similarly assessed in comparison to the subject, while differently classified, residential land was all assessed at $1.75 per square foot of land. The appellant further argued that land is land and should be equally assessed despite the assessor's classification of the land and its usage. The PTAB finds this argument unpersuasive and that the appellant failed to demonstrate by clear and convincing evidence that land should be assessed equally despite any county classification of the land's particular usage.

On the basis of the evidence submitted, the PTAB finds that the evidence has not demonstrated that the subject is assessed in excess of that which equity dictates. Therefore, the PTAB finds that a reduction in the subject's land assessment is not warranted.

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| **APPELLANT:** | **Thomas and Margaret Carey** |
| **DOCKET NUMBER:** | **05-00396.001-R-1** |
| **DATE DECIDED:** | **January, 2008** |
| **COUNTY:** | **Will** |
| **RESULT:** | **Reduction** |

The subject property consists of a one-story brick dwelling containing 2,463 square feet of living area that was built in 1988. Features include a partial finished basement, central air conditioning, a fireplace, and a 910 square foot attached garage.

The appellant, Thomas Carey, appeared before the Property Tax Appeal Board claiming a lack of uniformity regarding the subject's improvement assessment as the basis of the appeal. The subject's land assessment was not contested. In support of this claim, the appellants submitted an equity analysis of four suggested comparables located in close proximity to the subject. The comparables consist of a two-story style and three, one-story style brick, fame or brick and frame dwellings that were built from 1982 to 1989. Features include central air conditioning, one or two fireplaces, and garages ranging in size from 832 to 1,629 square feet. One comparable has a partial finished basement while three comparables contain unfinished basements. The dwellings range in size from 2,460 to 3,023 square feet of living area and have improvement assessments ranging from $61,749 to $75,140 or from $24.86 to $26.62 per square foot of living area. The subject property has an improvement assessment of $102,370 or $41.56 per square foot of living area.

The appellant argued the local assessor "chased" the subject's listing and sale price when assessing the subject property resulting in a 25% increase in its property tax bill. The appellant acknowledged the subject property was offered for sale in June 2004 for $514,900 as noted on its property record card and was purchased by the appellants in June 2005 for $419,252. The appellant argued these actions are contrary to case law and against acceptable assessment procedures. The appellants cited no case law or legal authority to support these claims. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $133,210 was disclosed. In support of the subject's assessment, the board of review submitted an assessment analysis of three suggested comparables located within the subject's subdivision. Additionally, testimony from the township assessor was offered.

The comparables consist of a one-story; a part one and part two-story; and a one and one-half story frame or brick and frame dwellings that were built from 1983 to 1988. Features include full or partial unfinished basements, central air conditioning, one or two fireplace, and two or three-car garages. The dwellings range in size from 2,782 to 2,913 square feet of living area and have improvement assessments ranging from $65,328 to $74,747 or from $23.48 to $26.62 per square foot of living area. The township assessor acknowledged the subject property has a higher improvement assessment of $102,370 or $41.56 per square foot of living. However, the assessor argued the subject's quality grade was changed and is higher than the comparables, which justifies its higher assessment.

Under cross-examination, the assessor testified the subject's quality grade was raised, although no interior inspection was made to the subject. The witness further testified assessment officials use all available information in calculating assessments, including the Multiple Listing Service, but the primary method utilized for determining assessed values is the cost approach to value. There was also some discussion whether it was proper to change the subject's quality grade.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

The appellants argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have overcome this burden.

The parties submitted two assessment analyses detailing a total of six assessment comparables for the Board's consideration. One comparable was a common property used by both parties. The Board placed diminished weight on two comparables submitted by the board of review and one comparable submitted by the appellant due to their dissimilar design when compared to the subject. The Property Tax Appeal Board finds the remaining three comparables to be most representative of the subject in location, age, size, design and amenities. These most similar comparables have improvement assessments ranging from $61,749 to $74,747 or from $25.10 to $26.62 per square foot of living area. The subject property has an improvement assessment of $102,370 or $41.56 per square foot of living area, which falls well above the range established by the most similar assessment comparables contained in this record. As a result, the Board finds the appellants have demonstrated a consistent pattern of assessment inequities within the assessment jurisdiction by clear and convincing evidence. Therefore, the Board finds a reduction in the subject's improvement assessment is warranted.

As a final point, the Property Tax Appeal Board finds the township assessor's decision to change the subject's quality grade resulting in its higher assessment to be improper and is not supported by the testimony and evidence in this record. First, the Board finds local assessment officials did not inspect the subject property to make a determination regarding the subject's quality grade. Furthermore, the Illinois Real Property Appraisal Manual states that quality grades represent the workmanship and types of materials used at the time of construction. The quality grade should be established on original built-in quality as new dwellings and not to be influenced by physical condition. A house will always retain its initial grade of construction regardless of its present deteriorated condition. Thus, the Property Tax Appeal Board gave the board of review's argument regarding the subject's quality grade in comparison to other properties quality grade little merit.

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| **APPELLANT:** | **Charles and Gail Ellenbaum** |
| **DOCKET NUMBER:** | **05-01077.001-R-1** |
| **DATE DECIDED:** | **August, 2008** |
| **COUNTY:** | **Kane** |
| **RESULT:** | **No Change** |

The subject parcel, located on a corner, consists of 12,500 square feet of wooded ground in a special flood hazard area. The parcel has Geneva Creek running through the center and the lot has been improved with a 19-year-old, one and one-half story frame dwelling which was constructed across a ravine with the dwelling straddling the creek with two partial crawl-space foundations on either side of the creek. The dwelling contains 3,167 square feet of living area and features an attached two-car garage of 644 square feet of building area, central air conditioning, and two fireplaces. The property is located in Geneva, Geneva Township, Kane County.

Appellant Charles Ellenbaum appeared before the Property Tax Appeal Board on behalf of both appellants contending unequal treatment in the assessment process as the basis of this appeal with regard to both the land and improvement assessment of the subject property. Appellants indicated the subject property was purchased in September 2001 for $550,000, at what appellant Charles Ellenbaum characterized as the peak of the market. Furthermore, appellant argued that he and his wife paid too much for the property.[1] He also noted their real estate agent advised the property was worth no more than $400,000. Additionally appellants indicated that since the purchase, the property has been modified by converting an existing garage of 550 square feet of building area into additional living space and constructing a new two-car garage of 644 square feet of building area.

As part of the data submission, appellants included a multi-page listing from the township assessor indicating the "assessment rank" of the properties in the jurisdiction. Appellants contend that the subject's rank of 24 out of 269 properties in 2005 is not appropriate given that the subject is a modest property compared to neighboring properties.

In support of the instant inequity argument for both the land and improvement assessments, appellants presented a grid analysis of six suggested comparable properties, three of which were located in the subject's same neighborhood code as assigned by the township assessor and three of which were located north of the subject in a different neighborhood code, but still in Geneva Township. Appellants indicated the latter three properties were selected as similar contemporary frame constructed dwellings on non-traditional foundations and situated in a wooded ravine setting like the subject with intermittent water running by the properties.

In support of the land inequity argument, the six suggested comparable lots range in size from 9,000 to 41,220 square feet of land area and have land assessments ranging from $25,342 to $47,929 or from $1.16 to $2.82 per square foot of land area. The subject has a land assessment of $46,750 or $3.74 per square foot of land area. Given the topography and issues with flooding

[1] Even though the property had been on the market for several years, according to Ellenbaum there were no real negotiations on the sale price with the previous owner.

and building, appellants felt the parcel should not be characterized as a "normal" lot and the land assessment was excessive. On the basis of these comparisons, the appellants felt that a land assessment of $20,000 or $1.60 per square foot of land area was appropriate for the subject lot.

In support of the improvement inequity argument, the six comparables were reported to consist of one and one-half, two-story or three-story style frame or masonry dwellings that ranged in age from 26 to 51 years old. These dwellings ranged in size from 1,392 to 3,492 square feet of living area. Five of the properties were described as having full finished basements ranging in size from 696 to 2,328 square feet of building area; one property was described as having no basement. Five of the comparables included central air conditioning and two-car garages; one comparable featured only a car port. Five of the comparables had from one to three fireplaces. These six properties have improvement assessments ranging from $80,179 to $112,274 or from $31.88 to $60.04 per square foot of living area. The subject has an improvement assessment of $139,898 or $44.17 per square foot of living area. On the basis of these comparisons, the appellants felt that an improvement assessment of $133,334 or $42.10 per square foot of living area was appropriate for the subject dwelling.

In further support of his inequity argument, while appellants acknowledged the subject property was purchased in September 2001 for $550,000, appellant Ellenbaum noted the property was originally assessed in 2001 for $71,007, but the assessment was increased to $183,315 in 2002. The appellants argued that the subject's assessment increase from 2001 to 2002 was excessive when compared to other dwellings in the area. The subject's assessment increased to 99.99% of its purchase price and the "error" has been carried forward subsequently through equalization according to appellants. Of the six suggested comparables with sales data in appellants' grid analysis, only two sales occurred within three years of the assessment date at issue, with three other properties having sale prices occurring from 18 to 29 years prior to January 1, 2005. The more recent sales occurred in October 2003 and April 2004 for purchase prices of $302,000 and $365,000, respectively. These comparables as of 2005 had assessments of $108,444 and $117,525 or, as the appellants explained 108% and 96% of their recent sales prices, respectively.

On cross-examination, while appellant Ellenbaum did not have floodplain maps with him at the hearing, he testified that upon seeking a building permit for the new garage, appellants were informed by at least three governmental entities that the lot was basically floodplain. Appellant Ellenbaum was also asked by the board of review representative if the property flooded in August 2007. Appellant testified there was flooding on the lot and damage to abutments that was easily repaired. Upon further examination, appellant Ellenbaum indicated that he was unaware of the opportunity to file for assessment relief due to that flooding.

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of $186,648 for the subject property was disclosed. This final assessment was a reduction granted by the board of review based upon an appraisal submitted by the appellants. A copy of that appraisal was filed as part of the board of review's evidence in this matter. The appellants' appraiser used the sales comparison approach to value in concluding an estimated market value of $560,000 for the subject property as of January 18, 2006. The appraiser's report indicates the dwelling consists of 3,238 square feet of living area, the lot was within a FEMA special flood hazard area, the appellants were the clients for the appraisal, and the stated purpose of the appraisal was for use in a mortgage finance transaction. The subject's total assessment as

modified by the board of review reflects an estimated market value of $558,994 using the 2005 three-year median level of assessments for Kane County of 33.39%.

The board of review representative noted that county maps do not indicate the subject lot being within a floodplain.[2] In support of the current assessment as to both the land and improvement assessment pending before the Property Tax Appeal Board, the board of review presented a grid analysis of three suggested comparable properties located "nearby" the subject property.

As to the land inequity argument, the board of review's suggested comparable parcels ranged in size from 18,200 to 20,000 square feet of land area. These parcels had land assessments ranging from $39,024 to $74,799 or from $2.14 to $3.74 per square foot of land area. In particular, comparable #1, a corner lot, had a per square foot land assessment of $3.74, identical to the subject's corner lot per-square-foot land assessment.

In response to the Hearing Officer's question regarding the land assessment methodology utilized in Geneva Township, the board of review's representative had no information as to the methodology utilized as the assessor was not present at the hearing. Likewise, the board of review representative was unable to explain to appellant Ellenbaum what the characterization "normal" concerning parcels on the property record cards of the subject and comparables meant.

As to the improvement inequity argument, the board of review representative noted that due to the unique nature of the subject dwelling, there were really no truly comparable dwellings, but the board of review selected the best comparables they could find. The board of review's suggested comparable properties were improved with either one and one-half or two-story frame constructed dwellings ranging in age from 33 to 36 years old. The comparables ranged in size from 3,058 to 3,798 square feet of living area; two of the comparables featured basements and one had a crawl-space foundation. Features included central air conditioning, two or four fireplaces, and two-car or three-car garages. Their improvement assessments ranged from $122,926 to $191,835 or from $40.20 to $51.67 per square foot of living area. As noted by the board of review, the subject's per square foot improvement assessment falls within the range of these comparable dwellings. Two of these comparables sold within three years of the assessment date at issue; the third comparable had a sale ten years prior. The two more recent sales occurred in January 2004 and October 2006 for prices of $575,000 and $655,000 or for $163.12 and $214.19 per square foot of living area including land. As a comparison, the subject's four-year-old purchase price of $550,000 applied to the new size of the dwelling results in a purchase price of $173.67 per square foot of living area, including land, not adjusting for the costs of the new garage or conversion of the old garage into living area. Alternatively, the subject's estimated fair market value based upon its assessment of $558,994 results in an estimated market value of $176.51 per square foot of living area, including land.

Based on its analysis of these properties and the appraisal previously filed by the appellants establishing an estimated fair market value of the subject property of $560,000, the board of review requested confirmation of the subject's assessment.

[2] In appellants' appeal, appraisal, and rebuttal material, reference was made to the FEMA Special Flood Hazard Area (FEMA Flood Zone AE and FEMA Map #17089CO268F).

In questioning the board of review's evidence, appellant was able to establish that board of review comparables #1 and #2 have partially finished basements rather than unfinished basements as set forth on the board of review's grid analysis.

At the hearing in rebuttal appellant objected to the board of review's inference that the subject parcel was not actually in a floodplain given the numerous agencies that have declared it so.

Additionally as written rebuttal evidence in a document entitled Appendix appellants set forth a great deal of data. Among the data, appellants provided a very brief description with assessment data on eight newly suggested comparables in the subject's immediate neighborhood plus another three newly suggested comparables asserted to be similar to the subject property along with a discussion of two comparables not fully described in the board of review's evidence nor relied upon by the board of review in this appeal. Also appellants addressed assessment data on three of the sales comparables set forth in the appraisal filed by the board of review along with a calculation of how the assessment related proportionately to the recent sale price. As to these sold properties, appellants indicated the assessments did not yet reflect one-third of the property's recent purchase price like the subject's assessment that was raised within one year of its purchase to reflect its purchase price. Appellants also contended that board of review comparable dwellings #1 through #3 ranged in size from 3% smaller to 20% larger than the subject dwelling and appellants pointed to additional differences between the subject and the three comparables suggested in the board of review's grid analysis and thereby questioning their similarity to the subject. Finally, in analyzing the dwelling sizes and lots selected by the board of review as comparable to the subject, the appellants noted that board of review comparable #1 is a corner lot.

As to the appraisal appellants filed with the board of review at the local hearing, appellant Ellenbaum testified that the report was presented by the appraiser to the appellants at the time of the local hearing. Had he reviewed it prior to the hearing, appellant Ellenbaum testified that he would not have submitted it for the hearing because he thinks it was too high.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

As a preliminary matter, the appellants submitted written rebuttal evidence in this proceeding which exceeded what by the Official Rules of the Property Tax Appeal Board is suitable rebuttal evidence. "Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties." (86 Ill.Admin.Code §1910.66(c)). In light of this rule, only those portions of appellants' appendix which addressed the comparables in the appraisal or the three comparables presented by the board of review may be considered in this appeal. No newly suggested comparable properties or reiteration of the appellants' comparables in this appeal may be considered from this rebuttal filing.

The appellants contend unequal treatment in the subject's improvement assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment

jurisdiction. The Supreme Court of Illinois in Walsh v. Property Tax Appeal Board, 181 Ill. 2d 228 (1998), set forth the basic tenets of the Illinois Constitution's uniformity clause requirement as it relates to the assessment and taxation of real estate. The court stated that:

> The Illinois property tax scheme is grounded in article IX, section 4, of the Illinois Constitution of 1970, which provides in pertinent part that real estate taxes "shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." Ill.Const.1970, art. IX, §4(a). Uniformity requires equality in the burden of taxation. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 20 (1989). This, in turn, requires equality of taxation in proportion to the value of property being taxed. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Thus, taxing officials may not value the same kinds of properties within the same taxing boundary at different proportions of their true value. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 20 (1989). The party objecting to an assessment on lack of uniformity grounds bears the burden of proving the disparity by clear and convincing evidence . . . Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 22 (1989).

Walsh v. Property Tax Appeal Board, 181 Ill. 2d at 234 (1998). The uniform assessment requirement mandates that property not be assessed at substantially greater proportion of its value when compared to similar properties located within the taxing district. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 21 (1989). Having considered the evidence presented, the Board concludes that the appellants have failed to meet this burden and thus finds a reduction is not warranted.

As to the assessment rank data supplied by the appellants, no weight has been placed on this evidence by the Property Tax Appeal Board. A listing in assessment value order from highest total assessment to lowest total assessment of every residential property in the township is not evidence of a lack of uniformity of assessment without individual data on the similarities and differences in age, size, design, exterior construction, features and amenities of these properties.

Likewise, no weight has been placed on the appellants' argument that the subject's assessment increased substantially from 2001 to 2002. The jurisdiction of the Property Tax Appeal Board is strictly limited by law. (35 ILCS 200/16-160) Any dispute that appellants had with their 2002 assessment should have been timely raised with the Kane County Board of Review upon notice of the new assessment with further potential appeal to the Property Tax Appeal Board as was done for this 2005 assessment appeal.

For purposes of the inequity argument, the parties submitted a total of nine comparable properties for consideration by the Property Tax Appeal Board. The land assessments of the nine suggested comparables ranged from $25,342 to $74,799 or from $1.16 to $3.74 per square foot of land area. The subject's land assessment of $46,750 or $3.74 per square foot of land area falls within the range of these comparables. Moreover, the subject is a corner lot and the only other corner lot provided in evidence, board of review comparable #1, had an identical per square foot land assessment as the subject property. As to the land assessment, the appellants have failed to establish inequitable treatment by clear and convincing evidence.

As noted by both parties, none of the suggested comparable dwellings is truly similar to the subject property given its unique design over the creek. However, appellants' comparables #4 through #6 were the most similar in their woodland setting and non-traditional foundations despite being significantly smaller in square foot living area than the subject.[3] The board of review's comparables were more similar to the subject in size, but still differed significantly in age. Despite the differences in size and age of both parties comparables, the data presented by the parties demonstrates that the subject property is being assessed in an equitable manner as provided by the courts. The subject property's assessment is within the range established by all the comparables. The comparables had improvement assessments ranging from $80,179 to $191,835 or from $31.88 to $60.04 per square foot of living area. The subject's improvement assessment of $139,898 or $44.17 per square foot of living area is within this range. In light of the evidence, the Board finds the subject's improvement assessment is supported and a reduction in the subject's assessment is not warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellants have not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, the Property Tax Appeal Board finds that the subject's assessment as established by the board of review is correct and no reduction is warranted.

As a final point, the parties submitted sales data on several comparables which occurred within three years of the assessment date at issue; those sales ranged from $302,000 to $655,000. The subject property has an assessment that reflects an estimated market value of $558,994 using the 2005 three-year median level of assessments for Kane County of 33.39%. The subject property's 2005 assessment is not only supported by this sales data, but also by the 2001 purchase price of the property for $550,000 before the modification of an existing garage into additional living area and the addition of a new, larger two-car garage. Furthermore, this assessment is supported by the 2006 estimated fair market value of $560,000 for the subject property as set forth in an appraisal. Therefore, no reduction in the subject's assessment is justified.

[3] While appellant criticized the size differences in the board of review's suggested comparables, the appellants' comparables #4 through #6, despite their similarity in setting, are from 48% to 57% smaller than the subject property in terms of square foot living area.

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| **APPELLANT:** | **Scott & Stacie Eversgerd** |
| **DOCKET NUMBER:** | **05-02418.001-R-1** |
| **DATE DECIDED:** | **June, 2008** |
| **COUNTY:** | **Washington** |
| **RESULT:** | **No Change** |

The subject property consists of a 1.17 acre parcel improved with a one-story single family dwelling with 2,075 square feet of living area. The home has a brick and vinyl exterior. Features of the home include a full basement, central air conditioning, a fireplace and a 768 square foot attached garage. The dwelling was constructed in 2004. The property is located in Nashville, Pilot Knob Township, Washington County.

The appellant, Scott Eversgerd, appeared before the Property Tax Appeal Board contending inequity in the improvement assessment as the basis of the appeal. In support of this argument the appellant submitted descriptions, photographs, copies of property record cards, and assessment data on four comparable properties. The comparables were composed of one, one and one-half story dwelling and three, one-story dwellings that ranged in size from 1,932 to 2,658 square feet of living area. Each of the comparables had a full basement, central air conditioning and an attached garage. Three of the comparables had a fireplace. These comparables were located from ¼ to 4 miles from the subject property. The appellant testified that comparables 3 and 4 were located in a different township. The appellant indicated that these comparables had improvement assessments that ranged from $47,470 to $61,121 or from $22.99 to $24.57 per square foot of living area. The appellant indicated the comparables had an average improvement assessment of $23.88 per square foot. Based on this data the appellant requested the subject's improvement assessment be reduced to $49,572.

The appellant also questioned why the subject property had a grade "B" and also questioned why the subject had a subdivision adjustment factor of 1.10.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject was disclosed. The subject property had an improvement assessment $60,072 or $28.95 per square foot of living area. To demonstrate the subject property was equitably assessed the board of review submitted descriptions, photographs, copies of property record cards, and assessment data on five comparable properties. The comparables were improved with one-story single family dwellings ranging in size from 1,888 to 2,129 square feet of living area. The dwellings were constructed from 1989 to 2004 and had frame, brick, or brick and frame exteriors. Each of the comparables had a full basement, central air conditioning, and an attached garage. The garages ranged in size from 460 to 1,092 square feet. Two of the comparables had one or two fireplaces. Comparable 4 also had an 864 square foot storage shed and comparable number 5 also had a detached 1,170 square foot garage. The board of review indicated the comparables were located from approximately 1/3 to 9.75 miles from the subject in subdivisions a few miles from Nashville. Comparable number 1 was located in the subject's subdivision and had a grade "B" and a 1.10 subdivision factor was applied. Comparable number 1 had an improvement assessment of $48,294 based on being 80% complete. As complete this property had an improvement assessment of $60,360 or $28.35 per square foot of living area.

The four remaining comparables had improvement assessments ranging from $51,199 to $59,501 or from $27.12 to $29.00 per square foot of living area.

The board of review also indicated that the comparables sold from May 2003 to September 2005 for prices ranging from $200,000 to $249,000 or from $105.93 to $128.95 per square foot of living area. The subject's total assessment of $67,056 reflects a market value of $200,887 or $96.81 per square foot of living area. The board of review indicated the market data supported the subject's assessment.

The board of review also explained that the 1.10 subdivision factor was based on sales ratio studies disclosing that the assessments in the subdivision had to be adjusted for market conditions. The board of review also indicated the grade factor assigned to the subject is based on the township assessor's analysis. The board of review argued that the market data supported the subject's total assessment regardless of the grade assigned by the assessor and the application of the subdivision factor.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds a reduction in the subject's assessment is not supported by the evidence in the record.

The appellant argued assessment inequity as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data the Board finds a reduction is not warranted on this basis.

The record contains assessment information on nine comparables submitted by the parties. The comparables had varying degrees of similarity to the subject property. The Board gave little weight to the appellants' first comparable because it differed from the subject in construction style. The remaining comparables were improved with one-story dwellings with similar features as the subject property. These dwellings ranged in size from 1,888 to 2,339 square feet of living area. The comparables had improvement assessments that ranged from $23.60 to $29.00 per square foot of living area. The three comparables most similar to the subject in age were the appellants' comparable number 3 and the board of review's comparables numbered 1 and 3. These comparables had improvement assessments per square foot of $23.60, $28.35[4], and $29.00, respectively. The subject property has an improvement assessment $60,072 or $28.95 per square foot of living area, which is within the range and supported by these most similar properties. After considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's per square foot improvement assessment is supported and a reduction in the subject's assessment is not warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the

[4] This is based on an improvement assessment of $60,360 based on the home being complete.

parties disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence.

The appellant also questioned the accuracy of the subject's "B" grade and the application of the 1.10 subdivision factor. The Property Tax Appeal Board finds the market data submitted by the board of review supports the application of these factors. The board of review disclosed that its comparables sold from May 2003 to September 2005 for prices ranging from $200,000 to $249,000 or from $105.93 to $128.95 per square foot of living area. The subject's total assessment of $67,056 reflects a market value of $200,887 or $96.81 per square foot of living area, which is below the range on a per square foot basis established by these comparables. The Board finds this market data demonstrates the subject's total assessment, considering both its grade and the subdivision factor, is reflective of its market value.

In conclusion the Board finds the assessment of the subject property as established by the board of review is correct and a reduction is not warranted.

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| **APPELLANT:** | **Hermann Faubl** |
| **DOCKET NUMBER:** | **06-01628.001-R-1** |
| **DATE DECIDED:** | **October, 2008** |
| **COUNTY:** | **Kane** |
| **RESULT:** | **No Change** |

The subject property consists of a Buckingham model one-story frame dwelling that was built in 2004 and contains 2,598 square feet of living area. Features include a full basement, central air conditioning, and a 407 square foot attached garage. The subject property is located in the Sun City senior citizen retirement community in Huntley, Illinois, which is within the assessment jurisdiction of Rutland Township, Kane County, Illinois. Directly north of the subject is the McHenry County boundary line and another portion of the Sun City community, which is located in the assessment jurisdiction of Grafton Township, McHenry County. Thus, the Sun City community straddles the Kane and McHenry County boundary line, which includes portions of Rutland Township, Kane County, and Grafton Township, McHenry County.

The appellant appeared before the Property Tax Appeal Board claiming a lack of uniformity regarding the subject's improvement assessment as the basis of the appeal. More specifically, the appellant argued the improvement assessments of Buckingham model dwellings located in Grafton Township, McHenry County, are assessed proportionally less than Buckingham model dwellings located in Rutland Township, Kane County. The subject's land assessment was not contested. In support of this argument, the appellant presented an equity analysis of four suggested comparables located from 3 to 7 blocks from the subject. However, the comparables are located in Grafton Township, McHenry County. The comparables consist of Buckingham model, one-story frame or frame and masonry dwellings that are from two to five years old. Features include full basements, central air conditioning and attached garages that contain 406 or 606 square feet. Two comparables contain a fireplace. The dwellings range in size from 2,758 to 2,806 square feet of living area and have improvement assessments ranging from $77,389 to $78,508 or from $27.87 to $28.32 per square foot of living area. The subject property has an improvement assessment of $94,220 or $36.27 per square foot of living area.

The appellant's evidence also revealed the comparables sold from December 2002 to August 2005 for prices ranging from $333,334 to $396,205 or from $120.86 to $147.81 per square foot of living area including land. The evidence showed the appellant purchased the subject property in August 2004 for $415,483 or $159.92 per square foot of living area including land.

The appellant argued taxpayers of Sun City properties, Rutland Township, Kane County, pay 90% of their property taxes to the same taxing districts as property owners in Grafton Township, McHenry County. The appellant argued that since Rutland Township assessments for the same model homes are substantially higher than Grafton Township, property owners in Rutland Township pay proportionally higher property taxes to the shared taxing districts, which is inequitable. (See appellant's attachment D) The appellant acknowledged the subject's assessment is equitable with similar properties within Rutland Township.

To support the contention that assessment comparables located in a different taxing jurisdiction and county are proper to utilize and consider for equity purposes, the appellant cited Section 18-155 of the Property Tax Code, which provides in part:

> Apportionment of taxes for district in two or more counties. The burden of taxation of property in taxing districts that lie in more than one county shall be fairly apportioned as provided in Article IX, Section 7, of the Constitution of 1970. (35 ILCS 200/18-155).

The appellant argued that when man-made boundaries cause non-uniformity with respect to the tax burden, government bodies must correct the situation. The appellant next referred to attachments C and D of his submission, which show significant tax dollar differences between the two townships as a consequence of non-uniform assessments.

The appellant next cited a prior Property Tax Appeal Board decision under Docket Number 04-01093.001-R-1. The subject property in that appeal was located in Rutland Township like this appeal. In that decision, the Property Tax Appeal Board gave no weight to three of the comparables submitted by the appellant because they were located in a different county and assessment jurisdiction than the subject, citing Cherry Bowl v. Property Tax Appeal Board, 100 Ill.App.3d 326, 331 (2nd Dist. 1981). In Cherry Bowl, the appellate court held that evidence of assessment practices of assessors in other counties is inadmissible in proceedings before the Property Tax Appeal Board. The court further observed in Cherry Bowl the interpretation of the relevant provisions of the statutes governing the assessment of real property by assessing officials in other counties was irrelevant on the issue of whether the assessment officials within this particular county, where the property is located, correctly assessed the property. As a result, the Board found the assessments of other similar models in McHenry County are not relevant or probative of whether the assessments established by Kane County assessment officials are correct.

The appellant contends the Property Tax Appeal Board misinterpreted the court's holding in Cherry Bowl. The appellant contends the court in fact held that the plaintiff did not properly introduce the evidence of other assessors, but presented it as hearsay. Therefore, the appellant contends the plaintiff in Cherry Bowl had not laid the proper foundation for the evidence and the court did not incorporate other assessor's methods into its decision. As a result, the appellant contends Cherry Bowl cannot be used to reject the inequity contention and the case law should be correctly applied by the Property Tax Appeal Board. When questioned by the Hearing Officer on whether the taxpayer was going to introduce a foundational witness and/or testimony from McHenry County Assessment Officials regarding assessment methodologies and practices for properties located in the Sun City development of McHenry County, the appellant responded by indicating he did not procure such witnesses nor would any expert testimony be elicited regarding this matter.

The appellant next cited other court cases to support his proposition of unequal treatment. In his brief, the appellant stated: In Bracher v. Millard, 307 Ill. 556, 139 N.E. 113 (1923), the Illinois Supreme Court held the tax imposed by a taxing district shall be proportional to the value of the taxable property within its limits so that one owner shall not pay a higher tax in proportion to the value of its taxable property than another owner. The appellant claims a similar statement was

made by the Illinois Supreme Court in Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 229 Ill.Dec. 487, 692 N.E.2d 260 (1998). The appellant argued the Illinois Supreme Court reiterated its consistent position in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). In this case, the court held the uniformity requirement prohibits taxing officials from valuing one kind of property within a taxing district at a certain proportion of its true value while valuing the same kind of property in the same district at a substantially lesser or greater proportion of its true value. The principle of uniformity in taxation requires equity in the burden of taxation. See also Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). In People ex rel. Hawthorne v. Bartlow, 111 Ill.App. 3d 513, 520 (1983), the court held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation. As stated in his brief, the appellant assumed the word "taxing officials" by the court was a combination of assessors, taxing bodies and extension officials, but agreed only assessment officials value property for taxation purposes.

During the hearing, the appellant initially cited and submitted as rebuttal to the board of review's evidence the Illinois Supreme Court ruling in People ex rel. Skidmore v. Anderson, 56 Ill. 2d 334 (1974). The appellant relied heavily on the Court's holding in this case to support his contention that the subject property is inequitably assessed compared to other similar properties within the same taxing district, but located in a different assessment jurisdiction and county. (Kane County versus McHenry County). In Skidmore, taxpayers who resided within the Lake County portion of two school districts that encompassed portions of four counties filed written objections to application by the county collector of Lake County for judgment and an order of sale. The school districts intervened. The circuit court sustained the objections to the tax rates and ordered refunds in the sums as the court had found to be 'excessive, illegal and void.'

The same group of property owners in Skidmore, the objectors, in a separate and earlier proceeding had unsuccessfully sought a reduction in assessments before the Lake County Board of Review. The circuit court affirmed the Board's action and denied the reduction in assessments. The objectors also unsuccessfully brought a class action in the United States District Court for the Northern District of Illinois.

In Skidmore, the Illinois Supreme Court held that under the Constitution of 1870, assessment levels of 42% of full, fair cash value of property within the Lake County portion of the school districts was so unequal when compared to the 26.31% assessment level for taxpayers within the Cook County portion of the districts as to constitute constructive fraud on the Lake County taxpayers.

Before considering the intervenors' claims, the Court in Skidmore pointed out that it was appropriate to observe that Section 7 of Article IX of the Constitution of 1970 recognized the problem illustrated in the appeal. The new constitution provided that the General Assembly may enact laws to require apportionment of the burden of taxation of property situated in taxing districts that lie in more than one county. The Court noted the legislature enacted a statute which provides for the future, a method of apportioning the burden of taxation of property in taxing districts lying in more than one county, if one or more of the counties has a population of at least 200,000. (Pub.Act 78-724 (1973) 78th Gen.Assembly, now codified in the Property Tax Code under 35 ILCS 200/18-155 through 18-160).

In Skidmore, the Court held there is no legal impediment to a consideration of differences in assessment levels to determine whether they amount to constructive fraud, though the involved assessments have been made by different assessment bodies. The circumstances that properties may lie in different counties should not preclude a comparison of their respective assessment levels to determine if there is constructive fraud, when the properties lie within the same taxing district or districts. Each set of taxpayers receives identical services from the taxing districts, but there are substantial and gross discrepancies or differences between the assessment levels of Cook County and the Lake County properties and between the taxes the Cook County and Lake County taxpayers must pay for identical services from taxing districts.

Based on the assessment comparables, previous Property Tax Appeal Board decisions and case law, the appellant argued he has demonstrated the subject property was inequitably assessed by clear and convincing evidence. More importantly, the appellant requested the Board to issue an opinion finding the use of similar comparables within the same taxing district, even if they are located in different governmental jurisdictions such as townships or counties, to be appropriate.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $115,634 was disclosed. The subject's assessment reflects an estimated market value of $346,937 or $133.54 per square foot of living area including land using Kane County's 2006 three-year median level of assessments of 33.33%.

In support of the subject's assessment, the board of review submitted an analysis of four suggested comparables. The comparables are located from next door to three properties north along the subject's street. In addition, the comparables are located in Rutland Township, Kane County, like the subject. The comparables back to a 21.86 acre area that is dedicated as open space, like the subject and unlike the comparables used by the appellant. They consist of Buckingham model, one-story frame and masonry dwellings that were built in 2004. Features include full unfinished basements, central air conditioning and two or three car attached garages ranging in size from 407 to 578 square feet. The dwellings contain 2,598 or 2,808 square feet of living area and have improvement assessments ranging from $94,220 to $117,061 or from $36.27 to $43.25 per square foot of living area. The subject property has an improvement assessment of $94,220 or $36.27 per acre square foot of living area.

The evidence also revealed these comparables sold in March and August of 2004 for prices ranging from $369,945 to $446,019 or from $142.40 to $163.02 per square foot of living area including land. The evidence shows the appellant purchased the subject property in August 2004 for $415,483 or $159.92 per square foot of living area including land. Again, the subject's assessment reflects an estimated market value of $346,937 or $133.54 per square foot of living area including land using Kane County's 2006 three-year median level of assessments of 33.33%.

In response to the legal argument outlined by the appellant, Joseph F. Lulves, Kane County Assistant State's Attorney, submitted a legal brief. The brief explains the appellant's citation of Section 18-155 of the Property Tax Code (35 ILCS 200/18-155) is accurate, but his interpretation is misplaced. The assistant state's attorney argued while this statute addresses the uniform apportionment of taxes for taxing districts that cross county lines, jurisdictional enforcement is through the Illinois Department of Revenue, not the Supervisor of Assessments,

the Board of Review, or the Property Tax Appeal Board. Section 18-155 of the Property Tax Code provides in part:

> The Department may, and on written request made before July 1 to the Department shall, proceed to apportion the tax burden. The request may be made only by an assessor, chief county assessment officer, Board of Review, Board of Appeals, overlapping taxing district or 25 or more interested taxpayers. (35 ILCS 200/18-155).

Section 1-40 of the Property Tax Code (35 ILCS 200/1-40) defines "Department" as the Illinois Department of Revenue. The assistant state's attorney argued the appellant is requesting that the taxes of the various taxing districts that extend from Grafton Township, McHenry County into Rutland Township, Kane County, be reapportioned more equitably based on Section 18-155 of the Property Tax Code. (35 ILCS 200/18-155). The assistant state's attorney argued the Supervisor of Assessments, the Board of Review, and Property Tax Appeal Board have no jurisdiction to adjust property taxes as provided by Section 18-155 of the Property Tax Code. (35 ILCS 200/18-155). The state's attorney argued the appellant is confusing the apportionment of districts' tax levies with uniformity of assessments, both of which processes are the responsibility of different government bodies. Additionally, the assistant state's attorney argued none of the authorities cited by the appellant established that county assessment officials have the statutory authority to rely on assessments of properties located outside their assessment jurisdiction in making decisions. In fact, the Property Tax Code limits the jurisdictional authority of county assessment officials. (See 35 ILCS 200/9-210 and 35 ILCS 200/16-55). Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination, Kane County Board of Review member Gerald A. Jones testified Sun City is one subdivision with multiple neighborhoods. Jones testified similar properties within Kane County's assessment jurisdiction of Sun City show a high level of assessment uniformity including the four comparables located in close proximity along the subject's street. With respect to the comparables located along the subject's street, the appellant contends through implication that these property owners should have a valid case on appeal. Jones reiterated he believed the subject and comparables were assessed appropriately. Jones argued the legal issue raised by the appellant should be directed to the Department of Revenue pursuant to Section 18-155 of the Property Tax Code. (35 ILCS 200/18-155). Jones explained assessment officials "deal" with assessments, not property taxes. He further argued the appellant's argument pertains to the levy rates and property taxes collected by overlapping taxing districts in two separate counties. Based on the presumption that the State Constitution holds tax assessments within a taxing district, even in overlapping counties, should be equitable, Jones testified he is not a property tax lawyer or a constitutional expert. Thus, Jones respectfully declined to answer the question as posed by the appellant. The appellant next referred to the Kullman decision as rendered by the Property Tax Appeal Board under Docket Number 03-01428.001-R-1. The appellant interpreted the Kullman decision by arguing the Property Tax Appeal Board did not find it was inappropriate to look across county lines to consider comparables. The assistant state's attorney responded by indicating the Board's Kullman decision does not stand for the proposition the board of review can be required to take into account assessments of properties across county lines.

At this point in the proceeding Mr. S.M. Titus, who accompanied the appellant to the hearing, interjected himself into the hearing by objecting to the assistant state's attorney's response. Titus is not an attorney licensed to practice law in the State of Illinois nor a party to this appeal. Thus, Titus was admonished at the hearing for improperly interrupting the proceedings. The appellant then requested Titus to be called as a witness, which was denied by the Board pursuant to Sections 1910.67(j) and 1910.90(c)(3) of the Official Rules of the Property Tax Appeal Board because the appellant's case-in-chief had concluded. At the conclusion of the board of review's closing statement, Titus again attempted to interject a response to the legal arguments presented by Assistant State's Attorney Lulves. Titus was again admonished.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds no reduction in the subject's assessment is warranted.

The appellant appeared before the Property Tax Appeal Board claiming a lack of uniformity regarding the subject's improvement assessment as the basis of the appeal. More specifically, the appellant argued the improvement assessments of Buckingham model dwellings located in Grafton Township, McHenry County, are assessed proportionally less than Buckingham model dwellings located in Rutland Township, Kane County, where the subject is located. The appellant's main argument was that those comparables located in McHenry County should be considered and utilized to determine an equitable assessment for the subject property.

The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds that the appellant has failed to overcome this burden.

The Property Tax Appeal Board finds each of the parties' selected four suggested assessment comparables in support their respective positions on whether the subject property was uniformly assessed. All the comparables submitted by the parties were similar one–story Buckingham model dwellings like the subject. They had varying degrees of similarity when compared to the subject in age, size, exterior construction, and amenities.

The Property Tax Appeal Board further finds the assessment comparables submitted by the board of review to be most representative of the subject in age, size, design, style, features and assessment jurisdiction. Additionally the board of review's comparables are located in very close proximity along the subject's street. Thus, these comparables were given significant weight by the Property Tax Appeal Board. These most similar comparables have improvement assessments ranging from $94,220 to $117,061 or from $36.27 to $43.25 per square foot of living area. The subject property has an improvement assessment of $94,220 or $36.27 per square foot of living area, which falls at the low end of the range established by the most similar comparables contained in this record. As a result of this analysis, the Board finds the appellant failed to demonstrate that the subject property was inequitably assessed by clear and convincing and no reduction is warranted.

When an appeal is based on assessment inequity, the appellant has the burden to show the subject property is inequitably assessed by clear and convincing evidence. Proof of an assessment inequity should consist of more than a simple showing of assessed values of the subject and comparables together with their physical, locational, and jurisdictional similarities. There should also be market value considerations, if such credible evidence exists. The Illinois Supreme Court in Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 169 N.E.2d 769, discussed the constitutional requirement of uniformity. The Court stated that "[u]niformity in taxation, as required by the constitution, implies equality in the burden of taxation." (Apex Motor Fuel, 20 Ill.2d at 401) The Court in Apex Motor Fuel further stated:

> "the rule of uniformity ... prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. [citation.]
>
> Within this constitutional limitation, however, the General Assembly has the power to determine the method by which property may be valued for tax purposes. The constitutional provision for uniformity does [not] call ... for mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute in its general operation. A practical uniformity, rather than an absolute one, is the test.[citation.]" Apex Motor Fuel, 20 Ill.2d at 401.

In this context, the Illinois Supreme Court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the Court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent level. Kankakee County Board of Review, 131 Ill.2d at 21. The Board finds evidence is clear that the comparables submitted by the appellant, which are located in Grafton Township, McHenry County, sold from December 2002 to August 2005 for prices ranging from $333,344 to $396,205 or from $120.86 to $147.81 per square foot of living area including land. On the other hand, the comparables submitted by the board of review that are located in Rutland Township, Kane County, sold in March and August of 2004 for prices ranging from $369,945 to $446,019 or from $142.40 to $163.02 per square foot of living area including land. The evidence also showed the appellant purchased the subject property in August 2004 for $415,483 or $159.92 per square foot of living area including land. The Board finds the subject's 2006 assessment reflects an estimated market value of $346,937 or $133.54 per square foot of living area including land, which is considerably less that its 2004 purchase price.

In light of the Court's holding in Kankakee, the Board finds the sale dates of both parties' comparables bracket the subject's sale date. The Property Tax Appeal Board finds the subject property sold for a higher price than six of the eight comparables. In fact, the subject property sold for more than all of the comparables submitted by the appellant, which are located in the different assessment jurisdiction of Grafton Township, McHenry County. Based on the limited market value evidence contained in this record, the Property Tax Appeal Board finds for some inherent reason similar Buckingham model dwellings located in Rutland Township, Kane County, sell for consistently higher sale prices than Buckingham model dwellings located in Grafton Township, McHenry County. Notwithstanding the legal jurisdictional issues

surrounding this instant appeal, the Property Tax Appeal Board finds the subject property's higher improvement assessment when compared to similar properties' assessments located in Grafton Township, McHenry County is well justified giving consideration to the credible market evidence contained in this record. In fact, the Property Tax Appeal Board finds a preponderance of the market value and equity evidence submitted by the parties suggest the subject property, like other properties located in Rutland Township, Kane County, are all under-assessed in relation to their fair market value. In conclusion, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed even in light of his legal arguments.

In considering the appellant's legal arguments, the Property Tax Appeal Board finds the appellant's comparables are located in the different assessment jurisdiction of Grafton Township, McHenry County, whereas the subject property is located the assessment jurisdiction of Rutland Township, Kane County. This Board fully recognizes the shared taxing districts between the properties located in the Sun City development of the overlapping Counties of Kane and McHenry. Nevertheless, the Property Tax Appeal Board gave diminished weight to the assessment comparables submitted by the appellant due to their location in the different assessment jurisdiction of Grafton Township, McHenry County. In Cherry Bowl v. Property Tax Appeal Board, 100 Ill.App.3d 326, 331 (2nd Dist. 1981), the appellate court held that evidence of assessment practices of assessors in other counties is inadmissible in proceedings before the Property Tax Appeal Board. Moreover, the Court observed that the interpretation of relevant provisions of the statutes governing the assessment of real property by assessing officials in other counties was irrelevant on the issue of whether the assessment officials within the particular county where the property is located correctly assessed the property. Therefore, based on the latter finding in Cherry Bowl, the Property Tax Appeal Board finds the assessments of similar properties located in Grafton Township, McHenry County, are not relevant or probative of whether the assessments established by Kane County assessment officials are correct.

The appellant also argued taxpayers of Sun City properties, Rutland Township, Kane County, pay 90% of their property taxes to the same taxing districts as property owners in Grafton Township, McHenry County. The appellant argued that since Rutland Township assessments for the same model home are substantially higher than Grafton Township, property owners in Rutland Township pay proportionately higher property taxes to the shared taxing districts, which is inequitable. However, the appellant acknowledged the subject's assessment is equitable with similar properties within Rutland Township, as this Board has previously found.

To support the contention that assessment comparables located in a different taxing jurisdiction and county are proper to utilize and consider for uniformity purposes, the appellant cited Section 18-155 of the Property Tax Code, which provides in part:

> Apportionment of taxes for district in two or more counties. The burden of taxation of property in taxing districts that lie in more than one county shall be fairly apportioned as provided in Article IX, Section 7, of the Constitution of 1970. (35 ILCS 200/18-155).

The appellant argued that when man-made boundaries cause non-uniformity with respect to the tax burden, government bodies must correct the situation. The appellant next referred to attachments C and D, which show significant tax dollar differences between the two townships as a consequence of the different assessment amounts. The Property Tax Appeal Board finds the appellant's reliance on this statute to be misplaced in this venue. The Property Tax Appeal Board plays no part in the calculation of tax bills of the subject property or the suggested comparables used by the appellant in this appeal. Section 1910.10(f) of the Official Rules of the Property Tax Appeal Board states:

> The Property Tax Appeal Board is without jurisdiction to determine the tax rate, the amount of the tax bill, or the exemption of real property from taxation. (86 Ill. Admin. Code 1910.10(f)).

Rather, it is Section 18-155 of the Property Tax Code (35 ILCS 200/18-155) which provides for a remedy, if unequal tax levies and the burden of taxation exist, through the Illinois Department of Revenue. Section 18-155 of the Property Tax Code provides in pertinent part:

> The Department may, and on written request made before July 1 to the Department shall, proceed to apportion the tax burden. The request may be made only by an assessor, chief county assessment officer, Board of Review, Board of Appeals, overlapping taxing district or 25 or more interested taxpayers. . . When the Department has received a written request for equalization for overlapping tax districts as provided in this Section, the Department shall promptly notify the county clerk and county treasurer of each county affected by that request that the tax bills with respect to property in the parts of the county which are affected by the request may not be prepared or mailed until the Department certifies the apportionment among counties of the taxing districts' levies, except as provided in subsection (c) of this Section. . . .
>
> The Department may conduct hearings, at which the evidence shall be limited to the written presentation of assessment ratio study data. . .
>
> Use the township assessment ratio studies to apportion the amount to be raised by taxation upon property within the district so that each county in which the district lies bears that burden of taxation as though all parts of the overlapping taxing district had been assessed at the same proportion of actual value. The Department shall certify to each County Clerk, by March 15, the percent of burden. Except as provided below, the County Clerk shall apply the percentage to the extension as provided in Section 18-45 to determine the amount of tax to be raised in the county. . .
>
> Any adjustments necessitated by the procedure authorized by this Section shall be made by increasing or decreasing the tax extension by fund for each taxing district where a prior certified percentage was used. (35 ILCS 200/18-155) (See also 105 ILCS 5/17-3A).

In reviewing the statute cited it is clear the Property Tax Appeal Board has no jurisdiction over the appellant's legal argument with respect to uniformity of assessments and property taxes regarding properties located in shared taxing districts, but located in a different assessment jurisdiction. The statute indicates the remedy regarding the appellant's inequity claim lies within the venue of the Department of Revenue pursuant to Section 18-155 of the Property Tax Code. (35 ILCS 200/18-155).

The appellant also cited numerous court cases to support the proposition of unequal treatment in the assessment process. In People ex rel. Bracher v. Millard, 307 Ill. 556, 139 N.E. 113 (1923), the Illinois Supreme Court held that equalization of assessments is the adjustment of graduated values of property as between different taxing districts so that the whole tax imposed by a taxing district shall be proportional to the value of the taxable property within its limits so that one owner shall not pay a higher tax in proportion to the value of its taxable property than another owner. The appellant claims a similar statement was made by the Illinois Supreme Court in Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 229 Ill.Dec. 487, 692 N.E.2d 260 (1998). The appellant argued the Illinois Supreme Court reiterated its consistent position in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). In this case, the Court held the uniformity requirement prohibits taxing officials from valuing one kind of property within a taxing district at a certain proportion of its true value while valuing the same kind of property in the same district at a substantially lesser or greater proportion of its true value. The principle of uniformity in taxation requires equity in the burden of taxation. See also Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). In People ex rel. Hawthorne v. Bartlow, 111 Ill.App. 3d 513, 520 (4th Dist. 1983), the court held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation.

The appellant placed most emphasis to support his contention that the subject property is inequitably assessed compared to other similar properties within the same taxing district, but located in a different assessment jurisdiction and county, on the Illinois Supreme Court ruling of People ex rel. Skidmore v. Anderson, 56 Ill. 2d 334, 307 (1974). The appellant relied on the Court's holdings that the circumstances that properties may lie in different counties should not preclude a comparison of their respective assessment levels to determine if there is constructive fraud, when the properties lie within the same taxing district or districts. The Board finds the appellant's reliance on Skidmore to be misplaced. The Board finds Skidmore involved the legal challenge by property owners to 1970 real estate taxes. Since the time of the Skidmore decision, the legislature has set forth a specific mechanism to challenge unequal tax levies as provided in Section 18-155 of the Property Tax Code. (35 ILCS 200/18-155). The Property Tax Appeal Board further finds the Court in Skidmore pointed out that it was appropriate to observe that Section 7 of Article IX of the Constitution of 1970 recognized the problem illustrated in the appeal. The Court noted the new constitution provided that the General Assembly may enact laws to require apportionment of the burden of taxation of property situated in taxing districts that lie in more than one county. The Court noted the legislature enacted a statute which provides for the future a method of apportioning the burden of taxation of property in taxing districts lying in more than one county, if one or more of the counties has a population of at least 200,000. (Pub.Act 78-724 (1973) 78th Gen.Assembly, now codified in the Property Tax Code under 35 ILCS 200/18-155 through 18-160).

Even if the test in Skidmore were applied in this appeal, it would not show the subject's assessment was incorrect or inequitable. The 2006 three-year median level of assessment for Rutland Township, Kane County was 33.33%, identical to the 2006 three-year median level of assessment for Grafton Township, McHenry County of 33.33%. (See Illinois Department of Revenue PTAX-215, Assessment Ratios Adjusted for Changes through the 2006 assessment year for Kane and McHenry Counties).

Based on this analysis, the Property Tax Appeal Board finds much of the legal authorities and case law cited regarding uniformity of assessments by the appellant applies to levels of assessment, the amount of actual real estate tax dollars paid, or the extension tax rate or levy, in which this Board has no jurisdictional authority.

In conclusion, the Board finds the appellant failed to show the subject property was inequitably assessed by clear and convincing evidence. Therefore, the Property Tax Appeal Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Arthur P. and Gloria J. Fields** |
| **DOCKET NUMBER:** | **05-01358.001-R-1** |
| **DATE DECIDED:** | **February, 2008** |
| **COUNTY:** | **Madison** |
| **RESULT:** | **No Change** |

The subject property consists of a one-story brick and frame dwelling that was built in 1994 and contains 2,530 square feet of living area. The dwelling features a full, partially finished walkout basement, two and one-half bathrooms, a whirlpool, central air conditioning, two fireplaces, a patio, a deck, and a three-car attached garage. The subject dwelling is situated on a 13,272 square foot lake front lot.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. More specifically, the appellants claim the subject property's market value is diminished because of a zoning violation, which renders the property without a marketable title. In support of these arguments, the appellants submitted a letter outlining the appeal, a plat of survey, and a real estate appraisal of the subject property prepared by a state licensed appraiser.

The appellants' letter explained the builder of the subject dwelling did not set the structure on its site properly to conform to local zoning regulations. The appellants contend the plat of survey shows a portion of the subject dwelling crosses a set back line. The appellants contend they have a legal opinion indicating the location the builder placed the home on the lot renders the property without a marketable title. The appellants did not indicate who rendered the purported legal opinion nor was it submitted for the Board's consideration. The appellants argued a marketable title is reasonably free that a prudent buyer would be willing to accept free from question that might present a reasonable risk of litigation.

The appraisal submitted by the appellants estimated a fair market value for the subject property of $291,000 as of March 1, 2006. The appraiser developed the cost and sales comparison approaches to value in arriving at the final value conclusion. Page 1 of the appraisal disclosed the subject has R-1 zoning; zoning compliance is legal; and the subject's highest and best use is its present use as a single family dwelling. Page 3 disclosed the appraisal is intended for the use in a mortgage finance transaction only. The report is not intended for any other use.

Under the cost approach to value, the appraiser estimated the subject's site value to be $65,000 based on sales in the area, which were not contained within the appraisal report. The subject dwelling's cost new was estimated to be $362,168 using the Marshall and Swift Cost Service Physical depreciation was estimated to be $65,190 based on the age of the dwelling. The appraiser also deducted $55,000 for external obsolescence because the subject dwelling is encroaching on a neighbor's property. Therefore, the appraiser calculated the subject dwelling has a depreciated cost new of $241,978. Adding the estimated value for site improvements of $15,500 and land value of $65,000, the appraiser concluded a final value for the subject property under the cost approach of $322,478.

Under the sales comparison approach to value, the appraiser utilized three suggested comparable sales. Two sales were located in close proximity to the subject while one comparable was located a distance from the subject in a neighboring community. The comparables consist of one-story style brick and frame dwellings that are from 2 to 13 years old. The comparables are situated on irregularly shaped lots ranging in size from 9,126 to 22,965 square feet of land area. Only comparables 3 has a lake front lot like the subject. The comparables contain partial finished basements, central air conditioning, one or two fireplaces, various decks, porches and patios, and two or three-car garages. The dwellings are reported to range in size from 2,050 to 2,440 square feet of living area. The comparables sold for prices ranging from $300,000 to $355,000 or from $122.95 to $166.82 per square foot of living area including land. The transactions occurred from April to October of 2005.

The appraiser adjusted the comparables for differences to the subject for site size, age, dwelling size, room count, and amenities. Specifically, the sites for comparables 1 and 2 were adjusted by $20,000 because of the lack of lake frontage. In addition, all the comparables were adjusted downward by $55,000 for "marketable". In the summary of the sales comparison approach, the appraisal report explained "currently there are zoing (zoning) issues. Owner stated the subject property is encroaching upon neighbors property. Until this is resolved, property is not marketable". The appraiser's adjustments resulted in adjusted sale prices ranging from $266,700 to $311,400. Based on these adjusted sales, the appraiser concluded the subject property has a fair market value of $291,000 or $116.40 per square foot of living area including land under the sales comparison approach.

The appraiser did not reconcile the two approaches to value; however, it appears the appraiser placed most reliance on the sales comparison approach to value in arriving at a final value conclusion of $291,000 as of March 1, 2006. Based on this evidence, the appellants requested a reduction in the subject's assessment to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $118,820 was disclosed. The subject's assessment reflects an estimated market value of $356,068 or $140.74 per square foot of living area including land using Madison County's 2005 three-year median level of assessments of 33.37%.

In support of the subject's assessment, the board of review submitted a copy of a certified letter sent to the appellants; a copy of a letter sent to the building and zoning administrator for the Village of Glen Carbon; a copy of a response letter from the Glen Carbon Building and Zoning Department; and an appraisal of the subject property.

The copy of the certified letter sent to the appellants from the Madison County Board of Review, which was dated April 11, 2007, indicates the board of review must submit evidence to the Property Tax Appeal Board due to the assessment complaint filed by the taxpayers. The board of review's letter states it was necessary for the office appraiser, Barry Loman, to come into the subject property on behalf of the board of review. The letter gave instruction and a time frame to contact Loman.

The copy of the letter sent to the building and zoning administrator for the Village of Glenn Carbon from the Madison County Board of Review, which was dated April 11, 2007, indicated

the appellants filed complaint with the Property Tax Appeal Board seeking a reduction in the subject property's assessment due to the dwelling not being in compliance with village zoning regulations and set back ordinance. By this letter, the Madison County Board of Review requested information, including a house diagram, indicating whether the appellants' dwelling is in compliance with Glen Carbon Building & Zoning Regulations regarding the Set Back Ordinance.

In a response letter dated April 16, 2007, the Glen Carbon Building & Zoning Department indicated the department reviewed the original site plan for the subject property. The letter revealed the subject lot has rear setback in excess of 25'-0". A copy of the site plan was attached. In addition, the letter indicated the plat of survey submitted by the appellants shows a 25'-0" set back along a side of the property line that is shown as 31.48' and 90', which is actually a side set back. The letter states the actual rear set back is determined from the area labeled as "Lake" and the proper distances are shown as a rear set back. The letter further states "This letter will certify that the structure located at this location is in conformance with the requirements of the Glen Carbon Zoning Ordinance."

The appraisal submitted by the board of review estimated a fair market value for the subject property of $360,000 as of January 1, 2005. The appraiser developed the cost and sales comparison approaches to value in arriving at the final value conclusion. Page 1 of the appraisal disclosed the subject has RS-10 zoning; zoning compliance is legal; and the subject's highest and best use is its present use as a single family dwelling. In addition, the report indicates the property owner did not permit the appraiser to inspect the interior of the property. The appraiser noted no deterioration from the exterior.

Under the cost approach to value, the appraiser estimated subject's site value to be $65,000 based on vacant land sales in the area, which were not contained within the appraisal report. The subject dwelling's replacement cost new was estimated to be $384,266 using Marshall and Swift Cost Service Physical depreciation was estimated to be $70,321 using the age/life method of depreciation. Therefore, the appraiser calculated the subject dwelling has a depreciated replacement cost new of $313,945. Adding the estimated value for site improvements of $5,000 and the estimated land value of $65,000, the appraiser concluded a final value for the subject property under the cost approach of $383,900.

Under the sales comparison approach to value, the appraiser utilized five suggested comparable sales. Three sales are located in close proximity to the subject while two comparables are located 1.71 and 2.5 miles from the subject, respectively, but are located in the subject's community of Glen Carbon. The comparables consist of one-story style brick and frame dwellings that are from new construction to 13 years old. Two comparables have lake front lots like the subject. Four comparables contain partial finished basements. Other features include central air conditioning, one or two fireplaces, various decks, porches and patios, and three-car garages. The dwellings are reported to range in size from 1,753 to 2,342 square feet of living area. The comparables sold for prices ranging from $322,500 to $380,000 or from $152.13 to $192.89 per square foot of living area including land. The transactions occurred from August 2004 to April 2005.

The appraiser adjusted the comparable sales for differences to the subject for date of sale, site size, age, dwelling size, finished basement area, and various amenities. The appraiser's adjustments resulted in adjusted sale prices ranging from $342,200 to $372,700 or from $155.74 to $212.60 per square foot of living area including land. Based on these adjusted sales, the appraiser concluded the subject property has a fair market value of $360,000 or $142.29 per square foot of living area including land under the sales comparison approach.

When reconciling the two approaches of value, the appraiser considered the sales comparison approach to value most reliable because it reflects direct market reactions of buyers and sellers. Thus, the appraiser concluded the subject property has a fair market value of $360,000 as of January 1, 2005. Based on this evidence, the board of review requested confirmation of the subject's assessed valuation.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellants argued the subject property was overvalued. Specifically, the appellants claim the subject property's market value is diminished because of a zoning violation, which renders the property without a marketable title. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellants have not overcome this burden. The appellants submitted an appraisal estimating the subject's fair market value of $291,000 as of March 1, 2006, which is over one year subsequent to the subject's January 1, 2005 assessment date at issue in this appeal. In addition, the appellants submitted a plat of survey which purportedly shows a side of the subject dwelling crosses a set back line. The Board gave less weight to these documents.

With respect to the appraisal submitted by the appellants, the Board finds the appraiser's final value conclusion to be unsupported. Furthermore, the board finds the appraisal to be inconsistent in certain areas of importance. Page 1 of the appraisal disclosed the subject has residential zoning that is in legal compliance with local regulations and its highest and best use is its present use as a single family dwelling. Additionally, page 1 of the report indicates the subject property does not suffer from any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.) However, page 2 of the report states: "Currently there are zoing (zoning) issues. Owner stated the subject property is encroaching upon neighbors property. Until this is resolved, property is not marketable". The Board finds the validity of the appraiser's value opinion is undermined based on the aforementioned discrepancies within the appraisal report.

The Board further finds the appellant's appraiser adjusted all the comparable sales under the sales comparison approach downward by $55,000 for "marketable" and deducted $55,000 under the cost approach for external obsolescence. First, the Board finds the appraisal report does not contain any independent analysis or credible documentation showing the subject property has "zoning issues"; that the subject dwelling is in violation of any local zoning ordinance; or that the property does not hold a "marketable" title. Rather, it appears the appraiser simply relied on the appellants' claim of the purported zoning violations and the lack of a "marketable title" in

concluding the subject's fair market value was diminished without foundational investigation. Second, even if the appellants had adequately demonstrated that the subject property violated some type of zoning regulation, the appraisal report contained no market derived evidence, such as a paired sales analysis, to support the large $55,000 deduction amount within the cost and sales comparison approaches.

Finally, the Property Tax Appeal Board finds the best evidence in this record demonstrates the subject dwelling is not in violation of local zoning regulations. The board of review submitted a letter from the Glen Carbon Building & Zoning Department indicating the department reviewed the original site plan for the subject property. The letter and site plan revealed the subject lot has rear set back line in excess of 25'-0". In addition, the letter indicates that the plat of survey submitted by the appellants showing the subject dwelling crosses a rear set back line is actually a side set back line. The letter further states the actual rear set back is determined from the area labeled as "Lake" and the proper distances are shown as a rear set back. Most importantly, the letter states that the subject dwelling's location on its site is in conformance with the requirements of the Glen Carbon Zoning Ordinance. The Board finds this evidence was un-refuted by the appellants and further detracts from the plat of survey submitted by the appellants and their corresponding arguments.

The Property Tax Appeal Board finds the best evidence of the subject property's fair market value is the appraisal submitted by the board of review that was prepared by Barry T. Loman. Loman estimated the subject's fair market value to be $360,000 as of January 1, 2005, using two of the three traditional approaches to value. In reviewing the appraisal, the Property Tax Appeal Board finds Loman prepared the appraisal in accordance with Uniform Standards of Professional Appraisal Practice and supported the appraisal methodology and final value conclusion. The subject's assessment reflects an estimated market value of $356,068, which is less than the appraisal submitted by the board of review. Therefore, the Board finds no reduction in the subject's assessed valuation is warranted.

In conclusion, the Board finds the appellants failed to demonstrate the subject property was overvalued by a preponderance of the evidence. In addition, the Board finds the evidence demonstrates the subject's estimated market value as reflected by its assessment is supported. As a result of this analysis, the Property Tax Appeal Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **David Fishman** |
| **DOCKET NUMBER:** | **05-00646.001-R-1** |
| **DATE DECIDED:** | **February, 2008** |
| **COUNTY:** | **Lake** |
| **RESULT:** | **No Change** |

The subject property consists of a 141,570 square foot parcel improved with a 7 year-old, two-story style brick dwelling that contains 4,394 square feet of living area. Features of the home include central air-conditioning, two fireplaces, a 928 square foot garage, a full unfinished basement and an in-ground swimming pool.

Through his attorney, the appellant submitted evidence to the Property Tax Appeal Board claiming unequal treatment in the assessment process regarding the subject's improvements and overvaluation as the bases of the appeal. In support of the inequity argument, the appellant submitted a grid analysis of three comparable properties located on the subject's street. The appellant reported the comparables range in age from 5 to 10 years and range in size from 3,425 to 4,086 square feet of living area. Features of the comparables include one or two fireplaces, garages that contain from 690 to 856 square feet of building area and full or partial basements with finished areas ranging from 943 to 1,200 square feet. The appellant did not indicate the comparables' design or exterior construction. These properties have improvement assessments ranging from $147,896 to $227,711 or from $43.18 to $55.73 per square foot of living area. The subject has an improvement assessment of $250,642 or $57.04 per square foot of living area.

In support of the overvaluation argument, the appellant submitted sales information on the same three properties used to support the inequity contention. The comparables were reported to have sold in 2002 or 2005 for prices ranging from $799,000 to $1,399,000 or from $233.28 to $349.14 per square foot of living area including land. Based on this evidence, the appellant requested the subject's total assessment be reduced to $467,742 and its improvement assessment be reduced to $223,910 or $50.96 per square foot of living area.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $494,474 was disclosed. The subject has an estimated market value of $1,483,570 or $337.64 per square foot of living area including land, as reflected by its assessment and the statutory assessment level of 33.33%.

In support of the subject's improvement assessment, the board of review submitted property record cards and a grid analysis of three comparable properties located on the subject's street. However, the board of review's comparable 2 and the appellant's comparable 2 are the same property. The comparables consist of two-story style frame dwellings that range in age from 5 to 9 years and range in size from 3,826 to 4,086 square feet of living area. Features of the comparables include central air-conditioning, one to three fireplaces, garages that contain from 690 to 816 square feet of building area and full or partial basements, two of which contain 768 and 943 square feet of finished area, respectively. These properties have improvement assessments ranging from $210,265 to $227,711 or from $54.96 to $55.73 per square foot of living area. The board of review also submitted a grid of the appellant's comparables which

indicates those properties consist of two-story or two and one-half-story style dwellings of frame exterior construction.

The board of review failed to submit any comparable sales or other market evidence in support of the subject's estimated market value. Based on this evidence the board of review requested the subject's total assessment be confirmed.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's assessment is not warranted. The appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not overcome this burden.

The Board finds the parties submitted six comparables for its consideration, although the appellant's comparable 2 and the board of review's comparable 2 are the same property. The Board gave less weight to the appellant's comparable 1 because it was significantly smaller in living area when compared to the subject. The Board finds four comparables were frame dwellings that were similar to the subject in terms of age, size, location and most features. These most representative comparables had improvement assessments ranging from $210,265 to $227,711 or from $53.97 to $55.73 per square foot of living area. The subject's improvement assessment of $250,642 or $57.04 per square foot of living area falls above this range. However, the Board finds the subject has all brick exterior construction and an in-ground swimming pool, amenities not enjoyed by any of the comparables in the record. Therefore, the Board finds the subject's slightly higher improvement assessment is justified.

The appellant also argued overvaluation as a basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). After analyzing the market evidence submitted, the Board finds the appellant has failed to overcome this burden.

The Board finds the appellant submitted three comparable sales while the board of review submitted no comparable sales or other market evidence in support of the subject's estimated market value. The Board gave less weight to the appellant's comparable 1 because it was significantly smaller in living area when compared to the subject. The Board finds the remaining two comparables were frame dwellings, dissimilar to the subject's all brick exterior construction, but were similar to the subject in most other respects. The Board also finds the comparables had lots that contain 43,996 and 46,609 square feet of land area, much less than the subject's lot, which contains 141,570 square feet. These two properties sold for prices of $1,145,000 and $1,399,000 or $280.22 and $349.14 per square foot of living area including land. The Board finds the subject's estimated market value of $1,483,570 or $337.64 per square foot of living area

including land, as reflected by its assessment and the statutory assessment level of 33.33%, is supported by these comparables.

In summary, the Property Tax Appeal Board finds the appellant has failed to prove unequal treatment in the assessment process by clear and convincing evidence, or overvaluation by a preponderance of the evidence and the subject's assessment as determined by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Mark & Candace Graham** |
| **DOCKET NUMBER:** | **06-00640.001-R-1** |
| **DATE DECIDED:** | **October, 2008** |
| **COUNTY:** | **McLean** |
| **RESULT:** | **Reduction** |

The subject property consists of a part two and part one-story frame and brick dwelling that was built in 1998 and contains 3,134 square feet of living area. Features include a full unfinished basement, three and one-half bathrooms, central air conditioning, a fireplace and a 1,090 square foot attached garage. The subject property is located in the City of Bloomington Township, McLean County, Illinois.

The appellants appeared before the Property Tax Appeal Board arguing the subject's assessment is not reflective of its fair market value. In support of this argument, a settlement statement was submitted indicating the appellants purchased the subject property for $325,000 on April 19, 2006. The appeal petition indicated the seller, Land America Onestop, Inc., listed the subject property for sale on the open market through the Realty firm of Brady Weaver GMAC. The settlement statement indicates the seller paid a $19,500 commission fee to the real estate agent. The appeal petition depicts the subject property was listed for sale through the Multiple Listing Service.

The appellants testified and presented credible documentation indicating the subject property was originally listed for sale on the open market for $422,900 on June 1, 2004. Subsequently, the subject property went on and off the market with its offering price reduced or was re-listed for sale on the open market at incrementally lower amounts through the Multiple Listing Service. For example, the subject's offering price was $412,900 on July 5, 2004; $399,000 on August 9, 2004; $387,500 on October 13, 2004; $379,900 on December 8, 2004; $369,900 on March 15, 2005; $349,900 on August 24, 2005; and $329,900 on February 23, 2006. Thus, the appellant calculated the subject property had been listed for sale on the open market for 683 days. The appellants testified they looked at several homes to purchase including the subject. The appellants testified they ultimately purchased the subject property after negotiations with the seller for $325,000 on April 19, 2006.

To test the assessment placed on the subject property by the board of review, which reflects an estimated market value of $366,400, the appellants' listed the subject property for sale on the open market using Re/Max Choice and the Multiple Listing Service. The evidence and testimony disclosed a listing price was $379,900 for 28 days before being withdrawn. The appellants testified their real estate agent held two open houses and not a single person viewed the property for the listing price. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject property's final equalized assessment of $122,133 was disclosed. The subject's assessment

reflects an estimated market value of $366,326 or $116.89 per square foot of living area including land using McLean County's 2006 three-year median level of assessment of 33.34%.

In support of the subject's assessment, the board of review submitted a restricted use appraisal of the subject property. The restricted appraisal was prepared by and co-signed by the City of Bloomington Township Assessor, Michael Ireland, and Deputy Township Assessor, Randall D. Hoffman. The report indicates both Ireland and Hoffman are licensed appraisers in the State of Illinois. Hoffman provided testimony in connection with the appraisal report. The appraisal estimated the subject property had an estimated market value of $372,000 as of January 1, 2006, using the sales comparison approach to value.

The comparables consist of part two and part one-story frame and masonry dwellings. Comparables 1 through 3 are located in Phase I of Hawthorne Hills Subdivision while comparable 4 is located in Phase II like the subject. The dwellings were built from 1990 to 2003 and range in size from 2,986 to 3,210 square feet of living area. Features include unfinished basements, central air conditioning, two and one-half bathrooms, and attached garages ranging in size from 600 to 889 square feet. Comparable 2 has a swimming pool. The comparables sold from June 2004 to September 2006 for prices ranging from $340,000 to $415,000 or from $112.46 to $131.66 per square foot of living area including land.

The assessor/appraiser adjusted the comparables for differences when compared to the subject in date of sale, size, bathroom count, garage size and other ancillary improvements. Comparable 2 was adjusted for its swimming pool. The adjustments resulted in adjusted sale prices ranging from $357,203 to $416,956 or from $111.27 to $132.28 per square foot of living area including land. Based on the adjusted sales, the assessor/appraiser estimated the subject property had an estimated market value of $372,000 or $118.70 per square foot of living area including land as of January 1, 2006.

With respect to the subject's sale price, the board of review and assessor argued the seller of the subject property was a relocation company most likely owned by State Farm Insurance Company. They argued sales involving relocation companies tend to typically reflect a measurable difference from the market when compared to sales not involving typical grantors, as tracked and measured in the township assessor's database.

The appraisal report indicates 91 sales occurred in Hawthorne Hills Subdivision, with 23 sales (25.3%) identified as sales involving a relocation company. The witness testified 13 of these 23 sales (56.5%) indicate the same sale price and sale date from the initial purchase by the relocation company to the subsequent individual buyer. The 10 remaining sales had a range of reduction between the recorded relocation purchases and the new sales from 3% to 24%. Therefore, the board of review argued transactions involving relocation companies are not typical buyers or sellers in the market place. This data or analysis was not contained in the restricted appraisal report nor submitted by the board of review. Page 12 of the appraisal report and testimony further indicate an analysis of 28 single-family, two story or part one and part two-story homes that are +/- 3 years of age from the subject. They sold between January 1, 2004, and January 1, 2006, for prices ranging from $350,000 to $600,000, with an average sale price of $442,175. The assessor argued the subject's sale price of $325,000 fell outside all typical sales from the neighborhood. Again, this analysis was not contained in the restricted

appraisal report nor submitted by the board of review. Based on this evidence, the board of review requested confirmation of the subject's assessed valuation.

In rebuttal, the appellants argued the subject property had been listed for sale in the $360,000 to $370,000 range for over 250 days without being sold, which dispels the board of review's position the subject property is worth $366,400. In fact, the appellants argued the property was listed for sale on the open market for $329,900 for over 60 days before purchase. The appellants also argued appraisal values can be easily manipulated to meet targeted criteria. The appellants also argued the subject property backs to a busy road which negatively impacts its value, as depicted by its sale price.

In response, the assessor argued the subject was overpriced when listed on the market in 2004 for $422,500. The assessor argued studies of seven sales that sold in 1998 or 1999 and resold in 2004 or 2005 show market appreciation of 3% to 3.5% annually. Again, this study was not submitted for the Board's review. By extension, applying the 3% or 3.5% annual appreciation rate to the subject's original sale price in 1998 of $300,273, results in estimated market values of $369,300 and $382,000 for 2006. (Note: the board of review's evidence indicates the subject dwelling was constructed in 1999, but the evidence indicates the dwelling was constructed in 1998). The assessor's response also discussed the average number of days properties are listed for sale from the subject's subdivision, arguing the listing of the subject property for 28 days was not a reasonable amount of time. The assessor also believes that since the subject had been listed on the market for such a long period of time, it was overexposed to the market and suffered "stigma" resulting in its lower sale price. Thus, the assessor argued the seller was under duress to sell the property.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject property's assessment is warranted.

The appellants argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellants have overcome this burden.

The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the seller is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). The evidence in this record indicates the subject's transaction was a voluntary sale where the seller was ready, willing, and able to sell but not compelled to do so, and the buyer was ready, willing and able to buy but not forced to do so. The Board finds the subject's sale price was negotiated by the unrelated parties involved in the transaction, which further supports the arm's-length nature of the subject's transaction and sale

price. Although the seller was a relocation company, the Board finds this record is void of any credible evidence suggesting the subject's transaction was not of an arm's-length nature. For example, the board of review submitted no witness testimony from the relocation company or any other persons involved in the transaction that would suggest the relocation company was under duress to sell the property for less than its fair cash value. In fact, the Board finds the subject's last listing price of $329,900 in February 2006, set the upper limit of value for the subject property. Based on this analysis, the Board finds the best evidence of the subject's fair market value is its April 2006 sale price of $325,000.

With respect to the appraisal, the Board gave little weight to the final value conclusion. The Property Tax Appeal Board gave diminished weight to comparables 1 through 3. These properties are dissimilar in age when compared to the subject, with no adjustments for the age differences. Furthermore, these comparables are located in Phase I of the subject's subdivision whereas the subject is located in Phase II. Finally, comparables 1 and 2 sold in 2004 and are considered less indicative of the subject's fair market value as of its January 1, 2006, assessment date. One sale is similar to the subject in most respects, however, the Property Tax Appeal Board finds a single comparable sale is not a persuasive indicator of the subject's fair market value nor does it overcome the arm's-length nature of the sale of the subject property. Additionally, this suggested comparable property is five years newer in age when compared to the subject with no adjustment for age difference.

Based on this analysis, the Property Tax Appeal Board finds that the appellants have proven that the subject property is overvalued by a preponderance of the evidence. Since fair market has been established, McLean County's 2006 three-year median level of assessment of 33.34% shall apply.

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| **APPELLANT:** | **Brian Harbour** |
| **DOCKET NUMBER:** | **06-01552.001-R-1** |
| **DATE DECIDED:** | **August, 2008** |
| **COUNTY:** | **Kendall** |
| **RESULT:** | **Reduction** |

The subject property consists of a two-story dwelling of brick and frame exterior construction that was built in 2005. The dwelling contains 4,415 square feet of living area. Features include central air conditioning, two fireplaces, a full unfinished walkout basement, and a 662 square foot three car attached garage.

The appellant appeared before the Property Tax Appeal Board claiming the subject property was inequitably assessed and overvalued. In support of these claims, the appellant submitted photographs and an analysis of three suggested comparables. The comparables are located in a neighboring subdivision that shares adjacent roads with the subject's subdivision and are within one mile from the subject. However, comparable 3 is located along the subject's street. The appellant argued the comparables are located in the same geographic area and neighborhood.

The comparables are described as two-story dwellings of brick and frame exterior construction that were built in 2002 and 2005 situated on one acre lots like the subject. Features include unfinished walkout basements, central air conditioning, at least one fireplace, and two or three car attached garages. The comparables have improvement assessments ranging from $124,865 to $127,718 or from $29.55 to $30.83 per square foot of living area. The subject property has an improvement assessment of $142,035 or $32.17 per square foot of living area. Comparables 2 and 3 sold in 2005 for prices of $512,578 and $620,000 or $123.72 and $150.05 per square foot of living area including land.

The appellant also contends the subject dwelling contains 3,840 square feet of living area, but submitted no evidence in support of this argument. Based on this evidence, the appellant requested a reduction in the subject's assessment.

Under cross examination, the appellant acknowledged the comparables he selected are located in a different subdivision and township than the subject, but are located less than one mile from the subject. He argued the comparables are virtually in the same subdivision as the subject, but have different subdivision names. The appellant argued it is unfair that similar properties located in close geographic proximity, but simply located in a neighboring township are assessed less than subject. The appellant also testified he purchased the subject property from a general contractor for a cost of $415,000 in August 2005, but acknowledged the construction cost from the contractor may not reflect fair market value.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $176,297 was disclosed. The subject's assessment reflects an estimated market value of $517,911 or $117.31 per square foot of living area including land using Kendall County's 2006 three-year median level of assessments of 34.04%.

In support of the subject's assessment, the board of review submitted a letter in response to the appeal, a diagram of the subject dwelling, and an analysis of the subject and three suggested comparables along with dwelling diagrams for the suggested comparables. The comparables are located along the subject street in close proximity within the subject's subdivision. In addition, the board of review submitted dwelling diagrams and a "Sales Listing Report" for six additional comparable sales that are located in the subject's subdivision or "within a reasonable distance and considered to be in the same market" as the subject. However, little descriptive data or comparative analysis was provided for the six additional comparables.

The first three comparables consist of two, part two and part one-story dwellings and a part one and part two-story dwelling. The dwellings are of brick and frame exterior construction that were built in 2005. The comparables have basements, central air conditioning, one fireplace, and attached garages ranging in size from 781 to 1,191 square feet. None of the comparables have walkout basements like the subject. The dwellings range in size from 4,152 to 4,180 square feet of living area and have improvement assessments ranging from $128,210 to $149,680 or from $30.67 to $36.04 per square foot of living area. The subject property has an improvement assessment of $142,035 or $32.17 per square foot of living area.

The comparables also sold from April 2004 to March 2006 for prices ranging from $259,669 to $628,742 or from $62.53 to $151.43 per square foot of living area including land. However, construction was not completed for comparable 2, which sold for $259,669 or $62.53 per square foot of living area including land.

The six additional properties from the "Sales Listing Report" had little descriptive information for comparative analysis. The limited data indicates the suggested comparables consist of a one-story; a part one and part-two story; and four, two-story style dwellings of an unknown age and exterior construction. Three comparables are located on the subject's street, but the proximity of the other three properties was not disclosed. The diagrams submitted indicate the suggested comparables range in size from 3,019 to 4,140 square feet of living area with basements and attached garages ranging from 649 to 897 square feet. No other features were disclosed. They sold from June 2005 to October 2006 for prices ranging from $410,000 to $517,446 or from $121.45 to $151.04 per square foot of living area including land.

The board of review called Kendal Township Assessor, Michael Hardercopf, who was qualified as an expert witness and provided testimony in connection with the appeal. The assessor testified all the comparables are located within Kendall Township. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

Under cross examination, the assessor testified he only chose comparables located in Kendall Township because that is his assessment jurisdiction. The assessor agreed comparables 1 and 3 are assessed for less than their 2005 and 2006 sale prices. The assessor agreed the subject property's assessment reflects an estimated market value of $528,891, considerably more that its $415,000 purchase price.

In rebuttal, the appellant argued board of review comparables 1 and 2 are not a full two-story property and do not have a walkout basements, dissimilar to the subject. He also argued

comparable 2 is not occupied. The appellant also claimed board of review comparable 3 is the most similar property when compared to the subject due to its predominantly two-story design.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds a reduction in the subject property's assessment is warranted.

The appellant first argued the subject property was inequitably assessed. More specifically, the appellant argued it is inequitable that properties located in Oswego Township are assessed proportionally less than similar properties in Kendall Township. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the evidence submitted, the Board finds the appellant has overcome this burden and a reduction is warranted.

Both parties submitted assessment information for six suggested comparables for the Board's consideration. The three comparables submitted by the appellant are located in a neighboring subdivision, but a different township than the subject. However, the comparables are located within one mile from the subject, with one comparable sharing the same street name as the subject. The board of review submitted three comparables to demonstrate the subject dwelling was uniformly assessed. The board of review's comparables are located along the subject street within the subject's subdivision and township. The board of review argued the appellant's comparables are not located in the same township as the subject and therefore should not be considered. The Property Tax Appeal Board accords this aspect of the board of review's argument little merit. The board of review failed to submit any evidence indicating similar real property within the same geographical area, but situated in different townships, carry dissimilar values. In contrast, the Property Tax Appeal Board finds the market evidence contained in both parties evidence support the appellant's contention that all the comparables are located in the same geographic competing market area.

The Property Tax Appeal Board finds this record contains four sales of properties with varying degrees of similarity to one another that have similar market values, although they are located in different townships. Two credible sales submitted by the appellant are located in close proximity to the subject, but are located in a neighboring subdivision and township. They sold in 2005 for prices of $512,578 and $620,000 or $123.72 and $150.05 per square foot of living area including land. By comparison, two credible sales submitted by the board of review that are located in close proximity within the subject's subdivision and township. They sold in 2005 and 2006 for prices of $517,446 and $628,742 or $123.79 and $151.43 per square foot of living area including land. Based on this analysis, the Property Tax Appeal Board finds the board of review's contention that the appellant's comparables should not be considered due to their location in a different township is without merit.

The parties submitted a total of six assessment comparables for consideration. The Board gave less weight to comparable 1 submitted by the appellant due to its slightly older age than the subject. The Board also gave less weight to comparables 1 and 2 submitted by the board of

review. These properties are part one story and part two story dwellings, dissimilar the subject's two story design. (See dwelling diagrams submitted by the board of review). The Property Tax Appeal Board finds the remaining three comparables to be most similar when compared to the subject in age, size, design, amenities and location. They have improvement assessments ranging from $127,313 to $128,210 or from $30.67 to $30.83 per square foot of living area. The subject property has an improvement assessment of $142,035 or $32.17 per square foot of living area, which falls above the range established by the most similar assessment comparables contained in this record. After considering adjustments to the comparables for any differences when compared to the subject, the Board finds the subject's improvement assessment is excessive and a reduction is warranted.

The appellant also argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellant has not overcome this burden. After reviewing the market data evidence offered by both parties and considering the assessment reduction granted based on the principals uniformity, the Property Tax Appeal Board finds no further reduction in the subject's assessed valuation is supported.

In conclusion, the Board finds the appellant has demonstrated a lack of uniformity in the subject's improvement assessment by clear and convincing evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is incorrect and a reduction is warranted.

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| **APPELLANT:** | **Tim C. & Donna S. Hicks** |
| **DOCKET NUMBER:** | **06-02792.001-R-1** |
| **DATE DECIDED:** | **October, 2008** |
| **COUNTY:** | **Washington** |
| **RESULT:** | **No Change** |

The subject property consists of 2,128 square foot Fleetwood double-wide mobile home that was built in 2002. The subject also has a two-car detached garage and a 10 foot by 12 foot wooden deck. The property is located in Radom, DuBois Township, Washington County.

The appellant, Donna S. Hicks, appeared before the Property Tax Appeal Board contesting the assessment on the mobile home. The appellant contends the mobile home should not be classified and assessed as real estate due to its lack of a permanent foundation. The appellant testified the home was purchased from a mobile home dealer in Mt. Vernon. The appellant submitted a copy of the purchase agreement disclosing the subject home was a Fleetwood model that was purchased in July 2001 for a price of $66,126. The appellant also submitted a copy of Certificate of Title of Vehicle describing the subject as a 2002 Fleetwood with 2,128 square feet that was purchased on July 9, 2001. The appellant also submitted a copy of a document entitled Appraiser's Manufactured Housing Checklist dated April 1, 2005, indicating the home is not permanently affixed on a concrete/masonry perimeter with concrete/masonry footings and further indicating the home is not permanently affixed to blocks. The form also indicated, however, that the subject had been converted to real property.

The appellant testified the mobile home is on blocks but not permanently attached to the blocks and can be removed off of the blocks. She testified that when the mobile was purchased they had problems obtaining a loan because they were told that loans were not made for mobile homes. She also testified that she could not obtain insurance from State Farm Insurance because it does not insure mobile homes. Her main complaint was that her taxes are high and should be based on a mobile home privilege tax.

She testified the home was delivered to its present location in two sections and was pulled by a tractor. She observed the home being set up. The appellant stated the subject has three high mortared blocks around the perimeter of the home. The appellant testified the home sits on top of this perimeter foundation. The appellant stated the home is anchored in place by the blocks that it sits on. The appellant assumed the home was attached to these blocks. The appellant did not know how deep the concrete blocks extended into the ground but indicated that in setting up the home they did not dig into the ground.

Under cross-examination the appellant did not know how the home was attached to the perimeter mortared concrete block foundation.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment totaling $30,125 was disclosed. The board of review provided testimony that the appellants did obtain a building permit wherein the subject was described as a modular or manufactured home on a permanent foundation. The board of review also noted the appellants submitted an appraiser's manufactured housing checklist wherein the appraiser indicated the

subject dwelling had been converted to real property. The board's witness indicated that an inspection was made of the exterior of the home and the subject had a mortared concrete block foundation as described by the appellant. The witness said from appearances it looked as though the perimeter mortared concrete block foundation supported the home; however, no one looked under the home.

The board of review also submitted information on comparable sales disclosing that mobile homes have been sold as part of the real estate. The homes were built from 1997 to 1998 and ranged in size from 1,716 to 1,850 square foot of living area. The sales occurred from June 2004 to December 2005 for prices ranging from $68,000 to $79,000 or from $36.76 to $43.07 per square foot of living area. The subject has an assessment reflecting a market value of approximately $91,500 or $43.00 per square foot of living area using the 2006 three year median level of assessments for Washington County of 32.92%. The board of review also submitted information on equity comparables to demonstrate the subject was equitably assessed. The comparables were improved with mobile homes that ranged in size from 1,352 to 2,135 square feet of living area and were constructed from 1996 to 2001. These properties had improvement assessments that ranged from $19,928 to $27,099 or from $11.88 to $16.69 per square foot of living area. The subject had an improvement assessment of $28,795 or $13.53 per square foot of living area.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds a reduction in the subject's assessment is not justified based on this record.

The appellant contends that the mobile home on the subject property should not be classified and assessed as real estate because of the nature of the home's foundation. The appellant argued the mobile home should not be classified and taxed as real estate but subject to privilege tax provided by the Mobile Home Local Services Tax Act.

Section 1-130 of the Property Tax Code defines real property in part as:

> [A]ny vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, if the structure is resting in whole on a permanent foundation. . . . (35 ILCS 200/1-130).

Additionally, section 1 of the Mobile Home Local Services Tax Act defines a mobile home as:

> [a] factory assembled structure designed for permanent habitation and so constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, from the place of its construction to the location, or subsequent locations, and placement on a temporary foundation, at which it is intended to be a permanent habitation, and situated so as to permit the occupancy thereof as a dwelling place for one or more persons, provided that any such structure resting in whole on a permanent foundation, with wheels, tongue and hitch removed at the time of registration provided for in Section 4 of this Act, shall not be construed as a 'mobile home', but shall be assessed and taxed as real property as defined by Section 1-130 of the Property Tax Code. (35 ILCS 515/1).

Both the Property Tax Code and the Mobile Home Local Services Tax Act require a mobile home to be resting in whole on a permanent foundation before it can be classified and assessed as real estate. Absent a permanent foundation a mobile home is subject to the privilege tax provided by the Mobile Home Local Services Tax Act. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711, 719(2nd Dist. 1996); Berry v. Costello, 62 Ill.2d 342, 347 (1976). The Property Tax Code and the Mobile Home Local Services Tax Act provide that the determining factor in classifying a mobile home as real estate as being the physical nature of the structure's foundation. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 724.

Neither the Property Tax Code nor the Mobile Home Local Services Tax Act defines "permanent foundation." The Property Tax Appeal Board may, however, look to other statutes that relate to the same subject to determine what constitutes a permanent foundation for assessment purposes. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 720; Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App.3d 792, 800 (5th Dist. 2006).

The Illinois Manufactured Housing and Mobile Home Safety Act contains a definition of "permanent foundation". Section 2(l) of the Illinois Manufactured Housing and Mobile Home Safety Act defines a "permanent foundation" as:

> a closed perimeter formation consisting of materials such as concrete, mortared concrete block, or mortared brick extending into the ground below the frost line which shall include, but not necessarily be limited to cellars, basements, or crawl spaces, but does exclude the use of piers. (430 ILCS 115/2(1)).

The Manufactured Home Quality Assurance Act in defining "Manufactured Home" provides a definition of a permanent foundation stating in part:

> [T]hat any such structure resting wholly on a permanent foundation, which is a continuous perimeter foundation of material such as mortared concrete block, mortared brick, or concrete which extends into the ground below the established frost depth and to which the home is secured with foundation bolts at least one-half inch in diameter, spaced at intervals of no more than 6 feet and within one foot of the corners, and embedded at least 7 inches into concrete foundations or 15 inches into block foundations, shall not be construed as a mobile home or manufactured home. . . . (430 ILCS 117/10).

The Mobile Home Park Act also speaks in terms of an "immobilized mobile home" which means:

> [A] mobile home served by individual utilities, resting on a permanent perimeter foundation which extends below the established frost depth with the wheels, tongue and hitch removed and the home secured in compliance with the Mobile Home Tiedown Act. 210 ILCS 115/2.10.

The Manufactured Home Installation Code (77 Ill.Admin.Code 870) also contains a definition of "permanent foundation" which mirrors the language contained in Manufactured Home Quality Assurance Act as quoted above. Section 870.10 of the Illinois Manufactured Home Tiedown Code states in part that:

> "Permanent Foundation" is a continuous perimeter foundation such as mortared concrete blocks, mortared brick, or concrete that extends into the ground below the established frost depth and to which the home is secured with foundation bolts at least one-half inch in diameter, spaced at intervals of no more than 6 feet and within one foot of the corners, and embedded at least 7 inches into concrete foundations or 15 inches into block foundations. (77 Ill.Admin.Code 870.10).

The Board finds that each of these statutory provisions requires that a permanent foundation must be a continuous perimeter foundation composed of concrete, mortared concrete block, or mortared brick that extends below the frost line. The home must be actually attached, supported and anchored by this type of continuous perimeter foundation to be considered a permanent foundation.

After considering the evidence and testimony the Board finds the appellant did not present sufficient evidence to establish that the subject mobile home was not resting in whole on a permanent foundation so as not to be classified and assessed as real estate under the provisions of the Property Tax Code. The appellant's evidence with respect to the nature of the subject's foundation was contradictory. The appellant provided a copy of a document entitled Appraiser's Manufactured Housing Checklist dated April 1, 2005, indicating the home is not permanently affixed on a concrete/masonry perimeter with concrete/masonry footings and further indicating the home is not permanently affixed to blocks. However, the document also indicated the home had been converted to real estate. Additionally, the appellant testified that the subject was resting upon and supported by a mortared concrete block perimeter foundation. At other times the appellant indicated the subject was resting on concrete blocks and could move. The Board finds this testimony and evidence was equivocal and inconclusive with respect to the nature of the subject's foundation. The Board finds the appellant provided no photographs or testimony concerning the nature of crawl space under the home to demonstrate the property was not resting in whole on a permanent foundation. The Board finds under the facts of this appeal the appellant did not satisfy the burden of challenging the correctness of the assessment by providing descriptive data, testimony and photographs establishing the mobile home was not resting on a permanent foundation.

The Board finds the board of review did provide assessment and market data to demonstrate the subject property was equitably assessed and the assessment was reflective of its market value.

In conclusion, the Property Tax Appeal Board finds a reduction in the subject's assessment is not supported based on this record.

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| **APPELLANT:** | **Tod and Lori Hinkle** |
| **DOCKET NUMBER:** | **05-01529.001-R-1** |
| **DATE DECIDED:** | **February, 2008** |
| **COUNTY:** | **Union** |
| **RESULT:** | **Reduction** |

The subject property consists of a one and one-half story masonry dwelling containing 2,151 square feet of above grade living area that was built in 1996. The property features a full finished basement, central air conditioning, a fireplace, a two-car detached, and a two-car attached garage.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellants submitted an appraisal of the subject property. The appraisal estimated a fair market value of $192,000 as of April 2006, using the sales comparison approach to value. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $100,620 was disclosed. The subject's assessment reflects an estimated market value of $301,890 using Union County's 2005 three-year median level of assessments of 33.33%. In support of the subject's assessment, the board of review submitted photographs and an equity analysis detailing four assessment comparables to demonstrate the subject property was being uniformly assessed. The board of review did not submit any market evidence to support its assessed valuation of the subject property. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds a reduction in the subject property's assessment is warranted.

The appellants argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellants have overcome this burden. The Board gave no weight to the assessment comparables submitted by the board of review. The Board finds this evidence fails to address the market value complaint raised by the appellants. The Board finds the best and only evidence of the subject's fair market value contained in this record is the appraisal submitted by the appellants for $192,000. The subject's assessment reflects an estimated market value of $301,890, which is considerably higher than the appraisal. Based on this analysis, the Board finds the preponderance of the evidence demonstrates the subject property was overvalued and a reduction is warranted.

In conclusion, the Board finds the appellants demonstrated overvaluation by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is incorrect and a reduction is warranted. Since fair market value has been established, the three-year median level of assessments for Union County of 33.33% shall apply.

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| **APPELLANT:** | **Kaner Trust** |
| **DOCKET NUMBER:** | **06-23680.001-R-1** |
| **DATE DECIDED:** | **October, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **Reduction** |

The subject property consists of a 7,504 square foot parcel of land containing an 82-year old, frame, one-story, single-family dwelling. The improvement contains one bath. The appellant raised two arguments: first, that there was unequal treatment in the assessment process of the improvement; and second, that the fair market value of the subject is not accurately reflected in its assessed value as the bases for this appeal.

The appellant argued that the board of review incorrectly listed the subject property's square feet of living area. In support of this and the market value argument, the appellant presented an appraisal listing the subject property as containing 810 square feet of living area. The appraisal utilized the cost and sales comparison approaches to value to estimate the market value of the subject property as of April 13, 2007 at $200,000.

In support of the equity argument, the appellant submitted assessment data and descriptions on four properties suggested as comparable to the subject. Colored photographs of the subject property and these properties were also submitted. The data in its entirety reflects that the properties are located within six blocks of the subject and are improved with a one-story, frame, single-family dwellings with one bath. The properties range: in age from 54 to 88 years; in size from 864 to 900 square feet of living area; and in improvement assessments from $15.90 to $17.10 per square foot of living area. As a result of these analyses, the appellant requested a reduction of the subject's assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's improvement assessment was $18,196, or $17.43 per square feet of living area using 1,044 square feet. In addition, the total assessment was $24,499 which yields a market value of $153,119 using the level of assessment of 16% for Class 2 property as contained in the Cook County Real Property Assessment Classification Ordinance. The board also submitted assessment data and descriptions of three properties suggested as comparable to the subject. The suggested comparables are located within the subject's neighborhood and are improved with a one-story, frame, single-family dwelling with one or one and one-half baths, and, for one property, a full, unfinished basement. The properties range: in age from 68 to 82 years; in size from 1,012 to 1,090 square feet of living area; and in improvement assessments from $18.89 to $19.74 per square foot of living area. In addition, the board submitted copies of its file from the board of review's level appeal. As a result of its analysis, the board requested confirmation of the subject's assessment.

In rebuttal, the appellant submitted a letter arguing that the subject's square feet of living area was incorrectly listed in the board of review's evidence and that its suggested comparables are not similar to the subject property.

After considering the evidence and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

Appellants who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the suggested comparables to the subject property. Property Tax Appeal Board Rule 1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960). Having considered the evidence presented, the PTAB concludes that the appellant has met this burden and that a reduction is warranted.

As to the appellant's square footage argument, the PTAB finds that the appellant has submitted sufficient evidence to establish that the subject property's square feet of living area was incorrectly listed by the board of review. Therefore, the PTAB finds that the subject property contains 810 square feet of living area.

The parties presented assessment data on a total of seven equity comparables. The PTAB finds the appellant's comparables are the most similar to the subject. These four comparables contain a one-story, frame, single-family dwelling located within six blocks of the subject. The properties range: in age from 54 to 88 years; in size from 864 to 900 square feet of living area; and in improvement assessments from $15.90 to $17.10 per square foot of living area. In comparison, the subject's improvement assessment of $22.46 per square foot of living area falls above the range established by these comparables. The PTAB accorded less weight to the remaining comparable due to a disparity in size.

As a result of this analysis, the PTAB further finds that the appellant has adequately demonstrated that the subject was inequitably assessed by clear and convincing evidence and that a reduction is warranted. Since the PTAB finds that a reduction is required for uniformity, the market value argument need not be addressed.

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| **APPELLANT:** | **Thomas Koprowski** |
| **DOCKET NUMBER:** | **05-01685.001-R-1** |
| **DATE DECIDED:** | **May, 2008** |
| **COUNTY:** | **DuPage** |
| **RESULT:** | **No Change** |

The subject property consists of an approximately 9,100 square foot lot which has been improved with a 55-year-old, two-story, frame dwelling of 2,618 square feet of living area. Features include a partial basement, fireplace, central air conditioning and a two-car garage. The property is located in Glen Ellyn, Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board claiming both unequal treatment in the assessment process and overvaluation as the bases of the appeal regarding the subject's land only. No dispute was raised concerning the improvement assessment.

In support of the land inequity argument, the appellant submitted a table (Exhibit A) setting forth the street address, property identification number, land area square footage, land assessment, and land assessment per square foot for sixteen parcels which the appellant described as being all of the two-story residential lots within his taxing district and within one square block of the subject. Some of the comparables were further noted as being "corner" lots. The comparable lots ranged in size from 7,800 to 20,538 square feet of land area and have land assessments ranging from $18,070 to $46,010 or from $1.65 to $2.32 per square foot of land area. The subject has a land assessment of $23,820 or $2.62 per square foot of land area.

In a second chart (Exhibit G), appellant analyzed properties described as either across from and/or in visual contact with Lake Ellyn. In this chart, eight comparable parcels which ranged in size from 6,393 to 15,700 square feet of land area had land assessment ranging from $19,990 to $55,100 or from $3.13 to $6.89 per square foot of land area.

In addition, appellant noted the subject property is within 75 yards of railroad tracks, is in direct visual line of said tracks with the associated dilatory attributes of noise, vibration and graffiti on passing cars, and from among the comparables, the subject property is farthest from Lake Ellyn. Furthermore, while the assessing officials have purportedly classified the subject parcel as "normal," appellant contends the property shape is a trapezoid with no one side equal whereas other lots have been classified as "irregular" with no explanation for the differences in classifications. Appellant also briefly set forth other factors he contends detract from the desirability of the subject parcel including lack of street parking, topography, potential radon, and high traffic.

In support of his overvaluation argument, the appellant submitted sales information on three properties. These comparables sold in August and September 2004 for purchase prices ranging from $610,000 to $690,000. Appellant then set forth the 2005 total assessed values for these properties and the estimated fair market values based on these assessments. Using these calculations, appellant indicated the comparables were assessed from 7.86% to 13.68% below their recent purchase prices, whereas the subject's estimated fair market value based upon its 2005 assessment was only 4.54% below its August 2004 purchase price of $585,000.

Based on this evidence, the appellant requested the subject's land assessment be reduced to $18,564 or $2.04 per square foot of land area.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $186,140 was disclosed. In support of the subject's assessment, the board of review submitted three narrative responses to the appellant's appeal along with supporting attachments of applicable property record cards and parcel maps. The subject property has an estimated market value of $558,979 as reflected by its assessment and DuPage County's 2005 three-year median level of assessments of 33.30% as determined by the Illinois Department of Revenue.

As to land assessment inequity argument, the board of review articulated the methodology both in documentary evidence and through the testimony of Ginny Westfall-Sprawka, the Milton Township Deputy Assessor. In the subject's neighborhood, a front-foot land assessment methodology was used with $361.53 per front-foot with potential depth factor adjustments. The subject property was calculated as having 70' of frontage and a negative or .94 depth factor. The deputy township assessor testified the front-foot of the subject was calculated by adding the front (90') and back lot lengths (65') and dividing by two (77.5'). The depth of the parcel was similarly calculated using the side lot line lengths (109' + 152' = 261/2 = 130.5'). With a depth of only 130', a .94 depth factor was applied resulting in a land assessment of $340.00 per front-foot or $23,820 according to the assessor's narrative, noting the assessments may be "off slightly" due to rounding.[5]

The submitted documentation then reiterates appellant's sixteen land comparables and presents the assessments in terms of the front-foot assessment methodology which was applied, rather than a square foot of land methodology calculated by the appellant. It was further noted that one of the sixteen properties, an irregularly shaped, curved corner lot, was assessed on a site value basis, but the remaining fifteen were assessed on a front-foot basis. The documentation lists these fifteen comparables setting forth the recorded front-foot measurement, applicable depth factor, if any, and the land assessment per front-foot with a resulting 2005 land assessment. These fifteen comparables have front-foot measurements of 50', 70' or 126' and depth factors ranging from zero (for lot depths of 150' to 159') to 1.05 (for lot depths of 200') with resulting assessments from $361.53 to $380.00 per front-foot and total land assessments ranging from $18,080 to $46,020.

In testimony to address the purported deleterious effects of the railroad tracks near the subject property as set forth by the appellant, the assessor testified that the land assessments for properties across the street from the subject and which back up to the railroad tracks have been assessed using the same front-foot methodology as the subject with no adjustment to the land. However, since 1991 the improvements on those properties across the street from the subject have been assessed at a lower base construction cost to account for abutting the railroad tracks. No data to depict the land assessments of these properties was set forth in the board of review's evidence, although a narrative showing a history of sales of properties backing directly to the

[5] For the subject, base of $361.53/front-foot x .94 depth factor = $340/front-foot (rounded); 70' frontage x $340 = $23,800, but the 2005 assessment of the subject was $23,820. On the other hand, the frontage could be said to be 77.5', but was apparently "rounded-down" to 70'; at 77.5' x $340 would be a land assessment of $26,350.

railroad tracks was provided. The assessor noted this point was to show property value appreciation even though these properties abut the railroad tracks; multiple sales of the properties were listed dating as far back as 1979. Examining only the most recent sales, the assessor has shown these properties sold between March 1998 and December 2005 for purchase prices ranging from $136,500 to $475,000

In addressing the appellant's irregularly shaped lake lots (Exhibit G), the assessor set forth a front-foot land assessment methodology for this neighborhood as $545.14 per front-foot; however, according to the data only one property was assessed directly using this methodology. As set forth in the documentation, one property received a reduced land assessment as a "busy corner" and the remaining properties ranging in size from 50' x 160' to 100' x 157' were done on a "site value" basis. No explanation of the site value methodology was provided. These lake view properties had total land assessments ranging from $55,070 to $55,100.

The board of review submitted one comparable sale in a grid primarily addressing uniformity of improvement assessments. This sale occurred in January 2005 for $810,000; this land parcel was said to be 50' x 168' (8,400 square feet) with a land assessment of $18,270.

Based on the foregoing evidence, the board of review requested confirmation of the subject's land assessment.

In rebuttal, the appellant noted the properties across the street from the subject which abuts the railroad tracks were in a different taxing district and different assessor's neighborhood code. As such, the appellant contends that these comparisons are irrelevant. Moreover, the appellant urges that the previously outlined detriments of his property should be considered in determining the correct assessment of the subject property.

Upon examination by the Hearing Officer, the deputy assessor acknowledged that the subject property received no reduction in assessed value for facing the railroad tracks, although a reduction in assessed value is afforded to the improvement assessments of the properties which abut the railroad tracks.

While the deputy assessor contended that presence on a highly trafficked street would not afford the subject property a reduction in assessment, the appellant noted that the assessor did afford a reduction to one of the lake view properties for "busy corner." This reduction was not further explained by the board of review on this record.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's assessment is not warranted.

As noted at the hearing, the appellant argued overvaluation as a basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). After analyzing the market evidence submitted, the Board finds the appellant has failed to overcome this burden.

The Property Tax Appeal Board finds the appellant submitted three sales in an effort to argue the "inappropriateness" of the subject's assessment in light of its recent sale price as compared to the sale prices and respective assessments of three nearby properties which recently sold. While a small number of properties can be used to establish lack of uniformity, with the raw sales data provided, appellant has not shown the comparables selected were similar in age, size, design, or other characteristics to the subject property. In fact, the appellant was very specific that the only dispute concerned the land assessment. As set forth in his Exhibit F, however, there is no descriptive data of these three properties. Thus, as cited in Peacock v. Illinois Property Tax Appeal Board, 339 Ill. App. 3d 1060 (4th Dist. 2003), such a limited study of handpicked comparables without other evidence of similarity to the subject is not sufficient and, is in fact, fatally flawed. This is not a random sampling of like properties that could be viewed as representative of the county's assessments as a whole. At most, the appellant's data shows that instances exist in which particular properties are undervalued, some more so than others. The law does not require "absolute equality" in taxation. Schreiber v. County of Cook, 388 Ill. 297 (1944)("Perfect equality and uniformity of taxation as regards individuals or corporations or different classes of property subject to taxation can hardly be visualized. Absolute equality is impracticable in taxation and is not required by the equal protection clause of the constitution. Inequalities that result occasionally and incidentally in the application of a system that is not arbitrary in its classification, and not applied in a hostile and discriminatory manner, are not sufficient to defeat the tax"); Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960) (the constitutional uniformity requirement is satisfied if the taxing body achieves a reasonable degree of uniformity). It is difficult to imagine a context in which a study would be deemed valid where the author of the study chooses the subjects based on the result he seeks to prove. As such, the Board gave no weight to the appellant's comparable sales evidence.

Next, the Board gave no weight to the appellant's arguments regarding the external factors purportedly detracting from the value of the subject property because appellant included no market data to support the claim that the subject's land assessment should be discounted for these factors. Appellant provided no empirical data demonstrating an adverse impact or diminution on the value of the subject property because of the railroad tracks, the high traffic, or any of the other claimed deleterious conditions. Moreover, the sales history of the subject property not only reflects a purchase in August 2004 for $585,000, but also a prior purchase in May 1998 for $318,000.

The appellant's other argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not overcome this burden.

The only dispute before this Board is a land inequity contention. The evidence establishes that for the subject and neighboring properties, the assessing officials uniformly utilize a front-foot assessment methodology. While rounding of numbers could certainly lead to some differences

in calculations, beyond these minor mathematical differences, the methodology appears to be uniform within the area.[6]

As noted previously, the assessor's determination of 70' frontage for the subject property was calculated by adding the front lot line and the back lot line and then dividing by two. This calculation results in 77.5' and could arguably be rounded up to 80' of frontage, but instead was rounded down to 70' of frontage. Besides differences due to rounding, the front-foot land assessment methodology was applied uniformly to the subject property and neighboring properties.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, the Property Tax Appeal Board finds that the subject's land assessment as established by the board of review is correct and no reduction is warranted.

[6] Upon examining the fifteen comparables at the front-foot assessment rates set forth in the board of review's documentation, the mathematical process and the total land assessments stated do not match up. Some land assessments are nearly $20 less than the mathematical calculation (50' x $371.61 = $18,581, not $18,560) while others are $20 more than the calculation (50' x $380.00 = $19,000, not $19,020). Moreover, four of the comparables are said to be 50' x 200' lots with, after depth factors, assessments of $380 per front-foot; however, one of these four properties has a land assessment of $18,990 whereas the other three have land assessments of $19,020, for a total difference of $30.

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| **APPELLANT:** | **Scott and Cathy LePenske** |
| **DOCKET NUMBER:** | **05-00800.001-R-1** |
| **DATE DECIDED:** | **June, 2008** |
| **COUNTY:** | **Kane** |
| **RESULT:** | **Reduction** |

The subject property has been improved with a one-story, frame single-family dwelling containing 2,037 square feet of living area constructed in 1988. Features of the dwelling include a full finished basement, central air conditioning, fireplace, and a two-car attached garage. The property is located in Elgin, Plato Township, Kane County, Illinois.

Appellants reported the subject dwelling to have 1,772 square feet of living area as stated in an appraisal filed in support of an overvaluation claim. The appraiser was not present at the hearing to explain the method of calculating the square footage set forth in the appraisal report. The board of review's evidence, which included a copy of the property record card for the subject dwelling, indicated the dwelling contains 2,037 square feet of living area. Furthermore, upon questioning by the Hearing Officer, appellant Scott LePenske had no information to dispute the measurement reported by the township assessor. The Property Tax Appeal Board finds that the best evidence in the record of the subject dwelling's living area square footage is the property record card showing 2,037 square feet of living area.

Appellant Scott LePenske appeared before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of the overvaluation argument, appellants filed an appraisal that estimates a market value for the subject property of $282,000 as of October 21, 2005 utilizing both the cost approach and the sales comparison approach to value. The appraiser was not present at the hearing to provide direct testimony or to be cross-examined regarding the appraisal methodology and final value conclusion. Appellants' residential appeal petition sought a reduction from the 2005 total assessment of $98,406 to a revised total assessment of $85,330. The requested assessment would result in an estimated market value of $255,556 based on the 2005 three-year median level of assessments for Kane County of 33.39% as determined by the Illinois Department of Revenue, which is lower than the estimated market value of the subject property set forth in the appraisal.

Besides presenting an appraisal to support an overvaluation claim, appellants filed copies of revised assessment notices and/or a Kane County Board of Review Notice of Findings for years 2002, 2003 and 2004 reflecting total assessments for the subject property of $80,912, $88,325, and $91,657, respectively. More specifically, in his opening statement, appellant LePenske argued that a decision by the Kane County Board of Review for the 2004 assessment year reduced this owner-occupied property's assessment to $91,657 and should be carried forward, subject only to the township equalization factor of .9858, until the next general assessment cycle in 2007. (35 ILCS 200/16-80) Based on this legal contention, the appellant requested the subject's assessment of 2004 as determined by the Kane County Board of Review be carried forward to 2005, subject only to equalization.

The Board of review presented "Board of Review Notes on Appeal" wherein the subject's final assessment of $98,406 was disclosed along with an equalization factor of 0.9858. Among the

documents filed by the board of review with the Property Tax Appeal Board was the appellants' underlying complaint made with the board of review. Within the appellants' board of review complaint was a legal argument and citation to Section 16-80 of the Property Tax Code along with a photocopy of the text of the statute.

The board of review representative objected to the presentation of a legal argument at hearing which had not been raised specifically in the appeal. The representative argued that no history of the 2004 assessment decision had been placed in the record by the appellants and that no contention of law had been made when the appeal was filed.

In support of the current assessment, the board of review presented various documents including a letter from the Plato Township Assessor along with various documents including the subject's property record card, a schematic drawing of the subject, and a three-page, single-spaced listing of properties in the subject's subdivision. Most of the three-page document consisted of parcel numbers, street addresses, design (number of stories), square footage, and assessment data for land, improvement and total, the next column on the listing was a "value" amount, and the last column was entitled "value per square foot." At the very bottom of this three-page document, there was sales information for five properties described by parcel number, street address, square footage, date of sale, sale price, and price per square foot. The board's representative indicated these sales were of one-story properties, but nothing in the evidence indicates the design of the properties. Of these five sales, based on the parcel identification number and the previous listing of every parcel in the subject's subdivision, only one of the sale properties appears to be in the subject's subdivision. In the course of the hearing, the board of review representative requested that only the first two sales be considered for purposes of this appeal because they occurred at or prior to the date of valuation of January 1, 2005. These two properties contain 2,020 and 1,856 square feet, respectively, and sold in January 2005 and October 2004 for prices of $336,000 and $303,000 or for $166.34 and $163.25 per square foot of living area, including land.

Plato Township Assessor Janet Roush was called to testify on behalf of the board of review and indicated that she reassesses all the properties in her township every year. Evidence was also elicited that 2003 was the beginning of a new general assessment period with the new quadrennial reassessment occurring in 2007.

In the course of the hearing, a board of review member with CIAO and CAE designations put forth various oral criticisms of the appellants' appraisal report. The board of review closed its case seeking confirmation of the subject's assessment and expressing disappointment that the legal issue had not been specifically raised prior to hearing. However, when offered the opportunity by the Hearing Officer to stipulate to the value of the subject property based upon the requirements of Section 16-80 of the Property Tax Code, the board of review representative declined to do so.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

Section 16-80 of the Property Tax Code (35 ILCS 200/16-80) provides:

> In any county with fewer than 3,000,000 inhabitants, if the board of review lowers the assessment of a particular parcel on which a residence occupied by the owner is situated, the reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless the taxpayer, county assessor, or other interested party can show substantial cause why the reduced assessment should not remain in effect, or unless the decision of the board is reversed or modified upon review.

Based on this provision, the Property Tax Appeal Board finds the board of review is bound to its decision issued for the 2004 assessment year of the subject property, subject only to equalization. As such, the board of review's objection to the legal argument being raised at hearing is overruled and the decision herein shall be based on the Property Tax Code as provided in Section 16-80. The Property Tax Appeal Board finds that the prior year's decision made by the Kane County Board of Review should be carried forward to the subsequent year subject only to any equalization factor applied to that year's assessments. This finding is pursuant to Section 16-80 of the Property Tax Code (35 ILCS 200/16-80).

The subject property is an owner occupied residence that was the subject matter of an appeal before the Kane County Board of Review the prior year of 2004. In that appeal the Kane County Board of Review rendered a decision lowering the assessment of the subject property based on the evidence submitted.

The record contains no evidence indicating substantial cause why the reduced assessment should not remain in effect. There also was no evidence that the 2004 decision of the Kane County Board of Review had been reversed or modified upon review by the courts or this Board. Finally, the evidence indicates that the assessment year in question, 2005, is in the same general assessment period. For these reasons the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted to reflect the Kane County Board of Review's prior year's finding of $91,657 plus the application of the factor of 0.9858 applied for equalization for the 2005 assessment.

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| **APPELLANT:** | **Nicholas J. Lombardi** |
| **DOCKET NUMBER:** | **05-01739.001-R-2** |
| **DATE DECIDED:** | **June, 2008** |
| **COUNTY:** | **DuPage** |
| **RESULT:** | **No Change** |

The subject property consists of a 4.4 acre (191,664 square foot) vacant lot which is adjacent to the appellant's residence. On the property record card, the subject is described as "only 1 buildable acre; 3.4 acres in flood plain." The subject property is located in Oak Brook, York Township, DuPage County, Illinois.

The appellant's petition included a legal brief and numerous exhibits including historical documents referencing a floodplain designation (Exhibits B & F), a tax map depicting part of the parcel within Ginger Creek (Exhibit C), both aerial and ground-level photographs of the lot (Exhibits D & E), and a grid analysis (Group Ex. H). In the presentation of the grid analysis of ten suggested comparables located both in the subject's township and in the neighboring township of Downers Grove, the appellant's counsel made what he termed "an alternative argument" of unequal treatment in the assessment process.

The point of the legal brief, in particular, was to challenge the assessment applied to the northwest corner of the lot which is actually in Ginger Creek and thus under water along with a challenge to the assessment of the 3.4 acres located in a floodplain. Appellant acknowledged that the 3.4 acres of land located in a flood zone has been assessed at a reduced rate of $1.28 per square foot of land area or half of the assessment applied to the remaining one-acre "buildable" portion of the lot of $2.56 per square foot of land area. Despite this undisputed fact, appellant argues that, while this may be a uniform policy in the township, there is no basis for the valuation of the subject at 50% of estimated market value as opposed to perhaps 33.33% or, as the appellant contends, non-usable, unbuildable land which should have a zero assessment.

As noted in his opening statement, appellant's value evidence is based upon the state of the property and a "common sense approach" that it should not have the value ascribed to it by the assessor. Part of the evidence included photographs of the lot (Exhibit E) depicting a large amount of standing rainwater. The photographs were taken between Spring 2006 and October 2006 after a substantial rainstorm. One of the photographs depicted not only flooding, but also a "150 yard" sign; appellant acknowledged using the subject land as a driving range when permissible.

Appellant further testified that the lot was purchased in the 1960's or 1970's from a neighbor. As appellant understood it, there was some kind of agreement initially regarding a land exchange due to the flooding, but that was never consummated. Given the imposition of regulation by the Army Corp of Engineers, appellant has been unable to do anything affecting the creek and his property has become part of and an extension of the creek. Appellant stated in years past, the creek was dredged regularly and thus was only two or three feet wide. Appellant testified the flooding has continued to increase since the 1960's and 1970's with flooding occurring with each severe rainstorm. Moreover, a "homesite" on the parcel is only feasible in the northeast corner of

the parcel, but this would require issuance of an easement by the appellant for access in and out as there is no road access alongside any part of the subject lot.

Prior to 2004, appellant contends the subject lot was assessed between $120,000 and $140,000, but in 2004 the historical treatment of the lot and the assessment changed significantly. Appellant then questioned whether he should not perhaps donate the land to the county since the land is part of Ginger Creek. As a follow-up by appellant's counsel, when asked whether appellant had ever investigated the possibility of donating the land to the county's conservation district or a forest preserve district, he seemed to indicate he was not familiar with any such process.

As an alternative argument, appellant presented evidence of assessment data on ten properties to compare to the subject property; comparables 1 through 3 were in York Township like the subject and comparables 4 through 10 were in Downers Grove Township. Appellant's counsel noted that uniformity of assessments is a county-wide standard and therefore, properties in another township were appropriate for presentation. The comparables were described only by their parcel identification number, street address, total land square footage, assessment (land and improvement, where applicable) and, in some instances, sale price and date of sale. The ten comparable lots ranged in size from 54,414 to 530,996 square feet of land area. The land assessments for these lots ranged from $150 to $273,420. Only one sale price was within three years of the valuation date at issue, namely, comparable 4 consisting of 530,996 square feet of land area sold in November 2004 for $2,066,000. Calculated on a square foot basis, the comparable lots were assessed from less than $0.01 to $1.00 per square foot of land area. In the grid analysis, the appellant set forth a proportion of the land assessment for the subject property presumably attributed to the 3.4 acres of land being disputed; no dispute was being raised apparently as to the assessment of the "buildable" one acre. To this disputed 3.4 acre area, appellant set forth a land assessment valuation of $189,570 or approximately $1.28 per square foot. The subject parcel consisting of 191,664 total square feet with a total land assessment of $302,370 actually has a land assessment of $1.58 per square foot.

On the basis of the legal arguments and, alternatively, these comparable properties, the appellant felt that a land assessment for the subject parcel of $125,050 or $0.65 per square foot of land area was appropriate.

Upon questioning by the Hearing Officer, appellant acknowledged having been told by the seller of the subject property that part of the property is in the creek, although it was his understanding at the time that Ginger Creek would also be "backfilled." On examination by the board of review, appellant went on to acknowledge that he knew "right from the very first day" that part of the property was under the creek. (TR. 28)

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of $302,370 for the subject property was disclosed. In the course of the appellant's presentation of evidence, the board of review indicated that it agreed that part of the subject property is in a wetland and also is in a floodplain; the board of review further stipulated that Ginger Creek runs through the northwest corner of the subject lot. (TR. 21)

For the board of review's case-in-chief, testimony was presented by Ronald J. Pajda, Deputy Assessor for York Township along with documentary evidence filed previously by a predecessor township assessor. The documentary evidence consisted of a letter explaining the supporting data with legal argument, a grid analysis reiterating the appellant's three comparables within the township along with applicable property record cards, and a chart entitled "Assessors Office - Land Development." Pajda first testified that property values are ascertained from sales data. Then, under York Township's policy, property within a floodplain is given half-value throughout the township, regardless of location. The assessor noted the subject property consists of a one-acre "homesite" or buildable land which was assessed at full value and 3.4 acres which has been listed as floodplain and assessed at half of the full value per square foot. The board of review concluded the township uniformly provided a reduction to properties within a floodplain within the jurisdiction.

The letter filed by the board of review explaining its supporting data and presenting legal argument asserted that the "assessor's comps" provided a land assessment range of $1.00 to $2.57 per square foot and thus the subject's land assessment of $1.58 per square foot fell within the range of those comparables. Upon close examination of the data filed by the board of review, however, there is no land assessment data supporting an assessment range of $1.00 to $2.57 per square foot of land area. Besides repeating the appellant's grid analysis of comparables 1 through 3 in the township[7] which established a range of less than $0.01 to $1.00 per square foot, the only other data is a chart of 38 land assessments in the neighborhood of the subject, and including the subject, ranging from $1.07 to $2.74 per square foot of land area. No further explanation of the board of review's argument or detail of its data to support the argument was presented at the hearing.

In conclusion, the board of review argued the appellant submitted no market value evidence to show the subject's land assessment was not indicative of its fair market value or that it was assessed in an inequitable manner given its location in a floodplain. Based on its analysis of the data, the board of review requested confirmation of the subject's assessment.

On cross-examination, the township assessor was asked what sales data the township utilized to establish market value of the portion of the subject property which is in the floodplain. Padja responded sales data of "regular" buildable lots at their highest and best use establishes the market value for the township and then it is the York Township Assessor's policy to apply a 50% reduction in market value to land in a floodplain. Padja could not testify as to how long this policy had been in effect. When asked by appellant's counsel to cite another property in the record or otherwise, besides the subject, which has been assessed under this floodplain policy, Padja was unable to cite any other property.

On cross-examination, Padja was asked to explain the 38 properties, including the subject, set forth in the "land development" chart which was filed as part of the board of review's evidence. Padja's testified the chart shows land values in the subject property's neighborhood. The properties range in size from about 5,009 to 199,463 square feet of land area and have total land assessments ranging from $13,720 to $546,520. These land assessments result in one property

[7] In the board of review's data, it is noted that appellant's comparable 3 has been improved with a building of 3,625 square feet which was constructed in 1941. The remaining size data and land assessment data is identical to that presented by the appellant. There are no notations on the property record cards of the comparables referencing property located in a "floodplain" like the notation on the subject's property record card.

having a land assessment of $1.07 per square foot, the subject having a land assessment of $1.69 per square foot, and the remaining 36 properties having a land assessment of $2.74 per square foot. Additionally, board of review chairman Anthony Bonavolonta testified the one property assessed at $1.07 per square foot was due to a sale price of an unknown date according to information he received from a previous township assessor.

In rebuttal, appellant's counsel noted that the board's chosen comparables are all buildable lots; none of the properties are in a floodplain like the subject. Moreover, while the assessor testified there is a policy of reducing assessments on floodplain properties by 50%, there were no examples of that practice besides the subject property.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The focus of the instant appeal concerned appellant's "common sense" argument that due to flooding, the subject property is less valuable than comparable properties. Furthermore, appellant contends the 50% valuation reduction afforded by the township assessor due to the location in a floodplain is not adequate. Importantly, however, appellant provided no empirical data to indicate the property was over-valued and thus the Property Tax Appeal Board has given these arguments little merit.

Section 9-145(a) of the Property Tax Code provides that for the purposes of taxation, [e]ach tract or lot of property shall be valued at 33 1/3% of its fair cash value. (35 ILCS 200/9-145(a)). Furthermore, Section 1-130 of the Property Tax Code defines "Property; real property; real estate; land; tract; lot" as "[t]he land itself, with all things contained therein, . . . and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code." (35 ILCS 200/1-130).

With regard to the portion of the lot in the floodplain and/or under water, the appellant contends this land should be valued at a lesser rate of value than the "dry" ground. The Board finds the evidence submitted demonstrates that the land assessments of land located in a floodplain within York Township are assessed at a 50% reduction over neighboring land. The Board further finds appellant submitted no substantive evidence that clearly shows the land in the floodplain and/or under water decreases the subject's market value. In Lake County Board of Review v. Property Tax Appeal Board, 91 Ill. App. 3d 117 (2nd Dist. 1980), the property owners argued underwater property had no value for tax assessment purposes due to a reverter clause in the deed. The court held that the reverter clause made it unlikely that anyone would be interested in purchasing the property at any price, but that did not support a finding that such underwater property had no taxable value. The court further noted that "[a]ll property in Illinois is subject to taxation unless specifically exempted." [Citation omitted.] The court additionally cited "land" as meaning "not only the soil or earth but also things of a permanent nature affixed thereto or found thereon, (such) as water . . ." (Black's Law Dictionary 1019 (4th ed. 1968)), and it has been held to include lakes, streams and submerged property. (Citing Slayton Gun Club v. Town of Shetek, Murray County, 286 Minn. 461, 176 N.W.2d 544 (1970)).

All real property in Illinois is assessed according to its "fair cash value." (35 ILCS 200/1-50). The Illinois Supreme Court has defined fair cash value as what the property would bring at a

voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d. 428 (1970).

When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); Official Rules of the Property Tax Appeal Board, 86 Ill. Admin. Code Sec. 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Official Rules of the Property Tax Appeal Board, 86 Ill. Admin. Code Sec. 1910.65(c). Appellant submitted no evidence that indicated the subject property had suffered any decrease in value due to its location in a floodplain and/or under water, even though the assessor had already provided a 50% reduction in assessed value as compared to neighboring properties. Essential to a determination of the correct assessment of the subject property based on market value would be evidence of fair market value; appellant presented no evidence as to what effect location in the floodplain and/or under water has upon the market value of the property. The Board recognizes the appellant's premise that the subject's value may be affected due to its location in a floodplain, but without credible market evidence showing the subject's land assessment at 50% less than non-floodplain property was inequitable or not reflective of market value, the appellant has failed to show the subject property's land assessment was incorrect.

Based on the aforementioned case law and statutes, the Board finds the subject property located in a floodplain and/or under the creek is assessable. Not only is the property not exempt from assessment pursuant to any provision of the Property Tax Code, but the appellant acknowledged use of the property when the flooding recedes. In summary, the Board finds the appellant failed to show the subject's land assessment was incorrect based on overvaluation.

The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. The Board finds the appellant has failed to overcome this burden.

The uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960); People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 520 (4th Dist. 1983). A uniformity violation can be established through evidence regarding the assessed valuations of a small number of properties. Du Page County Board of Review v. Property Tax Appeal Board, 284 Ill. App. 3d 649, 655 (1996). The properties selected for comparison must be similar in kind and character and must be similarly situated to the subject property. Id. at 654.

There is no indication that properties in Downers Grove Township are in the same taxing district as the subject property and therefore those comparables have been given no weight in the Board's analysis. Moreover, as to uniformity of land assessments, the three comparables presented by

the appellant within York Township have no indication that they are similarly situated to the subject property, namely, a location within a floodplain and/or under water. The fact that appellant's three York Township comparables have land assessments ranging from less than $0.01 to $1.00 per square foot of land area, without evidence of similarity, this data has no known bearing on the subject's land assessment.

The Board recognizes the appellant's lack of uniformity premise. However, the constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence. Therefore, the Property Tax Appeal Board finds that the subject's assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Paz Martinez Estate** |
| **DOCKET NUMBER:** | **06-00649.001-R-1** |
| **DATE DECIDED:** | **October, 2008** |
| **COUNTY:** | **McLean** |
| **RESULT:** | **No Change** |

The subject property consists of a tri-level style dwelling of brick and vinyl exterior construction containing 1,172 square feet of living area that is 30 years old. Amenities include a partial finished basement, central air conditioning, a fireplace, and a 364 square foot attached garage.

The appellant appeared before the Property Tax Appeal Board through counsel claiming unequal treatment in the assessment process as the basis of the appeal. The subject's land assessment was not contested. In addition, the appellant argued the assessor miscalculated the size of the subject dwelling.

The appellant argued the subject property contains 1,028 square feet of living area because it is identical to comparable 1. The appellant argued comparable 1 was constructed by the same builder and was designed by the same architect as the subject property. The appellant submitted a photograph of comparable 1 to support these claims.

In support of the inequity claim, the appellant submitted property record cards and an assessment analysis of three suggested comparables located in close proximity along the subject's street. The comparables consist of tri-level brick and vinyl exterior constructed dwellings that are 30 years of age. The dwellings range in size from 1,028 to 1,074 square feet of living area. Features include partial finished basements, central air conditioning, and attached garages ranging in size from 288 to 312 square feet. Two comparables have a fireplace. They have improvement assessments ranging from $31,374 to $32,194 or from $29.86 to $31.08 per square foot of living area. The subject dwelling has an improvement assessment of $36,430 or $31.08 per square foot of living area. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $44,604 was disclosed.

In support of the subject's assessment, the board of review submitted a restricted use appraisal of the subject property. The restricted appraisal was prepared by and co-signed by the City of Bloomington Township Assessor, Michael Ireland, and Deputy Township Assessor, Steven R. Scudder. The report indicates Ireland is a licensed appraiser in the State of Illinois. Scudder initially provided testimony in connection with the appraisal report, but was later supplemented by Ireland. The appraisal estimated the subject property had an estimated market value of $138,000 as of January 1, 2006, using the sales comparison approach to value. The subject's assessment of $44,604 reflects an estimated market value of $133,825 using the statutory level of assessment of 33.33%.

Page 11 of the appraisal is labeled "equity analysis". This page contains a table purportedly consisting of all the sales from the subject's neighborhood since January 2004, segregated into

styles of dwellings. The properties' current total assessments were divided by their sales prices to create a ratio of assessed value to sale price. The analysis does not disclose the sale prices or assessments for the properties. The assessor indicated the table shows an overall median level of assessment for the subject's neighborhood of 31.66%, very close to the statutory level of assessment of 33.33%. Ireland testified the chart provides inference as too how the assessment level deviates based on the story type of dwelling. The subject's style of dwelling, a tri-level style dwelling, had a median level of assessment within the subject's neighborhood of 31.56%, which is within $1/10^{th}$ of a percentage point to the overall median level of assessment for the subject's neighborhood.

The equity analysis also indicates the International Association of Assessing Officials (IAAO) standard on ratio studies requires the coefficient of dispersion to be 10% or less in newer homogenous areas. Again, based on the undisclosed sales and assessments from the study, the chart indicates the overall coefficient of dispersion for properties within the subject's neighborhood is 5.94%, well below the IAAO standard. For tri-level style dwellings like the subject, the chart shows a coefficient of dispersion of 3.99%, indicating better equity for tri-level style homes from the subject's neighborhood. Based on this statistical equity analysis, the assessor argued the subject property is uniformly assessed.

Under questioning, the assessor testified the subject's dwelling size was determined using exterior dimensions based on physical onsite measurements.

In further support of the subject's assessment, the Assistant Chief County Assessment Officer, Connie Clifford, prepared an equity analysis of the four suggested comparable properties that were detailed in the appraisal report prepared by the township assessor. The comparables are located within the subject's subdivision, but not as close in proximity as the comparables submitted by the appellant. The comparables consist of tri-level frame and vinyl or aluminum exterior constructed dwellings that are 29 to 32 years of age. The dwellings range in size from 1,048 to 1,400 square feet of living area. Three comparables have partial finished basements and two comparables have a fireplace. Other amenities include central air conditioning and attached garages ranging in size from 312 to 468 square feet. They have improvement assessments ranging from $32,469 to $34,930 or from $24.95 to $32.03 per square foot of living area. The subject dwelling has an improvement assessment of $36,430 or $31.08 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant argued the comparables used by the board of review are not compelling due to differences to the subject in size, design and floor plan. The appellant argued its comparables are more similar in physical characteristics, they are located on the same side of the street, were constructed by the same builder, and were designed by the same architect as the subject property. The appellant also submitted a diagram of the subject dwelling to further support the claim the subject dwelling contains 1,028 square feet of living area. The diagram was prepared by an appraiser from Appraisal Services of McLean County. However, the appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the method used to determine the dwelling size. Moreover, in reviewing the diagram, the Property Tax Appeal Board finds the dwelling sketch shows the subject dwelling contains 1,192 square feet of living area, which is larger than the 1,028 square feet as claimed by the

appellant and the 1,172 square feet calculated by the board of review. From a review of the dwelling sketch, the appellant did not include the 12 foot by 12 foot or 144 square feet of living area that is located at the rear section of the subject dwelling's main level.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The Property Tax Appeal Board finds the best evidence of the subject's dwelling size was offered by the board of review. This evidence and testimony indicate the subject's dwelling size was determined using exterior dimensions based on physical onsite measurements. In contrast, the appellant presented no credible evidence to support a dwelling size of 1,028 square feet of living area. Based on the evidence in this record, the Property Tax Appeal Board finds the subject dwelling contains 1,172 square feet of living area.

The appellant argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the evidence, the Board finds the appellant has not overcome this burden.

The Board gave no weight to the appraisal submitted by the board of review. The Board finds the appraisal prepared on behalf of the board of review indicates the subject's assessment is not excessive in relation to its fair market value. However, the Property Tax Appeal Board finds the appraisal fails to adequately address the lack of uniformity argument concerning only the subject's improvement assessment as raised by the taxpayers.

With respect to the "equity analysis" contained on page 11 of the appraisal report, the Property Tax Appeal Board gave little weight to this evidence for multiple reasons. First, the Board finds the assessors failed to utilize the proper method in calculating the assessment to value ratio for the properties. Notwithstanding the lack of foundation for the equity analysis in terms of disclosing the properties used in the study, their actual sale prices and assessments, the Board finds the proper method to calculate assessment to value ratios for ad valorem taxation purposes is by using a property's prior year's assessment divided by its arm's-length sale price. The assessor testified he used sales from 2004 to 2006 and used their "current assessments". Thus, the Property Tax Appeal Board finds it can give little credence to the assessors' contention that the subject property is equitably assessed based on its sales ratio study or the coefficient of dispersion analysis performed only within the subject's neighborhood.

Second, the Property Tax Appeal Board finds the "equity analysis" is not dispositive in determining whether the individual property that is subject matter of this appeal is equitably assessed. The Board finds these types of ratio studies, even if determined to be proper, evaluates the accuracy of assessed values in comparison to the marketplace as whole, not the individual subject property that is subject to this appeal. The Board finds ratio studies are one of the primary tools for measuring mass appraisal performance. This tool is commonly used to

calculate equalization factors or to determine whether assessors are entitled to additional compensation. (35 ILCS 200/4-20). This Board fully recognizes, based on the assessors' limited ratio study, assessments in the subject's neighborhood appear to mimic the market to some extent. However, again this evidence is not demonstrative that the individual subject property in this appeal is uniformly assessed in comparison to other similar properties by clear and convincing evidence.

The Property Tax Appeal Board finds the more traditionally accepted method of determining on whether uniformity of assessments exist is by comparing and contrasting properties assessments together with their salient physical characteristics. The Property Tax Appeal Board finds the board of review and the appellant each submitted an assessment analysis detailing descriptions and assessment information for a total of seven suggested comparables. The Board gave diminished weight to comparable 4 submitted by the board of review due to its somewhat larger size when compared to the subject. The Board finds the six remaining comparables are most similar when compared to the subject in style, age, size, construction and amenities. The Board recognizes the appellant's comparables are located in closer proximity to the subject than the board of review's comparables. However, the board of review's comparables are located only a few blocks and within the subject's subdivision. The Board finds there is no evidence in this record that demonstrate these similar properties are located in different market areas.

The six most similar comparables are comprised of tri-level brick or frame dwellings with some vinyl exteriors that are from 30 to 32 years of age and range in size from 1,028 to 1,114 square feet of living area with features that are similar to the subject in most respects. They have improvement assessments ranging from $31,374 to $34,054 or from $29.86 to $32.03 per square foot of living area. The subject property has an improvement assessment of $36,430 or $31.08 per square foot of living area. After considering adjustments to these comparables for any differences when compared to the subject, the Board finds the subject's per square foot improvement assessment falls within the range established by the most similar comparables contained in this record. Therefore, the Board finds the subject's improvement assessment is supported.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables contained in the record disclose that properties located in similar geographic area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. As a result of this analysis, the Board finds no reduction in the subject's assessment is warranted.

In conclusion, the Board finds the appellant failed to demonstrate a lack of uniformity in the subject's improvement assessment by clear and convincing evidence. As a result, the Board finds the subject property’s assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Joseph McGowan** |
| **DOCKET NUMBER:** | **05-01905.001-R-1** |
| **DATE DECIDED:** | **May, 2008** |
| **COUNTY:** | **Jo Daviess** |
| **RESULT:** | **No Change** |

The subject property consists of a one-story frame dwelling with a loft. The home contains 2,230 square feet of living area that was constructed in 1995. Features include four bathrooms, two decks, central air-conditioning, one fireplace, a finished basement and an integral basement garage containing 510 square feet. The subject dwelling is situated on a lake front lot in Thompson Township, Jo Daviess County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject property was illegally assessed for the 2005 assessment year. In support of the contention of law, the appellant submitted a short brief outlining the legal basis of the appeal. The brief indicates the subject property was reassessed for the 2005, a non-general assessment year. Counsel argued the notice of the subject's assessment increase was not timely mailed to the taxpayer nor was the notice of the subject's increased assessment timely published. Counsel submitted the notice of revised assessment for the subject property dated January 18, 2006 wherein its 2005 assessment was increased to $165,092 from the 2004 assessment amount of $141,427. The reason for change listed on the notice of revised assessment that was mailed to the taxpayer was "Correction, Equalization, Plumbing Addition." The appellant also submitted copies of pages printed from the Jo Daviess County's internet website labeled "2005 Real Estate Assessment Information." This information indicates the official publication of real estate assessments for 2005 were published in various publications throughout Jo Daviess County. Properties in Thompson Township, where the subject is located, had their assessments published in the Village Voices on January 18, 2006. The publication also provides the deadline for filing assessment complaints with the Jo Daviess County Board of Review by February 17, 2006.

Counsel argued the subject property was not reassessed on or before June 1, 2005, which is contrary to and in violation of Section 9-160 of the Property Tax Code. (35 ILCS 200/9-160). Additionally, counsel argued publication of the assessments was not made on or before December 31, 2005, which is in violation of Section 12-10 of the Property Tax Code. (35 ILCS 200/12-10). Finally, counsel argued the subject's notice of assessment change was not mailed to the taxpayer in a timely manner, which is in violation of Section 12-30 of the Property Tax Code. (35 ILCS 200/12-30). Counsel argued the statutory provisions for publication and notice are designed for the benefit and protection of taxpayers. The statutes are mandatory and require strict and timely compliance. Counsel argued the failure of the Jo Daviess County assessment officials to give timely publication and notification vitiates the tax resulting from the increase in assessment. As authority for this legal claim, counsel cited Andrews v. Foxworthy, 71 Ill.2d 13, 15 Ill.Dec. 648 (1978). Based on this evidence, the appellant requested the subject's assessment be reduced to the amount in the previous general assessment or $141,427.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $165,092 was disclosed.

In response to the appellant's appeal, the board of review submitted four exhibits and a letter addressing the issues raised by the appellant. Exhibit A is the subject's property record card, which shows the subject's assessment was $141,427 in 2004, with an improvement assessment of $91,760. In 2005, the subject's improvement assessment was corrected for the number of plumbing fixtures contained in its four bathrooms; the subject was previously assessed as having only two and one-half bathrooms. After the revision and correction, the subject's improvement assessment increased by $1,621 to an improvement assessment of $93,381, resulting in a total assessment of $143,048. Next, all non-farm properties located in Thompson Township received an equalization factor of 1.1541 (15.41%), resulting in a final equalized assessment for the subject property of $165,092. ($143,048 X 1.1541 = $165,092).

Exhibit B is a copy of the public notice published in Village Voices newspaper dated the week of January 18-January 24, 2006. The notice states real estate assessments in Apple River and Thompson Townships have been changed. Pursuant to section 9-210 of the Property Tax Code [35 ILCS 200/9-210], an equalization factor of 1.1541 was applied to property in Apple River and Thompson Townships. This factor brings the level of assessments into compliance with Section 9-145 of the Property Tax Code. (35 ILCS 200/9-145). The notice also states taxpayers may appeal assessments to the Jo Daviess County Board of Review by February 17, 2006. This exhibit also contained a copy of the notice of revised assessment that was mailed to the taxpayer disclosing a final equalized assessment for the subject property of $165,092 that was dated January 18, 2006. Again this notice provides that a taxpayer may appeal assessments to the Jo Daviess County Board of Review by February 17, 2006.

Exhibit C is a copy of the results of a sales ratio study from the Illinois Department of Revenue showing the three-year median level of assessments for Apple River/Thompson Townships through 2004 was 28.88%. The postmark on the envelope indicated this document was not mailed to the Chief County Assessment Official until November 7, 2005. The board of review explained that since the county did not receive the sales ratio study until November 2005, it was not possible to finish the 2005 assessments and publish by December 31, 2005.

Exhibit D is an assessment analysis of seven suggested comparables to demonstrate the subject's assessed valuation is uniform with other similar properties. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

After reviewing the record and considering the evidence, the Board finds it has jurisdiction over the parties and the subject matter of this appeal. The only issues before the Property Tax Appeal Board are the legal arguments raised by the taxpayer regarding the publication and notification of real estate assessment in Jo Daviess County for the 2005 non-quadrennial assessment year. The taxpayer made no arguments with respect whether the subject's assessment reflected its fair cash value or that the subject property was not uniformly assessed. After reviewing the evidence in this record, the Property Tax Appeal Board further finds the appellant's legal arguments to be without merit.

The appellant claimed the subject property was not reassessed on or before June 1, 2005, which is in violation of Section 9-160 of the Property Tax Code. (35 ILCS 200/9-160). Section 9-160 of the Property Tax Code provides in part:

> Valuation in years other than general assessment years. On or before June 1 in each year other than the general assessment year, in all counties with less than 3,000,000 inhabitants, . . . , the assessor shall list and assess all property which becomes taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which had not been previously added to or included in the valuation of the property on which such improvements have been made, specifying the property on which each of the improvements has been made, the kind of improvement and the value which, in his or her opinion, has been added to the property by the improvements. (35 ILCS 200/9-160).

The appellant further argued assessments in Jo Daviess County were not published until January 18, 2006, eighteen days after the last day to publish assessments of December 31, according to and in violation of Section 12-10 of the Property Tax Code. (35 ILCS 200/12-10). Section 12-10 of the Property Tax Code provides in part that:

> Publication of assessments; counties of less than 3,000,000. . . . In years other than years of a general assessment, the chief county assessment officer shall publish a list of property for which assessments have been added or changed since the preceding assessment, together with the amounts of the assessments, except that publication of individual assessment changes shall not be required if the changes result from equalization by the supervisor of assessments under Section 9-210, or Section 10-200, in which case the list shall include a general statement indicating that assessments have been changed because of the application of an equalization factor and shall set forth the percentage of increase or decrease represented by the factor. The publication shall be made on or before December 31 of that year, and shall be printed in some public newspaper or newspapers published in the county. (35 ILCS 200/12-10).

Furthermore, appellant's counsel argued the notice of assessment change was not mailed to the taxpayer in a timely manner, which is in violation of Section 12-30 of the Property Tax Code. (35 ILCS 200/12-30). Section 12-30 of the Property Tax Code provides in part that:

> Mailed notice of changed assessment; counties of less than 3,000,000. In every county with less than 3,000,000 inhabitants, in addition to the publication of the list of assessments in each year of a general assessment and of the list of property for which assessments have been added or changed, as provided above, a notice shall be mailed by the chief county assessment officer to each taxpayer whose assessment has been changed since the last preceding assessment, . . . (35 ILCS 200/12-30).

Counsel argued the statutory provisions for publication and notice are designed for the benefit and protection of taxpayers. The statutes are mandatory and require strict and timely compliance. Counsel argued the failure of timely publication and notification vitiates the tax resulting from the increase in assessment. As authority for these legal claims, the appellant placed reliance on Andrews v. Foxworthy, 71 Ill.2d 13, 15 Ill.Dec. 648 (1978). This case involved a tax objection claiming the taxes were void because no timely publication of increase

in assessments had been given. The Board finds the facts in Andrews are somewhat analogous to the facts in this instant appeal. Andrews involved the failure of the supervisor of assessments to timely publish assessment changes in a non-quadrennial year in accordance with Section 103 of the Revenue Act of 1939. (Ill.Rev.Stat., ch. 120, ¶527). Like Andrews, the 2005 assessment year for Thompson Township was a non-quadrennial year in the general assessment period. However, the Property Tax Appeal Board finds counsel misplaced reliance on Andrews v. Foxworthy, which held that a 1972 publication of assessments was not done in a timely manner, in that the decision was limited to that particular case. The Board finds there are other statutory provisions and long standing case law that negate counsel's arguments. People v. Holmstrom, 8 Ill.2d 401 (1956); North Pier Terminal Co. v. Tully, 62 Ill.2d 540 (1976); People ex rel. Costello v. Lerner, 53 Ill.App3d. 245 (5th Dist. 1977); Schlenz v. Castle, 84 Ill.2d 196 (1981). For example, Section 26-5 of the Property Tax Code states:

> Failure to complete assessment in time. An assessment completed beyond the time limits required by this Code shall be as legal and valid as if completed in the time required by law. (35 ILCS 200/26-5)

Section 26-10 of the Property Tax Code states:

> Informality in assessments or lists. An assessment of property or charge for taxes thereon, shall not be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law. (35 ILCS 200/26-10)

Section 26-15 of the Property Tax Code states:

> Failure to deliver collector's books on time. Any failure to deliver the collector's books within the time required by this Code shall in no way affect the validity of the assessment and levy of taxes. In all cases of failure, the assessment and levy of taxes shall be held to be as valid and binding as if the books had been delivered at or within the time required by law. (35 ILCS 200/26-15)

The Property Tax Appeal Board finds all three of the above provisions are controlling in curing any error in the late publication of the 2005 assessments. Furthermore, in Golf Trust of America v. Soat, 355 Ill.App.3d 333 (2nd Dist. 2005), the court upheld assessment of taxes despite a multitude of alleged irregularities in the assessment procedure and practice and in particular alleged failures in the publication of assessment lists, citing with approval the savings provision of 35 ILCS 200/21-185. Section 21-185 of the Property Tax Code provides:

> Cure of error or informality in assessment rolls or tax list or in the assessment, levy or collection of the taxes. No assessment of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or an account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner. Any irregularity or informality in the assessment rolls or tax

> list, or in any of the proceedings connected with the assessment or levy of the taxes, or any omission or defective act of any other officer or officers connected with the assessment of levying of the taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default it was occasioned. Where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in all cities, villages and incorporated towns in counties with 3,000,000 or more inhabitants, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time which the return, required in Section 20-100 may be made, the procedure shall, in all respects, be the same as in this section prescribed, except that there shall be 2 separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes. (35 ILCS 200/21-185)

The Property Tax Appeal Board finds the board of review submitted a copy of the newspaper and a copy of the notice of the revised assessment that was mailed to the taxpayer, marked as Exhibit B. After reviewing the publication and notification evidence, controlling statutes, and case law, the Property Tax Appeal Board finds all publications and notifications of the subject's changed assessment were proper. Furthermore, the Board finds the rights to be heard to challenge the subject's assessment or to even object to the taxes were available and have been afforded to this taxpayer. The Property Tax Appeal Board finds the appellant in the instant appeal was in no way injured, nor was his right of due process violated. Thus, the Property Tax Appeal Board finds the documentation in this record satisfies the notification and publication requirements as enumerated in sections 12-10, 12-30, 26-5, 26-10 and 26-15 of the Property Tax Code. (35 ILCS 200/12-10 and 12-30 and 35 ILCS 200/26-5, 26-10 and 26-15). The Property Tax Appeal Board further finds Jo Daviess County Assessment Officials properly revised and corrected the subject's 2005 assessment, a non-quadrennial assessment year, as appeared to be just pursuant to Section 9-75 of the Property Tax Code. (35 ILCS 200/9-75). See Albee v. Soat 315 Ill.App3d. 888 (2nd Dist. 2000).

In conclusion, the Board finds the appellant's legal arguments to be without merit. Furthermore, the Board finds the taxpayer made no challenges with respect whether the subject's assessment reflected its fair cash value or that the subject property was not uniformly assessed. Therefore, the Board finds the subject property's assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Maria Michalik** |
| **DOCKET NUMBER:** | **04-25066.001-R-1** |
| **DATE DECIDED:** | **November, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **No Change** |

The subject property consists of a land parcel with 39,540 square feet of area that is improved with a 53-year old, two-story, frame and masonry dwelling. This improvement contains 3,335 square feet of living area as well as two full baths and one half-bath, three fireplaces, and a two-car garage.

The appellant's appeal is based on unequal treatment in the assessment process. The appellant submitted information on three comparable properties for consideration. They are improved with a two-story, masonry dwelling all of which contain two full and one half-baths. They range: in age from 16 to 26 years; in size from 3,372 to 3,742 square feet of living area; and in improvement assessments from $15.81 to $15.98 per square foot of living area. Amenities include a full basement, one or two fireplaces, and a multi-car garage. The subject's improvement assessment is $17.88 per square foot of living area.

Furthermore, the appellant's attorney asserted the subject experienced a diminution in value caused by the subject's involuntary annexation in Glenview from unincorporated Northbrook. In support of this assertion, a copy of the first page of Ordinance #4657, an ordinance to annex certain territory to the Village of Glenview, Cook County, Illinois. The page reflects multiple address numbers located on Landwehr Road and Woodridge Lane. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment was disclosed. The board of review presented descriptions and assessment information on three comparable properties for consideration. They are improved with a two-story, masonry or frame and masonry dwelling. They range: in baths from two and one-half to three; in age from 21 to 25 years; in size from 3,045 to 3,340 square feet of living area; and in improvement assessments from $18.14 to $19.54 per square foot of living area. Amenities include a full basement, one fireplace and a two-car garage. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The PTAB further finds a reduction in the subject's assessment is not warranted.

The appellant contends unequal treatment in the subject's improvement assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). After an analysis of the assessment data, the PTAB finds the appellant has not met this burden.

The PTAB finds the comparable #1 submitted by the appellant and the comparables #1 and #2 submitted by the board of review are most similar to the subject in exterior construction, size, age and amenities. Due to their similarities to the subject, these three comparables received the most weight in the PTAB's analysis. These comparables had improvement assessments that ranged from $15.81 to $18.24 per square foot of living area. The subject's improvement assessment of $17.88 per square foot of living area is within this range.

Furthermore, the PTAB finds the appellant's argument of diminution in value due to involuntary annexation unpersuasive. The appellant failed to demonstrate the diminution in value via market data or legal argument supported by case law. Assuming arguendo that a reduction in value occurred by the involuntary annexation of certain properties from unincorporated Northbrook to the Village of Glenview, the appellant failed to utilize similarly annexed properties as comparables to reflect a detriment to the subject's market value.

After considering adjustments and the differences in both parties' comparables when compared to the subject, the PTAB finds the subject's per square foot improvement assessment is supported and a reduction in the subject's assessment is not warranted.

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| **APPELLANT:** | **Elizabeth H. Morin, Trustee** |
| **DOCKET NUMBER:** | **06-02840.001-R-1** |
| **DATE DECIDED:** | **October, 2008** |
| **COUNTY:** | **Alexander** |
| **RESULT:** | **No Change** |

The subject property consists of a two-story frame dwelling containing 1,508 square feet of ground floor living area or 3,016 square feet of above grade living area. The dwelling is approximately 103 years old with an effective age of 1952. Features include an unfinished basement, central air conditioning, two fireplaces, and a 399 square foot detached garage. The subject property was placed on the National Register of Historic Places on January 26, 1979.

The appellant submitted evidence before the Property Tax Appeal Board claiming a lack of uniformity regarding the subject's improvement assessment as the basis of the appeal. In addition, the appellant argued the subject dwelling should receive a preferential assessment due to its status on the National Register of Historic Places.

In support of the inequity claim, the appellant submitted property record cards, photographs and an assessment analysis of four suggested comparables located in close proximity to the subject. The comparables consist of three, two-story and a one-story dwelling of fame or masonry construction that were built from 1891 to 1957. Property record cards indicate comparables 2 and 3 have effective ages of 1922 and 1959. The comparables have unfinished basements. Three comparables have central air conditioning, three comparables have at least one fireplace, and three comparables have garages ranging in size from 284 to 640 square feet. The dwellings range in size from 1,500 to 1,827 square feet of ground floor area or from 1,584 to 3,654 square feet of above grade living area. They have improvement assessments ranging from $10,350 to $11,340 or from $2.88 to $7.18 per square foot of total above grade living area. The subject property has an improvement assessment of $27,145 or $9.00 per square foot of above grade total living area.

Based on its status on the National Register of Historic Places, the appellant also argued the subject property is entitled to a preferential assessment as provided by Sections 10-40 through 10-80 of the Property Tax Code. (35 ILCS 200/10-40 through 10-80). Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $27,900 was disclosed. In support of the subject's assessment, the board of review submitted property record cards and a limited assessment analysis of six suggested comparables. Since no detailed side by side comparative analysis was prepared by the board of review, the Property Tax Appeal Board attempted to glean the descriptive and assessment information from the property record cards submitted by the board of review.

The comparables consist of a one and one-half story and five, two-story frame or masonry dwellings that were built from 1879 to 1913, with five properties having effective ages ranging from 1904 to 1983. Five comparables have unfinished basements while one comparable has a partially finished basement. The comparables have central air conditioning; five comparables

contain one or two fireplaces; and five comparables have detached or integral garages ranging in size 285 to 720 square feet. The board of review indicated the subject and two comparables are in excellent condition; three comparables are in fair condition; and one comparable is in poor condition. The dwellings range in size from 1,285 to 2,221 square feet of ground floor area or from 1,848 to 4,442 square feet of above grade living area. They have improvement assessments ranging from $21,170 to $39,980 or from $7.50 to $13.51 per square foot of total above grade living area.

The board of review also asserted that the subject property is considered one of the top five homes in Cairo, Illinois. The board of review also contends the comparables used by the appellant are inferior due to their condition when compared to the subject. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds no reduction in the subject's assessment is warranted.

The appellant argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not overcome this burden.

The parties submitted ten assessment comparables for the Board's consideration. The Board placed diminished weight on seven comparables due to their larger or smaller size and dissimilar design when compared to the subject. The Property Tax Appeal Board finds the three remaining comparables to be most representative of the subject in terms of location, size, design and amenities. These most similar comparables have improvement assessments ranging from $10,350 to $31,950 or from $3.45 to $9.03 per square foot of living area. The subject property has an improvement assessment of $27,145 or $9.00 per square foot of living area, which falls within the range established by the most similar assessment comparables contained in this record. Therefore, the Property Tax Appeal Board finds the subject's improvement assessment is supported.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed.

The appellant also argued the subject property is entitled to a preferential assessment as provided by Sections 10-40 through 10-80 of the Property Tax Code (35 ILCS 200/10-40 through 10-80) due to its inclusion on the National Register of Historic Places on January 26, 1979. The

Property Tax Appeal Board gave this argument no weight. In reviewing the controlling statutes, the Board finds the provisions provide for a preferential assessment for 12 years after the property is individually listed on the National Register of Historic Places, which would have expired on January 27, 1991. Therefore, the Property Tax Appeal Board finds the subject property is not entitled to a preferential assessment as provided by Sections 10-40 through 10-80 of the Property Tax Code (35 ILCS 200/10-40 through 10-80).

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| **APPELLANT:** | **Ann and Charles Phillips** |
| **DOCKET NUMBER:** | **05-00552.001-R-1** |
| **DATE DECIDED:** | **January, 2008** |
| **COUNTY:** | **Will** |
| **RESULT:** | **No Change** |

The subject property is an owner occupied residential property located in Homer Township, Will County, Illinois. The subject property is improved with a two-story brick and frame dwelling containing 2,715 square feet of living area that was built in 1979. Amenities include a partially finished walkout basement, central air conditioning, a fireplace, and a 644 square foot attached garage.

The appellant, Charles Phillips, appeared before the Property Tax Appeal Board claiming a lack of uniformity in the subject's assessment as the basis to the appeal. The subject's land assessment was not contested. In support of this claim, the appellants submitted four suggested comparables located in close proximity to the subject. They consist of two-story dwellings of brick, brick and stone, or brick and frame construction. Three comparables were reported to be 27 years old while the age of one comparable was not disclosed. Three comparables have full or partial finished basements, one to three fireplaces, central air conditioning, various decks and porches, and garages ranging in size from 476 to 641 square feet. Besides containing central air conditioning, the appellants did not disclose any features for comparable 4. The dwellings range in size from 2,334 to 2,961 square feet of living area and have improvement assessments ranging from $70,183 to $74,713 or from $25.23 to $30.90 per square foot of living area. The subject property has an improvement assessment of $88,226 or $32.50 per square foot of living area. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The evidence also disclosed the subject property was previously the matter of an appeal before the Property Tax Appeal Board under docket number 03-00589.001-R-1. In that appeal, the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to $98,200 based on the evidence submitted by the parties. The subject property is located in Will County, which has a quadrennial assessment cycle that began January 1, 2003 and ends in the 2006 assessment year.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $114,125 was disclosed. In support of the subject's assessment, the board of review submitted a letter from the township assessor, photographs, property record cards, aerial photographs of the subject's subdivision, and spreadsheet detailing four suggested comparables. The comparables are located in the subject's subdivision with one comparable located along the subject's street. They consist of two-story brick and frame dwellings that were built from 1983 to 2001. The comparables have unfinished basements, a fireplace, central air conditioning, and garages ranging in size from 521 to 826 square feet. The dwellings range in size from 2,481 to 3,820 square feet of living area and have improvement assessments ranging from $90,813 to $129,617 or from $33.88 to $36.60 per square foot of living area.

The letter from the township assessor argued the comparables offered by the appellants are inferior to the subject due to the lack of walkout basements, decks, porches and smaller garages.

The board of review further argued the Property Tax Appeal Board reduced the subject's assessment to $98,200 for the 2003 assessment year. The board of review argued the subject's 2005 final assessment reflects the Property Tax Appeal Board's 2003 decision plus application of the township equalization factors of 1.0792% and 1.0816% for the 2004 and 2005 assessment years. The deputy assessor testified these equalization factors were applied to all non-farm property within Homer Township for the 2004 and 2005 assessment years. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. Based upon the evidence submitted, the Board finds no reduction in the subject's assessment is warranted.

The appellants argued the subject property was inequitably assessed. However, the Board finds the subject property was the subject matter of an appeal before the Property Tax Appeal Board in a prior year under docket number 03-00589.001-R-1. In that appeal, the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to $98,200 based on the evidence submitted by the parties. The record also indicates the subject property is an owner occupied residential property. Section 16-185 of the Property Tax Code provides in part:

> If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period (Emphasis Added) as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. (35 ILCS 200/16-185)

Based on this statutory language, the Board finds its 2003 decision shall be carried forward to the subsequent assessment years of the same general assessment period plus annual application of equalization factor applied by the proper authority. This finding is pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185). The Board finds the subject's final assessment for the 2005 assessment year reflects the Property Tax Appeal Board's 2003 decision plus application of equalization factors applied by the township assessor. There is no evidence in this record indicating the subject property sold in an arm's-length transaction subsequent to the Board's decision or that assessment year in question is a different general assessment period. As a result, the Property Tax Appeal Board finds the board of review's assessment of the subject property is in accordance with section 16-185 of the Property Tax Code (35 ILCS 200/16-185). For these reasons, the Board finds no reduction in the subject property's assessment is warranted.

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| **APPELLANT:** | **Glenn Rawski** |
| **DOCKET NUMBER:** | **01-23263.001-R-1** |
| **DATE DECIDED:** | **May, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **No Change** |

The subject property consists of a nine-year-old, one-story style single-family dwelling of frame construction containing 2,005 square feet of living area and located in Leyden Township, Cook County. Amenities include one full bath, one half-bath, air conditioning, and a two-car garage.

The appellant, through counsel, submitted evidence before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. In support of this argument, the appellant offered a spreadsheet detailing nine suggested comparable properties located in the same coded assessment neighborhood as the subject. These properties consist of one-story or one and one-half story style single-family dwellings of frame construction from 40 to 76 years old. The comparable dwellings contain one or two full baths; six have additional half-baths, seven have basements; three have air conditioning; and four have fireplaces. The comparables range in size from 1,828 to 2,488 square feet of living area and have improvement assessments ranging from $5.02 to $7.09 per square foot of living area. A copy of the subject's 2001 board of review final decision was also included. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final improvement assessment of $17,907, or $8.93 per square foot of living area, was disclosed. In support of the subject's assessment, the board of review offered property characteristic sheets and a spreadsheet detailing four suggested comparable properties located within one block of the subject. The comparables consist of one-story style single-family dwellings of masonry construction. The comparables contain one or two full baths, basements, and air conditioning; three have fireplaces and three have garages. These properties range in size from 1,500 to 2,100 square feet of living area and have improvement assessments ranging from $9.75 to $11.57 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has failed to overcome this burden.

The Property Tax Appeal Board finds that the parties submitted 13 properties as comparable to the subject. The Board places diminished weight on the appellant's comparables primarily due to the great age discrepancy between the comparables and the subject. The Board accords

substantial weight to the board of review's comparables. Of these properties, the Board finds that the board's comparables one and two are the most similar when compared to the subject. After considering adjustments and the differences in both parties' suggested comparables when compared to the subject property, the Board finds the subject's per square foot improvement assessment is supported by the properties contained in the record.

As a result of this analysis, the Property Tax Appeal Board finds the appellant failed to adequately demonstrate that the subject dwelling was inequitably assessed by clear and convincing evidence and no reduction is warranted.

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| **APPELLANT:** | **Steven V. Riederer** |
| **DOCKET NUMBER:** | **06-01551.001-R-1** |
| **DATE DECIDED:** | **October, 2008** |
| **COUNTY:** | **Kendall** |
| **RESULT:** | **No Change** |

The subject property consists of a two-story brick and frame dwelling that is 18 years old and contains 2,423 square feet of living area. Amenities include an unfinished basement, central air conditioning, a fireplace, a deck, and a 550 square foot attached garage.

The appellant appeared before the Property Tax Appeal Board claiming a lack of uniformity regarding the subject's land and improvement assessment. More specifically, the appellant argued the subject's assessment increase of over 30% from the prior year is inequitable considering the percentage increases of other properties' assessments in neighboring subdivisions, which ranged from 14% to 17.9% from the prior year.

In support of the inequity claim, the appellant completed Section V of the appeal petition describing eight suggested comparables. Their proximity in relation to the subject was not disclosed. However, testimony elicited during the hearing indicates these comparables are located a short distance from the subject, but are located in a different subdivision. The appellant also submitted property record cards and photographs of the suggested comparables. The comparables consist of two-story frame or brick and frame dwellings that were built from 1987 to 2005 and range in size from 2,330 to 3,370 square feet of living area. Seven comparables have full or partial unfinished basements while one comparable was reported to have a crawl space foundation. Other features include central air conditioning, one fireplace, and two or three car garages ranging in size from 440 to 836 square feet. The comparables have improvement assessments ranging from $54,885 to $83,333 or from $22.01 to $27.35 per square foot of living area. The subject property had an improvement assessment of $70,240 or $28.99 per square foot of living area.

To demonstrate the subject's land assessment was not uniform, the appellant provided three additional land comparables. Again, their proximity in relation to the subject was not disclosed. They have land assessments of $20,000 whereas the subject property has a land assessment of $23,000.

The appellant also submitted four packets of assessment information to further bolster the claim the subject property was inequitably assessed. However, the appellant testified he did not prepare this evidence, but the data was put together by a group of homeowners from the subject's street that were appealing the assessments of their residential properties. Packet 1 consists of an analysis of 12 residential properties located on the subject's street. They had improvement assessments ranging from $63,736 to $93,919, which are from 13.92% to 34.67% higher than their 2005 improvement assessments. The analysis further depicts that four other properties that are located in an adjacent subdivision had their improvement assessments changed from the 2005 assessment year by -4.74% to 17.9%. Packets 2 and 3 had similar types of analyses regarding the percentage increases in assessments of various properties in relation to the subject and other properties located along the subject's street. Packet 4 reiterates the inequity argument regarding

the subject's land assessment. Based on this evidence, the appellant requested a reduction in the subject property's assessment.

Under cross-examination, the appellant agreed he did not use comparables located along the subject's street. He also agreed the comparables are not located in the subject's subdivision, but within ¾ of a mile from the subject. The appellant argued he felt the property record cards for the properties located on the subject's street were inaccurate. For example, the appellant testified the sizes of the dwelling changed.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $93,240 was disclosed. The board of review called Raymond J. Waclaw, the Bristol Township Assessor, as a witness. Waclaw was qualified as an expert in the field of real estate valuation.

The assessor acknowledged properties within the subject's subdivision received significant assessment increases due to a general reassessment in Bristol Township for 2006. He testified assessments have not increased within the subject's subdivision over the previous three years. He testified the average percentage increase in assessments for properties in the subject's subdivision were not out of line with properties in other subdivisions. The assessor presented a document that indicated assessment increases within the subject's entire subdivision averaged 14% from 2005 to 2006. In 13 other subdivisions, the average assessment increase ranged from 18% to 25% from 2005 to 2006.

In support of the subject's assessment, the board of review submitted an assessment analysis of 30 suggested comparables located in close proximity along the subject's street. They consist of four, one and one-half story style; five, one-story style; and 21, two-story style dwellings of frame or brick and frame exterior construction that are from 1 to 21 years old. Features include full or partial basements, central air conditioning, one fireplace, and garages ranging in size from 460 to 1,804 square feet. The dwellings range in size from 1,855 to 4,256 square feet of living area and have improvement assessments ranging from $54,385 to $126,732 or from $28.59 to $35.49 per square foot of living area. The subject property has an improvement assessment of $70,240 or $28.99 per square foot of living area.

With respect to land assessments, the testimony and evidence revealed all lots along the subject's street, which have city water and sewer service, have land assessments of $23,000, except one property with a double lot, which has a land assessment of $33,000. The assessor acknowledged lots located in the subject subdivision vary in size from just under 15,000 square feet to almost 29,000 square feet. Although they differ in size, the assessor testified lots are uniformly assessed on a site basis.

The board of review also submitted evidence indicating a sale of a comparable property that is located along the subject's street. This property is a 17 year old, two-story brick and frame dwelling that contains 2,426 square feet of living. Features include a basement, fireplace, and a 782 square foot garage. It sold in September 2007 for $340,000 or $140.15 per square foot of living area including land. This property has a total assessment of $93,714, which reflects an estimated market value of $281,170. The assessor argued that even with its significant assessment increase, this comparable property is under-assessed in relation to its sale price,

noting the board of review granted a reduction in the assessment of this property based on market value considerations. The assessor argued this sale indicates the value of this property had increased by 83% in 20 years. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

Under cross-examination, the assessor testified he assessed the subject property at $30 per square foot of living area using a model in the mass appraisal system before the board of review reduced its assessment. The assessor also testified properties located in Heartland subdivision are not similar to the subject, noting the subject is located in a subdivision with custom built homes.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellant's argument was unequal treatment in the assessment process or a lack of uniformity in the subject's assessment. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not overcome this burden.

The appellant argued the subject's assessment increase of over 30% from the prior assessment year is not equitable considering the assessment increases of other properties located in a neighboring subdivision on a percentage basis, which ranged from 14% to 17.9% from the prior year. The Property Tax Appeal Board gave little merit to this argument. The Board finds this type of argument is not a persuasive indicator demonstrating the subject property was inequitably assessed by clear and convincing evidence. The Board finds rising or falling assessments from assessment year to assessment year on a percentage basis do not indicate whether a particular property is inequitably assessed. The actual assessment amounts together with their salient characteristics must be analyzed and compared with other similar properties to make a determination on whether uniformity of assessments exists. The Board finds assessors and boards of review are required by the Property Tax Code to revise and correct real property assessments, annually if necessary, that reflect fair market value, maintain uniformity of assessments, and are fair and just. This may result in many properties having increased or decreased assessments from year to year of varying amounts and percentage rates depending on prevailing market conditions and their prior year's assessments.

The Property Tax Appeal Board finds the parties submitted assessment information for 38 suggested comparables. The Board gave less weight to the comparables submitted by the appellant due to their location in a different subdivision when compared to the subject and are not located as close in proximity to the subject as the board of review comparables, which are located on the subject's street. The Property Tax Appeal Board also gave less weight to 14 comparables submitted by the board of review. These properties are of a dissimilar design when compared to the subject and/or are dissimilar in size and age when compared to the subject. The Property Tax Appeal Board finds the remaining 16 comparables submitted by the Board of review to be most representative of the subject in location, age, size, design and features. These

brick and frame two-story dwellings are between 13 and 21 years old; range in size from 2,056 to 2,662 square feet of living area; and have features similar to the subject. These comparables have improvement assessments ranging from $60,158 to $78,578 or from $28.59 to $30.50 per square foot of living area. The subject property has an improvement assessment of $70,240 or $28.99 per square foot of living area. The Board finds the subject's improvement assessment falls well within the range established by the most similar comparables contained in this record. After considering adjustments to the most similar comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is supported and no reduction is warranted.

With respect to the subject's land assessment, the parties submitted land assessment information for 33 suggested comparables. Again, the Board gave less weight to the comparables submitted by the appellant due to their location in a different subdivision when compared to the subject and are not located as close in proximity to the subject as the board of review's comparables, which are located on the subject's street. The Board further finds the credible testimony and evidence revealed all lots along the subject's street have land assessments of $23,000, except one property with a double lot, which has a land assessment of $33,000. Although lots differ in size, the assessor testified lots are uniformly assessed on a site basis. Based on this evidence, the Board finds the subject lot is uniformly assessed at $23,000 and no reduction in the subject's land assessment is warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables disclosed that properties located in similar geographic areas are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed.

Based on this analysis, the Property Tax Appeal Board finds the appellant has not demonstrated a lack of uniformity in the subject's assessment by clear and convincing evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Sheldon Ruttenberg** |
| **DOCKET NUMBER:** | **06-28797.001-R-1 and 06-28797.002-R-1** |
| **DATE DECIDED:** | **August, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **Reduction** |

The subject property consists of two parcels. The first parcel contains a 132-year-old, three-story, mixed use building of masonry construction with 7,104 square feet of building area sited on a 2,400 square foot lot (17-05-124-041). The second parcel is a vacant, class 2-41 lot containing 2,400 square feet (17-05-124-040). Cook County Ordinance grants a residential level of assessment of 16% to class 2-41 parcels which consist of vacant land under common ownership with an adjacent residence. Features of the building include three full bathrooms and a partial-unfinished basement.

The appellant submitted evidence before the Property Tax Appeal Board arguing unequal treatment in the assessment process of the subject as the basis of the appeal. In support of this claim, the appellant submitted assessment data and descriptive information on three properties suggested as comparable to the subject. The appellant also submitted photographs and Cook County Assessor's Internet Database sheets for the subject and the suggested comparables and a copy of the board of review's decision. Based on the appellant's documents, the three suggested comparables consist of three-story, 110 or 113-year-old, mixed use buildings of masonry construction located within three blocks of the subject. Two of the comparables are located on the same street as the subject. The improvements range in size from 4,950 to 10,395 square feet of building area. The comparables contain four full bathrooms. The improvement assessments range from $7.30 to $7.48 per square foot of building area. The appellant also provided three suggested land comparables, located within two blocks of the subject, for the vacant lot. Like the subject, the three comparables are vacant, class 2-41 properties that range in size from 3,000 to 3,312 square feet with land assessments ranging from $4,800 to $6,639 or from $1.54 to $2.15 per square foot of land. The subject's land assessment for the vacant class 2-41 lot is $3.14 per square foot. Based on the evidence submitted, the appellant requested a reduction in the subject's improvement assessment as well as the vacant lot assessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject's total combined assessment of $74,081. The subject's improvement assessment is $57,512 or $8.10 per square foot of building area. In support of the assessment the board submitted property characteristic printouts and descriptive data on four properties suggested as comparable to the subject. The suggested comparables are improved with three-story, mixed use buildings of masonry construction with the same neighborhood code as the subject. The improvements range in size from 6,362 to 7,425 square feet of building area and range in age from 113 to 135 years. The comparables contain from two to five full bathrooms and a partial-unfinished basement. The improvement assessments range from $1.10 to $8.84 per square foot of building area. The board's evidence disclosed that the board's comparable two has a partial assessment. Based on the evidence presented, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant's

argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review V. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has overcome this burden.

Regarding the improvement, the Board finds the board of review's comparables one, three and four to be the most similar properties to the subject in the record. These three properties are similar to the subject in improvement size, amenities, age and location and have improvement assessments ranging from $8.59 to $8.84 per square foot of building area. The subject's per square foot improvement assessment of $8.10 falls below the range established by these properties. The Board finds the remaining comparables less similar to the subject in improvement size. After considering adjustments and the differences in both parties' suggested comparables when compared to the subject, the Board finds the subject's per square foot improvement assessment is supported by the most similar properties contained in the record.

Regarding the land, the Board finds the three vacant land comparables submitted by the appellant to be similar in size and location to the subject. In addition, like the subject, they are class 2-41 parcels that range in size from 3,000 to 3,312 square feet with land assessments ranging from $1.54 to $2.15 per square foot. The subject's per square foot land assessment of $3.14 falls above the range established by these properties. The board of review's comparables are accorded less weight because unlike the subject, they are improved parcels.

As a result of this analysis, the Property Tax Appeal Board finds the appellant has adequately demonstrated that the subject's vacant land or class 2-41 parcel, was inequitably assessed by clear and convincing evidence and a reduction is warranted.

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| **APPELLANT:** | **Ronald Schurr** |
| **DOCKET NUMBER:** | **05-00581.001-F-1** |
| **DATE DECIDED:** | **September, 2008** |
| **COUNTY:** | **Kankakee** |
| **RESULT:** | **Reduction** |

*(Please note, the Property Tax Appeal Board recognizes this case was filed as a farm appeal, however the evidence and context of this decision primarily relates to residential issues.)*

The subject property consists of a 10.52 acre farm which is improved with a 27-year-old, split-level style frame and masonry single-family dwelling that contains 1,907 square feet of living area. Features of the home include a partial crawl-space foundation and partial basement, central air-conditioning, two fireplaces, and a two-car attached garage. The property is located in Chebanse, Otto Township, Kankakee County, Illinois.

The appellant appeared before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal with regard to the residence. No dispute was raised concerning the assessments of the homesite, farmland, or farm buildings. In addition, the appellant filed a brief to support a contention of law involving Section 16-185 of the Property Tax Code (35 ILCS 200/16-185). While appellant's appeal petition also indicated comparable sales as a basis of this appeal, only two recent sales were provided in the appellant's grid analysis.

In support of the inequity argument, the appellant submitted a grid analysis with improvement information on four suggested comparable properties located from one mile to five miles from the subject property. The comparables were reported to consist of split-level or bi-level/two-story style frame or frame and masonry dwellings that were built between 1962 and 1987, with one property having been "improved" in 1996. The dwellings range in size from 1,936 to 2,788 square feet of living area. One of the comparables was said to have a finished basement of 528 square feet of building area. Features of the comparables include central air-conditioning, a fireplace, and garages ranging in size from 504 to 720 square feet of building area. These properties have improvement assessments ranging from $39,586 to $50,868 or from $18.25 to $20.45 per square foot of living area. At the hearing, appellant testified that comparable #2 was the most similar to the subject dwelling, although it is 17 years older than the subject dwelling; this property also was noted as having sold in April 2005 for $130,000 or $67.15 per square foot of living area including land. As set forth in the appellant's grid analysis, comparable #3 also sold in July 2004 for $162,500 or $71.21 per square foot of living area including land. The subject property has an improvement assessment of $45,727 or $23.98 per square foot of living area.

For appellant's brief, he noted that he had received favorable decisions from the Property Tax Appeal Board in the 2002, 2003 and 2004 assessment years in respective docket numbers 02-00931, 03-00724, and 04-00533. Given that the determination of the correct assessment of the residential improvement in 2004 was $38,386, appellant seeks a finding of the correct assessment for 2005 of $40,689 or $21.34 per square foot of living area to account for a 6% increase from 2004 for the quadrennial reassessment cycle.

On cross-examination, appellant acknowledged that his comparable #2 was located in a different township than the subject property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total homesite and residence assessment of $48,711 was disclosed. The subject homesite and residence have an estimated market value of $144,372 or $75.71 per square foot of living area including land, as reflected by its assessment and Kankakee County's 2005 three-year median level of assessments of 33.74%.

In support of the subject's current assessment, the board of review presented an appraisal of the subject property providing an estimated fair market value as of January 1, 2005 of $198,000. In addition, the board of review presented documentation regarding the quadrennial reassessment cycles in Kankakee County townships reflecting that 2005 was the start of a new assessment cycle in Otto Township in addition to submission of a one-page multiple listing sheet regarding a property located on a river.

The board of review called Steve Sasnow for testimony. Sasnow is a licensed and certified appraiser in the State of Illinois with experience in the Kankakee County area since 2003 on a full-time basis. The majority of his appraisal work has involved residential properties with an average of 250 appraisals a year, of which about 80% were located in Kankakee County.

The appraiser was not allowed inside the dwelling and thus performed an exterior inspection only on March 5, 2007. The appraiser utilized two of the three traditional approaches to value to arrive at an estimated market value for the subject property as of January 1, 2005 of $198,000. The appraiser noted the income approach was not applicable.

Under the cost approach, the appraiser estimated the subject's land value at $40,000. No data was provided as to how the land value was calculated. Using the Marshall Swift Valuation Service, the appraiser determined a reproduction cost new for the subject dwelling of $162,967 assuming a living area square footage of 1,907 and a basement area of 672 square feet. Additionally the replacement cost new of the garage was said to be $16,754 for 657 square feet of building area. Approximately 12% was deducted for physical depreciation resulting in a depreciated value of improvements of $158,873. The appraiser provided no explanation for the physical depreciation calculation. Site improvements were estimated at $7,500 for a total value by the cost approach of $206,373.

Under the sales comparison approach, the appraiser used sales of five comparable properties located between 2 and 8.5 miles from the subject property. He testified that he chose rural properties like the subject, but acknowledged there can be a challenge to find properties similar in lot size, age, dwelling size and location to a rural subject; he acknowledged having been unable to find another split-level designed property like the subject. The subject was also described in the appraisal as consisting of 1,907 square feet of living area and being 28 years old. In the appraisal, the comparable dwellings consist of three, one-story, one, one and one-half story, and one, two-story of unknown exterior construction which ranged in age from 23 to 90 years old. Three comparables had partial unfinished basements and two comparables had no basements. The comparable dwellings ranged in size from 1,606 to 2,029 square feet of living

area. Two comparables had no garages; the other comparables had two-car or four-car garages. Four of the comparables had central air conditioning. No data was provided regarding fireplaces, if any.

The comparables sold between July 2004 and October 2004 for prices ranging from $164,987 to $211,500 or from $93.33 to $109.23 per square foot of living area including land. In comparing the comparable properties to the subject, the appraiser made adjustments for land area, age, size, basement foundation and/or finish, lack of central air conditioning, and garage/size. Little explanation was provided in the appraisal as to what methodology the appraiser utilized to support his adjustments; the appraiser noted "gross/net adjustments for sales 2, 4 and 5 exceed recommended guidelines due to site adjustments." This analysis resulted in adjusted sales prices for the comparables ranging from $198,487 to $213,000 or from $95.86 to $123.91 per square foot of living area including land. From this process, the appraiser estimated a value for the subject by the market approach of $198,000 or $103.83 per square foot of living area including land.

Upon cross-examination, the appraiser explained that despite the significant adjustments necessitated by the varying lot sizes of the comparables to the subject, he still felt that for rural properties these were sufficiently comparable sales for valid comparison purposes. The appraiser also explained on cross-examination the mechanism utilized for performing an appraisal in March 2007 with a valuation date of January 1, 2005 by focusing on sales of properties occurring six to twelve months prior to the date of valuation.

The board of review's next witness was the Otto Township Assessor. He testified at the recommendation of the State's Attorney, a current appraisal was obtained in response to the instant appeal. He further indicated that the township had a multiplier of 1.06 for 2005.

In closing, the board of review's representative contended that the appellant failed to meet his burden in an equity claim. Therefore, based on the evidence presented, the board of review requested the subject's assessment be confirmed.

In rebuttal, appellant noted the board of review did not respond to his equity claim. Furthermore, appellant asserted that the appraisal done in 2007 for the subject property would not be accurate as the appraiser did not inspect the property in 2005. Moreover, the single sale comparable presented by the board of review was river front property which would be valued substantially higher than the subject. Furthermore, appellant asserted the comparables utilized in the appraisal were not of the same design as the subject dwelling and were located from 10 to 12 miles from the subject property, including being in other townships and perhaps even another county.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject's assessment is warranted.

The legal argument raised by the appellant will be addressed first. The subject property is an owner occupied residence that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under docket number 04-00533.001-F-1. In that appeal the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property based on

the evidence submitted by the parties. Appellant contended this decision should be carried forward pursuant to Section 16-185 of the Property Tax Code. Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in part:

> "If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review." [Emphasis added.]

As established in this record, 2005 was the start of a new general assessment period in Otto Township, Kankakee County, and therefore the provisions of Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) are not applicable. Instead, a decision must be rendered based upon the evidence presented by the parties.

The appellant further argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has overcome this burden.

The appellant submitted four comparables for the Board's consideration. The Property Tax Appeal Board finds that the board of review failed to submit any evidence addressing the appellant's inequity claim. The Property Tax Appeal Board gave less weight to the appellant's comparable #4 due to its different design, exterior construction, age, and size. The Board finds the three remaining comparables were most similar to the subject in terms of design, size and most property characteristics. These comparables had improvement assessments ranging from $18.47 to $20.45 per square foot of living area. The subject's improvement assessment of $23.98 per square foot of living area is above this range. After considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's improvement assessment is not supported and a slight reduction in the subject's assessment is warranted. The differences between the subject and the three most similar comparables in the record with regard to age and basement foundation and/or basement finish justifies a slightly higher assessment for the subject.

The appellant's evidence submission also implied that the subject property was overvalued. When overvaluation or market value is claimed as the basis of the appeal, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board,

331 Ill. App. 3d 1038 (3rd Dist. 2002); *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.63(e). The Board finds the appellant has not overcome this burden.

The two sales presented by appellant close in time to the assessment date at issue established sales values of $67.15 and $71.21 per square foot of living area including land. These suggested sales were relatively similar to the subject and closer in proximity than most of the sales presented in the appraisal filed by the board of review. The Board has given minimal weight to the appraisal submitted by the board of review as the comparable sales set forth in the appraisal lacked sufficient similarity to the subject property to support the appraisal's value conclusions which were primarily based upon the sales comparison approach. Moreover, the adjustments were mostly unsupported with very substantial adjustments to land size.

After considering adjustments for differences between the subject and the two sales comparables suggested by the appellant and considering the assessment reduction granted based on the principles of uniformity, the Property Tax Appeal Board finds no further reduction in the subject's residence is warranted. The evidence supporting a reduction of the residential assessment for the subject property results in an estimated market value of the subject homesite and residence of $130,365 or $68.36 per square foot of living area including land, pursuant to Kankakee County's 2005 three-year median level of assessments of 33.74%. This estimated market value of the subject residence falls within the range of the sales comparables presented by the appellant, thus considering the appellant's sales evidence, no further adjustment of the subject's assessment based on overvaluation is warranted.

## 2008 RESIDENTIAL CHAPTER

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*[Items Contained in Brackets Indicate*
*Arguments or Evidence in Opposition to the Appellant's claim]*

# PROPERTY TAX APPEAL BOARD

# SYNOPSIS OF REPRESENTATIVE CASES

# 2008 FARM DECISIONS

**PROPERTY TAX APPEAL BOARD**
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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# 2008 FARM CHAPTER

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| **APPELLANT:** | **Ellsworth D. Emery** |
| **DOCKET NUMBER:** | **06-02652.001-F-1** |
| **DATE DECIDED:** | **September, 2008** |
| **COUNTY:** | **Clinton** |
| **RESULT:** | **No Change** |

The subject property consists of a 35 acre tract with a 1.22 acre homesite that is improved with a one-story frame dwelling on a crawl space. The dwelling was constructed in 1959 and contains 1,632 square feet of living area. The dwelling has an attached garage with 440 square feet. Other improvements include a 600 square foot barn and a 2,400 square foot machine shed.

The appellant appeared before the Property Tax Appeal Board contending the assessment of the subject property was excessive due to the fact there is no publicly maintained road to the property. The appellant testified the improvements are located ¼ of a mile south of State Route 161 and the county and township deny responsibility for maintaining the road that leads to the improvements. The appellant testified that he has to maintain the road. He testified that in 2004 it cost $935 for the rock and in 2007 costs to maintain the road were $1,128. The appellant submitted copies of bills to corroborate the costs associated with the rock for the road. Mr. Emery also testified that he has to mow along the road multiple times during the year and that requires a tractor and mower. The appellant further explained that he has to remove the snow drifts in order to make the road passable, which required him to buy, maintain and store a snow blower and a tractor with at least 60 horsepower. Due to these factors the appellant was of the opinion that the subject's assessment should be reduced by 1/3.

The board of review submitted its "Board of Review Notes on Appeal" wherein its assessment of the subject totaling $27,260 was disclosed. The board of review submitted a copy of the subject's property record card containing a cost approach to value. The board of review submitted a comparable and noted the subject's 1.22 acre homesite was valued at $12,000 while a property similarly situated with a .80 acre homesite was valued at $18,000, which demonstrates the subject's land assessment is equitable and not excessive. The board of review also argued the appellant presented no evidence explaining why the subject should receive a 1/3 reduction of value.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends the subject's assessment is excessive due to the fact the improvements are located on a road that is ¼ mile from Route 161 that he has to maintain. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

In this appeal, although the appellant provided testimony that he has to maintain the road, he provided no evidence of market value associated with the subject property. The appellant did not provide any evidence, such as an appraisal, establishing an alternate estimate of the market value of the subject property as of January 1, 2006, considering the property's location. The appellant did not provide any estimate of market value that called into question the correctness of the subject's assessment. The board of review did submit a copy of the subject's property record card estimating the market value of the subject through the use of the cost approach. The subject's homesite and house had a combined assessment of $25,631, which reflects a market value of approximately $76,300 using the 2006 three year median level of assessments for Clinton County of 33.59%. The appellant failed to provide any market data demonstrating the subject's assessment was not reflective of its market value considering its location on a gravel road that has to be maintained by the property owner.

Based on this record the Property Tax Appeal Board finds the assessment of the subject property as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Edwin W. Gebke** |
| **DOCKET NUMBER:** | **06-02683.001-F-1** |
| **DATE DECIDED:** | **September, 2008** |
| **COUNTY:** | **Clinton** |
| **RESULT:** | **No Change** |

The subject property consists of a 41.87 acre parcel with a 7.34 acre homesite. The property is improved with a one-story brick dwelling with 1,612 square feet of living area that was constructed in 1983. The subject property also has three outbuildings that range in size from 800 to 3,200 square feet. The property also has a six acre lake that is considered part of the homesite for assessment purposes.

The appellant appeared before the Property Tax Appeal Board contesting the classification of the lake as part of the homesite. The appellant argued the lake should be classified and assessed as part of the farmland. The appellant testified the lake was constructed 30 years ago on worthless pasture area or waste ground that had ditches and brush. The appellant indicated the ground where the lake was constructed was worthless and had much soil erosion. The appellant explained that the neighbor's farmland drains into the pond and that periodically, every three to five years, he has to dredge the lake's "throat" of the soil that has silted into the lake. The appellant indicated that prior to 2006 the lake was classified as wasteland. He did testify that the lake is not used in connection with any farming operation but does serve to promote soil conservation. He also indicated in his written submission that the lake provides fire protection for the dwelling and buildings. The appellant submitted a copy of the 2006 assessment change notice disclosing the subject's land assessment was increased from $3,605 to $10,516. The land assessment was subsequently reduced to $8,545 by the board of review. He requested the subject's land, specifically the pond area, be changed to its original classification and the land assessment be reduced to $3,605.

The appellant submitted photographs of the subject lake, an aerial photograph of the property and photographs depicting the soil removed from the lake. At the hearing the appellant also argued a neighboring property had two ponds and more farm buildings but had a lower real estate tax. However, the appellant did not submit any documentation to support this assertion.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $51,507 was disclosed. The board of review indicated that it classified and assessed the lake as part of the homesite at 33 1/3% of market value in accordance with farmland assessment guidelines. It contends the lake is not used in connection with any farming operation that would allow the area to be assessed and classified as farmland. The board of review submitted photographs of the subject as well as an aerial photograph of the property depicting the lake as being incorporated or integrated as part of the homesite. The board of review indicated the lake was incorporated into the homesite and assessed at 33 1/3% of market value in accordance with Bulletin 810, Average Crop, Pasture, and Forestry Productivity Ratings for Illinois Soils published by the University of Illinois. The board of review indicated that all properties were reviewed through aerial maps taken in 2004 to identify actual homesites. The board of review submitted Exhibits 8 through 17, which were copies of aerial photographs of depicting homesite areas in gray and their associated property record cards indicating lakes were

included as part of the homesite. The board of review also submitted a copy of page 95 of the Illinois Real Property Appraisal Manual, Rural Section, Farmland Implementation Guidelines, marked as Exhibit 19. The guidelines provided in part:

> **Ponds and borrow pits.** Assess ponds and borrow pits used for agricultural purposes as contributory wasteland. If a pond or borrow pit is used as part of the homesite, assess it with the homesite at 33 1/3 percent of market value.

Based on this record, the board of review requested confirmation of the subject's assessment.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds a reduction in the subject's assessment is not warranted.

The appellant argued the assessment of the subject property's homesite is excessive due to the fact that the lake on the property had been included as part of the homesite. The appellant contends the lake should be classified and assessed as farmland. The Board finds the appellant's argument is without merit.

Section 1-60 of the Property Tax Code defines farm in part as:

> Farm - When used in connection with valuing land . . . for an agricultural use, any property used solely for the growing and harvesting of crops; for the feeding, and management of livestock; for dairying or for any other agricultural or horticultural use or combination therof. . . . (35 ILCS 200/1-60).

The testimony and evidence submitted by the appellant did not demonstrate or establish that the subject lake was used in connection with any farming operation. The photographs and aerial photographs or aerial maps depict the subject lake as being contiguous to and integrated with the homesite. Therefore, the Property Tax Appeal Board finds the board of review properly classified the lake as part of the homesite and assessed it as part of the homesite at 33 1/3% of market value as required by section 10-145 of the Property Tax Code. (35 ILCS 200/10-145). The Board finds the appellant did not otherwise challenge the correctness of the assessment as being inequitable or not reflective of market value. The board of review did submit evidence depicting similar homesites with incorporated ponds being assessed as part of the homesite at 33 1/3% of market value. The Board does find that the lake does provide for soil conservation by collecting silt in the "throat" that has to be removed every three to five years; however, this is not an agricultural use which allows for an agricultural classification and farmland assessment.

Based on this record the Board finds a reduction in the subject's assessment is not warranted.

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| **APPELLANT:** | **John Hernan** |
| **DOCKET NUMBER:** | **05-00801.001-F-1** |
| **DATE DECIDED:** | **July, 2008** |
| **COUNTY:** | **Kane** |
| **RESULT:** | **No Change** |

The subject property consists of a farm and associated land and buildings located in Hampshire, Plato Township, Kane County. Appellant only contests the assessment of the ½-acre homesite based on unequal treatment in the assessment process and a legal contention.

In support of the inequity argument, appellant presented six single-spaced typed pages consisting of listings of parcel numbers, homesite acreage, and assessments of homesites for 2005. According to appellant, this exhibit was presented by the Plato Township Assessor at the board of review hearing in support of the current assessment of the homesite. But for a few exceptions, the listing displays that homesites associated with farmland in Plato Township which range in size from .35 acres up through 1.75 acres are assessed at $29,571. Then, the vast majority of two-acre through 3.21 acre homesites in the township have been assessed at $36,142 or $49,285. And, lastly, the list reflects homesite assessments which range in size from 3.5 to 11 acres varying from $0 to $82,142.

With regard to this data, appellant's attorney argued, without any sales data to support the proposition, that purchasers do not in fact pay about the same sales price for a rural lot of .35-acre up to nearly 2 acres. Therefore, appellant concluded that the assessment data presented established inequity of assessments of farmland homesites in Plato Township.

In addition, appellant presented four residential, improved lots, in Plato Township of .2 or .4 acres in size with land assessments of $19,998 and $23,331, respectively, to establish lack of uniformity for farmland homesite assessments. Appellant Hernan further testified that he viewed each of these four single-family residential improved parcels prior to the date of hearing in this matter; appellant Hernan further testified that none of these parcels is attached to a farm.

Lastly, counsel for appellant noted at hearing that a reduction in assessment had been achieved in 2003 from an appeal and that appellant was agreeable to a like increase in assessment as compared to nearby properties of about 10%. On the basis of these comparisons, the appellant felt that a homesite assessment of $19,620 was appropriate for the subject.

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of $29,571 for the subject homesite was disclosed. The board of review asserted that the subject's ½-acre homesite was uniform with other farmland homesites in the township. Furthermore, the board of review specifically recinded an assertion made in a letter from the Plato Township Assessor, Janet M. Roush, which was filed as evidence with the Property Tax Appeal Board that the subject property is being rented by appellant for parking for high school students and should perhaps be classified as commercial property.

In support of the current assessment, the board of review asserted that based upon limited sales data of farmland homesite properties ranging in size from .35-acre up to 2 acres, all such homesites are uniformly assessed at $29,571. The board of review relied upon the same six page listing of all homesites attached to farms in the township identifying the parcel, the homesite size, and the homesite assessment. In addition, the testimony of the Plato Township Assessor, Janet M. Roush, was presented wherein she indicated that her methodology for assessing farmland homesites was to utilize the "same sales of lots that occur within our township and just applying them to the homesites of the lands that we have under these [parcels]." Those sales indicated that there was not a great variation in value of the lands between .35-acre up to 2 acres of land. Above 2 acres of land, the township assessor began to see a slight increase in value and changes in amenities such as creeks and woodland that would change the assessment from parcel to parcel. Likewise, farmland homesites ranging in size from about 3.5-acres to 11 acres would vary depending upon amenities and location. Based on its analysis of these properties, the board of review requested confirmation of the subject's homesite assessment.

On cross-examination, the township assessor expounded that the farmland homesite assessment of $29,571 for a 2-acre parcel or less in the township was determined from sales data as follows: "We have other subdivisions within the township that are larger, that are not smaller towns, they are one-acre and above of which we have land [rural acreages] -- that are still under the well and septic that are farmland homesites would be using but they are acres and above we would be using." On further cross-examination, the township assessor agreed that there is not a uniform sale price per acre of rural subdivision land, but she developed the uniform assessment for farm homesites because she had no other criteria to use.

In a written rebuttal previously filed in this matter, counsel for appellant responded to the apparent erroneous assertion about the use of the subject property for paid parking and indicated that the students are allowed to park on the property for free.

In the course of closing argument, the board of review representative cited to the Official Rules of the Property Tax Appeal Board, namely Section 1910.70(f), and asserted that appellant's attorney improperly appeared before the Property Tax Appeal Board as both an advocate and a witness. As such, the board of review requested that all of Attorney Boyd's "testimony" should be disregarded.

In response, Attorney Gates noted that the appeal was filed both under assessment equity and as a contention of law. Attorney Gates further indicated that he had filed a brief in this proceeding, he did not testify at the hearing, but rather had his client testify and asserted that he only argued his legal points and cross-examined the board of review's representative and witness.

Finally, the board of review representative contested the Hearing Officer's authority to allow a reply by appellant's counsel after the presentation of the board of review's closing argument.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

As a preliminary matter, it must be noted that "[a]ll appeals [before the Property Tax Appeal Board] shall be considered *de novo*." (35 ILCS 200/16-180) "Under the principles of a de novo

proceeding, the Property Tax Appeal Board shall not presume the action of the board of review or the assessment of any local assessing officer to be correct. However, any contesting party shall have the burden of going forward." Official Rules of the Property Tax Appeal Board, 86 Ill. Admin. Code, § 1910.63(a). In this regard, the contentions made by appellant's counsel about previous statements of witnesses at the Kane County Board of Review hearing about homesite values and/or sizes of homesites in the township are irrelevant to the instant appeal. Similarly, the argument of appellant's counsel regarding the split decision which was made by the Kane County Board of Review is also irrelevant to the instant proceeding.

As to the issue raised about the conduct of closing arguments, Section 1910.90(c)(5) of the Official Rules of the Property Tax Appeal Board provides in pertinent part:

> Closing statements – the closing argument of the contesting party shall be heard first, followed by the closing arguments of the board of review and intervenors, if any; the contesting party shall be permitted a brief rebuttal at the end of the closing arguments of the other parties. (Emphasis added.)

As such, the Property Tax Appeal Board finds that allowing appellant's counsel the opportunity to reply to the closing argument of the board of review was appropriate, particularly in the situation where the board of review raised a new matter in the course of closing argument which had not been previously raised during the course of the proceeding. Furthermore, upon review of the hearing, the Board finds that Attorney Gates only acted as an advocate and reiterated assertions which were set forth in the brief already on file before the Property Tax Appeal Board and which had been served upon the board of review. The Property Tax Appeal Board finds there was no violation of the terms or rationale of Section 1910.70(f) of the Official Rules of the Property Tax Appeal Board. Furthermore, the Board finds that there was no "testimony" of Attorney Gates which could or should be stricken from this record and thus denies the request of the board of review to do so.

As to the merits of this matter, appellant contends unequal treatment in the subject's homesite assessment as the basis of the appeal. The Supreme Court of Illinois in Walsh v. Property Tax Appeal Board, 181 Ill. 2d 228 (1998), set forth the basic tenets of the Illinois Constitution's uniformity clause requirement as it relates to the assessment and taxation of real estate. The court stated that:

> The Illinois property tax scheme is grounded in article IX, section 4, of the Illinois Constitution of 1970, which provides in pertinent part that real estate taxes "shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." Ill.Const.1970, art. IX, §4(a). Uniformity requires equality in the burden of taxation. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 20 (1989). This, in turn, requires equality of taxation in proportion to the value of property being taxed. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Thus, taxing officials may not value the same kinds of properties within the same taxing boundary at different proportions of their true value. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 20 (1989). The party objecting to an assessment on lack of uniformity grounds bears the burden of proving the disparity by clear and convincing

> evidence . . . Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 22 (1989).

Walsh v. Property Tax Appeal Board, 181 Ill. 2d at 234 (1998). The uniform assessment requirement mandates that property not be assessed at substantially greater proportion of its value when compared to similar properties located within the taxing district. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d at 21 (1989). Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). After an analysis of the homesite assessment data, the Board finds the appellant has not met this burden.

Simply put, the uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960); People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 520 (4th Dist. 1983). A uniformity violation can be established through evidence regarding the assessed valuations of a small number of properties. Du Page County Board of Review v. Property Tax Appeal Board, 284 Ill. App. 3d 649, 655 (1996). The properties selected for comparison must be similar in kind and character and must be similarly situated to the subject property. Id. at 654.

Appellant presented two types of properties for consideration. The first type was the six page list of homesites in the township which establishes that the assessor has, for all practical purposes, assessed all homesites ranging from .35-acre to nearly 2 acres in size at $29,571, regardless of size. On its face, this is uniform. Appellant essentially was arguing this was not a "correct" assessment of 33 1/3% of fair market value because these parcels of varying sizes would not all sell for $88,713 each. However, appellant supplied no sales data whatsoever to support this contention that sales prices vary among homesites of from .35-acre up to 2-acres in size.

The second type of evidence appellant presented was four residential improved lots of .20 and .40 acres, respectively, in the township which were not attached to farms and have been assessed at $19,998 and $23,331, respectively. Appellant argued this was presented to refute an assertion by the township assessor that no "homesites" in the township were valued at less than $88,713. As described in the testimony, a "homesite" is the tract upon which a farm dwelling and appurtenant structures are located. Pursuant to the Property Tax Code, "[e]ach farm dwelling and appurtenant structures and the tract upon which they are immediately situated shall be assessed by the local assessing officials at 33 1/3% of fair cash value . . . ." (35 ILCS 200/10-145) The evidence clearly indicates that these four suggested properties were not "homesites" associated with farmland, but rather these were merely improved residential real estate lots. As such, these suggested comparables are not similar to the subject property and have been given no weight in the Board's analysis.

In summary, both parties presented assessment data on numerous farmland homesites located in Plato Township ranging in size from .35-acre to nearly 2-acres, all of which were assessed for $29,571. The subject homesite property of ½-acre has been likewise assessed for $29,571. Therefore, the Board finds the subject homesite's assessment is supported by the properties

contained in the record. As a result of this analysis, the Property Tax Appeal Board finds the appellant failed to adequately demonstrate that the subject homesite property was inequitably assessed by clear and convincing evidence and no reduction is warranted.

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| **APPELLANT:** | **Bruce M. Peleschak** |
| **DOCKET NUMBER:** | **06-01243.001-R-1** |
| **DATE DECIDED:** | **June, 2008** |
| **COUNTY:** | **McHenry** |
| **RESULT:** | **Reduction** |

*(Please note, the Property Tax Appeal Board recognizes this case was filed as a residential appeal, however the evidence and context of this decision primarily relates to farmland issues.)*

The subject property consists of a 5.0-acre parcel improved with a 17 year-old, one-story frame dwelling that contains 2,351 square feet of living area. Features of the home include a full unfinished basement, central air-conditioning and a 552 square foot garage and a deck. The subject also includes a stable and an 8,640 square foot indoor horse arena.

The appellant appeared before the Property Tax Appeal Board claiming that about 0.5 acre of the subject parcel is a homesite and that approximately 4.5 acres of the subject are used as a horse boarding and training facility and pasture, and should be classified and assessed as farmland. The appellant also claimed unequal treatment in the assessment process regarding the subject's land and improvement assessments as a basis of the appeal.

In support of the land inequity argument, the appellant submitted information on three comparable properties. Two of these properties are located 0.4 mile to 2.6 miles from the subject. Proximity of the third comparable to the subject was not reported. The comparables range in size from 9.62 to 11.11 acres and have land assessments ranging from $13,223 to $23,579 or from $1,190 to $2,451 per acre. The subject has a land assessment of $28,295 or $5,659 per acre.

In support of the improvement inequity argument, the appellant submitted a grid analysis and property record cards for the same three comparables used to support the land inequity contention. The appellant claimed these properties are used as horse boarding facilities like the subject. The comparables are improved with one-story or one and one-half-story dwellings, two of which are frame or brick and frame structures. No exterior construction was submitted for comparable 3. The appellant did not report the age of comparable 2, nor could it be discerned from the property record card. Comparables 1 and 3 were reported to be 25 and 50 years old, respectively. The comparables were reported to range in size from 791 to 1,876 square feet of living area and all have barns. One comparable was reported to have a partial basement, central air-conditioning and a 576 square foot garage. The comparables have improvement assessments ranging from $57,937 to $110,001 or from $39.35 to $139.07 per square foot of living area. The subject has an improvement assessment of $110,947 or $47.19 per square foot of living area. Based on this evidence, the appellant requested the subject's land assessment be reduced to $9,423, its improvement assessment be reduced to $106,669 and its total assessment be reduced to $116,092.

The appellant's evidence also claimed the subject's deck is 24 feet by 20 feet, or 480 square feet, not 800 square feet as indicated on the subject's property record card. The appellant also claimed

the assessor had miscalculated the size of the subject's barn, which is used as a horse training arena. The subject's property record card indicates the barn is 150 feet by 80 feet, or 12,000 square feet. The appellant submitted a copy of a sales receipt from FBI Buildings, Inc., which sold the barn. The receipt disclosed the building is 72 feet by 120 feet, or 8,640 square feet and that it was shipped in November 2002.

During the hearing, the board of review stipulated to a revised improvement assessment for the subject of $104,339, based on the corrected size of the barn used as a horse arena as containing 8,640 square feet. The appellant accepted this stipulation. The appellant testified approximately 4.5 acres of the subject has been used exclusively as a horse boarding and training business for at least the years 2004, 2005 and 2006. The appellant testified he notified the board of review in 2003 that the subject was being used for this purpose. The appellant also testified two colts have been bred recently, that riding lessons and horse training lessons are offered at the subject facility and that year round horse boarding is provided. The appellant further testified his three comparables were all used as horse boarding facilities, whereas none of the board of review's comparables are used as such, nor are they used for any other farming activity. The appellant referred to Item 3 in his rebuttal evidence, which is a copy of Schedule C from the appellant's 2004 federal income tax Form 1040. This document lists income and expenses associated with "horse boarding", as depicted on Line A of the form.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $139,242 was disclosed. In support of the subject's assessment, the board of review submitted a letter prepared by a board of review member. The letter claimed the appellant had "supplied no evidence that the property is used as a commercial stable." The letter also stated "Department of Revenue guidelines indicate that for agriculture to be a primary use, there should be a minimum of five acres in agricultural use." The letter further disclosed that the appellant's comparable 3 contains 1,141 square feet of living area and that its improvement assessment is actually $96.41 per square foot.

A separate letter prepared by the township assessor that was included in the board of review's evidence indicated the appellant's three comparables "have filed the proper paper work justifying a horse boarding business which qualifies a portion of the land to be farmland." The letter also described four comparables that range in size from 5.0 to 5.3 acres with equalized land assessments of $28,085 or $28,295 or from $5,299 to $5,659 per acre. The letter stated these comparables have improvements, but provided no descriptions of such improvements. The board of review also submitted numerous photographs of these comparables.

In rebuttal, the appellant submitted numerous items that expanded the points raised in his petition. The rebuttal evidence included photographs of the appellant's three comparables that are used as horse boarding facilities, some of which show signs identifying the facilities. The evidence also included a 2005 advertising receipt and a copy of a 2007 advertisement for the subject's horse boarding operation. The appellant claimed the subject parcel is "in complete compliance as a commercial horse boarding facility", after reviewing the McHenry County Department of Planning and Development horse boarding requirements. Finally, the appellant reiterated that the four comparables referenced by the board of review were not "for profit" horse boarding facilities like the subject and the appellant's comparables.

During the hearing, the Hearing Officer requested the board of review to submit within 15 days of the hearing a breakdown of the subject's assessment if the Property Tax Appeal Board ultimately determined a portion of the subject property qualified for agricultural classification and assessment. The board of review submitted the requested breakdown, which acknowledged a 0.57-acre homesite and 4.43 acres of farmland, but the board of review did not stipulate that the subject deserves an agricultural assessment. However, if such a determination were to be made, the board of review's breakdown indicated the following:

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| Urban land | 21,891 |
| Farm land | 56 |
| Urban building | 79,946 |
| Farm buildings | 24,393 |
| Total | 126,286 |

The breakdown referenced the agreement of the parties at the hearing to a total building value of $104,339.

The board of review did not refute the appellant's assertion that the subject meets McHenry County requirements for a horse boarding facility.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds that 4.43 acres of the subject parcel is entitled to a farmland classification and assessment.

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

> Any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ***ponies or horses***, fur farming, bees, fish and wildlife farming (emphasis added).

The Board also finds Section 10-110 of the Property Tax Code, provides as follows:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

The board of review argued the appellant "has supplied no evidence that the property is used as a commercial stable." The board of review referenced Illinois Department of Revenue guidelines "that for agriculture to be a primary use, there should be a minimum of five acres in agricultural use." The Property Tax Appeal Board finds no statutory minimum acreage requirement to

satisfy the definition of a farm cited herein. Rather, property that is used solely for the growing and harvesting of crops or the feeding, breeding and management of livestock is properly classified as farmland, even if the farmland is part of a parcel that has other uses. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d 872 (3rd Dist.1983). The Board further finds the aforementioned Department of Revenue guidelines do not have the weight of law and cannot overcome the provisions of Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) and Section 10-110 of the Code (35 ILCS 200/10-110) cited above.

In this 2006 appeal, the Property Tax Appeal Board finds the appellant provided testimony and documentation showing that, of the subject's 5.0 acres, 4.43 acres has been used exclusively to board, raise and train horses for at least the years 2004, 2005 and 2006. The appellant submitted Schedule C from his 2004 federal income tax return wherein income and expenses for a "horse boarding" enterprise were claimed and documented. The appellant testified year round horse boarding is provided, as well as riding and training lessons. In order to qualify for an agricultural assessment, land must be used as a farm for at least the two years preceding the date of assessment (35 ILCS 200/10-110). The Board finds this requirement has been met. The Board thus finds 4.43 acres of the subject parcel should be classified and assessed as farmland. The Board further finds that at the hearing, the parties agreed the subject's improvement assessment should be reduced to $104,339 to reflect the corrected size of the barn used as a horse training arena.

The Board further finds the appellant argued unequal treatment in the assessment process as a basis of the appeal. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of a lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not overcome this burden.

In support of the inequity argument, the appellant submitted three comparables which are used as horse boarding facilities. The appellant did not provide a breakdown of acreage devoted to this use, nor did he provide a breakdown of the improvements into dwelling and farm buildings. The Board gave little weight to the appellant's comparables because they differed in size and age when compared to the subject and no age was supplied for one comparable. The Board gave no weight to the four comparables submitted by the board of review because no descriptive information was provided, nor were these properties used as horse boarding businesses. Nevertheless, the Board finds the improvement assessments of the appellant's own comparables range from $39.35 to $96.41 per square foot, after correcting the living area of the appellant's comparable 3 to reflect 1,141 square feet of living area, as reported by the board of review. The subject's improvement assessment of $104,339, to which the parties agreed at the hearing, is $44.38 per square foot, which falls near the low end of the range of the appellant's own comparables. Therefore, the Board finds no additional reduction in the subject's improvement assessment based on equity is appropriate.

In summary, the Property Tax Appeal Board finds the appellant has sufficiently met the requirements contained within sections 1-60 and 10-110 of the Property Tax Code (35 ILCS

200/1-60 and 10-110) and a farmland assessment is warranted for 4.43 acres of the subject parcel.

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| **APPELLANT:** | **Kevin and Cynthia Stenzel** |
| **DOCKET NUMBER:** | **06-00212.001-F-1** |
| **DATE DECIDED:** | **February, 2008** |
| **COUNTY:** | **Winnebago** |
| **RESULT:** | **No Change** |

The subject property consists of 10.24-acre parcel that is improved with a 20 year-old, one-story frame dwelling that contains 1,680 square feet of living area. Features of the home include central air-conditioning, a 440 square foot garage and a full basement that is partially finished. The appellants' evidence also refers to a barn, but no description was provided. The subject is located in South Beloit, Roscoe Township, Winnebago County.

The appellants submitted evidence to the Property Tax Appeal Board claiming portions of the subject property should be classified and assessed as farmland. In support of this contention, the appellants submitted a letter, several photographs of portions of the subject, an aerial photograph of the entire property, a soil map and several receipts for various items. In their letter dated January 23, 2007, the appellants claimed they planted four acres in prairie grass "a few years back" to establish a habitat for local wildlife. After meeting with the township assessor regarding the various uses to which the subject has been put, the appellants killed the prairie grass and planted winter wheat on the four-acre portion of the subject. In support of this statement, the appellants submitted a letter from Chuck Hutchins dated December 14, 2006 in which Hutchins stated he planted wheat "on the back portion" of the subject property on November 10, 2006. The amount of acreage planted was not stated in the letter. The appellants also submitted a copy of a receipt for $138.95 for wheat seed sold to Hutchins. The appellants' letter indicated they intend to plant alfalfa on the four-acre portion of the subject in 2007 after harvesting the wheat.

The appellants' letter also claimed they had not yet finished their two-acre pasture, but had set all the posts, installed gates and hired a contractor to finish stretching the fence. The appellants intend to raise elk in the pasture area. They submitted a receipt indicating they paid a deposit of $500 dated December 12, 2006 for one bull and two cow elk, with the balance to be paid on delivery. The appellants' January 23, 2007 letter further stated they have a half-acre pen in which they intend to raise whitetail deer. The letter also claimed they have a ¾-acre pond that is almost four years old and is stocked with bluegill, which they plan to start selling "this summer" (presumably, the summer of 2007). Finally, the appellants' letter claimed they have a barn which is used to store hay, feed and equipment, along with facilities for bottle raising fawns. No age, size or exterior construction information was provided for the barn. The appellants submitted no evidence demonstrating any portion of the subject had been farmed in the years 2004 and 2005. Based on this evidence, the appellants contend four acres of the subject should be classified and taxed as tillable land, 2.25 acres is permanent pasture, one acre is woodlands, one acre is wasteland, one acre is a homesite and one acre is "other", for a total of 10.25 acres. The appellants requested the subject's total assessment be reduced to $46,806, comprised of a farmland assessment of $292, a homesite assessment of $3,962 and an improvement assessment of $42,552.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $69,168 was disclosed. In support of the subject's assessment, the board of review submitted a letter prepared by the township assessor dated October 31, 2006. The board of review also submitted a copy of a letter to the appellants from the township assessor that was dated July 20, 2006. The board of review also submitted a copy of a letter dated October 5, 2006 from the appellants to the board of review, with commentary by the assessor. The board of review further submitted a copy of a letter from the appellants dated January 28, 2003, to the township assessor. The board of review also submitted a copy of Publication 122 by the Illinois Department of Revenue which discusses wildlife and fish farming. Finally, the board of review submitted several photographs of the subject property.

In the appellants' January 28, 2003, letter to the township assessor, the appellants claimed they both raise livestock and grow crops. The appellants also referred to their pond, which they planned on stocking with fish and aquatic plants. The appellants' letter claimed they had a larger farming operation two years prior, but cut back to construct the pond. The appellants also claimed they raised turkeys, pheasants and emus in the earlier operation. No dates or other information regarding the earlier purported farming activity was submitted.

In her July 20, 2006, letter to the appellants, the township assessor stated the subject property "was viewed and would no longer be assessed as farmland." The letter stated that for a pond to be considered farm property, "it would have to be solely used for raising fish (emphasis in original)." The letter stated the assessor had seen no evidence of breeding whitetail deer, growing hay, or selling fish and aquatic plants "in the past three years".

Regarding the appellants' October 5, 2006, letter to the board of review, which includes a breakdown of the various portions of the subject and their purported usage, the assessor commented that no crops had been grown for at least 3 years, no elk were owned as of the letter's date, the deer are all the same sex (bucks) and there was no evidence of fish farming.

As to the assessor's October 31, 2006, letter to the board of review regarding the subject parcel, the assessor claimed "there have been no crops grown on this property for at least three years." Further, the assessor claimed the appellants had "provided no evidence that any kind of aquatic farming has occurred." The assessor's letter noted the three deer are kept in a small pen and are the same sex, making it impossible to breed the animals.

Regarding Publication 122 by the Illinois Department of Revenue, this document includes, under the heading "Fish farming", the statement:

> Fish farming is included in the statutory definition of a farm. To qualify for fish farming, a tract must comply with the "keeping, raising, and feeding" provisions of the farm definition. Fishing may be a component of fish farming; but fishing, in itself, does not constitute fish farming. Neither is just the purchase and release of fish for fishing, a practice often referred to as "put and take," considered fish farming. Land that is actively used for the farming of fish is eligible for a farmland assessment provided its sole use has been in this or another qualified farm use for the previous two years and it is not part of a primarily residential parcel (emphasis in original).

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds the subject parcel is not entitled to a farmland classification for 2006 because no farming activity took place on any portion of the subject land in 2004 and 2005, according to the evidence in the record. The Board finds several statutes are relevant in this instance.

Section 1-60 of the Property Tax Code defines "farm" in part as:

> Any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming (35 ILCS 200/1-60).

The Board finds Section 10-110 of the Property Tax Code provides as follows:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

Regarding the four-acre portion of the subject purportedly used for crop production, the Board finds the winter wheat was not planted until November 10, 2006, according to Hutchins' letter. The appellants' evidence indicates this portion of the subject "had been in prairie grass to establish habitat for local wildlife." The Board finds this information indicates no farming activity on this portion of the subject had occurred for the two years prior to the subject's January 1, 2006 assessment date.

Regarding the claimed two-acre pasture, the Board finds the appellants' evidence indicated that according to their January 2007, letter to the Property Tax Appeal Board, they "did get all posts set, braced, gates installed, and hired a contractor to finish stretching fence (see letter from JDL)." The letter from JDL Longhorn, dated December 12, 2006, states "Since we are 300 miles from him, we plan to finish his job when we have several more job's (sic) in the area." The appellant's receipt for their $500 deposit with Sandy Pine Elk Farm, dated December 26, 2006, indicates the "Balance of $3,000 to be paid upon delivery" and makes clear the one bull and two cow elk had not been acquired yet by that date. Obviously, the elk were not being raised in 2006, 2005 and 2004. Therefore, the Board finds the planned pasture was not yet fenced on January 1, 2006 and was not used for farming purposes in accordance with Section 10-110 of the Property Tax Code (35 ILCS 200/10-110) cited above.

Regarding the penned area in which the appellants kept three deer, the Board finds no evidence in the record that deer were being raised. The appellants' October 5, 2006, letter submitted to the Winnebago County Board of Review and included in the board of review's evidence indicates

that as of that date "we currently have (3) adult bucks and are in the process of selling (2) of them, which will then be replaced by (2) does." The Board thus finds no evidence in the record that "feeding, breeding and management of livestock;" or "wildlife farming" as required by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) was occurring on any portion of subject parcel for 2006, 2005 and 2004.

Regarding the pond, the Board finds no evidence in the record that fish farming was taking place. The Board finds the appellants' January 23, 2007, letter described the current usage of the entire 10.24-acre subject parcel and states "We plan to start selling fish this summer." It is clear from this statement that no fish farming had yet occurred as of this letter's date, so it is obvious no such activity occurred in 2006, 2005 and 2004, as required by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) and Section 10-110 of the Code (35 ILCS 200/10-110) cited above. The Board also finds the record includes no evidence submitted by the appellants that any aquatic plants had been raised and harvested during 2006, 2005 and 2004. For these reasons, the Board finds no farming activity was taking place regarding the subject's pond for the instant 2006 assessment year or for two years prior to that assessment year.

The Board further finds Section 1-60 of the Property Tax Code also states

> For purposes of this Code, "farm" does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use (35 ILCS 200/1-60).

The Board finds the township assessor's October 31, 2006 letter to the Winnebago County Board of Review states "There have been no crops grown on this property for at least three years." In this letter, the assessor also observed "The mere keeping of deer does not meet the provisions of wildlife farming as stated in Publication 122 from the Illinois Department of Revenue". In her July 20, 2006, letter to the appellants when discussing the pond for selling fish and aquatic plants, the assessor stated "I have seen no evidence of this activity in the past three years."

Based on the foregoing analysis, the Property Tax Appeal Board finds the evidence in the record indicates no portion of the subject parcel was used for farming purposes for the 2006 assessment year and the subject's classification and assessment by the board of review is correct and no reduction is warranted.

## 2008 FARM CHAPTER

*Index*

*[Items Contained in Brackets Indicate*
*Arguments or Evidence in Opposition to the Appellant's claim]*

# PROPERTY TAX APPEAL BOARD

# SYNOPSIS OF REPRESENTATIVE CASES

# 2008 COMMERCIAL DECISIONS

**PROPERTY TAX APPEAL BOARD**
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
Printed by Authority of the State of Illinois

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# 2008 COMMERCIAL CHAPTER

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| **APPELLANT:** | **James Auffenberg, Jr.** |
| **DOCKET NUMBER:** | **05-02349.001-C-3** |
| **DATE DECIDED:** | **June, 2008** |
| **COUNTY:** | **St. Clair** |
| **RESULT:** | **No Change** |

The subject property consists of a 5.53 acre parcel improved with an 8,160 square foot automobile showroom constructed in 1993 and an 11,520 service center also constructed in 1993. The property is located in O'Fallon, Caseyville Township, St. Clair County.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument the appellant presented an analysis of four car dealership assessments. The appellant provided the parcel number, building size, lot size, assessment and assessment per square foot on the subject and four car dealer assessments. As foundation for the data the appellant submitted copies of the property record cards associated with each property. The analysis indicated the building areas on the comparables ranged in size from 15,984 to 29,345 square feet and land areas ranged in size from 4.19 to 6.53[1] acres. These same comparables had total assessments ranging from $860,371 to $1,429,554 or from $35.79 to $53.83 per square foot of building area, land included. The appellant indicated the subject had a total assessment of $1,100,536 or $53.68 per square foot of building area, land included. Based on this data the appellant requested the subject's land assessment be reduced to $166,667 and the improvement assessment be reduced to $567,028 for a total revised assessment of $733,695 or $35.79 per square foot of building area, land included.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject property had an equalized total assessment of $1,166,128. The subject property had an equalized land assessment of $550,622 or $99,570 per acre and an equalized improvement assessment of $615,506 or $31.28 per square foot of building area.

To demonstrate the subject's land was being equitably assessed the board of review presented the equalized land assessments on four comparables located along the same street as the subject. The comparables ranged in size from .98 to 4.92 acres and had land assessments ranging $117,870 to $409,544 or from $83,241 to $122,727 per acre. The board of review argued the subject's land assessment was within the range established by the comparables; therefore, a reduction in the subject's land assessment was not justified.

To demonstrate the subject improvments were equitably assessed the board of review used three of the comparables submitted by the appellant. The property record cards submitted by the board of review disclosed the comparables were constructed from 1997 to 2000 and had total building areas that ranged in size from 16,735 to 28,069 square feet. These comparables had equalized improvement assessments that ranged from $649,669 to $906,967 or from $29.81 to $38.82 per square foot of building area. The board of review argued the subject's improvement assessment

[1] Auffenberg Hyundai is composed of two parcels, 03-25.0-330-006 & 007, having a combined area of 6.53 acres.

of $615,506 or $31.28 per square foot of building area was well within the range of the comparables and equitable.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds a reduction in the subject's assessment is not supported by the evidence in this record.

The appellant contends unequal treatment in the subject's assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). After an analysis of the assessment data, the Board finds the appellant has not met this burden.

With respect to the land assessment the Property Tax Appeal Board finds that board of review submitted assessment information on four land comparables demonstrating the subject's land assessment was equitable. The four land comparables were located along the same street as the subject and ranged in size from .98 to 4.92 acres. These comparables had equalized land assessments ranging from $117,870 to $409,544 or from $83,241 to $122,727 per acre. The subject property had an equalized land assessment of $550,622 or $99,570 per acre, which is within the range established by the comparables on a per acre basis and is well supported by this data.

The Board also finds the analysis presented by the board of review demonstrated the assessment of the subject improvements is equitable. The board of review used three of the four comparables submitted by the appellant but isolated the equalized improvement assessments for these properties. The comparables were constructed from 1997 to 2000 and had total building areas that ranged in size from 16,735 to 28,069 square feet. These comparables had equalized improvement assessments ranging from $649,669 to $906,967 or from $29.81 to $38.82 per square foot of building area. The subject's equalized improvement assessment $615,506 or $31.28 per square foot of building area is within the range established by the comparables on a per square foot basis and is equitable.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence.

For these reasons the Property Tax Appeal Board finds the appellant did not demonstrate with clear and convincing evidence that the subject property was not being uniformly assessed. Based on this record the Property Tax Appeal Board finds the assessment of the subject property as established by the board of review is correct and no reduction is warranted.

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| **APPELLANT:** | **Thomas J. Baryl** |
| **DOCKET NUMBER:** | **03-30668.001-C-3 thru 03-30668.002-C-3 & 04-28280.001-C-3 thru 04-28280.002-C-3** |
| **DATE DECIDED:** | **December, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **No Change** |

The subject property consists of a 15,000 square foot parcel improved with a 60,000 square foot four level valet parking garage built in 1960 of reinforced concrete construction. The structure contains 187 parking stalls; a 600 square foot office; a 5,000 pound passenger elevator; and ramps between floors.

The appellant through counsel appeared before the Property Tax Appeal Board claiming the fair market value of the subject is not accurately reflected in its assessed value. In support of this argument, the appellant submitted a summary appraisal report with an effective date of January 1, 2004, (Appellant's Exhibit #1) and presented the testimony of the appraisal's author, Neil J. Renzi. Renzi testified that he is a State of Illinois licensed real estate appraiser with a Member of the Appraisal Institute (MAI) designation; has been an appraiser for approximately 39 years; has taught courses on appraisal principles and practice in several venues; has appraised many properties similar to the subject; and has developed properties in the subject's immediate area. In addition, the witness testified, he has been qualified as an expert witness in the courts and before administrative agencies such as the Property Tax Appeal Board. The appraiser was accepted by the Property Tax Appeal Board as an expert witness.

Renzi testified that he did a full interior and exterior inspection of the subject on September 15, 2004. He also testified the subject was appraised fee simple for *ad valorem* tax purposes. After a brief description of the subject's environs, the appraiser rendered an opinion of the subject's highest and best use as improved would be to demolish the existing improvements and develop the site with a mixed-use commercial/residential structure. The highest and best use as vacant would be to develop the site with a commercial/residential structure.

In his research, Renzi discovered garages similar in design and vintage to the subject are becoming obsolete and sales were limited. Available sales indicated a range in price from $12.07 to $32.50 per square foot of building area, or from $724,200 to $1,950,000. From this data, the appraiser opined the difference in sales prices for the comparables is reflective of the age and location of the properties. He further opined that based on this information the subject's market value would likely be on the low end of the range.

To support his conclusion of highest and best use, Renzi included an abbreviated income approach to value based on the subject's average net operating income (NOI) from the years 2001, 2002 and 2003 of $250,947. Relying on an analysis of the subject's general market and discussions with local area brokers, Renzi estimated that overall capitalization rates range from 8% to 10%, and the effective tax rate was 6.83%. Adding the components resulted in a range of capitalization rates from 14.83% to 16.83%. Capitalizing the average NOI resulted in a range of estimated values for the subject from $1,491,070 to $1,692,158. Due to the fact this estimated

value was less than the value of the land as vacant; Renzi concluded the improvements did not contribute to the market value of the property.

Based on his opinion of the subject's highest and best use, Renzi prepared a sales comparison to estimate the market value for the subject's land. Six land sales located in the subject's general area were analyzed. The properties range in size from 11,674 to 65,340 square feet of land area. These comparables were sold from September 2000 to March 2004 for prices ranging from $1,250,000 to $10,135,000 or from $94.12 to $155.11 per square foot of land area. Two of the sites were improved with small commercial and industrial buildings that were subsequently demolished. Demolition costs were unknown by the appraiser. Two of the properties were surface parking lots and two were vacant at the time of sale. One of the vacant properties was an assemblage of parcels, which were acquired by a realty company and resold the same day; the realty company retained a right of first refusal. A sale in 1999 of a 16,200 square foot surface parking lot for a price of $1,500,000, or $92.59 per square foot was also considered but not emphasized due to the age of the sale. The comparables' sales were adjusted for location, size, development potential, zoning, and other applicable items. Based on his research and analysis, the witness estimated an 'as if vacant' market value for the subject of $135.00 per square foot, or $2,025,000.

Next, utilizing *Marshall Valuation Service Cost Manual* and his research of the market area, the appellant's appraiser established $225,000 as an estimated cost to demolish the subject's current improvement. The estimated demolition cost was subtracted from the land estimate resulting in an estimated value for the subject of $1,800,000 as of January 1, 2004.

In the appraiser's reconciliation, Renzi indicated that the subject was appraised in accordance with his opinion of its highest and best use and neither the cost approach nor the income approach to value were presented in his summary appraisal. His final opinion to value for the subject's property was $1,800,000 as of the assessment dates at issue.

Renzi testified that parking facility rates south of Congress Parkway (Eisenhower Expressway) were no more and probably less than half of parking facility rates north of Congress Parkway. This is due to a higher density commercial and office market north of Congress Parkway. In addition, he testified, that parking garages south of Congress Parkway do not commonly have first floor retail space.

When cross-examined by the Hearing Officer, Renzi reiterated that he appraised the subject 'as is' or as it stood as of the date of valuation.

During cross-examination, the appraiser stated the site had not been redeveloped as the date of his appraisal and as of the date of hearing was still operating as a parking facility. Renzi was questioned regarding the technique used to value parking facilities. He responded that both price per parking space and price per square foot are relevant techniques. With contemporary facilities, the price per stall tends to be more applicable while for older properties the price per square foot tends to be more appropriate. The appraiser testified that he was not aware of any sales of parking garages south of the Eisenhower Expressway (Congress Parkway) for more than $32.50 per square foot.

In response to questions about the income approach, the appraiser indicated the income approach was not employed in the final value conclusion but it was part of the process to get to that value conclusion. Renzi acknowledged the map within the appraisal indicating the locations of his comparables was inaccurate.

Further cross-examination of the witness revealed the subject sold more than three and one-half years after the 2004 date of value.

During re-direct examination, the witness explained the differences between a summary appraisal, which was submitted into evidence for the subject, and a self-contained report. Pointing out that the summary report is a summary of the information utilized to conclude value and does not contain all the information of a self-contained report. He indicated that the vast majority of clients utilize the summary report.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's 2003 and 2004 final total assessments of $1,044,831 were disclosed. This assessment reflects a fair market value of $2,749,555 when the Cook County Real Property Assessment Ordinance level of assessments of 38% for Class 5a property, such as the subject, is applied. The subject's assessment equates to $45.83 per square foot of building area or approximately $14,704 per parking space. In addition a memorandum and sale summary reporting sheets for seven properties from *CoStar Comps* were proffered. These properties sold from July 2001 to October 2005 for prices ranging from $7,250,000 to $90,500,000. All of the properties are located either within Chicago's central business district (Loop) or north of the Loop. In addition to parking facilities, all appear to contain retail and/or office space and some of the board's comparables are sales of parts of larger facilities. The memorandum's author, Jeffrey M. Hortsch, suggested an analysis indicated the comparables had an unadjusted sales price range from $29,000 to $78,696 per parking space. Hortsch did not appear at the hearing to explain the similarities and/or differences between the comparables and the subject; the methodologies utilized to arrive at the range per parking space; or to be meaningfully cross-examined by the appellant's counsel and the Property Tax Appeal Board. Based on the foregoing the board of review requested confirmation of the subject's current assessment.

Next, the intervenor presented a summary appraisal report and the testimony of its author Kevin A. Byrnes of Byrnes, Houlihan & Walsh, LLC, Chicago. Byrnes testified he is a State of Illinois certified general appraiser and has been in practice for approximately 18 years. After a brief description of his credentials, Byrnes was accepted as an expert witness.

Byrnes testified the scope of his assignment was to appraise the subject property for ad valorem tax purposes. He testified he personally inspected the exterior areas of the subject and the subject was appraised as fee simple. He also testified that he prepared a summary appraisal report and this type of appraisal is common in the appraisal profession. The appraiser's opinion of the subject's highest and best use as improved is its current use and as vacant would be for mixed commercial-residential use. The appraiser testified that in estimating a fair market value for the subject of $2,800,000 as of January 1, 2004, he utilized the cost and the sales comparison approaches to value.

The first technique employed by the appraiser was the cost approach to value. The sales of seven properties were used to estimate the subject's land value. Four of these properties were also utilized by the appellant's appraiser. The properties range in size from 12,000 to 62,291 square feet of land area; were sold from September 2000 to August 2005 for prices ranging from $1,250,000 to $10,135,000, for from $102.46 to $293.70 per square foot. One of the properties was improved at the time of sale; one was a parking lot; and the remaining parcels were vacant. One of the vacant properties was an assemblage of parcels, which were acquired by a realty company and resold the same day; the realty company retained a right of first refusal. That same property was sold again in 2005 and the realty company quitclaimed its right of first refusal to the purchaser. The comparables' sale prices were adjusted for market conditions, location, size, zoning, and other applicable items.

Byrnes estimated that the subject's market value would be $180.00 per square foot of land area, or $2,700,000, slightly above the weighted average of the comparables.

In testimony, the appraiser discussed the floor area ratios (FAR) of his land comparables. FAR, he explained, is the ratio of floor area to a parcel's square footage; i.e. if the subject has a FAR of 12 the owner can develop a structure 12 times the gross land area. Byrnes described his sales comparables six and seven as paired sales illustrating the appreciation in values from 2000 to 2005 in the subject's general area.

In estimating the value of the improvements under the cost approach Byrnes used replacement cost new from the *Marshall Valuation Service* for Class B average quality parking structure of $41.00 per square foot of floor area. Multiplying the subject's 15,000 square feet of land square footage by $41.00 per square foot resulted in a cost new estimate of $615,000. The appraiser then added $8,610 for financing costs; $50,000 for real estate taxes during construction; and 10% or $67,361 for entrepreneurial profit, which includes other direct and indirect costs. These computations resulted in a total of $740,000, rounded, as a replacement cost new for the subject's improvement. Byrnes estimated the subject suffered 88% depreciation based on an economic life of 50 years and an effective age of 44 years. Deducting $654,200 for the depreciation resulted in an estimated depreciated value for the subject's improvement of $88,000. The estimated depreciated improvement value was added to the estimated land value to arrive at a market value through the cost approach for the subject of $2,790,000, rounded.

Byrnes analyzed five sales in the sales comparison approach to value. The properties are all located north of Congress Parkway in Chicago's central business area. The sales occurred from May 1998 to April 2005 for prices ranging from $2,200,000 to $12,000,000. The comparables range in age from 18 to 45 years; in size from 23,000 to 90,000 square feet of building area; and contain from 260 to 250 parking spaces. The sale prices ranged from $56.76 to $158.35 per square foot of building area or from $9,333 to $55,814 per parking space. Byrnes testified that three of the five comparables contain retail/commercial space and one of the sales was a tax deferred sale. After adjusting the sales for conditions of sale, market conditions, location, size and other pertinent factors, the appraiser opined that a unit value of $15,000 per parking space for the subject was reasonable. The witness testified that he did not make any specific adjustments for retail space within the comparables. Therefore the appraiser's estimated market value for the subject through the sales comparison approach was $2,800,000, rounded.

Brynes testified that both the cost approach and the sales comparison approach were given substantial consideration when reaching a final conclusion of value for the subject. His final opinion of the subject's market value as of January 1, 2004, was $2,800,000, rounded.

During cross-examination by the Hearing Officer, the witness discussed the 2000 sale of comparable six of his land sales. The witness testified a developer assembled several parcels packaged them and sold them as a unit the same day. The purchaser then sold the assembled parcels in 2005.

Byrnes was questioned about parking rates and he testified that the daily parking rates for the subject might be 50% to 60% lower than the comparables located north of Congress Parkway. In addition, he testified that he did not recall if any of his sales comparables were offered on the open market. After viewing *CoStar Comps* sale summary sheets for his sales comparables (Appellant's Exhibits #10 through #14,) the witness testified that four of the comparables were not offered on the open market at the time of sale. The witness further acknowledged that the text under market conditions of the land sales in the appraisal there was a typo. In addition, the witness viewed *CoStar Comps* sale summary sheets for his land sales (Appellant's Exhibits #2 through #9) and testified that he did not know if these properties were offered on the open market.

In closing, the appellant's counsel requested that the Board find $1,800,000 as a fair market value for the subject; counsel for the board of review, argued that the appellant's appraisal was flawed because it did not address all three traditional approaches to value properly; and the intervenor argued the subject's assessment should be reflective of Byrnes testimony and appraisal or a fair market value of $2,800,000.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of this appeal. The issue before the Property Tax Appeal Board is the determination of the subject's market value for ad valorem tax purposes.

When market value is the basis of the appeal, the value of the subject property must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. (86 Ill.Adm.Code §1910.65(c)).

The Property Tax Appeal Board finds that both appraisers' conclusions were similar with respect to the subject's highest and best use as vacant. As improved, Renzi concluded the subject's highest and best use is for demolition and redevelopment. Conversely, Byrnes concluded the subject's highest and best use as improved is its continued use as a parking facility, for the near future. Testimony also indicated that as of the hearing date the subject was still utilized as a parking facility.

The Property Tax Board finds that both appraisers agree the subject's value is primarily associated with the land value with the improvement having no or little value. The appellant's appraiser did not develop a cost approach to value but did estimate the land value to be $135.00

per square foot or $2,025,000. Under the cost approach Byrnes estimated the subject land value to be $180.00 per square foot of land area, slightly above the weighted average of his comparables. The sales of eight properties were presented in the two appraisals. The Board places the most weight on the four sale properties that were analyzed by both appraisers. In its analysis, the Board will refer to these four properties number one through four. The Board places little weight on sale property number four as approximately quadruple the size of the subject. Testimony and evidence revealed that sale property number three was sold in September 2000 for a price of $137.75 per square foot of land area and again in August 2005 for a price of $293.70 per square foot of land area. Sale comparable one and two sold August 2001 and March 2004 for prices of $107.07 and $111.19 per square foot of land, respectively. The Board finds that sales comparables one through three are the most similar to the subject in terms of proximity to the subject, size, and zoning. The properties found the most similar to the subject were sold from September 2000 to March 2004 for prices ranging from $102.46 to $137.75 per square foot of land area. The Board also finds that the second sale of sale comparable number three in August 2005 for a price of $293.70 per square foot of land area illustrates the appreciation in values from 2000 to 2005 in the subject's general area. In light of the appreciation in land values, the Board finds the sales of the three properties found most similar to the subject support Byrnes' estimate of a value for the subject's land of $180.00 per square foot of land area or $2,700,000.

Renzi developed an income approach using the subject's actual income to demonstrate the subject's improvement contributes no value to the subject and that the subject is worth more vacant than as currently improved. The Board gives this little weight finding the appellant's appraiser should have used market derived income and expenses rather than income and expenses associated with the subject's business operations.

In the sales comparison approach Byrnes testified all of the sales analyzed are located north of the Congress Parkway which is considered a superior location. Byrnes testified that three of the five comparables contain retail/commercial space. The Board finds the photographs contained in the Byrnes appraisal clearly show four of the five contain commercial space. Byrnes testified adjustments were not made for that retail/commercial space. Further, during cross-examination he agreed that four of the five comparables were not offered on the open market. In addition, he testified that the parking rates for his comparables are probably 50% to 60% higher than the subject's rates. Further, the Board finds that these sales demonstrate the subject's assessment is not excessive due to the fact these superior properties have unit prices greater on both a per square foot basis and for the most part on a per parking space basis.

After hearing the testimony considering the evidence, the Property Tax Appeal Board finds that the land sales and the improved sales in the record demonstrate that the subject's assessments are reflective of the property's market value as of January 1, 2003 and January 1, 2004. Therefore, the Property Tax Appeal Board finds that no reduction in the assessment of the subject property is warranted for either of the assessment years in question.

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| **APPELLANT:** | **Countryside Plaza – Tri-Land Properties, Inc.** |
| **DOCKET NUMBER:** | **04-02340.001-C-3 & 05-01736.001-C-3** |
| **DATE DECIDED:** | **November, 2008** |
| **COUNTY:** | **Kendall** |
| **RESULT:** | **No Change** |

The Property Tax Appeal Board conducted a consolidated hearing involving the 2004 and 2005 appeals under Docket Nos. 04-02340.001-C-3 and 05-01736.001-C-3. Due to the commonality of the appeals, the Property Tax Appeal Board will issue a consolidated decision for these appeals in accordance with the Official Rules of the Property Tax Appeal Board, Section 1910.78 (86 Ill.Admin. Code, Sec. 1910.78).

The subject property consists of an irregularly shaped 18.2± acre (792,792 square foot) parcel at the intersection of State Route 47 (to the east) and U.S. Route 34 (to the south) in Yorkville, Bristol Township, Kendall County, Illinois. The site has no direct access from either highway or from the outlots along those routes. The outlots also create somewhat limited visibility of the site from those highways. The subject property is accessed from parkways on the north and west; each of the parkways meet at signaled intersections to one of the surrounding highways. The property has been improved with a retail/office center built in 1972, commonly known as Countryside Shopping Center, consisting of three one-story retail buildings and a one-story cinema building. Property record cards for the subject property were not filed by the board of review, but the board of review included a reference in a letter to the center having 158,000 square feet of improvements. The improvements were demolished in mid-2006.

The appellant appeared before the Property Tax Appeal Board through counsel contending overvaluation as the basis of the appeal. In support of this argument, appellant submitted a narrative appraisal of the subject property estimating a market value of $3,965,000 or $5.00 per square foot of land area as of January 1, 2004. As set forth in that appraisal, appellant argued the subject property suffered from significant economic and functional obsolescence, noting more specifically that this property was the subject of a tax increment financing (TIF) district. On the basis of this evidence, appellant requested the subject's assessment be reduced to reflect the subject's appraised value for both 2004 and 2005, or a total assessment not exceeding $1,323,914 for 2004 and $1,327,482 for 2005 using Kendall County's 2004 and 2005 three-year median level of assessments of 33.39% and 33.48%, respectively. The board of review contends the subject property is fairly and accurately assessed at $1,815,204 reflecting an estimated market value for 2004 and 2005 of roughly $5,445,612 or $6.87 per square foot of land area.[2]

Appellant called the Kendall County Chief County Assessment Officer, David E. Thompson, as its first witness under procedures for calling an adverse witness (86 Ill.Admin. Code Sec. 1910.90(j)). Among other things, Thompson explained that application of an equalization factor, whether positive or negative, is utilized by the Chief County Assessment Officer after examining sales data; the factor is applied in order to attempt to bring all property to 33 1/3% of fair market value. The equalization factor is derived from examination of sales data for the county which

[2] The improvements on the property had a nominal assessment of $200,000.

has been entered into the county's computer, sales ratio studies as provided by the Illinois Department of Revenue, and consideration of the previous year's assessed values. To the extent possible, accuracy is checked when entering sales data in the computer by Thompson's staff.

The record in this appeal also contains "Board of Review Notes on Appeal" wherein the subject's final assessment was disclosed (Board of Review Ex. 1). In the course of this adverse examination, Thompson acknowledged he gathered the data which was presented on behalf of the board of review in response to the instant appeals. The witness was questioned about the evidence submitted. Vacant land comparable Sale #1, consisting of 3.94 acres, sold in January 2005 for $6.73 per square foot of land, but this sale was not included in the Illinois Department of Revenue Sales Ratio Study nor was it denoted as a "good sale" for purposes of a sales ratio study on the computer records of the county. Through an underlying deed, it was established that comparable land Sale #1 was segmented, or taken as a portion from another parcel identification number, which would be one reason it might not be utilized in a sales ratio study according to Thompson. He further testified that his staff determines inclusion and exclusion of sales from the sales ratio study based upon criteria provided by the Illinois Department of Revenue.

As to vacant land comparable Sale #2 presented by the board of review, appellant through adverse questioning of Thompson established that this sale was not included in the Illinois Department of Revenue's sales ratio study data either and the coding on the property record card indicated there was an improvement on the parcel which was not correct according to Thompson. Additionally, the records indicate this vacant parcel of 1.26 acres was also segmented and admittedly substantially smaller than the subject property. Thompson reiterated that the record card is for a 2005-2006 value, but the sale presented by the board of review was from 2002.

Upon further adverse examination concerning board of review comparable land Sale #3, Thompson acknowledged that the property record card submitted also reflected an improvement on the property, although Thompson reiterated that as of the sale date in 2003 the property was vacant. The reference to a sales ratio of 12.53% on this property meant the sale was extremely undervalued in relation to its sale price. (TR. 32) At about 4.0 acres, this sale comparable was admittedly substantially smaller than the subject property.

Appellant further established through Thompson that comparable land Sale #4 presented by the board of review was also segmented. Upon examination of the underlying deed for this sale, Thompson testified that new parcel identification numbers are created when segmentation occurs and that Thompson, with his experience, can tell this by examination of the documents submitted in support of the board of review's notes on appeal.

With regard to finding suitable sales to compare to the subject parcel, Thompson noted that farmland would not be a suitable comparable in his opinion, although the size of the property might be more similar to the subject. Thompson further acknowledged that general appraisal rules suggest that per unit values increase as size decreases, all other factors being equal, which would be applicable to the subject parcel as well.

Thompson was further adversely examined with regard to a three-page letter he had written and filed with board of review's evidentiary submission. In describing the subject property in that

letter, Thompson noted the shopping center began to show a decline in usage in the 1990's; admittedly a decline in usage can be associated with more vacancy and lower rents. However, by decline in usage, Thompson testified he meant less foot traffic to this center as other commercial ventures entered the market. Thompson wrote with regard to the center's decline in usage:

> This was brought upon by the rapid growth being experienced throughout Kendall County. New and more modern facilities provided more types of retail outlets closer to the major growth areas and at a much more competitive level.

During his adverse examination, Thompson refused to characterize the foregoing observation as indicators of functional and/or economic obsolescence. Although he did admit that economic obsolescence is defined as the loss in value from outside the subject property and in some cases the existence of new and more modern facilities would be considered a form of economic obsolescence.

Thompson further testified that he attempted to estimate a value for assessment purposes as of January 1, 2004, but he did not do an appraisal although he is an appraiser and familiar with the three traditional approaches to value and how those are to be reconciled in an appraisal. Thompson testified that the county examined the most recent sale of the subject as being the best indicator of value as outlined in guidelines provided by the Illinois Department of Revenue. (TR. 54) In this regard, Thompson's cover letter referenced sales of the subject property in 2002 for $5 million with nearly 100% occupancy and a sale in 2005 for $7 million with less than 15% occupancy. When questioned as to whether he arrived at a market value, Thompson responded that for the subject property he arrived at a sale price conclusion of value. (TR. 57) No further testimony was elicited on this point.

Examination then turned to the witness' familiarity with an Eligibility Study commissioned by the city of Yorkville with regard to the subject property for tax increment financing (TIF) purposes. While a TIF was passed for the subject property which included a finding of elements of blight present, Thompson's cover letter stated:

> While the Board [of Review] understands the City of Yorkville must do what it can to attract new businesses, it sees little evidence of a blighted condition in the immediate area of the subject as evidenced by the sales they have submitted.

Turning back to the evidence submitted in response to the appeal, Thompson acknowledged that Improved Sale Comparable #1 concerns a car wash facility located on a 67,725 square foot parcel. Improved Sale Comparable #2, a restaurant facility, was purchased by an adjoining gas station.

Upon cross-examination by the State's Attorney, Thompson testified that there were no comparable properties similar in land size, location and type of improvement to the subject property available for presentation. There were, however, larger vacant parcels of land similar in location that were sold for commercial development.

As to the sales prices of the subject property, Thompson indicated on cross-examination that he learned that information from the sales declaration sheets filed with the County Clerk. Thompson testified that as of the 2004 and 2005 assessment dates at issue in this proceeding, the buildings on the subject property were still standing and had not been condemned or demolished.

On re-direct examination, Thompson stated that he did not present sales of larger vacant parcels which were similar in location to the subject because those sales were "past the date of the effective date of this assessment appeal." He further stated those sales were not relevant at the time to this appeal. Then Thompson opined that the sales had not closed at the time the evidence was filed, or if they had closed, the evidence had already been filed by the board of review. Thompson concluded that if the evidence had been open, he would have submitted those sales. Thompson acknowledged that two vacant land sales located near the subject property sold in April 2001 and in early 2005; they contain about 19 and 45 acres, respectively. The record reveals that for the 2004 appeal filing, the board of review postmarked its evidence on May 30, 2006. In the 2005 appeal, the board of review's evidence was postmarked on October 24, 2006.

Upon questioning by the Hearing Officer, Thompson testified that the sale of the subject property in 2005 for $7 million was not a portfolio sale; however, in later testimony, Thompson indicated he did not know if the $7 million sale was the same parcel(s) as were offered for $4.7 million.

Furthermore in response to the Hearing Officer, Thompson explained that vacant land Sale #4 with a sale date in January 2006 was chosen due to location, despite the fact that the sale occurred after the assessment dates at issue.

The next witness called by the appellant was Michael S. MaRous, a real estate appraiser and consultant licensed in the State of Illinois who is also president of MaRous & Company of Park Ridge, Illinois. The firm, which MaRous founded in 1980, specializes in real estate valuation, real estate consultation, and real estate land use issues. MaRous has been employed in real estate appraisal work since May 1976, having appraised over 8,000 properties with a total estimated value in excess of $10 billion in over 25 states, notably having appraised over 1,000 retail properties.

MaRous has held the Member of the Appraisal Institute (MAI) designation for about 27 years and the Society of Real Estate Appraisers (SREA) designation since 1979. Additionally, MaRous was invited to membership in the Counselors of Real Estate (CRE) for real estate consulting roughly eight or nine years ago. He also has held various positions with the Appraisal Institute and other like organizations and has spoken to various groups and published several articles. MaRous also testified that in the past six years he has performed appraisal work specifically for the Kendall County Board of Review and appraisals for other clients in Kendall County. Lastly, evidence was elicited that MaRous had experience with tax increment financing (TIF) arrangements from both the municipality's perspective as having been mayor for several years of the Illinois community of Park Ridge and from the developer's perspective as an investor.

MaRous prepared the instant appraisal (Appellant's Ex. 5) along with field appraiser Barbara Ricken which estimated a fair market value for the subject as of January 1, 2004 of $3,965,000.

MaRous opined that the value as of January 1, 2005 would be similar. He took responsibility for the entire report and testified that he inspected the property on numerous occasions and up to the date of the hearing. Despite this testimony, the appraisal report on pages 13-14 specifies co-worker Ricken conducted an inspection on January 26, 2006 and MaRous inspected the subject on February 1, 2006. The stated purpose of the appraisal is two-fold: (1) to assist the owner in determining at what price the property would sell if properly exposed for sale in the open market and (2) for possible *ad valorem* taxation purposes. (Appellant's Ex. 5, p. 13)

Upon questioning, MaRous testified that a TIF is adopted to remove blight, upgrade facilities and stimulate economic development; TIF financing is used for subsidies to help achieve redevelopment. He described the steps in achieving a TIF: (1) an Eligibility Study is performed which considers eighteen factors to ascertain if the property meets established criteria; (2) a Joint Review Board is established of the affected taxing districts and public hearings are held before this board votes for or against the TIF; and (3) as the last step, assuming a positive vote was had, the matter goes before the municipal elected officials (city council, etc.) and further public hearings are conducted after which the municipal officials either vote for or against the creation of the TIF by ordinance. The parties then typically negotiate a Redevelopment Agreement and can either structure it through the issuance of bonds or "pay-as-you-go." In some situations, a developer's incentive is also negotiated.

Without objection, the witness was qualified as requested as an expert in the field of appraising real estate in general, in appraising shopping centers, and as an expert in TIF properties.

In terms of market area, MaRous noted the Yorkville area is currently in the path of Chicago suburban development and as a result, the community has been changing with the introduction of large retailers along with expanded residential development and away from an agricultural community with locally owned retailers. Thus, while the subject property is in a prime location at the junction of two major arterial east-west and north-south roads, the property has no direct access from either of those roads and is somewhat blocked out by development on the outlots; MaRous testified there is 891 feet of frontage on Route 47,[3] but no curb cuts or access. Moreover, the subject's improvements are obsolete office/retail buildings and an obsolete theater with very high vacancy as of the date of value with a total building area of 157,820 square feet. MaRous testified the improvements were razed around mid-April 2006.

MaRous opined that the fact that new and more modern facilities in the area provided more types of retail outlets closer to the major growth areas and at a much more competitive level than the subject property was a form of economic obsolescence. He described such obsolescence as factors outside the subject property which generally have a negative impact on the property's value.

On the other hand, he described physical depreciation as wear and tear, from buckling or cracked parking surfaces to leaky roofs or poorly sealed windows, water damage, worn carpet, and/or an insufficient cooling system. MaRous described the subject improvements as being in average condition consistent with 32-year-old buildings; they were not derelict such as caved-in ceilings and/or broken out windows.

[3] Page 2 of the report indicates the property has 589.06 feet of frontage on the west side of Route 47.

In testimony, MaRous analogized functional obsolescence to something that does not meet the market or keep up with modern times, such as gas stations now all are covered and self-serve.

MaRous found the subject property to be physically obsolete because it was 32-years-old or average; functionally obsolete because it did not work for the market from a retail standpoint being blocked out and not having easy access with no anchor store; and economically obsolete because of the growth and demand for modern facilities citing numerous large retailers that have come into the Yorkville area with related outlots.

For appraisal purposes, highest and best use is defined as the highest use to which a property can be put considering whether it is physically possible, legally permissible, financially feasible, and highest economic use to which the property can be put. As a result of MaRous' highest and best use analysis of the subject property as vacant, he found the property should be redeveloped with a larger retail use such as a retail big-box facility with a multi-tenant commercial building or buildings. As improved, MaRous found the existing improvements do not contribute any value to the land and the highest and best use is a commercial use in conformance with current zoning that is up to market standards in layout, design, and size. In other words, the improvements do not contribute adequate value to the land as compared to what the land as vacant would contribute.

As part of his appraisal process, MaRous examined the rent rolls, income and expenses of the property and found the occupancy rate to be a disastrous 55% in 2004; a thriving shopping center would have 95% to 100% occupancy and an economically viable one would have something over 80% occupancy. Even worse was the subject's approximate 15% occupancy rate in 2005, unless the owner was trying to vacate and redevelop the property (and avoid buying out leases). The appraisal report states by the end of 2005, the property was 100% vacant (Appellant's Ex. 5, p. 1). Furthermore, MaRous found the subject's income for 2004 and 2005 was negative without even considering depreciation or mortgage cost; about ($161,000) for 2004 and several hundred thousand dollars in 2005. He opined that based on the value estimate and a typical capitalization rate of 9%, the property would have to generate a net income of about $357,000 (Appellant's Ex. 5, p. 36).

MaRous testified that his review of the sale contract of the subject property impacted his determination as to an estimate of the fair market value of the subject property. The Uniform Standards of Professional Appraisal Practice (USPAP) require reporting and analyzing any sale transactions of the subject property occurring within 3 years and any current listings, pending sales, or options for the subject. (Appellant's Ex. 5, p. 15) The property had a last recorded sale of $5 million in July 2002 according to MaRous.

The appraisal report also acknowledges the existence of a contract dated August 16, 2004 for $7 million concerning the subject property. (Appellant's Ex. 5, p. 16) MaRous testified the contract included an unusual contract term allowing the buyer to get out of the contract for any reason and also provided for a 180-day due diligence period. The report at page 16 then continues:

> This long period of time was agreed upon to allow the necessary time to obtain the United City of Yorkville's consent and the passage and sale of a Tax

> Increment Financing (TIF) District subsidy. As of March 21, 2005, a $3,000,000 bond issue from the City of Yorkville was deposited into an escrow account and the City's obligation to issue a Note to the Development (subject to procuring an anchor tenant) for an additional $2,200,000 was recorded. The acquisition of the shopping center was contingent upon obtaining the TIF subsidy; when received, all but $500,000 of the TIF subsidy will be designated for demolition cost reimbursement and the remainder of the TIF funds will be used to reduce the land acquisition basis from the purchase price of $7,000,000. In our opinion, this is not considered to be a conventional arm's length transaction.
>
> The TIF subsidy from the City of Yorkville amounts to approximately $5,200,000; under Illinois TIF law, subsidy funds are usable for reimbursement of acquisition, renovation, demolition, and infrastructure (site improvement) costs. The TIF subsidy (under Illinois law) cannot be used for new building construction costs. A portion of the bond proceeds held in escrow ($500,000) are to be released when the shopping center is demolished. The balance of the proceeds ($2,500,000) and issuance of the Developer Note ($2,200,000) is to occur when a lease is signed or a sale is closed for a portion of the Property with an "anchor" retailer that will operate a store of at least 60,000 square feet and the property owner gives a firm commitment to the City to construct an additional 25,000 square feet of new retail space at the property or when a lease is signed or a sale is closed for a portion of the Property with an "anchor" retailer that will operate a store of at least 80,000 square feet. Under the terms of the Redevelopment Agreement, if a Vesting Event does not occur by March 7, 2008, the property owner will not be entitled to receive the $2,500,000 payment.

MaRous further testified that analyzing the relationship of a sale price with a TIF developer's incentive versus a sale price without such an incentive is very complex. Depending upon the facts, if there is significant assistance or bond assistance, the sale price generally reflects a higher value than a property without the TIF assistance.

MaRous was asked to discuss the 2002 and 2005 sale prices of the subject in light of the decreasing occupancy rates from 2002 to 2005. He testified that to understand these transactions despite this reduced tenancy, the parties to the transaction(s) would have to be interviewed and contracts analyzed to ascertain if there are extraordinary situations impacting the situation. MaRous did not indicate that he engaged in interviews and analysis of the contracts. He opined, however, that the differences in sale prices could be things such as a partial interest sale, assemblage, purchase by government for condemnation, an unknowledgeable buyer, although at $7 million most buyers are knowledgeable, significant participation through a business redevelopment agreement or TIF assistance. With regard to the subject property, there was TIF assistance; an Eligibility Study dated September 17, 2004 was performed (Appellant's Ex. 6) finding five of the thirteen statutorily necessary blighted area factors. After the TIF processes were concluded by the appropriate entities, the parties entered into a Redevelopment Agreement regarding the subject property dated March 8, 2005 (Appellant's Ex. 7).

From this data, MaRous opined that while the $7 million purchase price did not reflect market value, deducting $5.2 million of TIF incentives ($3 million bond issue + $2.2 million incentive)

would also not reflect market value as some money was based on performance and taking risk, obtaining an anchor tenant, and construction of an 80,000 square foot building, but a significant portion of the $5.2 million was directly attributable to the as-is value of the land. In summary with regard to the subject's sale price of $7 million, MaRous found this was not a typical arm's-length transaction with a conventional due diligence period and conventional contingencies, but it was instead a complex financial transaction. Although the appraisal report was dated February 20, 2006, there was no acknowledgement in the report of the Real Estate Transfer Declaration reflecting the sale of the subject for $7 million as of April 2005.

In preparing his appraisal report, MaRous began with consideration of the three traditional approaches to value. Due to the obsolescence of the improvements, he did not feel that a cost approach to value was appropriate. Had the income of the subject property been sufficient to attract an investor, he could have performed an income approach to value. Given MaRous' conclusion that the highest and best use was as vacant with the improvements being demolished, the sales comparison approach was the only approach deemed to be germane to estimate the value of the subject; moreover, the income approach reflected net losses and the cost approach was not appropriate given the age of the improvements. The sale comparison approach was performed through market research and consideration of similar trends in similar situations and locations, preferably finding four comparables in the immediate area of similar size and similar characteristics as the subject.

In the sales comparison or market approach to value utilized for this report to arrive at a vacant land value estimate of the subject property, MaRous set forth six vacant land sales, two of which were related, and two pending sales or sales under contract. One land sale was in Yorkville and the remaining sales were in Sugar Grove and the Aurora areas of Kane County, Illinois. The properties ranged in size from 19 acres to 80.18 acres and sold between April 2001 and January 2005 for prices ranging from $1,251,500 to $9,982,000 or from $1.08 to $4.87 per square foot of land area. The pending sales were located in Oswego and Yorkville, respectively, for properties of 22 and 45 acres each with prices (one of which was estimated) of $3,833,280 and $6,125,000 or $3.12 and $4.00 per square foot of land area.

The appraisal report discussed adjustments made to the sales data from pages 51 – 53. MaRous testified that Sale #1 was inferior to the subject due to the lack of development in its location, but also required a downward adjustment due to its greater size than the subject. Sale #2 involved a larger property that has the ability to sell off the outlots which may sell for two or three times the original purchase price; while the subject no longer has outlots available. MaRous testified that Sale #3 involves an inferior location compared to the subject. Sales #4A & #4B were part of the same transaction, the average sale price of the two properties was about $1.60 per square foot of land area; the location of these parcels is significantly superior to the subject, but a significant upward adjustment was also necessary due to some hydrology and wetlands that had to be addressed; an upward adjustment for time was necessary for these sales and adjustments for size as compared to the subject. Sale #5, located kitty-corner from the subject, while similar in size, required upward adjustments for time; also, this property had available outlots and much better road access. Pending Sale #6, similar in size to the subject and in a community similar to Yorkville, was given less reliance because the contract for sale was executed after the date of value. Pending Sale #7, west of the subject and along Route 34, involves property for which

MaRous engaged in negotiations on behalf of the owner(s) consisting of 45 acres from a 150-acre parcel.

Based on the sales, MaRous testified that the range of unit prices was $1.46 to $4.87 per square foot of land area[4]; given the subject's excellent general location, even without direct access from either of the two major highways and only limited frontage on one of the major highways, MaRous concluded an estimated market value of $5.00 per square foot of land area for the subject. With a site area of 792,792 square feet, MaRous concluded an estimated market value as of January 1, 2004 of $3,965,000, rounded, by the sales comparison approach to value. An additional notation was made that demolition costs were estimated to be $500,000, according to the appellant's confidential private placement memorandum dated June 1, 2005, which costs were to be paid out of the TIF proceeds. In light of the reimbursement, the appraisal made no consideration for demolition, because while accounting for the demolition cost would have reduced the value estimate, since it was also paid for by the TIF MaRous did not want to "double count" it. The appraisal further noted consideration was given to the facts that a majority of the comparables were zoned for a less intense use at the time of sale and sales were contingent upon rezoning to a more intense use (Appellant's Ex. 5, p. 51). In testimony MaRous indicated the actual demolition costs of the subject's improvements were between $350,000 and $360,000.

With regard to the sale evidence submitted by the board of review in this matter, MaRous reviewed the data and commented upon it (see also Appellant's Ex. 8). MaRous noted board of review vacant land Sale #1 is a retangular, significantly smaller, corner backlot of a larger commercial parcel with more frontage than the subject; MaRous found this property to have a different highest and best use and lacking in comparability due to its size. The property is a back outlot of a larger development; not a prime outlot. It sold for about $6.73 per square foot of land area. Board of review land Sale #2 is a small outlot of a shopping center with no direct arterial access; as a general rule, outlots tend to sell for significantly more money on a per-square-foot basis than a large lot, with prime outlots commanding from $15 to $20 per square foot versus the large lot price of $2 to $5 per square foot. This particular property sold for $13.66 per square foot of land area. Likewise, MaRous described board of review land Sale #3 as a prime outlot at the intersection of the two arterials, like the subject, but with direct access and additional access via an adjoining shopping center; it is a prime outlot, not a large parcel. This parcel sold for $11.48 per square foot of land area. As to board of review land Sale #4, MaRous found it lacked similarity due to its size. Improved Sale #1 was a carwash and an outlot of a larger shopping center; MaRous failed to see how it was comparable to the subject. Likewise, board of review Improved Sale #2, a restaurant with direct access to one of the arterials, was not comparable to the subject.

Under cross-examination, the board of review established that the stated street address of the subject property was erroneous in MaRous' appraisal report.[5] MaRous testified that he appraised the subject property and not some other facility.

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[4] On page 51 of the appraisal report, the analysis summarizes a land sales range of $1.08 to $4.87 per square foot.

[5] The same erroneous address of 1107A S. Bridge Street, Yorkville, is set forth in the appellant's 2004 and 2005 Commercial Appeal forms filed with the Property Tax Appeal Board and also on the Board of Review – Notes on Appeal filed in 2004. Both the computer screen printout of the subject filed as part of the board of review's evidence and the 2005 Board of Review – Notes on Appeal have the property address as 509 Countryside Center, Yorkville.

With regard to the 2002 sale of the subject for $5 million, MaRous stated he was not aware of the occupancy rate(s) at the time of that sale involving a mix of office and secondary retail with the movie theater still perhaps operating, but he understood the buildings to be in average condition. MaRous admits there was no development agreement or TIF district established as of the 2002 sale of the subject property; furthermore MaRous did not interview the participants in detail or review the contract for the 2002 sale of the subject. MaRous had no reason to believe or any special conditions to suggest that the 2002 sale was not an arm's-length transaction. MaRous then acknowledged that he considered the 2002 sale price, but then considered the fact that the area had significantly changed from mid-2002 until January 2004 with a major push for redevelopment and modern retail which caused more obsolescence for the subject. MaRous acknowledged that in general values were increasing from 2002 to 2004/2005 in this area.

As to the sales comparables in his appraisal, MaRous acknowledged that most of the sales were larger properties than the subject. Sale #1 in the appraisal, located about 6 to 8 miles to the north of the subject, was unimproved farmland with utilities nearby, but not on the property; access to the property from Route 47 was undetermined at the time of sale and subject to negotiation with the Illinois Department of Transportation (IDOT). Sale #2 was an agricultural parcel for which some discussions with IDOT had occurred, but no specific plans or permits for road access were in place prior to sale. Again, utilities were nearby, but not developed on the parcel. Furthermore, while MaRous did not have the specifics, it was very possible that there were some special tax incentives associated with Sale #2 which would have increased the unit sales price paid. Sale #3 considered by MaRous was not directly on a major arterial road and was agricultural land without any known access authorized by IDOT and without incentive agreements for development. As to his Sales #4A and #4B which were acquired for development of an outlet mall, MaRous acknowledged on cross-examination that these properties had visibility from and access near to Interstate 88; additional access directly to the property would need to be negotiated with IDOT and MaRous believed that some type of governmental incentive agreement was in place for development of these properties which would have inflated the overall price and lead to the need for a downward adjustment of the sales price. Lastly, these parcels were located closer to metropolitan Chicago than the subject property. As to Sale #5 located near the subject, at the time of purchase utilities were located nearby, but as an undeveloped parcel hook-ups would be necessary and discussions with IDOT along with a plan for access would need to be negotiated after purchase. As to Pending Sale #6, MaRous acknowledged there was an incentive agreement in place prior to purchase. There was no such incentive involved in Pending Sale #7, but there was an agreement with the municipality prior to close on that sale with regard to a roadway extension.

MaRous characterized the subject parcel as unique in its size and location at a critical intersection of two highways, even with limited direct access. In addressing adjustments to sales comparables, MaRous testified, "Our profession is an art, not a science." In this regard, he noted that there can be some difference of opinion on adjustment and he further acknowledged that the subject property could petition IDOT for direct access along its frontage with Route 47.

On cross-examination, MaRous indicated that he discussed the developer's intent with regard to the subject property and learned they intended to take advantage of area growth, but to only purchase the property with significant economic assistance and incentive from Yorkville. Then,

the developer intended to raze the facility and attempt to get one or two "big box" stores in the parcel with smaller in-line shop space and build a new modern facility. Prior to purchase, the developer had done preliminary feelers in the market and felt there was enough interest in Yorkville by large to mid-sized retailers to suggest growth was possible. As far as MaRous was aware, the previous owner continued to attempt to lease the subject property from 2002 until 2005.

As to the 2002 sale price of $5 million, MaRous admitted the price reflected the value of the property as an office/retail building in 2002 and that buyer's perception of the market. However, by 2005, the highest and best use of the property had changed according to MaRous. The level of investigation done by MaRous was questioned in terms of whether the sales comparables were adjusted for TIFs and/or redevelopment agreements, but MaRous was not aware of any for those properties.

As to the subject property's utility access, MaRous noted that while utilities may exist, in a situation where the buildings have been razed, the developer typically must remove and replace the thirty-year-old infrastructure.

Upon being cross-examined about the impact of access to the subject property from the main arterials, MaRous described a number of factors that go into desirability of a property including shape, access, visibility (or whether the property is blocked out from major roadways). He testified that an access road directly from a major road into the heart of a property is more desirable than "side-road" access like the subject property has. He noted the subject is even further blocked out by office building improvements on one of the side-streets that lead to the subject property.

On re-direct examination, MaRous stated he was unaware of any applications as of the dates of value at issue in this matter seeking to obtain additional access to the subject property from either arterial highway. MaRous testified as to a number of "big-box" retailers that have gone out of business since 1998 thereby reducing the number of big retailers who could lease a vacant space such as the subject property.

To questions posed by the Hearing Officer, MaRous stated the TIF study only confirmed his opinion of the need for redevelopment and the obsolescence, both functional and economic, of the subject property as improved. Furthermore, the existence of the TIF illustrated why the $7 million purchase price was not an arm's-length or traditional comparable which needed to have significant adjustment. The $7 million sale price influenced MaRous' estimate of fair market value to a higher figure in that both a developer and the municipality recognized the property was in a good location and both were willing to take significant risk and expend significant dollars to have the site redeveloped. Likewise, the redevelopment agreement essentially provided a gross discount of $5.2 million, therefore, as MaRous summarized the subject has a low end value of $1.8 million (after deducting the incentive) and a high end value of $7 million; however, this agreement was an "earn-out" and involved the construction of a building; there would be no deduction for land. Finally, as to the 2002 purchase price of $5 million, MaRous testified that price reflected the perception of market value at that time, but the market went the other way.

Based on the foregoing evidence of an appraisal setting forth an estimated fair market value for the subject property, appellant's counsel in closing argument reiterated that the subject property was overvalued. Counsel further argued, given the previous testimony, that a 55% occupancy rate in 2004 is not evidence of a viable shopping center. In summary, appellant asserted the 2002 sale price was not relevant to the property's value as of January 1, 2004. Moreover, counsel argued that the existence of the TIF with regard to the subject affects how the $7 million sales price should be treated. In other words, a TIF district would not have been granted by the municipality if, in fact, the subject property was not blighted, obsolete, and/or deteriorating. Additionally, the purchase of the property was contingent on the approval of the TIF and also allowed the buyer an open-ended exit clause. Likewise, the execution of a redevelopment agreement with significant requirements, but also significant financial incentives, was executed prior to the $7 million sale of the subject property. In closing argument, counsel for appellant cited People of the State of New York, ex rel. Empire State Building Corp. v. Boyland, 135 N.Y.Supp.2d 764 (1954) and Reynolds v. Coleman, 173 Ill.App.3d 585 (1988) for the proposition that in a complex transaction not every sale of a property reflects fair market value.

Pursuant to Section 1910.67(h)(1)(D) of the Official Rules of the Property Tax Appeal Board, the Hearing Officer required the production of the Illinois Real Estate Transfer Declarations relevant to the 2002 and 2005 sales of the subject property. Those documents were produced and marked before the close of the hearing.

Property Tax Appeal Board Ex. No. 2 concerns the July 2002 sale and confirms the $5 million purchase price. The primary intended use is described therein as:

> Shopping center containing grocery store, travel service, clothing store, liquor store, book store, offices for doctor and others, gift store, dry cleaners, restaurant, County Health department offices, hardware store, video rental store, theater, card/gift shop, parking lots space.

This PTAX-203 form further indicates at Line 7 that the property was not advertised for sale, but on the required PTAX-203-A supplemental form in answer to Line 3 states the property was for sale on the market for 9 months. Moreover, this supplemental form reflects the property was approximately 92% occupied on the sale date of July 2002.

Property Tax Appeal Board Ex. No. 1 concerns the April 2005 sale and confirms the $7 million purchase price. The primary intended use is described as "Retail Shopping Center" and the supplemental PTAX-203-A form reflects the property to have been 6% occupied as of the date of sale.

The board of review filed its Notes on Appeal in each case reflecting total assessments for 2004 and 2005 of $1,815,204. For 2004, the assessment reflects an estimated market value of $5,436,370 or $6.86 per square foot of land area using the 2004 three-year median level of assessments of 33.39% as determined by the Illinois Department of Revenue. For 2005, the assessment reflects an estimated market value of $5,421,756 or $6.84 per square foot of land area using the 2005 three-year median level of assessments for Kendall County of 33.48%. In support of the assessments, the board of review submitted identical evidence in these two docket

numbers consisting of data sheets regarding what it described as four vacant land sales and two improved sales which it considered comparable to the subject.

The four vacant land sales presented by the board of review consist of parcels within less than one mile of the subject property which range in size from 1.26 to 4.0 acres in size. The parcels sold between February 2002 and January 2006 for prices ranging from $750,000 to $2,000,000 or from $6.72 to $13.66 per square foot of land area. Additionally the board of review presented data sheets on two improved sale comparables, a car wash and a restaurant. These parcels consisted of 56,400 and 67,725 square feet of land area, respectively, and had structures for which no size information was provided. These two improved properties each sold twice as reported in the board of review's data printouts. Improved Sale #1 sold in October 2002 and in November 2004 for sale prices of $750,000 and $1,500,000, respectively. Improved Sale #2 sold in January 2004 and December 2005 for sale prices of $726,000 and $1,600,000, respectively. On the basis of these sales comparisons, the board of review requested confirmation of the 2004 and 2005 assessments of the subject property.

At hearing, the board of review recalled David Thompson to the stand for testimony in its case-in-chief. Board of review Sale #3 was clarified to consist of two separate adjacent parcels totaling 4 acres with one sale price. Thompson further testified that the selling price of the four vacant land sales comparables and two improved sales comparables submitted by the board of review were important factors in the consideration of the value of the subject property.

For its closing argument made through State's Attorney Weis, the board of review argued that the 2002 sale price of the subject property for $5 million should be given considerable weight in determining the subject's fair market value as it reflects what the market will bear. Moreover, according to the State's Attorney the 2005 sale price for $7 million should bear heavily in the determination of the property's fair market value. There was, however, no specific request by the board of review to increase the 2004 and/or 2005 assessments of the subject property. Weis argued the appellant's appraisal should be discounted because the appraiser failed to engage in an in-depth analysis to consider adjustments to the sales comparables for things such as TIFs and/or incentives related to those properties. However, counsel noted that the best comparable in the appraisal was Sale #5 located near the subject with similar lack of direct access, although it had a sale date of April 2001 and was a vacant farm field at the time of sale lacking the infrastructure already on the subject property.

After closing arguments, there was discussion and agreement by the parties that a large map used by the appraiser in testimony, but which had been taken back by the witness who was now gone, would be submitted after the hearing to the Property Tax Appeal Board. No submission of that map was made by appellant's counsel and a decision shall be rendered without that particular document.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record fails to support a reduction in the subject's assessment for either 2004 or 2005.

The appellant contends the market value of the subject property as reflected by the assessment is excessive. When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). The Board finds the evidence in the record does not support the appellant's claim of overvaluation.

Before analyzing the evidence, the Board makes some initial findings about the subject property. The Board finds, based on the uncontested testimony, that the subject's configuration, reduced visibility, and lack of direct access from two major arterial highways, has a negative impact on its value. Appellant's appraiser explained that the subject's layout does not provide for significant exposure and there is no ingress/egress at the one point of frontage on Illinois Route 47. The appraiser made a logical point that retail space prefers direct access and exposure on major arterial streets. No one disputed the testimony that the improvements on the subject property were mostly blocked from view from these two arterial highways by the surrounding outlot developments, which has a negative impact on the ability to lease the space. The Board also finds the subject property at the time of valuation was experiencing high vacancy due in part to the development of more modern and desirable retail space in nearby areas. Testimony from both the appraiser and the Chief County Assessment Official suggested that national retailers were more inclined to locate in these newer areas of development rather than at the subject property. The Board further finds that testimony indicated the improvements at the subject property were razed after the valuation dates at issue, which further indicates that the subject property was experiencing economic or functional problems with difficulty in finding and maintaining tenants to occupy the retail and office building space. This finding is further supported by the creation of the TIF district.

Appellant's appraiser estimated the subject property had a market value of $3,965,000 as of January 1, 2004 and was of the opinion that the value of the subject property as of January 1, 2005 had not changed significantly. This estimated market value did not include consideration of the anticipated cost of demolition of the improvements of $500,000 which were to be paid by the TIF and therefore the appraiser did not want to double deduct for demolition. The Property Tax Appeal Board finds the appraiser's analysis of the highest and best use of the subject property to be highly persuasive. The Board further finds this instant appeal hinges on the underpinnings of the highest and best use concept as determined by appellant's appraiser. Highest and best use is the reasonable and probable use that supports the highest present value as of the date of the appraisal. For improved properties, the highest and best use is determined for the site, both as if vacant and as if improved. Once a highest and best use has been determined, the use must meet four criteria:

1. Physically possible
2. Legally permissible
3. Financially feasible
4. Most productive

The Board finds the appellant's appraiser determined the subject's highest and best use was as vacant as for further retail development. The Board further finds the board of review supplied no

highest and best use analysis nor an alternate highest and best use analysis to refute the appraiser's analysis. With this framework in mind, the appraiser considered the three approaches to value, finding only the sales comparison approach to be valid under the facts and circumstances.

As to the appraisal, the Property Tax Appeal Board finds an important factor to be considered is the lack of investigation by the appraiser into the two sales of the subject property. As a consequence of this lack of investigation, the Board finds the appraisal prepared by MaRous lacks credibility as a valid indicator of the subject's fair market value at issue in this matter.

The subject sold in July 2002 for $5 million or $6.31 per square foot of land area. The appellant's appraiser explained that the 2002 sale reflected that buyer's expectation of the market at that time, but the market went the other way as evidenced by the declining occupancy rate of the property. Thus, the appraiser found the sale to not be representative of the property's market value as of 2004 and/or 2005.

The subject sold in April 2005 for $7 million or $8.83 per square foot of land area. Both parties agree and the evidence supports that the 2005 sale was tied to a TIF district and developer's agreement. Appellant's appraiser MaRous explained why those factors of a TIF and developer's agreement detract from the sale price as being an indication of the subject's market value.

As to both the 2002 and the 2005 sale, MaRous did not interview the parties to the transaction or ascertain why the parties in both PTAX-203-A (Property Tax Appeal Board [PTAB] Exs. 1 & 2) declarations on line 8 answered "yes" to the following question:

> In your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 [$5 million and $7 million, respectively, on PTAB Exs. 1 and 2] a fair reflection of the market value on the sale date?

Moreover, PTAB Exs. 1 and 2 regarding these sales transactions also indicate on line 7 of the PTAX-203-A that "the seller's financing arrangements" did not affect the sale price of either $5 million or $7 million.

The Illinois Supreme Court has held that "fair cash value" means "what the property would bring at a voluntary sale where the owner is ready, willing and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced so to do . . . . " [citation omitted]. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428, 430, 256 N.E.2d 334, 336 (1970). Illinois courts have consistently held that "a contemporaneous sale between parties dealing at arm's length is not only relevant to the question of fair cash market value but would be practically conclusive on the issue of whether an assessment was at full value." People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967). However, the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances. Ellsworth Grain Co. v. Illinois Property Tax Appeal Board, 172 Ill.App.3d 552, 526 N.E.2d 885 (4th Dist. 1988).

A sale of the property that occurred after the relevant assessment date, in this case a sale in April 2005, may still be considered unless it is too elusive as to the value on the assessment date. In

re. Appl. of Rosewell v. United States Steel Corp., 120 Ill.App.3d 369, 458 N.E.2d 121 (1st Dist. 1983). In this regard, it is essential to more than superficially address these two recent sales of the subject property and then discard them as not reflective of market value when preparing an appraisal of the subject. See Residential Real Estate Co. v. Illinois Property Tax Appeal Board, 188 Ill.App.3d 232, 543 N.E.2d 1358 (5th Dist. 1989). The appellant elected not to present any other objective evidence of the purchase price of the subject property through parties to the transaction. The $7 million sale of the subject was concluded a mere four months after one of the assessment dates at issue in this matter and yet the appraisal makes a final value conclusion for this same basic time period of $3,965,000. In considering what evidence was presented by the appellant, the Property Tax Appeal Board finds MaRous was remiss in his lack of consideration of the two recent sale prices of the subject property in relation to his final value conclusion. (Kankakee County Bd. of Review v. State Property Tax Appeal Board, 337 Ill.App.3d 1070, 787 N.E.2d 865 (3rd Dist. 2003). Due to this failure, the Board finds that it may not rely upon the appraiser's value conclusion.

The Board does not disagree with MaRous' statement that the 2005 sale price which was tied to the TIF was a complex financial transaction. However, the mere fact that it may be a complex financial transaction does not mean that it should not be analyzed and dissected so as to ascertain all of the facts and circumstances surrounding the transaction and why the parties engaged in the transaction so as to determine whether the transaction in any way reflects the subject property's fair cash value, even after potential adjustments for TIF considerations. (See Town of Cunningham v. Property Tax Appeal Board, 225 Ill.App.3d 760, 587 N.E.2d 573 (4th Dist. 1992) (actual rent paid under sale-leaseback arrangement property properly excluded in appraising mall since the payments did not reflect either actual income potential or true market rent); National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038, 780 N.E.2d 691 (3rd Dist. 2002)). Additional analysis would be also be required for the 2002 sale of the subject property for $5 million when the property's occupancy rate was much more attractive than it was in 2005 when it sold for $7 million.

Appellant's sole evidence challenging the instant assessments, the MaRous appraisal, focused upon comparable sales as the purported best evidence of the subject's market value. The appellant's appraiser used recent sales or pending sales in the area and surrounding communities of properties ranging in size from 19 to 80.18 acres finding prices ranging from $1.08 to $4.87 per square foot of land area in order to estimate a value for the subject land of $3,965,000 or $5.00 per square foot. As set forth above, the lack of adequate consideration of the recent sales of the subject property has significantly reduced the credibility of the opinion of value set forth by MaRous.

In support of the current assessment, the board of review submitted four vacant land sales comparables and two improved sales comparables gathered by the Chief County Assessment Official. The Board finds the documentation and presentation of all of this sales data was extremely poor. There was no grid setting forth the data. The primary evidence consisted of computerized printouts from which the reader had to decipher the date of sale, price and what property(s) were involved in the sale. Then, upon adverse examination, it became evident that the board of review was relying upon sales of properties which, by their very nature, were deemed to be inappropriate sales for purposes of the Illinois Department of Revenue's sales ratio studies. The board of review never adequately explained why these sales would be valid sales

comparables for presentation to the Property Tax Appeal Board when these same sales were not feasible for sales ratio studies.

More importantly, the Property Tax Appeal Board finds the board of review's presentation of four significantly smaller vacant land sales comparables to be merely anecdotal. The subject property over 18 acres in size, cannot reasonably be compared to parcels no larger than 4 acres especially without any meaningful adjustment, analysis or articulation as to why these suggested comparable sales should be considered valid indicators of the market value of the subject land. The record reflects sales of these smaller vacant outlots ranging from $6.72 to $13.66 per square foot of land area. However, these properties bear little if any resemblance to the subject property, other than in location. Similarly, the presentation of two improved sales comparables consisting of a car wash and a restaurant, both of which are located on outlots of other larger properties, without sufficient analysis and adjustment and/or explanation as to the rationale for comparability, again fails to present a valid indication of the market value of the subject 18 acre site and its multiple buildings.

In conclusion, while there is no presumption of correctness of the board of review's assessment of the subject property, in this matter the appellant failed to support his overvaluation claim by a preponderance of the evidence and therefore no reduction is warranted. People ex rel. Thompson v. Property Tax Appeal Board, 22 Ill.App.3d 316, 317 N.E.2d 121 (1974), *appeal dismissed*, *cert. denied*, 422 U.S. 1002 (1975); Mead v. Bd. of Review of McHenry County, 143 Ill.App.3d 1088, 494 N.E.2d 171 (2nd Dist. 1986); Commonwealth Edison Co. v. Property Tax Appeal Board, 102 Ill. 2d 443, 464, 468 N.E.2d 948, 956-57 (1984); Residential Real Estate Co., *supra*. The Board finds the two sales of the subject property in July 2002 for $5 million and in April 2005 for $7 million demonstrate the subject's assessment is not excessive in relation to its market value.

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| **APPELLANT:** | **Developers Diversified F Corporation** |
| **DOCKET NUMBER:** | **05-01832.001-C-3 thru 05-01832.002-C-3** |
| **DATE DECIDED:** | **February, 2008** |
| **COUNTY:** | **Jefferson** |
| **RESULT:** | **Reduction** |

The subject property consists of a regional shopping mall containing 297,119 gross square feet of building area with 263,305 square feet of leaseable space that is situated on 28.40 acres of land which encompasses two tax parcels. The subject property is also improved with a smaller 5,000 square foot building located on the perimeter of the site. One half of this building is used as a liquor store. The subject property is located in Mt. Vernon, Jefferson County, Illinois. The one–story concrete superstructure was originally built in 1977 and 1978 with several additions and renovations between 1998 and 2000. The mall contains four large anchor stores with 32 smaller in-line retail units accessed within its common open space. The subject property also generates income through a land lease to Broadway Video. The subject has parking for approximately 876 vehicles.

The appellant appeared before the Property Tax Appeal Board arguing that the fair market value of the subject property is not accurately reflected in its assessed valuation. In support of this claim, the appellant submitted an appraisal prepared by Joe Camerer, an Illinois licensed appraiser. Camerer was called as the appellant's expert valuation witness. It was Camerer's first time appraising an enclosed shopping mall. Camerer does hold the professional designation as a Member of the Appraisal Institute. After qualification, Camerer was accepted as an expert valuation witness to provide opinion testimony before the Board without objection.

Using two of the three traditional approaches to value, Camerer estimated a fair market value for the subject property of $8,100,000 as of January 1, 2005. The appraisal was marked as Appellant's Exhibit 1.

The appraiser first provided testimony in connection with the appraisal methodology. Camerer testified he completed an interior and exterior inspection of the subject property and interviewed the mall manager regarding the history of the property, notably occupancy, vacancy, type of tenants, and the physical condition of the improvements. Camerer testified he reviewed the subject's historical income and expenses and performed a national search for comparable sales. The appraiser testified he did not perform the cost approach to value due to the unreliability in calculating accrued depreciation and because the subject is an income producing property.

Camerer indicated the subject property was purchased in August 1993 for $11,190,000. The sale price included a separate parcel with a ground lease to a Wendy's fast food restaurant for $7,500 annually. Based on a capitalization rate of 10%, Camerer opined the leased-fee value of the ground lease was $70,000, resulting in a net sale price for the subject of $11,120,000 in 1993. Camerer testified the purchaser is a nationally traded company who specializes in owning and operating shopping malls. However, the appraiser testified it would be improper to use the subject's 1993 sale price as an indication of value because of the loss of major tenants and

multiple in-line stores resulting in higher vacancy, which has substantially reduced the subject's income. Camerer noted the vacancy rate for the smaller in-line stores was approximately 40%.

Under the income approach to value, the appraiser testified he used the actual leases within the subject shopping mall. He first analyzed the four anchor tenants; Sears, JC Penney's, Peebles and Goody's. These properties range in size from 19,200 to 82,682 square feet of building area with their original leases commencing from 1976 to 2005. Lease rates ranged from $2.63 to $3.00 per square foot of building area. Two of the lease rates included escalation clauses based on a set amount of sales volume for a particular year. Camerer testified the Goody's is the most recent lease for $3.00 per square foot and is representative of the market. Camerer also testified Goody's was allowed $270,000 for tenant improvements, which equates to three years of rent.

Camerer next analyzed the actual ground leases for Broadway Video, an automated teller machine (ATM), and Wendy's, which had leases ranging from $8,000 to $27,772, annually. However, the Wendy's lease income was not included in the gross or net operating income because it is not located on either of the subject parcels. Camerer also included the rents collected from Times Square Liquor, who leases 2,350 square feet of a 5,000 square foot building for $12.50 per square foot.

Camerer indicated the in-line (interior) smaller stores have rental rates ranging from $5.72 to $29.69 per square foot based on location within the mall, with some tenants paying escalations based on sales volume and one property paying only rent based on its percentage of sales volume. Overall, rental rates averaged $10.95 per square foot and $12.14 per square foot including escalations. Camerer next addressed the vacant mall space, which encompassed 37,935 square feet. The published asking rental rate for the vacant in-line stores was $15.00 on a triple net basis with the exception of two larger stores with a triple net lease rate of $8.00 per square foot. The appraiser testified the mall owners are making every attempt to lease the vacant space at market rates, even leasing some stores on a temporary basis for $3.00 to $5.00 per square foot. As a result, Camerer calculated the vacant space has a potential annual income of $445,972.

Based on the aforementioned analysis, Camerer calculated the subject's potential gross income to be $415,638 for the anchor stores, liquor store and ground leases; $521,734 for the occupied in-line stores; and $445,972 for the vacant in-line stores for a total of $1,383,344. Additional income for the percentage rent escalations was $225,908. Triple-net leases required reimbursement for shared expenses that was stabilized at $450,000 based on an actual six year history. Therefore, Camerer calculated the subject property has a potential gross annual income of $2,025,252.

Vacancy and collection loss for the occupied anchors stores was estimated to be 10% or $51,943. A vacancy allowance of 5% or $28,935 was projected for the occupied in-line space while. The large vacant space was estimated to have a loss of $350,000 compared to its actual vacancy loss of $445,972. This difference was offset by temporary leasing. Thus, total vacancy and collection loss was estimated to be $430,878, resulting in an effective gross income of $1,594,374. From 2000 to 2005, the appraiser indicated the subject's effective gross income ranged from $1,569,397 to $1,923,672, with an average of $1,781,025. After deducting the Wendy's ground lease income of $20,307, resulted in a historical average effective income of $1,760,718. However, in the final estimation, the appraiser gave most weight to the subject's historical income amounts in estimating a final effective gross annual income of $1,700,000.

Expenses were estimated to be $630,000 excluding property taxes based on six years of the subject property's actual operating expenses, resulting in a net operating income of $1,070,000. A copy of the subject's actual income and expenses as reported by the appellant from years 2000 to 2005 were contained in the addenda of the appraisal. The appraiser next calculated a capitalization rate for the subject property. The appraiser testified the subject property has become less stable and a more risky investment due to vacancy and the need for roof replacement He employed the band of investments technique and comparable sales to extract a capitalization rate of 10.25%. Adding a property tax load factor of 2.5858%, an overall capitalization rate of 12.8358% was applied to the subject's net operating income of $1,070,000. Thus, the appraiser concluded the subject property has a fair market value of $8,336,060 under the income approach. However, the appraiser deducted $270,000 for the tenant improvement allowance paid by the mall owner to Goody's, resulting in a final value estimate under the income approach of $8,050,000, rounded.

The appraiser next discussed the sales comparison approach to value. The appraiser identified three suggested comparables sales and four sale listings. The sales are located in Kokomo, Indiana; Centralia, Illinois; and Bowling Green, Ohio. The four offerings are located in Alliance, Ohio; Galesburg; Illinois; Laport, Indiana; and Alton, Illinois. The appraiser testified a potential investor of the subject would look across the entire Midwest or nationally to find properties for purchase. He testified the subject's types of property are marketed regionally and nationally.

The three comparables sales were constructed from 1963 to 1987. Comparables 1 and 3 are enclosed shopping malls like the subject and comparable 2 is strip mall. Comparable 2 was renovated in the 1990's. The buildings range in size from 270,502 to 385,000 square feet of building area. Comparables 1 and2 are situated on sites ranging that contain 33 and 37.09 acres with land to building ratios of 3.7:1 and 5.6:1, respectively. The land size for comparable 3 was not disclosed. Comparables 1 and 2 had occupancy rates of 86.3% and 95%, respectively, while comparable 3 was described as well occupied. Community populations ranged from 22,500 to 67,700 with average median incomes ranging from $36,750 to $44,735. The appraisal indicates the buildings are in average or good condition. They sold for prices ranging from $8,250,000 to $10,100,000 or from $21.43 to $37.34 per square foot of gross building area including land. The transactions occurred between July 2004 and November 2005. The appraiser placed most emphasis on comparable sale 1, which sold for $21.43 per square foot of gross building area and $24.17 per square foot of leaseable area.

The four sale listings or offerings range in size from 207,707 to 632,000 square feet of building area and were listed for sale for prices ranging from $4,100,000 to $20,000,000 or from $9.57 to $32.18 per square foot of building area. The comparable listings properties are enclosed malls like the subject. Three were built from 1975 to 1983 and have occupancy rates of 70% to 79%. Other descriptive information for these properties was sparse.

The appraiser considered adjustments to the three comparable sales and listing comparable 1 for differences when compared to the subject. Elements considered in judging the overall similarity and making adjustments for differences to the subject are physical characteristics such as size, age, and condition, as well as community population, median income level, and occupancy. Based on these adjustments, the appraiser concluded the subject property has a market value including land of $32.50 per square foot of leaseable building area or $8,557,413. The appraiser

next deducted $270,000 for the tenant improvement allowance paid by the mall owner to Goody's, resulting in a final value estimate under the sales comparison approach of $8,300,000, rounded.

In reconciling the valuation methods, the appraiser placed most weight on the income approach to value with slightly less weight on the sales comparison approach. As a result, the appraiser concluded the subject property has a fair market value of $8,100,000 or $27.26 per square foot of gross building area or $30.76 per square foot of net leaseable area as of January 1, 2005.

Under cross-examination, Camerer testified he has never performed an appraisal of an enclosed shopping mall like the subject, but has appraised strip type shopping centers. Multiple typographical errors or inadvertent omissions were discussed in the text of the appraisal. The appraiser was not sure if Mt. Vernon had one or two hospitals. The appraiser also clarified he used the subject's 2005 assessment information on page 43 of the appraisal.

The appraiser was questioned regarding the subject's highest and best use as described on page 52 of the report. The report indicates that if the subject's site were vacant, the appraiser would expect the site to be developed with a large regional shopping center with a major anchor tenant. The appraiser noted a drawback for redevelopment would be the site's irregular frontage and the improved out-lots owned by other entities. The appraiser would not expect the site to be developed with a mall like the existing structure since this type of use in not feasible. Camerer explained, based on research and consultation with real estate journals, regional malls are no longer being constructed in smaller towns like Mt. Vernon because consumers are using shopping centers more often. The appraiser cited an example of a newly developed shopping center complex on the west side of Interstate 57 in Mt. Vernon, only a short distance from the subject. Camerer explained regional malls are occasionally being constructed in larger metropolitan areas. When questioned if he conducted a highest and best use analysis before the appraisal, Camerer testified as vacant, he did not analyze the potential rents versus the cost to construct feasibility analysis. Camerer testified a detailed analysis was not needed to clearly determine the subject's highest and best use as improved is its current use as a regional mall.

Camerer was next cross-examined regarding the income approach to value. He agreed he used the subject's actual historic rental income in calculating its potential gross income. A $270,000 tenant improvement allowance was discussed. The appraiser testified he deducted the $270,000 tenant allowance from the indicated value under the income approach because in order to secure a new tenant, the mall owners made a concession in the form of the tenant improvement allowance. Camerer testified the allowance was for the tenant to prepare the space for its particular needs. He did not believe the allowance was for roof replacement, but acknowledged the roof was replaced. Camerer testified a tenant improvement allowance is a normal one time expense for a new tenant. He did not believe the tenant allowance should be prorated under the reserves for replacement because it was an immediate expense.

With respect to vacancy, Camerer agreed he did not and should have accounted for the additional 2,350 square feet of building area contained in the Time Square Liquor store that is not leased when calculating the subject's potential gross income. Camerer testified he used the subject's actual vacancy rate from 2005 based on the rent rolls. He further projected an additional 10% vacancy rate for the occupied anchor stores and a 5% vacancy rate for the occupied smaller in-

line stores. The actual vacant space within the mall would have a potential income of $446,000, but the appraiser projected a $350,000 vacancy loss due to offsets provided by temporary leases. The appraiser agreed he was essentially projecting 37% vacancy, which is consistent with the subject's historic vacancy rate. Camerer agreed the subject's actual overall vacancy rate averages 14.4%. Camerer did not use comparable leases of like properties to project a market vacancy rate. Camerer also agreed he used actual reimbursement expense amounts paid by tenants and he did not project the reimbursement expenses as 100% paid.

With respect to expenses, Camerer testified he used the subject's actual expense amounts. He agreed he did not specifically demonstrate that the subject's actual expenses are reflective of the market, but believed the subject property is owned by a national company very experienced in managing shopping malls. The appraiser agreed there are resources available to determine market expenses, but it had been the appraiser's experience that historical expenses from the subject are the most reliable. The appraiser testified he did not use a reserve for replacement deduction under the income approach to account for replacing the subject's parking lot, roof and interior common space maintenance, which would have resulted in a lower net operating income and final value conclusion under the income approach.

With regard to the capitalization rate, the appraiser placed most emphasis on the market extraction method with minimal weight on the band of investments method. He placed most weight on comparable sale 2 in arriving at the final capitalization rate of 12.8358%, which included a tax load factor of 2.5858%.

With respect to the sales comparison approach to value, Camerer testified he focused on smaller regional malls outside metropolitan areas in the Midwest that were between 200,000 to 500,000 square feet in size. The appraiser also found listings of mall properties, which were given some minimal consideration as a general market range. The appraiser inspected one comparable sale and one comparable listing. Consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), the appraiser testified he believed with a certain degree of reasonableness all the comparable properties are considered similar to the subject. The appraiser agreed he placed some weight on comparables that he did not inspect in arriving at the final value conclusion.

Under redirect examination, the Camerer testified he has prepared several appraisals of large, multi-tenant shopping centers that share some of the same characteristics as regional malls. He testified the subject's highest and best use is its continued use as a shopping mall as detailed in the appraisal report. Camerer testified he believed the subject's actual historic rents equate to market rents. He agreed there were some typographical errors within the 80 page report, but these errors did not affect the final value conclusion. Camerer clarified under the income approach he applied a 10% vacancy rate to the larger anchor stores and a 37% to 44% vacancy rate for the smaller in-line stores resulting in an overall vacancy rate of approximately 14%. The witness also testified USPAP does not require the appraiser to inspect comparable properties. It was also the appraiser's opinion that the actual rents paid reflect market rents, with support of the most recent leased property, Goody's, which was leased for $3.00 per square foot of building area in 2005.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $3,607,172 was disclosed. The subject's assessment reflects an estimated

market value of $10,822,598 using Jefferson County's 2005 three-year medina level of assessments of 33.33%.

The board of review offered valuation evidence prepared by Steven L. Lueker, Supervisor of Assessment for Jefferson County, Illinois. Lueker testified he inspected the interior and exterior of the subject property. He identified Exhibit F, which is an aerial photograph of the subject property. Lueker testified he is not an appraiser nor did he arrive at a final value conclusion for the subject property.

Lueker next discussed a narrative valuation report he prepared regarding the subject property. The narrative valuation report contains four sales of properties that Lueker deemed comparable to the subject property. Lueker testified he inspected and photographed each of the suggested comparables. The witness testified he attempted to establish a value range and believed the subject property's assessed valuation falls within the value range established by the comparable sales.

Comparable sale 1 is located across the street from the subject. Comparable 1 is a multi-tenant strip mall that was built in 1996 and contains 96,355 square feet of leasable building area. The improvements are situated on 12.91 acres. The comparable sold in December 2001 for $6,950,000 or $72.13 per square foot of leaseable building area including land. Lueker recognized and acknowledged the older sale date, but considered its location across the street superior. Lueker also indicated the comparable's access is inferior when compared to the subject.

Comparable sale 2 is a strip mall comprised of three separate buildings totaling 271,815 square feet of building area. The suggested comparable is located in Centralia, Illinois, which is approximately 15 miles from the subject. The buildings were constructed in 1969 and are situated on 37.9 acres. He noted the parking lot was in very poor condition. Lueker indicted the property has poor visibility due to its location on a curved road. This property sold in July 2004 for $9,400,000 or $34.58 per square foot of building area including land. Lueker considered this property overall inferior to the subject by design, access and condition.

Comparables sale 3 is a indoor shopping mall containing 580,000 square feet of building area that is located in Carbondale, Illinois, which is approximately 60 miles from the subject. The building was constructed in 1973 and is situated on 48.58 acres. The suggested comparable sold in November 2004 for $46,700,000 or $80.52 per square foot of building area including land. Lueker considered this property overall superior to the subject, but believed it would be representative of the economics for southern Illinois.

Comparable sale 4 is a small strip mall containing 15,100 square feet of building area that is located in Effingham, Illinois, which is approximately 65 miles from the subject. The building was constructed in 1999 and is situated on 3.02 acres. The suggested comparable sold in August 2004 for $1,800,000 or $119.21 per square foot of building area including land. Lueker acknowledged the comparable's considerably smaller in size and has inferior access when compared to the subject. Lueker considered this property less desirable than the subject.

Lueker testified the comparables sold for prices ranging from $1,800,000 to $46,700,000 or from $34.58 to $119.21 per square foot of building area including land. The subject's assessment

reflects an estimated market value of $10,822,598 or $41.10 per square foot of building area including land. Lueker argued the subject's assessed valuation is not unreasonable based on the sales.

Under cross-examination, Lueker testified he did not attempt to draw a value conclusion for the subject or offer any other alternative value to support the subject's assessment. Lueker agreed his narrative valuation analysis did not follow USPAP standards and he did not attempt to perform the income approach to value. Lueker agreed comparable 1 sold more than three years prior to the subject's January 1, 2005, assessment date; it is considerably smaller in size than the subject; and is 20 years newer in age than the subject. Comparable 3 is almost twice as big as the subject; and is an "upscale mall" unlike the subject; and is clearly superior to the subject. Lueker agreed comparable sale 4 is considerably smaller in size than the subject and is a weak property for comparison purposes. Lueker agreed sale 3, which was also used by the appellant's appraiser, is closest in size and location, but is inferior in condition and access.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds a reduction in the assessment of the subject property is warranted.

The appellant argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellant has overcome this burden.

In support of the overvaluation claim, the appellant submitted an appraisal and testimony from the appraiser estimating the subject property has a fair market value of $8,100,000 as of January 1, 2005, using the sales comparison and income approaches to value. The board of review submitted limited valuation evidence in narrative form of four suggested comparable sales. The Property Tax Appeal Board gave less weight to the appraiser's final value conclusion as offered by the appellant and three of the four suggested comparables sales submitted by the board of review.

With respect to the appraisal submitted by the appellant, specifically under the income approach to value, the Property Tax Appeal Board finds the appraiser used the subject's actual income and expense information in calculating the final value conclusion. The Property Tax Appeal Board finds the income approach developed by the appraiser lacked support using comparable income and expense derived from the marketplace. It is the capacity for earning income, rather than income actually derived, which reflects "fair cash value" for taxation purposes. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428, 431 (1970). The Property Tax Appeal Board finds the appellant's appraiser failed to demonstrated the subject's actual income and expenses were reflective of the market and its capacity to earn income. Since the appraiser placed most reliance on the unsupported income approach to value, the Board finds the appraiser's final value conclusion is undermined and was therefore given less weight.

The Property Tax Appeal Board finds this record contains sales information on six suggested comparables sales and listing information on four additional properties. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979), the court held that significant relevance

should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. The Property Tax Appeal Board placed diminished weight on the listings contained in the appellant's appraisal. Notwithstanding that the properties had not sold to attempt in establishing a value for the subject property, the Property Tax Appeal Board finds two of the listings are considerably larger in size when compared to the subject. The Property Tax Appeal Board also gave little weight to three sales submitted by the board of review due to their dissimilar age and/or size when compared to the subject.

The Property Tax Appeal Board finds the remaining three comparable sales to be most similar to the subject in terms of use and physical characteristics. One comparable is a common property submitted by both parties, although it a strip mall compared to the subject's enclosed design. Two properties are enclosed shopping malls like the subject. The buildings were constructed from 1963 to 1987 and range in size from 270,502 to 341,375 square feet of gross or leasable building area. They sold from July 2004 to November 2005 for prices ranging from $8,250,000 to $10,100,000 or from $24.17 to $37.34 per square foot of building area including land. The Board finds the common comparable used by both parties sold for $9,400,000 or $34.58 per square foot of building area including land. The evidence further revealed this property is inferior to the subject in terms of condition. The subject's assessment reflects an estimated market value of $10,822,598 or $41.10 per square foot of leasable building area including land, which falls above the range established by the most similar comparable sales contained in this record. After considering adjustment to the comparables for differences when compared to the subject, the Property Tax Appeal Board finds a reduction in the subject's assessment is justified.

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| **APPELLANT:** | **Diamond Developing Co.** |
| **DOCKET NUMBER:** | **05-02504.001-C-1** |
| **DATE DECIDED:** | **July, 2008** |
| **COUNTY:** | **Effingham** |
| **RESULT:** | **Reduction** |

The subject property is improved with a two-unit, Section 515 low-income housing apartment building that contains approximately 1,715 square feet of living area. The building was constructed in 1981 and is located in Watson, Watson Township, Effingham County.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. In support of this overvaluation argument the appellant submitted a consulting report prepared by a licensed general real estate appraiser estimating the subject property had a market value of $19,546 as of January 1, 2005. The report was prepared in accordance with sections 10-240, 10-245 and 10-250 of the Property Tax Code (35 ILCS 200/10-240, 10-245 and 10-250) using only the income approach to value. The report indicates Illinois statutes mandate the method by which Section 515 low-income housing projects are to be valued for ad valorem tax purposes. Section 10-245 of the Property Tax Code requires assessing officials to consider actual or probable net operating income and historical expenses of a property, with a vacancy rate of not more than 5%, to be capitalized at normal market rates to calculate a fair cash value of any Section 515 low-income housing project. (35 ILCS 200/10-245) The appellant submitted the final decision issued by the Effingham County Board of Review establishing a total assessment for the subject of $27,750, which reflects a market value of approximately $81,283 as reflected by its assessment and Effingham County's 2005 three-year median level of assessments of 34.14%. Based on this evidence the appellant requested the subject's assessment be reduced to reflect the subject's appraised value.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

Section 10-235 of the Property Tax Code provides that it is the policy of the State of Illinois that Section 515 low-income housing projects are to be valued based on their economic productivity to their owners to insure that high taxes do not result in rent levels that cause excess vacancies, loan defaults, and loss of rental housing facilities to those that are in most need. (35 ILCS

200/10-235). Section 10-245 establishes the method of valuing Section 515 low-income housing projects in accordance with this policy. Section 10-245 of the Property Tax Code states:

> Notwithstanding Section 1-55 and except in counties with a population of more than 200,000 that classify property for the purposes of taxation, to determine 33 and one-third percent of the fair cash value of any Section 515 low-income housing project, in assessing the project, local assessment officers must consider the actual or probable net operating income attributable to the project, using a vacancy rate of not more than 5%, capitalized at normal market values. The interest rate to be used in developing the normal market value capitalization rate shall be one that reflects the prevailing cost of cash for other types of commercial real estate in the geographic market in which the Section 515 project is located. (35 ILCS 200/10-245).

Section 10-250 sets forth the certification process and the notification requirements as follows:

> After (i) an application for a Section 515 low-income housing project certificate is filed with the State Director of the United States Department of Agriculture Rural Development Office in a manner and form prescribed in regulations issued by the office and (ii) the certificate is issued certifying that the housing is a Section 515 low-income housing project as defined in Section 2 of this Act, the certificate must be presented to the appropriate local assessment officer to receive the property assessment valuation under this Division. The local assessment officer must assess the property according to this Act. Beginning on January 1, 2000, all certified Section 515 low-income housing projects shall be assessed in accordance with section 10-245. (35 ILCS 200/10-250).

Here, the record is clear that the subject property is a Section 515 low-income housing project authorized and constructed in accordance the Federal Housing Act and the Farmers Home Administration (now United States Department of Agriculture, Rural Development Office). The Board finds the subject property has been certified in accordance with Section 10-250 of the Code. (35 ILCS 200/10-250). The Board, therefore, finds the subject property is to be assessed according to section 10-245 of the Property Tax Code (35 ILCS 200/10-245) in order to meet the objectives and intent of the legislature as set forth in section 10-235 of the Code. (35 ILCS 200/10-235). The appellant submitted a consulting report in which the appraiser used the actual income and expense history of the subject property in projecting its net operating income for 2005. The appraiser calculated a normal market capitalization rate. The Board finds the valuation methodology employed by the appraiser conforms to the requirements of section 10-245 and the intent of section 10-235 of the Code. (35 ILCS 200/10-235 and 10-245).

The Board finds the appellant presented a consulting report indicating it was prepared in accordance with sections 10-235 through section 10-250 of the Property Tax Code. (35 ILCS 200/10-235 through 10-250). As a result, the Board finds the appellant has proven by a preponderance of the evidence that the subject was overvalued. Therefore, a reduction in the assessment of the subject property is warranted. The board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by Section 1910.40(a) of the rules of the Property Tax Appeal Board and is found to

be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. The final value estimate for the subject property by the appellant's appraiser was $19,546 as of January 1, 2005. Since fair market value has been established in accordance with section 10-245 of the Property Tax Code, the three-year median level of assessments for Effingham County of 34.14% shall apply.

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| **APPELLANT:** | **Famous Barr #47** |
| **DOCKET NUMBER:** | **05-00346.001-C-3** |
| **DATE DECIDED:** | **April, 2008** |
| **COUNTY:** | **McLean** |
| **RESULT:** | **Reduction** |

The subject property consists of a 96,267 square foot site improved with a two-story anchor department store that contains 151,018 square feet. The subject building was constructed in 1999 and has steel framing that supports concrete block walls with stucco exterior. The store has clear ceiling heights of 12 to 16 feet. The first floor contains 76,393 square feet and the second level contains 74,625 square feet. The second floor also has approximately 24,000 square feet of unfinished area. The property is one of the anchor stores at the Eastland Mall in Bloomington.

The issue in this appeal is the determination of the correct market value of the subject property for assessment purposes as of January 1, 2005.

The appellant contends the assessment of the subject property is excessive and not reflective of the property's market value. The appellant contends the subject property had a market value of $5,100,000 as of January 1, 2005. In support of this argument the appellant submitted an appraisal of the subject property prepared by J. Edward Salisbury ("Salisbury") of Salisbury & Associates, Inc.

Salisbury was called as the appellant's first witness. Salisbury is a State of Illinois Certified General Real Estate Appraiser. Salisbury also has the Certified Illinois Assessment Officer (CIAO) designation from the Illinois Property Assessment Institute and the Certified Assessment Evaluator (CAE) designation awarded by the International Association of Assessing Officers (IAA0). Salisbury has previously appraised 10 to 15 anchor stores associated with regional malls.

Salisbury identified Taxpayer's Exhibit No. 1 as the appraisal of the subject property he had prepared. The appraisal was described as a summary report of a limited appraisal. The witness explained that a limited appraisal means that he made a departure from the Uniform Standards of Professional Appraisal Practice (USPAP) by electing not to use the cost approach, one of the three approaches to value. Salisbury testified he did not use the cost approach because anchor stores are unique and in malls create their own market. He explained that anchor stores tend to sell for about the same price regardless of age. The witness testified that sales of new anchor stores would be less representative because of the significant amount of depreciation associated with a sale.

The appellant's appraiser testified the preferred method of valuation of anchor stores is the sales comparison approach. He testified there is a symbiotic relationship with anchor stores and the malls they are associated with. According to Salisbury malls rely on anchor stores to bring in people which in turn make the inline stores successful. The witness explained that mall developers first try to line up anchor stores willing to locate in the mall to surround the inline

stores. Salisbury testified that as a result, anchor stores tend to sell in a very tight range and rents are very consistent in a very short range.

Salisbury testified the subject property is attached to the Eastland Mall, a very strong commercial area and the strongest commercial area in Bloomington-Normal. Salisbury testified he has been in the subject property a number of times but the official inspection date was May 23, 2006, where he conducted a full physical interior and exterior inspection. The purpose of his appraisal was to estimate market value as of January 1, 2005. He appraised the unencumbered fee simple interest and categorized the subject property as an anchor store for a regional mall. Salisbury testified the improvements were constructed in 1999 and were approximately six years old as of January 1, 2005. He was of the opinion the improvements were in good condition. The witness was of the opinion the highest and best use of the subject as improved was its continued commercial use as developed. In estimating the market value of the subject property Salisbury developed the income and sales comparison approaches.

The first approach to value developed by Salisbury was the income approach. The initial step under the income approach was to estimate the potential gross income using market rent. To estimate the subject's market rent Salisbury used eleven rental comparables. Seven of the comparables were located in the Illinois cities of Alton, Normal, St. Charles, Bloomington and Lincolnwood. Four of the comparables were located in either Indiana or Michigan. Salisbury testified that the comparables were anchor stores in regional malls. Salisbury testified his rental comparable number 9 is located in the same regional mall as the subject property. The appraisal indicated these comparable rentals ranged in size from 79,216 to 161,630 square feet of leased area. The comparables had leases that commenced from 1990 to 2003. Six of the comparables had rents ranging from $3.06 to $4.25 per square foot. The five remaining comparables had a combination of base rents and rents based on a percentage of sales. Salisbury indicated these comparables had rents ranging from $3.34 to $3.92 per square foot. Comparable nine, an anchor store in the Eastland Mall, had rents from 2002 through 2004 ranging from $3.38 to $3.52 per square foot. Salisbury testified none of the rental comparables is a free-standing building. He explained there is a difference between anchor department stores and freestanding buildings. Salisbury testified that freestanding buildings have different tenants and different investment criteria than anchor department stores. He testified big box stores have a limited number of users and these big box tenants are not going to be anchor stores in malls. Salisbury explained that it is critical for a mall with 90 to 150 inline stores to obtain high-quality tenants as anchors. The appellant's appraiser explained if you have a freestanding big box store, income can only be derived from that one property.

Salisbury also reviewed the retail sales at the subject property from 2001 through 2005. Retail sales at the subject property declined from $14,111,000 to $12,024,0000 from 2001 to 2005. During this period the subject property had sales per square foot of gross building area ranging from $93.44 to $79.62 per square foot and sales per square foot of retail area ranging from $114.11 to $97.24 per square foot. During the years 2003 to 2005 the subject had average sales per square foot of gross building area of $81.39 per square foot. Salisbury compared the subjects actual income to national and regional trends found in "Dollars and Cent of Shopping Centers: 2004". He indicated that U.S. median was $153.15 per square foot and the Midwestern median was $146.08 per square foot. Salisbury acknowledged he had a typographical error the top of page 41 of his appraisal concerning the subject's three year average retail sales per square foot of

gross building area. Salisbury testified the subject's sales were below the national median average. Salisbury's report also indicated the U.S. median rent per square foot for anchor stores was $2.85 per square foot and for Midwestern stores the median was $2.45 per square foot. Salisbury also reported that the United States median rent based on a percentage of sales was 2% with a range from 1.5% to 3%. If the subject were leased on a percentage basis and applying the national median of 2% to the average sales generated by the subject from 2003 through 2005 of $12,291,000 results in a rent of $1.99 per square foot of retail area. Salisbury testified the subject property is performing below the data obtained from the market. Based on this analysis Salisbury estimated the subject property would have a market rent of $3.50 per square foot of gross building area resulting in a potential gross income of $528,563.

Salisbury estimated the subject property would have a vacancy and collection loss of 5%. Deducting 5% for the vacancy and collection loss resulted in an effective gross income of $502,135. Salisbury also estimated that operating expenses of 5% of effective gross income should be deducted for management of the investment and reserves for replacement of the major components resulting in a net operating income of $477,128.

Salisbury next estimated the capitalization rate using data from the market and the use of the direct capitalization approach. Salisbury also reviewed the First Quarter, 2005 edition of Valuation of Insights and Perspectives where national market indicators for the fourth quarter of 2004 are reported. After considering this information, Salisbury estimated the subject would have an overall capitalization rate of 9.5%. Capitalizing the net income of $528,563 using the capitalization rate of 9.5% resulted in an estimate of value under the income approach of $5,000,000.

The next approach to value developed by Salisbury was the sales comparison approach. He explained his report contained errors on page 50 where he described the comparable as a one-story as opposed to a two story building; page 55 where the property was sold by May Department Store not Foley's to Baybrook Mall; and in the adjustment grid on page 64. Under the sales comparison approach Salisbury used eight comparable sales located in Illinois, Ohio, Michigan, Texas and Colorado. The comparables ranged in size from 94,341 to 254,720 square feet and in age from 5 to 35 years old. The sales occurred from January 2002 to July 2005 for prices ranging from $2,750,000 to $9,000,000 or from $25.77 to $37.63 per square foot of building area. Based on these sales Salisbury estimated the subject property had an indicated market value under the sales comparison approach of $34.00 per square foot of building area resulting in a total estimate of value of $5,150,000.

Salisbury testified that none of the sales were freestanding stores and all were associated with regional malls. He further testified that he verified each of the sales with either the buyer or seller. Salisbury noted that sales 1 through 5 were older stores while sales 6 through 8 were newer ranging in age from 5 to 8 years old. He also noted these three sales were associated with newer malls causing him to make a little bit of a negative adjustment because of age.

In reconciling the two approaches to value Salisbury placed most weight on the sales comparison approach and was of the opinion the income approach supported the conclusion derived under the sales comparison approach. Salisbury was of the opinion the subject property had a market value of $5,100,000 as of January 1, 2005.

Under cross-examination Salisbury agreed the anchor store needs are satisfactorily met by this property. Salisbury acknowledged he did not value the subject land as vacant and did not prepare a cost approach to value. The witness testified that the owner had not instructed him to not prepare a cost approach to value. Salisbury testified it was his decision to make a summary limited appraisal. Salisbury also testified he did not know how much it cost to build the subject building. Salisbury was shown Intervenor's Exhibit No. 1, which was identified as a McLean County Assessment Complaint form. The exhibit purports to be a complaint form filed on the subject property dated January 17, 2003, contesting the 2002 assessment. Salisbury acknowledged that page 2 of the exhibit indicated the building was constructed in November 1999 for a construction cost of $8,845,663.

Salisbury indicated that the total economic life of anchor stores could range from 35 to 50 years but it would be guessing as to the total economic life. Salisbury opined, however, there would be significant depreciation in the subject building.

Salisbury agreed that a mall needs both anchor stores and inline stores. He testified that anchor stores have significantly reduced rent in comparison to inline stores. Salisbury testified that in theory the anchor stores draw shoppers and as shoppers go from one anchor store to another they pass inline stores and stop to shop. The witness also testified that rents for inline stores can range from $15 to $50 per square foot while rents for anchor stores can range from $2.50 to $4.50 per square foot.

Under the income approach Salisbury testified he did not use any additional value other than the rent. He also acknowledged that his vacancy allowance and expense deductions are estimates. He also did not make any adjustments to account for operating agreements. Salisbury acknowledged that the rents paid for his comparables were paid to the mall owner. With respect to rental 4, the rent was calculated based on a percent of sales using 1993 retail sales. Salisbury also acknowledged rental number 6 was located in Anderson, Indiana and was 34 years older than the subject being constructed in 1965. He also acknowledged his comparable rental 9 is a Sears store located in the same mall as the subject. This comparable was constructed in 1966 and was recently renovated by Sears. Sears had a base rent of $245,916 per year plus a rent based on a percentage of sales. The rent for Sears for 2002 through 2004 was $405,916, $413,002 and $395,811, respectively. Using the 2002 rent indicates that that Sears had sales in excess of about $17,000,000. Salisbury acknowledged that his comparable rental number 10 had a lease commencing in August 2003 with a base rent of $3.92 per square foot plus a percentage if gross sales exceed $16,000,000. Under cross-examination Salisbury acknowledge that his rental 11 was the same property as his rental 8, which was a mistake to include the property twice.

Salisbury acknowledged that on page 45 of his report the average internal rate of return as reported by Valuation Insights and Perspectives was 9.64%. Applying this internal rate of return to the reported cost of the improvement on Intervenor's Exhibit No. 1 would result in an income requirement of $852,722. Salisbury agreed that dividing his finding of net income of $477,128 by the reported cost of $8,845,663 results in a rate of return of 5.39%.

With respect to comparable sale number 1 Salisbury agreed this was a Montgomery Wards located in Springfield, Illinois that was in bankruptcy and vacant at the time of sale. Salisbury

agreed his sale number 2 was a two-story store that was a Montgomery Wards located in Lombard vacant at the time of sale. This building was 30 years older than the subject. Sale number 3 was located in downtown Columbus, Ohio and was vacant at the time of sale. This building was 10 years older than the subject. Sale 4 was located in Dearborn, Michigan and was 26 years old at the time of sale. Sale number 5 is located in Friendswood, Texas and is 21 years older than the subject. Sale 6 was a Lord & Taylor store located in Littleton, Colorado. Sale 7 was also a Lord & Taylor located in Broomfield Colorado. Sale 8 is located in Columbus, Ohio. Salisbury indicted that he had not been to comparable sales 5, 6, and 7.

Salisbury was questioned about the statement on page 34 of his report where he opined "[t]he subject is improved with an older building." He acknowledged, however, in 2005 the subject was in its fifth year of operation and was relatively new. Salisbury was questioned about the comment on page 13 of his report where he stated, "As a check against the other approaches, the Cost Approach was analyzed and considered, but found to contribute no meaningful conclusions with respect to the market value of the subject property." Salisbury acknowledged; however, he did not develop a cost approach. Salisbury was also questioned about page 69, number 8 under the Certification where he stated in part that, "I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report." He agreed that this statement was wrong. Salisbury also acknowledged a typo error in the last sentence on page 34 of his report referring to page 15.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $2,556,666 was disclosed. The subject's assessment reflects a market value of approximately $7,693,850 using the 2005 three year median level of assessments for McLean County of 33.23%. The board of review called as its witness Michael Ireland, assessor for the City of Bloomington. Ireland submitted a packet of information, marked as BOR Group Exhibit No. 1, to demonstrate how the property was assessed. He testified he focused on local market conditions, specifically local rents on larger box retail stores. Ireland identified page A as the subject's property record card wherein the subject's 2005 assessment totaling $2,556,666 was disclosed. Page B was identified as the improvement description showing the subject was a two-story building constructed in 1999 with 75,327 ground floor square feet and 123,295 square feet of gross usable area. Page C was identified as a electronic sketch of the subject building. The witness identified page D as an aerial photo of the Eastland Mall with the subject property being identified with parcel number 126-010. Ireland testified the subject parcel encompasses approximately 2.21 acres. Page E depicted the assessment of the subject land and four comparables to demonstrate the land was equitably assessed. The subject was depicted as having a land assessment of $122,706 or $3.82 per square foot of land area. The four land comparables ranged in size from 98,818 to 810,608 square feet and had assessments ranging from $115,701 to $936,327 or from $3.05 to $3.51 per square foot of land area. Ireland identified page F as being the assessments of anchor stores at Eastland Mall. The comparables ranged in size from 63,021 to 134,395 square feet of gross usable area. Their improvement assessments ranged from $1,470,222 to $1,676,265 or from $12.47 to $23.33 per square foot of gross usable area. The subject property had an improvement assessment of $2,436,484 or $19.76 per square foot of gross usable area. Ireland testified page G contained a replacement cost new using the Marshall and Swift cost estimator as of December 12, 2006. The document indicated the subject would have a cost new of $10,388,836. From this $311,666 was deducted for depreciation to arrive at a depreciated improvement value of $10,077,170. To this amount the

land value of $962,680 and the value of the paving of $142,710 were added to arrive at an estimate of value under the cost approach of $11,182,560. Ireland described page M as being the lease schedule for a 55,200 square foot building in Bloomington that covers a 7 year period. The rent ranged from $5.75 to $6.75 per square foot over this seven year period. Ireland testified he was also aware of a lease on Kay's Merchandise of $4.50 and $5.00 per square foot. Using this data Ireland created an income approach using a discounted cash flow analysis. He estimated a rent of $6.00 per square, a vacancy and collection loss of 1%, an expense ratio of 5%, a discount rate of 10% and a resale capitalization rate of 9.00%. Using this data Ireland estimated the subject had a market value of $6,929,872. Page N was identified as sales of five retail establishments. The document disclosed four of the buildings ranged in size from 5,280 to 7,560 square feet. The sales occurred from February 2004 to October 2006 for prices ranging from $268,400 to $1,500,000 or from $49.70 to $244.92 per square foot of building area. Ireland also identified the addendum attached to the packet of information. The cover letter prepared by Ireland stated he estimated the subject property had a market value of $7,000,000. Based on Ireland's presentation the board of review offered to stipulate to an assessment of $2,333,100 to reflect a market value of $7,000,000.

Under cross-examination Ireland agreed the subject site had 2.21 acres and the building had a gross area of approximately 150,000 square feet with a usable area of 123,295 square feet. Ireland also testified he prepared the evidence in the packet. The witness testified he categorized the subject as retail space and agreed the property was built in 1999. With respect to the price paid for the land, Ireland had documentation in the addendum indicating the purchase price of the land was $0 but that was in lieu of a $2.2 million dollar contribution made to the developer for site work. The documentation indicated the building pad was 2.207 acres and there was another 5.66 acres for parking. Dividing the $2.2 million by the combined size of the land resulted in a unit value of $6.42 per square foot. Ireland agreed that page E disclosed the subject had the highest land assessment per square foot and comparables 1, 2 and 4 were significantly larger than the subject. He also agreed that page F depicting anchor store equity comparables at the mall reflected values ranging from $37.42 to approximately $70.00 per square foot. He also agreed the comparable sales on page N were 5% or less the building size of the subject. Ireland also acknowledge page O of his packet was a commercial building sale containing 75,275 square feet that was constructed in 1990. The improvements were located on a 477,069 square foot. This property sold in December 2003 for a price of $7,450,000 or $98.97 per square foot of building area. Ireland noted this sale contained excess land that had since been developed. Ireland testified that he had not appraised an anchor store at a regional mall other than as his duties as the assessor. He also did not consider his submission an appraisal.

Ireland testified he was familiar with the document marked as Intervenor's Exhibit No. 1, which is an assessment complaint filed by May Department Store on the subject property in 2002 while Ireland was employed as the assessor. He agreed that the complaint indicated a construction date of November 1999 and a cost of $8,845,663, which appeared to be reasonable to Ireland as the cost of construction. With respect to his income approach Ireland used a rental of approximately $740,000 and when divided by the reported construction cost results in a rate of approximately 8%.

The intervening school district submitted an appraisal prepared by Robert C. Gorman of The Gorman Group, Ltd. in support of its contention of the correct assessment of the subject

property. Gorman estimated the subject property had a market value of $10,750,000 as of January 1, 2005. Gorman was called as a witness on behalf of the school district.

Gorman identified Intervenor's Exhibit No. 2 as the narrative appraisal he prepared on the subject property. Gorman has the Member of the Appraisal Institute (MAI) designation and has the General Certified Appraiser license with the State of Illinois. Gorman is also a licensed appraiser in Indiana, Wisconsin, Michigan, and Florida. Gorman testified he has appraised a variety of properties including shopping centers and anchor stores. He testified his appraisal work spans the country and he has performed a lot of work in Illinois. Gorman testified he estimated the fair market value of the fee simple unencumbered interest of the subject property.

Gorman testified the subject is adjacent and attached to Eastland Mall, which he described as an excellent mall that fits within the top 10% in the United States. Gorman testified the subject building was five years old as of the effective date of the appraisal. On page 7 of his report Gorman briefly described the subject as a "big-box" store attached to the Eastland Mall and is of the type commonly referred to as "anchor stores." He further testified the subject has adequate parking along with easements to use the parking of adjacent spots. He was of the opinion the highest and best use of the subject as improved was its existing use. In estimating the market value of the subject property Gorman utilized the three approaches to value.

The first approach to value developed by Gorman was the cost approach to value. The initial step under the cost approach was to estimate the land value using nine land sales located in Bloomington and Normal. The sites ranged in size from .75 to 9.29 acres. The sales occurred from January 2002 and September 2006 for prices ranging from $498,863 to $4,249,807. On a unit basis the prices ranged from approximately $347,882 to $1,200,313 per acre or from $7.99 to $27.56 per square foot of land area. In explaining his land sales he noted sale 1 was located at the next street south of the subject and this was subsequently divided in to land sales 2, 3, and 4. He testified that the only location that might be better would be adjacent to the subject's mall. Sale 5 was a 1.434 acre site adjacent to the subject mall that sold in July 2005 for a price of $7.99 per square foot. Sale 6 was a 1.5667 acre site adjacent to the mall that sold in July 2005 for a price of $11.01 per square foot. At the time of sale land sale 6 was improved with a medical office building, which is still in place. The witness described sales 7 and 8 as being related and part of a former Menards which was razed. Gorman explained that land sales 9 and 10 were adjacent to College Hills Mall in Normal and sold in June 2004 and September 2006 for prices of $10.00 and $11.00 per square foot, respectively. Gorman testified that land sale 11 was improved with a restaurant when it sold. The restaurant was to be razed and replaced with a strip shopping center. Land sale 12 was the farthest sale north of the subject property that was subsequently improved with a bank. Based on these land sales Gorman estimated the subject's land had a market value of $20.00 per square foot or $2,000,000. He described this estimate as being conservative.

Gorman's next step under the cost approach was to estimate the replacement cost new of the improvements using the Marshall Valuation Service. Gorman's calculations were on page 40 of his appraisal. He estimated the subject had a replacement cost new of $64.65 per square foot resulting in a cost estimate of $9,739,781. From this the appraiser deducted 10% for physical depreciation using the age life method using the subject's age of 5 years and expected life of 50 years taken from the Marshall Valuation Service. Gorman concluded the subject building

suffered from no functional or external obsolescence. The appraiser than added $100,000 for site improvements and a land value of $2,000,000 to arrive at an estimate of value under the cost approach of $10,900,000. The witness was of the opinion his estimate of the cost new was reasonable when compared to the construction costs reported on Intervenor's Exhibit No. 1 of $8,845,000.

The next approach to value developed by Gorman was the income approach. The first step under this approach was to estimate the subject's market rent. On page 41 of his appraisal Gorman stated that, "As an anchor to a very large regional mall, the subject is a type of big box that is typically either owner occupied or is owned in common with the rest of the shopping center." In estimating the subject's market rent the appraiser completed a survey of anchor and big box stores. The appraisal included a list of 49 stores with 23 located in Illinois. The appraisal contained the company name, city, state, square footage, rent per square foot and lease year for each rental comparable. The appraisal did not otherwise distinguish or identify each of the rental comparables as either an anchor store to a regional mall or a freestanding big box store. The lease dates ranged from 1981 to 2006. The size of the comparables ranged from 19,000 to 163,370 square feet. The rentals ranged from $3.06 to $13.27 per square foot of building area. Based on this data the appraiser estimated the subject property had a market rent of $7.00 per square foot resulting in a potential gross income of $1,054,578. As a check the appraisal contained two regression analyses of the data using rent versus size and rent versus lease year. The appraiser estimated the vacancy and collection loss of 1.5% resulting in an effective gross income of $1,038,759.33. The appraiser next deducted 2% of effective gross income for management expenses and 2% of effective gross income for reserves to arrive at a net income of $997,208.95. Using the mortgage equity technique Gorman estimated the subject would have a capitalization rate of 9.5%. Dividing the estimated net income by the capitalization rate resulted in an estimate of value under the income approach of $10,500,000.

The final approach to value developed by Gorman was the market approach. Gorman used five sales located in the Illinois cities of Schaumburg, Lake Zurich and Orland Park. Comparable sale number 1 was a freestanding, one-story single tenant retail store with 77,721 square feet located on a 6.9 acre site that was sold by Kohl's in January 2003 for a price of $5,725,000 or $73.66 per square foot. Sale number 2 was improved with a freestanding masonry constructed single-tenant retail store with 88,306 square feet located on a 16.09 acre site that sold in November 2001 for a price of $9,258,983 or $104.85 per square foot of building area. This building was fully leased at the time of sale for either $9.07 or $9.90 per square foot. Sale number 3 was improved with a 163,000 square foot building located on a 554,183 site that was part of the Orland Square shopping center. The report indicates the property was sold by the occupant who retained possession. Gorman testified this sale had problems because it was one of a group of buildings that was sold by Carson's and the price was allocated. He further indicated that this transaction would be equivalent to a sale-leaseback. The sale occurred in August 1998 for a price of $14,905,675 or $91.44 per square foot. Sale number 4 was the sale of a Montgomery Wards store in Orland Park that was attached to a regional mall that closed. The report also noted this was a bankruptcy sale. Gorman testified that both Montgomery Wards and the shopping center went bankrupt at different times. He further testified that the store and shopping center were a disaster. The building was 10 years old and contained 155,000 square feet located on a 10 acre site. The sale occurred in July 2001 for a price of $4,500,000 or $29.03 per square foot. Sale number 5 was a 32,000 square foot building constructed in 1980 located on

a 16,000 square foot site. The sale occurred in July 1998 for a price of $2,625,000 or $82.03 per square foot. The report indicated this sale was part of the Orland Park Place shopping center that went defunct. Gorman testified that all his sales were from Illinois and within 150 miles of the subject property. He also indicated that he had visited each of the sales. Based on this data the appraiser estimated the subject property had a market value of $73.00 per square foot resulting in an estimate of value under the market approach of $11,000,000.

In correlating the three approaches to value the appraiser gave most weight to the cost and income approaches and estimated the subject property had a market value of $10,750,000 as of January 1, 2005.

Under cross-examination Gorman was questioned about operating agreements and testified he did not know how they operated and did not do any research because he valued the property as being unencumbered. Gorman was questioned as to whether he considered the terms big box store and anchor department store interchangeable. He testified that there is a difference between a store that is attached to a mall and a big box store that is unattached. He described the subject as both a big box store attached to a mall and an anchor store. Gorman did not know if in appraisal terminology big box store is the same as an anchor department store.

Gorman was questioned about comments on page 7 of his report dealing with sales at regional malls. The Dollars and Cents of Shopping Centers:2004 reported average sales of the upper ten percent of regional malls is $254.62 per square foot. He indicated that SEC filings for 2005 indicated that sales in Eastland Mall averaged $318.00 per square foot. He acknowledged these figures included sales of inline stores.

He agreed the subject building has approximately 151,000 square feet and approximately 24,000 square feet is unfinished area.

With respect to his land sales Gorman acknowledged that sale number one was improved with a motel that was subsequently razed. After demolition of the hotel and site preparation including the construction of streets, the site was subsequently subdivided. Gorman agreed the subdivided lots were improved with a 13,000 to 14,000 square foot retail shopping center, a doughnut shop and bank. He thought that the Eastland Mall purchased land sales 5 and 6. He acknowledged that sale 7 had a building in place at the time it sold and agreed that sale 8 was actually a portion of sale 7 and was sold for approximately $10.00 per square foot. Gorman also testified that he considered the sale of the subject land but didn't think it was necessary to be in the report.

With respect to the cost of the improvements Gorman agreed that the cost reported by the owner on the board of review complaint form sounded reasonable. However, Gorman used the Marshall Valuation Manual to develop an estimate of cost new. He also used the manual to estimate the subject had 10% depreciation. He did not make any deduction for functional obsolescence even though approximately 16% of the building was not used as retail space.

With respect to the comparable rentals the appraiser stated that they are big box stores with some attached to malls and some aren't attached to malls. He indicated that the rentals are not all competing properties to each other and stated some operate complementary to one another. Gorman also agreed that he used rentals located in Illinois, Texas, Oklahoma, Pennsylvania,

South Carolina, Ohio, Michigan, Georgia, Minnesota, Colorado, Indiana, Arizona, Florida, Washington, New Jersey, California, and New Mexico. He acknowledged that he used one rental adjacent to the subject identified as a Sears that had a rental of $3.45 per square foot and a lease date of 2003. Gorman was also questioned about whether the rental comparables that contained from 19,000 to 24,000 square feet are properly classified as big box stores. The witness was also questioned about rentals that were listed twice and indicated those were mistakes. The witness did not know if double counting these stores would change his regression analysis. Gorman agreed that a major influencing factor of this type of property is attachment to a regional mall. Gorman did not know how many attached anchor department stores were included in his comparable rentals.

Gorman agreed that his comparable sale number 1 was not attached to a regional mall. The appraiser also agreed his comparable sale number 2 is a freestanding store not connected to a regional mall. Gorman understood that sale number 2 was built to suit Kohl's, Kohl's leased the property, and somebody sold the building with the lease in place. Gorman agreed that sale number 3 that occurred in 1998 and is dated. He indicated this sale was an allocation, in a vibrant retail location and the transaction was a sales-leaseback. Gorman acknowledged that sale 4 was in a mall that was "the pits" located across the street from sale 3. Gorman also agreed that sale 5 occurred in 1998 and was less than half the size of the subject. Gorman further agreed that all his comparable sales are from the Chicago metropolitan area. The appraiser was of the opinion his sales comparison approach wasn't as reliable as the other two approaches.

Based on this evidence and testimony the intervening taxing district requested the subject's assessment be increased to reflect a market value of $10,750,000. No other witnesses were called on behalf of the intervenor.

The appellant called as its rebuttal witness real estate appraiser Joseph Ryan to discuss his review of the Gorman appraisal and the valuation evidence submitted by the board of review. The intervenor objected to Ryan giving testimony as a rebuttal witness because he had not previously submitted a review appraisal report or been present during the course of the entire hearing to observe and hear the testimony provided by Ireland and Gorman. At the hearing the Board reserved ruling on the objection and allowed Ryan to testify with the caveat that the intervenor had a standing objection to the testimony.

The Board sustains the objection and will not give any consideration or weight to the testimony provided by Ryan. A review of the record disclosed that by letter dated July 18, 2007, the appellant was provided a copy of the evidence submitted by the other parties to the appeal and further informed that it was granted a 30-day rebuttal period. Section 1910.66 of the rules of the Property Tax Appeal Board provides in part that:

Section 1910.66 Rebuttal Evidence

a) Upon receipt of the argument and accompanying documentation filed by a party, any other party may, within 30 days after the postmark date of the Board's notice, file written or documentary rebuttal evidence. Rebuttal evidence shall consist of written or documentary evidence submitted to explain, repel, counteract or disprove facts given in evidence by an adverse party and must tend to explain or contradict or

disprove evidence offered by an adverse party. **Rebuttal evidence shall include a written factual critique based on applicable facts and law, a review appraisal, or an analysis of an adverse party's appraisal prepared by a person who is an expert in the appraisal of real estate. This written critique, review appraisal, or analysis must be submitted within the responding party's 30-day rebuttal period pursuant to this Section. (Emphasis added).**

b) In any appeal in which a change in assessed valuation of $100,000 or more is sought, the Board shall grant one 30-day extension of time to submit rebuttal evidence upon good cause shown in writing. Good cause shall include the complexity of the appeal, the volume of the evidence submitted by an opposing party, and the inability of a rebuttal appraiser to complete the review and written critique within the 30-day filing period. A request for an extension of time to submit rebuttal evidence shall be in writing, supported by affidavit, and served on the Board and other parties to the appeal. No further extensions of time to submit rebuttal evidence shall be granted . . ..

86 Ill.Admin.Code 1910.66(a) & (b). In this appeal the appellant did not submit any written rebuttal evidence, review appraisal or written critique or an analysis of the Gorman appraisal prepared by an expert in the appraisal of real estate as required by section 1910.66 of the rules of the Property Tax Appeal Board. The Board finds that by allowing Joseph Ryan to testify to his review of the Gorman appraisal submitted by the intervening school district would be a violation of section 1910.66 of the Board's rules. In essence the appellant is attempting to circumvent the rule by providing oral appraisal review testimony without any written critique of the school district's appraisal as required by the rule in advance of the hearing. This violates both the intent and spirit of the rule which is to provide a limited form of discovery and to put the opponent on notice of potential flaws in his expert's analysis. For these reasons the Board sustains the intervenor's objection to the appraisal review testimony provided by Ryan. In reaching its determination of the correct assessment of the subject property, the Board will not give any weight or consideration to the testimony provided by Ryan during the course of the hearing.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The issue before the Property Tax Appeal Board is the determination of the market value of the subject property as of January 1, 2005, for assessment purposes. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002).

After considering the evidence and testimony provided by the parties, the Board finds a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. The appellant argued the subject property had a market value of $5,100,000 as of the assessment date based on the appraisal and testimony provided by Salisbury. The board of review contends the subject property had a market value of $7,000,000 based on the testimony and evidence provided by Ireland. The intervening school district contends the subject property had a market value of $10,750,000 as of the assessment date based on the appraisal and testimony provided by Gorman. The subject property had a final assessment of $2,556,666, which reflects a market value of approximately $7,693,850 using the 2005 three year median level of assessments for McLean County of 33.23%.

First, the Board finds the parties were in general agreement with respect to the physical description and condition of the subject property. The Board also finds the parties were in general agreement that the subject property is located in a very strong commercial area and perhaps the strongest commercial area in Bloomington-Normal. The Board further finds the subject property should be considered an anchor department store attached to a regional mall.

Of the three valuation witnesses only two developed a cost approach to value. Ireland prepared a cost analysis using the Marshall & Swift commercial cost estimator. However, the cost calculation was as of December 2006, almost two years after the assessment date at issue. As a result, the Board gives this estimate little weight.

Gorman also developed a cost approach to value. The Board finds, however, his cost approach overestimates the value of the subject property. In estimating a value under the cost approach Gorman first estimated the land value using 12 land sales. Using these sales Gorman estimated the subject site had a unit value of $20.00 per square foot or $2,000,000. After reviewing the data in Gorman's appraisal, the Board finds his estimated land value is excessive. The Board finds the best land comparables in Gorman's report were land sales 5, 6, 8, 9 and 10. Land sales 5 and 6 were located adjacent to Eastland Mall and were purchased by the mall. Sale 5 was a 1.434 acre site that was vacant at the time of sale in July 2005 and sold for a unit price of $7.99 per square foot. Sale 6 was adjacent to the mall but was improved with a medical building at the time of sale. This 1.5667 acre site sold in July 2005 for a price of $11.01 per square foot. Sale 8 was a vacant 3.07 acre parcel that sold in January 2006 for a unit price of $9.72 per square foot. Both sales 9 and 10 were vacant parcels located at the entrance of College Hills Mall in Normal. These parcels contained 3.209 and 1.189 acres and sold in June 2004 and September 2006 for $10.00 and $11.00 per square foot, respectively. In summary these sales had unit prices ranging from $7.99 to $11.01 per square foot. Considering these most representative sales the Board finds the subject parcel had a unit market value of $10.00 per square foot.

In estimating the cost new of the improvements Gorman used the Marshall Valuation Service to estimate a replacement cost new of the building of $9,739,781. Gorman deducted 10% for physical depreciation using the age life method based on data contained in the Marshall Valuation Service cost manual. According to Gorman the manual indicated the subject would have a life expectancy of 40 to 50 years and the subject had an actual age of 5 years. He opted to use a 50 year life span and made a 10% deduction for physical depreciation. Gorman did not

make any deduction for either function or economic obsolescence. The Board finds there should have been some deduction for functional obsolescence due in part to approximately 24,000 square feet of the subject not being utilized. Furthermore, Salisbury testified there is always functional obsolescence in any kind of anchor store or big box store and there would be significant depreciation in this building. (Transcript page 46.) The Board finds, however, that Salisbury did not quantify the amount of obsolescence attributed to this building because he did not prepare a cost approach to value. Nevertheless, the Board finds that Gorman's failure to make any deduction for functional obsolescence results in overstating the value of the subject property's improvement under the cost approach. In summary, the Board finds Gorman overstated the value of both the subject's land and the subject's improvement under the cost approach; therefore, the Board gave little weight to the conclusion of value under the cost approach.

With respect to the income approach to value the Board gave less weight to Ireland's conclusion due to size of the comparable rental he used to develop the estimate of market rent. Ireland's documentation contained only one rental comparable and it was less than half the size of the subject building.

In estimating market rent under the income approach, Salisbury submitted information on 10 comparable rentals that he identified as anchor stores[6]. These properties ranged in size from 79,216 to 161,630 square feet with lease dates ranging from 1996 to 2003 and rentals ranging from $3.06 to $4.25 per square foot. Gorman submitted rental data on 49 comparables.[7] The Board finds that Gorman's list included all the comparables utilized by Salisbury. In comparing the data on these common comparables the only difference was with respect to Salisbury's comparable number 4. Salisbury reported this Carson Pirie Scott located in St. Charles, Illinois, as having 100,000 square feet and a rental of $3.34 per square foot. Gorman reported this store as having 141,805 square feet and a rental of $5.85 per square foot. The Board finds that Gorman did not segregate or otherwise identify his rental comparables as either anchor department stores or as freestanding big box stores. The Board finds that the most comparable rental properties should be anchor stores at regional malls. Because Gorman did not otherwise identify his comparables the Board gave less weight to his data and estimate of market rent. The Board further finds that 16 of Gorman's comparables contained less than 70,000 square feet, or were less than 50% the size of the subject, calling into question whether these properties are truly rental comparables. Because Gorman's data contained numerous smaller stores as juxtaposed with the subject, the Board finds his estimate of market rent of $7.00 per square foot is excessive.

The Board finds the best rental comparables in the record were the common rentals submitted by Salisbury and Gorman. The Board finds that both appraisers utilized the Sears store located in the Eastland Mall that had a lease commencing in 1996 and had rental rates from 2002 through 2004 ranging from $3.38 to $3.52 per square foot. The Board also finds two other comparables had recent lease dates commencing in 2003 with rentals of $3.92 and $4.25 per square foot. After considering these common comparables the Board finds the subject property had a market rent of $4.00 per square foot, slightly greater than Salisbury's estimate of $3.50 per square foot. Using this estimate of market rent the Board finds the subject property had a potential gross

[6] The Board finds that one of Salisbury's comparables rentals was listed twice.

[7] The Board finds that Gorman's list of comparable rentals included duplicates.

income of $604,072. Based on the testimony and evidence in the record the Board finds a vacancy and collection loss of 1.5% is appropriate resulting in an effective gross income of $595,010. The Board further finds that Salisbury and Gorman were in near agreement with respect to the percentage deduction for operating expenses and reserves of 5% and 4% of effective gross income, respectively. Deducting 4% of the effective net income for expenses and reserves results in a net income of $571,210. The Board further finds both Salisbury and Gorman agreed that a capitalization rate of 9.5% was appropriate for the subject property. Dividing the subject's net income by the capitalization rate results in an estimated value under the income approach of approximately $6,000,000.

The Board next reviewed the comparable sales used by the respective valuation witnesses. The Board finds that the sales used by Ireland were not similar to the subject in size; therefore, little weight was given this evidence. The Board finds the sales data used by Gorman in the sales comparison approach should be given little weight. First, the Board finds sales 1 and 2 were freestanding stores not connected to a regional mall, unlike the subject property. Additionally, sale 2 was built to suit and had a tenant in place at the time of sale which may be considered the sale of a leased fee. The Board finds that Gorman sales number 3 and 5 occurred in 1998 and are dated. Furthermore, sale 3 was an allocation and the transaction was a sales-leaseback, which calls into question whether the allocated price was truly reflective of market value. Additionally, comparable sale 4 was located in a mall that was in distress and in poor condition. The Board further finds that Gorman's comparables sales 1, 2 and 5 were not particularly similar to the subject in size ranging from 32,000 to 88,306 square feet. For these reasons the Board finds little can be given the conclusion of value contained in Gorman's sales comparison approach.

The Board finds the best comparable sales in the record were those included in Salisbury's appraisal. These were anchor department stores that ranged in size from 94,231 to 254,720 square feet. The comparables ranged in age from 5 to 35 years old and sold from January 2002 to July 2005 for prices ranging from $2,750,000 to $9,000,000 or from $25.77 to $37.63 per square foot. The Board finds Salisbury's comparables 6 through 8 were most similar to the subject in age and sold most proximate in time to the assessment date at issue. These sales ranged in age from 5 to 8 years old and sold from June 2004 to July 2005 for prices ranging from $33.38 to $37.63 per square foot. Considering this data the Board finds the subject had an indicated value under the sales comparison approach of $37.50 per square foot of building area or $5,660,000.

In conclusion, after giving most weight to the income data and the comparable sales as discussed herein, the Property Tax Appeal Board finds the subject property had a market value of $5,850,000 as of January 1, 2005. Since market value has been determined the 2005 three year median level of assessments for McLean County of 33.23% shall apply.

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| **APPELLANT:** | **Illinois Casualty Company** |
| **DOCKET NUMBER:** | **05-00424.001-C-2** |
| **DATE DECIDED:** | **March, 2008** |
| **COUNTY:** | **Rock Island** |
| **RESULT:** | **Reduction** |

The subject property consists of a 20,333 square foot parcel improved with a three-story, masonry-constructed office building that was built in 2003 and contains 24,045 square feet of building area. The site includes a small asphalt parking lot with 9 striped spaces. The subject is located in the city of Rock Island, Rock Island Township, Rock Island County.

Through its attorney, the appellant appeared before the Property Tax Appeal Board claiming overvaluation of the subject property as the basis of the appeal. In support of this argument, the appellant submitted an appraisal of the subject with an effective date of January 1, 2005. The appraiser, who was present at the hearing and provided testimony regarding his preparation of the appraisal report, utilized all three traditional approaches in estimating a value for the subject of $2,350,000.

In the cost approach, the appraiser described the subject's improvements as containing 9,263 square feet on floors 1 and 2, and 5,520 on level three, which also contains a mechanical equipment mezzanine, a storage area and an outside patio on one side. The building was designed and built for its owner/occupant, an insurance company, and features a steel frame on a slab foundation, a fire alarm and sprinkler system and is described as containing good quality components. The appraiser opined that any change in use to multi-tenant occupancy would require significant remodeling.

In determining a value for the subject site, the appraiser examined three comparable sales located in Rock Island. The comparables range in size from 1,625 to 13,255 square feet and sold between August 2001 and May 2004 for prices ranging from $3,800 to $35,000 or from $1.74 to $3.93 per square foot. The appraiser noted all three sales are smaller than the subject, but that he had no evidence with which to make size adjustments to the comparables. The appraiser opined the subject site, as if vacant, has a value of $2.50 per square foot, or $51,000, rounded. The appraiser concluded the subject site has inadequate parking. He noted the appellant also owns another parcel across the street from the subject, whose assessment is not contested. This parcel provides additional paved parking for the appellant's use.

In valuing the subject's improvements, the appraiser used the Marshall & Swift Commercial Estimator to generate a replacement cost of $3,161,711. He estimated the subject has a building life of 65 years and an effective age of two years. Using the straight line method, the appraiser estimated the subject has suffered physical depreciation of $97,000. The appraiser concluded significant functional and external obsolescence exits because rents and sales prices in the subject's neighborhood do not support above average construction like the subject. Many buildings in the area remain vacant, due to an oversupply of office space. The appraiser determined downtown Rock Island has experienced an exodus of businesses to outlying areas and a declining population, similar to that experienced by nearby Moline, Illinois and Davenport,

Iowa, which is across the Mississippi River from Rock Island. The appraiser stated the subject is located on the eastern edge of downtown Rock Island and a development group is attempting to draw more businesses to downtown by rehabilitating several buildings. For these reasons, the appraiser concluded the subject suffers functional and external obsolescence of 25% or $766,000. After subtracting the physical depreciation of $97,000 and the functional obsolescence of $766,000, and adding back the land value of $51,000, the appraiser estimated a value for the subject by the cost approach of $2,350,000.

In the sales comparison approach, the appraiser examined sales of five comparable properties. The comparables sites range in size from 19,200 square feet to 6.39 acres and are improved with two-story masonry office buildings that range in size from 6,400 to 75,854 square feet of building area and range in age from 4 years to 100 years, although the latter building was extensively remodeled and has an effective age of 20 years. The properties sold between September 2001 and June 2005 for prices ranging from $570,000 to $10,402,049. The appraiser made various adjustments to the comparables for market conditions, site improvements and parking availability, location and age/condition/quality. After adjustments, the comparables had adjusted sales prices ranging from $96.50 to $102.34 per square feet of building area including land and indicated values for the subject ranging from $2,320,000 to $2,461,000. The appraiser explained the bases for his adjustments, including a discussion of how he accounted for the subject's inadequate parking. Based on this analysis, the appraiser estimated a value for the subject by the sales comparison approach of $2,400,000.

In the income approach, the appraiser examined lease rates of three comparable properties located in Rock Island and Moline, Illinois and Davenport, Iowa, and four rental offerings. The comparables contain from 3,395 to 40,800 square feet of rentable area and have either net rents or rental offerings ranging from $8.50 to $14.00 per square foot. Three of the offerings located in Rock Island have had little or no space rented in a year or more. Based on his analysis of these rental comparables and rental offerings, the appraiser concluded a rental rate for the subject of $12.00 per square foot was appropriate, with the tenant paying all expenses but repairs to the bone-structure of the building. After applying this rate to the subject's 24,045 square feet, the appraiser determined a net rent for the subject of $288,500, which was reduced by 15%, or $43,000, for vacancy and collection loss, resulting in an effective net rent of $245,500. The appraiser then reduced this net rent by $15,000 to account for the subject's inadequate parking, leaving a net income of $230,500. He divided the net income by an overall rate of 10%, which resulted in an indicated value for the subject by the income approach of $2,305,000.

In his reconciliation and final value estimate, the appraiser noted only two of the five comparable sales are of office buildings less than 8 years old. Because the subject is and likely will remain owner-occupied, the appraiser opined the sales comparison approach is valid and would be used by market participants and appraisers. The cost approach relies on a cost service and historical evidence, with some support for a land value from land sales in the subject's neighborhood. The subject is relatively new and a reliable cost manual was used to value the improvements. The income approach has some applicability because the subject could rent to a single-user. This approach highlights the oversupply of office space in the local market. The appraiser relied most heavily on the cost approach of $2,350,000, which is bracketed by the sales comparison and income approaches. Finally, the appraiser estimated a marketing time for the subject of 1 to 3

years. The appraiser testified his estimate of value did not include an adjustment for his estimated marketing time.

During cross-examination, the appraiser acknowledged the subject was not a typical office building, was specifically designed and built for the appellant and would require significant remodeling for use by multiple tenants. When asked by the board of review's representative why he depreciated the subject by 25% for functional and external obsolescence, the appraiser responded that other sales and rents in the subject's neighborhood do not support above-average construction. The appraiser acknowledged he has an SRA, or Senior Residential Appraiser, designation, but that much of his work in the last 4 to 5 years has been commercial. The appraiser testified he has successfully taken the exam and completed course work for the MAI, or Master of the Appraisal Institute, designation.

The board of review's representative then questioned the president of Illinois Casualty Company, Mr. John Klockau. The witness acknowledged the land on which the subject building sits was sold to the appellant for $1.00. Some tax incentives involving sales tax on materials used to construct the subject building were also involved in the tax increment financing district in which the subject resides. The witness also acknowledged the total cost of constructing the subject building was around $4,000,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $905,409 was disclosed. The subject has an estimated market value of $2,718,130 or $113.04 per square foot of living area including land, as reflected by its assessment and Rock Island County's 2005 three-year median level of assessments of 33.31%.

In support of the subject's estimated market value, the board of review submitted the subject's property record card and a brief appraisal analysis of the subject prepared by Robert Brown, Deputy Assessor of Rock Island Township. The deputy assessor prepared a limited cost approach, in which he estimated a cost new for the subject building at $3,162,000. He did not indicate the source of his cost new estimate. The deputy assessor allowed 3%, or $97,000, for physical depreciation and 10%, or $306,714, for functional and external obsolescence. To the subtotal of $2,760,426, the deputy assessor added a land value of $60,999, resulting in an indicated value for the subject by the cost approach of $2,821,425. He did not indicate how he determined the land value. The witness testified the cost approach is most appropriate in valuing new buildings like the subject. He also testified his allowance of 10% for functional and external obsolescence was very generous.

Regarding the sales comparison approach, the deputy assessor stated it is difficult to find sales of buildings of the subject's quality. The deputy assessor testified the comparables used by the appellant's appraiser should not be given much weight, as they are not very similar to the subject, in his opinion. The deputy assessor submitted no comparables in support of the subject's assessment, but acknowledged the appellant's appraiser's comparable sale 3 is most similar to the subject's market appeal and location.

Regarding the income approach, the deputy assessor assumed a net rent for the subject of $14.00 per square foot, which generates $336,630 in gross rent. He then deducted 15%, or $50,495 for vacancy and collection loss, resulting in effective net rent of $286,135. The deputy assessor

allowed the appellant's appraiser's estimate of obsolescence due to lack of parking of $15,000, leaving a net income of $271,135. The witness divided this net income by an overall rate of 9.0%, resulting in an estimated value for the subject by the income approach of $3,012,611. The deputy assessor did not explain how he arrived at a rent of $14.00 per square foot for the subject, nor did he submit any supporting documentation for his capitalization rate of 9.0%.

In summary, the deputy assessor reiterated that the cost approach is the most appropriate method for valuing a new building like the subject.

During cross-examination, the appellant's attorney questioned the deputy assessor regarding his qualifications. The witness responded that, while he is not a licensed appraiser, he is certified with the IAAO, the International Association of Assessing Officers. In response to a question by the appellant's attorney about his reliance on the cost approach, the witness testified it is difficult to employ the principal of substitution as it relates to the income approach or sales comparison approach. The witness acknowledged the subject contains "a number of amenities to that building that are specifically valuable to the tenant today." (Tr. 39)

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject property's assessment is warranted. The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the appellant submitted an appraisal of the subject property wherein the appraiser utilized all three traditional approaches in estimating the subject's market value at $2,350,000. The appraiser was present at the hearing to provide testimony regarding his methodology and to be cross-examined.

In his cost approach, the appellant's appraiser estimated a replacement cost for the subject of $3,162,000, rounded. The Board finds the deputy assessor accepted this estimate in his own abbreviated cost analysis. While the appellant's appraiser determined that an allowance for functional and external obsolescence of 25% was appropriate to account for the subject's superior quality of construction when compared to other buildings in downtown Rock Island, the deputy assessor claimed 10% was a more reasonable figure. However, the Board finds the deputy assessor acknowledged in his testimony that the subject contains "a number of amenities to that building that are specifically valuable to the tenant today." The Board finds that the parties are in agreement that the subject building was designed and constructed according to the appellant's wishes. The Board finds the appellant's appraiser concluded significant functional and external obsolescence exists because rents and sales prices in the subject's neighborhood do not support above average construction like the subject. He claimed many buildings in downtown Rock Island remain vacant, due to an oversupply of office space. The appraiser determined the Rock Island has experienced an exodus of businesses to outlying areas and a declining population, similar to that experienced by nearby Moline, Illinois and Davenport, Iowa, which is across the

Mississippi River from Rock Island. The Board finds the deputy assessor disputed the appraiser's claim, but did not effectively refute the appraiser's testimony.

Regarding the sales comparison approach, the Board finds the appellant's appraiser examined sales of five comparable properties. After adjustments, the comparables had adjusted sales prices ranging from $96.50 to $102.34 per square feet of building area including land. The subject has an estimated market value of $2,718,130 or $113.04 per square foot of building area including land, as reflected by its assessment, which is above the range of the only comparable sales in the record. The deputy township assessor testified these comparables are dissimilar to the subject. However, the board of review failed to submit any comparable sales of its own in support of the subject's assessment. The Board finds the courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available.

Regarding the income approach, the Board finds the appellant's appraiser examined lease rates of three comparable properties located in Rock Island and Moline, Illinois and Davenport, Iowa, and four rental offerings. The comparables have either net rents or rental offerings ranging from $8.50 to $14.00 per square foot. Three of the offerings located in Rock Island have had little or no space rented in a year or more. Based on his analysis of these rental comparables and rental offerings, the appraiser concluded a rental rate for the subject of $12.00 per square foot was appropriate. The board of review's analysis also included a very brief income capitalization approach with no rental comparables or other support from the market for the estimated rent for the subject of $14.00 per square foot used by the deputy assessor in his analysis.

Based on the foregoing analysis, the Property Tax Appeal Board finds the best evidence of the subject's market value is found in the appraisal submitted by the appellant, wherein the appraiser estimated the subject's market value at $2,350,000. The Board finds the appellant, through the supporting documentation and testimony of its appraiser, adequately demonstrated the subject's market value as reflected by its assessment is excessive. The Board finds the abbreviated appraisal analysis and testimony offered by the board of review is insufficient to support the subject's assessment and does not overcome the appraisal submitted by the appellant. Therefore, the Property Tax Appeal Board finds the subject had a market value as of January 1, 2005 of $2,350,000. Since market value has been established, the 2005 three-year median level of assessments for Rock Island County of 33.31% shall apply.

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| **APPELLANT:** | **Patricia J. Maul** |
| **DOCKET NUMBER:** | **05-02339.001-C-1** |
| **DATE DECIDED:** | **June, 2008** |
| **COUNTY:** | **St. Clair** |
| **RESULT:** | **Reduction** |

The subject property consists of a mini-warehouse storage facility composed of five buildings containing 22,107 square feet of building area. The buildings have metal frame with metal panels and were constructed in 1998 and 2001. There are a total of 143 storage units and a 1,307 square foot office.

The appellant appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. The appellant contends the subject property had a market value of $410,000 as of the assessment date. In support of this argument the appellant testified the subject property was purchased in March 2005 for a total price of $610,000. She testified that the seller was not related to the appellant and was a competitor. The appellant explained that the seller approached her in February 2005 and offered to sell the subject for a price of $610,000, which included the real estate and the business. She countered with an offer of $550,000 but this was rejected and the parties ultimately agreed to a price of $610,000. She further explained included in the purchase price was $200,000 attributable to goodwill and a non-competition agreement. In support of this assertion the appellant submitted a copy of the sales contract, a copy of the non-competitive agreement, and a copy of an IRS Asset Acquisition Statement stating that $100,000 was the consideration for the non-compete agreement and $100,000 was the consideration for the going concern and goodwill. As a further support of her market value argument the appellant submitted a copy of an appraisal estimating the subject real estate had a market value of $400,000 as of December 26, 2005.

As a final point the appellant noted that the cost approach to value developed by the assessor's office had a cost estimate for 6 roll-up doors at $13,536. She submitted a copy of a quote from a manufacturer that the retail cost of each door was $404 for a total cost of $2,424.

Based on this evidence the appellant requested the subject's assessment be reduced to reflect a market value of $410,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the equalized assessment of the subject totaling $183,239 was disclosed. The subject's assessment reflects a market value of approximately $548,950 using the 2005 three year median level of assessments for St. Clair County of 33.38%. In support of its assessment the board of review submitted a copy of the Illinois Real Estate Transfer Declaration (PTAX-203) disclosing the subject property sold in March 2005 for a price of $610,000. The board of review noted that there was no deduction on the form for personal property or goodwill; the net consideration for the real estate was reported to be $610,000.

In rebuttal the appellant identified her signature on the transfer declaration but explained the form was not completed correctly.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970).

A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). Furthermore, the sale of a property during the tax year in question is a relevant factor in considering the validity of the assessment. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983).

In this appeal the appellant testified the subject property was purchased in March 2005 for a total price of $610,000. The Board finds, however, the testimony presented by the appellant and documentation disclosed this price was inclusive of $200,000 for a non-compete clause and for the going concern and goodwill associated with the business that was purchased. Thus the Board finds the full consideration attributed to the real estate was $410,000. This conclusion of value is further supported by the appraisal submitted by the appellant estimating the subject real estate had a market value of $400,000 as of December 26, 2005.

In this appeal the Property Tax Appeal Board gave little weight to the Illinois Real Estate Transfer Declaration submitted by the board of review as proof of value for the subject. The testimony of the appellant as well as the sales contract, the non-competitive agreement, and the IRS Asset Acquisition Statement stating that $100,000 was the consideration for the non-compete agreement and $100,000 was the consideration for the going concern and goodwill, demonstrated that the net consideration for the real property recorded on the declaration was not accurate.

In conclusion the Property Tax Appeal Board finds subject property had a market value of $410,000 as of January 1, 2005. Since market value has been determined the 2005 three year median level of assessments for St. Clair County of 33.38% shall apply.

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| **APPELLANT:** | **Moline Apartments, L.P.** |
| **DOCKET NUMBER:** | **05-00360.001-C-3** |
| **DATE DECIDED:** | **June, 2008** |
| **COUNTY:** | **Rock Island** |
| **RESULT:** | **Reduction** |

The subject property consists of a six building apartment complex that was built in 1998/1999 situated on 571,072 square feet or 13.12 acres of land area commonly known as Crown Forest Apartments. The part two-story and part three-story apartment buildings are of vinyl and brick exterior construction that were built over concrete slab foundations. Each building contains 20 apartment units totaling of 108,680 square feet of gross building area. The apartment mix includes 20 one-bedroom apartments; 60 two-bedroom apartments; and 40 three-bedroom apartments, with an average unit size of 906 square feet. Six units are handicapped equipped. Other amenities of the complex include an outdoor swimming pool, a 1,950 square foot clubhouse building, a maintenance/laundry facility, 187 paved parking spaces, and ten, four stall garages.

The apartment complex was constructed and operated as a Section 42 low income housing tax credit project (LIHTC) under the United States Department of Housing and Urban Development (hereinafter HUD). One hundred apartment units are limited to households which qualify as low income at rental rates that may not exceed specified maximum amounts. Twenty apartment units can be offered at prevailing market rents.

The appellant appeared before the Property Tax Appeal Board by counsel claiming overvaluation as the basis of the appeal. The subject matter of this appeal was part of a consolidated hearing along with Docket Number 05-00359.001-C-3. Both appraisers testified the testimony given under Docket Number 05-00359.001-C-3 would be essentially the same or similar with respect to methodology and selection of comparables in this instant appeal, with the exception of the subject's descriptive information and final valuation conclusions. The appellant's counsel moved that the testimony given under Docket Number 05-00359.001-C-3 be adopted for Docket Number 05-00360.001-C-3 without objection.

In support of the overvaluation argument, the appellant submitted an appraisal report which estimated the subject's market value to be $3,450,000 as of January 1, 2005. The appraiser, Howard B. Richter, was present and testified regarding the appraisal methodology and value conclusion contained within the valuation report. In addition, the testimony of Thomas Dobbin, vice president of McCormick Baron Asset Management was presented.

The appellant first called Thomas Dobbin as a witness. Dobbin testified his duties include asset and property management, including overseeing operations of Moline Apartments in East Moline, Illinois. He testified he engaged Howard B. Richter to prepare an appraisal of the subject property. Dobbin testified he provided Richter with three years of audited financial statements and the subject's rent roll as of January 2005.

Under cross-examination, Dobbin testified the subject's financial records were submitted during the local board of review appeal process, but this information was not provided to the local assessor. Dobbin testified if requested he would have supplied said documentation. The board of review's representative alleged that this information was requested by the local assessor. Under redirect examination, Dobbin testified he does not customarily send financial records to assessors throughout the State of Illinois. In addition, Dobbin could not recall a request for the subject's financial records prior to the assessment of the subject property.

The next witness called by the appellant was real estate appraiser Howard B. Richter, a state licensed appraiser who holds several professional designations in the field of real estate valuation. The board of review had no questions regarding Richter's qualification to provide expert testimony in this appeal. Richter testified he has performed many appraisals of subsidized low income housing projects at the request of the Illinois Housing Development Authority, including at least six properties in Rock Island County.

The appraiser first gave a short summary of the appraisal methodology and Section 42 low-income housing. Richter testified the subject property is a low income housing tax credit property (LIHTC). Under this program, developers or purchasers agree to limit tenancy to people who have incomes less than a percentage of the area wide median income and charge rents that do not exceed a certain level, which are typically below the market rents of that particular community. Richter testified developers and purchasers of Section 42 housing projects are not able to remove the restrictions for these projects for a set period of time from 15 to 30 years. Richter testified that Illinois passed legislation mandating the method by which Section 42 low income housing projects are to be valued for ad valorem taxation purposes. He testified state law requires a Section 42 project to be valued by the income approach, using only low income rental rates. Richter testified these types of projects are subject to a detailed review of their annual operations by the sponsoring agencies, in Illinois, the Chicago Housing Authority and the Illinois Housing Development Authority, and on the federal level, by either HUD, Fannie Mae or Freddie Mac.

Richter testified because of the LIHTC agreement, economic rents must be determined by comparison with other similarly restricted properties because the owner is not free to charge market rents. Thus, Richter testified the subject's economic rental rates are based in part on the current operations of the property, but also by comparison with other low income properties. Richter also indicated Illinois law requires the use of a 5% vacancy rate rather than a market derived vacancy rate. Operating expenses, under proper management, are also deducted in arriving at a net operating income. The subject's expenses were compared to expense ratios in the marketplace and were found to be typical. Thus, the appraiser opined the subject property was being managed appropriately. A capitalization rate was calculated, including an effective tax rate factor, depending on the risk of the investment. Richter testified calculation of the proper capitalization rate is the most complex part of the income approach.

Under the income approach to value, Richer first valued the subject's 20, two-bedroom units that were not part of the Section 42 program. In reviewing the subject's 2005 rent roll, the appraiser reported the two-bedroom units charged rents from $610 to $640 per month with an average and stabilized rent of $620 per unit or $.71 per square foot.

As a check of economic rents, Richter performed a lengthy comparative analysis of four apartment complexes located in the "Quad Cities" communities of East Moline and Moline, Illinois. After reviewing the four suggested rental comparables and considering adjustments for differences when compared to the subject, the appraiser concluded the subject's rents reflected market rents for the 20-units not under the restrictions of a Section 42 low income housing project. Therefore, Richter calculated these 20 units have a potential gross annual income of $148,800.

Richter next analyzed the 100 rental units that were subject to the Section 42 low income housing program. In reviewing the subject's 2005 rent roll, the appraiser indicated one bedroom units charged rents from $455 to $510 per unit with average and stabilized rents of $490 per month or $.79 per square foot; two bedroom units charged rents from $555 to $585 per month, with an average rent of $564 per unit and stabilized rent of $565 per unit or $.64 per square foot; and three bedroom units charged rents from $630 to $660 per month with an average rental rate of $637 per unit and a stabilized rental rate of $640 per unit or $.57 per square foot. Richter next performed a lengthy comparative analysis of six Section 42 low income housing apartment complexes in the "Quad Cities" communities of Milan, Silvis, Moline, Rock Island and Carbon Cliff. After reviewing the suggested rental comparables and considering adjustments for differences when compared to the subject, the appraiser concluded the subject's stabilized rents for the 100-units reflect the rents for properties under the constraints of a Section 42 low income housing project. Therefore, Richter calculated that the 100 units under Section 42 low income housing have a potential gross annual income of $696,000.

Based on the aforementioned rental rates, the appraiser calculated the subject property had potential gross annual income of $844,800. As required by statute, Richter deducted 5% or $42,240 for vacancy loss, resulting in an effective apartment income of $802,560. Ancillary income was stabilized increasing the subject's effective gross income to $850,560.

Richter next calculated the subject's annual stabilized expenses to be $437,974 or $3,650 per rental unit or 51.5% of the effective gross income. The subject's actual expenses as reported for 2004 were $360,732 or $3,006 per unit or 46.2% of the effective gross income. Richter next compared the subject's actual and stabilized expenses to two Section 42 low income housing projects and one section 8 subsidized housing complex. The expense comparables were located in Milan, East Moline, and East St. Louis, Illinois. They contain from 76 to 174 rental units and had expenses in either 1999 or 2004 ranging from $305,672 to $685,386 or from $3,542 to $4,022 per rental unit or from 44.7% to 58% of their effective gross income. Based on three years of reported expenses and considering adjustments to the comparable properties' expenses, Richter opined the subject's stabilized expenses of $437,974 or approximately 51.5% of its effective gross income to be consistent. Thus, he deducted $437,974 from the subject's effective gross income of $850,560 resulting in a net operating income of $412,586, excluding real estate taxes.

Richter next calculated a capitalization rate using two methods to be applied to the subject's net operating income. Using the market extraction method, the appraiser analyzed 16 suggested sales of apartment buildings located throughout the State of Illinois. However, Richter primarily relied on five sales located in Moline or Rock Island. These properties were built from 1966 to 1981; contain from 12 to 216 apartment units; and sold from September 2003 to May 2005 for

prices ranging from $485,000 to $5,100,000 or from $23,611 to $57,000 per rental unit. Based on these comparables' reported effective gross incomes, occupancy rates, operating expenses, and net operating incomes, Richter extracted overall capitalization rates ranging from 5.26% to 9.97%. After considering adjustments, Richter developed a capitalization rate range from 8.5% to 9.0%.

Richter next developed a capitalization of rate of 8.6% using the band of investments technique. Based on both methods, Richter considered an overall capitalization rate of 8.6% to be both market supported and derived from the band of investments. The appraiser next added a tax load factor of 3.22% to account for real estate taxes resulting in a final capitalization rate of 11.8%. Capitalizing the subject property's net operating income of $412,586 by 11.8% resulted in estimated market value of $3,496,492. Richter next deducted $45,000 to account for the contributory value of personal property for a final value estimate under the income approach of $3,450,000.

The Richter appraisal report was based on the subject property having 18.245 acres of land. Based on this evidence and testimony, the appellant requested the Property Tax Appeal Board to reduce the subject property's assessment to reflect its appraised value as required by Public Act 93-533. (35 ILCS 200/10-235, 10-245, 10-250).

Under cross-examination, the appraiser was questioned regarding some line item expenses. (Pg. 59 of appraisal). The appraiser stabilized the management fee of $51,034 or $425 per unit, although the management fees from 2002 to 2004 ranged from $38,582 to $39,759 or from $322 to $331 per rental unit. Richter explained he utilized 6% of the subject's effective gross income or $51,034 for the management fee because it is typical and virtually universal for managing buildings like the subject and similar properties throughout the county. He also noted the Illinois Housing Development Authority and the HUD permit up to an 8% management fee for LIHTC properties. He further explained that the higher management fee is justified given the statutory requirement of using only a 5% vacancy rate. He testified the subject experienced vacancy over the allowable 5% rate between 2002 and 2004 and since the management fee is based on a percentage of money collected, the amount of money collected is less with the higher vacancy rate. In other words, using a set vacancy rate of 5% would generate higher effective gross income; partially offsetting that factor would be the higher management fee. He also testified that since McCormick Baron operates two properties in the area, they have some savings in the expenses that a typical owner does not have.

When questioned regarding the statutory requirement of using actual expenses when valuing a Section 42 low income housing property, the appraiser testified the law requires stabilizing actual expenses for valuation purposes. With respect to the insurance expense, Richter acknowledged he could not explain why the insurance premium decreased in 2004 to $23,675 or $197 per rental unit from the 2002 and 2003 premiums of $52,159 and $56,541 or $435 and $471 per rental unit, respectively. He testified the stabilized insurance premium used of $54,000 or $450 per rental unit is between the 2002 and 2003 amounts and is consistent with the Section 42 expense comparables. He acknowledged page 60 of the report indicates the management company was able to negotiate lower insurance premiums for the two properties they own in Rock Island County together with over 20 other properties McCormick Baron owns or manages.

He further explained an appraiser is anticipating the expenses to the next owner, which may not be someone with the leverage of owning multiple properties.

With respect to advertising fees, the appraiser stabilized the advertising expense at $7,200 or $60 per rental unit, although the advertising expense fees from 2002 to 2004 ranged from $3,089 to $3,623. Richter again tied this increased expense to the mandatory 5% vacancy rate. He explained the owner is attempting to achieve 95% occupancy. Thus, Richter thought increasing the advertising expense was appropriate.

The appraiser was next questioned about the expense comparables, all three of which are managed by McCormick Baron. Richter acknowledged the income and expenses are estimates based on the percentage of their effective gross incomes. The expense ratios of the effective gross income for the two expense comparables located in Rock Island County were 44.7% for one property in 1999 and 58% for the other property in 2004. The subject's actual expense to effective gross income ratio was 46.2% in 2004 in which Richter stabilized to 51.5% for valuation purposes. Richter did not consider the East St. Louis expense property to be comparable in location. However, Richter opined expenses are not an attribute of location, but are a function of the building operations. In contrast, he next testified East St. Louis is a lower-tiered economic community, noting insurance costs would be higher, but labor costs are lower in comparison to Rock Island County.

Richter testified of the two primary methods of developing a capitalization rate, a market derived capitalization rate is preferred. He explained an appraiser analyzes sales of similar comparable properties and their verifiable net incomes to calculate a market derived capitalization rate. Richter testified that under the market extraction method, he primarily relied on the sales that occurred in Moline or Rock Island. In further support of the market capitalization rate, Richter analyzed suggested comparable sales in the Iowa section of the Quad Cities, which he considered much less pertinent because they are located in a different state. He did not give these sales much weight for purposes of developing a capitalization rate due to their out of state location. He also looked at sales in other Illinois communities in calculating a capitalization rate. He testified his analysis shows the Iowa and other Illinois communities' sales show a consistent capitalization rate range that is somewhat higher than the rates in Rock Island County. Richter next provided testimony in connection with the band of investments technique of capitalization. Richter acknowledged he used the 2004 tax rate to calculate the effective tax load factor in the capitalization rate

The board of review presented its "Board of Review Notes on Appeal" wherein the subjects' final assessment of $1,570,771 was disclosed. The subject's assessment reflects an estimated market value of $4,715,614 using Rock Island County's 2005 three-year median level of assessments of 33.31%. In support of the subject's assessment, the board of review submitted an appraisal report that estimated the subject's market value to be $4,500,000 excluding $65,000 of personal property as of January 1, 2005. The appraiser, David Mark Nelson, was present and testified regarding the appraisal methodology and value conclusions contained within his valuation report.

Nelson is a licensed appraiser in the State of Illinois and Iowa. He has been appraising real property for approximately 15 years. Prior to appraising real property he was a property manager in suburban Washington, D.C. Nelson testified he appraised the subject property for its

original construction loan. He has appraised over 25 low income housing projects within the region. Nelson testified he has completed all the necessary requirements for the Member of the Appraisal Institute designation.

Under questioning from opposing counsel regarding qualifications, Nelson testified he is not a graduate of a college or university, but had taken several courses and received 30 to 40 credit hours from American University and Augusta College. Nelson acknowledged his professional property management affiliations have lapsed.

Page 2-A of the appraisal report indicates the owner of the subject property purchased the 18+ acres of land in 1996 for $335,165. However, the owner sold 5.137 acres that has frontage on 34th Avenue to the City of East Moline in 1998. No sale price for the 1998 transaction was listed. Thus, Nelson appraised the subject property as having 13.12 acres of land. Nelson's report also indicates the subject property is improved with 15 garages, each with four stalls. However, an aerial photograph of the subject contained in Nelson's report clearly shows 10 garages as identified in the Richter report.

Under the income approach to value, Nelson calculated the subject's potential gross annual income to be $844,800 using the subject's asking rents. He testified the actual asking rents are supported by a survey of comparable apartment units. He testified low income tax credit housing in the subject's market have rental rates that are competitive to traditional market rents. Nelson testified low income housing like the subject has difficulty procuring new tenants due to limited income qualification requirements. Some of these prospective tenants can get lower rental rates at older properties that are proximate to the subject. Nelson opined although the subject is a newer property, it is at a competitive disadvantage due to tenant income restrictions. Nelson next deducted 5% or $42,240 for vacancy as required by Public Act 093-0533 (35 ILCS 200/10-245), resulting in an effective apartment income of $802,560. The potential gross annual income and effective gross income amounts were identical to figures contained in the appellant's appraisal report. Nelson stabilized the subject's other income at $45,000 as reported by the owners from 2002 to 2004, increasing the subject's effective gross income to $847,560.

Nelson next stabilized the subject's annual expenses at $314,878 or $2,624 per rental unit or 37.15% of the effective gross income, based in part on its reported expenses from 2002 to 2004, expense comparables, and market research. He placed more weight on the expenses from 2002 and 2003 due to their stability in those years with some modest increases. Nelson stated the 2004 expense figures appear to be an anomaly. Nelson next deducted $24,000 for reserves for replacement resulting in a final expense amount of $338,878 or 39.98% of the effective gross income. As a result Nelson concluded the subject property had a stabilized net operating income of $508,682.

Nelson stabilized a management fee of 5% or $40,128 based on its size, which is slightly higher than its historical management fee. He testified a 5% fee is more consistent with his professional experience. Nelson stabilized contract services at $20,500, which was consistent with the 2002 through 2004 amounts reported by the appellant. The appraiser also stabilized the subject's insurance premiums at $24,000 or $200 per rental unit, considerably less than the premiums paid in 2002 and 2003 of $52,159 and $56,541. Nelson testified he consulted insurance brokers and larger property owners and found insurance premiums rarely, if ever, exceed $200 per rental unit

in the Quad Cities market. Nelson noted insurance premiums vary depending on the type of insurance and deduction levels. The appraiser next explained the maintenance expenses reported by the owner ranged from $80,611 to $108,486 or in excess of $700 per rental unit, which is considerably higher than properties in the subject's market area. Nelson determined maintenance expenses average between $500 and $750 per rental unit, with higher expenses for older properties. Given the subject's newer age, Nelson stabilized the subject's maintenance expenses at $75,000 or $625 per rental unit. In the reserves for replacement allowance, the appraiser calculated a set aside amount of $24,000 or $200 per unit. However, this amount was based on the likelihood of replacement during the holding period. The length of the holding period was not defined.

Nelson reconciled the subject's reported expenses with six other apartment complexes deemed to be located in the subject's market. They were all located in Davenport, Iowa. Nelson performed the expense comparison on a line-by-line basis. Expenses ranged from $150,027 to $801,020 or from $2,093 to $2,885 per rental unit or from 39.01% to 58.80% of their effective gross incomes.

After this analysis, Nelson concluded the subject's actual and stabilized expenses as calculated by Richter were considerably higher than the expense comparables. Thus, Nelson suggested that there was some inefficiency in the management or some process of overstating the expenses that was being applied to the subject's financial statements. Nelson explained the expense amounts for his comparables and four of the five expense comparables in Richter's report were under $3,000 per rental unit. As a result, Nelson concluded the subject property's expenses as stabilized by Richter at $437,974 or almost $3,650 per rental unit were inconsistent with the market, especially given its newer age.

Nelson next calculated a capitalization rate using the same two methods as developed by Richter. Nelson explained that due to a lack of investor interest in the Quad Cities market, capitalization rates tend to be higher than other parts of Illinois. Using the market extraction method, the appraiser analyzed suggested sales of apartment complexes located in Davenport, Iowa, which is located across the Mississippi River from Rock Island County. Nelson testified he had complete income and expense data for these properties. These properties were from 3 to 37 years old; contain from 52 to 288 apartment units; and sold from April 2004 to September 2005 for prices ranging from $1,500,000 to $9,359,500 or from $26,375 to $42,143 per rental unit. Based on these comparables' effective gross incomes, occupancy rates, operating expenses, and net operating incomes, Nelson extracted overall capitalization rates ranging from 7.01% to 9.22%. After considering adjustments, Nelson determined a capitalization rate of 8.25% was appropriate.

Nelson also developed a capitalization rate of 8.25% using the band of investments technique, identical to the rate under the market extraction method. The appraiser next added a tax load of 3.07% to account for real estate taxes resulting in a final capitalization rate of 11.32%. Capitalizing the subject property's projected net operating income of $508,682 by 11.32% resulted in an estimated value of $4,493,657 or $37,447 per rental unit. Nelson next deducted $65,000 to account for the contributory value of personal property resulting in a value estimate under the income approach of $4,428,657. Nelson calculated the subject's property taxes based on a market value of $4,428,657 would be $136,038.

As a check of the aforementioned value estimate, Nelson reconstructed the income approach using the estimated taxes of $136,038 as an expense from his initial value estimate of $4,428,657. This method resulted in the subject's projected net operating income including property taxes of $372,644, capitalized at 8.25%, resulted in value estimate of $4,516,901 or $37,641 per rental unit. Based on the two value estimates under the income approach, Nelson concluded a final value estimate for the subject property of $4,500,000 or $37,500 per rental unit as of January 1, 2005.

Under cross-examination, Nelson testified he was engaged to prepare the appraisal report on July 19, 2006; inspected the subject property on August 26, 2006; and transmitted the report by letter dated September 7, 2006. He indicated the county supplied the subject's property record card and the appraisal report prepared by Richter. With respect to Public Act 93-0533 (35 ILCS 200/10-235, 10-245 and 10-250), Nelson identified the specific assumptions related to the Act of a 5% vacancy rate and the use of restricted rents. Nelson testified his appraisal report is in conformity with Public Act 93-0533, based on his understanding of the law.

Nelson testified one source of the data within the appraisal was taken from Richter's appraisal report, but the stabilized projection amounts were based on his calculations using the actual data and market comparables. He did not know if the data used from the Richter report was independently audited. He did not prepare a formal review of the Richter appraisal, but he did read parts of the report. The appraiser next discussed Quad City area retail sales on the Illinois and Iowa sides of the Mississippi River. He testified the Quad Cities is a single economic region in the eyes of the federal government with virtually little difference between the two sides of the community in terms of economics. He testified the relevance of Iowa being the largest population is highly important to the Illinois side of the river.

With respect to expenses under the income approach, Nelson testified he eliminated the line item for bad debt because the law required the use of a vacancy and collection loss rate of 5%. Nelson testified he stabilized the computer expenses at $2,500 based on the amount reported in 2003 of $2,360, which reportedly increased to $7,646 in 2004. Likewise, Nelson stabilized the repairs and maintenance amount at $30,000 because it is more in-line with the reported amount in 2003 of $31,900. The appellant reported repairs and maintenance fees of $50,757 in 2002 and $52,628 in 2004.

Nelson agreed he reduced the insurance liability amount to $24,000 or $200 per rental unit from the actual reported amounts ranging from $23,675 to $56,541 between 2002 and 2004. Nelson explained he surveyed owners of similar sized properties as well as insurance agencies and found insurance rates in almost all cases were under $200 per rental unit. He agreed the actual insurance costs in 2002 and 2003 were over $400 per unit; but slightly less than $200 per unit in 2004. He questioned the management decision in purchasing insurance with such high premiums in 2002 and 2003. With regard to overall expenses, the appraiser testified he was surprised at the $437,974 or $3,650 per unit expense amount as calculated by Richter. Nelson testified he is intimately involved in the apartment market throughout the Quad Cities and he routinely reviews income and expense statements. Nelson testified he has not seen apartments having expenses at that high level, which is completely out of line with the market.

The appraiser was next questioned about the expense/sales comparables, which are located in Davenport, Iowa. Nelson testified there were no sales of similar apartment complexes on the Illinois side of the Quad Cities within a relevant time frame. The appraiser testified he did not adjust the comparables' expenses because the markets are very uniform, noting small differences in tax rates. Nelson testified the income and expense information was sourced through a survey in November 2005 of property management firms or contacts with property owners. If a firm or owner could not be contacted for a particular property, Nelson testified he used information from a prior survey that was prepared in July 2004. He agreed the 2004 survey was not contained within the appraisal report. Nelson agreed four properties contained in the survey (page 4-F of appraisal) were in bankruptcy, but were operational. The appraiser testified he has been in close contact with the parties involved in the bankruptcies. Nelson agreed the bankruptcy status of a property could affect a potential buyer's opinion of value. Nelson testified certain buyers have a positive interest in distressed properties and feel they are very unique investment opportunities. In contrast, a potential buyer who does not want that kind of trouble, the bankruptcy issue would be a negative influence. Nelson acknowledged bankruptcy of a given property tends to decrease its market value modestly. He also noted three of the four properties discussed subsequently sold. Nelson testified the bankruptcy status of these properties is a direct result of the quality of management. He noted the three properties that sold were involved in a "bidding war of sorts," but did sell for less than properties not subject to bankruptcy, mostly due to deferred maintenance. The one property in bankruptcy that has not sold was due to prepayment penalty mortgage restrictions.

The appellant recalled Howard Richter as a rebuttal witness. He testified there would be a significant reduction in the price a potential buyer would pay for bankrupt properties, as opposed to properties not under financial distress. In the written rebuttal submission prepared by Richter, he recognized the subject's site contains approximately 13 acres of land rather that the 18+ acres described in his appraisal report. Since both appraisers relied on the income approach to value and the land that was sold is un-buildable due to its low lying terrain, he concluded the difference has no impact on the value estimate. Richter also claimed none of the comparables used by Nelson were low income housing projects like the subject.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the subject property is entitled to be assessed according to the dictates provided by Article 10, Division 11 of the Property Tax Code. (35 ILCS 200/10-235 through 10-260). The Board further finds both parties offered appraisal reports valuing the subject as a Section 42 low income housing project in accordance with Section 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-245 and 10-260). Finally, the Board finds both appraisal reports support a reduction in the subject's assessed valuation.

The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Property Tax Appeal Board is required to determine the correct assessment of the subject property on the basis of the evidence received at hearing. Illini Country Club v. Property Tax Appeal Board, 263 Ill.App.3d. 410, 416, (4th Dist. 1994).

Section 10-235 of the Property Tax Code provides that it is the policy of the State of Illinois that low income housing projects that qualify for low-income housing tax credits under Section 42 of the Internal Revenue Code shall be valued based on their economic productivity to their owners to ensure that high taxes do not result in rent levels that cause excess vacancies, loan defaults, and loss of rental housing facilities to those that are in most need. (35 ILCS 200/10-235). Sections 10-245 and 10-260 of the Property Tax Code establish the method of valuing Section 42 low-income housing projects in accordance with this policy. Section 10-245 of the Property Tax Code provides in part:

> . . . to determine 33 and one-third percent of the fair cash value of any low-income housing project that qualifies for low-income housing tax credit under Section 42 of the Internal Revenue Code, in assessing the project, local assessment officers must consider the actual or probable net operating income attributable to the project, using a vacancy rate of not more than 5%, capitalized at normal market rates. The interest rate to be used in developing the normal market value capitalization rate shall be one that reflects the prevailing cost of cash for other types of commercial real estate in the geographic market in which the Section 515 project is located. (35 ILCS 200/10-245).

Section 10-250(b) of the Property Tax Code provides the method that Section 42 property is to be assessed stating:

> Beginning with taxable year 2004, all low-income housing projects that qualify for the low-income housing tax credit under Section 42 of the Internal Revenue Code shall be assessed in accordance with Section 10-245 if the owner or owners of the low-income housing project certify to the appropriate local assessment officer that the owner or owners qualify for the low-income housing tax credit under Section 42 of the Internal Revenue Code for the property. (35 ILCS 200/10-250(b)).

Section 10-260 of the Property Tax Code clarifies that the income approach is to be given greatest weight in valuing Section 42 housing, providing:

> In determining the fair cash value of property receiving benefits from Low-Income Housing Tax Credit authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42, emphasis shall be given to the income approach, except in those circumstances where another method is clearly more appropriate. (35 ILCS 200/10-260).

The Board finds both appraisers used the income approach to value as provided by the Property Tax Code in valuing the subject property for ad valorem taxation purposes. The Board finds both appraisers were in agreement in most part as to the description of the subject property, with the exception of the subject's land size and number of garages. In addition, the Board finds both appraisers had similar if not identical components within each of their respective income approaches. For example, both appraisers used a potential apartment gross income of $844,800; both appraisers used the statutory required vacancy rate of 5% or $42,240; they had a slight

variance in other stabilized income of $45,000 and $48,000, respectively; resulting in very similar effective gross incomes of $847,560 and $850,560, respectively.

The Board finds the main divergence within the two appraisals is the method that each expert accounted for the subject's stabilized/projected expenses for 2005. Both appraisers had access to and partially used the subject's actual income and expenses, independently audited as reported by the appellant. Also, both appraisers analyzed suggested comparable properties in calculating the subject's stabilized/projected expenses for 2005. The appellant's appraiser calculated the subject's expenses to be $437,974 or 51.5% of the effective gross income or $3,650 per rental unit, resulting in a net operating income of $412,586. The board of review's appraiser calculated the subject's expenses to be $338,878 or 44.45% of the effective gross income or $2,824 per rental unit, resulting in a net operating income of $508,682. Finally, the Board finds both appraisers calculated somewhat similar capitalization rates of 11.8% and 11.32%.

In reviewing both appraisal reports, analyzing the subject's actual income and expenses as reported by the appellant, and considering the expense comparables contained in both reports, the Property Tax Appeal Board finds the appellant's appraiser overstated the subject's expenses of $437,974, resulting in an incorrect net operating income of $412,586. In this same context, the Property Tax Appeal Board finds the board of review's appraiser understated the subject's expenses at $338,878 resulting in an incorrect net operating income of $508,682. The subject's three-year operating history, as reported by the appellant and analyzed by both appraisers, shows overall expenses that are much less than calculated by Richter. In this same sense, the subject's three-year operating history depicts overall expenses that are much higher than calculated by Nelson.

The Board finds both appraisal reports contained a total of nine suggested expense comparables with varying degrees of similarity and dissimilarity when compared to the subject in terms of location, age, design, size and features. The Board placed less weight on two of the expense comparables contained in the appellant's appraisal report. One comparable is a somewhat larger apartment complex than the subject and is located in the distant city of East St. Louis, Illinois. The appellant's appraiser used 1999 expense data for the other comparable, which the Board finds dated for this 2005 appeal. The Board also gave less weight to one expense comparable used in the board of review's appraisal report due to its considerably larger size when compared to the subject.

The Property Tax Appeal Board finds the remaining six expense comparables to be more representative of the subject, recognizing four comparables are older, requiring more maintenance when compared to the subject. These comparables had total expenses ranging from $150,027 to $360,720 or from $2,093 to $3,006 per rental unit or from 39.01% to 58.80% of their effective gross incomes. After considering proper adjustments to the more similar expense comparables for differences when compared to the subject, the Property Tax Appeal finds a more proper expense ratio of the subject's effective gross income is 47.3%. The Board also reconciled the small difference in both appraisers effective gross income of $847,560 and $850,560 to $849,000. Thus, the Board finds in this appeal the proper expense amount attributed to the subject property is $401,577 or $3,346 per rental unit. These calculations result in a stabilized net operating income for the subject of $447,423.

With respect to the proper market capitalization rate, the Board finds both appraisers used the band of investments technique as well as the market extraction method in calculating the proper rate, with addition of the tax load factor to account for property taxes. The Board gave less weight to the capitalization rate calculated by the appellant's appraiser. The Board finds the evidence and testimony indicates the appraiser used an incorrect tax load factor for the 2005 assessment year. Likewise, the Board gave more weight to the capitalization rate developed by the board of review's appraiser. He used the correct property tax load factor for the 2005 assessment year. Thus, the Board finds the capitalization rate of 11.32% to be more appropriate.

Capitalizing the subject's stabilized net operating income of $447,423, as previously found by this Board, by a rate of 11.32%, equates to a fair cash value of $3,952,500. Deducting $65,000 for personal property as detailed in the Nelson report, the Board finds the subject property has a fair market value of $3,887,500. The subject's assessment reflects an estimated market value of $4,715,614. Therefore, the Property Tax Appeal Board finds a reduction in the subject's assessment is warranted. Since fair market value has been established, Rock Island County's 2005 three-year median level of assessments of 33.31% shall apply.

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| **APPELLANT:** | **Shannon Court Limited Partnership** |
| **DOCKET NUMBER:** | **01-25627.001-C-2 & 03-21092.001-C-2** |
| **DATE DECIDED:** | **April, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **Reduction** |

The subject property consists of a 12,200 square foot parcel of land containing a 29-year old, masonry, five-story, apartment building. The improvement contains 49 units and 43,652 square feet of net rentable area. The appellant, via counsel, argued that there was unequal treatment in the assessment process of the land and the improvement as the basis for this appeal.

The PTAB finds that these appeals are within the same assessment triennial, involve common issues of law and fact and a consolidation of the appeals would not prejudice the rights of the parties. Therefore, under the *Official Rules of the Property Tax Appeal Board, Section 1910.78*, the PTAB consolidates the above appeals.

In support of the equity argument, the appellant submitted a brief from the appellant's attorney, a copy of the 1998 PTAB appeal decision, the circuit court decision of the administrative review appeal of the 1998 decision, and an analysis titled "Study of Comparable Assessed Value of Apartment Communities Hanover Township, Cook County, Illinois". In the 2003 appeal, the appellant also submitted 2001 and 2002 income statements, the 2002 rent rolls, and four market value comparables to evidence their assessed values based on the sale price.

At hearing, the appellant called its witness, Kevin Morse. Mr. Morse testified that he has worked within commercial real estate for the last 17 years with the last 10 in multi-family housing as an executive. He indicated that he also has a real estate broker's license in Illinois and Indiana and a certification from the National Apartment Association as a Certified Apartment Property Supervisor.

Mr. Morse testified that during the 2001 and 2003 assessment years, he supervised the management of the subject property which included making frequent visits to the property, reviewing the financial statements, reviewing the rent rolls, and being involved in tax appeal matters.

Mr. Morse testified that he prepared the two documents entitled Study of Comparable Assessed Value of Apartment Communities Hanover Township, Cook County, Illinois, dated February 21, 2003 which was marked as Appellant's Exhibit #1 and the one dated June 30, 2003 which was marked Appellant's Exhibit #2. Mr. Morse stated that he gathered information about the subject property and comparable properties and compiled this information in the studies. Mr. Morse then summarized each section of Appellant's Exhibits #1 and #2.

As to the introduction section of the exhibits, Mr. Morse testified part of this section indicates the criteria used in establishing a comparable property. This criteria was: properties located within a two mile radius of the subject; those that had similar gross rent per square foot; heat was included in the rent for the comparables; and the properties were all located within Hanover Township. In establishing the gross rent per square foot for each suggested comparable, Mr.

Morse testified that he telephoned either the property manager or the landlord for the properties to gather information on the property. Mr. Morse testified he toured all the suggested comparables either by inspecting the interior of the units and/or walking around the exterior. Mr. Morse stated he reviewed third party data, such as a property database, to confirm the square footage of the suggested comparables.

Section 2 of appellant's exhibits contains a colored photograph, assessment data, and description of the subject property. Mr. Morse testified he took the photograph of the subject property in 2001 and it is an accurate depiction of the property for both the 2001 and 2003 assessment year. Mr. Morse testified that the only difference between the data in the exhibits is that the 2003 assessment was reduced by the assessor and this information is contained in Appellant's Exhibit #2. In addition, Mr. Morse stated there was a slight reduction to the 2003 assessment by the board of review that was not reflected in the exhibit.

Assessment data and descriptions of the suggested comparables as well as colored photographs are contained in section 3 of the exhibits. As to comparables #1, #2 and #3, Mr. Morse testified he took the photographs of the properties and gathered the description of the properties from a CoStar report. Mr. Morse testified he confirmed the descriptions by speaking with the property managers or owners. Mr. Morse stated all three comparables are located down the road from the subject, are in the same type of development, were built at the same time, most likely by the same developer, contain the same number of units, have the same amenities, and look identical to one another. Mr. Morse testified these properties have access to laundry facilities.

As to suggested comparable #4, Mr. Morse testified that this property is located just down the road from the subject. Mr. Morse wrote the description for this comparable after gathering information about the property during a tour of the property with a representative from the leasing office. Mr. Morse testified this property was remodeled in 1999 and amenities included a clubhouse, a pool and laundry facilities. Mr. Morse stated the subject property also has access to a clubhouse, pool and laundry facilities.

Mr. Morse testified the only difference between the exhibits for the suggested comparables is the assessments for these properties. The assessed values for the 2003 assessment year decrease for all the suggested comparables from the 2001 assessment year.

Section four of appellant's exhibits is a map of the subject property and the suggested comparables. Mr. Morse testified the suggested comparables are all located within the Lake Street corridor between Route 59 and the Elgin O'Hare expressway. Mr. Morse indicated this area is within two miles of the subject property.

Mr. Morse testified that he prepared section five of the exhibits. This section is a summary of the rental information gathered for the subject property and the suggested comparables. The information includes the number of units, the style of the units, the rent, the square footage of the units and the rent per square foot. Mr. Morse stated the subject property total rent for both the 2001 and 2003 assessment years was $11.58 per square foot of rental area and the comparables range in rent from $11.64 to $11.88 per square foot of rental area. Mr. Morse testified this is a narrow margin which shows the properties are comparable.

In section six of the appellant's exhibits, Mr. Morse summarized the assessed values for the subject property and the suggested comparables. Mr. Morse stated this section lists the square footage of the land and improvements for the subject and the suggested comparables as well as their assessed values. Mr. Morse testified that the differences between exhibit #1 and exhibit #2 are the differences in the assessment amounts and the assessment amounts per square foot.

Mr. Morse testified he was familiar with the land size of the subject because he has been involved in its management and that he gathered the land size information for the suggested comparables from either the assessor's property characteristic printouts, CoStar Comps or a multiple listing service. Mr. Morse then testified he believed he gathered the land information from plat maps for the properties. Mr. Morse testified that the suggested comparables' land assessments for 2001 were all $.99 per square foot while the subject's land assessment was $1.32 per square foot. Mr. Morse then testified the subject's land assessment for 2003 was $1.20 while the suggested comparables were all assessed at $.90 per square foot.

As to the improvements, Mr. Morse testified that for the 2001 assessment year the subject property was assessed at $9.59 per square foot of rental area while the comparables' improvement assessments ranged from $4.04 to $7.53 per square foot of rental area. In regards to the 2003 assessment year, Mr. Morse testified the subject's improvement was assessed at $8.72 per square foot and the suggested comparables were assessed from $3.67 to $5.61 per square foot of rental area.

Section seven of appellant's exhibits lists the current assessment for the subject property for 2001 and 2003, respectively. Each exhibit then lists the land and improvement assessments that the appellant is requesting.

During cross examination, Mr. Morse testified in regards to gathering information of the suggested comparables that he did not recall the exact name of the people he spoke to or the exact date of when the telephone calls were made. Mr. Morse testified that he confirmed the information provided in the telephone conversations by looking at other sources and comparing the properties to each other. Mr. Morse than gave an example of how suggested comparables #1, #2 and #3 are almost identical properties and the square footage and unit styles should be roughly the same. If any property manager or owner provided inaccurate information, this would be noticeable.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's 2001 land assessment was $16,104 or $1.32 per square foot and the improvement assessment was $418,599 or $9.59 per square foot of rentable area and the 2003 land assessment was $14,640 or $1.20 per square foot and the improvement assessment was $360,359 or $8.26 per square foot of rentable area. The board also submitted raw sale information for a total of nine properties suggested as comparable to the subject. These comparables are all located within the subject's market and are improved with one to four apartment buildings or complexes of two or three-story design and masonry or frame exterior construction. These buildings range: in age from 17 to 40 years; in units from 24 to 120; and in improvement size from 14,700 to 99,000 square feet of gross net rentable area with three sizes estimates. The comparables sold from September 1999 to May 2002 for prices ranging from $813,822 to $4,900,000 or from $49.49 to $93.37 per square foot of gross rentable area. At hearing, the board of review rested on the evidence.

In rebuttal, the appellant's attorney argued that the board of review's evidence does not address the appellant's appeal based on uniformity of the assessments. The appellant submitted the assessed values for the board of review's sales properties, with the exception of one property located in DuPage County, to establish that these properties are under assessed based on their sale prices.

After considering the evidence and reviewing the testimony, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

Appellants who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the suggested comparables to the subject property. *Property Tax Appeal Board Rule* 1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960). Having considered the evidence presented, the PTAB concludes that the appellant has met this burden and that a reduction is warranted.

The appellant presented assessment data on a total of four equity comparables. The PTAB finds these comparables similar to the subject. The testimony shows the comparables are located within two miles of the subject property, have similar rental units and amenities, and all have heat included in the rent. The PTAB finds that this evidence along with the narrow rental price per square feet of rental area establish the comparability of the properties to the subject.

As to the land, the comparables range in size from 33,472 to 388,029 square feet and have land assessments of $.99 per square foot for 2001 and $.90 per square foot for 2003. In comparison, the subject property's land assessments for 2001 of $1.32 per square foot and $1.20 per square foot for 2003 fall above the assessments of the comparables. As to the improvements, the comparables range in size from 19,800 to 190,080 square feet of rental area and in improvement assessments from $3.67 to $7.53 per square foot of rental area for both the 2001 and 2003 assessment years. In comparison, the subject's improvement assessment of $9.59 per square foot of rental area for 2001 and $8.72 per square foot of rental area for 2003 falls above the range established by these comparables.

The PTAB accorded little weight to the board of review's evidence because they failed to submit evidence that addressed the appellant's equity appeal. The board's evidence of unadjusted sales information did not include any assessment information. The assessment information provided by the appellant in rebuttal shows that the properties submitted by the board of review were assessed at a value substantially less than the sale price. In addition, the board of review submitted a property located within DuPage County which does not assess property at the same level as Cook County.

As a result of this analysis, the PTAB further finds that the appellant has demonstrated that the subject's improvement was inequitably assessed by clear and convincing evidence and that a reduction for both the 2001 and 2003 assessment years are warranted.

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| **APPELLANT:** | **Super Valu, Inc.** |
| **DOCKET NUMBER:** | **02-21139.001-C-3 thru 02-21139.002-C-3 & 03-20046.001-C-3 thru 03-20046.002-C-3** |
| **DATE DECIDED:** | **August, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **Reduction** |

The subject property consists of a nine-year-old, one-story, masonry commercial type building containing 65,940 square feet of building area on two parcels totaling 308,865 square feet of land. The appellant argued that the fair market value of the subject is not accurately reflected in its assessed value.

The PTAB finds that these appeals are within the same assessment triennial, involve common issues of law and fact and a consolidation of the appeals would not prejudice the rights of the parties. Therefore, under the *Official Rules of the Property Tax Appeal Board, Section 1910.78*, the PTAB, without objection from the parties, consolidates the above appeals.

In support of this market value argument, the appellant submitted a complete, self-contained appraisal of the subject with an effective date of January 1, 2002 and an estimated market value of $3,600,000. The appraiser is Terrence P. McCormick who testified that he is a principal in the appraisal firm of McCormick and Wagner. He indicated that he is a state-certified appraiser in Illinois and that he holds a MAI designation with the Appraisal Institute. Mr. McCormick testified he has been appraising property since 1979 and has appraised over 400 grocery stores and large retail properties. Mr. McCormick was offered as an expert in the field of property valuation and, without objection from the remaining parties, was accepted as such by PTAB.

The appellant's appraisal gave an estimate of market value as of the effective date of January 1, 2002 of $3,600,000. The appraisal reflects that a personal inspection of the subject property was undertaken in August, 2002. McCormick testified that he conducted a complete interior and exterior inspection of the property. McCormick further testified that there were no significant changes in the value of the property from 2002 to 2003. The appraisal identifies and fully describes the subject property's improvements.

McCormick testified that the subject property is located at an intersection that includes a main thoroughfare and a secondary street that dead-ends two blocks east of the subject property. He stated a large truck terminal facility is located across the street, an industrial park is located north of the subject, and residential properties are located to the west and south of the subject. McCormick testified the subject's improvement is a large, single-user retail building having a floor area of approximately 65,940 square feet. He stated the improvement has an actual age of nine years and was in average condition.

The appraisal indicated that the highest and best use of the subject, as vacant, was for commercial use and that as improved, its highest and best use would be its current use as a retail building. An effective age of 30 years was accorded the subject with a remaining economic life of 20 years.

The appellant's appraiser developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $4,060,000, rounded, while the income approach indicated a value of $3,560,000, rounded. The sales comparison approach indicated a value of $3,550,000, rounded. The appraiser concluded a market value of $3,600,000 for the subject property as of January 1, 2002.

The initial step under the cost approach was to estimate the value of the site at $1,850,000, or $6.00 per square foot. In doing so, McCormick testified he considered six land sales that sold between December 1998 to November 2001 and ranged in size from 53,000 to 228,000 square feet and in sale prices from $4.18 to $9.50 per square foot.

Using the Boeckh's Automated Cost Estimator, Marshall Valuation Service, and a survey of local cost indexes, the appraiser estimated the reproduction cost new to be $4,048,782 or $61.40 per square foot of building area. In establishing a rate of depreciation, McCormick testified he analyzed 10 sales of properties included in the sales comparison approach. He noted that these sales were between eight and 32 years old at the time of sale and indicated an annual rate of depreciation between 2.3% and 12.1%. McCormick established a range of total depreciation between 65.7% and 96.7%. He testified he estimated the subject properties depreciation at 50% which is an average annual rate of depreciation of 5.5% to arrive at the depreciated value of the improvements at $2,211,891. Adding the land value resulted in a final value estimate of $4,060,000, rounded.

Under the income approach, the appraiser reviewed the leases of five comparables and the rental offers of four comparables available at the date of value. McCormick testified the five leases ranged in size from 17,000 and 85,000 square feet of building area. He stated the properties were leased between October 1999 and December 2001 for rental rates between $4.00 and $9.83 per square foot of building area. McCormick testified the lease information was obtained through files of properties he has previously appraised or been asked to appraise.

The four rental offers ranged in size between 82,000 and 106,000 square feet of building area and the asking rents ranged from $4.00 to $8.00 per square foot of building area on a net basis. McCormick testified he estimated the market rent to be $7.50 per square foot on a net basis. McCormick testified the subject property was owner occupied. This resulted in a potential net income (GPI) of $494,550. Vacancy and collection loss was estimated at 10% of GPI and reserves for replacement and management fees were estimated at 2% each. Therefore, the net effective net income (ENI) was estimated at $427,291.

In determining the appropriate capitalization (CAP) rate, McCormick testified he, again, analyzed the 10 sales used in the sales comparison approach. He testified these sales indicated an overall range from 10.3% to 14.1%. In addition, McCormick stated he also considered the band of investment technique which came in at 11.9%. McCormick testified he applied an overall CAP rate of 12% to the ENI to estimate the market value for the subject under this approach at $3,560,000, rounded.

McCormick testified he does not consider the subject property to be a prime grocery store in the Chicagoland area because the location is not as desirable as other commercial locations. He

opined that where the subject is located on Harlem Avenue is not fully developed and there are industrial and marginal businesses.

The final method developed was the sales comparison approach. McCormick testified that, under this approach, he examined 10 improved sales and one offering of single user retail buildings. The 10 properties range in building size from 55,000 to 161,000 square feet and sold from March 1996 to June 2002 for prices ranging from $1,351,518 to $4,000,000, or from $13.00 to $38.99 per square foot of building area, including land. The properties ranged in age from eight to 32 years and in land to building ratio from 1.50:1 to 7.08:1. McCormick testified he estimated a value for the subject property based on this unit of comparison of $55.00 per square foot of building area, including land. This yields a value for the subject property under the sales comparison approach at $3,626,700.

McCormick testified that he also established a unit of comparison based on price per square foot of building area, excluding land. He opined it was an effective secondary approach for developing a unit of comparison when there are various land to building ratios for large retail users. McCormick estimated the land value of each sale, subtracted this amount from the indicated sale price, and then divided this amount by the building size. McCormick testified he did not utilize the same land value for each comparable to estimating these values. He opined that each land value was indicative of their location and sale date.

A range of $1.79 to $20.20 per square foot of building area, excluding land was established and, McCormick testified, he estimated a unit value under the basis of comparison at $25.00 per square foot, excluding land. This yields a value for the subject excluding land at $1,853,190. Once the land is added, the value is $3,501,690. McCormick testified that he reconciled these two amounts to arrive at a value for the subject property under the sales comparison approach at $3,550,000, rounded.

In reconciling the various approaches, McCormick testified he gave primary consideration to the sales comparison approach, secondary consideration was given to the income approach and the least amount of consideration to the cost approach. After reconciliation, the appraisal estimated the value for the subject property as of January 1, 2002 to be $3,600,000.

Under cross-examination, McCormick testified that the subject property was built and used as a grocery store and that the appraisal describes the subject as a one-story, retail-type building. McCormick also testified that directly north of the subject is a small video store and a Wal-Mart. McCormick opined that the improvement was properly described as a one-story, retail-type building, but did acknowledge that, under the cost approach, the category of supermarket was used to establish a reproduction cost.

In regards to the land sales, McCormick testified that comparables #1 through #4 could not accommodate a 65,000 square foot building, but that he was utilizing the sales for land value only. McCormick acknowledged that several of the land sales were farm land prior to their purchase and that the zoning information was not included within the appraisal. McCormick opined that zoning is important, but can be changed.

McCormick testified that when developing depreciation, he almost always uses the market approach to establish a rate as opposed to the age-life method. In the appraisal's depreciation analysis chart, where McCormick developed a depreciation rate for the subject, McCormick lists the sale prices for the 10 sales comparables. McCormick testified that the land value developed in the chart was an estimate for each property. He testified that the remainder to building column is also an estimate based on the subtraction of the land value from the sale price. McCormick further testified that a cost new for each property was estimated and subtracted from the remainder to building to arrive at a depreciated value stated in a percentage format. McCormick stated the only known factor is the sales price and the other factors are a function of the process.

In response to questions regarding the income approach to value, McCormick acknowledged that several rental properties were smaller in size than the subject and rental comparable #7 is located 50 miles northwest of the subject. In establishing the CAP rate, McCormick testified he utilized the 10 sales comparables, but that the sales were all fee simple and no actual rental data was available. He acknowledged his estimates establish a Net Operating Income (NOI) after deductions from between $1.72 to $4.25 and that the subject property's estimate is higher than this range at $6.48. He agreed that a higher NOI range would result in a higher CAP rate.

As to the sales comparison approach, McCormick testified that eight of the 10 sales were from 1996 to 1999 and that many of the sales had a smaller land to building ratio than the subject. McCormick acknowledged that sale #6 and #8 is located in DuPage County and that sale #7 was a sale out of the bankruptcy courts. McCormick testified that six of the sales took place within three years of the lien date.

The intervenor called a rebuttal witness, Eric Dost, who reviewed the McCormick appraisal. Mr. Dost testified he has been an independent appraiser for 22 years and earned his MIA designation in 1993. He stated he is a certified licensed appraiser in six states, including Illinois. He has prepared approximately 2,000 appraisals with 1,500 of them being appraisals of commercial properties. Dost was admitted as an expert in the field of property valuation without objection of the remaining parties.

Dost opined that the descriptions of the subject property and the immediate area were not adequate. He testified that the appraisal indicates the subject is a single-user retail type commercial building and nowhere in the report does it state the subject is a supermarket. He opined that the description given to the property encompasses quite a few categories of commercial properties. In addition, Dost testified that there is no indication that the subject is located in a mall where a Wal-Mart is an anchor store. He opined that a Wal-Mart would be beneficial for a supermarket; it draws in people to the mall. He opined that the lack of this information in the appraisal was potentially misleading.

As to the land sales, Dost testified that four of the six sales were smaller in size than the subject and, in his opinion, not comparable. He testified that the report does not include the zoning of these comparables and that the land value established in the McCormick report is not reliable.

Dost opined that the market extraction method to develop a depreciation rate in the cost approach is a very speculative approach. He testified that many of the elements of this approach are the appraiser's opinion as opposed to true market evidence. He opined that the age-life method

would be a more appropriate method to determine depreciation. Therefore, he opined that the cost approach as developed in the McCormick appraisal was not a reliable approach.

In regards to the income approach, Dost testified that the report does not include information of tenancy for the rental comparables, with the exception of rental #5. He stated the report does not inform the reader if any of the rental comparables are supermarkets. Dost also testified that the NOI information used to develop a CAP rate was not market derived information, but the appraiser's opinion. He opined that that the NOI established suggests these comparables are significantly inferior to the subject. He testified that a lower NOI will develop a lower value.

As to the band of investment method utilized in the McCormick report, Dost opined that the 15-year amortization was extremely conservative and that a 30-year period would be more appropriate. He testified that when the amortization years are condensed, the Cap rate is increased which decreases the value. Dost found the income approach to value within the McCormick appraisal to be suspect.

In the sales comparison approach, Dost testified that none of the comparables appear to be supermarkets. He opined that many of the sales were not comparable to the subject due to the remoteness of the sale; lower land to building ratio; location; use of building; size and condition of sale. Dost opined that adequate adjustments were not made on the comparables.

Dost also disagreed with how the McCormick appraisal developed a sales comparison approach to value without the land included. He testified that he has never seen this in any other appraisals, nor has he seen a value excluding land in any listing of a property for sale. Based on a review of the sales comparison approach, Dost opined that this approach was not reliable.

Under cross examination, Dost acknowledged that the subject property is a single-user commercial property. Dost testified that, in calculating depreciation, the age-life method could include obsolescence if the effective age or the actual age and the economic life were used. He stated that external obsolescence could change depending on the market conditions. Dost agreed that land sales that are 16% to 28% of the property being valued would be improper to use. He also acknowledged that six of the sales used by McCormick were sold within three years of the lien date.

The board of review submitted "Board of Review-Notes on Appeal" that reflect the subject's total assessment of $2,132,769 yielding a market value of $5,612,550 or $85.12 per square foot of building area using the Cook County Real Property Classification Ordinance for Class 5A property of 38%. In support of this market value, the notes included a retrospective appraisal. The appraiser, Jeffrey M. Hortsch, utilized the income and sales comparison approaches to value to estimate the value of the subject property at $4,950,000 as of January 1, 2002. As a result of its analysis, the board requested confirmation of the subject's assessments. At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions.

In support of the intervenor's position, the intervenor submitted a complete, summary appraisal of the subject with an effective date of January 1, 2002 and an estimated market value of $6,250,000. The appraiser is Susan A. Enright. Ms. Enright was the intervenor's first witness in

this appeal. Ms. Enright testified that she has been a state certified, real estate appraiser for approximately 20 years and also holds the designation of MAI. Enright also stated she is a certified commercial investment member and also licensed in Ohio and Wisconsin. She stated she has performed approximately 4,000 appraisals where approximately 2,000 were for commercial properties. Enright testified she appraised many grocery store properties. Enright was admitted as an expert in the field of property valuation without objection of the remaining parties.

Enright testified she performed a partial inspection of the subject's interior and exterior on February 28, 2005 and prior to this hearing. She stated the subject property is located in a shopping center anchored by a Wal-Mart at a signalized intersection. Enright noted that the Wal-Mart may have some food for purchase, but was not a grocery store. Enright opined that the subject property's highest and best use would be continuation of its present use. In addition, Enright developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $6,250,000, rounded, while the income approach indicated a value of $6,250,000, rounded. The sales comparison approach indicated a value of $6,250,000, rounded. The appraiser concluded a market value of $6,250,000 for the subject property as of January 1, 2002.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the land. Enright testified she reviewed six land sales. The properties sold from May 2000 to January 2002 for prices ranging from $6.63 to $16.95 per square foot. Enright testified that three of the sales are located on Harlem Avenue in subject's town. After adjustments, Enright estimated the subject land at $8.00 per square foot or $2,500,000, rounded.

Using the Marshall Valuation Cost Manual, Enright estimated the replacement cost new to be $3,941,893. Enright testified this value was determined by using the separate category of grocery store within the manual. She opined that this category includes costs for cooling features which are not personal property. Enright testified that depreciation was estimated by using the age-life method. She stated the subject property was nine years old at the time of valuation and she estimated the typical economic life of the subject to be 40 years; thereby, physical depreciation was estimated at 23%. This resulted in a depreciated cost of the building improvements of $3,429,841, while the depreciated cost of other site improvements was estimated at $325,000. Adding the land value resulted in a final value estimate of market value for the subject of $ $6,250,000, rounded.

Under the income approach, Enright testified she reviewed the rental data of seven grocery stores. She opined that they were all in the same general size category as the subject and were all new or newer facilities. These properties ranged in size from 58,000 to 73,247 square feet of building area and in rents from $11.00 to $12.50 per square foot of building area. Based on this data, Enright estimated the subject's market rent at $11.00 per square foot of building area on a net basis. Enright testified she estimated vacancy and collection at 10%, management at 3%, and reserve allowance at $.12 per square foot of building area. After calculations, the appraisal estimated the net operating income (NOI) at $625,309.

In determining the appropriate CAP rate, Enright reviewed Korpacz Investor Survey, fourth quarter, 2001, wherein rates for national strip shopping center properties ranged from 8.50% to

12% with an average rate of 9.98%. Enright testified that she tempered this with her knowledge of grocery stores to conclude a CAP rate of 10%. NOI was then capitalized by this rate to reflect a market value estimate under the income approach of $6,250,000, rounded, for the subject.

The final method developed was the sales comparison approach. Under this approach, Enright utilized six suggested sales comparables. Five of the sales were grocery store properties and one was a former hardware store. Enright testified the former hardware store was located down the street from the subject property. The properties ranged in size from 12,000 to 66,300 per square foot of building area. They sold from October 2000 to June 2002 for prices ranging from 1,000,000 to $5,500,000 or from $50.59 to $132.76 per square foot of building area.

After making adjustments, Enright determined a value for the subject from $95.00 per square foot of building area or $6,250,000, rounded.

In reconciling the various approaches, Enright testified she gave all three approaches weight because, she opined, they were all legitimate approaches and each was reasonable for the subject. Enright's testimony indicated a final market value estimate of $6,250,000 as of January 1, 2002. She opined he value would not be any less for 2003.

Upon cross-examination, Enright opined that the subject property was not located in an industrial area, but on a commercial street. She acknowledged that there were a number of industrial properties in Bridgeview.

Enright acknowledged that most of the land sales were smaller in size than the subject and that an adjustment would be necessary for this. She testified that smaller sizes in land sell for a higher unit value. Enright agreed that the land sale closest in size to the subject sold for $6.63 per square foot.

Enright testified that an entrepreneurial profit of 10% was fairly standard in the industry and an adjustment in the cost approach is made for all appraisals for this, including owner-occupied buildings.

In regards to the sales approach, Enright testified that sale #1 was vacant for several years and became a grocery store again. She acknowledged that there were several other stores affiliated with this property and that this sale could possibly have been a land deal if the building was knocked down. Enright could not confirm if the building was torn down or if the shell of the old building was used. She testified that if the sale price is divided by the land area the price of $16.60 per square foot seems low for the land alone.

Enright also acknowledged that three of the six sales were purchases made by Safe-A-Lot as this company was attempting to establish a presence in the market. For several of the sales, Enright stated these properties were smaller than the subject. She also acknowledged that for sale #2, she did not know if the purchaser was the tenant at the time of sale and that for sale #4, this was a 1031 exchange.

In response to questions, Enright testified that sales #2 through #6 were smaller than the subject and adjusted downward for size. She then testified that larger stores tend to be the essence of the market so an upward adjustment was made for functional utility to the smaller stores.

The appellant called Mr. Anthony Uzemack as a rebuttal witness. Uzemack testified that he has owned and operated a real estate appraisal firm and has been performing appraisals for 30 years. He indicated that he is an Illinois state-certified appraiser and he carries the MAI designation. He indicated he has taught several appraisal classes for the Appraisal Institute and the Appraisal Foundation. Uzemack testified he has reviewed approximately two to three appraisals a week and appraised approximately 300 food stores. Uzemack was admitted as an expert in the field of property valuation without objection of the remaining parties.

Uzemack opined that the report contained some serious flaws due to the market data selected and the lack of comparability of the sales information presented. Uzemack testified that the market data used in the land sales are not comparable to the subject in regards to size. He stated that the closest comparable in size, Sale #6, illustrates the differences in price per square foot for smaller properties versus larger lots. Uzemack then testified as to the problems not addressed in the Enright report with a replacement cost as opposed to a reproduction cost.

In regards to the income approach, Uzemack opined that the market data presented was good; however, only one rental comparable was a Cub Foods and the others were the major players in the market, Jewel and Dominick's. In addition, Uzemack testified the locations for these comparables are more superior to the subject's location. He opined that the better the location the higher the rent.

As to the sales comparison approach, Uzemack testified that the only sale that was comparable to the subject property was sale #1. He opined that the five other sales comparables are so much smaller than the subject property that they do not enter into the same competitive realm as the subject. Uzemack testified that these properties are mom-and-pop stores where the use may be similar because retail buildings are flexible, but the size makes them more desirable.

Uzemack testified that sales #1, #2, #3, and #4 of the Enright appraisal did not have any brokers listed on information reviewed, with the exception of a buyer's broker on sale #4. He also testified that, for sale #3, 110% of the purchase price was financed and, for sale #4, this was a 1031 exchange.

At the conclusion of his testimony, Uzemack opined that a CAP rate can be, and should be, derived from the market. He also testified that it is a recognized appraisal technique to develop a sales price per square foot of building excluding land.

Under cross examination, Uzemack acknowledged he could not confirm any bulk sales included in the Enright appraisal. He also acknowledged that some 1031 exchanges could be an arm's length transaction.

Uzemack opined that an appraisal should indicate the use of the building and describe the environment of the property. In addition, Uzemack acknowledged that the subject property's size is consistent with other larger chain grocery stores.

On re-direct Uzemack opined that the omission of the subject's environment may not have an impact on the opinion of value. Uzemack testified that size as opposed to use would be the critical factor in determining comparables for the subject property.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. *Property Tax Appeal Board Rule* 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Property Tax Appeal Board Rule* 1910.65(c).

Having considered the evidence presented, the PTAB concludes that the appellant has satisfied this burden and that a reduction is warranted.

In determining the fair market value of the subject property for tax years 2002 and 2003, the PTAB closely examined the parties' two appraisal reports. The PTAB accords little weight to the board of review's evidence for the report lacked the preparer's testimony to explain the methodology used therein. Moreover, the PTAB found: missing analytical components, limited property data, and limited analysis.

That having been said, the PTAB then looks to the remaining evidence that comprises the McCormick appraisal and testimony submitted by the appellant; the Enright appraisal and testimony submitted by the intervenor(s); and the testimony of the two review appraisers, Dost and Uzemack.

The PTAB notes that both appraisers placed most weight on the sales comparison approach to value. Therefore, the PTAB will also accord this approach the most weight because the courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989).

In totality, the parties' experts submitted 16 suggested sales comparables excluding the one offering submitted by the appellant and the comparables submitted by the board of review. Therefore, PTAB shall look to the data on the suggested sales comparables submitted by both appraisers in this matter in order to determine the subject's market value. For in Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9, the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach. Thus, the PTAB finds that the best evidence of value is the market data submitted by the parties under this approach to value. The appellant's sales #7 through #10 and the intervenor's sales #2 through #6 were accorded little weight due to the disparity in size in comparison to the subject. These properties had a difference in building size from the subject of 60% or more. Moreover, the appellant's comparables #1, #3 and #4 were

accorded little weight due to the remote date of the sales when compared to the date of value for the subject.

The PTAB finds questionable the appellant's appraiser's reliance upon establishing a value for the subject property under the sales comparison approach that analyzed sales with the appraiser making land value estimates to exclude the land without articulating any source or treatise for said methodology. Although this methodology may have merit, it was not evident at this hearing. Therefore, the PTAB will not consider this method under the sales comparison approach.

The remaining sales were given significant weight by the PTAB have a sales range of $21.12 to $82.96 per square foot of building area, including land. The subject property's current assessed value equates to a market value of $85.12 per square foot of building area, including land. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments and differences for sale date, location, building size, building age, and type of legal conveyance in the appellant's and the intervenor's suggested comparables, the PTAB finds that the subject's current 2002 and 2003 assessments are not supported by the properties contained in this record.

As a result of this analysis, the PTAB finds that the evidence and testimony has demonstrated that the subject property was overvalued and that a reduction in the subject's assessment is warranted.

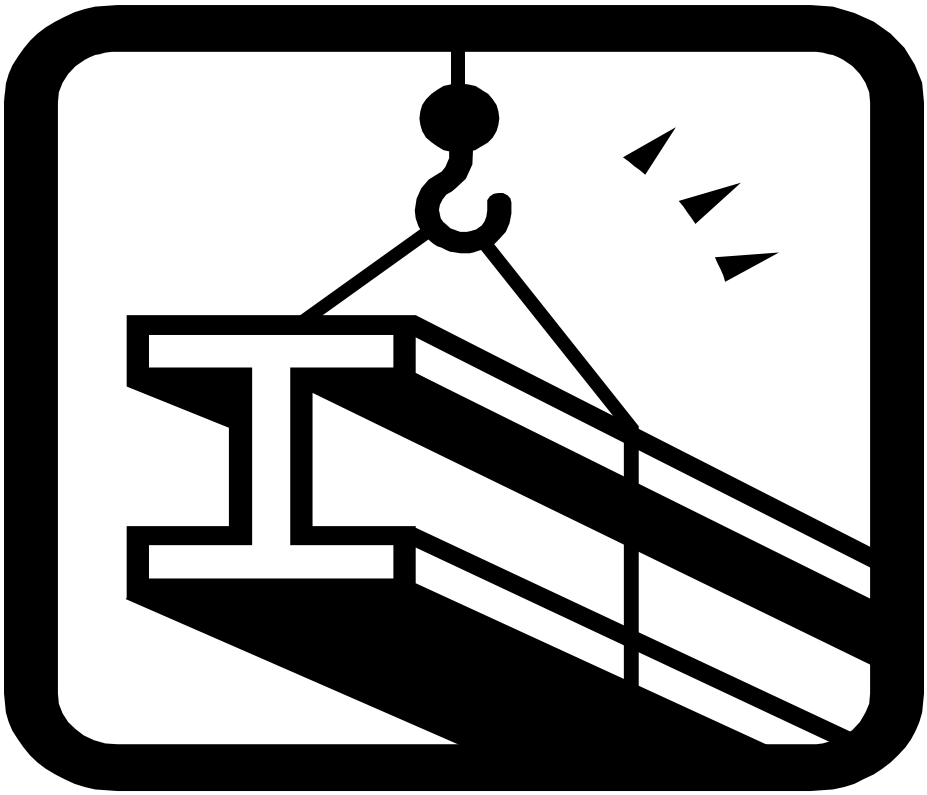
## 2008 COMMERCIAL CHAPTER
*Index*

*[Items Contained in Brackets Indicate*
*Arguments or Evidence in Opposition to the Appellant's claim]*

# PROPERTY TAX APPEAL BOARD

# SYNOPSIS OF REPRESENTATIVE CASES

# 2008 INDUSTRIAL DECISIONS



PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
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# 2008 INDUSTRIAL CHAPTER

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| **APPELLANT:** | **IRG Galesburg II LLC Tower Galesburg II LLC** |
| **DOCKET NUMBER:** | **05-00274.001-C-3** |
| **DATE DECIDED:** | **January, 2008** |
| **COUNTY:** | **Knox** |
| **RESULT:** | **Reduction** |

*(Please note, the Property Tax Appeal Board recognizes this case was filed as a commercial appeal, however the evidence and context of this decision primarily relates to industrial property.)*

The subject property consists of approximately 51.37 acres of land which have been improved with a manufacturing and office facility, paved parking, driveways and other improvements. The property was formerly known as Butler Manufacturing and is located in City of Galesburg Township, Illinois.

The appellant appeared before the Property Tax Appeal Board through counsel arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of this contention, the appellant's attorney argued the appellant purchased the subject property in December 2005 for a total price of $200,000.

To support the claim, the appellant submitted a copy of a Purchase and Sale Agreement executed in August 2005 for properties, including the subject, consisting of approximately 105 acres with a purchase price of $200,000 and a Final Settlement Statement dated December 2005, disclosing a purchase price of $200,000, with reference to prorated property taxes for four separate parcel identification numbers. Peter Yanson, Senior Vice President and Asset Manager-Midwest Region of Quadrelle Realty Services, was called to testify as appellant's only witness in this proceeding.

Yanson described his company as a third party real estate management agent for the appellant's portfolios which combined consist of approximately 40 million square feet of space. He further described the appellant companies as purchasers of "second generation" properties which are largely functionally obsolete; the appellant then redevelops the properties for occupancy by multiple business tenants. Through the purchase of another nearby Knox County property, the appellant became aware of the availability of the subject property through the Galesburg Regional Economic Development Association ("GREDA") and negotiations for purchase were undertaken between the buyer and seller.

On cross examination, Yanson admitted that he had no personal knowledge as to how the parties arrived at the purchase price.

Based on evidence of the recent purchase price, the appellant requested the subject's assessment be reduced to $67,000 which would reflect the entire purchase price on the one instant parcel. Counsel for appellant reiterated that claim despite further questioning by the Hearing Officer concerning the values assigned to the other three parcels comprising this sale transaction. Counsel for the appellant indicated those remaining parcels had minimal assessed values which

were not at issue and had not been appealed; according to counsel for appellant, the vast majority of the assessment was placed on the subject property.

The Board of review presented its "Board of Review Notes on Appeal" wherein the subject's final assessment of $1,196,620 was disclosed reflecting a market value of approximately $3,582,695 using the 2005 three-year median level of assessments for Knox County of 33.40% as determined by the Illinois Department of Revenue. In support of the assessment, the board of review submitted three documents, presented two witnesses, and argued that with regard to the sale of the property in December 2005 and subsequent adjustment of the assessed value, the board of review acted in conformance with its rules and prior practices.

The first document submitted by the board of review was a computer print-out from the city assessor's office acknowledging that the subject property's 2006 assessment was reduced to $49,370 to reflect a proportionate share of the arm's length sale which occurred the prior year in accordance with the rules and directions of the board of review.

The second document submitted consisted of two newspaper stories from August 24, 2005 about the closure of the Butler Manufacturing facility and about the potential sale of the property. One of the articles regarding sale of the property indicates that the property was not listed with a real estate firm and the seller was not disclosing its asking price.

The third document submitted was a copy of an Illinois Real Estate Transfer Declaration dated December 2005 referencing four parcel identification numbers, including the subject property, and reflecting a total purchase price of $200,000 and indicating that the property was advertised for sale or sold using a real estate agent.

The first witness called by the board of review was Darrell Lovell, the Galesburg city assessor since 1986 who testified that the subject property known as Butler Manufacturing was purchased initially in April 2004 by Blue Scope and consistent with directives from the board of review, that purchase price resulted in the instant assessment as of January 1, 2005. Lovell testified that pursuant to long-standing policy of the board of review, arm's length sales transactions occurring between January 2 and December 31 of a given year are to be reflected in the assessment as of January 1 of the following year. At the request of the Hearing Officer, the board of review submitted its "Board of Review Complaint Procedures" in effect for 2005 which it contends sets forth this policy at the last line of the document: "The Board of Review does not act on a current year (2005) sale." (Board of Review Ex. 1)

Lovell also testified that the subject property was again placed for sale on August 24, 2005 after the closure of the manufacturing plant which led to the purchase by the appellant in December 2005. Lovell and his staff made inquiries into the terms of this sale to appellant and determined the sale was an arm's length transaction and therefore adjusted the assessment of the subject property as of January 1, 2006 to reflect a portion of the sales price for an assessment on the subject property of $49,370 or an estimated fair market value of approximately $148,110 with the remainder of the $200,000 sales price divided among the other three parcels comprising the purchase.

On cross examination, Lovell acknowledged that the 2004 purchase of the subject property by Blue Scope involved six or seven factories, including the subject, and no Illinois Real Estate Transfer Declaration was filed for that purchase. Furthermore, Lovell determined the 2004 sale was of an arm's length nature and he utilized that sale to establish the assessment for January 1, 2005.

The board of review's final witness was its chairman Mike Gehring who testified he has been chairman for four years and a board member for six years. Gehring confirmed the standard practice and procedure of the board of review with regard to adjusting assessments the following year after a sale.

Based on its submissions, the board of review requested confirmation of the assessment or a finding of approximately $3,582,695 as the fair market value of the subject as of the assessment date of January 1, 2005.

As provided for in the procedural rules of the Property Tax Appeal Board, counsel for appellant timely filed a letter in rebuttal to the board of review's evidence which was made part of the instant record. In said rebuttal correspondence, appellant contends the subject property's value as of January 1, 2005 would be consistent with its value as of January 1, 2006 and that the board of review provided no "substantive documentary evidence" to support its 2005 assessment in accordance with Section 1910.63(c) of the Board's rules. (86 Ill. Admin. Code, Sec. 1910.63(c)).

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject property's assessment is warranted. The appellant argued the subject property's assessment was not reflective of its fair market value. When market value is the basis of the appeal, the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). The Board finds the appellant has overcome this burden.

The Board finds the subject property along with three additional parcels sold in December 2005 for $200,000. Moreover, the Board finds the board of review adjusted the subject's 2006 assessment to reflect the December 2005 sale, but declined to reduce the 2005 assessment because of the board of review's standard practice and procedure in effect since 1987. The Property Tax Appeal Board notes that the Illinois Supreme Court has indicated that a sale of property during a tax year in question is a "relevant factor" in considering the validity of an assessment. People ex rel. Munson v. Morningside Heights, 45 Ill. 2d 338, 259 N.E.2d 27 (1970). Furthermore, the Property Tax Code provides that, except in counties with more than 200,000 inhabitants which classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)).

The Illinois Supreme Court defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d. 428 (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective

of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill. App. 3d 369 (1st Dist. 1983); People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill. 2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). Additionally, Section 1-50 of the Property Tax Code defines fair cash value as:

> The amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller. (35 ILCS 200/1-50).

The board of review conceded that the instant sale transaction of December 2005 was, in fact, an arm's length transaction. Moreover, the board of review provided no evidence or testimony that the subject's December 2005 sale price did not reflect the subject's market value. Therefore, the Property Tax Appeal Board finds the best evidence contained in the record of the subject's fair market value as of its January 1, 2005 assessment date is its December 2005 sale along with three additional parcels for $200,000. The record is clear that the subject property along with three additional parcels sold on the open market meeting the criteria of an arm's-length agreement for $200,000 as of December 2005. This sale is probative, credible evidence that the subject's assessment established by the board of review, which reflects an estimated market value of $3,582,695, is not an accurate indication of value as of January 1, 2005.

In conclusion, the Board finds the appellant has met its burden of proving overvaluation by a preponderance of the evidence. On the basis of the sale price and the failure of the appellant to present evidence in order to apportion that sale price among the four parcels purchased, the Property Tax Appeal Board finds that the subject had a fair market value of $200,000 as of January 1, 2005. Since fair market value has been established, the three-year weighted average median level of assessments for Knox County of 33.40% shall apply.

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| **APPELLANT:** | **Lyons Township High School District No. 204** |
| **DOCKET NUMBER:** | **01-21556.001-I-3 thru 01-21556.002-I-3** |
| **DATE DECIDED:** | **February, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **An Increase** |

The subject property consists of 10.094 acres, or 439,694 square feet, improved with three metal-clad industrial buildings 25+ years old along with a 40+-year-old office building. The industrial buildings contain a total of 19,678 square feet of building area and the office building contains 3,300 square feet of building area.

The appellant, through counsel, appeared before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of that argument, an appraisal (Exhibit 1) and the supporting testimony of its author, Anthony J. Uzemack, was presented. Mr. Uzemack testified he has been an independent appraiser since 1978; and is a State of Illinois, State of Indiana and State of Michigan certified real estate appraiser. Uzemack also testified that he holds the Member of the Appraisal Institute (MAI) designation and is a facilitator and instructor of *Uniform Standards of Professional Appraisal Practice* (USPAP) both for the Appraisal Institute and the Appraisal Foundation in Washington, D.C. After further testimony regarding Uzemack's credentials, the witness was offered and accepted as an expert appraisal witness in the valuation of industrial property.

Appellant's counsel introduced an aerial photograph (Exhibit 2) into evidence. Mr. Uzemack identified the photograph as an aerial view of the subject property and the surrounding area which was secured from brokers currently listing the property for sale. The witness proceeded to explain that the subject property is located in an industrial area with excellent access to major interstate highways and key secondary roads. He also indicated that the subject has exceptional visibility from at least three of these roadways.

Uzemack testified when preparing the appraisal, he made an on-site inspection of the facility. He also researched the subject's history, zoning and made other inquiries regarding details concerning the subject site and its improvements. The witness testified he performed additional research into the surrounding area's potential, uses, rentals, sales and similar properties. From the accumulated data, the witness testified, he concluded that the subject's highest and best use is as vacant land for redevelopment into industrial uses similar to adjacent properties. The hearing officer questioned the witness about the speculative nature of his conclusion of highest and best use for the subject. Uzemack indicated that time has borne out his conclusion of highest and best use as the property is and has been marketed for redevelopment. He also testified offers have been made and one is to be consummated at the end of 2007. Uzemack also noted this sale is at a substantially higher price than his estimated 2001 value.

The appraiser testified he considered all three approaches to value; the cost approach, the income approach, and the sales comparison approach. As the structures are of a more temporary nature and do not economically enhance the subject land, the cost approach was not utilized. During research for the income approach, the witness was unable to find lease information applicable to

the subject; consequently he did not employ the income approach to value. As a result, the sales comparison approach was the preferred approach.

Six vacant land sales in the subject's general area were examined by the appraiser. The sale properties range in size from 1.3 acres to 6.9 acres with zoning somewhat similar to the subject. The sales occurred from October 1999 to April 2002 for prices ranging from $311,500 to $1,580,000, or from $5.25 to $7.96 per square foot of land area. Uzemack then adjusted the sales for time of sale, size, zoning, and other items pertaining specifically to the comparables. From the resultant data, the witness testified that the estimated adjusted unit value for the subject is $5.00 per square foot of land area, or $2,200,000, as of January 1, 2001. Based on the foregoing evidence and testimony, the appellant requested an increase of the subject's current assessment.

The board of review presented "Board of Review Notes on Appeal" wherein the subject's final assessment of $324,998 was disclosed. The final assessment reflects a market value of $902,772, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 36% for Class 5b properties is applied. In addition, the board of review proffered *Comps* sale summary sheets for five sales of industrial building sites (vacant land) located in the subject's general area. The properties range in size from 5.28 acres to 18 acres and were sold from April 1997 to January 2000. The properties sold for unadjusted sales prices of from $2.92 to $3.50 per square foot of land area.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of this appeal. The issue before the Property Tax Appeal Board is the subject's fair market value. Next, when overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). Having heard the testimony and considered the evidence; the Property Tax Appeal Board concludes that the appellant has satisfied this burden.

The Property Tax Appeal Board finds that in this appeal, the appellant presented a competent, experienced and articulate appraiser in support of its position. The appraiser demonstrated he was very familiar with the subject's market area and associated values. The appellant's witness testified thoroughly regarding his credentials, appraisal methodologies, and the validity of the data contained in the report. The Board finds that the comparable sales presented were reasonably adjusted. Therefore, the Board finds that Mr. Uzemack's estimated value of $2,200,000, as of January 1, 2001, is a logical conclusion. The Board also finds that the board of review's documentation, while not supported by credible testimony, tends to support Uzemack's conclusion of value.

Therefore, based on the evidence and testimony, the Property Tax Appeal Board finds that the subject had a market value of $2,200,000, as of January 1, 2001. The Property Tax Appeal Board further finds that the Cook County Real Property Assessment Classification Ordinance level of assessments of 36% for Class 5b properties shall apply and an increase of the subject's land assessment is warranted.

As a final point, consistent with the appraiser's conclusion of highest and best use and that the current improvements have no intrinsic value; the Property Tax Appeal Board finds that the fair market value found herein is applicable to the land only.

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| **APPELLANT:** | **MCZ Centrum Adams, LLC** |
| **DOCKET NUMBER:** | **05-24917.001-C-1** |
| **DATE DECIDED:** | **August, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **No Change** |

The subject property consists of 15,990 square foot parcel improved with an 86-year-old, five-story style industrial building of masonry construction containing 79,625 square feet of building area and located in West Chicago Township, Cook County.

The appellant, through counsel, presented evidence before the Property Tax Appeal Board claiming the subject's market value is not accurately reflected in its assessment as the basis of the appeal. The appellant offered a spreadsheet detailing three suggested comparable properties located from six to fourteen miles from the subject. Sale summary sheets from Property Valuation Services, LLC and assessment data for the comparables were submitted in support. These properties consist of one or three story style industrial buildings of masonry construction from 77 to 105 years old. The comparables range in land size from 71,695 to 196,020 square feet and in building area from 93,800 to 149,500 square feet. The properties sold from May 2002 to January 2005 for prices ranging from $375,000 to $800,000, or from $4.00 to $5.35 per square foot of building area including land area.

Further, counsel asserted the subject building is currently in the process of being converted to single family condominium units and was 100% vacant during 2005. It is the appellant's contention that as the building was vacant during 2005 a 35% occupancy factor should be applied to the value of the improvement. Supporting this contention, two affidavits presented at the board of review level and signed by the subject's owner/manager Roy Schutz were included. Additionally, a copy of the subject's 2005 board of review final decision was included. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $167,213, which suggests a fair market value of $464,481 when the Cook County Real Property Classification Ordinance level of assessments for Class 5 properties of 36% is applied. In support of the subject's assessment, the board of review offered a memorandum from Ralph F. DiFebo Jr. a State of Illinois certified general appraiser. The author indicated that a Trustees Deed for the subject was executed in May 2004 for a price of $14,250,000 or $32.51 per square foot. DiFebo noted this transaction included an additional parcel not a part of this appeal. The author indicated the subject's market area was surveyed for sales and five sales were utilized as comparables. These properties are industrial/warehouse/manufacturing buildings ranging in size from 219,400 to 1,539,197 square feet that sold for prices ranging from $1,000,000 to $141,600,000, or from $4.56 to $92.00 per square foot. These sales prices were not adjusted for typical factors. The Cook County Assessor's Office sale summary sheets for the comparables and the subject's property record cards were proffered in support. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant argued that the subject's market value was not accurately reflected in its assessment. When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Section 1910.65 *The Official Rules of the Property Tax Appeal Board* (86 Ill.Adm.Code §1910.65(c)). Having reviewed the record and considered the evidence, the Board concludes that the appellant has not satisfied this burden.

The Property Tax Appeal Board accords the appellant's comparables little weight. Located from six to fourteen miles from the subject, the Board finds these properties are sited in significantly different market areas than the subject's market area. Further, the Board finds the appellant's comparables differ considerably in both land and building sizes. Therefore, the Property Tax Appeal Board finds that the appellant's suggested comparable properties are not similar to the subject.

As to the appellant’s argument that the subject’s assessment should be debased by a vacancy factor of 65%, the Board finds this argument unpersuasive. The appellant did not present evidence of what negative effect, if any, that the vacancy within the improvement has on its value.

In conclusion, the Property Tax Appeal Board finds that appellant failed to surmount its burden of proving the value of the property by a preponderance of the evidence and no reduction is warranted.

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| **APPELLANT:** | **Vince Pisha** |
| **DOCKET NUMBER:** | **02-25109.001-C-2 thru 02-25109.003-C-2** |
| **DATE DECIDED:** | **September, 2008** |
| **COUNTY:** | **Cook** |
| **RESULT:** | **Reduction** |

*(Please note, the Property Tax Appeal Board recognizes this case was filed as a commercial appeal, however the evidence and context of this decision primarily relates to industrial property.)*

The subject property contains three land parcels improved with a 40-year old, single-story, building. The improvement is used as an industrial auto repair building consisting of 16,989 square feet of gross building area sited in Glenview.

The appellant, via counsel, argued that the fair market value of the subject is not accurately reflected in its assessed value.

The appellant submitted a summary appraisal report prepared by an appraiser opining a fair market value for the subject as of January 1, 2001, of $600,000. However, the appraisal report only speaks to two of the three subject's parcels, parcel -010 is not included within the report without further explanation.

As to the remaining two parcels, the appraisal develops all three of the traditional approaches to value in determining a value estimate. The land value was estimated at $427,000 with a value under the cost approach of $770,000. The income approached reflected a value of $420,000, while the sales comparison approach reflected a value of $767,000. In reconciling the approaches to value, the appraiser accorded most consideration to the income and sales comparison approaches to value to reflect a final market value estimate of $600,000. Based on this evidence, the appellant requested a reduction in the subject's assessment for all three parcels for tax year 2002.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $446,309 was disclosed. This assessment reflects a market value of $1,637,851 or $96.41 per square foot based upon the Cook County Ordinance Level of Assessment for class 5b property of 36%. In addition, the board of review presented a cover memorandum and copies of CoStar Comps service printouts for four properties. These four industrial properties sold from January, 2001 to September, 2003 for prices that ranged from $1,150,000 to $2,350,000 or from $95.83 to $163.64 per square foot of building area, unadjusted. Furthermore, the Comps service printouts indicated on their face that the information therein was obtained from sources deemed reliable, but not guaranteed. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The PTAB further finds a reduction in the subject's assessment is warranted.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. *86 Ill.Admin.Code 1910.63(e).* Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *86 Ill.Admin.Code 1910.65(c).* Having considered the evidence presented, the PTAB finds the PTAB finds that the appellant did meet its burden and that a reduction was warranted in part with a no change in part.

The PTAB finds that the best evidence of market value was submitted by the appellant in the form of an appraisal report that addressed all three approaches to value for a final value estimate for two of the subject's parcels at $600,000. Despite the fact that the appellant had requested a reduction in assessment for the third parcel, the appellant failed to present any evidence to support this assertion.

On the basis of this analysis, the PTAB further finds that the subject had a fair market value of $600,000 as of January 1, 2003 assessment date at issue. Since fair market value has been established, the Cook County Ordinance level of assessment for class 5b property of 36% shall apply.

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| **APPELLANT:** | **Weder, Inc.** |
| **DOCKET NUMBER:** | **05-00461.001-C-1** |
| **DATE DECIDED:** | **April, 2008** |
| **COUNTY:** | **Madison** |
| **RESULT:** | **No Change** |

*(Please note, the Property Tax Appeal Board recognizes this case was filed as a commercial appeal, however the evidence and context of this decision primarily relates to industrial property.)*

The subject property consists of an 81,126 square foot manufacturing and warehouse facility of concrete block construction. The structure was built in phases with the original portion constructed in 1965 with additions in 1974 and 1983. The building contains a loading dock with a below grade truck well, a sprinkler fire protection system and has clear ceiling heights ranging from 12 to 14 feet. The subject property is composed of two parcels containing 7.09 acres located in Highland, Helvetia Township, Madison County. However, only one parcel was appealed.

The appellant appeared before the Property Tax Appeal Board by counsel arguing the subject's assessment is not reflective of its fair cash value. In support of this claim, the appellant submitted an appraisal estimating that the subject property had a fair market value of $375,000 as of January 1, 2004, using the three traditional approaches to value. Although only one parcel was appealed, the appellant's appraisal report encompassed two parcel numbers. (01-2-24-06-00-000-014 and 01-2-24-06-00-000-015).

At the commencement of the hearing, the Board's Hearing Officer noted the Illinois Property Tax Appeal Board issued a decision lowering the assessment of the subject property to $221,450 based upon the equity and the weight of the evidence the prior assessment year under Docket Number 04-00563.001-C-2. In reviewing the appeal, the Board's Hearing Officer noted the evidence in this 2005 appeal was the same as presented in the 2004 appeal. Counsel for the appellant agreed that the evidence was the same as in the prior year, however, the appellant wished to expand the testimony from John M. Brendel, the appellant's appraiser. Counsel argued the condition of the subject's roof in the prior year's hearing was not made clear. Counsel opined the Hearing Officer did not adequately consider the condition of the subject's roof in the prior year's appeal. When questioned, counsel contends the Property Tax Appeal Board issued an incorrect decision for the subject property the prior year, but he had not appealed the Board's decision under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code. (35 ILCS 200/16-195).

At the hearing, counsel tendered two new exhibits. Exhibit 1 was a proposal to repair/replace the subject's roof for an estimated cost of $315,000. Exhibit 2 was photographs of the subject's trucking dock and well.

John M. Brendel, a state licensed appraiser, was called as the appellant's expert witness without objection. Brendel testified the subject's concrete block construction was popular prior to the

1970's, but since then there are more modern building methods that require less maintenance. He testified structures made of concrete block like the subject require periodic tuck-pointing, so they become more obsolete. The appraiser also discussed the subject's low ceiling height when compared to more modern constructed buildings. The appraiser next referred to a photograph within the appraisal report depicting some deterioration along the roof line. From the interior, the appraiser testified there were signs of the roof's deterioration and corrosion, noting some water stains on the floor. The appraiser also noted the subject's floor had ripples and cracks making it difficult for machinery to traverse the property. The appraiser was presented photographs of the trucking well showing water stains due to standing water after rains due to a lack of a drain. The appraiser testified this factor could potentially be a detractor to a potential buyer because standing water could cause damage to the wheels, hubs, and bearings of shipping trailers.

The appraiser next referred to Exhibit 1, the proposal to repair/replace the subject's roof for $315,727 as of September 10, 2004. The appraiser testified no repairs have been made to the subject's roof. The appraiser acknowledged his value conclusion before roof repair would be $690,000, but a $315,000 deduction should be applied for the roof repair as any willing buyer or seller would have to reduce the sale price of the property or the seller would give the buyer a credit for the repair. As a result, Brendel concluded the subject property has a fair market value of $375,000 given its roof condition. The appraiser further testified there is not very much demand for properties like the subject due to its construction quality. He testified typical demand for manufacturing and warehouse property are for more modern clear span tilt-up concrete building or a more modern metal building with clear ceiling heights from 25 to 30 feet.

The appraiser next provided testimony in connection with the three approaches to value that he prepared. Under the cost approach to value, the appraiser concluded a value of $330,000, which included a curable physical depreciation deduction of $315,000 to account for the subject's roof condition. Under the income approach to value, the appraiser developed an initial value of $670,000. From this amount, the appraiser deducted $315,000 to account for the subject's roof condition resulting in a final value conclusion of $355,000 under the income approach. Under the sales comparison approach to value, the appraiser calculated an initial value of $690,000. Again, the appraiser deducted $315,000 to account for the subject's roof condition resulting in a final value conclusion of $375,000 under the sales comparison approach. In reconciliation, the appraiser gave little emphasis to the cost approach; total confidence was withheld from the income approach due to the subjectivity of the capitalization rate; and the sales comparison approach was considered a good indicator of value. Thus, secondary weight was placed on the cost and income approaches to value with most emphasis placed on the sales comparison approach in arriving at a final value estimate for the subject property of $375,000 as of January 1, 2004.

Under questioning, the appraiser acknowledged under the income and sales comparison approaches that he adjusted the comparables for condition when compared to the subject. However, the appraiser testified if there is a significant amount of curable depreciation, in this case roof repair, that amount can be deducted from all three approaches initial value conclusion. Prior to deduction for roof repair, the appraiser testified the adjustments were based as if the subject property's roof was in standard usable condition and not in an advanced state of disrepair. With respect to comparable sale 4 located in Venice, Illinois, which was also used by the board

of review's appraiser, the appraiser testified its roof was demolished in a thunderstorm. He was unsure if the roof collapse occurred in 2004 or 2005 but opined the collapse occurred after its sale in 2001 for $850,000 or $7.45 per square foot of building area.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $209,750 was disclosed. The subject's assessment reflects an estimated market value of $628,559 using Madison County's 2005 three-year median level of assessments of 33.37%.

In support of the subject's assessment, the Chairman for the Madison County Board of Review, Kerry Miller, offered testimony and presented an appraisal of the subject property prepared by Barry T. Loman. Loman was present at the hearing and is a state licensed appraiser who holds several professional designations in the field of real estate valuation. The appellant's counsel stipulated to Loman's qualifications to provide expert valuation testimony. Loman estimated the subject's fair market value to be $730,000 as of January 1, 2004, using the three traditional approaches to value.

Although only one parcel was appealed, Miller explained Loman's appraisal report is composed of two parcels in which the subject property is situated. Miller explained the adjoining parcel (01-2-24-06-00-000-015) has an assessment of approximately 21,710 which reflects an estimated market value of $65,000. He was of the opinion that the appropriate manner to value the subject parcel in this appeal was to deduct the estimated market value from the parcel not under appeal from the conclusion of value developed by Loman. As in the 2004 appeal, the appellant's counsel raised no objection with this process. Deducting the $65,000 from Loman's value conclusion of $730,000 resulted in residual value for the parcel under appeal of $665,000, which is higher than the subject's estimated market value as reflected by the assessment for parcel 01-2-24-06-00-000-014.

As pointed out by the appellant's counsel, board of review Chairman Kerry Miller testified the value conclusions of both Brendel and Loman are not far apart prior to the consideration for the roof adjustment. Under the cost approach, Loman developed a value of $719,000 after the $65,000 adjustment for the second parcel whereas Brendel calculated a value of $645,000 prior to the adjustment for the roof. Under the income approach, Loman developed a value of $693,200 after the adjustment for the second parcel whereas Brendel calculated a value of $670,000 prior to the adjustment for the roof. Under the sales comparison approach, Loman developed a value of $665,000 after the adjustment for the second parcel whereas Brendel calculated a value of $690,000 prior to the adjustment for the roof.

With regard to common comparable sale used by both appraisers that is located in Venice, Illinois, Miller testified only a portion of its roof collapsed in 2005 after a thunderstorm. Miller testified he is familiar with this property through the appeal process over the last 15 years. Miller testified that as of its date of sale in 2001, this comparable's roof was in poor condition. Miller further explained the owners of the comparable made the decision not to repair the section of the structure where the roof collapsed, but rather demolish that portion of the building. Thus, the board of review reduced the comparable's assessment the subsequent year due to a loss of square footage. Miller acknowledged the subject's roof is in poor condition, but disputed the

methodology for assessment purposes on how to treat the condition of the roof and the estimated cost to cure the roof problem.

Miller argued that if the Board determined an adjustment is justified for the roof, it is the county's position that a one time market value adjustment of $315,000 should not be used, but this amount should be pro-rated over the 20 year life of the roof. In other words, Miller testified when measuring depreciation of a short life or long life individual items, the depreciated value should be spread out over the life of that particular item.

Loman was next called as a witness. He testified he inspected the subject property sometime in 2003 and again in November 2004. Loman agreed based on his interior inspection there were some areas of the subject's roof needing repair noting some small areas with standing water. Loman testified he reviewed the proposal for the replacement cost of the subject's roof and found it to be detailed, professional and proper. Loman testified he found the concrete flooring had some cracking in a normal way for a 40 year old property, but he observed forklifts traversing the flooring. Thus, Loman testified he did not see any indication the cracked flooring caused problems with production. Loman testified he observed two feet of standing water in the truck wells and did not see any loading or unloading. However he did not know if the standing water affected operations.

Under the cost approach, Loman first utilized six land sales to estimate the value for the subject's 6.9 acre site of $151,800. The appraiser next used the Marshal Valuation Service to estimate the reproduction costs new of the improvements of $3,585,448. He explained he used reproduction costs rather than replacement costs due to considerations for functional obsolescence. He explained the main difference between reproduction and replacement costs in that reproduction is an exact replica with built in obsolescence whereas replacement costs uses more modern building techniques that are fully functional without obsolescence. Using the age life method of depreciation, the appraiser calculated the subject property suffered physical deprecation of 83% or $2,795,922 resulting in a depreciated cost new for the improvements of $609,526. Adding the land value of $151,800 and the contributory value of the steel bins of $22,610, Loman arrived at a final value estimate under the cost approach of $784,000.

Under the sales comparison approach, the appraiser analyzed five suggested comparable sales. Four sales were located in Highland and one sale was located in Venice. Brendel also used sales 1, 2 and 5. The suggested comparables consist of industrial properties with structures ranging in size from 7,320 to 195,298 square feet of building area. The four properties located in the Highland area were constructed from 1956 to 1983, with the property located in Venice constructed in 1940. The comparables have clear ceiling heights ranging from 10 to 24 feet and office areas ranging from 7% to 7.04% of the total building area. The properties sold from July 1999 to October 2003 for prices ranging from $175,000 to $3,906,000 or from $7.45 to $23.91 per square foot of building area including land. The appraiser testified the property in Venice was important to consider because he actually inspected the property on several occasions and found it had ongoing roof problems when it sold in December 2001 for $850,000 or $7.45 per square foot of building area including land. Loman testified this property was very useful because of its similarity when compared to the subject in use, size and poor roof condition. Loman noted this property had 10 and 20 foot clear ceiling heights, but was older than the subject. Loman also testified the Venice property had some environmental contamination

problems; it is located in an area with high crime; surrounding properties are deteriorating; and lacks good access to the highway system. Loman opined these factors might have caused its lower sale price in relation to the other comparable properties.

After considering adjustments to the comparables for differences when compared to the subject, the appraiser concluded a value estimate for the subject of $9.00 per square foot of building area including land or $730,000 under the sales comparison approach.

Under the income approach to value, the appraiser utilized three rental comparables located in Highland, Milstadt, and Granite City. The rental comparables range in size from 22,500 to 168,456 square feet of building area; had clear ceiling heights from 18 to 24 feet; and office area ranging from 2% to 9% of the total building area. Rental rates ranged from $2.35 to $4.04 per square foot of building area. The appraiser opined these properties were superior to the subject. Based on this data, Loman estimated the subject has a market rent of $1.50 per square foot of building area resulting in a potential gross income of $121,869. The appraiser deducted 10% to account for vacancy and collection loss in arriving at an effective gross income of $102,520. Expenses were estimated to be 10%, which included a reserves for replacement allowance, resulting in a net operating income of $98,568. Loman explained the normal appraisal practice and the correct way to handle the subject's poor roof, similar to short-lived items such as floor covering or heating and cooling systems, was to expect the owner to properly manage the property and annually set aside funds for repairs, as in the reserves for replacement under the income approach.

Using the band of investments technique, the appraiser calculated a capitalization rate of 11%. The appraiser then added 2% to account for the risk factor associated with the nature of the subject property in its current condition in arriving at an overall capitalization rate of 13%, excluding a factor for the effective tax rate. Capitalizing the subject’s net income of $98,568 by 13% resulted in an estimated market value of $758,200 under the income approach.

In reconciling the valuation methods, the appraiser gave the sales comparison approach greatest weight. Little weight was placed on the cost approach. As a result, the appraiser concluded the subject property has a fair market value of $730,000 as of January 1, 2004.

During his testimony, Loman testified he is not familiar with the practice of deducting or making a one-time lump sum deduction for a particular item from an initial valuation conclusion. He explained that in normal appraisal practice a specific item such as a poor roof would be part of the deprecation line in the cost approach. However, under the sales comparison approach, the poor roof would be considered in the adjustment process made to the comparable sales. Under the income approach, consideration for a poor roof would be accounted for in the rents received and the amount of funds put into reserves for replacement.

Under cross-examination, Loman agreed the property in Venice had only a partial roof collapse. He disagreed that the subject's entire roof needed repaired. The issue of expenses under the income approach was next discussed. The appellant's counsel pointed out using the monthly allotted expenses of $10,952 calculated by Loman, which included a reserve to replace the roof, equates to approximately $300,000 over 30 years, which does not even cover the proposal for roof repair or any other items that may need repaired. Loman agreed the subject is owner

occupied. During examination, there was much discussion regarding about how new improvements are assessed by county assessment officials, noting they are not spread out over a number of years. However, Miller clarified the difference between maintenance and capital improvements. In addition, Miller testified assessments are not adjusted upward for maintenance.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject's assessment is warranted.

First, the Board finds that prior to the commencement of the hearing, the appellant's counsel attempted to submit a "corrected appraisal" of the subject that was prepared by Brendel due to "typographical errors". These corrections occurred after the Property Tax Appeal Board issued its 2004 decision regarding the subject property under Docket Number 04-00563.001-C-2. The Board's Hearing Officer did not mark this document as an exhibit nor admit the revised appraisal into the record pursuant to section 1910.67(k) of the Official Rules of the Property Tax Appeal Board, which provides:

> In no case shall any written or documentary evidence be accepted into the appeal record at the hearing unless:
>
> 1) Such evidence has been submitted to the Property Tax Appeal Board prior to the hearing pursuant to this Part;
>
> 2) The filing requirement is specifically waived by the Board; or
>
> 3) The submission of the written or documentary evidence is specifically ordered by the Board or Hearing Officer. (86 Ill.Adm.Code §1910.67(k)).

The appellant argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellant has not overcome this burden.

In support of the overvaluation claim, the appellant submitted an appraisal and testimony from the appraiser estimating the subject property had a fair market value of $375,000 as of January 1, 2004. The board of review submitted an appraisal and testimony from the appraiser estimating the subject property had a fair market value of $730,000 as of January 1, 2004. Each appraiser identified the subject property as being composed of two parcel identification numbers of 01-2-24-06-00-000-014 and 01-2-24-09-00-000-015. However, only parcel number 01-2-24-06-00-000-014 was appealed to the Property Tax Appeal Board pursuant to the Property Tax Code. The board of review offered testimony that parcel 01-2-24-09-00-000-015 has an assessment of approximately $21,710, which reflects an estimated market value of approximately $65,000. The parties agreed that $65,000 should be deducted from the Board's finding of market value based on the appraisals to arrive at the assessment for parcel 01-2-24-06-00-000-014. Deducting the $65,000 from both appraisals results in estimated market values of $310,000 based on the Brendel report and $665,000 for the Loman report. The subject's assessment of $209,750

reflects an estimated market value of $628,559 using Madison County's 2005 three-year median level of assessments of 33.37%.

After a review of both appraisals and considering the testimony offered by both appraisers, the Property Tax Appeal Board finds the best evidence of value was the appraisal report prepared by Loman for the Madison County Board of Review. He estimated the subject property has a fair market value of $730,000 as of January 1, 2004. Furthermore, The Property Tax Appeal Board finds from its analysis of the record that the evidence in this appeal is no different from that of the prior year. The Board finds that no new probative evidence was timely submitted and the expanded testimony offered by Brendel does not warrant a change from the Board's previous year's findings. Thus, no reduction in the subject's assessment justified.

The Board finds both appraisers were in agreement as to the description of the subject property. The main divergence within the two appraisals is the method that each expert accounted for the subject's poor roof condition. The Board finds Loman's method of calculating the subject's fair market value considering the roof condition was better supported in accordance with acceptable appraisal practice and theory. With respect to the subject's roof condition, the Board finds Loman adequately supported the depreciation amount under the cost approach; allocated a reasonable amount in the reserves for replacement and developed a capitalization rate associated with higher risk given the subject's condition under the income approach; and placed primary emphasis on comparable sales that had varying degrees similarity of functional obsolescence, with greatest weight placed on a similar comparable sale with poor roof condition like the subject.

The Property Tax Appeal Board gave Brendel method of discounting the subject property's value due to its roof condition less weight. Although Brendal properly deducted for curable physical depreciation due to its roof condition under the cost approach, the Board finds the simplicity of deducting the lump sum amount for curable physical depreciation from the initial value conclusions under the sales and income approaches suspect. The more appropriate method would be adjusting the comparable sales and rentals to the subject based on the condition as well as considerations for other salient factors, which is more in accordance with acceptable appraisal practice and theory

The Property Tax Appeal Board finds this record contains three common comparable sales used by both appraisers. However, the Board placed less weigh on two comparables due to considerably larger or smaller size when compared to the subject. The Board further finds the remaining common comparable sale to be most representative of the subject. This property is an older industrial building located in Venice, Madison County, Illinois. The appraisers each recognized this property had a poor roof that was in a state of disrepair at the time of sale like the subject property. Furthermore, both Loman and Miller testified regarding their familiarity regarding this comparable, in that is suffers from functional obsolescence and ongoing roof problems. This comparable property sold in December 2001 for $850,000 or $7.45 per square foot of building area including land. The Property Tax Appeal Board further finds this comparable provides direct evidence of value in exchange for an older industrial building with documented deficiencies like the subject. The Board finds this common sale contained in both appraisal reports supports Loman's value conclusion of $730,000 or $9.00 per square foot of

building area. In this same context, the Board finds this common sale clearly undermines Brendel's final value conclusion of $375,000 or $4.62 per square foot of building area.

The Property Tax Appeal Board finds the subject property has a market value of $730,000 as of January 1, 2005. The Board further finds $65,000 must be deducted to account for the value on the parcel that was not appealed, which results in a final market value of $665,000. The subject's assessment of $209,750 reflects an estimated market value of $628,559, which is less the final value of $665,000. Therefore, the Property Tax Appeal Board finds the board of review's assessment of the subject property is supported and no reduction is warranted.

## 2008 INDUSTRIAL CHAPTER
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*[Items Contained in Brackets Indicate*
*Arguments or Evidence in Opposition to the Appellant's claim]*