State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2010

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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
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2010 FOREWORD

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. Additional Property Tax Appeal Board decisions may also be accessed at: www.state.il.us/agency/ptab/Pub/SearchAdditionalPTABDocuments.htm.

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.

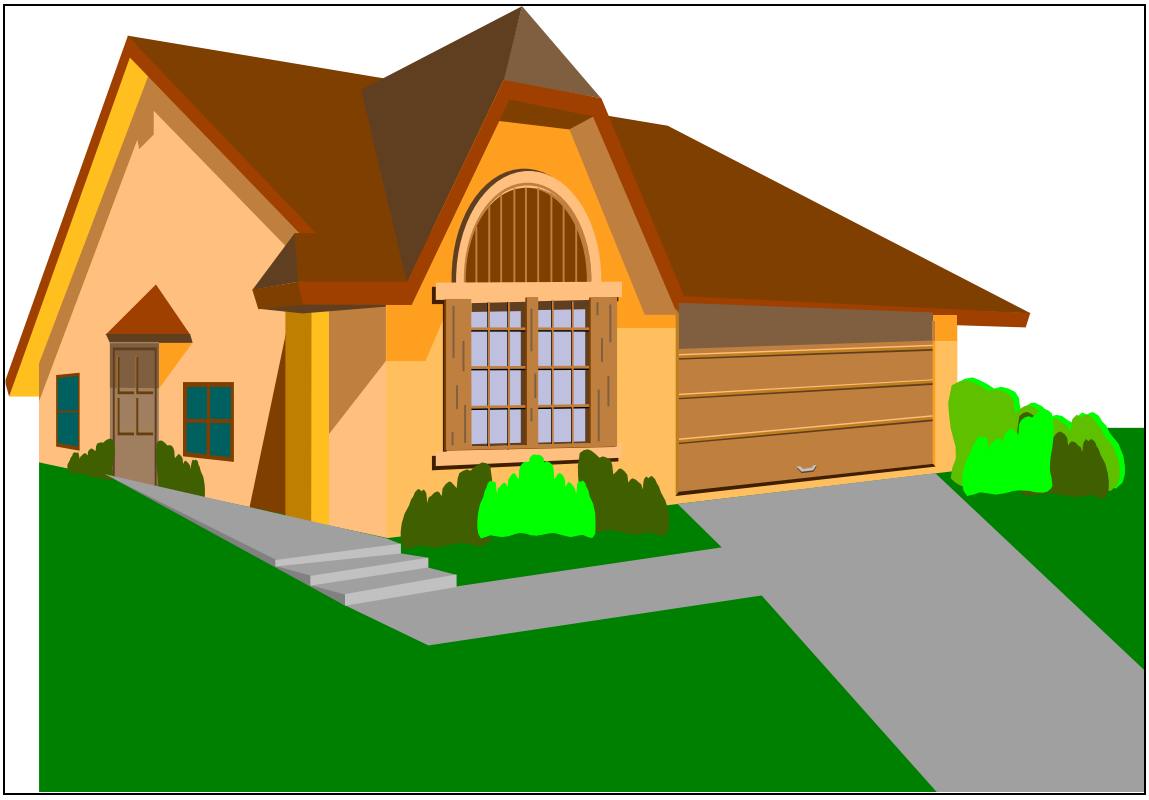
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial 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 2010 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

2010 RESIDENTIAL DECISIONS



PROPERTY TAX APPEAL BOARD
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2010 RESIDENTIAL CHAPTER

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APPELLANT:	**Gavin Campbell**
DOCKET NUMBER:	**06-31810.001-R-1**
DATE DECIDED:	**October, 2010**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a 4,588 square foot parcel of land improved with a 113-year old, two-story, masonry, multi-family dwelling containing 3,793 square feet of living area, three apartment units, four and two-half baths, one fireplace, and a full basement. The appellant argued both unequal treatment in the assessment process and that the market value of the subject property is not accurately reflected in the property's assessed valuation as the bases of this appeal.

In support of the equity argument, the appellant submitted information on a total of nine properties suggested as comparable and located within five blocks of the subject. The properties are described as two or three-story, masonry or stone, multi-family dwellings with two to five apartment units and two to five baths. In addition, five properties have either one or five fireplaces. No basement information was provided. The properties range: in age from 95 to 116 years; in size from 3,415 to 6,000 square feet of living area; and in improvement assessment from $3.71 to $12.35 per square foot of living area. These properties range in land size from 2,676 to 12,426 square feet and in land assessment from $1.90 to $4.43 per square foot of land area. In addition, the appellant's documentation states the subject property received a 12% assessment increase which is above the neighborhood average without further market data.

In support of the market value argument, the appellant's documentation states the subject was 50% vacant during the assessment year. The appellant submitted a grid indicating the percentage of vacancy for the subject property during the 2006 assessment year with an average vacancy of 50%. In addition, the appellant submitted a document indicating the actual income and expenses for the subject for 2007.

Finally, the appellant has indicated that the PTAB issued a 2005 decision reducing the subject property's assessment and requested this amount "rollover" to the 2006 assessment year.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's improvement assessment of $49,612 or $13.08 per square foot of living area and land assessment of $12,112 or $2.64 per square foot were disclosed. The total assessment reflects a market value of $385,775 using the level of assessment of 16% for Class 2 property as contained in the Cook County Real Property Assessment Classification Ordinance. In support of the subject's assessment, the board of review presented descriptions and assessment information on a total of four properties suggested as comparable and located within a quarter-mile of the subject. The properties are described as two or three-story, masonry, multi-family dwellings with three baths, and a full basement. In addition, two properties contain air conditioning and one contains a fireplace. The properties range: in age from 93 to 116 years; in size from 3,738 to 4,269 square feet of living area; and in improvement assessment from $13.88 to $15.29 per square foot of living area. The lots range in size from 3,004 to 4,725 square feet and in land assessment from

$2.64 to $4.44 per square foot. 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 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.

As to the land, the parties submitted a total of 13 properties suggested as comparable to the subject. The PTAB finds all the comparables are similar to the subject in size and location. These properties range in lot size from 2,676 to 12,246 square feet and in land assessment from $1.90 to $4.44 per square foot with a majority of the properties assessed at $2.64 per square foot. In comparison, the subject's land assessment of $2.64 per square foot of land area is within the range of comparables. After considering adjustments and the differences in both parties' comparables when compared to the subject, the PTAB finds the subject's per square foot land assessment is supported and a reduction in the subject's assessment is not warranted.

As to the improvement, the parties submitted a total of 13 properties suggested as comparable to the subject. The PTAB finds the appellant's comparables #3, #5 and #9 and the board of review's comparables are the most similar to the subject in size, construction, and age. Therefore, these properties were given the most weight. These properties are masonry, two or three-story, multi-family dwellings located within a quarter-mile of the subject. The properties range: in age from 93 to 116 years; in size from 3,415 to 4,269 square feet of living area; and in improvement assessments from $3.71 to $15.29 per square foot of living area. In comparison, the subject's improvement assessment of $13.08 per square foot of living area is within the range of comparables. 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.

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, 331Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (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.Admin.Code 1910.65(c). Having considered the evidence presented, the PTAB concludes that the evidence indicates a reduction is not warranted.

The appellant submitted documentation showing the income of the subject property. The PTAB gives the appellant's argument little weight. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

> [I]t is the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value".

Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes. Id. at 431.

Actual expenses and income based on vacancy can be useful when shown that they are reflective of the market. Although the appellant made this argument, the appellant did not demonstrate through an expert in real estate valuation that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using income, one must establish, through the use of market data, the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. The appellant did not provide such evidence and, therefore, the PTAB gives this argument no weight and finds that a reduction is not warranted.

As to the appellant's argument that the subject property should receive the same assessment as the PTAB decision for the previous year. The Property Tax Appeal Board Rules state:

> 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 of the Code, 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.

86 Ill. Adm. Code 1910.50(i). The PTAB finds that the subject property does not qualify for a reduction under this rule. The reassessment year for the township where the subject property is located is 2006. Under the rules, the assessment shall remain in effect only until this new reassessment year. In addition, the subject is a multi-family apartment building and the appellant's own petition indicates the appellant's address differs from the location of the subject property. Therefore, the PTAB finds that the rules prohibit application of the 2005 assessment to the 2006 assessment year and no reduction is warranted.

APPELLANT:	**Karaly Realty, LLC**
DOCKET NUMBER:	**06-24097.001-R-1**
DATE DECIDED:	**July, 2010**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a 3,125 square foot parcel of land improved with two buildings. Improvement #1 is a 113-year old, two-story, masonry, multi-family dwelling containing 2,438 square feet of living area, two apartment units, two baths and a full, unfinished basement. Improvement #2 is a 113-year old, two-story, masonry, multi-family dwelling containing 1,496 square feet of living area, two apartment units, two baths and a full, unfinished basement. The appellant argued, via counsel, unequal treatment in the assessment process of the improvement as the basis of the appeal.

In support of the equity argument, the appellant, via counsel, submitted information on a total of three properties suggested as comparable and located on the subject's block. The properties contain two improvements each that are described as two-story, masonry or frame, multi-family dwellings with two or four baths, full, unfinished basement for three properties, and, for one property, air conditioning. The properties are 113-years old and range in combined total size from 2,646 to 5,119 square feet of living area and in improvement assessments from $15.79 to $18.39 per square foot of living area. The appellant also submitted black and white photographs of the subject property and the suggested comparables. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

At hearing, the appellant's attorney argued that the subject property is over assessed when comparing the subject's total square footage and improvement assessment with suggested comparables. He acknowledged that the total square feet of living area and the improvement assessments of the suggested comparables are the combined totals of the two improvements located on each parcel.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's Improvement #1 assessment of $57,260 or $23.49 per square foot of living area and Improvement #2 of $18,352 or $12.27 per square foot of living area were disclosed. In support of the subject's assessment, the board of review presented descriptions and assessment information on suggested comparables for each improvement. For Improvement #1, the board of review submitted three properties suggested as comparable and located within one-half mile of the subject. The properties consist of two-story, masonry or frame and masonry, multi-family dwellings with three apartment units, two or three baths and, for two properties, a full, unfinished basement. The properties range: in age from 103 to 124 years; in size from 2,288 to 2,484 square feet of living area; and in improvement assessments from $26.35 to $33.85 per square foot of living area.

For Improvement #2, the board of review submitted three properties suggested as comparable and located within one-quarter of a mile from the subject. The properties consist of two-story, masonry or frame, multi-family dwellings with two apartment units, two baths, a full basement

for one property, and for one property, air conditioning. The properties range: in age from 108 to 118 years; in size from 1,512 to 1,634 square feet of living area; and in improvement assessments from $25.31 to $34.57 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

The board of review's representative, Michael LaCalamita, rested on the evidence previously submitted. He testified that the board of review separates each improvement on a parcel and assesses each improvement individually prior to combining the assessments.

In rebuttal, the appellant submitted a letter arguing that board of review's comparables are not as similar to the subject as the appellant's. The appellant asserted that all the appellant's comparables were properties that contained two improvements on the parcel while the board of review's comparables contained one improvement on the parcel.

After reviewing the record and considering the testimony, 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 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 Board finds the appellant has not met this burden.

As to Improvement #1, the parties submitted a total of six properties suggested as comparable to the subject. The PTAB finds the board of review's comparables are the most similar to the subject in design, size, and age. These properties are frame and masonry or masonry, two-story, multi-family dwellings located within one-half mile of the subject. The properties range: in age from 103 to 124 years; in size from 2,288 to 2,484 square feet of living area; and in improvement assessments from $26.35 to $33.85 per square foot of living area. In comparison, the subject's improvement assessment of $23.49 per square foot of living area is below the range of these comparables. The PTAB gives little weight to the appellant's comparables as the appellant combined the square feet of living area and the improvement assessment for each suggested comparable's two improvements without providing any documentation for each individual improvement. 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 Improvement #1's assessment is not warranted.

As to Improvement #2, the parties submitted a total of six properties suggested as comparable to the subject. The PTAB finds the board of review's comparables are the most similar to the subject in design, size, and age. These properties are frame or masonry, two-story, multi-family dwellings located within one-quarter mile of the subject. The properties range: in age from 108 to 118 years; in size from 1,512 to 1,634 square feet of living area; and in improvement assessments from $25.31 to $34.57 per square foot of living area. In comparison, the subject's improvement assessment of $12.27 per square foot of living area is below the range of these comparables. The PTAB gives little weight to the appellant's comparables as the appellant combined the square feet of living area and the improvement assessment for each suggested

comparable's two improvements without providing any documentation for each individual improvement. 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 Improvement #2's assessment is not warranted.

APPELLANT:	**Tracy Kramer**
DOCKET NUMBER:	**07-03221.001-R-1**
DATE DECIDED:	**March, 2010**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property is improved with a part two-story and part one-story dwelling of frame and masonry construction containing 3,441 square feet of living area. The dwelling was constructed in 1989 and features a full unfinished basement, central air conditioning, three fireplaces, and a three-car garage of 644 square feet of building area. The property is located in West Chicago, Wayne Township, DuPage County.

The appellant's appeal contends that the subject property is overvalued based on its assessment. In support of the overvaluation argument, the appellant reported the subject property was purchased in March 2007 for $434,000 or $126.13 per square foot of living area, land included, from the previous owner who was not related to the appellant. The property was said to be listed for sale on the internet. Appellant included an illegible copy of the settlement statement to support the purchase data and a copy of the sales contract which appears to reflect a purchase price of $437,000.

Based on this evidence, the appellant requested a reduction the subject's assessment to $144,666 or to reflect a market value of approximately $434,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $171,670 was disclosed. The subject's assessment reflects an estimated market value of $516,150 or $150.00 per square foot of living area, including land, using the 2007 three-year median level of assessments for DuPage County of 33.26%. In support of the subject's assessment, the board of review submitted a memorandum from the township assessor arguing that a sale after the assessment date of January 1, 2007 "cannot be considered as evidence for a 2007 assessment appeal" along with a grid analysis of six comparable properties located in the subject's neighborhood code as assigned by the assessor and that sold in 2005 and 2006.

The six comparable properties consist of one, part one and one-half-story and part one-story, and five, part two-story and part one-story frame and masonry dwellings that were built between 1988 and 1991. The dwellings range in size from 2,770 to 3,645 square feet of living area. Features include full or partial basements, two of which have finished area, central air conditioning, one or two fireplaces, and a three-car garage ranging in size from 528 to 805 square feet of building area. These properties sold between February 2005 and August 2006 for prices ranging from $437,500 to $545,000 or from $142.66 to $163.76 per square foot of living area, land included.

Both in the grid analysis and as shown on an attached data sheet for the subject property, the board of review also indicates the subject property was sold in March 2007 for $434,000.

Based on this evidence, the board of review requested confirmation of the subject's assessment based on market value.

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 a reduction in the subject's assessment is warranted.

The appellant contends the subject's assessment should be reduced based on the purchase price of the subject property. 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 evidence in the record does support a reduction in the subject's assessment.

The evidence disclosed that the subject was purchased in March 2007, 3 months after the assessment date of January 1, 2007, for a price of $434,000. The information provided by the appellant indicated the sale had the elements of an arm's length transaction.

Ordinarily, property is valued based on its fair cash value (also referred to as fair market value), "meaning the amount the property would bring at a voluntary sale where the owner is ready, willing, and able to sell; the buyer is ready, willing, and able to buy; and neither is under a compulsion to do so." Illini Country Club, 263 Ill. App. 3d at 418, 635 N.E.2d at 1353; see also 35 ILCS 200/9-145(a). The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967). 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. Munson v. Morningside Heights, Inc., 45 Ill. 2d 338 (1970), 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). In light of this holding, the comparable sales submitted by the board of review have been given less weight.

The Board finds the best evidence of the subject's fair market value in the record is the March 2007 purchase for $434,000. The Property Tax Appeal Board finds the sale was not a transfer between family or related parties; the property was advertised for sale on the internet. Furthermore, the Board finds there is no evidence in the record that the sale price was not reflective of the subject's market value. Moreover, the board of review did not contest the arm's-length nature of the subject's sale, thus, based on the foregoing facts, the Property Tax Appeal Board finds the subject's March 2007 sale price of $434,000 was arm's-length in nature.

Based on the foregoing analysis, the Property Tax Appeal Board finds the subject property had a market value of $434,000 on January 1, 2007. Since the subject's assessment reflects a substantially higher estimated market value of $516,150, the Board finds that a reduction is warranted. Since the fair market value of the subject has been established, the Board finds that the 2007 three-year median level of assessment for DuPage County of 33.26% shall apply.

APPELLANT:	**Michael & Dana LaRosa**
DOCKET NUMBER:	**06-01890.001-R-1**
DATE DECIDED:	**January, 2010**
COUNTY:	**Madison**
RESULT:	**No Change**

The subject property consists of a one-story brick and frame dwelling containing 1,778 square feet of living area that was built in 1996. Features include a full unfinished basement, central air conditioning, an 825 square foot attached garage and a 672 square detached garage. The improvements are situated on a 2-acre site.

The appellants submitted evidence before the Property Tax Appeal Board claiming both unequal treatment in the assessment process and overvaluation as the bases of the appeal. In support of these claims, the appellants submitted photographs, multiple listing sheets and an analysis of four suggested comparables located from .75 of a mile to 1.5 miles from the subject. The comparables have lots that contain from 10,184 square feet to 2.25 acres. The comparables consist of one-story frame or brick and frame dwellings that are from 1.5 to 15 years old. The comparables have full, partially finished basements, central air conditioning, and two car garages. Comparable 1 has an additional two car detached garage and comparable 2 has fireplace. The dwellings range in size from 1,620 to 1,966 square feet of living area. They sold from November 2005 to November 2006 for prices ranging from $170,000 to $224,000 or from $99.19 to $122.27 per square foot of living area including land. Three of the comparables have improvement assessments ranging from $38,222 to $43,951 or from $22.36 to $25.93 per square foot of living area. The subject property has an improvement assessment of $65,370 or $36.77 per square foot of living area.

The appellants argued comparable 1 is most similar to the subject in age, size, proximity and land area. This property also has a second detached garage like the subject. 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 final assessment of $71,470 was disclosed. The subject's assessment reflects an estimated market value of $214,496 or $120.64 per square foot of living area including land using Madison County's 2006 three-year median level of assessments of 33.32%. In response to the appeal, the board of review indicated the comparables used by the appellants are located in neighboring Macoupin County. In support of the subject's assessment, the board of review submitted property record cards, photographs, a market analysis and an equity analysis.

The market analysis contains five suggested comparable sales. The comparables are located in Staunton School District like the subject. The comparables have lots that contain from 2 to 20 acres of land area. The comparables are improved with three, one-story and two, part two-story and part one-story frame or frame and masonry dwellings that were built from 1967 to 2000. The comparables have full or partial unfinished basements and central air conditioning. Four comparables have garages that range in size from 528 to 986 square feet, comparable 4 has an extra 1,534 square foot detached garage, and comparable 3 has two additional pole buildings.

Comparables 3 and 4 have at least one fireplace. The dwellings range in size from 1,202 to 2,623 square feet of living area. The comparables sold from September 2005 to December 2006 for prices ranging from $185,000 to $342,200 or from $123.37 to $153.91 per square foot of living area including land.

The uniformity analysis contains four suggested comparables located in the subject's assessment jurisdiction of Madison County. The comparables consist of one-story brick or brick and frame dwellings that were built from 1995 to 1997. The comparables have full unfinished basements, central air conditioning and garages that range in size from 676 to 896 square feet. Three comparables have a fireplace. The dwellings range in size from 1,642 to 2,130 square feet of living area and have improvement assessments ranging from $46,730 to $73,450 or from $27.82 to $38.23 per square foot of living area. The subject property has an improvement assessment of $65,370 or $36.77 per square foot of living area.

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 Property Tax Appeal Board further finds no reduction in the subject's assessment is warranted.

The appellants argued the subject property was inequitably assessed. 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 appellants have not overcome this burden of proof.

The Property Tax Appeal Board finds the record contains eight suggested equity comparables for consideration. The Board placed less weight on the comparables submitted by the appellants because they are located in neighboring Macoupin County, which is a different assessment jurisdiction than Madison County where the subject property is located. 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. 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.

The Property Tax Appeal Board finds the assessment comparables submitted by the board of review are similar to the subject in age, size, style, location and amenities. They have improvement assessments ranging from $46,730 to $73,450 or from $27.82 to $38.23 per square foot of living area. The subject property has an improvement assessment of $65,370 or $36.77 per square foot of living area, which falls within the range established by the most similar comparables contained in this record. After considering adjustments to these 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.

The appellants 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 appellants have not overcome this burden.

The Board finds this record contains sales information for nine suggested comparable sales. The Board placed less weight on comparables 2, 3 and 4 submitted by the appellants because they have considerably less land area than the subject. The Board also gave less weight to comparables 2, 3 and 4 submitted by the board of review. Comparable 2 is a dissimilar part one-story and part two-story, larger dwelling that is considerably older than the subject. Comparable 3 is improved with a considerably older dwelling that is situated on considerably more land area than the subject. Comparable 4 is dissimilar in design when compared to the subject.

The Board finds the remaining three comparable sales are most similar when compared to the subject in age, size, style, location and amenities. They sold from December 2005 to December 2006 for prices ranging from $170,000 to $218,500 or from $100.00 to $153.91 per square foot of living area including land. The subject's assessment reflects an estimated market value of $214,496 or $120.64 per square foot of living area including land, which falls within the range established by the most similar comparable sales in this record. After considering adjustments to the most similar comparable sales for differences when compared to the subject, the Board finds the subject's estimated market value as reflected by its assessment is supported and no reduction is warranted.

APPELLANT:	**B.F. & Dorothy McClerren**
DOCKET NUMBER:	**07-05193.001-R-1**
DATE DECIDED:	**March, 2010**
COUNTY:	**Madison**
RESULT:	**Reduction**

The subject property consists of a one and one-half story brick and frame dwelling containing 3,996 square feet of living area that is approximately 38 years old. Features include a crawl space foundation, geothermal central heating/air conditioning, a fireplace and a two-car attached garage. The dwelling is situated on a two acre site.

The appellants appeared before the Property Tax Appeal Board with counsel claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal of the subject property. Using two of the three traditional approaches to value, the appraisal report indicates the subject property has a fair market value of $209,000 as of January 1, 2007.

The appraiser, Stanly D. Gordon, was present at the hearing and provided direct testimony regarding the appraisal methodology and final value conclusion. Under the cost approach to value, the appraiser estimated the subject's two acre site has a land value of $20,000 or $10,000 per acre. The deprecated cost of the improvements and driveway was estimated to be $193,535, resulting in a final value estimate under the cost approach of $214,000, rounded. Under the sales comparison approach to value, the appraiser utilized three suggested comparable sales with varying degrees of similarity when compared to the subject. They sold from January 2006 to July 2006 for prices ranging from $175,000 to $256,000 or from $74.60 to $77.21 per square foot of living area, including land. The appraiser adjusted the comparables for differences when compared to the subject in land area, design, age, room count, living area and various amenities, resulting in adjusted sales prices ranging from $175,500 to $226,300. Based on the adjusted sale prices, the appraiser estimated the subject property had a fair market value of $209,000 as of January 1, 2007.

Based on this evidence, the appellants requested a reduction in the subject's assessment.

The appraiser was not cross-examined by the board of review.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $75,098 was disclosed. The subject's assessment reflects an estimated market value of $226,335 using Coles County's 2007 three-year median level of assessments of 33.18%.

In support of the subject's assessment, the board of review submitted an appraisal of the subject property. Using only the sales comparison approach to value, the appraisal report indicates the subject property has a fair market value of $227,000 as of January 1, 2007.

The appraiser, Ronald C. Reardon, was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. Under the sales comparison approach to value, the appraiser utilized four suggested comparable sale with varying degrees of similarity when compared to the subject, including the subject's sale in April 2006.[1] The properties sold from May 2005 to April 2006 for prices ranging from $175,000 to $269,000. The appraiser adjusted the comparables for differences when compared to the subject in land size, living area, basement area, garages and various ancillary amenities, resulting in adjusted sales prices ranging from $190,200 to $227,250. Based on the adjusted sale prices, the appraiser estimated the subject property has a fair market value of $227,000 as of January 1, 2007.

The board of review also submitted a Real Estate Transfer Declaration indicting the subject property sold in December 2008 for $227,400, almost 24 months subsequent to the subject's January 1, 2007 assessment date. This document was filed with the Property Tax Appeal Board on June 11, 2009, without objection. Based on this evidence submitted, the board of review requested confirmation of the subject's assessment.

At the hearing, the appellant's counsel raised some questions with respect to the board of review's appraiser's final value conclusion, selection of the comparables and overall appraisal methodology. However, the board of review's appraiser was not present at the hearing for cross-examination.

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 appellants argued the subject property was 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 of proof.

The appellants submitted an appraisal report estimating the subject's fair market value of $209,000 as of January 1, 2007. The board of review submitted an appraisal of the subject property estimating a fair market value of $227,000 as of January 1, 2007. In addition, the board of review submitted a Real Estate Transfer Declaration indicting the subject property sold in December 2008 for $227,400. Finally, the evidence disclosed the subject property was purchased by the appellants in April 2006 for $269,000.[2]

The Property Tax Appeal Board finds the best evidence of the subject's fair market value is the appraisal submitted by the appellants' estimating a market value for the subject property of $209,000 as of January 1, 2007, using two of the three traditionally accepted approaches to

[1] The subject property sold for $269,000 in April 2006. At that time, the subject property had 10 acres of land area, which was split into two separate parcels: an eight acre parcel improved with a barn and a two acre parcel improved with the single-family residence that is the matter of this appeal.

[2] In April 2006, the subject property had 10 acres of land area, which was split into two separate parcels: an eight acre parcel improved with a barn and a two acre parcel improved with the single-family residence that is subject matter of this appeal.

value. The Property Tax Appeal Board finds the appellants' appraiser provided credible, logical and professional testimony regarding the reasonable application of the adjustment amounts and final value conclusion. Based on this record, the Property Tax Appeal Board finds the subject property has a fair cash value of $209,000 as of January 1, 2007. The subject's assessment reflects an estimated market value of $226,335, which is not supported by the most credible valuation evidence contained in this record. Therefore a reduction in the subject's assessed valuation is supported.

The Property Tax Appeal Board gave minimal weight to the appraisal submitted by the board of review. The board of review's appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. Without the testimony of the appraiser, the Board was not able to accurately determine the credibility, reliability and validity of the value conclusion. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined.

The Property Tax Appeal Board also gave less weight the subject's December 2008 sale price $227,400. The Board finds this sale occurred almost two years subsequent and is considered less indicative of fair cash value as of the subject's January 1, 2007 assessment date at issue in this appeal. The Board also placed diminished weight to sale that occurred in April 2006, which included the subject property. The Board finds the 2006 sale included an additional eight acres of land area and a barn, which is not the subject valuation matter of this appeal.

Based on this analysis, the Property Tax Appeal Board finds the evidence contained in this record demonstrated the subject property was overvalued by a preponderance of the evidence and a reduction is warranted. Sine fair market value has been established, Coles County's 2007 three-year medial level of assessments of 33.18% shall apply.

APPELLANT:	**Ken Mihavics**
DOCKET NUMBER:	**07-04147.001-R-1**
DATE DECIDED:	**February, 2010**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property consists of a 7,500 square foot lot that is improved with a single family dwelling located in York Township, DuPage County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming unequal treatment in the assessment process regarding the subject's land assessment. The subject's improvement assessment was not contested. In support of this claim, the appellant submitted a letter addressing the appeal; Exhibit A, comprised of 13 suggested land comparables; and a grid analysis and property detail sheets of four land comparables. The comparables are located in close proximity to the subject.

The appellant's letter explained the subject property is located one lot south of North Avenue, which is a busy four lane highway. The subject has a land assessment of $49,550 or $6.61 per square foot of land area. The appellant argued the subject property's land value is negatively impacted by noise and air pollution due to the close proximity of North Avenue, but the subject's land is assessed at the same rate as other lots located further from North Avenue.

The appellant next referred to Exhibit A, identifying two lots that are located on the corner of Willow Road and North Avenue. They contain 7,450 and 10,398 square feet of land area and have land assessments of $41,830 and $58,380 or $5.62 per square foot of land area. The appellant contends these lower per square foot land assessments clearly show the negative value impact associated to the proximity of North Avenue.

Exhibit A also identified 11 additional land comparables; however, their land sizes or total land assessments were not disclosed. One comparable is located on the corner of North Avenue and Indiana Street with a reported land assessment of $5.61 per square foot; one comparable is located on the interior of Indiana Street with a reported land assessment of $6.11 per square foot; five comparables are located on the interior of Willow Road like the subject and have reported land assessments of $6.61 per square foot; and three comparables are located on Melrose Avenue and have reported land assessments ranging from $3.95 to $5.61 per square foot of land area.

The four additional comparables contained in the grid analysis were also contained in Exhibit A. Three comparables are located along Willow Road like the subject, but comparable 1 is also a corner lot along North Avenue. One comparable is located on nearby Melrose Avenue. The lots contain from 5,000 to 7,500 square feet of land area and have land assessments ranging from $28,070 to $49,550 or from $5.61 to $6.61 per square foot of land area. Based on this evidence, the appellant requested a reduction in the subject's land assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $128,230 was disclosed.

In support of the subject's assessment, the board of review submitted a letter addressing the appeal, property record cards, a location map and two land assessment analyses of nine suggested comparables located in close proximity to the subject. Five comparables are corner lots with side lot lines along North Avenue. They range in size from 7,450 to 12,294 square feet of land and have land assessments ranging from $41,290 to $69,020 or $5.61 per square foot of land area. The other four land comparables are located on Willow Road, Illinois Street or Indiana Street and are one lot south of North Avenue like the subject. They range in size from 7,173 to 8,263 square feet of land and have land assessments ranging from $47,830 to $54,590 or $6.61 per square foot of land area. The Board of review argued the subject's land assessment of $49,550 or $6.61 per square foot of land area is supported. Thus, the board of review requested confirmation of the subject's land assessment.

In rebuttal, the appellant argued the negative value impact of noise and air pollution caused from traffic congestion is not limited to lots directly adjacent to North Avenue. Rather, the diminished values are inversely proportional to the distance between the subject and the undesirable feature. No credible evidence such as paired sales analysis was submitted to support this theory.

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.

The appellant argued the subject property was inequitably assessed. 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 of proof.

The Property Tax Appeal Board finds the parties submitted 20 suggested land comparables for consideration. Two comparables are common properties. The Board gave most weight to four comparables submitted by the board of review and comparable 4 submitted by the appellant. Four comparables are located in close proximity, one lot south, of North Avenue like the subject. One comparable is located six lots south of North Avenue along the subject's street. They contain from 7,173 to 8,263 square feet of land area and have land assessments ranging from $47,380 to $54,590 or $6.61 per foot of land area. The subject property has a land assessment of $49,550 or $6.61 per square foot of land area. The Board further finds the appellant also submitted four additional land comparables situated on interior lots along the subject's street that are reported to have land assessments of $6.61 per square foot of land area, identical to the subject. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Property Tax Appeal Board finds the subject's land assessment is well supported and no reduction is warranted.

The Board gave less weight to the remaining comparables submitted by the parties due to their dissimilar size, location or setting when compared to the subject. The Board recognizes the appellant's premise that the subject's land value could be negatively impacted due to its

proximity to North Avenue; however, the Board finds this record clearly shows the subject's land is uniformly assessed with similarly situated properties. The Board finds the manner in which the appellant's argument was posed with respect to the diminished valuation of land due to its inferior location or other perceived detrimental factors is not supported. This type of argument mainly pertains to a market value complaint. Although this issue was referred to anecdotally in the appellant's letter, the Board finds there is no credible market evidence that would suggest the subject's assessment is not reflective of its fair cash value.

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 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 assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT:	**Thomas Nickas**
DOCKET NUMBER:	**07-05233.001-R-1**
DATE DECIDED:	**November, 2010**
COUNTY:	**St. Clair**
RESULT:	**No Change**

The subject property consists of a part one-story and part two-story single family dwelling of brick and vinyl siding exterior construction that contains 3,020 square feet of living area. The dwelling was constructed in 2006. Features of the home include a full walk-out basement that is unfinished, central air conditioning, a fireplace and a three-car attached garage. The property is located in Swansea, St. Clair Township, St. Clair County.

The appellant contends the subject's assessment is excessive based on a recent sale, comparable sales, a recent appraisal and assessment equity. The record disclosed the subject property was purchased on July 23, 2007 for a price of $420,000. The appellant indicated on the petition the property was sold by the owners, the parties to the transaction were not related and the property was advertised for sale for 14 months. The appellant also submitted a copy of the Illinois Real Estate Transfer Declaration (PTAX-203) associated with the sale disclosing a purchase price of $420,000. Additionally, one of the sellers was identified as Steven Nickas, a person with the same surname as the appellant.

The appellant's petition listed four comparables, three of which sold, consisting of two, one-story dwellings and two, 1½-story dwellings. The dwellings ranged in age from 1 to 6 years old and were located within two-tenths of a mile from the subject. Each comparable has a basement with the two one-story dwellings having basements that were partially finished. Each comparable had central air conditioning, one or two fireplaces, and a three or four-car garage. Comparables #1 through #3 sold from August 2006 to May 2007 for prices ranging from $393,000 to $443,000 or from $106.22 to $170.00 per square foot of living area, land included.

According to the appellant's evidence, comparables #1, #3 and #4 had full improvement assessments ranging from $84,706 to $121,031 or from $22.89 to $33.16 per square foot of living area. Comparable #2 had a prorated improvement assessment of $43,200, which the appellant indicated equated to a full year improvement assessment of $25.96 per square foot of living area. The appellant asserted the subject also has a prorated improvement assessment from July 23, 2007 of $44,206 which equates to a full year improvement assessment of $32.98 per square foot of living area.

The appellant also submitted a copy of a portion of an appraisal identifying three comparable sales. The appraisal did not contain that section of the report articulating a final estimate of value or the signature page of the appraisal. The report contained an additional sale, #1, that was not included in the appellant's grid analysis. This property was composed of a 1½-story dwelling with 2,883 square feet of living area. The dwelling was three years old with a full basement that had finished area, central air conditioning, three fireplaces and a three-car garage. The property sold in December 2006 for a price of $480,000 or $166.49 per square foot of living area.

The evidence further revealed the appellant filed the appeal directly to the Property Tax Appeal Board following receipt of the notice of a township equalization factor issued by the board of review increasing the assessment from $62,501 to $66,308. Based on this evidence the appellant requested the subject's assessment be reduced to $60,169.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $66,308 was disclosed.

The board of review submitted a copy of the subject's property record card disclosing the subject had a full value prior to equalization of $347,664. The card further indicated the subject's improvement assessment was prorated for 160 days or 43.8356% (160 ÷ 365).[1] The subject improvements were valued at $285,164 and the prorated value was computed to be $125,003 (285,164 x .438356). This equates to in an improvement assessment of $41,668 prior to the application of a 1.0609 township equalization factor. Applying the equalization factor resulted in an improvement assessment of $44,206, which equates to a full market value for the improvements of $305,535. ($44,206 ÷ 43.8356% = $100,845. $100,845 x 3 = $302,535.) Adding the value of the land of $66,306 as reflected by the equalized land to the full improvement value results in an estimated market value for the property of $368,841. 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 the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant argued in part overvaluation as the basis of the appeal. 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 not met this burden of proof and a reduction in the subject's assessment is not warranted on this basis.

The Board finds the best evidence of market value in the record is the purchase of the subject property on July 23, 2007 for a price of $420,000. The subject property has a total assessment of $66,308. The subject has a land assessment of $22,102 which reflects a market value of approximately $66,306. The subject has a prorated improvement assessment of $44,206 which equates to a full assessment of $100,845 and a market value of $302,535. The total market value as reflected by the full assessment is $368,841, which is $51,159 less than the purchase price. The Board finds the subject's assessment is not excessive in relation to the property's market value as evidenced by the purchase price.

The appellant further 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

[1] Section 9-180 of the Property Tax Code (35 ILCS 200/9-180) provides for the pro-rata valuation of new improvements to December 31 and computations are on the basis of a year of 365 days. The subject's improvement assessment was prorated from July 24 to the end of the year.

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.

In support of the assessment inequity argument the appellant submitted information on four comparables. The Board finds only two of the comparables were similar to the subject in style. Comparables #1 and #2 were given no weight due to their one-story design. Comparables #3 and #4 were more similar to the subject in style but were larger than the subject with 3,650 and 3,350 square feet of living area, respectively. Comparable #3 was older than the subject and had a smaller garage. These two comparables had 2 fireplaces compared to the subject having 1 fireplace. The comparables had improvement assessments of $121,031 and $105,795 or $33.16 and $31.58 per square foot of living area, respectively. The subject's has an equalized prorated improvement assessment of $44,206, which equates to a full assessment of $100,845 or $33.39 per square foot of living area. This is slightly above the range established by the two most similar comparables but justified when considering economies of scale due to size differences, age and features. For these reasons the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject was inequitably assessed.

APPELLANT:	**Ziggy Sekula**
DOCKET NUMBER:	**07-02505.001-R-1**
DATE DECIDED:	**February, 2010**
COUNTY:	**Lake**
RESULT:	**No Change**

The subject property consists of a one-story single family dwelling of wood-siding construction that contains 2,168 square feet of living area. The dwelling was constructed in 1957. The subject dwelling has a slab foundation, central air conditioning, a fireplace and a 986 square foot attached garage. The subject property has a 19,166 square foot parcel and is located in Lincolnshire, Vernon Township, Lake County.

The appellant contends assessment inequity with respect to the improvement assessment and also made a legal argument that the subject's assessment should be adjusted due to vacancy. In support of the assessment inequity argument the appellant provided descriptions and improvement assessments on three comparables improved with one-story dwellings with wood siding exteriors that ranged in size from 1,965 to 2,367 square feet of living area. The appellant indicated the comparables were constructed from 1920 to 1957 and had effective dates of construction from 1950 to 1970. The subject is reported to have an effective date of construction of 1958. None of the comparables was reported to have a basement, two of the comparables have central air conditioning, each of the comparables has one or two fireplaces and each comparable has an attached garage ranging in size from 380 to 580 square feet. These properties have improvement assessments ranging from $71,386 to $93,806 or from $36.33 to $40.28 per square foot of living area. In her brief, appellant's counsel stated the average improvement assessment per square foot for the comparables was $38.45 per square foot of living area. Based on this evidence the appellant requested the subject's improvement assessment be reduced to $83,360 or $38.45 per square foot of living area.

With respect to the legal argument the appellant argued the subject dwelling has not been habitable since the time of purchase because the previous owner removed all personal property from the subject property. The appellant's evidence indicated the subject property was purchased in August 2006 for a price of $547,000. The appellant's counsel contends the objector is in the process of obtaining a building permit to rehabilitate 75% of the improvement and the subject was 100% vacant during 2007. Based on these facts the appellant requested that a 10% occupancy factor be applied to the subject's 2007 improvement assessment of $90,953 to reduced the 2007 improvement assessment to $9,095.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $155,629 was disclosed. The subject's assessment reflects a market value of approximately $469,186 using the 2007 three year median level of assessments for Lake County of 33.17%. The subject has an improvement assessment of $90,953 or $41.95 per square foot of living area. The board of review submitted a copy of the subject's property record card indicating the subject property was purchased in August 2006 for a price of $547,000.

To demonstrate the subject was equitably assessed, the board of review submitted descriptions and assessment information on three comparables selected by the Vernon Township Assessor. The comparables were improved with one-story dwellings with wood siding that range in size from 2,258 to 2,287 square feet of living area. The assessor indicated that each of the comparables was built in 1957 and had an effective date of construction of 1957. The assessor further indicated the subject was built in 1957 and had an effective construction date of 1958. None of the comparables have basements, each comparable has central air conditioning, each comparable has a fireplace and each comparable has an attached garage that ranges in size from 456 to 500 square feet. These properties have improvement assessments ranging from $95,773 to $98,773 or from $42.15 to $43.42 per square foot of living area. In a written statement the assessor indicated the subject's assessment fell within the range of all the comparables and further stated that the subject's assessment reflects a market value below the $547,000 purchase price. 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 the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant argued in part 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 descriptions and assessment information on six comparables submitted by the parties to support their respective positions. The Board finds appellant's comparables #1 and #2 and the board of review comparables were most similar to the subject in age and features. These five comparables were generally similar to the subject in size ranging from 2,258 to 2,367 square feet of living area. The Board finds the comparables were similar to the subject in features with the exception that each had a smaller garage and one had two fireplaces. These properties had improvement assessments ranging from $39.63 to $43.42 per square foot of living area. The subject's improvement assessment of $41.95 per square foot of living area is within the range established by these properties. After considering adjustments and the differences in both parties' most similar comparables when compared to the subject, the Board finds the subject's improvement assessment is equitable and a reduction in the subject's assessment is not warranted.

The appellant also argued the subject's improvement assessment should be adjusted due to vacancy. The Board gives this argument no weight. The record disclosed the subject was purchased in August 2006 for a price of $547,000. In the brief, appellant's counsel stated that the subject dwelling has not been habitable since the time of purchase because the previous owner removed all personal property from the subject property and the home was vacant during 2007 as the owner was in the process of obtaining a building permit to rehabilitate 75% of the improvement. Based on these facts the Board finds the subject's purchase price of $547,000 is reflective of its market value considering the dwelling's uninhabitable condition. The Board

further finds the subject's total assessment of $155,629 reflects a market value of approximately $469,186 using the 2007 three year median level of assessments for Lake County of 33.17%, which is below the August 2006 purchase price. In reviewing this record, the Board finds the subject's assessment is not excessive in relation to the property's market value as reflected by the purchase price and no reduction is warranted for vacancy.

APPELLANT:	**Gregory Sztejkowski**
DOCKET NUMBER:	**07-25294.001-R-1**
DATE DECIDED:	**April, 2010**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a two-story multi-family building of masonry exterior construction with 5,460 square feet of building area. The subject building is 78 years old and has six apartments. Other features include a full unfinished basement and a two-car attached garage. The subject is located in Chicago, Jefferson Township, Cook County.

The appellant contends both assessment inequity and overvaluation as the bases of the appeal. In support of the assessment inequity argument the appellant submitted descriptions, assessment information and photographs on three comparables composed of multi-family buildings with the same classification code as the subject property. Only one of the comparables had the same neighborhood code as the subject property. The comparables are of masonry construction and ranged in size from 7,804 to 9,330 square feet of building area and each had six apartments. The buildings were either 81 or 82 years old. Each comparable had a full basement with one being finished as an apartment and two comparables had either a two-car or a three-car detached garage. These properties had improvement assessments ranging from $66,207 to $74,955 or from $7.38 to $8.48 per square foot of building area. The subject has an improvement assessment of $51,268 or $9.39 per square foot of building area. In her brief, the appellant's counsel argued the average improvement assessment for the comparables was $7.96 per square foot, which should be applied to the subject's improvement resulting in a revised improvement assessment of $43,462 and a total revised assessment of $50,543.

The appellant's attorney also argued the subject's income and expenses indicates the subject should have a market value of $275,707. In support of this argument the appellant's attorney presented the subject's income and expenses for 2005 through 2007, with the figures for 2007 being prorated for a full year. According to the appellant's attorney, the subject had gross income ranging from $44,100 to $46,080 and allowable expenses ranging from $9,529 to $14,161. Counsel determined the subject's stabilized net operating income was $33,912. The attorney used a 12.30% capitalization rate, which include an effective tax rate of 2.30%, to arrive at an indicated market value of $275,707. In the brief, the appellant's attorney stated that, "In determining the base capitalization rate, we considered the Subject's age, location, condition, risk of collection loss/vacancy loss and likelihood of a breakdown in a major mechanical system or structural component." (Appellant's brief, p. 4.) Based on this estimate of value the attorney requested the subject's assessment be reduced to $44,113 after applying the 16% level of assessment for class 2 property as provided by the Cook County Real Property Assessment Classification Ordinance.

The Board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $58,349 was disclosed. The subject's assessment reflects a market value of approximately $581,165 or $106.44 per square foot of building area, land included, when applying the 2007 three year median level of assessment for Cook County class 2

property of 10.04%. (See 86 Ill.Admin.Code 1910.59(c)(2)). The subject has an improvement assessment of $51,268 or $9.39 per square foot of building area.

To demonstrate the subject property is correctly assessed the board of review submitted descriptions, copies of photographs and assessment information on three comparables. The comparables were improved with two-story masonry constructed multi-family buildings that ranged in size from 5,236 to 5,608 square feet of building area. The buildings ranged in age from 79 to 82 years old. The comparables had the same classification code and neighborhood code as the subject property. Each of the comparables has six apartments and a full unfinished basement. One comparable has a two-car attached garage. These properties have improvement assessments ranging from $51,468 to $61,975 or from $9.83 to $11.05 per square foot of building area.

The board of review also disclosed comparables #2 and #3 sold in November 2006 and August 2005 for prices of $580,000 and $690,000 or $110.77 and $123.04 per square foot of building area, land included, respectively. Based on this evidence, the board of review requested confirmation on 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 the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant argued in part 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 the appellant did not demonstrate unequal treatment by clear and convincing evidence.

The record contains descriptions and assessment information on six comparables submitted by the parties. The Board finds the comparables submitted by the board of review were most similar to the subject in size and location. The comparables were also similar to the subject in number of apartments, exterior construction, age and features. These comparables had improvement assessments ranging from $51,468 to $61,975 or from $9.83 to $11.05 per square foot of building area. The subject has an improvement assessment of $51,268 or $9.39 per square foot of building area, which is below the range established by the best comparables in the record. Based on this record the Board finds a reduction in the subject's assessment based on assessment inequity is not justified.

The appellant also argued overvaluation as an alternative basis of the appeal. 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 on this basis.

The Board finds the subject's total assessment of $58,349 reflects a market value of approximately $581,165 or $106.44 per square foot of building area, land included, when applying the 2007 three year median level of assessment for Cook County class 2 property of 10.04%. (See 86 Ill.Admin.Code 1910.59(c)(2)).

The appellant's counsel formulated an overvaluation argument using the subject's actual income and expenses from 2005 through 2007. The Board finds the appellant's argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses unconvincing and not supported by evidence in the record. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

> [I]t is the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value".

Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d at 431.

Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate through any documentation or an expert appraisal witness that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using an income approach, as the appellant attempted, one must establish through the use of market data the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. Further, the appellant must establish through the use of market data a capitalization rate to convert the net income into an estimate of market value. The appellant did not provide such evidence; therefore, the Property Tax Appeal Board gives this argument no weight.

The Board further finds problematical the fact that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion testimony of value for that client's property. (See 86 Ill.Admin.Code 1910.70(f)).

The Board finds that the record disclosed that two of the comparables submitted by the board of review sold in November 2006 and August 2005 for prices of $580,000 and $690,000 or $110.77 and $123.04 per square foot of building area, land included, respectively. The Board finds these sales support the conclusion that the subject's total assessment reflecting a market value of $581,165 or $106.44 per square foot of building area, land included, is reflective of the property's market value. Based on this record, the Board finds a reduction to the subject's assessment based on overvaluation is not justified.

APPELLANT:	**John Tagas**
DOCKET NUMBER:	**07-02979.001-R-1**
DATE DECIDED:	**February, 2010**
COUNTY:	**Kane**
RESULT:	**No Change**

The subject 9,148 square foot parcel has been improved with a two-story single-family dwelling built in 1982 that contains 1,810 square feet of living area. Features include a partial basement, fireplace, and a 420 square foot garage. The property is located in Algonquin, Dundee Township, Kane County.

The appellant through counsel Melissa Whitley appeared before the Property Tax Appeal Board contending overvaluation based on a recent purchase of the subject property. Counsel for appellant who appeared at hearing without the taxpayer took an oath at the hearing as a witness.[1]

In support of the argument concerning the purchase price, the appellant indicated on the appeal form and submitted documentation that the subject property was purchased in August 2004 for a price of $225,000 or $124.31 per square foot of living area including land. The appellant indicated the subject property was purchased from the previous owner and was advertised for sale, but the period of time of advertising was unknown and the manner of advertising was also unknown. The appellant further indicated the sale was not a transfer between family or related corporations, but the property was sold in settlement of a contract for deed. Documentation with the appeal included a Settlement Statement dated August 30, 2004 and reflecting a contract sales price of $225,000. Based on this evidence, the appellant requested the subject's assessment be reduced to $74,993.

On cross-examination, counsel for appellant was asked about the 2005 addition to the subject property; counsel was unaware of the addition and/or the costs involved in the construction of the 100 square foot one-story addition to the dwelling, although counsel did not dispute that an addition had been constructed as shown on the property record card for the subject.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $85,870 was disclosed. The subject's assessment reflects an estimated market value of approximately $258,023 or $142.55 per square foot of living area including land utilizing the 2007 three-year median level of assessments for Kane County of 33.28% as determined by the Illinois Department of Revenue.

In support of the subject's assessment, the board of review submitted a notation from the township assessor along with a spreadsheet of 2006 sales in the subject's area of Riverwood

[1] Section 1910.70(f) of the Board's Rules states: "An attorney shall avoid appearing before the Board on behalf of his or her client in the capacity of both an advocate and a witness. When an attorney is a witness for the client, except as to merely formal matters, the attorney should leave the hearing of the appeal to other counsel. Except when essential to the ends of justice, an attorney shall avoid testifying before the Board on behalf of a client." (86 Ill. Admin. Code, Sec. 1910.70(f)).

Estates. The township assessor further reported that as shown on the spreadsheet the assessment was based on the sales study; a market value of $110.00 per square foot of living area and $25.00 per square foot of garage and finished basement areas were used to arrive at uniform values according to model and square footage.

The sales study reports that eleven properties sold in Riverwood Estates between February 2006 and December 2006 for prices ranging from $190,000 to $275,500 or from $122.95 to $216.42 per square foot of living area including land. The properties consisted of six different models and varying elevations which ranged in size from 1,056 to 1,895 square feet of living area. Each property had a garage and four properties had partially finished basements. The board of review contended that the subject's assessment is reflective of its January 1, 2007 market value based on the sales study and therefore the board of review requested confirmation of the subject's assessment.

On cross-examination, the Deputy Township Assessor Sue Johnston acknowledged in part that differences in sales prices between the properties presented in the sales study may be due to the lack of a basement; many of the properties in the area have concrete slab foundations.

After considering 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 does not support a reduction in the subject's assessment.

The appellant contends the assessment of the subject property is excessive and not reflective of its 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 evidence in the record does not support a reduction in the subject's assessment.

The appellant contends the subject's assessment should be reduced based on the sale of the subject. The evidence disclosed that the subject sold in August 2004 for a price of $225,000 or $124.31 per square foot of living area, including land. The Property Tax Appeal Board finds that the sale of the subject cannot be relied upon to establish the subject's 2007 market value for two reasons: first, the sale occurred 28 months prior to the assessment date at issue of January 1, 2007 which detracts from its reliability and second, the sale occurred before the appellant expended an unknown sum of money to add a 100 square foot one-story addition to the dwelling. Therefore, the Board finds that the 2004 sale price of the subject property is not the best evidence of the subject's market value in the record.

In examining the eleven sales comparables submitted by the board of review, the Board has given most weight in its analysis to four comparables that ranged in size from 1,694 to 1,895 square feet of living area. These comparables sold between March 2006 and December 2006 for prices ranging from $210,000 to $275,500 or from $122.95 to $145.38 per square foot of living area including land. The subject's assessment reflects an estimated market value of $258,023 or $142.55 per square foot of living area including land utilizing the 2007 three-year median level of assessments for Kane County of 33.28%. The Board finds the subject's assessment reflects a market value that falls within the range established by the most similar comparables on a per square foot basis. After considering the most comparable sales on this record, the Board finds

the appellant did not demonstrate the subject property's assessment to be excessive in relation to its market value and a reduction in the subject's assessment is not warranted on this record.

2010 RESIDENTIAL CHAPTER

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

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2010 FARM 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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2010 FARM CHAPTER

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APPELLANT:	**Thomas Blievernight**
DOCKET NUMBER:	**06-00398.001-R-1 thru 06-00398.002-R-1**
DATE DECIDED:	**February, 2010**
COUNTY:	**Will**
RESULT:	**No Change**

(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 parcels of approximately 1.21 and .75-acres, respectively, are unimproved wooded parcels located in Crete, Crete Township, Will County.

Appellant contends the subject parcels should have remained classified and assessed as farmland as the basis of the appeal. In support of this argument, the appellant submitted letters arguing that the "zoning and use of this farm property has remained the same for 80 years" through the appellant's family's ownership. Furthermore, the appellant asserted that he has "harvested hedge trees for farm use." Appellant further argued that maintenance of green space is beneficial to society and the appellant intends to maintain these parcels for conservation purposes.

Based on this evidence, the appellant requested reversion to the 2005 farmland assessments of $30 and $27, respectively, for the parcels.

The board of review submitted its "Board of Review Notes on Appeal", wherein the subject parcels' respective 2006 assessments of $912 and $566 were disclosed. In support of the subject's assessments, the board of review submitted a letter from the Crete Township Assessor along with property record cards for the parcels and an aerial photograph depicting what appear to be fully wooded parcels.

The assessor reported that the parcels are in an area that has been platted for at least twenty years, but never developed. In January 2004, most of the land surrounding the subject parcels was sold for a housing development. Since that time, no farming activity has been observed. The 62 parcels which sold for $650,000 totaled 108 acres. During the implementation of new farmland guidelines known as Bulletin 810 issued by the Illinois Department of Revenue, the subject parcels were reviewed by the assessor to determine if they were properly classified as farmland properties.

As outlined in her letter and due to the landlocked nature of the parcels, the assessor used a base assessed value of $754 per acre to assess these two parcels. Based on this evidence, the board of review requested confirmation of the assessments for the subject parcels.

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 parcels are not entitled to a farmland classification for 2006.

The Board finds Section 10-110 of the Property Tax Code (35 ILCS 200/10-110) provides that:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, except tracts subject to assessment under Section 10-145, shall be determined as described in Sections 10-115 through 10-140.

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines farmland 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.

The Board finds the appellant has not established that the subject parcels are farmed within the definition of the Property Tax Code as set forth in Section 1-60. The "harvesting of hedge trees for farm use" does not satisfy the farm definition of Section 1-60 of the Property Tax Code for the "growing and harvesting of crops." Moreover, the subject parcels cannot be classified and assessed as farmland for 2006, as the parcels do not meet the requirements of Section 10-110 of the Property Tax Code cited above. Therefore the Board finds that there is no evidence that the assessment officials erred in changing the subject's 2006 classification and assessment to reflect the fact that no farming activity occurred on the subject parcels.

In summary, the Board finds that no farming activity took place on the subject parcels, the property is not entitled to be classified and assessed as farmland for the 2006 assessment year.

APPELLANT:	**Carol B. Bowser**
DOCKET NUMBER:	**07-01289.001-F-1**
DATE DECIDED:	**October, 2010**
COUNTY:	**Lee**
RESULT:	**Increase**

The subject property consists of a 5.98 acre parcel improved with a two-story frame single family dwelling with 1,718 square feet of living area. The subject property is also improved with a detached garage with 1,728 square feet, a barn, two sheds and a corn crib. The property is located in West Brooklyn, Brooklyn Township, Lee County.

The appellant and her husband, Bob Bowser, appeared before the Property Tax Appeal Board contending the subject property was entitled to an agricultural classification and a farmland assessment. In support of this argument the appellant submitted a written narrative explaining the subject property had been used as a pasture to board horses in excess of two years and a portion of the subject is an orchard which has been harvested for 4 years. The appellant provided photographs of the subject property including the horse stalls, the barn, corn crib, a shed, the pasture, a horse and orchard. Based on this evidence the appellant requested the subject be classified and assessed as a farm.

During the hearing the appellant was questioned about the construction of the detached, three-car garage. The appellant and her husband explained the garage was constructed over the foundation of a previously existing shed. Mr. Bowser testified the original building was approximately 12 feet deep (wide) and approximately 30 feet long. The new garage measures 54 feet by 32 feet resulting in 1,728 square feet of building area. The appellant indicated that they did not take out a building permit during construction but the township assessor observed the construction of the garage. Mr. Bowser testified the original shed was actually torn down but part of the foundation was left. Mr. Bowser testified additional concrete was added for the foundation. Mr. Bowser testified that someone else did the concrete work but he is a union carpenter and actually built the garage. He testified the materials cost $17,000 or $18,000 to build the garage. That cost did not include any value associated with his labor. He also indicated the garage was completed in 2005.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $43,494 was disclosed. The board of review indicated in its written submission and at the hearing that it would stipulate to classifying and assessing the subject as a farm. However, the Chief County Assessment Officer (CCAO) testified the three-car garage was not on the assessment rolls in 2007. Upon inspection of the property for the appeal the CCAO testified she discovered the three-car garage that was not listed. The CCAO testified the original assessment of the subject property did not include the garage structure but did include a crib, shed and barn that were valued at $600. The witness testified the value of the garage was added as part of the proposed stipulation to assess the subject as a farm. The CCAO testified the garage was described as having 1,600 square feet based on measurements using aerial photography. The garage was valued at a cost new of $24,832 and the garage was

depreciated $2,955.24 resulting in a depreciated value of $21,876.76. Based on this evidence the board of review proposed a total assessment of the subject of $44,020, which was derived after classifying the subject as a farm and including the three-car detached garage.

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 an increase in the assessment of the subject property.

The appellant initiated the appeal contending the subject property was entitled to an agricultural classification and a farmland assessment. The board of review agreed the subject should receive the farmland assessment but argued that the value of the three-car detached garage should be added to the assessment. The evidence disclosed that a three-car garage was constructed on the subject property during 2005 but was not being assessed as of January 1, 2007. The CCAO testified the detached garage was discovered during her inspection of the subject property and subsequently valued. Testimony by Mr. Bowser was that the garage cost $17,000 to $18,000, excluding the costs or value attributed to his labor in constructing the garage. The evidence disclosed, for assessment purposes, the garage was valued at a cost new of $24,832 and the garage was depreciated $2,955.24 resulting in a depreciated value of $21,876.76. The Board finds the depreciated value of the garage is supported by the testimony of Mr. Bowser and the appellant did not submit any evidence otherwise challenging the assessment of the three-car detached garage.

Based on this record, the Property Tax Appeal Board finds the assessment of the subject property commensurate with the board of review's proposal is appropriate.

APPELLANT:	**Deer Lane Ventures, Ltd.**
DOCKET NUMBER:	**07-03473.001-F-1 thru 07-03473.042-F-1**
DATE DECIDED:	**August, 2010**
COUNTY:	**Kane**
RESULT:	**Reduction**

The subject property consists of an 80-acre parcel located in Rutland Township, Kane County. The subject parcel was purchased in 2004 and assessed as farmland through 2006 and reclassified in 2007. In July 2007 a plat was recorded dividing the subject 80-acres into 35 sub-parcels. In 2007 the subject parcel was reclassified and assessed by the township assessor as non-farmland property.

The appellant, through legal counsel, appeared before the Property Tax Appeal Board claiming the subject parcels should be classified and assessed in accordance with Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). In support of this claim, the appellant submitted a brief and various maps.

Jennifer Davis, a partner of Deer Lane Ventures, LLC, was called as a witness. Davis testified that the subject 80-acres was acquired in the fall of 2004. Davis further testified that the subject was farmed in corn in 2005 and with winter wheat in the fall of 2006. In the spring of 2006 some preliminary development work was done and in the fall of 2006 the clearing of wooded areas occurred with a wheat crop also being planted in the fall of 2006. Davis reiterated that in the fall of 2005 a farm tractor was purchased and crops were planted. In 2006, Davis testified that preliminary site development was performed to convert the subject into a subdivision. The work involved the initial layout of the roadways and the construction of a fence around all of the wetland areas to protect against silt runoff. The clearing of corn crops continued while the development was being performed. The 2006 winter wheat crop was harvested in the spring of 2007. In 2007 they continued with some of the crops. Davis testified that the entire subject was farmed in 2007. In 2008, additional farming occurred. Davis testified that from 2005 to 2007 there was either development preparation ongoing or farming being done on the subject parcel. Davis testified that they continued to farm the subject parcel even though they were developing the subject parcel because the state of the economy was uncertain and the process of development was long and slow.

During cross-examination, Davis testified that on May 9, 2006 the subject parcel was rezoned from farming to planned unit development. It was brought to Davis' attention that she made a statement in a letter dated January 15, 2008 which stated in relevant part: "Due to the stage in development that we are at, the county is not willing to issue any building occupancy or access permits. As a result, no further use of the lots can be had for either it's [sic] prior use (farm) or it's [sic] future use (residential)." Davis explained that at the time of the letter on January 15, 2008, no physical farming was occurring. Davis testified that approximately 1-acre of the subject parcel is unusable wetland. Davis testified that additional planting occurred in the fall of 2007 on approximately 40% of the parcels with a harvest in 2008. In addition, Davis testified that roadways were being put in for the 1-acre to 2.5-acre lots. Davis testified that some changes

were made to the drain tiles. Davis further testified that the plat was recorded July 12, 2007. In 2005 the subject had a farmland classification which was not changed until sometime in 2007.

In the brief in support of the appellant's claim, the appellant argued that in accordance with Section 10-30 of the Code, the subject was 1) platted in accordance with the Plat Act; 2) the platting occurred after January 1, 1978; 3) at the time of platting the subject was in excess of 10-acres; and 4) at the time of platting the subject was vacant or used as a farm as defined in Section 1-60 of the Code (35 ILCS 200/10-30). The appellant argued that the Rutland Township Assessor incorrectly reclassified the subject parcel as residential in 2007, which increased the subject's assessment, in contravention of Section 10-30 of the Code. It is the appellant's position that Section 10-30 mandates that the platting, subdividing and development of the farm land or vacant land freezes the classification of the subject and any increase in assessment until such time as actual construction of the residence on each respective parcel is completed, or until commercial or business use begins. Appellant argued that when the subject parcel's plat was recorded in July 2007 the subject's prior year's assessment was based upon a farm classification. Relying on Mill Creek Development, Inc. v. Property Tax Appeal Board, 345 Ill.App.3d 790 (3rd Dist. 2004), the appellant asserts the operative date is the date upon which the land is platted and subdivided. If on that date the four criteria in Section 10-30 are met, then the developer will be eligible for statutory relief. Based on this evidence and argument, the appellant requested the subject parcels be afforded relief pursuant to Section 10-30 of the Code.

The board of review submitted its "Board of Review Notes on Appeal" wherein each or the 42 individual parcels' assessments of non-farmland property of $9,946 was disclosed. Janet Sires, the Rutland Township Assessor, was called as a witness. Sires testified that she retook office in January 1, 2006. Sires determined that the subject had not been farmed in 2005 or 2006 based on a visual inspection and discussions with adjacent farmers and property owners. Sires testified that a small amount of corn was planted in the front of the property, but it was never harvested. Sires testified that in 2006 the appellants started moving dirt and pulling up tiles which caused flooding in the front and did not allow for farming. Her observations in 2006 occurred towards the end of the year. Based on her observation in 2006, her office reclassified the subject from farmland to residential vacant land on January 1, 2007. Sires testified that she turned her records over to the county in November 2007.

During cross-examination, Sires testified that she observed corn in the front of the subject in 2005 that was never harvested and observed no farming in 2006, 2007 or 2008. Sires testified that her office determined at the end of 2006 that the subject was not being farmed, so at the beginning of 2007 she reclassified it. Her office would have put it on as of January 1, 2007. Once her office changes the assessments, they certify that information to the county, which occurred in November 2007. Notice of the change in assessment is sent out by the county. She was aware the subject property had been re-platted July 12, 2007.

In rebuttal, appellant argued that Board of Review clerk, Mark Armstrong, conceded in a memorandum dated February 14, 2008 that if the subject property were farmed, the statutory provisions of Section 10-30 applies in all respects. It was further argued that the Rutland Township Assessor, Janet Sires admitted that she only observed 2 of the 80 acres as being flooded, and that part of that had always been a pond. Sires reclassified the subject parcels, but admitted it was done with the knowledge that platting occurred in July 2007. Further, it was

argued that Sires testified to the amount of corn harvested, but never mentioned the winter wheat being planted or harvested. Counsel for the appellant argued that if the property was not farmed then it should be considered vacant, whereby Section 10-30 of the Code would still apply.

During legal argument, the board of review argued that the re-platting did not occur until after the subject was reclassified which occurred in January 2007, even though the assessors books were not turned over to the county until November 2007 and notice published in December 2007. Therefore, at time of platting, it was argued that the subject parcels were properly classified as vacant residential land. It was further argued that the subject was incorrectly assessed in 2006 as farmland and that Section 10-30 considers actual use and not the mistaken classification. It was the board of review's position that the subject was not farmed in 2006.

Upon questioning, the board of review agreed that the subject met all four criteria of Section 10-30 of the Code, however, the subject was vacant and not used as a farm. In addition, the board of review agreed that if the property was farmed in 2005 and 2006 it would deserve a farmland classification in 2007. It was the board of review's position that re-classification occurs based on the actions of the assessor (January 2007) and not when the books are turned over to the county (November 2007). The appellant argued that re-classification takes place when notice is actually given (December 2007).

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 subject parcel qualifies for a farmland classification and assessment. Section 1-60 of the Property Tax Code defines "farm" in part as:

> When used in connection with valuing land and buildings for an agricultural use, 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)

In addition, Section 10-110 of the Property Tax Code provides in pertinent part:

> The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, . . . shall be determined as described in Sections 10-115 through 10-140.

(35 ILCS 200/10-110).

The Property Tax Appeal Board finds credible evidence and testimony in this record that the subject property was used as a farm for the years 2005, 2006 and 2007. A partner of Deer Lane Ventures testified that a farm tractor was purchased in 2005 and corn was planted in that same

year. The witness further testified that winter wheat was planted in the fall of 2006 and harvested in the spring of 2007. The Board finds credible testimony that the clearing of corn crops continued and the planting of winter wheat occurred while the development was being performed. The Board finds it questionable that the Rutland Township assessor, based on personal observations, did not see winter wheat being planted or harvested on the subject parcels during the years in question. The assessor's determination was based in part on hearsay evidence which was not supported in this hearing. As a result, the Property Tax Appeal Board finds the subject parcels fall under the statutory definition of farmland as provided by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60). Thus, the Property Tax Appeal Board finds the subject parcels are entitled to a farmland assessment and classification based on the applicable statutes. The Board finds the controlling statutes clearly provide that in order for a particular property to receive a farmland assessment, it must be used for an agricultural purpose for the assessment year in question and the two years that precede that assessment date, which the Board finds occurred in this appeal.

Illinois case law and publications issued by the Illinois Department of Revenue provide that the actual use of land is the determining factor on whether a particular parcel receives a farmland classification and assessment. For example, property that is used solely for the growing and harvesting of crops is properly classified as farmland for tax purposes, even if that farmland is part of a parcel that has other uses. Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999). The present use of land determined whether it is entitled to a farmland classification for assessment purposes. Santa Fe Land Improvement v. Illinois Property Tax Appeal Board, 69 Ill.Dec. 708, 448 N.E.2d 3 (3rd Dist. 1983). Based on the actual use of the property during the 2007 assessment year, the Property Tax Appeal Board finds the subject parcel is entitled to a farmland classification and assessment.[1]

Having determined that the appellant established improper classification of the subject parcels, the Property Tax Appeal Board need not further address the application of Section 10-30 of the Code. Therefore, the Property Tax Appeal Board finds the subject property's assessment as established by the board of review is incorrect and a reduction in assessment and changes in classification for each parcel are warranted.

[1] At hearing, the board of review was requested to provide an estimated farmland assessment for the subject parcels if they had been classified as such. The farmland assessments were provided and entered into this record. Each farmland assessment herein was rounded to the nearest dollar.

APPELLANT:	**Esmer Capital Mgt., LLC**
DOCKET NUMBER:	**07-02900.001-F-2**
DATE DECIDED:	**July, 2010**
COUNTY:	**Kendall**
RESULT:	**Reduction**

The subject property consists of a 6.8-acre tract of land. Prior to hearing in this matter both parties stipulated that 1.8-acres should be properly classified as farmland for agricultural use. The Property Tax Appeal Board recognizes and accepts the stipulation and therefore, 5-acres remains in dispute as the subject of this appeal.

The appellant appeared with counsel before the Property Tax Appeal Board claiming that the subject 5-acre tract should be classified and assessed based on agricultural use. Appellant, Verne Henne, sole proprietor of Esmer Capital Management, LLC, testified that the subject property was purchased in December 1, 1997. Henne stated that prior to the purchase the property was used for agricultural purposes wherein beans and corn were planted. At the same time he purchased the property, Henne entered into a 15-year lease agreement with Job's Landscaping, Inc. (Appellant's Exhibit A). The lease terms required Job Lomeli, owner of the landscaping business, to pay Henne a fee based on the removal of trees, shrubs and sod from the property. Lomeli was to pay Henne $30 for each tree; $10 per shrub and $0.50 for each yard of sod. In 2006, Henne received a payment of $2,100 per the terms of the lease for removal of 10 trees, 100 shrubs and approximately 1,600 yards of sod. Job Landscaping first planted sod in 1998 after preparation of the property. Henne testified that in 2006 he received a notice of revised assessment for the subject property. Prior to 2006 the subject was classified as farmland. In 2006 Henne received a revised assessment from the Kendall County Board of Review for $592,409 for the subject parcel. The board of review later reduced the assessment to $170,301 following an appeal. Henne testified that the Yorkville/Bristol Sanitary District caused a disturbance on approximately 300 feet of the subject when they put in a sewer line. In addition, Harlem Irving further disturbed the property in late 2006 or early 2007 in widening Route 34 and during installation of a storm water sewer pipe. Henne testified that the subject property was actively farmed in 2005, 2006 and 2007.

During cross-examination, Henne testified that he drives by the property every other day since he lives next door. He has seen Lomeli take trees and sod off of the property in 2005 and 2006. Henne stated that he received two payments from Lomeli, one in 2006 and another in 2008. Henne testified that he and Lomeli had a gentleman's agreement that he [Henne] would get paid when Lomeli got to a substantial amount. Henne testified that he could not farm the front portion of the property in 2006 and 2007 because of the construction.[1] Henne testified that he does not use the subject parcel for any recreational activities.

The next witness called by the appellant's counsel was Job Lomeli. He is the owner of Job Landscaping, Inc. He does softscape and hardscape landscaping consisting of plants, sod, flowers, mulch and rocks or brick. Lomeli testified that in 1997 he entered into a lease agreement with

[1] The parties agreed that the front portion measuring approximately 14,000 square feet was not farmed in 2007 because of the ongoing construction.

Henne regarding the subject property. He agreed to pay Henne for removal of trees, shrubs and sod from the property as previously testified to by Henne. In preparation for the sod, his crew plowed the subject parcel and then slit seeded Kentucky Blue Grass. He then continually fertilized as needed. It took 2-3 years before he could remove any sod. He also planted trees and shrubs on the subject parcel. He removed approximately 1000 yards of sod in 2005, approximately 500 yards in 2006 and approximately 800 yards in 2007. Lomeli testified that he removes small sections of sod as needed for his landscaping business. Lomeli further testified that he farmed the subject parcel in 2005, 2006 and 2007. Based on this evidence, the appellant requested the subject property's classification be returned to agricultural and assessed accordingly.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment was disclosed. The board of review was of the opinion that the subject's primary use was for commercial purposes and that it was assessed appropriately. In support of the subject's assessment, the board of review submitted a grid analysis of four comparable properties.

The township assessor, Raymond Waclaw, testified that the subject's assessment classification and value changed in 2006. Waclaw testified that he was instructed by the Chief County Assessment Officer at the time that all parcels under 10-acres were to be reviewed and the values applied that were the highest and best use. Waclaw testified that if the properties were actually being farmed or attached to another farm, he [Waclaw] had to separate the issue and apply Bulletin 810. If a parcel was not being farmed then he determined the highest and best use and assessed it accordingly. For the subject he determined the highest and best use was for commercial use because there was commercial property across the road on the south side and commercial property to the west. Waclaw testified that he inspected the subject and did not see any harvesting. Waclaw stated that he goes by the property at least three days a week because his daughter lives across the road from the subject. Waclaw testified that he later reduced the assessment from a full commercial to a full commercial developer's value since Henne was the original owner. Waclaw stated that the subject's value was also reduced because of the trees on the property. The trees make up the area previously stipulated to as agricultural (1.8-acres).

During cross-examination, Waclaw could not testify as to the comparables submitted into evidence by the board of review as he did not prepare the evidence. Waclaw admitted he was not very familiar with sod farming operations.[2] The four vacant land comparables submitted by the board of review ranged in size from 42,200 square feet to 5.48-acres. The properties sold from February to June 2006 for prices ranging from $800,000 to $2,200,000. Comparables one and two represented one sale of two parcels.[3] Based on this evidence, the board of review requested confirmation of the subject's classification and assessment.

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 finds that 6.8-acres of the subject property are 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:

[2] The board of review was ordered to compute a farmland assessment for the subject property and submit same to the Property Tax Appeal Board. A copy the proposed farmland assessment is included and made a part of this record.

[3] No witnesses were offered to testify in support of the grid analysis.

> 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...

To qualify for an agricultural assessment, the land must be farmed at least two years preceding the date of assessment. 35 ILCS 200/10-110.

Credible testimony revealed that the subject property has been used as a farm since at least 2005 and continued up to and including 2007. The record disclosed that the appellant had a farming cash rent lease in place for the subject parcel covering the tax assessment year in question. Thus, the testimony presented by the appellant indicated that the subject has been used for agricultural purposes for two years preceding the assessment date and including the assessment year in question. The Board gave no weight to the board of review's grid analysis as it does not address the classification issue raised by the appellant. The Board further finds a portion of the property, approximately 300 feet along the roadway retained its agricultural characteristics as farmland during construction of a sewer line and road widening project in 2006 and 2007. The appellant's sod farming operation on this portion of the subject was disrupted through no fault of the appellant or actions taken by the appellant. Pursuant to a request by the hearing officer, the board of review has determined that because of the construction damage, the appellant's farmland assessment, if any, should be reduced by $69.[4]

The Property Tax Appeal Board ordered the Kendall County Board of Review to compute a farmland assessment for the subject parcel reclassifying certain portions of the subject property as farmland in accordance with relevant provisions of the Property Tax Code. The revised assessment calculations were received on May 19, 2010.

After reviewing the board of review's revised assessment, the Property Tax Appeal Board finds that it is proper, less the $69 for construction damage.

[4] See letter dated May 14, 2010 from Andrew Nicoletti, AS, CIAO/M

APPELLANT:	**Estate of Harold Jacobs**
DOCKET NUMBER:	**07-00565.001-R-2**
DATE DECIDED:	**October, 2010**
COUNTY:	**Will**
RESULT:	**No Change**

(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 an unimproved, 17.42-acre parcel that is heavily wooded. The subject is located in Crete Township, Will County.

Through its attorney, the appellant appeared before the Property Tax Appeal Board claiming improper classification as the basis of the appeal. The appellant argued the subject parcel is entitled to a farmland classification and assessment. In support of this argument, the appellant submitted a letter detailing various points. The appellant claimed the subject was part of a larger farm know as the Jacobs Crete Farm for many years and that in its present unspoiled state, "provides esthetic beauty and other intangibles to the general public, property owner and neighbors". The appellant acknowledged 14 other parcels totaling approximately 50 acres are heavily wooded like the subject and that firewood and logs are harvested by the owner's brother, who, in exchange for the firewood, maintains a dam for a pond on the subject. The appellant cited Section 10-125 of the Property Tax Code to justify that the subject should be assessed as wasteland.

> Sec. 10-125. Assessment level by type of farmland. Cropland, permanent pasture and other farmland shall be defined according to U.S. Census Bureau definitions in use during that assessment year and assessed in the following way:
>
> (a)Cropland shall be assessed in accordance with the equalized assessed value of its soil productivity index as certified by the Department (of Revenue) and shall be debased to take into account factors including, but not limited to, slope, drainage, ponding, flooding, and field size and shape.
>
> (b)Permanent pasture shall be assessed at 1/3 of its debased productivity index equalized assessed value as cropland.
>
> (c)Other farmland shall be assessed at 1/6 of its debased productivity index equalized assessed value as cropland.
>
> (d)Wasteland shall be assessed on its contributory value to the farmland parcel.
>
> In no case shall the equalized assessed value of permanent pasture be below 1/3, nor the equalized assessed value of other farmland, except wasteland, be below 1/6, of the equalized assessed value per acre of cropland of the lowest productivity index certified under Section 10-115.

The appellant's evidence also indicated that unauthorized hunting occurs on the subject and that no forestry management plan has been sought for the subject. Based on this evidence the appellant requested the subject's assessment be reduced to $331.

During the hearing, the appellant agreed no cattle, sheep, horses or other animals are bred or fed on the subject, nor are they raised on the other 14 parcels, which together comprised part of the Jacobs Crete Farm. However, the appellant opined many deer populate the subject. The appellant also agreed the firewood taken off the subject annually by the owner's brother amounts to 7 to 12 cords of wood, but the firewood is gathered from fallen trees. Under questioning by the Hearing Officer, the appellant acknowledged no traditional farm row crops, hay, or alfalfa are planted or harvested on the subject or the other 14 parcels owned by the appellant. However, the appellant argued the natural vegetation on the subject and other parcels is allowed to continue and that the harvesting of firewood constitutes farming in a general sense. The appellant also opined the subject meets the definition of wasteland. Finally, the appellant acknowledged the subject received an open space assessment for 2007, which reduced the subject's assessment from $131,653 to $8,710.

Under cross examination, the intervenor submitted an aerial view of the subject parcel and its environs, which the Hearing Officer allowed into the record, and asked the appellant if the area bordered in white on the photo represented the subject parcel. The appellant agreed that it did and the photo depicts dense, mature trees.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $131,653 was disclosed. The board of review also submitted a letter prepared by the Chief County Assessment Officer that states the subject is not being cropped and harvested, but is receiving an open space assessment for 2007, as well as a letter from the township assessor. The assessor's letter reiterated the subject's assessment change from farmland for many years, to residential land pursuant to Bulletin 810, which changed farmland assessment guidelines, to an open space assessment.

During the hearing, the board of review's representative deferred to the intervenor, who called Crete Township Assessor Sandra Drolet as a witness. The witness testified the subject's assessment as open space was warranted and the board of review's representative agreed. Drolet testified when she became aware of the appellant's request for the subject to receive the open space assessment, she contacted the Will County farmland specialist to obtain information on open space assessments in the county. The witness testified she did no independent research into open space valuation.

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 finds the appellant claimed the subject was entitled to a farmland assessment because it had been assessed as farmland for many years when it was part of an ongoing farming operation and prior to having been re-classified and assessed in 2006 pursuant to Bulletin 810, which required all farmland assessments in Illinois to be reevaluated. The subject was granted an open space assessment for 2007 upon application by the appellant, pursuant to Section 10-147 of the Property Tax Code which states:

> Former farm; open space. Beginning with the 1992 assessment year, the equalized assessed value of any tract of real property that has not been used as a farm for 20 or more consecutive years shall not be determined under Sections 10-110 through 10-140. If no other use is established, the tract shall be considered to be used for open space purposes and its valuation shall be determined under Sections 10-155 through 10-165 (35 ILCS 200/10-147).

However, the appellant contends the subject should further be reclassified and assessed as farmland. The Board finds the appellant acknowledged no crops have been grown on the subject parcel, which is heavily wooded, nor have any animals been raised or bred. The appellant argued that 7 to 12 cords of firewood being taken from the subject and the presence of numerous deer are factors that meet the statutory requirements for a property to be classified and assessed as farmland in the subcategory of wasteland. The Property Tax Appeal Board finds this argument is without merit. The Board finds the courts have found that the actual use of land is relevant. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d at 872,(3rd Dist.1983). 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 further finds Section 10-110 of the Code provides in part:

> 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 finds this record disclosed that no crops were grown and harvested on any of the 15 parcels owned by the appellant, including the subject parcel, during the assessment year under appeal and the two prior years, nor were any animals kept, raised, or fed within the clear meaning of Section 1-60 of the Code. Therefore the Board finds this record devoid of any evidence that supports a farmland classification and assessment of the subject parcel. However, the record further disclosed that the subject was granted a 2007 open space assessment of $8,710 subsequent to a request for such classification and assessment by the appellant. The Board finds this record includes testimony by the board of review's representative and the township assessor that this assessment was determined to be appropriate. Therefore, the Property Tax Appeal Board finds the subject's assessment as determined by the board of review is correct and no reduction is warranted.

APPELLANT:	**Jim Jeffrey**
DOCKET NUMBER:	**07-04834.001-F-1**
DATE DECIDED:	**October, 2010**
COUNTY:	**Stephenson**
RESULT:	**No Change**

The subject parcel of approximately 7.38-acres is improved with a two-story frame single-family dwelling and several farm buildings. The property has been classified as having a ½-acre homesite and 6.88-acres of farmland. Among the additional structures on the property is a 60' x 80' x 12' pole frame building that was built in 2006. The property is located in Dakota, Buckeye Township, Stephenson County.

The appellant appeared before the Property Tax Appeal Board relying on a contention of law alleging the assessment of the pole building located on the farm was excessive based on the guidelines for assessing farm buildings as published by the Illinois Department of Revenue. The appellant did not dispute the subject's homesite, farmland or other improvement assessments, but contends that the subject pole building was not being assessed in accordance with its contributory value to the farming operation.

Appellant contends the assessing officials failed to abide by Illinois Department of Revenue, Publication 122, in determining the pole building's "contribution to productivity" of the farm. Citing to page 33 of the publication, the appellant argued that "farm buildings are assessed at 33 1/3 percent of their contributory value." Appellant testified that the pole building is used in the farming operation to store equipment such as tractors, wagons and machinery. As of the valuation date of January 1, 2007, appellant acknowledged that only a hay bailer and old wagon for the farming operation were being stored in the building.[1]

In support of the overvaluation or improper assessment argument, the appellant testified with regard to the original cost of construction for the pole building which was estimated to be $23,000 including used lumber in the construction. The appellant testified that a contractor and his crew performed the labor on the pole building between other construction jobs. As materials were needed for the construction, the contractor obtained them and billed the appellant, who then paid the contractor in cash. Appellant further testified the receipts for materials have since been lost or misplaced. Based on the foregoing evidence and legal argument, the appellant requested the farm building total assessment be reduced to $2,568.

The board of review presented its "Board of Review Notes on Appeal" wherein the final assessment of the subject property including land of $29,064 was disclosed. This assessment includes $212 for farmland, $3,833 for homesite, $14,750 for a residence, and $10,269 for farm outbuildings.

[1] The initial plan was to use the building for a horse arena and therefore an 8-inch base of sand was placed in the building. Once the plans to use the building as an arena fell through, appellant began to clear out the sand to put the building to better use for the farming operation.

The board of review in a letter outlined that there were six older farm buildings on the property, all of which were still being used, but were in poor condition with an assessed value of $1,269.[2] The board of review also acknowledged in its written submission that the appellant utilizes the pole building to store farm machinery. The board of review further reported that the pole building is currently valued at $27,000 or $5.63 per square foot of building area or an assessment of $9,000. The board of review contends this valuation is consistent with other pole frame buildings that are not constructed with concrete [flooring] or electric [service].

While acknowledging the appellant's point that farm buildings are valued according to current use and contribution to the productivity of the farm, the board of review's representative, Ronald Kane, Stephenson County Supervisor of Assessments, testified that based on the length, width and height of the building the assessor examines what construction costs are and then values the farm buildings based on cost less depreciation. Kane further testified that the contributory value referenced in the Illinois Department of Revenue manuals was basically a market value; the manuals provide no further guidance in determining contributory value besides determining cost and applying appropriate depreciation.

Kane further testified that during the hearing was the first time that he learned that the appellant expended $23,000 plus the value of the lumber on hand in constructing the pole building. The cost manuals utilized by the assessor consider the average cost to build, not the highest and not the lowest.

Based on this evidence, the board of review requested the subject's assessment be confirmed.

On questioning by the Hearing Officer, appellant did not dispute the assessment placed on the six older farm buildings of $1,269; appellant's only dispute was with the $9,000 assessment placed on the pole building.

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 evidence in the record does not support a reduction in the building assessment of the subject property.

The appellant through a legal contention argued that the subject pole building was improperly valued. The appellant argued that the assessing officials failed to abide by guidelines issued by the Illinois Department of Revenue in Publication 122 entitled "Instructions for Farmland Assessments." At page 36 of Publication 122 it states in pertinent part:

> The law requires farm buildings, which contribute in whole or in part to the operation of the farm, to be assessed as part of the farm. They are valued upon the current use of those buildings and their respective contribution to the productivity of the farm. *Farm buildings are assessed at 33 1/3 percent of their contributory value*.

[2] The board of review representative characterized the valuation of these six buildings as being "pretty much salvage value."

> . . . Some farm buildings, even though they are in good physical condition, may play a minor role in the operation of the farm and have little value. These same buildings on another farm may be vitally important to the farming operation. The value of the farm buildings in these two instances is different.
>
> . . .
>
> Value must be based on cost. This entails a third problem – depreciation. Since most farm buildings are constructed in the hopes of increasing efficiency or productivity, the undepreciated cost of the building will approximate market value when the building is new. The undepreciated cost of the building may be quite different than the value as the building ages. . . . [Emphasis added.] (Publication 122, Instructions for Farmland Assessments issued by the Illinois Department of Revenue).

The appellant does not dispute that the pole building should be assessed to the extent that it contributes to the farming operation. The appellant has only contested the assessor's determination to assess the pole building based solely on the cost approach rather than its "contribution to the farming operation." The unrefuted testimony of the appellant was that the pole building contributed minimally to the farming operation as of January 1, 2007 due to its sand floor that had to be removed before equipment could move within the building.

The Property Tax Appeal Board notes the present use of land and buildings is the focus in issues involving farmland classification and assessment. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill. App. 3d 872 (3rd Dist. 1983). The Board also finds Section 1-60 of the Property Tax Code states in relevant part:

> Improvements, other than farm dwellings, shall be assessed as a part of the farm and in addition to the farm dwellings *when such buildings contribute in whole or in part to the operation of the farm*. [Emphasis added]. (35 ILCS 200/1-60)

Furthermore, Section 10-140 of the Property Tax Code provides:

> Other improvements. Improvements other than the dwelling, appurtenant structures and site, including, but not limited to, roadside stands and *buildings used for storing and protecting farm machinery and equipment*, for housing livestock or poultry, or for storing, feed, grain or any substance that contributes to or is a product of the farm, *shall have an equalized assessed value of 33 1/3% of their value, based upon the current use of those buildings and their contribution to the productivity of the farm*. [Emphasis added.] (35 ILCS 200/10-140)

Where farm structures do not contribute to the productivity of the farm, then the buildings would add nothing to the value of the farm. O'Connor v. A&P Enterprises, 81 Ill. 2d 260, 267-68 (1980); see also Peacock v. Illinois Property Tax Appeal Board, 399 Ill. App. 3d 1060, 1071-1073 (4th Dist. 2003). In O'Connor, the Illinois Supreme Court discussed Section 10-140 of the Property Tax Code concerning 'other improvements' as:

> a recognition by the legislature that certain structures located on a farm may have become obsolete by changes in farming methods or practices, and either have a greatly diminished value, or possibly no value at all in connection with the farming operation when considered as a part of the farm as a whole. The corncrib, once an essential structure on every farm for the storage of ear corn, has become primarily a relic of the past, due to the almost universal practice of combining the corn and drying and storing it as shelled corn. Horse barns now stand idle due to the disappearance of the use of horses for the powering of farm machinery, and many dairy barns are no longer used because of the decrease in the number of small dairy herds. The legislature has provided that these buildings should be valued on the basis of their contribution to the farm operation. If they are used for either their intended purpose, or for a substitute purpose, the appropriate value can be placed on them. Section 1(25) of the Revenue Act of 1939 [since replaced by the Property Tax Code] provides that these buildings shall continue to be valued as a part of the farm. If they contribute nothing to the productivity of the farm then, of course, the buildings would add nothing to the value of the farm. Being valued as a part of the farm, the failure to place a value on these buildings is a method or procedure of valuation and not an exemption from taxation. Just as a well that is no longer usable or a shade tree that is dead does not enhance the value of the farm, a barn or a corncrib that is not usable adds nothing to the value of a farm.

O'Connor at 267-268. The Court further discussed the application of Section 10-140 as follows:

> The application of the statute is of necessity placed in the hands of the various assessment officers and administrative bodies which, in turn, have the express and implied authority to adopt rules for the guidance of persons involved in the assessment procedure and assure the uniform application of the statute. [citation omitted] The Department of Local Government Affairs [now within the Illinois Department of Revenue] was granted the authority to prescribe rules and regulations for local assessment officers relevant to the assessment of real property. [citation omitted] Thus, the local assessment officers, in applying the Act [now known as the Property Tax Code], will not be left to conjecture as to the meaning of certain words and phrases used by the legislature, but will be guided by, and an acceptable degree of uniformity will be achieved by, the rules and regulations adopted for the guidance of assessment officers.

O'Connor at 269. The Court further stated:

> The General Assembly has prescribed enough affirmative tests as to what is a farm that a person of reasonable intelligence can carry out his duties of assessing farms and the improvements located thereon. Section 1(25) provides that improvements shall be assessed as a part of the farm when they contribute to the operation of the farm. Obviously, if the buildings are not being used in connection with the farm but are being used for some other operation, such as a warehouse or a gift shop, they should not be assessed as a part of the farm. This does not mean that these buildings would not be assessed at all, as the collector

> suggests, but simply means they would not be assessed as farm property. This section does not prohibit these buildings from being assessed as nonfarm property. There may be occasional instances where it will be difficult to determine whether a building should be assessed as a part of the farm, or as nonfarm property. This fact, however, does not render the Act invalid as being vague and uncertain, or for failing to give adequate guidance to those who must administer the Act.

O'Connor at 272. At the hearing before the Property Tax Appeal Board, Ronald Kane, the Stephenson County Supervisor of Assessments, testified that the value of the subject pole building was determined using the cost approach and adjusting for depreciation. There was no indication in Kane's testimony that the contribution of the improvement to farm productivity was specifically considered. The board of review's evidentiary submission also did not include any of the cost manual data or specifically how the assessment of the pole building was calculated.

On the other hand, the appellant contended that the pole building was overvalued by the assessor's applied methodology. 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. 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 (2nd Dist. 2000). The Board finds that the appellant has not overcome this burden.

The appellant testified that the building cost $23,000 to construct including use of lumber that was on-hand and for which no particular value was claimed. With regard to the appellant's construction costs, there were no actual bills or receipts presented to substantiate the reported cost. Moreover, as to the appellant's construction cost data, the board of review contends at a minimum that the building's full value would be $23,000 plus the value of the salvaged lumber.

The Property Tax Appeal Board agrees with the board of review that the value of the pole building would be the total of the money spent on construction plus the value of the materials already on hand (the salvaged lumber). Furthermore, on this record, the Board finds that the cost of construction evidence is weak with no documentation to support the appellant's testimony and no value set forth for the salvaged lumber. In any event and in the absence of the salvaged lumber value, the Board finds the building's value is in excess of $23,000.

The Property Tax Appeal Board further finds that the actual cost of construction may not necessarily reflect the contributory value of the subject building either, however, the appellant did not provide an alternative procedure or method to calculate the contributory value of the pole frame farm building. Moreover, due to the lack of substantive construction cost data in the record and considering the subject building was only one year old, the Board finds the cost approach less depreciation to be an acceptable method of estimating value for assessment purposes. Thus, the Board finds the board of review's use of the building's estimated reproduction cost new of $27,000 as a basis of market value is acceptable.

On the basis of the evidence and the foregoing analysis, the Property Tax Appeal Board finds that a reduction of the subject property's building assessed valuation and final assessment is not warranted.

APPELLANT:	**Holly Kohley**
DOCKET NUMBER:	**07-04390.001-R-1**
DATE DECIDED:	**April, 2010**
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 5.72-acres located in Woodstock, Seneca Township, McHenry County. The property has also been improved with a dwelling, garage and barn.

The appellant appeared before the Property Tax Appeal Board claiming that the subject tract should be partially classified and assessed based on agricultural use; no dispute was raised concerning the assessments of the residence and/or outbuildings. The appellant did not specify the acreage believed to be homesite and/or farmland, but simply contended the assessed value was excessive given its use as compared to similarly situated properties.

The appellant testified that as of the date of valuation of January 1, 2007 there were three sheep, two horses and maybe twelve free-range chickens that were kept on the property. Moreover, the fields were used for feed (hay and pasture).

In further support of the claim, appellant submitted data on fourteen suggested comparable properties located from 1.2 to 3.5-miles from the subject property. Of the fourteen comparables, thirteen comparables were said to be used as farmland/residences and the last comparable, consisting of two separate parcels, was described by the appellant as wetland. The comparables ranged in size from 5.05 to 13-acres and had land assessments ranging from $18,554 to $23,693 or from $1,551 to $4,115 per acre. The subject has a land assessment of $39,891 or $6,974 per acre.

Based on the evidence and testimony, appellant contends that the subject's land is not being treated uniformly with other nearby properties that have partial farmland assessments.

The board of review submitted "Board of Review Notes on Appeal" wherein the subject's total assessment of $99,789 was disclosed. The board of review was of the opinion that the subject's primary use was for residential purposes and that it was assessed accordingly. Moreover, the board of review representative noted that based on guidelines issued by the Illinois Department of Revenue, a property should have more than five acres of farmland to be afforded the farmland classification. Thus, on a county-wide basis for uniformity of treatment for farmland classification purposes, a parcel such as the subject of 5.72-acres, of which 1.31-acres is homesite, cannot qualify for farmland assessment.

In further support, the board of review presented a grid analysis of the fifteen comparable parcels which were presented by the appellant. As outlined by the board of review, each of the first twelve comparables was said to consist of both non-farmland and farmland classifications, three of which also included consideration of adjacent farmland. The farmland acreage for these

twelve parcels ranged from 3.86 to 12.51-acres; of note, comparable #6 had 4.44-acres of farmland with no notation of additional adjacent farmland, contrary to the county's contention that parcels of less than 5-acres without accompanying adjacent farmland cannot qualify for farmland classification. Comparables #13, #14 and #15 were noted to be "mostly wet land" although none was afforded a farmland classification according to the notations by the board of review. Based on the foregoing evidence, the board of review requested confirmation of the subject's non-farmland assessment.

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 evidence in the record supports a change in the classification of the subject property.

Here, the primary issue is whether the subject parcel is used primarily for agricultural purposes as required by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60). In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3rd Dist. 2005), the court stated that a parcel of land may be classified as farmland provided that those portions of the property so classified are used solely for agricultural purposes, even if the farm is part of a parcel that has other uses. *Citing* Kankakee County Board of Review, 305 Ill. App. 3d 799 at 802 (3rd Dist. 1999). A parcel of property may properly be classified as partially farmland, provided those portions of property so classified are used solely for the growing and harvesting of crops. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill. App. 3d 872, 875, 448 N.E.2d 3, 6 (3rd Dist. 1983).

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines farmland 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 finds that in order to receive a preferential farmland assessment, the property at issue must meet this statutory definition of a "farm" as defined in the Property Tax Code. The Property Tax Appeal Board finds portions of a parcel may be classified as farmland for tax purposes, provided those portions of property so classified are used solely for the growing and harvesting of crops and/or the raising of livestock. There was no evidence to refute the appellant's contention that farm animals were being kept on the property and portions were pasture. The Property Tax Code does not enumerate a minimum of 5-acres in order to qualify for farmland classification. The uniform farmland policy outlined by the board of review is not supported by the Property Tax Code. Based on the evidence presented and not refuted, the Property Tax Appeal Board finds all but the homesite of the subject parcel is entitled to a farmland classification and assessment with appropriate assessments separated for the barn and dwelling.

In conclusion, the Property Tax Appeal Board finds the board of review's classification and assessment of the subject property's land was incorrect and a reduction is warranted in accordance with a partial farmland classification of the subject property.

APPELLANT:	**B.F. & Dorothy McClerren**
DOCKET NUMBER:	**07-05512.001-F-1**
DATE DECIDED:	**March, 2010**
COUNTY:	**Coles**
RESULT:	**No Change**

The subject property consists of an eight acre tract of land that is improved with an older barn. The subject property is located in Charleston Township, Coles County, Illinois.

The appellants appeared before the Property Tax Appeal Board with counsel claiming the Coles County Board of Review improperly classified and assessed the subject parcel as residential land. The assessment assigned to the barn was not contested. The appellants contend 7.15 acres are used to grow hay; .55 of an acre is woodlands with a steep drop off; and .25 of an acre was described as "other farmland". In support of this claim, the appellants submitted undated photographs, an aerial photograph and a soil survey map of the subject property.

The appellant, B.F. McClerren, testified the subject property was purchased in 2006 for $269,000 along with a single-family residence and two additional acres of land. The eight acres in this appeal are contiguous to another parcel owned by the appellants, which is approximately seven acres and is improved with a single family dwelling. The appellant testified the contiguous seven acre parcel has been used as an orchard/nursery since 1966, but the seven acres do not receive a farmland classification and assessment. McClerren testified the eight acres under appeal were used to grow approximately 500 bales of hay in 2008 and 2009.

Based on this evidence, the appellants requested eight acres of the subject parcel be reclassified and assessed as farmland.

Under cross–examination, McClerren testified that when he acquired the property in April 2006, the property was not being used to harvest a hay crop. McClerren did not know how the prior owner used the property. McClerren testified the property was used to grow corn and beans in the late 1960's. For clarification, McCleren testified the subject property was not used to grow or harvest a hay crop in either 2006 or 2007. He testified the prior owner "mowed" the entire parcel in 2005 and 2006. McCleren did not know if the grass was baled for hay in 2005 or 2006.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $10,000 was disclosed. In support of the subject's assessment, the board or review submitted a letter addressing the appeal and the subject's property record card.

At the hearing, Mac Shoopman, Chief County Assessment Officer and Clerk of the Coles County Board of Review cited Section 10-110 of the Property Tax Code, which provides in part:

> The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, . . . shall be determined as described in Sections 10-115 through 10-140.

Shoopman argued that since the subject parcel was not used to grow and harvest a hay drop in 2005, 2006 and 2007, the subject property is not entitled to farmland classification and preferential assessment. Based on this evidence, the board of review requested confirmation of the subject property'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 Board further finds subject parcel is not entitled to a farmland classification and assessment.

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 Property Tax Appeal Board finds the appellant submitted credible testimony indicating approximately 7.15 acres of the subject parcel was used to grow and harvest a hay crop during assessment years 2008 and 2009. However, the Board finds this record is un-refuted that the subject was not used for an agricultural purpose, as defined by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60), for assessment years 2005, 2006 and 2007. In order to qualify for an agriculture classification and assessment, the land must be farmed at least two years preceding the date of assessment. Section 10-110 of the Property Tax Code provides in pertinent part:

> The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, . . . shall be determined as described in Sections 10-115 through 10-140.

The evidence and testimony offered by the appellants clearly establish that the subject property was not used for an agricultural purpose from 2005 to 2007. Therefore, the Property Tax Appeal Board finds the subject parcel does not qualify for a farmland classification and assessment as detailed in Sections 1-60 and 10-110 of the Property Tax Code. (35 ILCS 200/1-60 and 10-110). Therefore, the Board finds no reduction in the subject's assessment is warranted.

APPELLANT:	**Thomas & Jana Olsen**
DOCKET NUMBER:	**07-04982.001-F-1**
DATE DECIDED:	**April, 2010**
COUNTY:	**Stephenson**
RESULT:	**No Change**

The subject property consists of a 19.66-acre parcel improved with a two-story frame dwelling with attached garage and an older pole frame building. The subject is located in Rock Run Township in unincorporated Stephenson County.

With their attorney, the appellants appeared before the Property Tax Appeal Board claiming a portion of the subject parcel was improperly classified and assessed as the basis of the appeal. The appellants did not contest the subject's improvement or farmland assessments, but claimed a 5-6 acre pond on the parcel, classified and assessed as residential land for 2007, should be classified and assessed as farmland. The appellants argued the pond on the subject parcel had been assessed as farmland in years prior to 2007. The appellants testified they dug the pond because it is in a very wet area of the subject parcel that is fed by four springs and drain tile from a previous farm drains to the pond. The appellants agreed they had installed rip rap around the pond to deter animals. When questioned by the Hearing Officer as to whether the pond contributes to operation of a farm, the appellants responded it did not make any such a contribution and was not part of a farm on January 1, 2007. Nevertheless, the appellants contend in their petition that since the pond area remains wet for much of the year and cannot sustain crops, "it is difficult to understand how the property area in question can be deemed anything but agricultural." The appellants also testified they had prepared a forest stewardship plan for 11.7 acres of the subject parcel on which they would plant numerous trees. Their plan was approved on July 11, 2007 and will be effective for the 2008 assessment year. The appellants contend ponds on other parcels in the area are not considered residential land like the subject pond, but instead receive farmland classification and assessment. Based on this evidence, the appellants requested the subject's assessment be revised to include 2.00 acres homesite, and the balance including the pond and 11.7 acres of tree farm as part of a total of 17.66 acres of farmland.

The board of review submitted its Board of Review Notes on Appeal wherein the subject's total assessment of $106,919 was disclosed. In support of the subject's assessment, the board of review submitted the subject's property record card, a land use map, a farmland valuation card, a copy of the appellants' Forest Stewardship Plan, photographs of the subject and copies of pertinent statutes regarding farmland, non-farmland and forestry management.

The board of review's representative testified that, following provisions of Bulletin 810 regarding changes in farmland assessment, the board of review acknowledged a change in the subject's farmland assessment was warranted. This change was made for a creek that runs through the subject parcel. The board of review also submitted Publication 122, issued by the Illinois Department of Revenue. This document describes the four types of farmland based on Section 10-125 of the Property Tax Code. Farmland must fall into the categories of cropland, permanent pasture, other farmland (including woodland pasture and farm building lots) and wasteland, which is the result of soil limitations, not a management decision. The board of review's representative testified the Stephenson County Board of Review has a policy of implementing

forest stewardship plans in the year such plans are written, rather than the assessment year following, as required by statute. The representative asserted that the subject pond is near the dwelling, has riprap, a dock and a deck and appears designed for recreational use. Were the pond to be out in a farm field, it might be considered part of a farm. Publication 122 instructs assessors to "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 these factors the board of review asserts the pond has no agricultural use and must therefore be considered as residential land and assessed as part of the subject's homesite.

In rebuttal, the appellants submitted information on four parcels that included land broken off from larger farms where ponds are not used for livestock or farming purposes, but are assessed as farmland.

The Board finds that Section 1910.66(c) of the Official Rules of the Property Tax Appeal Board states in part:

> Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. A party to the appeal shall be precluded from submitting its own case in the guise of rebuttal evidence. 86 Ill.Adm.Code 1910.66(c).

Therefore, the Board finds the additional comparables are inadmissible and will not be considered.

In response to the appellants' additional information submitted as rebuttal, the board of review submitted information on three comparables to demonstrate consistent assessment of homesites on multi-acre parcels.

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 appellants argued the subject's pond should be classified and assessed as farmland. They contend the area in which the pond was dug is fed by four springs, was constantly very wet and could not support crops and was unusable for any purpose. The board of review's representative testified the pond is near the subject dwelling, has riprap around its perimeter, has a dock and a deck and appears to be for recreational use. The appellants did not dispute this testimony. When questioned by the Hearing Officer as to whether the pond contributes to operation of a farm, the appellants responded it did not make any such a contribution and was not part of a farm operation. The board of review relied on Publication 122, issued by the Illinois Department of Revenue, which instructs assessors to assess ponds that are not contributing to farming operations as part of the homesite. Based on this analysis, the Property Tax Appeal Board finds that as of the subject's January 1, 2007 assessment date, the evidence and testimony in the record indicates the subject pond was not used for any agricultural purpose and was not entitled to classification and assessment as farmland.

APPELLANT:	**Robert S. Orr**
DOCKET NUMBER:	**07-00057.001-F-1**
DATE DECIDED:	**February, 2010**
COUNTY:	**Tazewell**
RESULT:	**No Change**

The subject property consists of 78.91-acres of farmland made up of Onarga, Plano and Jasper as the three primary soil types. The property is located in Section 14 of Cincinnati Township, Tazewell County.

The appellant appeared before the Property Tax Appeal Board to challenge the assessment of the farmland based on productivity. In a letter submitted with the appeal, the appellant explained the appeal was predicated on the subject parcel being part of an adjoining 80-acre parcel which has similar productivity as the subject, however the adjoining property has a lower assessment. The appellant based his argument in part on data from a book titled Soil Survey of Tazewell County, Illinois. To support his claims the appellant submitted a Cincinnati Township Map, a Notice of Assessment, a tax spreadsheet, a Tazewell County Agricultural Assessment Map, a soils calculation report and comparison spreadsheet. First, the appellant contends that the EAV per acre for soil types 199A (plano silt loam) and 3107 (sawmill silty clay loam) bear no relationship to the production numbers assigned to these two soil types for corn or beans as found in the Soil Survey of Tazewell County, Illinois book. The appellant argued that the EAV/Acre numbers depict that soil type 199A is more than 6.68 times as productive as soil type 150B. To demonstrate this argument, the appellant submitted an example of a corn and bean production comparison sheet of the two different soil types. The comparison sheet depicts soil type 199A was 41% more productive than soil type 150B for corn and 29% more productive for beans. However, the EAV/Acre numbers for soil type 199A was 668% greater than for soil type 150B.

Second, the appellant argued that the subject's assessed value per acre was significantly higher when compared to the adjoining 80-acres. It was argued that the subject depicted an assessed value of $141.55 per acre while the adjoining field had an assessed value of $66.90 per acre.

To further demonstrate the disparity of assessed value, the appellant argued that the subject parcel had an assessed value of $1.11 per bushel of corn and an assessed value of $3.45 per bushel of soybeans, while the adjoining parcel had an assessed value of $0.54 per bushel of corn and an assessed value of $1.56 per bushel of soybeans. The appellant argued that there was no discernable difference between the two fields in topography or crop production. Based on this evidence, the appellant requested the subject's assessment be reduced to match the adjoining 80 acres or $5,230.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject farmland of $11,170 was disclosed. In response to the appeal, the board of review submitted a letter from Gary Twist, the Chief County Assessment Officer for Tazewell County. Mr. Twist was at the hearing to provide direct testimony and subject to cross-examination. Twist testified that the procedure for valuing farmland in Tazewell County is modeled after Division 6 of the Property Tax Code. He testified that individual soil types are valued according to land class and EAV's are calculated per individual soil type.

Twist testified that the subject primarily contains Onarga, Plano and Jasper soils. Plano has an EAV of 274.23 while Jasper has an EAV of 12.79. Twist explained that the subject contains 17.84 acres of Jasper soil while the adjoining parcel has 63.07 acres of Jasper soil. As a result, the subject parcel has an average EAV of between 141 and 152 while the adjoining parcel has an average EAV of between 66 and 67. Twist testified that the subject's assessed value is approximately double the adjoining parcel based on the average EAV's determined by the percentage of soil types on each parcel. Twist further testified that the subject's assessment was uniform with all other farmland assessments in Tazewell County and is based on guidelines provided by the Illinois Department of Revenue. The board of review submitted the Soils Calculation Report for the subject and the adjoining parcel.

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 does not support a reduction in the subject's farmland assessment.

The appellant contested the farmland assessment based on the productivity indexes assigned to the soils. Section 10-110 of the Property Tax Code (the Code) provides in part that, "[t]he equalized assessed value of a farm . . . shall be determined as described in Sections 10-115 through 10-140. . . ." (35 ILCS 200/10-110).

Section 10-115 of the Code provides in part that:

> The Department [of Revenue] shall issue guidelines and recommendations for the valuation of farmland to achieve equitable assessment within and between counties. . . .

(35 ILCS 200/10-115).

Furthermore, Section 10-115 of the Code sets forth the various components that the Department of Revenue is to certify to each chief county assessment officer on a per acre basis by soil productivity index for harvested cropland such as: gross income, production costs, net return to the land, a proposed agricultural economic value, the equalized assessed value per acre of farmland for each soil productivity index, a proposed average equalized assessed value per acre of cropland for each individual county, and a proposed average equalized assessed value per acre for all farmland in each county.

Section 10-125 of the Code (35 ILCS 200/10-125) provides for the assessment level of farmland by type and states in part that:

> (a) Cropland shall be assessed in accordance with the equalized assessed value of its soil productivity index as certified by the Department [of Revenue] and shall be debased to take into account factors including, but not limited to, slope, drainage, ponding, flooding and field size and shape.

(35 ILCS 200/10-125(a)).

The evidence provided by the Tazewell County Board of Review disclosed that in 2007 it was following the farmland assessment guidelines provided by the Illinois Department of Revenue in assessing farmland. The evidence disclosed that the board of review was using the soil types set forth on soil survey maps and the PI associated with the soil type identified on the maps and the EAV per acre as certified by the Department of Revenue for each soil type in assessing the farmland. Based on this record the Board finds that the board of review correctly assessed the farmland on the subject parcel.

The Board further finds the appellant did not submit sufficient substantive evidence that challenged the soil types, number of acres, PI, and EAV per acre as used by the Tazewell County assessment officials in calculating the farmland assessment for the subject parcel. Based on this record the Property Tax Appeal Board finds assessment of the subject parcel as established by the board of review is correct and no reduction is warranted.

APPELLANT:	**Timothy Robinson**
DOCKET NUMBER:	**07-04284.001-F-1**
DATE DECIDED:	**April, 2010**
COUNTY:	**Cumberland**
RESULT:	**Reduction**

The subject property is a 76.28 acre parcel improved with a two-story single family dwelling of frame construction with approximately 1,300 square feet of ground floor area. The dwelling was constructed in 1994. Features of the home include a crawl space foundation, central air conditioning and an attached two-car garage. The subject property also has a 2,160 square foot machine shed constructed in 1994. For assessment purposes the subject parcel has been classified as including a 5.59 acre homesite, 42.92 acres of cropland, 24.56 acres of other farmland and 3.21 acres used for a public road. The property is located in Toledo, Sumpter Township, Cumberland County.

The appellant contends the classification of the subject acreage, more specifically the area attributed to the homesite, is in error. The appellant was not contesting the assessment attributed to the house or the outbuilding. In his written submission the appellant asserted the subject property has a 1.0 acre homesite, with .44 acres actually being used as a yard, and the remaining 4.59 acres should be classified as other farmland. In his written submission the appellant indicated that the disputed area includes: (1) cropland (alfalfa), (2) existing woods, (3) driveway, (4) cropland converted to other farmland due to planting Christmas trees and (5) a pond.

At the hearing the appellant changed his argument contending that .44 acres should be the considered the homesite with 5.15 acres in dispute being other farmland. He testified that .44 acre homesite was based on a survey; however, no survey was submitted by the appellant in the instant appeal to corroborate the testimony. He testified this area is a manicured lawn that is easily defined. The appellant did not provide any photographs in the instant appeal that depicted the mowed or manicured lawn surrounding his home. He also testified the mortgage on the property is actually for .25 acres around the home.

The appellant identified Reference #2 as a GIS map of the subject property. On the exhibit the appellant identified "Area #1" as the homesite, which he stated as being 1.0 acre with a caveat that .44 acres is his true yard. The dark area on the map was identified as a pond, which is adjacent to the homesite. The appellant identified the lighter area of the map as the cropland and the shaded area as woodland. "Area #2" was identified as an area of pine trees and areas where he has planted a variety of trees.

The appellant testified that he has purchased livestock, particularly chickens, from time to time since 1997. The appellant also testified that he has used the pond as a source of water for the trees he has planted and to water the poultry. He testified he has used a transfer pump or submersible pump to extract water for the livestock but has used buckets to water the trees.

He testified that the primary difference in the area being currently classified as woodland (other farmland) and the area not receiving the woodland or other farmland classification is the size of the trees. The appellant testified that the area with the pond, the Christmas trees, that are now

too large to harvest, and the other trees he has planted is highly erodible. He has planted additional trees to connect the woodlands, beginning in 1993 with the pine trees/Christmas trees and planting of all of the deciduous trees began in 1996. Altogether he has planted over 400 to 500 trees. The appellant testified that he does mow some of the area from time to time. The appellant explained that the primary difference from the area being classified as other farmland and the area in contention is the size of the trees, 20 foot tall trees compared to 70 to 80 foot tall trees.

The appellant also made an unequal treatment argument with respect to the fact the subject property was not being classified similarly to other rural parcels. In support of this argument the appellant identified four comparables and submitted aerial photos depicting homesites and mowed areas. According to the appellant these parcels were being classified differently than the subject property even though they had less farm use than the subject.

Also submitted with the appellant's argument were copies of bills indicating the purchase of poultry/chickens. The bills depict the month and date but no year. The appellant testified he raises chickens for food.

At the hearing the appellant called as a witness Sandy McElravy, chief deputy with the Cumberland County Supervisor of Assessments Office. She testified she copied the evidence provided by the board of review that was sent to the Property Tax Appeal Board. She was also questioned with respect what changes she had made to assessments in 2007.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $50,750 was disclosed. The property had the following assessments; Farmland - $631; Homesite - $5,584; House - $41,250, and Outbuildings - $3,110. A copy of the subject's property record and assessment computation had the following classification breakdown; Cropland - 42.92 acres, Other Farmland - 24.56 acres, Homesite – 5.59 acres; and Public Road - 3.21 acres.

The chairman of the board of review, Richard Russell, testified the area in contention containing approximately 5 acres was not classified and assessed as other farmland based on Bulletin 810. He testified that when the property was visited the area looked as though it had been mowed. Photographs of the subject were submitted by the board of review. The photographs depict a gravel drive with grass on either side, an area composed of pine trees and grass east of gravel lane; an area of grass and small deciduous trees east of the pond, an area of grass and deciduous trees with the home in the background, an area of primarily grass south and west of the gravel lane and an area of deciduous trees west of the gravel lane.

The chairman testified the GIS is used to identify the area of the homesite. Mr. Russell identified different portions of the subject using an aerial photograph. The area to the north and east of the subject home was cropland while a significant portion of the area west of the home extending north and south was woodland. Mr. Russell indicated that the area planted in trees was not receiving the other farmland assessment because of the mowing and the fact the trees were planted far apart.

Under cross-examination the chairman of the board of review could not explain why the area of the subject property where the appellant had planted trees was not receiving the other farmland classification even though the woodland area that it borders is receiving the other farmland classification. The appellant also questioned the board of review about the date of the photographs, which appears to be in the spring due to no leaves being on the trees.

The Cumberland County Supervisor of Assessments Lois Dryden testified the subject property was assessed using the typical farmland assessment practices utilized in Cumberland County. She further testified that the farmland assessment guidelines contained in Publication 122 issued by the Illinois Department of Review are utilized. The witness testified that farmland is assessed based on use. If property is being tilled the land is assessed as cropland. If the land is a pond and trees that are contributing to the farm it is assessed as other farmland. Homesites are assessed based on actually use as a homesite.

Under cross-examination, the supervisor of assessments testified that even though the appellant has planted numerous trees, he had not demonstrated an actual agricultural use. She testified the existing trees on the subject property were part of the woods that was part of a larger farm tract. She explained the area in dispute was in Christmas trees many years ago, which are now gone, few are left along the edge of a subdivision the appellant put in. She indicated the area was pretty much clear when he put his house in and he began re-planting trees. The supervisor of assessments was of the opinion this area where trees are planted was more in the nature of landscaping.

The pond was not getting the other farmland assessment based on its use. She recognized that water was being used for the chickens but she indicated, "How much water do you use for the chickens?" She indicated that for a pond to receive the other farmland assessment livestock has to use it or the pond is used to water or spray crops.

Under questioning about the use of the pond, Mr. Robinson indicated that he does not fish on it, does not swim in it, does not boat on it and does not float on it. The pond is used for watering the trees and chickens.

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 Board finds the issue in this appeal is whether or not 5.59 acres of the subject parcel is correctly classified and assessment as a homesite. Section 10-115 of the Property Tax Code ("Code") provides in part that:

> The Department [of Revenue] shall issue guidelines and recommendations for the valuation of farmland to achieve equitable assessments within and between counties.

35 ILCS 200/10-115. Pursuant to this provision the Illinois Department of Revenue issued Publication 122, Instructions for Farmland Assessments, (Illinois Department of Revenue, September 2006). The supervisor of assessments testified this publication was used in

Cumberland County to assess farmland. Section 10-125 of the Code (35 ILCS 200/10-125), as noted in Publication 122, identifies cropland, permanent pasture, other farmland and wasteland as the four types of farmland and further prescribes the method for assessing the components. Section 10-125 further states that U.S. Census Bureau definitions are to be used to define cropland, permanent pasture, other farmland and wasteland. According to Publication 122 the following definition complies with this requirement:

> Other farmland includes woodland pasture, woodland, including woodlots, timber tracts, cutover, and deforested land; and farm building lots other than homesites. (*Publication 122, Instructions for Farmland Assessments*, Illinois Department of Revenue, September 2006, p.1.)

After considering the evidence and testimony presented by the parties, and weighing all the evidence offered, the Board finds the most credible evidence with respect to the use of the subject property was presented by the appellant. The appellant provided best and most credible testimony with respect to the manner in which the acreage at issue was being used.

During the hearing the appellant testified that .44 acres of the parcel is used as a homesite. According to the appellant this is the area he mows and manicures as a lawn for the home. This was also consistent with the manner in which he completed the appeal form and his written explanation of his appeal. This testimony was not refuted. The Board finds the subject property has a .44 acre homesite.

The appellant further provided testimony that he has planted approximately 400 to 500 trees, both fir/evergreen and deciduous trees, on the remaining portions of the 5.59 acre area, excluding the pond of course. Photographs of the subject property submitted by the board of review corroborate this testimony and depict numerous small trees. The Board finds this area meets the definition of other farmland as woodland pasture, woodland, including woodlots, and deforested land that is being replanted. The Board finds this area should not be classified and assessed as part of the "homesite" but should be classified and assessed as "other farmland."

The Board finds the subject also has a machine shed, which, as a farm building, should have the underlying land classified and assessed as "other farmland."

The testimony in the record also established that the subject has a pond covering approximately .90 acres of the subject property. The appellant provided testimony that the pond was used to water the trees he has planted and the few chickens he raises. Publication 122 provides that ponds and borrow pits used for agricultural purposes are to be assessed as contributory wasteland. (*Publication 122, Instructions for Farmland Assessments*, Illinois Department of Revenue, September 2006, p. 3.) The Board finds the evidence and testimony in the record support the conclusion the pond is being used for agricultural purposes, therefore, the Board finds this area should be assessed as contributory wasteland.

In conclusion, with respect to the classification of the 5.59 acres at issue, the Property Tax Appeal Board finds that .44 acres is to be classified and assessed as the homesite, the area of the pond should be classified and assessed as contributory wasteland, and the remaining acreage is to

be classified and assessed as other farmland. The Board finds that there should be no change to the land area classified and assessed as cropland and roadway.

The Board hereby orders the Cumberland County Board of Review to compute and certify the farmland assessment in accordance with the findings herein and submit the revised assessment to the Property Tax Appeal Board within 21 days of the date of this decision so that a final decision with the corrected assessments can be issued.

APPELLANT:	**Keith Soltwedel**
DOCKET NUMBER:	**07-02828.001-F-1**
DATE DECIDED:	**August, 2010**
COUNTY:	**Knox**
RESULT:	**Reduction**

The subject property consists of a 166-acre farm parcel located in Oneida, Ontario Township, Knox County.

The appellant appeared before the Property Tax Appeal Board claiming a contention of law regarding the assessment of farm buildings as the basis of the appeal. The appellant did not dispute the subject's farmland assessment, but contends that four hog nursery, breeding and finishing buildings of various sizes made no contribution to the operation of the farm, as they were vacant and had not been used to raise hogs for more than two years. The hog buildings provide no income or utility to the grain farming operation on the parcel, which is ongoing. The appellant acknowledged he purchased the subject property for $835,000 in December 2007. He submitted a copy of page 116 of the Illinois Real Property Appraisal Manual, which states that "Farm buildings are valued according to current use and contribution to the productivity of the farm. . . . The total of all building valuations should represent the value which their presence contributes to the productivity of the farm." Ordinarily, depreciated original cost is the basis for determining value for farm buildings. The appellant operates a hog farm in Effingham County, and based on his experience, argued the hog buildings on the subject farm are too small and obsolete for a modern hog operation. In support of this point, he submitted an appraisal of the subject property performed by a certified Illinois general appraiser. The appraiser, who was not present at the hearing, estimated the subject farm had a market value of $950,000. On page 5 of this report, the appraiser stated "The farrowing and gestation buildings are functionally obsolete due to the small size of the buildings." The appellant claimed he had made several inquiries in the community and with a large hog management company looking for interested tenants to lease the facilities, but to no avail. He also stated the water supply for the farm is a well located on another property not owned by him. Finally, the appellant's evidence stated, "(T)he current outlook in the swine industry is projecting losses due to high corn costs making it unlikely that these facilities will ever contribute value." Based on this evidence, the appellant requested the subject's assessment be reduced to $28,070, reflecting the farmland assessment, but with an assessment of $0 for the farm buildings.

During the hearing, the appellant acknowledged the hog buildings on the subject property were being rented for one year, from August 2009 to August 2010, to a local hog farmer who lost access to other buildings he had been leasing. The appellant claimed he doubted whether this lease arrangement will be extended, but reiterated the buildings had been vacant for several years as of the subject's assessment date of January 1, 2007, and had made no contribution to the farm's productivity.

The board of review submitted its Board of Review Notes on Appeal wherein the subject's total assessment of $50,560 was disclosed. This assessment includes $28,070 for farmland and $22,290 for the farm outbuildings. While acknowledging the appellant's point that farm

buildings are valued according to current use and contribution to the productivity of the farm, the board of review board of review's representative claimed Knox County has always put a salvage value on farm buildings. She could not state why this has been done, but "it is just the way it has always been." The assessment of the subject farm buildings had been determined by the township assessor, who is retired and was not present at the hearing. The representative further stated "In Knox County, we have not depreciated a hog confinement *that is still in use* below 20% (emphasis added)." "(A)s long as the buildings are standing, we would have value on them." The representative testified that farm buildings should have an assessment reflective of their salvage value until they are demolished. Based on this evidence, the board of review requested the subject's assessment be confirmed.

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 evidence and testimony in this record indicate the subject's hog buildings had been vacant for at least two years prior to the assessment year at issue in this appeal and made no contribution to the productivity of the subject's grain farming operation. The board of review's policy of not depreciating a hog confinement building that is still in use below 20% implies buildings that are no longer in use do not meet this threshold. The appellant argued the buildings are too small and obsolete for modern hog operations and that he had been unable to find a lessee until 2009. In an appraisal submitted by the appellant, the appraiser opined "The farrowing and gestation buildings are functionally obsolete due to the small size of the buildings."

The Board finds the present use of land and buildings is the focus in issues involving farmland classification and assessment. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d at 872,(3rd Dist.1983). The Board finds Section 1-60 of the Property Tax Code states in relevant part

> Improvements, other than farm dwellings, shall be assessed as a part of the farm and in addition to the farm dwellings *when such buildings contribute in whole or in part to the operation of the farm* (emphasis added). (35 ILCS 200/1-60)

Furthermore, Section 10-140 of the Property Tax Code provides:

> Other improvements. Improvements other than the dwelling, appurtenant structures and site, including, but not limited to, roadside stands and buildings used for storing and protecting farm machinery and equipment, for housing livestock or poultry, or for storing, feed, grain or any substance that contributes to or is a product of the farm, shall have an equalized assessed value of 33 1/3% of their value, based upon the current use of those buildings and their contribution to the productivity of the farm. (35 ILCS 200/10-140)

Where farm structures do not contribute to the productivity of the farm, then the buildings would add nothing to the value of the farm. O'Connor v. A&P Enterprises, 81 Ill.2d 260, 267-68(1980); see also Peacock v. Property Tax Appeal Board, 399 Ill.App.3d 1060, 1071-1073 (4th Dist. 2003).

The unrefuted testimony of the appellant was that the hog buildings had been vacant for at least two years prior to the subject's January 1, 2007 assessment date and that they made no contribution to the ongoing grain farming operation on the subject parcel. The appellant was unable to find a lessee for the hog buildings until August, 2009, when a local hog farmer agreed to lease the buildings for one year. The Property Tax Appeal Board finds that notwithstanding the board of review's policy of assigning a salvage value to all farm buildings regardless of current use, the subject farm buildings made no contribution in whole or in part to the farming operation and therefore, have no contributory value. For this reason, the buildings shall be assessed at $0 for the 2007 assessment year.

APPELLANT:	**Kerry Wienke**
DOCKET NUMBER:	**07-02127.001-F-1**
DATE DECIDED:	**April, 2010**
COUNTY:	**Vermilion**
RESULT:	**Reduction**

The subject property consists of a 5.02-acre parcel located in Oakwood, Oakwood Township, Vermilion County. The subject is improved with a one year-old, one-story pole building with a slab foundation that contains 3,486 square feet of building area, including 984 square feet of living area and a shed area of 2,502 square feet.

The appellant appeared before the Property Tax Appeal Board claiming a portion of the subject parcel should be classified and assessed as farmland as the basis of the appeal. In support of this argument, the appellant claimed the subject was 100% tilled farmland when purchased in 2004. In 2006, the subject's pole building was erected, "along with establishment of a 2-acre grass area for the building site," but 3.02 acres of the parcel remain in rotating corn and soybean production and are currently enrolled in the USDA Farm Program. The appellant also submitted level and aerial photographs of the subject parcel and a soil map. The appellant's evidence indicated he also farms a 20 acre tract in another township, which "is part of a family farm operation of approximately 1,500 acres." During the hearing, the appellant testified the 3.02-acre portion of the subject was farmed in 2005, 2006 and 2007. When asked by the Hearing Officer how he determined the requested farmland and building assessments, the appellant responded he apportioned the requests based on the tax bill. The appellant did not contest the assessment of the pole building. Based on this evidence, the appellant requested the 3.02-acre portion of the subject that he uses for crop production be classified and assessed as farmland with an assessment of $744 and the subject's homesite assessment be reduced to $5,326.

The board of review submitted its Board of Review Notes on Appeal wherein the subject's total assessment of $35,449 was disclosed. In support of the subject's classification and assessment, the board of review submitted a letter prepared by the clerk of the board who is also the Vermilion County Supervisor of Assessments. This letter cited Section 1-60 of the Property Tax Code where it 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 of review contends that since the appellant's residence is situated on the subject parcel, the subject "is precluded by law from being considered 'farm'." The board of review also submitted the covenants and restrictions of the subject's subdivision, citing several provisions which appear to preclude business uses, that no buildings can be used for business purposes and that any garage or shed must harmonize with the main dwelling. Finally, the board of review cited other sections of the covenants that prohibit livestock, or "noxious or offensive activity". The board of review contends the appellant agreed to abide by these covenants upon his purchase

of the subject. The board of review also submitted property record cards for the other lots in the subject's subdivision that indicate they are all classified as residential properties. Based on this evidence, the board of review requested the subject's classification and assessment as entirely residential land be confirmed.

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 finds the un-refuted evidence and testimony in this record clearly indicate that 3.02 acres of the subject parcel was used for corn and soybean production in 2005 and 2006, continuing in 2007 and that this portion of the subject was not used for any other purpose.

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 (emphasis added). (35 ILCS 200/1-60)

The Board further finds Section 10-110 of the Code states in part:

> 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 contends the primary use of the subject is residential and further, that restrictive subdivision covenants prohibit non-residential uses. However, the Property Tax Appeal Board finds the actual use of land is the determining factor in its correct classification and assessment. 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 at 872,(3rd Dist.1983).

The Board also finds the subdivision covenants which are the basis of the board of review's denial of farmland classification and assessment of 3.02 acres of the subject parcel do not supersede statutory interpretation by the courts of the state laws of Illinois. Therefore, the Board finds 3.02 acres of the subject is to be classified and assessed as farmland and ordered the board of review to compute a revised assessment incorporating this order. The board of review complied with the order on November 18, 2009 and provided the Property Tax Appeal Board with the revised assessment.

2010 FARM CHAPTER

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Arguments or Evidence in Opposition to the Appellant's claim]

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2010 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
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2010 COMMERCIAL CHAPTER

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APPELLANT:	**John Aegerter/Satcom, LLC**
DOCKET NUMBER:	**08-00270.001-C-1**
DATE DECIDED:	**August, 2010**
COUNTY:	**Will**
RESULT:	**Reduction**

The subject property consists of two communication buildings, 200 linear feet of chain link fencing that is 44 years old and a guyed microwave radio transmission tower that is 240 feet high that was erected in 1964. Building 1 contains 240 square feet of building area and is of masonry exterior construction built in 1964. Building 2 is a 2004 pre-fabricated concrete structure containing 180 square feet of building area that was shipped to the site by truck. The building was then bolted in place on a concrete slab foundation. The subject property is located in Monee Township, Will County, Illinois.

The appellant appeared before the Property Tax Appeal Board claiming the fair market value of the subject buildings was not accurately reflected in its assessed value. Furthermore, the appellant argued building 2 is personal property because it is merely bolted to a concrete slab, is not permanently affixed and could be easily removed. In support of these arguments, the appellant offered testimony, photographs, a letter addressing the appeal, a prior Property Tax Appeal Board decision (Docket Number 05-01099.001-C-1), and cost proposals to replace the two existing buildings.

With respect to building 1, the appellant submitted two replacement cost proposals. The first proposal was from CellXion of Milwaukee, Wisconsin that was dated February 14, 2009. The documents depict the cost new of a building similar to the subject was $22,872 including shipping. The second proposal was from Fibrebond Corporation of Minder, Louisiana that was dated February 11, 2009. The documents depict the cost new of a building similar to the subject was $23,455 including shipping.

With respect to building 2, the appellant submitted a replacement cost proposal. The proposal was from Fibrebond Corporation of Minder, Louisiana that was dated February 11, 2009. The documents depict the cost new of a building similar to the subject was $21,035 including shipping.

The appellant testified the subject property was purchased in 2002 for $20,000. The sale included the land, building 1 and the guyed microwave radio transmission tower. The appellant argued the assessor should view and assess the subject property according to its cost basis along with its age, condition and depreciation.

The appellant next referred to an unsigned memorandum dated May 28, 2003. The document is labeled Cell Towers In Will County and states:

> As per the Supervisor of Assessments, cell towers that include an equipment/shed room are to be assessed at $90,000 market value. Assessment should be placed on the building only.

The appellant argued this document supports his position that the guyed microwave radio transmission tower is personal property and should not be assessed as real estate. In addition, the appellant argued the "one size fits all" method applied to communication towers regardless of age, height, size and cost is inappropriate. To support this claim, the appellant cited the Property Tax Appeal Board decision under Docket Number 05-01099.001-C-1 regarding a communication building in Lake County, Illinois. In that appeal, the Ela Township assessor testified all communication buildings were valued at $45,000 regardless of age, size, type or height. The Board found that assessment practice to be arbitrary and not supported by the evidence in that record. The appellant next argued that during the local board of review hearing that occurred on December 16, 2008, he questioned the assessment officials regarding the classification and assessment of the guyed microwave radio transmission tower. The appellant testified the township assessor responded that the tower was personal property.

The appellant argued the transmission tower is personal property because it can be moved. Based on this evidence, the appellant requested the Property Tax Appeal Board reduce the subject's improvement assessment to $2,500 or a market value of $7,500 to reflect the depreciated replacement cost new of the communication building. In addition, the appellant requested the Board find the subject's guyed microwave radio transmission tower and building 2 to be personal property that is not subject to real estate assessment and taxation.

During cross-examination, the appellant testified he does not own building 2. He testified building 2 is owned by Motorola that is used by the Illinois State Police. Motorola has a land and antenna lease with the appellant associated with building 2. During the hearing, the appellant acknowledged Motorola is responsible for any property taxes associated with building 2 and the structure is assessable. The appellant testified he depreciated the cost new of building 1 and did not depreciate building 2 to arrive at the requested assessment amount of $2,500 or $7,500 fair market value for both buildings. The method of calculating depreciation was not disclosed.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $54,024 was disclosed. The subject has an improvement assessment of $40,000, which reflects an estimated market value of $120,337 using the 2008 three-year median level of assessments for Will County of 33.24%. The previous Monee Township Assessor, Nanci J. Barfoot, who initially valued and assessed the subject property was not present at the hearing for direct testimony or cross-examination. The newly elected Monee Township Assessor Sandra Heard was present at the hearing, but provided no testimony.

In support of the subject's assessment, the board of review submitted an aerial photograph of the subject property, a cost approach to value, an income approach to value and one purported comparable sale.

Using the telephone building cost schedule contained in Marshall Valuation Service, the board of review calculated the replacement cost new of building 1 to be $150.64 per square foot of building area or $35,153. Depreciation was calculated at 62%, resulting in a final depreciated value for building 1 of $13,738. The board of review calculated the replacement cost new of building 2 to be $150.64 per square foot of building area or $27,115. Depreciation was

calculated at 3%, resulting in a final depreciated value for building 2 of $26,301. Thus, both buildings were estimated to have a depreciated estimated market value of $40,039.

The board of review next calculated the replacement cost new of the guyed microwave radio transmission tower to be $224.94 per foot or $53,506 using the microwave tower cost schedule contained in Marshall Valuation Service. Depreciation was estimated at 20%, resulting in a final depreciated value for the tower of $40,040, rounded. The board of review also calculated the replacement cost new for 200 linear feet of chain link fencing. The fencing was estimated to have a market value of $8.44 per linear foot or $1,687. Depreciation was estimated at 20%, resulting in a final depreciated value for the fencing of $1,350, rounded.

Under the cost approach, the board of review argued the subject's improvements were estimated to have an aggregate depreciated market value of $84,194, resulting in an improvement assessment of $28,062, which is less than its 2008 improvement assessment of $40,000.

The board of review next considered the income approach to value. The board of review considered leases in comparison to the subject and concluded a gross annual income of $24,000. Vacancy was estimated to be 10% or $2,400 resulting in an effective gross income of $21,600. Management fee was estimated to be 5% or $1,080 resulting in a net operating income of $20,520. The board of review next selected a capitalization rate of 12% and then added an effective tax rate factor of .02256, which resulted in an overall loaded capitalization rate of 14.256%. Applying the 14.256% loaded capitalization rate to the subject's estimated net operating income of $20,520, the board of review concluded the subject property has an indicated market value under the income approach of $143,939 or $140,000, rounded.

The board of review also introduced a 2006 sale of an unknown type of transmission tower involving four leases for $285,000. The leases were reported to range from $800 to $1,200 per month. After adjusting this sale for differences to the subject, the board of review concluded the subject property had an indicated market value of $142,500 or $140,000, rounded. No evidence of this sale was submitted. The Board of review representative testified the details of the transaction were not submitted due to proprietary confidential information. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under examination, the board of review representative testified Will County assessment officials had an assessment policy to value transmission towers as real property subject to ad valorem taxation. The board's representative testified this policy had been in place prior to 1979. He could not attest as to the assessment methodology used by the prior township assessor regarding the classification and valuation of transmission towers. The board's representative testified the prior township assessor may have been mistaken. The board of review representative further explained the transmission tower and building 1 were assessed at $30,000 or an estimated market value of $90,000. Building 2 was assessed at a contributory value of $10,000 or an estimated market value of $30,000.

In rebuttal, the appellant argued the transmission tower is personal property because it is not permanently affixed to the land and can be moved to another location. The appellant explained the tower has an articulated base that rests on a concrete foundation with four guyed cables that hold the tower in place. The tower was placed on its site in 1964 and was modified in 1978. The

tower has never be moved to another location or replaced. The appellant also presented a second document from the prior township assessor. The document states in part:

> According to cell towers in Will County, "As per the Supervisor of Assessments, cell towers that include an equipment shed/room are to be assessed at $90,000 market value. Assessment should be placed on the building only."

In response, according to assessment nomenclature the subject property has land, building, farmland, and farm building assessments that equate to a total assessment. The board's representative explained the $30,000 or $90,000 market value is placed on the building portion of the assessment rolls that includes the cellular tower or in this case a guyed microwave radio transmission tower.

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 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 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 and a reduction in the subject's assessment is supported. The Board further finds the board of review properly classified and assessed building 2 and the guyed microwave radio transmission tower as real property subject to ad valorem taxation.

Illinois' system of taxing real property is founded on the Property Tax Code. (35 ILCS 200/1-1 et seq.) Section 1-130 of the Property Tax Code (hereinafter the Code) defines "real property" in pertinent part as:

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . . (35 ILCS 200/1-130).

As a general proposition, except in counties with more than 200,000 inhabitants that classify property for taxation purposes, each tract or lot of property is to be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145.

Of further relevance to this appeal is the following passage from the Illinois Constitution, which states:

> On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. . . . Ill.Const. 1970, art.IX, §5(c).

As mandated by the above excerpt from the Constitution of 1970 the General Assembly enacted the Illinois Replacement Tax Act (Ill.Rev.Stat.1979, ch.120, ¶499.1, now codified at 35 ILCS

200/24-5) to replace the revenues lost by the abolition of the personal property tax. Also known as the "Freeze Act", the statute was amended in 1983 to add a prohibition against the reclassification of property of like kind acquired or placed in use after January 1, 1979. Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855, 863-864 (3rd Dist. 1983). Section 24-5 of the Code now provides in part that:

> Ad valorem personal property taxes shall not be levied on any personal property having tax situs in this State. . . No property lawfully assessed and taxed as personal property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as real property subject to assessment and taxation. No property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property.

The legislature's intent in passing this provision of the Replacement Tax Act was to "freeze" classifications of property to their pre-January 1, 1979, classifications. Property that was lawfully classified as real property or personal property before January 1, 1979, cannot be reclassified as personal property or real property after that date. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855 (3rd Dist. 1983). Thus, the classification of property as either real or personal prior to January 1, 1979, controls the status of property after January 1, 1979. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981).

The taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and, thus, proving that such property was lawfully assessed and taxed as personal property prior to January 1, 1979. Trahraeg Holding Corp. v. Property Tax Appeal Board, 204 Ill.App.3d 41, 43 (2nd Dist. 1990). However, if the taxpayer meets this burden, the property must be classified as personal property without resorting to any other method of classification. Trahraeg Holding Corp. 204 Ill.App.3d at 43; Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996).

The court in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3rd Dist. 1995) considered the criteria used by the Property Tax Appeal Board in determining whether certain items of machinery and equipment put into service after 1979 were "of like kind" to pre-1979 personal property. The court stated "any common sense construction of the term like kind would require substantial similarities between pre-1979 and post-1979 equipment." County of Whiteside, 276 Ill.App.3d at 186. The court concluded the factors relied upon by the Property Tax Appeal Board were sufficient to establish a like kind relationship. The factors relied upon by the Property Tax Appeal Board in that appeal included: (1) performance of the same function; (2) production of the same product; (3) similar portability and manner of attachment; and (4) that the new equipment replaced the existing equipment. Id.

In this appeal, the appellant submitted anecdotal evidence prepared by the previous township assessor indicating that "cell towers that include an equipment/shed room are to be assessed at $90,000 market value. Assessment should be placed on the building only." The appellant interpreted this document to mean the subject's transmission tower in Will County should be

classified as personal property. The Board gives this argument little merit. Foremost, the prior township assessor was not present at the hearing to provide testimony or be cross-examined regarding this document. Therefore, the Board finds this document and any reference to the prior township assessor regarding the classification and assessment of transmission towers to be hearsay. The general rule is that hearsay is inadmissible in an administrative hearing. Spaulding v. Howlett, 59 Ill.App.3d 249, 251, 375 N.E.2d 437, 16 Ill.Dec. 564 (1st Dist. 1978). Hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted and is inadmissible in administrative proceedings unless it falls within one of the recognized exceptions to the rule. Morelli v. Ward, 315 Ill.App.3d 492, 734 N.E.2d 87, 248 Ill.Dec. 379 (3rd Dist. 2000).

Notwithstanding the hearsay nature of the evidence provided by the appellant, the Board further finds the board of review offered a credible response to the personal property argument. The board's representative testified according to assessment nomenclature, the subject property has land, building, farmland, and farm building assessments that equate to a total assessment. He explained the $30,000 or $90,000 market value placed on the building portion of the assessment rolls includes the cellular tower or in this case a guyed microwave radio transmission tower.
The Board further finds the board of review provided credible testimony that prior to January 1, 1979, Will County assessment officials had a policy to value transmission towers as real property subject to ad valorem taxation. The board's representative testified this policy had been in place prior to 1979. The appellant did not submit any credible evidence to refute the testimony offered by the board of review or that suggests transmission towers were classified as personal property prior to 1979.

The appellant also contends building 2 should be classified as personal property because it is merely bolted to a concrete slab, is not permanently affixed and could be easily removed. The Board gives this argument little merit. For ad valorem taxation purposes, section 1-130 of the Property Tax Code provides in part:

> The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, including all oil, gas, coal and other minerals in the land and the right to remove oil, gas, and other minerals, excluding coal, from the land, and all rights and privileges belonging or pertaining thereto, except otherwise specified by this Code. (35 ILCS 200/1-130).

The Board finds building 2 located on the subject parcel is structure that is assessable as real property according to the plain language contained in Section 1-130 of the Property Tax Code. (35 ILCS 200/1-130).

After reviewing the market value evidence submitted by both parties, the Property Tax Appeal Board finds the preponderance of the evidence shows the subject parcel is overvalued.

Building 1.

The Board finds the best evidence of value is the actual replacement cost proposal submitted by the appellant for $23,455 including shipping. However, this building was built in 1964 and is

subject to depreciation in the amount of 62%. (See board of review evidence). Thus, the Board finds building 1 has a fair market value of $8,913 based on this record.

Building 2.

The Board finds the best evidence of value is the actual replacement cost proposal submitted by the appellant for $21,035 including shipping. This building was constructed in 2004 and is subject to minimal depreciation in the amount of 3%. (See board of review evidence). Thus, the Board finds building 2 has a fair market value of $20,404 based on this record.

Guyed Tower.

The Board finds the board of review submitted the best and only evidence as to the fair market value of the guyed microwave radio transmission tower that is 240 feet high. The board of review calculated the replacement cost new of the transmission tower to be $224.94 per foot or $53,506 using the microwave tower cost schedule contained in Marshall Valuation Service. Depreciation was estimated at 20%, resulting in a final depreciated value for tower of $40,040, rounded.

Fencing.

The board of review also calculated the replacement cost new for 200 linear feet of chain link fencing. The fencing was estimated to have a market value of $8.44 per linear foot or $1,687. However, the Board finds the board of review underestimated the amount of depreciation for the fencing of only 20%. Given the age and condition of the fencing, the Board finds a depreciation rate of 62% to be more appropriate, similar to building 1. Thus, the Board finds the fencing has a depreciated value of $641.

Based on this analysis, the Board finds the subject's improvements have an aggregate market value of $69,998. The subject has an improvement assessment of $40,000, which reflects a market value of $120,337, which is higher than the best evidence of value contained in this record. Therefore, a reduction in the subject's improvement assessment is warranted.

In conclusion, the Board finds the appellant has shown by a preponderance of the evidence that the subject's property was overvalued and a reduction in the subject property's improvement assessment is warranted.

APPELLANT:	**Steven & Patricia Bates**
DOCKET NUMBER:	**07-03048.001-C-1**
DATE DECIDED:	**February, 2010**
COUNTY:	**Knox**
RESULT:	**No Change**

The subject property consists of a 113,038 square foot site improved with a 62 unit apartment complex constructed in stages in 1977, 1979 and 1980. The complex is composed of eight buildings with a total building area of 38,727 square feet. The property is located in Galesburg, Knox County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of $1,100,000 as of March 18, 2008. The appellant also submitted a copy of the Notice of Final Decision On Assessed Valuation by Knox County Board of Review dated March 7, 2008. The board of review notice reflects a total assessment of $451,670, reflecting a market value of approximately $1,355,000, rounded. The notice also states, "REASON FOR DECISION: dismissed – failed to appear at hearing." Based on this record the appellant requested the subject's assessment be reduced to reflect the appraised value.

Upon notification of the appeal, the Knox County Board of Review filed a Motion to Dismiss contending the Property Tax Appeal Board had no jurisdiction over the appeal pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160). The board of review stated the appellant was notified of the hearing before the Knox County Board of Review by notice dated January 21, 2008. The hearing was scheduled to take place at 8:15 AM, February 21, 2008. The board of review argued that section 16-160 of the Property Tax Code provides in part that:

> In any appeal where the board of review or board of appeals has given written notice of the hearing to the taxpayer 30 days before the hearing, failure to appear at the board of review or board of appeals hearing shall be grounds for dismissal of the appeal unless a continuance is granted to the taxpayer. If an appeal is dismissed for failure to appear at a board of review or board of appeals hearing, the Property Tax Appeal Board shall have no jurisdiction to hear any subsequent appeal on that taxpayer's complaint.

35 ILCS 200/16-160. The board of review argued that since more than 30 days notice was given to the appellant of the scheduled board of review hearing, the appellant's failure to appear and the board of review decision to dismiss the appeal due to the failure to appear precludes the Property Tax Appeal Board from asserting jurisdiction over the appeal.

In response to the motion to dismiss, the appellant argued because the board of review issued the Notice of Final Decision On Assessed Valuation by Knox County Board of Review, which provided in part that the appellant "may appeal this decision to the Property Tax Appeal Board within 30 days of the postmark date of this notice", this was a decision on the merits that vested jurisdiction with the Property Tax Appeal Board.

After reviewing the record and considering the arguments of the parties the Property Tax Appeal Board finds that it does not have jurisdiction over the parties and the subject matter of the appeal.

The undisputed facts are the board of review notified the appellant of the hearing before the Knox County Board of Review by notice dated January 21, 2008. The hearing was scheduled to take place at 8:15 AM, February 21, 2008, 31 days after the date of the hearing notice. The appellant failed to appear at the scheduled time and place to participate in the board of review hearing and there is no evidence that a continuance was granted the taxpayer. On March 7, 2008, the board of review issued a Notice of Final Decision On Assessed Valuation by Knox County Board of Review reflecting an assessed value after board of review action totaling $451,670. The notice also states, "REASON FOR DECISION: dismissed – failed to appear at hearing." Based on this record, the Property Tax Appeal Board finds the Knox County Board of Review dismissed the appeal because the appellant failed to attend the scheduled hearing.

The Property Tax Appeal Board finds section 16-160 of the Property Tax Code provides in part that:

> In any appeal where the board of review or board of appeals has given written notice of the hearing to the taxpayer 30 days before the hearing, failure to appear at the board of review or board of appeals hearing shall be grounds for dismissal of the appeal unless a continuance is granted to the taxpayer. If an appeal is dismissed for failure to appear at a board of review or board of appeals hearing, the Property Tax Appeal Board shall have no jurisdiction to hear any subsequent appeal on that taxpayer's complaint.

35 ILCS 200/16-160. The Property Tax Appeal Board finds that since the appellant failed to appear at the scheduled board of review hearing after receiving more than 30 days advanced notice and the board of review subsequently dismissed the appeal for the failure of the appellant to appear, the Property Tax Appeal Board has no jurisdiction to hear the subsequent appeal on the appellant's complaint. Therefore, the Property Tax Appeal Board grants the Motion to Dismiss filed by the Knox County Board of Review.

APPELLANT:	**Becker Group**
DOCKET NUMBER:	**07-00475.001-C-3**
DATE DECIDED:	**August, 2010**
COUNTY:	**Peoria**
RESULT:	**No Change**

The subject property consists of a 48,090 square foot parcel improved with a 16 story commercial office building containing 284,532 square feet of office area. The subject property has a concrete exterior and was built in 1992. The property is located in the City of Peoria Township, Peoria County.

The appellant appeared before the Property Tax Appeal Board, through counsel, contending assessment inequity in the improvement assessment as the basis of the appeal. The appellant is not disputing the subject's land assessment. In support of the inequity argument the appellant presented an assessment analysis prepared by Vivian E. Hagaman. Hagaman testified she has experience as a broker, appraiser and a certified assessor.

Hagaman prepared an assessment analysis, Appellant's Exhibit No. 1, using four equity comparables. The data used in her analysis was taken from the property record cards for the subject and the comparable properties. The comparables, consisting of offices, medical facilities and a bank, were located within 5 blocks of the subject. They ranged in area from 125,247 to 179,022 square feet of total building area. The brick or concrete comparables were built from 1925 to 1999 and ranged from 6 to 11 stories. The properties had improvement assessments ranging from $1,437,300 to $3,182,180 or from $8.03 to $24.77 per square foot of building area. Hagaman testified that the subject's property record card was incorrect, and the subject actually has 155,642 square feet of office space and 25,724 square feet of parking deck. Hagaman further testified that appellant's comparable #1 had 76,493 square feet of office space leaving 24,377 square feet of parking deck; comparable #2 had 156,000 square feet of office space, however, only 85,567 square feet or 64% was taxable. For comparable #2 Hagaman used 60% of the 156,000 square feet in her calculations to arrive at 99,853 square feet. Dividing this amount by the total improvement assessment indicated comparable #2 had an improvement assessment of $21.48 per square foot of office area. The subject was depicted as having an improvement assessment of $21.16 per square foot of building area; a grade of "B" and a condition, desirability and utility (CDU) of 90%. She indicated that the equity comparables were adjusted in relation to the subject for grade as well as for CDU. She testified that using CDU is an attempt to relate loss in value due to condition, desirability and utility. She indicated that condition relates to actual age versus effective age, desirability focuses on the economic obsolescence and utility focuses on functional obsolescence. She further explained her analysis dealt only with the improvement assessment and not the land. Her report contained copies of the property record cards for the subject and the comparables from the township assessor's Computer Assisted Mass Appraisal (CAMA) records. The comparables had grades ranging from "C+10" to "A+05" with a CDU ranging from 50% to 90%. After adjusting for grade and CDU, Hagaman opined the comparables had per square foot improvement assessments ranging from $5.20 to $23.55 per square foot of office space. Hagaman testified that she would discount comparable

#3 as an outlier. Based on this analysis, the appellant requested the subject's improvement assessment be reduced to $20.92 per square foot of building area using 181,366 square feet.

Under cross-examination Hagaman could not recall how many floors of parking space the subject contained. She testified that she totally dismissed the parking garage from her calculations. Hagaman admitted that the subject's property record card indicated four floors of parking deck with each having 25,724 square feet of parking area. She further admitted that the subject had 181,366 square feet of office area and 102,896 square feet of parking area for a total square foot of building area of 284,262 square feet. Hagaman testified that she used the total improvement assessment, which included all of the parking area, the elevators and all amenities for each building and divided that number by just the office space. Hagaman testified that her compensation for this appeal was 25% of what attorney Joe Solls made and was contingent on whether they win the appeal.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $5,020,690 was disclosed. The subject was depicted as having an improvement assessment of $4,562,710 or $16.35 per square foot of building area. To demonstrate the subject was equitably assessed, the board of review submitted assessment information on two of the same comparables used by the appellant and an additional property. The board of review's grid analysis depicts the subject has 279,054 square feet of building area and a grade of "A+10." The subject is depicted as having an improvement assessment of $16.35 per square foot of building area which includes office space plus parking. Gary Shadid, board of review member, testified that the subject's square footage was taken from the subject's property record card and is believed to be true and correct.

A revised grid analysis was presented into the record subsequent to the hearing.[1] The revised grid analysis depicts the subject contains 284,532 square feet of building area with four floors of parking deck that is not valued on the property record card. Comparable #1 has 76,493 square feet of office area with no value for the parking deck area; comparable #2 has 185,815 actual square feet of building area, however, only 156,020 square feet is taxable; #3 has 181,727 square feet of office space; #4 has 128,458 square feet of office area with the parking deck having no value and comparable #4 has 128,458 square feet of office space with no value for the parking deck area and #5 has 57,109 square feet of office space. The comparables are depicted as having improvement assessments ranging from $1,268,202 to $3,182,180 or from $7.91 to $26.00 per square foot of improvement with the subject having an improvement assessment of $16.04 per square foot of office space.[2] 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 Board further finds a reduction in the subject's assessment is not supported by the evidence in the record.

[1] The appellant and board of review were ordered by the hearing officer to submit a revised grid analysis depicting whether the total improvement assessment for the subject and each comparable included the parking garages.
[2] The appellant did not refute this information as being incorrect.

The appellant contends assessment inequity in the 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 assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data submitted by the parties, the Board finds a reduction to the subject's improvement assessment is not warranted.

Initially, the Board gives little weight to Hagaman's analysis and conclusion. First, Hagaman testified her fee was contingent on the outcome of the appeal. The Property Tax Appeal Board finds the fact the appellant's opinion witness' fee is contingent on the tax savings undermines her objectivity to give unbiased opinion testimony and detracts from the credibility of her analysis. Second, the Board finds that Hagaman's analysis was based on general subjective characteristics of the buildings such as grade and CDU. The Board finds that this type of analysis does not adequately consider the physical characteristics of the individual buildings such as age, size, ceiling height, type of construction and features to make a meaningful analysis of the similarity of the comparable properties to the subject property.

As stated by the Supreme Court of Illinois in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989):

> [T]he cornerstone of uniformity is the fair cash value of the property in question. . . . [U]niformity is achieved only when all property with the same income-earning capacity and fair cash value is assessed at a consistent level.

Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d at 21, 544 N.E.2d at 772. In this appeal the appellant failed to demonstrate the comparables and the subject had similar fair cash values but were assessed at substantially lesser or greater proportions of their fair cash values.

In the absence of evidence demonstrating the comparables and the subject have similar fair cash values, the Property Tax Appeal Board will examine the physical characteristics of the subject and the comparables to determine if the buildings are sufficiently similar so as to be indicative of assessment inequity. The Board gave reduced weight to the appellant's comparable #3 in the revised analysis because it is significantly older than the subject. In addition, the Board gave reduced weight to comparable #2 because this comparable is receiving a reduced assessment based on a medical facility exemption. The Board finds the remaining comparables are most similar to the subject even though they are substantially smaller than the subject. The remaining comparables have improvement assessments ranging from $19.99 to $26.00 per square foot of building area, which supports the subject's improvement assessment of $16.04 per square foot of office area. The subject's improvement assessment is below the range established by the most similar comparables contained in this record.

In conclusion, after considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's improvement assessment is equitable and a reduction in the subject's improvement assessment is not warranted.

APPELLANT:	**Irene Blake**
DOCKET NUMBER:	**07-06528.001-C-1**
DATE DECIDED:	**May, 2010**
COUNTY:	**St. Clair**
RESULT:	**Reduction**

The subject property consists of an apartment building located in Dupo, St. Clair County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming the market value of the subject property is not accurately reflected in its assessment. In support of this argument, the appellant submitted a limited appraisal estimating the subject property had a fair market value of $229,400 as of March 15, 2007. The appellant also submitted documentation showing the subject's final 2007 assessment was $93,431, which reflects an estimated market value of $279,566 using St. Clair County's 2007 three-year median level of assessments of 33.42%. Based on this evidence the appellant 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 an assessment for the subject of $78,165 was disclosed. The board of review indicated the subject property's 2006 final assessment of $76,467, as determined by the Property Tax Appeal Board under docket number 06-02434.001-C-1, is subject to equalization. The board of review reported the subject's 2007 assessment was reduced to reflect the Board's 2006 decision plus an equalization factor of 1.0222 was applied.

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 has met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the best evidence of the subject's fair market value is the appraisal submitted by the appellant. The appraisal estimated a fair market value of $229,400 as of March 15, 2007. The board of review did not submit any valuation evidence to support its assessment of the subject property as required by Section 1910.40(a) of the Official Rules of the Property Tax Appeal Board (86 Ill.Adm.Code §1910.40(a)) nor any evidence that would refute the value conclusion in the appraisal submitted by the appellant. The Board further finds the appellant submitted the only credible documentation evidencing the subject's final 2007 assessment was $93,431, not $78,165 as reported by the board of review. The subject's assessment reflects an estimated market value of $279,566. The subject's assessed valuation is considerably higher than the appraisal submitted by the appellant. Therefore, a reduction in the subject's assessment is

warranted. Since fair market value has been established, St. Clair County's 2007 three-year median level of assessments of 33.42% shall apply.

The Board gave little merit to the response offered by the board of review in this appeal. The board of review contends the Property Tax Appeal Board's prior decision, which reduced the subject's assessment to $76,467, is subject to the application of the 2007 equalization factor of 1.0222. The Board finds the board of review's inference to the applicability Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) to be in error. 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 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 the 2006 decision is not automatically carried forward to the subsequent assessment year of the same general assessment period. Due to the fact the subject parcel is not improved with a residence occupied by the owner, but is a multi-family apartment building used as a commercial enterprise to generate income, the subject's 2007 assessment is not covered by the provisions outlined in Section 16-185 of the Property Tax Code. (35 ILCS 200/16-185)

APPELLANT:	**Illinois Rural Electric Cooperative**
DOCKET NUMBER:	**06-02736.001-C-3**
DATE DECIDED:	**February, 2010**
COUNTY:	**Pike**
RESULT:	**No Change**

The subject property consists of a 5.01 acre parcel improved with a 1.65 megawatt wind turbine. The property is located in Pittsfield Township, Pike County, Illinois.[1]

The appellant appeared before the Property Tax Appeal Board by counsel contending the assessment of the subject property was excessive. The appellant argued the subject wind turbine should not be classified and assessed as real estate but should be considered personal property and exempt from real estate taxation under the provisions of section 24-5 of the Property Tax Code (35 ILCS 200/24-5). The appellant maintains that the subject wind turbine: (1) is not an integral part of the appellant's business, which is the distribution of electricity; (2) there was no intent on the part of the appellant to make the wind turbine a permanent fixture on the parcel; and (3) the subject wind turbine is not a like kind property to other turbines in Pike County.

The board of review contends it submitted evidence of like kind property to that of the subject wind turbine that was classified and assessed as real estate prior to 1979, which warrants the subject's classification as real estate. As an alternative theory, the board of review contends that under the intention test the subject wind turbine should be classified and assessed as real estate.

The first witness called on behalf of the appellant was Jeremiah Riggins. Riggins is employed by Barnhart Crane and Rigging (Barnhart), which has a primary business of building, repairing and performing maintenance on wind turbines. The witness testified he had knowledge on how to build wind turbines and how to tear down wind turbines.

Riggins has been working with Barnhart for approximately two and one-half years as the lead quality "tec" (quality technician), which does all the inspections and ensures every part of the tower is put together right. Riggins did not know who constructed the subject wind turbine tower. The witness testified that he had looked at the subject wind turbine.

He testified that once a crane is present the subject tower could be dismantled in less than one week. Riggins explained that once the tower is taken down the sections are loaded on 18 wheeler tractor/trailers. The witness explained there would be four tube sections, the nacelle, the hub and three blades. The nacelle is the large part that sits on top of the tower that holds the generator. The witness explained that each blade would be removed one at a time and placed on a different truck. Riggins stated there would be no permanent damage to the real estate other than tracks. A bulldozer would be used to smooth back the roads. The witness explained the tower could be removed in the winter and a farmer could plant again in the spring.

[1] For assessment years 2007 through 2011 wind energy devices are to be assessed in accordance with Sections 10-600 through 10-620 of the Property Tax Code (35 ILCS 200/10-600 through 10-620).

Riggins further testified a tower could be constructed in approximately a week after the foundation is built. While employed by Barnhart, Riggins has either constructed or torn down 200 to 250 towers. He stated he has taken towers down, transported them to different sites and put them back up.

Under cross-examination Riggins explained that the tubes are attached to the foundation with foundation rods that extend through the foundation. Nuts are placed on the foundation rods which they have to torque down to hold the tube in place. He testified he does not build the foundation but they are about 30 feet in the ground and the foundation would stay behind when the tower is moved. He estimated the dimension of the foundation is about 20 feet and agreed that heavy equipment would be needed to remove the foundation.

Riggins further explained that in his employment he had erected and dismantled towers all across the country including New York, California, Minnesota, Oregon, Washington and Texas. He testified he looked at the subject property the morning of the hearing for 10 or 15 minutes. He was accompanied by Bruce Giffin and they took an overall look on the layout of the land and what it would take to tear the tower down.

The witness explained the subject has four tubes, with each section of tubing measuring from 56 feet to 72 feet. These tubes are bolted together to form the tower. The witness stated the nacelle, which houses the gearbox and everything on top, would weigh from 50,000 to 70,000 pounds. The witness also stated there is a hub where the blades are attached to the nacelle. Riggins did not know the size of the hub. Riggins did not know the size of the blades at the subject property; the witness testified the blades vary in size from 129 to 136 feet.

The witness explained there are different contractors that build the foundations and he just shows up to put the parts together or take them down. He clarified the bolts are in the foundation approximately 30 feet. He further clarified this was his first time in Illinois and he has not removed or constructed any towers in Illinois. The witness further clarified that a quality technician is present on every phase of putting up a wind turbine. Quality technicians inspect it, make sure the numbers are right, make sure everything is torqued right, make sure there is no damage and make sure everything is ready for the customer. The witness further clarified that he had not been involved in taking towers down, transporting them to different sites and putting them back up, but his company has.

Under redirect he explained that he did not need more than 15 minutes to inspect the subject because he knew before arriving at the site that he could remove the tower. He explained the towers are a simple design and almost every manufacturer of turbines is the same with similar ways of putting them up or taking them down. The witness identified Appellant's Exhibit #1 as a photograph depicting similar foundation bolts. The witness identified Appellant's Exhibit #2 as a photograph depicting the tower he saw the morning of the hearing. He also testified the way the nacelle is shaped it looks as though it is a Vestas model.

Under re-cross examination the witness indicated the subject tower is approximately 295 to 310 feet tall. He also indicated the nacelle is intended to remain in place as long as they function.

The next witness called on behalf of the appellant was Bruce Giffin, general manager with Illinois Rural Electric Cooperative. He began his current employment in 1997. Giffin testified he reports to the Board of Directors, which establishes the policies and overall goals. Giffin manages the cooperative so as to work toward the achievement of the goals. Giffin has been in the electric distribution or generation business since 1991. Prior to 1997 Giffin was general manager of Fox Islands Electric Cooperative; prior to that he was Vice President at Palm Beach County Utilities Corporation; and prior to that he was a Vice President at the Connecticut Gas Company where he began in energy distribution in 1974. He explained that distribution gas companies and electric cooperatives buy a wholesale product and deliver it through an engineered system and sell it at retail. Giffin is also on the board of Prairie Power, Incorporated (PPI), a generation and transmission cooperative which is owned by Illinois Rural Electric Cooperative and nine other electric distribution cooperatives in the State of Illinois.

Giffin testified that Illinois Rural Electric is a distribution cooperative that buys power through Prairie Power on a wholesale basis and makes retail sales. He explained a generation cooperative owns or has contracts for power supply or owns generating facilities. A generation cooperative makes wholesale purchases on behalf of Illinois Rural Electric and produces electricity for and sells it to Illinois Rural Electric.

The witness testified the only production facility Illinois Rural Electric has is the subject wind turbine located in Pike County. Giffin testified Prairie Power owns the oil fired turbine at Pearl in Pike County and the natural gas fired turbines located at the Village of Alsey in Scott County. The witness testified that the Pearl oil powered generation facility is the one that Pike County is claiming is like kind property to the subject property. Giffin stated the Pearl facility is located in Pearl Township along the Illinois River. The witness identified Exhibit 1 attached to the appellant's petition for rebuttal evidence as four photographs of the oil driven turbine at Pearl. Giffin testified this turbine was housed in a building.

Giffin testified the name plate rating on the turbine at Pearl is 22 megawatts (a megawatt is a thousand kilowatts). The witness explained that the demand for the Illinois Rural Electric System is less than 20 megawatts for 74 percent of the hours of the year. Therefore, the oil fired turbine is larger than the demand for three quarters of the year. The witness testified the turbine is used as a peaking facility so its use will depend on the weather and prices on the Midwest Independent Transmission System Operator (MISO).

Giffin testified that in 2009 the cooperative's total requirements will be 161,000 megawatt hours. He anticipated the turbine in Pike County would provide 4,000 megawatt hours or slightly less than 2.5% of the total energy requirements. Giffin explained that a wind turbine simply provides energy into the system when the wind blows. He testified that if they didn't have the wind turbine, PPI is contractually obligated to meet all of their requirements.

Giffin testified the oil fired turbine at Pearl was put into service in 1974. Giffin testified that there are five gas fired turbines in Alsey, Illinois, owned by PPI, that are essentially the same size as the oil fired turbine at Pearl. He testified it took three or four months to assemble them. The witness testified he saw them moved.

Giffin testified the Pearl turbine constitutes capacity that can be turned on whenever you want to turn it on. The witness explained that as a participant in the MISO you must either own capacity facilities like Pearl, or you have to buy capacity from somebody who owns it. Giffin stated the facilities at Pearl constitute a capacity requirement by the MISO, which operates under the rules and requirements of the Federal Energy Regulatory Commission. The witness testified that the Pearl turbine is necessary because "we must have capacity."

Giffin testified the subject wind turbine is something that they do not have to have for their system. He testified the wind turbine does not provide capacity. He explained he would buy the electric from PPI. PPI would produce the electric and/or purchase it on their behalf from the MISO.

Giffin identified Appellant's Exhibit #2 as a photograph of the subject wind turbine. The wind turbine was constructed in 2005 and went into service in May 2005. Giffin personally observed the construction of the wind turbine, which took five days. He testified the construction period would have taken less time but it was windy one day and they could not put on the blades.

The witness explained that the turbine is efficient when it is windy and will produce electric when there are winds from 7 miles per hour up to 58 miles per hour. Giffin stated that on an average annual basis the turbine produces about 30 percent of its name plate capacity. The subject has a name plate rating of 1.65 megawatts and is not near the production capacity of the 22 megawatt Pearl facility.

The witness explained as the wind speed increases the blades only go at 14 rpm, relatively slowly. As the wind speed increases the torque builds up and more electric is produced. He agreed that there is a gearbox that regulates the speed of the generator producing more or less electricity.

The location of the wind turbine in Pike County was based on maps of the United States produced by the National Renewable Energy Laboratory, which showed simulations of areas in which there was likely to be utility grade wind. Giffin testified the subject wind turbine was constructed for three reasons: (1) if you can produce electricity from wind rather than from coal or natural gas, that is the right thing to do; (2) if the wind resource could be developed in Pike County it would contribute to the economic development of Pike County; and (3) since they were getting such substantial help from the federal government, state government and the Illinois Clean Energy Foundation they were able to do it at a price which was right at the time.

Giffin explained that the construction had to be economic for them meaning production costs would have to be lower than the wholesale market price for energy on the MISO. The target for Illinois Rural Electric was that the cost of production from the tower had to be equivalent to the marginal price of coal, which drove the price in the Midwest market at the time. Giffin testified it is still favorable to have the tower.

He testified that if the economic conditions were not favorable he would recommend to the Board of Directors to sell the subject wind turbine.

Giffin testified it cost $1,887,000 to build the wind turbine. Illinois Rural Electric borrowed $1,000,000 from the Department of Agriculture. Illinois Rural Electric also received $450,000 from the Federal Department of Agriculture, $250,000 from the Illinois Department of Commerce and Economic Opportunity, and $175,000 from the Illinois Clean Energy Foundation. The witness explained that they had to have that much grant money to make the project go; if they had gotten less than that Illinois Rural Electric could not have built the tower.

The witness testified if they sell the tower within the first five years they have to return to the federal government a prorated portion of their grant.

The witness testified that new towers the size of the subject on the market for the past year have been in the range of $2,000,000. He further testified there is an active market and was told by General Electric there was a two year waiting period for General Electric turbines.

Giffin testified they had the intention of having the subject turbine in operation as long as it was economic.

Giffin testified the subject turbine tower is 234 feet tall. The witness identified Appellant's Exhibit #1 as a photograph of the subject he took in April or May 2005 where a worker is bolting the bottom section of the tower to the foundation. To remove the tower you would dismantle the sections and then unscrew the bottom section and lift it with a crane. The witness testified the tower is not housed in any kind of building and the turbine is not essential to the operation of the business because Prairie Power, Incorporated then Soyland is contractually obligated to meet all of the demand on their system.

Giffin stated he was familiar with Exhibit 4 to the Petition for Rebuttal Evidence, which is the Notice of the 2004 Annual Meeting of the Illinois Rural Electric Cooperative. He testified that Illinois Rural Electric agreed that the foundation, driveway and fencing are fixtures worth $130,000.

Giffin testified that if the wind turbine was no longer part of the distribution system they would not notice any impact and they can distribute electricity without the wind turbine.

Giffin also stated that he was aware of other wind driven towers in Pike County that have not been considered real estate. He identified wind towers used to pump water. Giffin identified Exhibits 2 and 3 to the Petition for Rebuttal Evidence as photographs of wind mills used to pump water and copies of property information reports showing the assessments for a parcel owned by Velma Christison and Thomas B. Hughes Jr. Giffin contends these are similar to the subject and operate when the wind is blowing to power a shaft as the blades turn to have some usable form of power.

Giffin differentiated the Pearl facility from the subject wind turbine by noting Pearl provides capacity which is required by MISO under the regulations of the Federal Energy Regulatory Commission. Second, the turbine at Pearl can be turned on when needed but the wind turbine can't be turned on, it only produces electricity when there is wind. He did acknowledge they both produce electricity.

Under cross-examination Giffin testified that the turbine depicted in Exhibit 1 to the Petition for Rebuttal Evidence was at the Pearl facility in 1974 and essentially depicts the turbine as it would have appeared prior to 1979. The turbine has always had a name plate capacity of 22 megawatts. Giffin explained that the Pearl facility is a peaking facility meaning it can be dispatched on the hottest day of the year; it can be turned on when demand on the electric system is the highest. The witness stated the Pearl facility was a peaking facility prior to 1979.

In clarifying the size of the subject, Giffin stated from the base to the nacelle at the subject is 234 feet and the blades are 105 feet. Giffin agreed there is a fence around the wind tower and agreed that the fence around the wind tower is smaller and would be easier to move than the wind tower. The witness testified that to access the nacelle there is a ladder inside the tube with a safety on it and one can go up the ladder on the inside of the tube.

Giffin asserted that windmills which pump water for agricultural purposes are personal property. This was based on examination of tax records where they were never found to be listed on a real estate tax bill. The examination of the records was done under his direct supervision over the course of preparing material for this appeal. The subject wind turbine does not pump water on the subject property and is not used directly to pump water for livestock.

Giffin indicated there were no other activities going on at the subject property and the property was previously being used as farm property. He also agreed that if you brought the right people with the right equipment the turbine at the Pearl facility could be transferred to another location.

Giffin testified the wind turbine is being depreciated over 20 years, which they believe approximates the useful life of the equipment. Giffin testified that it took approximately five days to erect the tower but the foundation took several weeks to cure. He also thought the foundation was thirty-two feet deep and 15 feet across. He also indicated that as long as it is economically feasible the wind turbine will remain in place, which could be beyond the 20 year expected life of the property.

Giffin explained that there are relatively few pieces to the wind turbine in contrast to combustion turbines which have thousands of pieces, extensive plumbing, fuel supply and more extensive electrical connections. Additionally the combustion turbines are on a slab foundation while the wind turbine is up in the air.

The next witness called on behalf of the appellant was Donald G. Bergmann. Bergmann resides on a farm east of Perry, Pike County, Illinois. He purchased the farm from his father in 1969. His father owned the property beginning in 1933. He testified that he put a turbine to produce electricity on the windmill tower that he has on his farm. He explained that before the turbine there was a fan or mill head on the tower used to pump water for livestock and the home. The tower is 40 feet tall. The tower is bolted to the ground and has been in place since at least from 1930. He explained that when the wind was not blowing a gasoline engine worked the pump. He further explained that subsequently an electric motor replaced the gasoline engine to work the pump which was later replaced by a submersible pump in the well. To his knowledge the tower has not been assessed as real estate. He further explained that you could unbolt the legs of the tower and move it. He also stated that prior to 1979 he could operate the farm without the wind tower by using other wells, pack water or use a gas motor.

Under cross-examination Bergmann expected it might cost $5,000 or $6,000 to replace the tower on his property. He further stated that he had not reviewed any records at the Supervisor of Assessments' office to determine what was exactly assessed as real estate.

Under re-direct the witness stated he asked Cindy (Shaw) if the tower had been assessed as real estate and she indicated that it hadn't.

The next witness called by the appellant was William Christison. Christison lives on a farm two and a half miles east of Detroit, Pike County, Illinois. The witness stated that he has a windmill on his farm but it does not operate anymore. The windmill has been in place since he moved to the farm in 1950. The windmill was used as a source of power to pump water for cattle and hogs. If the wind was not blowing he would use a gasoline motor to power the pump. He stated that he could operate the farm without the windmill providing water for the farm. To his knowledge the windmill was not taxed as real property. Christison had not talked to the assessor's office to find out whether the windmill had been taxed as real estate.

Christison stated his wife's name is Velma Marie Christison and he resides at 25466 475th Street, Pittsfield. Christison identified the second photograph of Exhibit 2 to the Petition for Rebuttal Evidence as the windmill on his farm. He also examined Exhibit 3 to the Petition for Rebuttal Evidence, the Parcel Information Report for parcel number 52-011-02 and stated he did not see anything other than a farmland assessment.

Under cross-examination Christison testified the tower is still on the property and that if it is being assessed and taxed as real estate he does not know it.

Christison also identified the fourth photograph of Exhibit 2 to the Petition for Rebuttal Evidence as a photograph of the same windmill on his farm. The witness did not know whether the parcel identified in Exhibit 3 to the Petition for Rebuttal Evidence was the same parcel where the windmill on his farm is located. The witness agreed that the assessment year for Exhibit 3 to the Petition for Rebuttal Evidence was 2007. He did not know whether farm buildings are assessed based on their contributory value to the farm operation.

Giffin was recalled as a witness and testified the parcel identified in Exhibit 3 to the Petition for Rebuttal was the same parcel that had the photographs of the windmill.

Based on this evidence, the appellant on the Commercial Appeal petition requested the subject's total assessment be reduced to $48,543, reflecting a market value of approximately of $146,570, rounded, when using the 2006 three year median level of assessments for Pike County of 33.12%.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $571,000 was disclosed. The improvements had an assessment of $565,773 and the land had an assessment of $5,227. The subject's assessment reflects a market value of approximately $1,724,000, rounded, when using the 2006 three year median level of assessments for Pike County of 33.12%.

The board of review submitted a copy of the property record card for the subject property marked as Exhibit D. Page two of Exhibit D indicated the fence located on the subject had a market value of $5,630 and an assessment of $1,875; the road and base (concrete) had a fair market value of $130,000 and an assessment of $40,300; and the tower/turbine was considered real estate valued at $1,700,000 ($1,000,000 x 1.7 megawatts) and assessed at $518,500 or 30.5% of the value.

The board of review called as its witness Cindy Shaw, Pike County Supervisor of Assessments. Shaw has been the supervisor of assessments for six years. She testified that prior to 1979 turbines generating electric power in Pike County were considered real estate. She testified she went back into the township books in Pearl Township and the turbine at the power plant was assessed as real estate. She testified that it was put on in 1974.

Shaw testified that the turbine from the Pearl Township facility was depicted on board of review Exhibit B, the Assessor's List of Taxable Lands in the Township for Assessment Years 1971, 1972, 1973 and 1974. She was of the opinion the generator at Pearl is substantially similar to the subject wind turbine generator because they both produce electricity.

Shaw also testified that she did not recall speaking to Bergmann about the issue of whether his 40 foot tower was assessed and taxed as real estate. She testified she has spoken to him in the past because he is a township supervisor and she was surprised to hear him testify that she had spoken to him about that particular issue.

Shaw further identified Respondent's Exhibit 1 as an aerial view of property owned by Christison. On her review of the aerial map she could not identify the windmill located on parcel number 52-011-02. She further indicated the windmill may be located on parcel number 52-010-03 owned by Christison. She also reviewed Respondent's Exhibit 2, a printout of parcel 52-010-03, noting it has a $300 assessment for a farm building that she indicated could be attributed to the windmill, but she was not 100% sure.

Under cross-examination Shaw stated she was not positive the windmill was on parcel 52-010-03. She also stated she did not recall talking to Bergmann about the windmill. Shaw also testified since both the turbines at Pearl and the subject property generate electricity she considered them like property.

Shaw also testified she assessed the subject property at 30% of the fair market value.

Shaw was question with respect board of review Exhibit B. She stated that line 10 was for a land assessment and line 11 is for both land and improvement assessment at the Pearl facility. She noted that in 1974 the assessor noted a "new turbine add $182,000." She stated that the 1974 improvement assessment of $787,200 reflects the turbine assessment. She agreed that it was based on this ledger that she determined the subject property should be assessed as real estate.

Giffin was called as a witness and using Respondent's Exhibit 1 could not locate the windmill that was allegedly located on parcel 52-011-02, Exhibit 3 to the Petition for Rebuttal.

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 wind turbine has been incorrectly classified and assessed as real property. The appellant argued the subject wind turbine should be considered personal property, which is exempt from assessment and not taxed as real estate. The board of review contends the subject wind turbine is like kind to an oil fired turbine located at another facility in Pike County that was classified and assessed as real property prior to 1979 and, therefore, should be classified and assessed as real property.

Illinois' system of taxing real property is founded on the Property Tax Code. (35 ILCS 200/1-1 et seq.) Section 1-130 of the Property Tax Code (hereinafter the Code) defines "real property" in pertinent part as:

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . . (35 ILCS 200/1-130).

As a general proposition, except in counties with more than 200,000 inhabitants that classify property for taxation purposes, each tract or lot of property is to be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145.

Of further relevance to this appeal is the following passage from the Illinois Constitution, which states:

> On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. . . . Ill.Const. 1970, art.IX, §5(c).

As mandated by the above excerpt from the Constitution of 1970 the General Assembly enacted the Illinois Replacement Tax Act (Ill.Rev.Stat.1979, ch.120, ¶499.1, now codified at 35 ILCS 200/24-5) to replace the revenues lost by the abolition of the personal property tax. Also known as the "Freeze Act," the statute was amended in 1983 to add a prohibition against the reclassification of property of like kind acquired or placed in use after January 1, 1979. Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855, 863-864 (3rd Dist. 1983). Section 24-5 of the Code now provides in part that:

> Ad valorem personal property taxes shall not be levied on any personal property having tax situs in this State. . . No property lawfully assessed and taxed as personal property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as real property subject to assessment and taxation. No property lawfully assessed and taxed as real

> property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property.

The legislature's intent in passing this provision of the Replacement Tax Act was to "freeze" classifications of property to their pre-January 1, 1979 classifications. Property that was lawfully classified as real property or personal property before January 1, 1979 cannot be reclassified as personal property or real property after that date. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855 (3rd Dist. 1983). Thus, the classification of property as either real or personal prior to January 1, 1979 controls the status of property after January 1, 1979. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981).

The taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and, thus, proving that such property was lawfully assessed and taxed as personal property prior to January 1, 1979. Trahraeg Holding Corp. v. Property Tax Appeal Board, 204 Ill.App.3d 41, 43 (2nd Dist. 1990). However, if the taxpayer meets this burden, the property must be classified as personal property without resorting to any other method of classification. Trahraeg Holding Corp. 204 Ill.App.3d at 43; Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996).

The court in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3rd Dist. 1995) considered the criteria used by the Property Tax Appeal Board in determining whether certain items of machinery and equipment put into service after 1979 was "of like kind" to pre-1979 personal property. The court stated "any common sense construction of the term like kind would require substantial similarities between pre-1979 and post-1979 equipment." County of Whiteside, 276 Ill.App.3d at 186. The court concluded the factors relied upon by the Property Tax Appeal Board were sufficient to establish a like kind relationship. The factors relied upon by the Property Tax Appeal Board in that appeal included: (1) performance of the same function; (2) production of the same product; (3) similar portability and manner of attachment; and (4) that the new equipment replaced the existing equipment. Id.

The court in Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170 (3rd Dist. 1996), further discussed the workings of the Freeze Act. The court noted the Freeze Act also provides that the classification is frozen only if it was lawfully made. The court further stated that it is unlawful for an assessor to exempt one kind of property while classifying the same kind of property in the same district as nonexempt. The court further recognized that Article IX, section 4(a) of the Illinois Constitution states that, "taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." The Illinois Supreme Court further explained that:

> The principle of uniformity of taxation requires equality in the burden of taxation. [Citation.] This court has held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation. [Citation.] 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. [Citation omitted.]

The court concluded that an assessment of taxes on property is not lawful if it creates a "substantial disparity between similar properties or classes of taxpayers." Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170, 178 (3rd Dist. 1996); Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309 (3rd Dist. 1973).

The court in Oregon found that the Freeze Act contains no language indicating that the like kind comparison of machinery and equipment is limited to property located at one plant or at the same location. Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d at 180-181. The court also found that the legislative history of the Freeze Act indicates that the purpose of the like-kind provision was to continue the assessment practices of assessors in their respective counties. Id. The court further found that the like kind criteria used by the Property Tax Appeal Board in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3rd Dist. 1995) was not the exclusive method for determining whether the Freeze Act applies to post 1978 property. Oregon, 285 Ill.App.3d at 182-183.

When a county's pre-1979 method of classifying property as real or personal can be ascertained, that practice must be applied to property acquired in the same county after January 1, 1979. Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d at 182.

With these assessment and classification principles as a guide, the Property Tax Appeal Board finds the subject property was correctly classified and assessed as real property.

The Property Tax Appeal Board finds the parties are in agreement that the land, concrete foundation and fencing surrounding the wind tower are to be classified and assessed as real property. The parties disagree with respect to the classification and assessment of the tower, which measures 234 feet, supporting the wind turbine and the generating equipment located within the nacelle at the top of the tower as real property. The Board finds there was no testimony or evidence that segregated the cost of the tower and the generating equipment within the nacelle. Giffin testified it cost $1,887,000 to build the wind turbine, which included the tower. The property record card disclosed that the tower and turbine were valued at $1,700,000 by the Pike County assessing officials. The primary issue before this Board is whether the tower and generating equipment within the nacelle are to be classified and assessed as real property.

As previously stated, Section 1-130 of the Code defines "real property" in pertinent part as:

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . . (35 ILCS 200/1-130).

After considering the testimony and after viewing the photographs of the subject tower and foundation bolts affixing the 234 foot tower to the 32 foot deep by 15 foot wide concrete base, the Board finds the wind tower itself is a structure or improvement that is to be considered real property for assessment purposes. The tower serves as a structure or support base for the generating equipment located at the top of the tower housed within the nacelle. The tower also provides access to the nacelle and the generating equipment by a ladder within the tower itself. Based on this record the Board finds the tower is real property.

The Board further finds that the appellant did not meet its burden of proof with respect to establishing that the subject tower should be exempt under section 24-5 of the Code and, thus, proving that such property or like-kind property was lawfully assessed and taxed as personal property prior to January 1, 1979. First, the Board finds the windmills cited by the taxpayer were not particularly similar in construction, size and use as the subject tower to establish that they are like kind. Second, the taxpayer did not present any credible testimony or documentary evidence that the windmills were classified and assessed as personal property prior to January 1, 1979.

The Board finds the taxpayer's evidence with respect to whether or not the farm windmills are currently classified and assessed as real property was not persuasive in establishing that the subject tower should be exempt from classification and assessment as real property. First, the testimony of the witnesses with respect to the assessment of the windmills was somewhat equivocal. Second, as stated above, the Board finds the windmills and the subject tower are not similar in construction, size and use. Third, and more importantly, the photographs of the windmills and the testimony provided by the appellant's witnesses, Bergmann and Christison, clearly disclosed these farm windmills are in poor condition, dilapidated and non-functioning farm structures. There was no testimony that these water windmills were contributing to the productivity of the farm parcels cited in the appeal. With respect to the assessments of farm improvements the Board finds section 10-140 of the Code provides that:

> Other improvements. Improvements other than the dwelling, appurtenant structures and site, including, but not limited to, roadside stands and buildings used for storing and protecting farm machinery and equipment, for housing livestock or poultry, or for storing feed, grain or any substance **that contributes to or is a product of the farm**, shall have an equalized assessed value of 33 1/3% of their value, **based upon the current use of those buildings and their contribution to the productivity of the farm**. (Emphasis added.)

35 ILCS 200/10-140. Based on this record, the Board finds that it was appropriate that the windmills cited by the appellant as comparable to the subject tower should not be assessed as improvements to the respective farm parcels. The Board finds these water windmills did not contribute to the productivity of the farm parcels and were properly not assessed. The Board finds the subject tower's assessment is a different class of commercial property from the farm improvements and its assessment is not contingent upon contributing to the productivity of the parcel to which it is affixed.

The Board must next determine whether the wind turbine electric generating equipment within the nacelle is real property. The Board finds that the evidence and testimony provided by the Pike County Board of Review was that an oil fired turbine located in Pearl Township, Pike County, had been classified and assessed as real estate beginning in 1974. The appellant provided no testimony or evidence to refute this contention. Instead, the appellant challenged the like kind nature of the oil fired turbine as compared to the wind turbine generating equipment located at the subject property. The Board finds the two turbines are sufficiently like-kind to support the conclusion the subject wind turbine should be classified and assessed as real property pursuant to the dictates of section 24-5 of the Property Tax Code. (35 ILCS 200/24-5).

The Property Tax Appeal Board recognizes that there is a difference in size of the two turbines with the one located at Pearl having a name plate capacity of 22 megawatts as compared to the subject wind turbine with a 1.65 megawatt name plate capacity. The Board also recognizes that the two turbines are powered by different sources, one being powered by fuel oil and the other being powered by the wind. The Board further finds the turbine at Pearl can be started and turned off as needed to meet demand while the production of electricity at the subject wind turbine is limited by the existing wind. However, the Board finds the wind turbine at the subject property performs the same basic task as the oil fired turbine at Pearl in producing electricity that is distributed to Illinois Rural Electric Cooperative customers. The Board further finds the wind turbine at the subject property and the oil fired turbine at Pearl produce the same product, electricity, although in different megawatt capacities.

In summary, the Board finds both turbines in Pike County are used to produce electricity for distribution to customers of Illinois Rural Electric Cooperative. This leads the Property Tax Appeal Board to the conclusion these turbines are like kind properties that should have the same classification for real property assessment purposes as required by the uniformity clause of the Illinois Constitution of 1970 and section 24-5 of the Property Tax Code which provides in part that:

> No property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property.

The Board further finds the appellant did not challenge the estimate of market value of the subject property as reflected in the assessment. The Board finds the appellant presented testimony that the cost to build the wind turbine in 2005 was $1,887,000, which excludes the value of the land. The subject's total assessment of $571,000 reflects a market value of approximately $1,724,000, rounded, when using the 2006 three year median level of assessments for Pike County of 33.12%. Based on this record the Board finds the classification and assessment of the subject property by the Pike County Board of Review is correct.

APPELLANT:	**Randall Jacklin**
DOCKET NUMBER:	**05-20654.001-C-1 through 05-20654.005-C-1**
DATE DECIDED:	**March, 2010**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a 21,950 square foot, non-sprinkled, cut-up and divided; one and part two-story, with no basement, masonry-constructed, warehouse building constructed in stages over time from 1935 to 1981. The first floor consists of 12,955 square feet of warehouse and shop area including a small amount of retail showroom and office space. The second floor consists of 8,995 square feet of predominantly storage space and a six-room apartment with only one form of ingress and egress to the unit. The improvements are situated on a 15,000 square foot site zoned C-1, Limited Commercial District, and a non-contiguous 3,741 square foot site utilized for parking, zoned A-1, Single Family Residential District in Berwyn, Illinois.
The appellant, through counsel, submitted evidence before the Property Tax Appeal Board and 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 to the market value argument, the appellant submitted a copy of a self-contained complete appraisal report prepared by a State of Illinois certified real estate appraiser. The appraisal disclosed that the appraiser made a personal inspection of the subject property and that the appraiser determined the subject's highest and best use to be its current use. The appraiser utilized the three traditional approaches to value to estimate a market value of $385,000 for the subject as of January 1, 2005.

In the cost approach to value, the appraiser reviewed the sales of five parcels located within the subject's market area. After considering adjustments for market conditions, size, location and zoning, the appraiser opined a value for the subject's land, if vacant, of $7.25 per square foot, or $135,000, rounded. Using the *Marshall Valuation Service* to estimate replacement cost, the appraiser estimated a replacement cost new for the subject of $765,000. Accrued depreciation from all causes was estimated to be 65%, or $497,250, and deducted from the estimated replacement cost new. A cost of $25,000 for other site improvements was added to the depreciated cost of the main improvement, as was a land value of $135,000. Thus the appraiser determined a value for the subject via the cost approach of $405,000 rounded, as of January 1, 2005.

The next method employed by the appraiser was the income capitalization approach. Rental data from five properties located in the subject's market area were used as the basis of this approach. The appraiser indicated that considering the subject's interior finish, inferior loading facilities, cut-up and divided area as well as other relevant factors arrived at a gross rent of $5.00 per square foot of building area. Thus, the potential gross income (PGI) was estimated to be $109,750. Based on current vacancy levels in the market, the appraiser estimated a 7% vacancy and collection loss rate, resulting in an effective gross income of $102,067. The next step taken by the appraiser was the deduction of expenses totaling $25,176, resulting in a net operating income of $76,891 (NOI) for the subject. The appraiser then researched the market utilizing the

band of investment technique to determine an overall capitalization rate of 19.44% for the subject. Applying the capitalization rate to the NOI resulted in a value for the subject through the income approach of $395,000 rounded, as of January 1, 2005.

Next, the appraiser examined the sales of five, one-story, structural brick, warehouse or service type buildings built between 1949 and 1979 to estimate a value for the subject through the sales comparison approach. The five comparables are located in Cicero, Maywood or Riverdale, Illinois. With land areas ranging in size from 13,250 to 58,017 square feet and building sizes ranging from 10,000 to 39,014 square feet, the comparables have land to building ratios ranging from 1.07:1 to 1.83:1. The comparables sold between June 2002 and January 2005 for prices ranging from $170,000 to $700,000, or from $11.49 to $17.94 per square foot of building area, including land. After adjustments, the appraiser concluded a value for the subject via the sales comparison approach of $17.50 per square foot of building area, including land, or $385,000, rounded as of January 1, 2005.

In reconciling the three approaches to value, the appraiser placed the most weight on the sales comparison approach and the income capitalization approach to value with secondary weight placed on the cost approach. The appraiser's final estimate of fair market value for the subject was $385,000, as of January 1, 2005. Based on the evidence submitted, the appellant requested an assessment reflective of a fair market value for the subject of $385,000.

In support of the equity argument, the appellant submitted assessment data on three of the five properties utilized in the appellant's sales comparison approach to value. The three comparables consist of one-story, structural brick, warehouse or service type buildings built between 1949 and 1955 located within the subject's market area. The total assessments range from $92,760 to $209,211 or from $3.31 to $6.70 per square foot of building area. Based on the evidence submitted, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject's total combined assessment of $175,001, which reflects a market value of $460,528, or $21.00 per square foot of building area, utilizing the Cook County Real Property Assessment Classification Ordinance level of assessment of 38% for Class 5a property, such as the subject. As evidence, the board of review submitted five sales with an unadjusted range from $23.25 to $48.59 per square foot of building area, including land. No analysis or adjustment of the sales data was provided by the board. Based on the evidence presented, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant submitted a two-page brief arguing that included in the board's documentation is evidence of five alleged comparable sales that, by the board of review's own admission are not "adjusted for market conditions, time, location, age, size, land to building ratio, parking, zoning and other related factors."

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 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); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arms-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)). Having considered the evidence, the Board finds the appellant has satisfied this burden and a reduction is warranted.

In determining the fair market value of the subject property, the Property Tax Appeal Board finds the best evidence to be the appellant's self-contained complete appraisal report. The appellant's appraiser utilized the three traditional approaches to value to estimate the fair market value of the subject. The Board finds this appraisal to be persuasive as the appraiser reviewed the subject's history; utilized appropriate market data in undertaking the three approaches to value; and lastly, used similar properties in the sales comparison approach while providing sufficient detail regarding each sale as well as adjustments that were necessary. The Board gives little weight to the board of review's comparables as the information provided was raw sales data with no adjustments made.

Therefore, the Property Tax Appeal Board finds that the subject had a fair market value of $385,000 as of January 1, 2005. Since fair market value has been established, the Cook County Real Property Assessment Classification Ordinance level of assessment for Class 5a property of 38% shall apply. In applying this level of assessment to the subject, the total combined assessed value is $146,300, while the subject's current total combined assessed value is above this amount at $175,001. Therefore, the Board finds that a reduction is warranted.

As a final point, the Board finds no further reduction is warranted based on the appellant's equity argument.

APPELLANT:	**Mt. Hawley Insurance Co.**
DOCKET NUMBER:	**07-00539.001-C-2**
DATE DECIDED:	**August, 2010**
COUNTY:	**Peoria**
RESULT:	**Reduction**

The subject property consists of a 124,366 square foot site improved with a one-story office building constructed in 1971, with additions in 1982 and 1986. The structure contains a full, partially exposed lower level and is constructed of brick and precast aggregate panels. The upper level contains 38,502± square feet of building area partitioned into general office areas, private offices, conference rooms, an employee lounge and a maintenance room. The lower level contains 39,214± square feet of building area partitioned into a reception area, general offices, private offices, conference rooms, a computer room, employee lounge, fitness area, print shop, mail area and mechanical rooms. The subject is located in the City of Peoria.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming the fair market value of the subject was not accurately reflected in its assessed value. In support of this argument an appraisal was submitted with an estimated fair market value of $3,600,000 as of January 1, 2007 using the three traditional approaches to value.

James W. Klopfenstein, a licensed appraiser, was called as a witness to testify regarding his appraisal methodology and final value conclusion. Klopfenstein has the Member, American Institute Real Estate Appraisers (MAI) and Senior Residential Appraiser, designations from the Appraisal Institute. He is a State Certified General Real Estate Appraiser with over 42 years experience. He inspected the subject parcel on or about September 2007 and developed a cost approach, sales comparison approach and income approach to estimate the subject's market value. Klopfenstein opined that the subject's highest and best use of the subject site as though vacant and as improved was for commercial purposes which include office usage.

Under the cost approach to value, Klopfenstein estimated the subject's site value of $373,098 ($375,000 rounded) or $3.00 per square foot of land area. Klopfenstein examined five vacant land sales in Peoria, Illinois that ranged in size from 63,598 to 219,281 square feet of land area. The sales occurred from January 2004 to March 2007 for prices ranging from $150,000 to $1,529,000 or from $1.90 to $6.97 per square foot of land area. Klopfenstein used the Marshall Valuation Service Cost Manual to estimate a cost new for the improvements of $6,450,428 or $83.00 per square foot of building area. Physical depreciation was estimated to be 33 1/3% or $2,149,928 using the age/life method. Klopfenstein found no functional obsolescence, however, 25% external obsolescence ($1,075,125) was found due to the subject being considered an over-improvement for the site with limited marketability for single occupant buildings. Klopfenstein testified that the subject as a single occupant building has limited marketability because it is in excess of 75,000 square feet with minimal interior partitioning. Alterations into a multi-tenant building would be expensive in terms of adding partitioning and hallways. Therefore, Klopfenstein opined that the subject would have a difficult time marketing itself to another single tenant user. Klopfenstein next added a depreciated value of site improvements of $150,000 to calculate an estimated depreciated value of all improvements of $3,375,375. An estimated site

value of $375,000 was added to arrive at an estimated value under the cost approach of $3,750,375 or $3,750,000, rounded.

Klopfenstein next developed the sales comparison approach. Klopfenstein examined four comparable sales of commercial buildings. Three of the comparable sales were located in Peoria, Illinois and one was located in Pekin. The comparables were built from 1972 to 1992. The sales consisted of one, part one-story and part three-story steel and masonry building, one, two-story masonry building, one, three-story metal panel building and one, six-story steel and concrete building. Three of the comparable sales have a slab foundation and one has a partially partitioned basement. The interiors were partitioned into general office areas. The buildings ranged in size from 19,038 to 85,400 square feet and were situated on parcels ranging from 50,530 to 255,305 square feet of land area. The comparables sold from January 2002 to September 2006 for prices ranging from $1,250,000 to $6,800,000 or from $33.82 to $79.63 per square foot of building area, including land. Klopfenstein adjusted the comparables for differences when compared to the subject for date of sale, location, site size and site physical characteristics, building size and attending physical characteristics. Based on these adjusted sales, Klopfenstein estimated a value for the subject property under the sales comparison approach of $3,497,220 or $45.00 per square foot of building area, including land or $3,500,000, rounded.

Klopfenstein next developed the income approach to value utilizing five rental properties located in Peoria, Illinois. The comparables were described as multi-tenant office buildings that ranged in size from 69,633 to 230,158 square feet of building area. The properties ranged from 4-story to 20-story steel and masonry buildings with lease terms from 3 to 10 years. Their rentals or offerings ranged from $11.00 to $16.50 per square foot. They had occupancy rates ranging from 87% to 100%. The appraiser made adjustments to the comparables for multi-tenant occupancy, location, interior finish, partitioning, age and condition. Based on an analysis of this data, Klopfenstein estimated the subject had an indicated market rent of $6.00 per square foot of building area, including site and site improvements. The appraiser estimated the subject had a gross potential annual income of $466,296.

Klopfenstein assumed annual expenses of 20% or $93,256 for vacancy and credit losses, structural and exterior repairs, maintenance and reserve for replacements. After making these deductions, Klopfenstein estimated the subject had a net annual income of $373,040.

The appraiser then estimated the overall capitalization rate for the subject from the market using a mortgage equity band of investment analysis. Market trends indicated a 75% loan-to-value mortgage at 7.5% with a 20-year repayment for an indicated mortgage constant of .096671. Discussions with investors indicated an equity dividend rate of 12%. Based on this analysis, Klopfenstein estimated an overall capitalization rate for the subject of 10.25%. Capitalizing the subject's net income resulted in an estimate of value under the income approach of $3,639,415 or $3,650,000, rounded.

In reconciliation, Klopfenstein placed most weight and consideration on the sales comparison approach and income approaches because "those more nearly reflect the actions of typical purchasers and investors in this market." Therefore, he estimated a final market value of $3,600,000 for the subject property as of January 1, 2007.

Based on this evidence the appellant requested a reduction in the subject's assessment to reflect the estimated market value of $3,600,000 as set forth in the appraisal.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $1,334,120 was disclosed. The subject's assessment reflects a market value of approximately $4,016,014 or $51.68 per square foot of building area, including land, using the 2007 three-year median level of assessments for Peoria County of 33.22% as determined by the Illinois Department of Revenue. In support of the subject's assessment, a letter from the board of review was submitted along with a grid sheet using four of the appellant's comparable sales which were located in Pekin and Peoria.

The board of review argued that the appellant's comparable sales ranged from $33.82 to $79.63 per square foot of building area, including land. The board of review further argued that sales #2, #3 and #4 were most similar to the subject in location with sale #2 being most similar in size to the subject. Board of Review member, Mike Fortune, testified that the subject's assessment of $1,334,120 equates to an estimated market value of $4,002,360 or $51.50 per square foot of building area, which is slightly above the appellant's comparable #4 and below comparables #2 and #3. In addition, it was argued that the appellant's appraisal estimated the subject's potential gross income of $6.00 per square foot, which is below the five rental comparables contained within the appraisal. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant submitted a letter signed by Klopfenstein which indicates the appraisal report provided additional data and reasoning to support the subject's estimated market value of $45.00 per square of building area, including land. It was further pointed out that the board of review presented no evidence, data or analysis of its own to support the subject's assessed value.

In addition, the appellant argued that the board of review failed to consider supporting rental data and reasoning contained within the appraisal report (page 51) which supported Klopfenstein's estimate of value under the income approach to value.

After hearing the testimony and having considered the evidence, the Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant contends overvaluation as the basis of the appeal. 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 further finds the best evidence of the subject's market value in this record is the appraisal, prepared by James Klopfenstein, MAI, SRA, with an estimated opinion of value of $3,600,000.

The appraiser, James Klopfenstein, estimated the subject's market value of $3,600,000 using the three traditional approaches to value. The Board finds the estimated value is adequately supported by the evidence contained in this record.

The Board finds the appellant submitted an appraisal of the subject property in which the subject's market value was estimated to be $3,600,000 as of January 1, 2007. The subject's

assessment reflects an estimated market value of approximately $4,016,014 or $51.68 per square foot of building area, including land. The board of review submitted four comparable sales, used by the appellant that sold for prices ranging from $33.82 to $79.63 per square foot of building area, including land. However, no adjustments were made for differences in time of sale, land size, access, location and physical characteristics such as building size, condition, age and design. The Board finds the appraiser's testimony was credible and he used a logical and proper adjustment process to account for differences of the four comparables in the appraisal when compared to the subject. The board of review employed no such adjustment process in regards to the sales comparables. The Board finds the best evidence of the subject's market value is found in the version of the subject's appraisal with an effective date of January 1, 2007 as submitted by the appellant. Therefore, the Board finds the subject's market value as of the subject's assessment date of January 1, 2007 is $3,600,000.

In conclusion, the Board finds the appellant has demonstrated the subject property was overvalued 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 2007 three-year weighted average median level of assessments for Peoria County of 33.22% shall apply.

APPELLANT:	**Magdovitz Agency, Inc.**
DOCKET NUMBER:	**08-00104.001-C-1**
DATE DECIDED:	**August, 2010**
COUNTY:	**Champaign**
RESULT:	**No Change**

The subject property consists of a one-story commercial building of brick construction that contains 1,152 square feet of building area. The subject building is used as a Post Office and is located on a 5,148 square foot parcel in Sadorus, Sadorus Township, Champaign County.

The appellant claims overvaluation as the basis of the appeal. In support of this argument the appellant submitted documentation disclosing the subject property was purchased in April 2007 for a price of $50,000. The evidence further revealed that the appellant filed the appeal directly to the Property Tax Appeal Board following receipt of the notice of a township equalization factor of .9350 issued by the board of review reducing the assessment of the subject property from $41,930 to $39,200. A copy of the board of review notice submitted by the appellant indicated the equalized assessment reflected an estimated market value of $117,611. Based on this evidence the appellant requested the subject's assessment be reduced to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $39,200 was disclosed. After reviewing the appellant's evidence, the board of review stated that Sadorus Township had a "negative multiplier" in 2008 and further argued the Property Tax Appeal Board did not have jurisdiction.

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 appellant timely filed the appeal from the assessment notice issued by the board of review reducing the assessment of the subject by the application of an equalization factor of .9350, which conferred jurisdiction on this Board.

Based upon the evidence submitted, the Board finds that a change in the subject's assessment is not warranted. The record disclosed that the appellant appealed the assessment directly to the Property Tax Appeal Board based on notice of a township equalization factor of .9350 issued by the board of review reducing the assessment of the subject from $41,930 to $39,200. Since the appeal was filed after notification of an equalization factor, the amount of relief that the Property Tax Appeal Board may grant is limited by rule and statute. Section 1910.60(a) of the rules of the Property Tax Appeal Board states in part:

> If the taxpayer or owner of property files a petition within 30 days after the postmark 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.Admin.Code §1910.60(a). (Emphasis added.)

Additionally, section 16-180 of the Property Tax Code (35 ILCS 200/16-180) provides in pertinent part:

> Where no complaint has been made to the board of review of the county where the property is located and the appeal is based solely on the effect of an equalization factor assigned to all property or to a class of property by the board of review, **the Property Tax Appeal Board may not grant a reduction in the assessment greater than the amount that was added as the result of the equalization factor.** (Emphasis added.)

These provisions mean that where a taxpayer files an appeal directly to the Property Tax Appeal Board after notice of application of an equalization factor, the Board cannot grant an assessment reduction greater than the amount of increase caused by the equalization factor. Villa Retirement Apartments, Inc. v. Property Tax Appeal Board, 302 Ill.App.3d 745, 753 (4th Dist. 1999). Neither the Board's rule nor the Property Tax Code provide that the Property Tax Appeal Board may further reduce an assessment where a "negative" equalization factor has been applied by the board of review lowering the pre-equalized assessment.

Based on a review of the evidence contained in the record, the Property Tax Appeal Board finds the township equalization factor applied by the board of review reduced the assessment rather than causing the assessment to increase. On the basis of these facts, the Board finds it has no authority to further reduce the assessment of the subject property beyond the 2008 equalized assessment as established by the board of review. In conclusion, the Board finds a reduction in the subject's assessment is not appropriate.

APPELLANT:	**Nalco Chemical**
DOCKET NUMBER:	**05-01461.001-C-3 & 06-01383.001-C-3**
DATE DECIDED:	**May, 2010**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a 63.99 acre site improved with a single-tenant office research facility with a gross building area of 707,333 square feet. The multi-building complex was constructed in stages from 1976 through 1995. The property is located in Naperville, Naperville Township, DuPage County.

The 2005 and 2006 appeals were consolidated.

The first witness called by the appellant was Michael Kelly. Kelly is president of Real Estate Analysis Corporation (REAC) which is in the business of appraising industrial, commercial and residential properties in Illinois and around the country. Kelly has been with REAC for 31 years and has been a real estate appraiser for 34 years. Kelly is a Certified General Real Estate Appraiser licensed in Illinois and is also licensed in Indiana and Michigan. The appraiser also has the Member of the Appraisal Institute (MAI) designation and the Member of the Society of Real Estate Appraisers (SRPA) designation. Kelly also worked in the Cook County Assessment Office for approximately 3 years. He has appraised in excess of 50 corporate headquarters including headquarter properties in the subject's area.

Kelly performed an interior and exterior inspection of the subject property in January 2006 and again on April 24, 2009. Kelly identified Appellant's Exhibit No. 1 as the appraisal he prepared of the subject property. The purpose of the appraisal was to estimate the market value of the subject property as of January 1, 2005.

He testified the subject property is the Nalco Chemical Headquarters, which he described as a large, single tenant corporate office headquarters with about 15% lab space. Property rights appraised were the unencumbered fee simple interest.

Kelly testified that a building as large as the subject would be considered part of the regional and national market. He testified this market peaked in about 2000-2001 and since that time vacancy rates have increased to about 22% to 23% percent in the East-West corridor where the subject is located. He also testified there has been a slight decrease in the average rental rate offered during the same time period. Kelly testified the subject's location is an office market that is suitable for a building of its type. The appraiser testified the vacancy rate in the East-West corridor in 2005 was approximately 24%.

Kelly's estimate of the site size of approximately 2,787,000 square feet was based on county records and a survey. In describing the buildings, the appraiser explained there is approximately 707,000 square feet of gross floor area located in seven different buildings. The Corporate Center is a five-story building with 417,500 square feet built in 1985. This building has a 450-seat cafeteria with a full kitchen, exercise room, computer center, media studio, training center,

garage parking and five loading docks. The Research Center is a three story building constructed in 1976 with 178,000 square feet. This building has 65,447 square feet of laboratory and research area and 112,553 square feet of office space. Kelly's appraisal indicated the lab area has 5,428 square feet of mezzanine that was not included in the building area. The Resource Center is a 57,000 square foot one-story building constructed in 1976 that has a lower level. The Power Plant houses cogeneration equipment that provides electricity for the entire complex. The Power Plant contains HVAC equipment and serves as the location where utilities enter the site and are distributed to the complex. The Power Plant was originally built in 1976 with 20,886 square feet and received a 10,332 square foot addition in 1986. The Day Care facility is a one-story building that was constructed in 1995 and has 8,333 square feet. The subject also has a Utility Tunnel that distributes heating, cooling, electricity, water and sewer from the Power Plant to the remaining buildings.

In summary, on page 46 of Appellant's Exhibit No. 1, Kelly described the subject as having a weighted average age of 23 years. Kelly testified the building ages ranged from 20 to 29 years old and the weighted age was rounded to 23 years old. The buildings were of 4" to 5" reinforced concrete with steel framing. The campus is 100% protected by wet and dry sprinkler systems. There are 16 elevators throughout the facility. There is parking for 1,200 vehicles with 38 additional parking spaces on the lower level of building 3 of the Corporate Center. Site improvements included paved parking, driveways, sidewalks, a jogging path, a pond and landscaping.

Kelly testified he estimated the subject's net rentable area using an efficiency ratio of 85% based on taking out deductions for non-rentable areas such as utility tunnels, mechanical areas and basement area with both parking and mechanical areas. Kelly testified that typically multi-tenant buildings, especially those built in the last five years, have efficiency ratios of 90% and sometimes as high as 95%. He primarily considered the efficiency ratio in the income approach to value because the rentals he used are expressed in terms of net rentable area and the expense data used from the Building Owners and Managers Association (BOMA) is also expressed in net rentable area. Kelly used gross area in the cost and sales comparison approaches to value.

He also considered the improvements to be in average condition with no items of deferred maintenance identified. The zoning of the property was I, Industrial, which allows office, research, development and laboratory uses of the subject property.

Kelly was of the opinion the highest and best use of the subject, as improved, was for a single tenant use. In determining the highest and best use of the subject the appraiser juxtaposed the current use as a single tenant with that of a multi-tenant. (Appellant's Exhibit No. 1, pages 50 – 52.)

Kelly testified that he researched the sales history of the subject property, which was found at pages 6 through 11 of his appraisal. (Appellant's Exhibit No. 1, pages 6 – 11.) The appraisal indicated the subject property was transferred in a sale-leaseback transaction in December 2002 for a price of $145,000,000. Kelly testified this is typically described as a leased fee sale based on a sale-leaseback where the owner agrees to a contract rent for a long period of time, in this case, 25 years. The transaction included the subject building complex with 707,33e square feet of building area and 61.47 acres. The sale price equates to approximately $205.00 per square foot

of building area, land included. The seller was Onedo Nalco Company and the buyer was Wachovia Bank of Delaware, as Owner Trustee. The appraisal recited a lease term of 25 years to run from December 20, 2002 through December 20, 2027. The lessor was stated to be The Owner Trustee, the lessee was Nalco Company and the guarantor was Suez, the corporate parent of Nalco Company. The rent schedule recited in the appraisal was as follows:

Calendar Year	Cash Rent	Cash Rent Per Sq. Ft.*
2003	$8,192,800.39	$11.58
2004-2009	$8,953,688.56	$12.66
2010	$17,132,153.31	$24.22
2011	$35,096,516.72	$49.62
2012-2022	$12,682,622.42	$17.93
2023	$10,568,852.02	$14.94
2024-2027	$0	$0.00

*Triple net basis

Kelly testified that the effective net rent for the subject under this transaction was $18.70 per square foot on a net rentable basis or $27.00 per square foot on a gross basis. Kelly concluded the transaction was a leveraged lease transaction in which the sale was based on the leaseback of the property on a long term basis with a guarantee by the superior credit of the seller's parent company. He further noted in his report that since the seller retains use of the property and many benefits of ownership on a long term basis, the sale price is more reflective of a value-in-use price rather than a value-in-exchange value. Kelly concluded the sale transaction does not reflect a market value transaction because the price does not represent the normal consideration unaffected by special or creative financing. (Appellant's Exhibit No. 1, page 11.) Kelly testified minimal weight was given the transaction because it reflects a leased fee value based on contract rent that is significantly above market rent as well as 100 percent occupancy and a below market capitalization rate of 5.5%.

Kelly further testified that the transfer declaration indicated the property was not exposed on the open market when it sold, which is typical for these types of deals because they are essentially financing transactions.

Kelly estimated the exposure time for the property would be two to three years, which was due to the large size of the subject property and its marketability to a limited number of users on a nationwide basis.

In estimating the market value of the subject property Kelly developed the cost approach, income approach and sales comparison approaches to value. The first approach developed by Kelly was the cost approach with the initial step of estimating the site value using six comparable land sales. The six land comparables were located in Aurora and Naperville. The comparables ranged in size from 523,635 to 4,523,558 square feet of land area. The properties sold from October 1999 to July 2003 for prices ranging from $3,640,000 to $15,561,500 or from $2.75 to $8.75 per square foot of land area. Based on these sales the appraiser estimated the subject site had a value of $6.00 per square foot of land area or $16,725,000, rounded.

The next step under the cost approach was to estimate the replacement cost new of the improvements using national cost manuals. The appraiser developed a replacement cost new for each of the identified buildings located on the subject campus. The appraiser estimated the unit costs ranged from $45.00 per square foot for the Utility Tunnel to $145.00 per square foot for the Research Center. The total building replacement cost new was estimated to be $81,692,460 or $115.49 per square foot of total building area. The appraiser then added $6,000,000 for the replacement cost of the site improvements resulting in a total replacement cost new of $87,690,000, rounded, or $123.97 per square foot of building area. Kelly testified this cost new estimate included the normal soft costs such as overhead, profit for general contractor, architect fees and the like. Excluded from the cost new estimate was entrepreneurial profit due to the fact that none of the sales in the report indicate that there is a premium being paid. He further testified that his market derived depreciation indicated significant depreciation from the cost new, which indicates there is no entrepreneurial profit being paid.

In estimating depreciation the appraiser estimated physical depreciation using the age-life method. He estimated the subject had a weighted physical age of 23 years and a physical life of 60 years resulting in physical deterioration of 38.3% or $33,585,270. Deducting physical deterioration from the replacement cost new resulted in a physically depreciated value of the improvements of $54,104,730.

The appraiser also estimated or abstracted depreciation from all causes using the sales contained in the sales comparison approach to value in his report with the exception of comparable sale #12 since a land value was not available for that comparable. According to Kelly's calculations, the comparable sales had accrued depreciation ranging from 59.6% to 96.8% and annual rates of depreciation ranging from 2.1% to 8.0%. Kelly segregated the sales by building type such as: Local Single-Tenant Office Sales, National Single-Tenant Office Sales, and Research, Development, & Lab Buildings. Kelly then estimated functional/economic obsolescence by deducting from the estimated total deprecation an amount attributed to physical depreciation from each comparable sale calculated using the age-life method. Functional and economic depreciation for the comparable sales ranged from 14.7% to 75.9%. Kelly indicated that if the two extremes were eliminated the sales indicate functional and economic depreciation ranging from 23.2% to 56.8%. He further stated in the report that two sales within 100,000 square feet of the subject had functional and economic depreciation ranging from 37.0% to 43.6%. Kelly further estimated functional and economic depreciation based on deficient income or when property does not produce sufficient income to generate an acceptable rate of return. He stated that under the income capitalization approach to value the necessary rate of return for the subject property is 11.2%. To calculate the functional and economic obsolescence Kelly added the estimated land value and the physically depreciated value of the building to arrive at a total physically depreciated value of $70,829,730. Kelly then used the market required rate of return to calculate a market required net income before taxes of $7,932,930. The subject's stabilized net income under the income approach was estimated to be $4,920,000, which he deducted from the market required net income to arrive at a deficient income of $3,012,930. Capitalizing the deficient net income by 11.2% resulted in a total functional and economic obsolescence estimate of $26,901,161, which equates to 30.7% of the replacement cost new. Based on these two methods, Kelly estimated the subject suffered from 35% functional and economic obsolescence. Adding physical depreciation resulted in total depreciation from all causes of 73.3%, which equates to an average annual rate of deprecation of 3.19% using the subject's weighted age.

Total depreciation was estimated to be $64,276,770. Deducting total depreciation from the cost new and adding the estimated land value resulted in an estimated value under the cost approach of $40,140,000, rounded.

The next approach to value developed by Kelly was the income approach. Kelly testified he utilized gross rent per square foot of net rentable area to estimate the rental income attributable to the subject property. Kelly indicated in the appraisal that market rent for the subject property will be based on analyzing leases from comparable Class A & B office buildings. (Appellant's Exhibit No. 1, page 85.) In the appraisal Kelly explained that a "gross lease" is a lease where the landlord receives a stipulated rent from the tenant and is obligated to pay operating expenses and real estate taxes. Kelly explained in the appraisal that all the leases from the subject and from the comparable office buildings were analyzed on a gross basis. He stated that leases which are net leases will be grossed up with the appropriate real estate tax and operating expenses pass-through to indicate the total gross rent that a tenant is paying. He stated in the appraisal, however, since the purpose of the appraisal is to estimate the market value of the fee simple estate, the real estate taxes will not be expensed but rather an effective tax rate will be used to estimate the appropriate legal liability for real estate taxes. (Appellant's Exhibit No. 1, page 86.) Kelly explained in the appraisal that the leases for the subject property and the comparable leases have been adjusted for excess tenant improvement allowance if the tenant improvement allowance for the space exceeded $25.00 per square foot. (Appellant's Exhibit No. 1, page 92.) Kelly also stated in the narrative that larger office tenants (20,000 square feet or greater) are given rental rates significantly lower than the rates for smaller tenants (less than 20,000 square feet) in the building. He explained that anchor tenants generally receive considerable rental discounts. (Appellant's Exhibit No. 1, page 94.) Kelly further stated in the appraisal that the office market in the Chicago suburbs peaked in late 2000/early 2001. Since that time, rental rates have declined and vacancy rates have increased. He further stated in the appraisal that landlords with significant space have been forced to provide rent abatements, excess tenant improvement allowance, and/or reduced base rent. (Appellant's Exhibit No. 1, page 97.) Kelly's appraisal contained six examples of office leases that showed a downward trend in effective gross rent from 2001 to 2003 or 2004. (Appellant's Exhibit No. 1, pages 97-103.)

In estimating the market rent, Kelly utilized 10 office comparable rentals that were located in Itasca, Downers Grove, Schaumburg, Naperville and Lisle. The comparables ranged in size from 1,785 to 363,034 square feet of lease area. The ages of the buildings ranged from 3 to 19 years old. The leases commenced from April 2004 to March 2006. These comparables had gross rents ranging from $18.07 to $24.20 per square foot. Using an efficiency ratio of 85%, Kelly estimated the subject had a net rentable area of 601,223 square feet. As a further breakdowns, rentals #1 through #3 were of single tenant buildings that ranged in size from 240,725 to 363,492 square feet and in age from 3 to 15 years old. Their rental rates ranged from $18.07 to $22.13 per square foot. The remaining rental comparables are considerably smaller than the subject ranging in size from 1,785 to 19,452 square feet. Based on these rental comparables Kelly estimated the subject had a gross rental rate of $19.00 per square foot. He estimated the subject had a gross income of $11,423,427. Kelly estimated the subject's vacancy rate using the Studley Report and Space Data 4th Quarter 2004 and 1st Quarter 2005 and the CoStar Aggregate Vacancy Report 2nd Quarter 2004. Considering this data Kelly estimated the subject should have an allowance for vacancy and collection loss of 22.0% resulting in an

effective gross income of $8,910,000, rounded. Kelly was of the opinion, based on these studies that there is an oversupply of office space in this market.

In estimating expenses Kelly made use of the 2005 edition of the Building Owners and Managers Association (BOMA) publication and his familiarity with the operating expenses of comparable office types of property. Kelly stated within the report that maximum emphasis was placed on the BOMA survey in the determination of the stabilized operating expenses applicable to the subject property. (Appellant's Exhibit No. 1, page 111.) The following expenses were deducted: cleaning at $.95 per square foot or $570,000; repairs and maintenance at $1.15 per square foot or $690,000; utilities at $.95 per square foot or $570,000; roads, grounds and security at $.70 per square foot or $420,000; administrative/management at $1.20 per square foot or $720,000; leasing expenses at $1.50 per square foot or $900,000; and insurance of $.20 per square foot or $120,000. Deducting these expenses resulted in a stabilized net income of $4,920,000.

In estimating the capitalization rate the appraiser used the comparable sales from the sales comparison approach to arrive at overall rates ranging from 9.7% to 16.4%. Using the band of investment technique the appraiser estimated a capitalization rate of 9.6%. The appraiser also used the Korpacz Investor Survey for the Chicago Office Market, which indicated overall capitalization rates ranging from 6.0% to 11.0% with an average of 8.4% at year-end 2004. The report indicated that the Korpacz rates need to be adjusted to add a reserve for replacements, which results in an adjusted overall rate ranging from 8.65% to 8.90%. Considering these three methods Kelly estimated the subject had an overall capitalization rate of 9.0% to which he added an effective tax rate of 2.2% to arrive at a total capitalization rate of 11.2%. Capitalizing the net income resulted in an estimated market value under the income approach of $43,930,000.

The final approach to value developed by Kelly was the sales comparison approach. In developing the sales comparison approach, Kelly utilized 14 comparable sales. Kelly identified comparables #1 through #6 as local single-tenant office buildings. These comparables were located in the Illinois communities of Lake Zurich, Naperville, Skokie, Westmont, Elmhurst and Lombard. These properties were improved with multi-story office buildings that ranged in size from 113,369 to 1,176,158 square feet of gross building area. The comparable buildings ranged in age or had weighted ages ranging from 12 to 36 years old. These sales occurred from October 2000 to March 2005 for prices ranging from $5,650,000 to $30,500,000 or from $25.93 to $53.68 per square foot of gross building area, land included. Kelly also identified comparables #7 through #14 as national single-tenant office building sites. These comparables were located in Plano, Texas; Minneapolis, Minnesota; Geneva, Illinois; Princeton, New Jersey; Warrensville Heights, Ohio; Rochester, Michigan; and Skokie, Illinois. Kelly indicated the comparables ranged in size from 54,957 to 1,081,361 and had office space ranging from 25% to 100% of gross building area. The comparables ranged in age or had weighted ages ranging from 12 to 35 years old. The sales occurred from July 1997 to March 2005 for prices ranging from $2,400,000 to $45,000,000. Kelly adjusted the price for sale #7 for personal property; Kelly adjusted the prices for sales #9, #10, #11 and #13 for excess land; and Kelly adjusted the price for comparable #14 for the added cost to raze four buildings. The adjusted prices ranged from $1,037,730 to $44,500,000 or from $18.88 to $59.65 per square foot of building area. Comparables #1, #3, #7, #8, #9, #11, #12, and #14 were multi-building complexes having from 2 to 21 buildings. Additionally, portions of comparable sales #1, #4 and #8 were leased by the seller following their respective sales. Kelly considered adjustments to the comparables for date

of sale (time), location, building size, building age, number of stories, condition, quality of construction, land to building ratio, percent of office space and type of lab space, and single tenant versus multi-tenant design.

Kelly testified that the sales were essentially single tenant buildings. He testified that it was important to note that the single tenant design is an important consideration in determining what properties are comparable for this type of property. He testified that multi-tenant buildings are a totally different type of market and will sell at higher values per square foot and will typically have a lower capitalization rate because of the ability to diversify some of the risk by having a number of tenants rather than one. Kelly explained that he used plus and minus qualitative adjustments for the comparables due to insufficient data that would allow for the use of percentage adjustments. Kelly further testified that the sales were verified using information such as the transfer declaration, deed, sales contract and through one of the parties whether it be the broker for the seller or the buyer.

In the appraisal narrative Kelly also explained that three listings were also considered that were single tenant office buildings located in Naperville that were formerly occupied by Lucent Technologies, Inc. The buildings ranged in size from 223,000 to 344,000 and had asking prices ranging from $45.00 to $115.00 per square foot. Listing number #2 was the same as Kelly's sale #2. This property had an asking price of $67.00 per square foot but actually sold for $36.22 per square foot of gross building area. (Appellant's Exhibit No. 1, page 203.) He also testified that listing #1 sold after the date of value in September 2005 for approximately $43.00 per square foot. The property had an asking price of $45.00 per square foot. He further testified that comparable #2 resold in 2006 for a price of $140 or $150 per square foot after the developer had done a significant rehabilitation on the building for Office Max. After Office Max had signed the lease the property was sold as a sale-leaseback. He adjusted the price to a fee simple basis of $105 per square foot. Kelly testified the third listing sold in September 2005 for a price of approximately $53.00 per square foot. This property had been listed for a price of $115 per square foot.

After considering these sales, Kelly estimated the subject property had a market value of $55.00 per square foot of gross building area, land included, for a total indicated value under the sales comparison approach of $38,900,000.

In reconciling the three approaches to value, Kelly gave minimal consideration to the cost approach, moderate consideration to the income capitalization approach and substantial consideration to the sales comparison approach. In conclusion Kelly estimated the subject property had a market value of $41,000,000 as of January 1, 2005.

Kelly testified that he was not aware of any significant physical changes to the property from January 1, 2005 to January 1, 2006. He further testified that he was not aware of any significant changes in the market for similar types of property from January 1, 2005 to January 1, 2006. He also testified there would not be a significant difference between the market value estimate for the subject property as of January 1, 2005 and January 1, 2006.

Under cross-examination Kelly explained that the difference in reduction of the sale-leaseback for the subject as compared to the Office Max property was due to size of the subject building,

the age of the subject building compared to the effective age of the Office Max property after rehabilitation, and the differences in contract rent versus the market rent of the two properties.

Kelly also agreed that land sale #6, with 523,635 square feet, is located across the I-88 tollway from the subject and sold for $8.75 per square foot of land area. Kelly testified that he received some of the documents associated with the subject's sale-leaseback including those related to the sales contract and a summary of the lease terms. Kelly reviewed Intervenor's Exhibit No. 1, beginning on page 70, which was a letter dated February 3, 2003, from Robert C. Herman, Senior Manager, Deloitte & Touche, discussing the sale-leaseback of the subject property. Kelly agreed that the analysis provided in his appraisal matched the Deloitte & Touche letter word for word. Kelly testified the Deloitte & Touche letter was his work product.

Kelly was questioned about the date and location of the land sales. He agreed that five of the sales occurred four to six years prior to the effective date of the appraisal. He also agreed that land sale #6 is very comparable in location. He further testified that in estimating the replacement cost new of the improvements he primarily used the Means Cost Service and used the Marshall Valuation Service for some indication of what the cost of the 70,000 square feet of lab space would be.

In calculating the depreciation from the market using the comparables sales, Kelly agreed that the sales prices were from real estate transfer declarations, deeds or talking to a broker. The land value is estimated based on the sales they have in the area. For sales out of Illinois he would have to talk to a broker to get an estimate of value. Kelly explained that with reference to comparable sale #14 located in Skokie, the building area of 746,000 was what was left after the buyer demolished 264,000 square feet immediately after the sale. He did not see any reason to dilute the unit price by using a million square feet. He agreed that the explanation of the sale in the report could have been clearer.

Kelly agreed that with respect to comparable #1, Kemper, the seller's affiliate, was vacating the property. Kelly agreed that sale #2 was vacant at the time of sale. Kelly agreed that sale #3 was vacant at the time of sale. This property was being converted to multi-tenant use. Kelly agreed that with respect to sale #4, the seller remained there one year while the property was being redeveloped. Sale #4 was being converted to a multi-tenant occupancy after the sale. Kelly agreed that Keebler Company was using sale #5 and they vacated the property. Kelly indicated that sale #6 was vacant at the time of sale and the buyer converted it to multi-tenant use. Kelly testified that he had physically inspected sale #7 located in Plano, Texas. With respect to sale #8 located in Minneapolis, Minnesota, the seller Honeywell was vacating the property but keeping a small amount of space for a short period. Kelly explained that comparable sale #9 located in Batavia, Illinois, was not in totally comparable to the subject; it was used to be comparable to the lab space at the subject property. Waste Management had vacated this property prior to the sale. Kelly agreed that comparable sale #10 was primarily lab space that had been vacated by Waste Management. Kelly had been in comparable sale #10 to conduct an appraisal. With respect to comparable sale #11, Mobil Technical Center located in Princeton, New Jersey, Kelly agreed this property was being vacated by Mobil and vacant at the time of sale. Kelly had not physically examined this sale. With respect to comparable sale #12, BP Amoco located in Warrensville Heights, Ohio, Kelly agreed this property was vacant at the time of sale. Kelly had not physically examined this sale. With respect to comparable #13, Baxter Healthcare located in

Rochester, Michigan, Kelly agreed this property was vacant at the time of sale. Kelly agreed this sale was being used by a single tenant. Kelly stated that most of the sales were converted to multi-tenant users after the sales. Sale #14 had been vacated by Pfizer. The purchaser then demolished four buildings and then converted the property to multi-tenant use.

Kelly testified that vacancy rates have been 24% for four years. Kelly testified he inspected the subject property on January 11, 2006 and the appraisal is dated January 16, 2006. He testified he had appraised the subject property before, so there was an earlier inspection three years before from another MAI in his office.

Under redirect Kelly testified he has appraised the subject property two times. Kelly agreed that a sale of a property that is vacant, rather than occupied by lessees or tenants, is more akin to a fee simple interest. With respect to the language in the Herman letter, Kelly testified Herman left the employment of Real Estate Analysis Corporation (REAC) in 2000 to 2001. The language concerning sales-leaseback was from the Smith Barney people that put together the transaction, which is the first half of the analysis. Kelly testified that the second half, where they talk about how a sale-leaseback does not represent market value used by Herman is standard boilerplate that has been used in Kelly's office for 10 to 15 years.

Under re-cross examination, Kelly testified the analysis of the sale of the subject is the same in the 2005 report as in the 2003 report.

The board of review submitted its "Board of Review Notes on Appeal" for each of the years under appeal. For 2005 the subject property was reported to have a total assessment of $22,838,850 reflecting a market value of approximately $68,585,135 or $96.96 per square foot of gross building area, land included, using the 2005 three year median level of assessments for DuPage County of 33.30%. For 2006 the assessment of the subject was increased by the application of a township equalization factor of 1.026 resulting in a total assessment of $23,432,660 reflecting a market value of approximately $70,559,048 or $99.75 per square foot of gross building area, land included, using the 2006 three year median level of assessments for DuPage County of 33.21%. The board of review called no witnesses.

The intervening school district called as its witness Mark Pomykacz. Pomykacz is a real estate appraiser and a managing partner of Federal Appraisal and Consulting of Whitehouse Station, New Jersey. Pomykacz has the MAI designation and is a State Certified Real Estate General Appraiser in the states of: New Jersey, New York, Maryland, Connecticut, Michigan, Massachusetts, California and Illinois. He testified that he has analyzed about two-dozen sale-leaseback transactions. Pomykacz conducted an appraisal review of the report prepared by REAC of the subject property identified as Appellant's Exhibit No. 1. Intervenor's Exhibit No. 1 was marked as the appraisal review of the REAC report.

The purpose of the appraisal review was to determine the credibility and reliability of the REAC appraisal report and report his findings. Pomykacz concluded the appraisal was not reliable, the value conclusion was not credible and the appraisal value conclusions were substantially understated.

The witness agreed that page 13 of his report, stating the definition of market value, had five conditions that one must consider, those being:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto;
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Pomykacz testified the first deficiency in the REAC appraisal was the bare minimum land description. He was of the opinion this was a special purpose property, an unusual property and more data should have been provided.

The witness testified he has not made a personal inspection of the property but has driven past the property on several occasions. He was of the opinion that the improvement description in the REAC report was merely adequate if this was a traditional, garden variety office building. He testified this is a corporate campus/headquarters; an unusual property.

Pomykacz stated there was not enough information to determine whether the power plant assets are a separate area of value. He also testified there was very basic information about the interior description of the subject property. He also was of the opinion the 15% efficiency factor applied in the REAC report was very high for this type of property. The witness stated that in his experience inefficiency rates run from 10% to 15% with properties more than three decades old having the higher number. He testified that the efficiency loss factor is for the mechanicals in a building that you could not put an occupant in with a desk. The witness explained that with a corporate international headquarters he would not expect to see a lot of waste in the buildings and 15% seemed high.

The witness further indicated that REAC's section regarding the adequacies of the improvements was not helpful to the reader. He was of the opinion the REAC report did not provide enough detail to tell what kind of special qualities, if any, the improvements had.

The witness was of the opinion that Kelly reached the wrong conclusion as to the highest and best use of the subject property as improved as a single tenant user. The witness was of the opinion the most productive use is most likely a multi-tenanted operation. He also was of the opinion that Kelly was incorrect in stating in his appraisal that it is more viable for multi-tenant office property to convert to a single tenant use than for a single use property to be converted to a multi-tenant use. The witness explained that an incorrect highest and best use would result in an appraisal that would not be credible and valid. The witness was of the opinion that a single tenant use is one of the possible uses but it could also be a multi-tenanted building.

The witness was also of the opinion that the appraisal provided insufficient information for a user, reviewer or a reader to understand the functional adequacies or inadequacies or super-

adequacies of the property. He was of the opinion that since large adjustments were made for economic and functional obsolescence, he requires better descriptions, substantially different, more expansive descriptions than the minimal description Kelly provided. He also would expect an appraiser to obtain a detailed listing of the maintenance on any property over a couple of million dollars in value.

Pomykacz was of the opinion the appraisal analysis of the land was very weak. The witness was of the opinion the land value conclusion was not appropriate. He was also of the opinion the analysis of the land sales on page 67 of the REAC appraisal was not what he would customarily expect to find. He opined appraisers customarily provide an analysis with adjustments as a percentage.

Pomykacz was of the opinion the replacement cost new calculations contained on page 70 of the REAC appraisal do not contain sufficient information for a reader to determine how the appraiser arrived at the values. As a check on the validity of the the REAC cost approach, Pomykacz provided basic information from Marshall & Swift in the addenda of his report and recomputed the cost estimates for the various portions of the subject property on page 55 of his report. The report indicated the office space would have a cost new, after applicable multipliers, of $182.95 per square foot; basement office space would have a cost new, after applicable multipliers, of $105.10 per square foot; office and research space would have a cost new, after applicable multipliers, of $180.25 per square foot; office space –mezzanine would have a cost new, after applicable multipliers, of $71.76 per square foot; office space – resource center would have a cost new, after applicable multipliers, of $182.95 per square foot; and the day care space would have a cost new, after applicable multipliers, of $133.34 per square foot

Pomykacz also testified he worked backwards using the costs in the REAC appraisal and determined that Kelly considered the subject a low-cost property. The witness did not think this was consistent with corporate campuses. The witness also indicated the REAC appraisal did not have any discussion with respect to soft costs such as architectural fees, engineering fees and the cost of money during construction that one would expect. He also indicated that entrepreneurial profit also needs to be accounted for. Ultimately, Pomykacz was of the opinion the cost approach in the REAC appraisal is substantially below the replacement cost value.

Pomykacz was also of the opinion the physical depreciation estimate in the REAC appraisal is overestimated. With respect to the Market-Based Depreciation Analysis contained on page 75 of the REAC appraisal, Pomykacz indicated you could not determine how Kelly derived the land values in each of the 14 sales. The witness further indicated that Kelly did not give any description of how he determined replacement cost new of the 14 properties. Pomykacz was of the opinion the market extraction or market based depreciation was not reliable absent concrete verification. The witness did not find the REAC appraisal to be reliable or credible in its calculation of functional and economic depreciation. Ultimately Pomykacz concluded the cost approach developed by Kelly was not reliable and not credible.

Concerning the sales comparison approach, Pomykacz was of the opinion that Kelly's use of five out-of-state sales was not appropriate. He testified that even though the property may have potential buyers from other regions in the country or internationally, they are going to be looking at the value of real estate in the subject's locale. He also indicated that appraisers can make

adjustments for location in many situations, but making adjustments between such divergent locations as a practical matter is not a reasonable course for an appraiser to embark on.

The witness also testified the sales used by Kelly involved different assets than the subject property in the sense the subject is a mixed-type of property with office, daycare and lab space. He testified these are very difficult issues to adjust for when you have the best of data. Pomykacz testified in this case there was very little data provided about this in the appraisal making the ability to make the adjustments as a practical matter very difficult to impossible. The witness also opined if a property is 100% vacant, the owner is unusually motivated to sell. The witness concluded the sales comparison approach in the REAC appraisal is not reliable or credible.

With respect to the income approach the witness was of the opinion that Kelly's market rent for the subject is not reasonable; the rental is low. Pomykacz was of the opinion that Kelly did not adequately take into consideration multi-tenant rentals in valuing the subject property. The witness also was of the opinion Kelly incorrectly described anchor tenants, which are tenants that attract visitors to a building, where other tenants can benefit from the traffic, and is restricted to retail real estate. The witness testified that anchor tenants do not apply to office buildings. Pomykacz also was of the opinion an efficiency loss factor of 15% was high and 10% would be more appropriate. The witness was of the opinion that the vacancy and collection loss of 22% was not appropriate. He agreed that the vacancy as of the valuation date was in the low 20's, but was of the opinion an appraiser needs to project an average or stabilized estimate of income going out for the remainder of the life of the facility, the investment period plus the reversion. Using the REAC vacancy, Pomykacz was of the opinion that effective gross income is being substantially underestimated.

Pomykacz testified that largely the operating expenses projected in the REAC appraisal were acceptable except for one major divergent estimate; leasing expenses were estimated too high. Pomykacz indicated in his review appraisal and through testimony that the Building Owners and Managers Association (BOMA) projects leasing expenses at $.04 per square foot but the REAC appraisal estimates leasing expenses at $1.50 per square foot. As a result Pomykacz was of the opinion that the operating expenses were too high. He also was of the opinion that Kelly's operating expense ratio of 44.8% was substantially above the mark, which would have a negative impact on value. The witness indicated that Industrial Real Estate Managers (IREM) estimates expense ratios range from the mid 20's% to the low 30's%. Pomykacz was also of the opinion that Kelly's use of a 12% dividend rate for the equity portion of the band of investment technique was too high. The witness ultimately concluded the income approach used by REAC is not credible.

Pomykacz testified the sale involving the subject property was noted to be a sale-leaseback transaction and he also did a test to determine the reasonableness of the sale. Furthermore, Intervenor's Exhibit No. 1 contains the PTAX-203, Illinois Real Estate Transfer Declaration associated with the sale and the PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A associated with the subject's sale. The witness was of the opinion the transaction qualified as a market transaction deserving consideration in an appraisal. (Intervenor's Exhibit No. 1, page 22.) The witness also testified he performed an analysis of the lease, which was summarized on page 26 of Intervenor's Exhibit No. 1. The witness explained

that an appraiser has to "levelize" the unlevel rent payments to compare them with other rents. He stated appraisers use compounding and discounting to create a cash equivalent or level rent cash equivalent. The witness used a discount rate of 9.5% and calculated the present value of the unlevel actual rents to be $109,460,028. Pomykacz testified he calculated a constant growth rate cash equivalent, which means rent is going to grow every year at 2% and the constant growth rent cash equivalent was $8,209,502, which is the same net present cash value. The witness testified one could pay the unlevel rent as described in the lease or pay the $8,200,000 per year escalating 2% a year and both cash flows would equal the same present value. Using 636,600 square feet as the net rentable area the witness calculated the triple net lease equivalent to be $12.90 per square foot. Using a 40% expense ratio the witness calculated a gross equivalent rental of $21.29 per square foot. The witness testified he did not know how Kelly arrived at the conclusion the unlevel rents resulted in a $27.00 per square foot gross rental. He also testified that the gross equivalent rental of $21.49 per square foot falls within the range established by the REAC comparables, indicating it is on the market. As a result Pomykacz was of the opinion that one should not disqualify the lease stating, "it is not disqualified as representing market value." (Transcript p. 232, lines 12-14.) He was of the opinion Kelly did not complete a thorough analysis of the transaction.

In conclusion Pomykacz was of the opinion the REAC appraisal is not reliable and not credible. It was his conclusion the value in the REAC appraisal was understated.

Under cross-examination Pomykacz stated he did not come to his own independent estimate of value, which is also set forth in (Intervenor's Exhibit No. 1, page 5.) Pomykacz testified he did not do an interior inspection of the subject but did do drive-by's which took minutes. Pomykacz explained that an unencumbered property means without leases restricting the property. He agreed that at a vacant property would be a type of fee simple property.

The witness explained that exposure time was the amount of time a property has to be placed on the market to secure a sale. He further indicated that exposure time is dependent on the intended market that one is selling to, which is determined by the highest and best use. He testified that if you limit the property to a single tenant occupant or owner-occupant as the buyer, it may take you three years to get the property sold. He further testified that if you are going to market the property to an investor or market the property to multiple tenants it would take a lot less time. He indicated the subject's highest and best use could be either for a single occupant office or multi-occupant office use. For the entire property Pomykacz stated the highest and best use would be a combination.

Pomykacz reiterated his opinion that the 85% efficiency rating was too low based on economies of scale for an integrated complex of buildings. In reviewing REAC comparable sales #1 and #4, Pomykacz calculated efficiency ratios of 81% and 82%, respectively.

Pomykacz agreed that he determined the subject's sale-leaseback that occurred in December 2002 was a reliable indicator of value. He testified that he did not interview any party to the transaction and interviewed no beneficiaries of the Wachovia Trust. He also indicated he does not know who the trust beneficiaries are or who the actual owner of the subject property is. Pomykacz testified that form PTAX-203-A for the sale of the subject was given to him and he

put it in his report because it tells important details about the transaction that allowed him to complete the tables in his report on page 22. Question No. 8 on the form provides:

> 8. In your opinion, is the net consideration for real property entered on line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?

The answer to the question was "No". Pomykacz understood this answer to mean the price is not a reflection of market value. The question goes on to state, "If the answer is "No", please explain." The explanation provided on the form was, "Leverage Lease Sale-Leaseback Transaction Conveyance Not Limited to Fee Simple Interest in Transferred Real Estate."

Referencing the last page of the Deloitte & Touche letter authored by Robert C. Herman contained in Intervenor's Exhibit No. 1, Pomykacz agreed that Herman concluded the transaction was not reflective of the market value of the subject property. Referencing page 4, first paragraph, last sentence of the Deloitte & Touche letter authored by Robert C. Herman contained in Intervenor's Exhibit No. 1, Pomykacz agreed that Herman concluded the this sort of property would have a marketing time of 1 to 3 years. The witness also used a three year marketing/exposure time in a discounted cash flow analysis of the lease in place under the sale leaseback. (Intervenor's Exhibit No. 1, page 57.)

Referencing question 7 on Form PTAX-203 contained in Intervenor's Exhibit No. 1, Pomykacz agreed the answer was "No" to the question, "Was the property advertised for sale or sold using a real estate agent?" Referencing question 3 on Form PTAX-203-A contained in Intervenor's Exhibit No. 1, Pomykacz agreed the answer was "0" to the statement, "Write the total number of months the property was for sale on the market."

Pomykacz agreed that there was normal consideration paid for the subject property in the sale-leaseback transaction. He further agreed that under his cost approach he concluded a replacement cost new of $125,000,000 or $177.00 per square foot. Using Kelly's estimate of land value of $16,725,000 resulted in a replacement cost new plus land of approximately $142,000,000. He agreed that comparing this number with a sale-leaseback transaction price for a 23 year old building of $145,000,000 does not make sense. He indicated that one number is of a new property and you are comparing that to an old property. He further testified that real estate appreciates over time until near the end of its useful life.

With respect to the rent schedule in Section 16.4 of Intervenor's Exhibit No. 1, Pomykacz testified that it is not uncommon for commercial leases to have variable rents but this particular pattern was unusual.

Under redirect Pomykacz reviewed REAC sales #2, #3, #6 and #9. These sales had efficiency ratios of 89%, 95%, 92% and 100%. Pomykacz testified it was not his opinion that the $145,000,000 was reflective of the market value of the subject property.

Under cross-examination the witness was questioned about the size of REAC sales #2, #3, #6 and #9, which were approximately 386,000 square feet, 368,000 square feet, 210,000 square feet and 92,000 square feet, respectively. The witness further testified that there is an opportunity to

multi-tenant the subject building. However, he agreed the subject has a 25 year lease and that if everything goes well they can't do that for 25 years.

The next witness called on behalf of the intervernor was Warren L. Dixon, Jr., Naperville Township Assessor. Dixon is a licensed appraiser and owner of Dixon Appraisal. Dixon identified Intervernor's Exhibit No. 2 as a document he filed for the 2005 appeal with the DuPage County Board of Review. The document was for two parcels, one of which is the subject matter of the instant appeal. The exhibit stated these two parcels had a total assessment of $24,549,950 reflecting a market value of $73,657,216 or $104.13 per square foot of building area. Page two of the exhibit disclosed the parcel under appeal had a total assessment of $22,838,850 reflecting a market value of $68,523,400 or $96.87 per square foot of building area, land included.

In support of the assessment Dixon submitted a two page grid listing of twelve comparable sales. The list included the name/address, a two line description of the property, parcel number, age, land area, building area, land to building ratio, date of sale, sale amount, sale price per square foot and a section for a brief comment. The comparables included two, one-story industrial buildings that contained 165,000 and 303,192 square feet of building area. The buildings were constructed in 1992 and 2004. These two properties sold in November 2003 and October 2005 for prices of $19,600,000 and $22,750,000 or $75.04 and $118.79 per square foot of building area. Five of the comparables were described as either office buildings or office/research buildings. Each of these comparables had one building that was from 2 to 5-stories in height and ranged in size from 116,428 to 356,000 square feet of building area. The assessor did not know the age of one of these comparables and the four remaining comparables were built from 1983 to 2003. The sales occurred from January 2002 to April 2005 for prices ranging from $16,500,000 to $55,000,000 or from $141.71 to $192.12 per square foot of building area, land included. Of these five comparables, comparable #4 was noted to be a sale/leaseback transaction with the seller leasing the property for $11.99 per square foot for 20 years. The five remaining comparables were multi-building office buildings with comparable #12 also having a research and development building. These comparables had from 2 to 5 buildings that ranged in height from 1 to 7-stories. These comparables ranged in size from 215,144 to 498,507 square feet of building area and were constructed from 1969 to 2001. The sales occurred from February 1998 to November 2003 for prices ranging from $24,050,000 to $50,156,000 or from $89.27 to $149.61 per square foot of building area. On the grid the assessor identified comparables #5, #6, #7, #8 and #9 as being located in Cook County.

Dixon testified that sale #2 was located within Naperville Township close to the subject property. The witness testified sale #3 was located within Naperville Township approximately 1 mile from the subject property. These two sales occurred in December 2003 and April 2005 for prices of $146.19 and $141.71 per square foot of building area, land included, respectively. Dixon testified the average price for all the comparables was $130.76 per square of building area, land included. He further testified the median sales price per square foot for the comparables was $137.33 per square foot of building area, land included. Dixon was of the opinion that the appellant's requested market value of $41,000,000 or $57.96 per square foot of building area, land included, was not supported by these raw sales.

Dixon also testified he utilized the rent listed on page 2 of the Deloitte & Touche letter for the years 2004 through 2009, which is contained in Intervenor's Exhibit No. 1, in the amount of

$8,953,688 and a capitalization rate of 11.00% to arrive at an estimated value under an income approach of $81,400,000, rounded.

The assessor also testified that he has to create uniformity. In support of this aspect of his argument the assessor submitted a listing of 10 properties, including the subject, along with basic descriptive data and assessment information. These properties were improved with office buildings located along the I-88 corridor in Naperville Township. One of the comparable parcels only had a land assessment. Including the subject, these properties were improved with office buildings that were built from 1984 to 2001 and ranged in size from 141,328 to 797,399 square feet of building area. The assessor indicated in the document that the improved comparables had total assessments ranging from $6,658,650 to $29,222,200 reflecting market values ranging from $19,977,948 to $87,675,368 or from $110 to $142 per square foot of building area, rounded, land included. He testified the subject's market value as reflected by the assessment is $94.87 per square foot of building area, land included.

Dixon was of the opinion the assessment of the subject property was representative of a fair and equitable distribution of assessments in the township. Dixon further testified that in the early 80's they originally spent $33 million on the subject's construction and a major addition was added with $80 million in permits prior to 1993.

Under cross-examination Dixon agreed sale #1 was built in 2004 and sold in 2005 and was a new building when it sold. He did not know how much office space was in the property and did not know if it was a multi-tenant property. With respect to sale #2 the assessor stated as far as he knew there is no lab space in this building and it is a multi-tenant building. With respect to sale #3 his recollection was this building had no lab space and it was a multi-tenant building. Dixon agreed sale #4 was built in 2003 and sold in 2003 so it was a new building when it sold. He indicated this was an office building located in Cook County. He agreed his sales #5, #6, #7, #8, #9, #10 and #12 were all located in Cook County. He also testified he inspected sales #2, #3 and #11, all located in Naperville. The remaining sales he did not inspect. Dixon agreed sale #5 was a single tenant industrial building. Sale #6 was composed of multi-tenant office buildings. He thought there could have been some research area in this comparable. Dixon did not believe there was any office or research area in comparable sale #7. Sale #7 was a multi-tenant building with an addition in 2001. Dixon did not know the percent of office space in sale #8. Sale #9 was composed of multi-tenant office buildings. Dixon did not believe sale #10 had any research or lab space and he did not have the age or year built listed. Sale #11 had no lab space and was a multi-tenant building. Dixon did not know the percent of office space in sale #12. Dixon did not know the name of the buyer or seller for the comparables and stated that would be in his files.

Dixon stated these were unadjusted sales prices and he made quantitative adjustments to the sales but these were not supplied in the record. He agreed that the value under the income approach was much higher than the actual assessment on the property. Dixon explained this was only one approach to value and did not necessarily mean it was the total value conclusion on the property. He thought the income approach supported the conclusion he reached.

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 appellant contends overvaluation as the basis of the appeal. Section 9-145 of the Property Tax Code provides in part that 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). Proof of market value may consist of an appraisal of the subject property as of the assessment date at issue, a recent sale of the subject property or documentation of not fewer than three comparable sales. 86 Ill.Admin.Code 1910.65(c). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

For 2005 the subject property had a total assessment of $22,838,850 reflecting a market value of approximately $68,585,135 or $96.96 per square foot of gross building area, land included, when using the 2005 three year median level of assessments for DuPage County of 33.30%. For 2006 the subject property had a total assessment of $23,432,660 reflecting a market value of approximately $70,559,048 or $99.75 per square foot of gross building area, land included, when using the 2006 three year median level of assessments for DuPage County of 33.21%. The appellant submitted a narrative appraisal wherein the appraiser developed the three traditional approaches to value to arrive at an estimate of market value of $41,000,000 as of January 1, 2005. The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessments were disclosed but submitted no independent evidence and presented no witnesses in support of the assessment of the subject property for the assessment years in question. The intervening taxing district submitted a review appraisal and information from the Naperville Township Assessor including raw sales data on 12 sales, an income approach calculation using lease data from the sale-leaseback transaction, and an equity analysis.

The first issue the Board will address is whether or not the sale-leaseback transaction involving the subject property that occurred in December 2002 was indicative of the market value of the subject property. The Board finds the sale-leaseback was not reflective of the fair cash value of the subject real estate. First, the sale-leaseback had a price of $145,000,000, which equates to approximately $205.00 per square foot of gross building area, land included. The price reflected by the transaction is significantly above the comparable sales in the record demonstrating the transaction was not reflective of the fair cash value of the real estate. Second, Intervenor's Exhibit No. 1 contains Form PTAX-203, Illinois Real Estate Transfer Declaration and Form PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A associated with the subject's December 2002 sale. Question 7 on Form PTAX-203 reflects an answer of "No" to the question; "Was the property advertised for sale or sold using a real estate agent?" Item 3 on Form PTAX-203-A has an answer of "0" to the statement, "Write the total number of months the property was for sale on the market." Question No. 8 on the Form PTAX-203-A has an answer of "No" to the question, "In your opinion, is the net consideration for real property entered on line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?" Question 8

goes on to state, "If the answer is "No", please explain." The explanation provided on the form was, "Leverage Lease Sale-Leaseback Transaction Conveyance Not Limited to Fee Simple Interest in Transferred Real Estate." The Board further finds that Intervenor's Exhibit No. 1 contains a letter from Deloitte & Touche directed to the Naperville Township Assessor Warren Dixon explaining the nature of the transaction and concluding the sale did not reflect a market value transaction. The Board finds the evidence in this record demonstrates the sale-leaseback was a leveraged lease transaction in which the sale was based on the leaseback of the property for a long term basis guaranteed by the seller's parent company. The Board finds this sale is not indicative of fair cash value for ad valorem real estate assessment purposes.

The next issue the Board will address is the conclusion of highest and best use of the subject property as improved. Kelly determined the highest and best use of the subject property as improved is its current use as a single-tenant office complex. Kelly explained in his report that he considered conversion from a single-tenant office to a multi-tenant office as an alternative use. The REAC appraisal contains three pages of narrative discussing the analysis of highest and best use. (Appellant's Exhibit No. 1, pages 50-52.) Pomykacz was of the opinion that a single tenant use is one of the possible uses but it could also be a multi-tenanted building. The Board finds the subject property as of the assessment date at issue was designed and used as a single tenant office complex. The evidence in this record did not show the subject office complex was partitioned or could be readily partitioned into individual tenant suites. Nor was there any showing that the utilities as well as the heating, ventilation, and air conditioning (HVAC) system could be separately metered and controlled for multi-tenant use without substantial costs. The Supreme Court of Illinois has held that the fair cash value of property should be determined according to the use for which the property is designed and which produces its maximum income. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 18, 544 N.E.2d 762, 136 Ill.Dec.76 (1989). Here the property was built as a single-tenant office, research and laboratory complex. There is no evidence that a prospective purchaser could not also use the property as a single-tenant office, research and laboratory complex. Based on this record the Board finds that Kelly's conclusion of highest and best use as improved is credible given the physical characteristics of the improvements and the fact the subject is encumbered by a long term lease as a single-tenant property.

Only Kelly developed a cost approach to value. In estimating the land value Kelly used six land comparables that ranged in size from 523,635 to 4,523,558 square feet of land area. The properties sold from October 1999 to July 2003 for prices ranging from $3,640,000 to $15,561,500 or from $2.75 to $8.75 per square foot of land area. Based on these sales, Kelly estimated the subject site had an estimated value of $6.00 per square foot of land area or $16,725,000, rounded. The land sale that occurred most proximate in time to the assessment date at issue and was close to the subject in proximity was land sale #6 that sold for a unit price of $8.75 per square foot. This parcel is significantly smaller than the subject site. For 2005 the subject site had a land assessment of $6,420,920 reflecting a market value of approximately $19,282,000, rounded, or $6.92 per square foot of land area using the 2005 three year median level of assessments for DuPage County of 33.30%. For 2006 the subject site had a land assessment of $6,587,860 reflecting a market value of $19,837,000, rounded or $7.12 per square foot of land area using the 2006 three year median level of assessments for DuPage County of 33.21%. Considering Kelly's land sales with some focus on the parcel located most proximate to

the subject property, the Board finds the land assessments of the subject property for the respective years under appeal are reflective of market value.

In estimating the replacement cost new Kelly stated that he utilized the Means Cost Manual and the Marshall Valuation Service. In reviewing the appraisal, Kelly did not reference any particular pages or sections of the respective manuals that he utilized. Furthermore, he did not demonstrate or state how he classified the respective buildings on the subject property. Additionally, the replacement cost calculations are contained on one page of the appraisal and have a total cost of $87,690,000, rounded. The Board finds this minimal data is not particularly credible or reliable in demonstrating a replacement cost new for the improvements. Additionally, Pomykacz cited pages and sections of the Marshall and Swift Cost Manual in Section 16.8 of his review appraisal and prepared a cost calculation check in Section 16.2, which tended to demonstrate that Kelly undervalued the replacement cost new of the improvements. Furthermore, testimony by Dixon was that in the early 80's the original cost of the construction was $33 million and a major addition was added with $80 million in permits prior to 1993. The sum of these total costs was $113 million, which is more than $25 million greater than Kelly's cost new estimate. This further undermines Kelly's estimate of the replacement cost new of the subject property. Based on this record, the Board finds the cost approach contained in the REAC appraisal understated the estimated value of the subject property.

Kelly next estimated the value of the subject under the income approach. The Board finds Kelly's estimate of net rental area, market rent, vacancy and credit loss, and capitalization rate of 11.2% were appropriate and supported by evidence in the record. Kelly applied a market rent of $19.00 per square foot to the net rentable area, which was calculated to be 601,233 square feet. The Board finds this estimate of market rent was supported by his rental comparables #1, #2 and #3 in the REAC appraisal. The Board further finds the expenses associated with the subject property contained in the REAC appraisal, but for the $900,000 attributed to the leasing, were appropriate. In the appraisal Kelly noted that BOMA indicated the 2004 industry average leasing expenses in Suburban Chicago was $.04 per square foot. This would result in a leasing expense of $24,000, rounded. Kelly explained in the appraisal leasing expenses within the Chicago market had evolved over the last few years and that the $1.50 per square foot leasing expense was based on conversations with several brokers. The Board finds there was not sufficient data in the appraisal to add some credibility to this estimate of leasing expenses. Therefore, the Board finds Kelly's conclusion with respect to this expense component excessive. As a result total expenses should be $3,114,000. This in turn results in a net income of $5,796,000. When one capitalizes the net income by 11.2% the result is an estimated market value under the income approach of $51,750,000.

Kelly also prepared a sales comparison approach to value where he utilized 14 comparable sales of single tenant office buildings. Of these 14 sales, the Board finds comparables #1, #2, #3, #4 and #14 were most relevant with respect to date of sale, location, age and size. These comparables ranged in size from 329,658 to 1,176,158 square feet of building area. The sales occurred from March 2001 to March 2005 for prices ranging from $14,000,000 to $43,000,000. Kelly gave an upward adjustment to comparable #14 for demolition costs associated with removing 4 buildings comprising approximately 264,000 square feet of building area after the sale resulting in an adjusted sales price of $44,500,000. The unit prices ranged from $25.93 to $59.65 per square foot of building area, land included. Kelly indicated in his report that all but

comparable #14 were inferior to the subject and required upward adjustments. Kelly was of the opinion sale #14, with a unit price of $59.65 per square foot of building area, was overall similar to the subject.

The Board finds that Dixon provided limited information on twelve sales. The Board finds two of these sales, #1 and #5, were dissimilar industrial buildings. Sale #4 was a sales-leaseback transaction, which may have some bearing on whether this is reflective of fair cash value. Sales #11 and #12 occurred in 1999 and 1998, respectively. The Board finds these sales are dated and should not be given any weight. The Board further finds the office sales identified by Dixon were smaller multi-tenant buildings, different from the subject's highest and best use as a single-tenant office complex. The Board finds these smaller, multi-tenant office buildings would set the upper limit of value. The Board finds of some relevance Dixon's comparables #2 and #3. These were multi-tenant office buildings located in Naperville, in close proximity to the subject. The comparables were relatively similar to the subject in age, but significantly smaller than the subject with 167,260 and 116,428 square feet of building area. The sales occurred close to the assessment dates at issue in April 2005 and December 2003 for prices of $24,452,000 and $16,500,000 or $146.19 and $141.71 per square foot of building area, land included, respectively. The Board finds, based on the subject's size and single-tenant use, its market value would be significantly less on a per square foot basis than these two comparables, which are smaller and have multi-tenant use.

After giving most emphasis to the most relevant sales identified in the REAC appraisal and some consideration to Dixon's comparables #2 and #3, the Property Tax Appeal Board finds the subject property had a market value of $71.00 per square foot of building area, land included, resulting in a total indicated value of $50,220,000, rounded, under the sales comparison approach.

In conclusion, after considering the income approach and sales comparison approach as discussed herein, the Property Tax Appeal Board finds the subject property had a market value of $51,000,000 as of January 1, 2005. Since market value has been established, the Property Tax Appeal Board finds the 2005 three year median level of assessments for DuPage County of 33.30% shall apply. (86 Ill.Admin.Code 1910.50(c)(1)). The Board further finds the assessment as established for 2005 shall be carried forward to 2006 subject to the equalization factor applied in Naperville Township of 1.026 as reflected on the "Board of Review Notes on Appeal."

APPELLANT:	**Paldan Property Management**
DOCKET NUMBER:	**07-00613.001-C-1**
DATE DECIDED:	**October, 2010**
COUNTY:	**Knox**
RESULT:	**No Change**

The subject property consists of a 65,340 square foot vacant commercial parcel located in Homer Township, Will County.

Through its attorney, the appellant appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal of the subject property. The appraiser, who was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology, selection of the comparables, adjustment process and amounts, or final value conclusion, estimated the subject's market value at $750,000, as of the report's effective date of January 1, 2007. The appraiser examined sales of five comparable properties located in Homer Glen, Frankfort, or Lockport that range in size from 48,787 to 96,943 square feet of land area. The comparables were reported to have sold between June 2004 and September 2005 for prices ranging from $7.91 to $14.67 per square foot of land area. Based on this evidence the appellant requested the subject's land assessment be reduced to $249,975.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $323,446 was disclosed. The subject has an estimated market value of $968,401 or $14.82 per square foot of land as reflected by its assessment and the 2007 Will County three-year median level of assessments of 33.40%.

In support of the subject's assessment the board of review submitted a letter prepared by the Homer Township Assessor's Office, property record cards and a grid analysis of 21 comparable properties located in close proximity to the subject. Sales information was provided for 13 of these comparables, while land assessment data was provided for all the properties. The comparable range in size from 21,048 to 70,148 square feet of land area. These sales occurred between July 2002 and December 2006 for prices ranging from $500,000 to $1,150,000 or from $11.89 to $26.13 per square foot of land area.

To demonstrate the subject was equitably assessed, the board of review submitted land assessment data on the 21 comparables referred to above. The comparables, including the 13 properties which sold, range in size from 10,890 to 70,148 square feet of land area and have land assessments ranging from $50,856 to $350,452 or from $4.67 to $7.40 per square foot of land area. The subject's land assessment is $323,446, or $4.67 per square foot of land area.

The assessor's letter indicated the appellant's appraiser used land sales that were inferior to the subject, the "majority of them being miles away in another township", while ignoring comparables located near the subject. The letter claimed the comparables submitted by the board of review in support of the subject's land assessment were located within ¼ mile of the subject. The assessor's letter also indicated comparable one in the appellant's appraisal is improved with

office condominiums and is not vacant commercial land like the subject. The letter also stated the appellant's comparable 3 could not be located by its parcel identification number (PIN) or the docket number of its sale with the county recorder of deeds. Based on this evidence, the board of review requested confirmation of the subject's assessment.

During the hearing, the board of review's representative objected to the appellant's appraiser not being present at the hearing to testify or be cross examined and requested the Property Tax Appeal Board disregard the appraisal's market value conclusion.

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 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. 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 meet this burden.

The Board finds the appellant submitted an appraisal of the subject with a market value estimate of $750,000, while the board of review submitted a grid analysis of 13 comparable sales, which were included in a larger analysis of 21 land comparables. Pursuant to the board of review's objection and in recognition of the appellant's appraiser's absence at the hearing, the Property Tax Appeal Board gave no weight to the value conclusion in the appraisal. The Board will, however, consider the raw sales data in the parties' respective evidentiary submissions. The Board gave less weight to the appellant's comparables because they were not located proximate to the subject, with a majority located in another township. Further, the Board finds the board of review's evidence and testimony indicated the appellant's comparable 1 was improved with office condominiums and that the appellant's comparable 3 could not be located by its PIN or by the recorder of deeds' docket number. The Board only considered the 13 sales presented by the board of review because the appellant was claiming overvaluation, not assessment inequity. The Board then gave less weight to seven of the board of review's 13 comparable sales because they were significantly smaller in land area when compared to the subject. The Board finds the remaining six sales submitted by the board of review were similar to the subject in land size and location and sold for prices ranging from $11.89 to $20.25 per square foot of land area. The subject's estimated market value as reflected by its assessment of $14.82 per square foot of land area falls within this range.

In conclusion, the Board finds the appellant has failed to prove overvaluation by a preponderance of the evidence. For this reason, the Board finds the subject's assessment as determined by the board of review is correct and no reduction is warranted.

APPELLANT:	**Raritan State Bancorp, Inc.**
DOCKET NUMBER:	**07-02526.001-C-2**
DATE DECIDED:	**December, 2010**
COUNTY:	**Knox**
RESULT:	**Reduction**

The subject property consists of a 60,984 square foot parcel improved with a one-story brick building designed and currently used as a bank that contains 3,976 square feet of building area that was built in 1999. The subject, commonly known as the Abingdon Banking Center, features a drive-up window and a full, finished basement and is located in Abingdon, Cedar Township, Knox County.

By its attorney the appellant appeared before the Property Tax Appeal Board claiming overvaluation and assessment inequity as the bases of the appeal. The appellant first called Knox County Supervisor of Assessments Chris Gray as an adverse witness. Gray was asked whether the board of review had any evidence documenting rental income for the subject bank's basement, to which the witness replied the board did not have such information.

In support of its overvaluation argument, the appellant submitted an appraisal of the subject property wherein the appraiser estimated the subject's market value at $414,000 as of the report's effective date of January 1, 2007. Appraiser Larry Skinner was present at the hearing and testified regarding his methodology, selection of comparables and related data.

In the cost approach, Skinner first estimated a site value for the subject by examining three comparables that range in size from 46,345 to 261,360 square feet of land area. The comparables sold for prices ranging from $49,900 to $86,691 or from $0.33 to $1.08 per square foot of land area. Based on these land sales, the appraiser estimated the subject's site value at $65,863, or $1.08 per square foot of land area. For the subject's improvements, the appraiser consulted the 2007 edition of the Marshall and Swift Cost Manual, from which he derived a cost new of $1,333,215. This figure included a one-story masonry building, a finished basement, a drive-through canopy, concrete parking lot, vault with doors, fire alarm, sprinklers, and other features related to a bank. The appraiser estimated physical deterioration at 20%, or $266,643, functional obsolescence at 20%, or $328,811 and external obsolescence at 30% or $358,217. Total depreciation from all sources of $863,671 was subtracted from the cost new to derive a depreciated cost of improvements of $469,544. To this figure, the appraiser added the site value to estimate the subject's value by the cost approach of $535,500, rounded.

In the sales comparison approach, Skinner examined nine comparable sales, six of which were banks located in smaller communities like Abingdon. The comparables were 22.79 to 40.29 miles from the subject. The comparables were built between 1927 and 2000 on sites ranging from 6,000 to 85,378 square feet of land area. The comparables range in size from 882 to 18,274 square feet of gross building area and sold between February 2003 and October 2006 for prices ranging from $76,796 to $1,420,000 or from $33.68 to $179.29 per square foot of building area including land. Skinner adjusted the comparables for differences when compared to the subject, such as excess land, non-realty interests and location. After adjustments, the comparables had

adjusted sales prices ranging from $159,731 to $1,581,074 or from $48.63 to $199.63 per square feet of building area including land. Based on this analysis, the appraiser estimated the subject's value by the sales comparison approach at $414,000.

Skinner determined an income approach was not applicable to the subject, as "there were no leases available in the area. There is no lease on any of the subject property." However, the appraiser acknowledged the subject's basement is rented out for community events, but the income is "more than used up for utility expenses and there is no net income." The appraiser placed most reliance on the sales comparison approach in estimating the subject's value at $414,000.

In support of the inequity argument, the appellant submitted information on one comparable property. The comparable is the Tompkins State Bank, located approximately one mile from the subject in Abingdon, Illinois. The comparable is a 20,691 square foot parcel improved with a one-story brick bank that contains 4,198 square feet of building area. The comparable was built in 1990 with an addition in 1999. This property has an improvement assessment of $143,030 or $40.26 per square foot of building area. The subject has an improvement assessment of $205,570 or $51.70 per square foot of building area. Based on this evidence, the appellant requested the subject's be reduced to $138,000, reflecting a market value of approximately $414,000.

During the hearing, Skinner testified he has appraised 10 or 12 banks and since in his opinion location is the most significant factor in a bank's value, it was important to use comparable banks located in smaller towns like Abingdon. He acknowledged he also appraised the Tompkins State Bank in Abingdon and that this facility is similar to the subject in size and age. The Tompkins State Bank is the appellant's sole equity comparable. Skinner also agreed he does the bulk of appraisal work for the subject bank for fees.

The appellant then called Douglas Meadows, manager of the Abingdon Banking Center since 1998. Meadows testified the subject's basement was designed to provide a meeting place for various civic events, as "we felt the town would utilize a facility that was either a non-alcoholic or non-denominational (sic), and with the construction, it felt like that would certainly be advantageous to the community as well as to the bank from a marketing standpoint." Meadows testified blood drives, Boy Scout meetings and the like are held in the bank's basement, "but the revenue is very minimal." Meadows acknowledged part of the basement has a second vault and part is used for bank storage needs, but the basement contains no offices. The witness further testified 2007 gross revenue for the subject's basement was $3,075, but after subtracting cleanup, maintenance and utility costs, the bank realized no net income from the basement.

During cross examination, Meadows agreed the bank had gross basement rental income of $3,700 for 2008 and $1,900 for 2009. Finally, the witness was asked whether the availability for rental of the subject bank's basement is a marketing device, a good will device to draw people to the facility, to which he responded "Yeah, that's fair, yes."

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $240,330 was disclosed. The subject has an estimated market value of

$713,569 or $179.47 per square foot of building area including land as reflected by its assessment and the 2007 Knox County three-year median level of assessments of 33.68%.

In support of the subject's estimated market value as reflected in its assessment the board of review submitted the subject's property record card, a letter as well as an appraisal of the subject property, wherein the appraiser estimated the subject's value as of January 1, 2009 to be $575,000. Appraisers Steven Daly and Steven Morss were present at the hearing to provide testimony and be cross-examined regarding their report. At the outset of the board of review's case in chief, the board attempted to submit into the record a letter prepared by its appraiser, Stephen Daly. In the letter, Daly acknowledged certain bank and commercial property sales used in the board of review's appraisal and asserted there would be no change in the subject's market value between the January 1, 2007 assessment date and the January 1, 2009 effective date of the board of review's appraisal. At this point, the appellant objected to Daly's letter and moved to strike this new evidence, since it was not timely filed by the board of review. The Hearing Officer reserved ruling on the objection and motion to strike this evidence.

The Property Tax Appeal Board hereby sustains the appellant's objection. The Board finds this evidence was not timely submitted, per §1910.40(a) & (d) of the Official Rules of the Property Tax Appeal Board (86.Ill.Admin Code §1910.40(a) & (d)).

The appellant then objected and moved to strike the board of review's appraisal because its effective date was January 1, 2009, rather than January 1, 2007, the effective date of the appeal. The Hearing Officer denied the motion, stating the effective date of the appraisal goes to the weight and credibility of the report.

In the board of review's appraisal, the appraisers used the cost and sales comparison approaches to value. In the cost approach, the appraisers considered two recent sales of land in Abingdon. The comparables consist of parcels that contain 12,021 and 34,676 square feet of land area. The first comparable is improved with a one-story building on a slab foundation. This building was torn down to make way for another commercial building. The second comparable was vacant land. These two comparables sold in January 2003 for prices of $32,000 and $17,900, respectively, or $2.66 and $0.52 per square foot. The appraisers noted comparable 1 was "Considered a high sale due to the existing building." The appraisers estimated the subject's land value to be $35,000.

Regarding the subject's improvements, the board of review's appraisers contend the subject bank contains 3,824 square feet of building area. They utilized the Marshall & Swift Cost Manual Calculator Method to derive a base cost of $139.20 per square foot. This base cost was increased by $2.45 per square foot to account for a sprinkler system. Incorporation of a perimeter multiplier of 1.03, current cost multiplier of 0.99, and a local cost multiplier of 1.07 resulted in a final square foot cost of $154.55. A basement square foot cost of $85.85 was also included. Subtraction of physical deterioration of 20%, functional obsolescence of 10% and external obsolescence of 15% resulted in a depreciated building value of $510,000, to which depreciated site improvements of $40,000 were added, along with the site value of $35,000, to develop an indicated value for the subject by the cost approach of $585,000, rounded.

In the sales comparison approach, the board of review's appraisers considered twenty comparables. The comparables were located in Davenport, Bettendorf, Le Claire and Iowa City, Iowa and Peoria and Galesburg, Illinois. The comparable sites range in size from 6,849 to 118,614 square feet of land area and are improved with various commercial buildings that range in size from 1,050 to 7,920 square feet of building area. Most are one-story masonry, frame, masonry and frame or metal and masonry exterior construction. Some comparables' story height and/or design were not specified. Twelve comparables were banking facilities, while the remaining comparables were commercial buildings of various types, such as dental or medical offices, retail stores and other offices. These properties sold for prices ranging from $91,000 to $1,600,000 or from $37.42 to $329.02 per square feet of building area including land. The appraisers reported the bank sales ranged from $52.99 to $329.09 per square feet of building area including land, while the eight commercial building sales ranged from $37.42 to $104.76 per square feet of building area including land. The appraisers also noted the subject "would be considered an over improvement should it become vacant and placed on the market for sale." Based on this analysis, the board of review's appraisers selected a market value of $150.00 per square foot of building area including land, or $575,000, rounded.

The board of review submitted no equity evidence in response to the appellant's one equity comparable. Based on this evidence, the board of review requested the subject's assessment be reduced to $180,000 to reflect a market value of approximately $540,000.

During cross examination, the board of review's appraisers agreed they placed most weight on the comparable sales approach and acknowledged most of their bank comparables were located in Davenport, Iowa because they could not find sales of community banks in small towns. They further testified their bank comparables averaged $173.00 per square foot, while the commercial comparables averaged $67.00 per square foot, but when questioned by the appellant as to which sales were used to derive the $150.00 per square foot price for the subject, the board of review's appraisers could not answer with specificity.

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 both parties submitted appraisals of the subject property in support of their respective arguments. The Board initially finds Skinner's appraisal better reflects the subject's market value because it focused on modest banks in smaller, rural communities like Abingdon. However, Skinner acknowledged he does considerable appraisal work for the subject bank. The Board finds this may call into question his objectivity in valuing the subject, notwithstanding standard assurances in the language of his report that he "has no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property."

However, the Board finds the question of Skinner's objectivity does not overcome the more reliable comparable sales upon which he based his value conclusion, most of which were small town banks like the subject. Skinner utilized an appropriate process to adjust his comparables for differences when compared to the subject. The Board finds in the comments section of his appraisal, Skinner stated "Comparables one, two, three, five, and six show lower values for the outlying areas and smaller towns. The appraiser feels an average of the adjusted comparable sales prices is required to show the mid-range of value for the subject. In the appraiser's opinion, it is not worth what Peoria banks are worth but is worth more than the small town banks." Skinner relied on the adjusted comparable sales as the basis of his market value estimate for the subject, with little reliance on the cost approach.

Regarding the board of review's appraisal, the Board finds the credibility of the report is called into question by Daly's failure to adequately explain how he reconciled his comparable bank sales with office and retail properties with their average prices of $173.00 per square foot and $67.00 per square foot, respectively, in selecting a value for the subject of $150.00 per square foot of building area including land. The Board finds Daly's reliance on bank sales in cities such as Davenport, Iowa that are many times larger than Abingdon diminishes the reliability of such sales, as market forces can be significantly different. Also, notwithstanding Daly's testimony that no significant changes occurred in commercial values between the January 1, 2007 assessment date at issue in this appeal and his report's effective date of January 1, 2009, this assertion is not supported by credible market data in his appraisal. For these reasons, the Board gave less weight to Daly's value conclusion and also finds most of the comparable sales in his report are of minimal use in estimating the subject's market value. However, the Board notes Daly's comparable sale 11, though located in Iowa City, Iowa, is very similar in size to the subject bank and sold for $111.97 per square foot of building area including land. This sale appears to support the subject's estimated market value of $104.12 per square foot of building area including land as found in the appellant's appraisal.

To summarize the overvaluation contention, the Property Tax Appeal Board finds the best evidence of the subject's market value is found in the appellant's appraisal. Therefore, the Board finds the appellant has met its burden of proving overvaluation by a preponderance of the evidence and a reduction in the subject's assessment is justified.

The Property Tax Appeal Board finds the board of review's contention that the subject is more valuable than other banks of its size in similar rural locales because of its finished basement, which is rented for occasional use by various community organizations, is not supported by the evidence and testimony in this record. Meadows testified the bank realizes no net income from these rentals, after expenses such as cleaning and utilities are taken into account. The Board finds Meadows' acknowledgement that the bank realizes some marketing benefit because it has provided the community with access to the subject's basement appears is an intangible benefit, as the record contains no evidence of any increased value for the subject.

The appellant also 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 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, and considering the reduction in the subject's assessment based on the market value finding herein, a further reduction based on an assessment inequity is not warranted.

Based on the above analysis, the Property Tax Appeal Board finds the subject's market value as of its January 1, 2007 assessment date is $414,000. Since market value has been established, the 2007 Knox County three-year median level of assessments of 33.68% shall apply.

APPELLANT:	**Svigos Asset Management**
DOCKET NUMBER:	**04-21567.001-C-3 through 04-21567.003-C-3**
DATE DECIDED:	**April, 2010**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of three parcels totaling 336,370 square feet of land improved with a 30-year-old, one-story, masonry constructed, multi-tenant, retail, strip shopping center containing 59,020 square feet of building area. The appellant argued that the fair market value of the subject is not accurately reflected in its assessed value.

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, 2004 and an estimated market value of $2,000,000.

At hearing, the appellant's first witness was Paul Svigos, the managing owner of the subject property. Mr. Svigos was shown Appellant's Group Exhibit #1, copies of aerial black and white photos of the subject property for 2000, 2004, and 2006. Mr. Svigos testified these pictures accurately depicted the property on the years noted, with the exception of the paved parking near building C in 2000.

Mr. Svigos was then shown Appellant's Group Exhibit #2, copies of aerial black and white photos from the National Flood Insurance Program for Franklin Park and, more specifically, the subject property. Mr. Svigos asserted that approximately half the subject is within a floodplain.

In response to access questions, Mr. Svigos testified that there is poor access from both Grand and Mannheim Avenues into the subject's property. He opined that the traffic is fast and that it's not ideal for a shopping center. He testified that after the subject's purchase in 2000, the parking lot was repaved, new lights replaced the old ones in the parking lot, and a new façade was put on the buildings. He asserted that between 2000 and 2009 the subject underwent approximately $400,000 in repairs and updating.

Mr. Svigos testified that a member of his family owned the grocery center that was leasing space at the time the subject was purchased by his family. He indicated this was a significant factor in purchasing the property. Mr. Svigos was shown Appellant's Exhibit #3, a copy of the closing statement for the purchase of the subject in 2000. Mr. Svigos testified that at the time of purchase, a phase one environmental study was conducted on the property and eight tanks of heating oil were discovered on the property. He testified that five of the tanks are located within buildings. Mr. Svigos indicated that they are still attempting to receive a no further remediation necessary letter from the government. He testified that approximately $200,000 has been spent to date on remediation.

Mr. Svigos was shown the Appellant's Exhibit #6, a copy of the appraisal with a valuation date of January 1, 2004. He was directed to the financial statements at the end of the appraisal. Mr. Svigos testified that these documents in the appraisal are income statements kept in the normal

course of business. He testified that the subject experienced a 15% vacancy rate for 2004. He asserted that the 2004 taxes had an effect on the vacancy rate of the subject after the bills were sent to the tenants.

Under cross-examination, Mr. Svigos acknowledged that between the purchase of the property in 2000 and 2004 there were significant improvements made to the property. As to remediation, Mr. Svigos testified that approximately $80,000 of the $200,000 in costs was done prior to 2004. He stated the outside tanks were removed and the inside tanks were remediated as best as possible. Mr. Svigos testified that the grocery store paid for the majority of repairs on the property.

Mr. Svigos testified there were no turn lanes into the subject property. He also testified the subject property, specifically units D & C, have flooded since taking ownership of the property in 2000.

The appellant's next witness was the appraiser, Joseph M. Ryan. Mr. Ryan testified that he is president of LaSalle Appraisal Group since 1991. He testified prior to this job, he had worked at two appraisal firms and the Cook County Assessor's Office. He indicated that he is an Illinois certified appraiser and holds the designation of an MAI from the Appraisal Institute. Mr. Ryan testified that he has appraised hundreds of retail and commercial properties. Ryan was accepted as an expert in the field of property valuation without objection of the remaining parties.

The appellant's appraisal gave an estimate of market value as of the effective date of January 1, 2004 of $2,000,000. Ryan testified he conducted a complete inspection on November 11, 2004. Ryan stated he did not develop an income or a cost approach to value.

Ryan testified that the subject property is a four-building strip retail center. He opined the land was an odd configuration. He testified that, while there is exposure on Mannheim Road, ownership does not own the corner parcel. In addition, he opined that the out lot building blocks the exposure of the other buildings.

Ryan opined that the highest and best use of the subject as vacant was commercial use and that as improved, it highest and best use would be its current use. He testified that he reviewed the sales history for the subject and determined the property was purchased in August 2000 for $1,850,000. Ryan testified that the tenants are local credit retailers.

The appellant's appraiser developed the sales comparison approach to value in estimating the subject’s market value. Ryan testified he considered all three approaches, but did not develop a cost approach because the property had an effective age of 30 years and had some incurable problems with design and layout of the property. He testified he did not develop an income approach because about 30% of the property was leased to a tenant that had a relationship with the ownership and that an income approach could be somewhat subjective and misleading. In addition, he opined that the functionality and design of the property calls into question the quantity, quality and durability of the income stream. Ryan testified he did review the income for the subject and stated the vacancy rate for 2004 was approximately 20%.

Ryan testified that, under the sales comparison approach, he examined sales of five commercial properties. He testified that sale #1 was the sale of the subject property in 2000. He stated the owners expended approximately $185,000 to improve the property between the sale date and 2004.

Ryan testified the comparables were strip shopping centers with some form of functional obsolescence such as an odd configuration or limited exposure to the street. He noted that four of the five comparables had grocers as the anchor tenant.

Ryan testified that comparable #4 subsequently sold. He was presented Appellant's Exhibit #8, a copy of a transfer declaration filing and a supplemental form for suggested comparable #4 showing a sale in January 2004 for $6,000,000. He testified that because the sale was after the lien date and the transfer declaration filing and supplemental form indicate that the property was part of an exchange and higher than market value, that he would not use this sale as a comparable. Ryan testified he measured this property and the square footage of the building is larger than indicated by the county; that being 92,000 square feet of building area. He was presented with Appellant's Exhibit #9, a copy of a Google maps aerial photo of this comparable. Ryan testified that this map shows a bulding size of 90,627 square feet. He stated that the difference in size between his measurements and those of the map would not alter his overall value of the subject.

The comparables range in building size from 31,000 to 92,000 square feet of building area and sold from August 2000 to February 2003 for prices ranging from $825,000 to $4,000,000, or from $26.61 to $43.48 per square foot of building area, including land. The properties ranged in age from 20 to 30 years and in land to building ratio from 1.80:1 to 5.70:1. Ryan testified he compared and contrasted the comparables to the subject based on several factors and made adjustments. He testified he estimated the value of the subject at $34.00 per square foot of building area, including land. This yields a value for the subject property under the sales comparison approach at $2,000,000, rounded.

Under cross-examination by the intervenor, Ryan testified that his inspection of the property was done on the day his report was issued. In response to questions concerning case law cited in the appraisal, Ryan testified he reviewed a summary of the case, but was not familiar with the facts of the case, the approaches used or the prevailing party.

Ryan acknowledged that his definition of market value includes reasonable time for exposure on the open market. He was presented with Intervenor's Exhibit #1, copies of the transfer declaration filing and the trustee's deed for the subject's sale on July 1, 2000. Ryan testified the subject property was not listed with an agent or advertised for sale. He opined that the sale was at market value because it was negotiated.

As to sale #2, Ryan was presented Intervenor's Exhibit #2, a comps detail sheet for this comparable. Ryan testified he used Costar Comps Service for data on sale #2. Ryan acknowledged that the form stated the property was vacant for two years prior to its sale and that he did not have this information in his appraisal. He opined that this sale was evidence of a fee simple market value.

As to sale #3, Ryan was presented Intervenor's Exhibit #3, copies of the transfer declaration filing and the warranty deed for a subsequent sale for this property in May 2002 for $2,118,400. He acknowledged this sale is an increase of 45% from the previous 2001 sale that he used in his appraisal. Ryan acknowledged the sale information was available to him, but was not included in the appraisal report.

Ryan was presented with Intervenor's Exhibit #4, a copy of a CoStar Comps Service detail sheet for comparable #4, and Intervenor's Exhibit #5, a comps detail sheet printed by Dost Valuation Group for this comparable. Ryan acknowledged the CoStar Comps sheet does indicate that the property sold with deferred maintenance, but it does not indicate the sale was part of a 1031 exchange. He also acknowledged that the transfer declaration does not indicate the sale was an exercise of an option, but that it does list the sale as a fulfillment of a contract. He acknowledged that the buyer made an unsolicited offer for the property; but Ryan opined that once negotiations began, the property was available for other offers and therefore the sale was representative of market value.

Ryan was presented with Intervenor's Exhibit #5, a comps detail sheet for comparable #5 prepared by Dost Valuation Group. Ryan agreed that the property subsequently sold after the lien date for a higher price than the previous sale.

Ryan agreed that the subject was an income producing property and acknowledged that buyers would look at the income generating capacity of a property such as the subject. He reaffirmed that he did not develop an income approach to value for the subject.

On cross-examination by the board of review, Ryan again agreed that the subject is an income producing property and that potential income would be a concern for an investor. He acknowledged that the appraisal stated that the client requested the scope of the appraisal be limited. He testified he discussed the merits of the three approaches with the client and they opined that the sales comparison approach was the most relevant.

Ryan testified that the subject had vacancy issues and acknowledged that vacancy can arise from poor management. He testified the subject is on a heavily-traveled roadway where there are turning lanes for ingress into the property. He acknowledged the subject has fair access, visibility and is in fair condition.

On re-direct, Ryan opined that the definition of market value is all encompassing and focuses on the buyer and seller acting knowledgeably, prudently and in their own best interest.

As to sale #2, Ryan testified that he used the Costar Comp information, but that he also confirmed the information through the green sheet or talks with a party involved in the sale. He opined that this property was comparable to the subject in functional obsolesce because the building was flush with parking in front of Roberts Road and some spaces were deeper than others. He opined it was not a classic strip center design.

Ryan stated he looked at the market for properties that were not classic, straight across stip centers. He testified the comparables are either inhibited by the building's lack of prominence and exposure, bad design or lack a good anchor tenant.

Ryan testified that he relies on all forms of documentation to confirm a sale, but gives most weight to conversations with the buyer, seller or broker.

In regards to the ingress and egress of the subject, Ryan testified that several lanes of on-coming traffic must be crossed.

The board of review submitted "Board of Review-Notes on Appeal" that reflect the subject's total assessment of $1,673,096 yielding a market value of $4,402,884 or $74.60 per square foot of building area, including land, 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 $4,185,000 as of January 1, 2004. 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.

The intervenor, Village of Franklin Park, adopted the evidence submitted by the board of review.

In support of the Leyden C.H.S.D. #212's position, this intervenor submitted a complete, summary appraisal of the subject with an effective date of January 1, 2004 and an estimated market value of $5,000,000. The appraiser is Eric Dost. Mr. Dost was the intervenors' only witness in this appeal. Mr. Dost testified that he is president of Dost Valuation Group since 2003 and also holds the designation of MAI. Dost also stated he is a certified appraiser in five states, including Illinois. He stated he has performed over 2,500 appraisals over the course of his career with, roughly, 2,000 commercial properties and 500 of those strip shopping centers. Dost testified he has been an expert witness before the City of Chicago Zoning Board, the Illinois Property Tax Appeal Board, and the North Dakota State Board of Appeals. Dost was voir dired by the appellant's attorney. Over the objection of the appellant, Dost was admitted as an expert in the field of property valuation by PTAB.

Dost testified he performed an exterior and partial interior inspection of the subject on March 16, 2006. Dost described the subject's neighborhood characteristics. He opined that the subject property's highest and best use would be a continuation of its present use. In addition, Dost developed the three traditional approaches to value in estimating the subject’s market value. The cost approach indicated a value of $3,100,000, rounded, for the land while the income approach indicated a value of $5,000,000, rounded. The sales comparison approach indicated a value of $5,000,000, rounded. The appraiser concluded a market value of $5,000,000 for the subject property as of January 1, 2004.

Dost opined that the highest and best use of the subject as vacant was commercial use and that as improved, it highest and best use would be its current use. The first method developed was the cost approach to estimate a value for the land. Dost testified he reviewed four land sales. The properties sold from November 2003 to July 2004 for prices ranging from $2.98 to $22.03 per square foot. Dost opined that the two most comparable sales were #1 and #3. After adjustments, Dost estimated the subject land at $9.00 per square foot or $3,100,000.

The next method developed was the sales comparison approach. Under this approach, Dost utilized four suggested sales comparables. These buildings are described as strip shopping centers between 10 and 33 years old. The properties ranged in size from 32,036 to 82,359 square feet of rentable area. They sold from January 2003 to July 2004 for prices ranging from $4,000,000 to $5,850,000 or from $71.03 to $138.13 per square foot of rentable area.

Dost testified he made adjustments for various factors of comparison. He testified he also considered the sale of the subject property in 2000, but deemed it not relevant for several reasons. The first reason, he opined, was because market conditions had changed dramatically since the sale, a number of improvements were made to the subject, and two of the comparable properties had previous sales. Dost testified that comparable #4 sold previously in 2001 for 47% less than the current sale and that comparable #1 sold previously in 2000 for 38% less than the current sale. He opined these sales support the data of decreasing vacancy rates, increasing rents, and increasing prices.

Dost determined a value for the subject of $85.00 per square foot of rentable area which yields an estimate of value under the sales comparison approach of $5,000,000, rounded.

Under the income approach, Dost testified he examined two sets of rent comparables, one for the in-line stores and one for the out lots. For the in-line stores, Dost testified he reviewed the rental data on four comparables. The asking rent for the in-line space ranged from $12.00 to $14.40 per square foot of rentable area on a triple net basis. After making adjustments, Dost concluded a rent for the subject at $11.00 per square foot for the in-line space and $8.00 per square foot for the larger anchor store space. For the out lot space, Dost testified that these buildings have prominent frontage space and opined that with greater visibility and smaller space comes higher rents. Dost reviewed the rental data on four comparable out lots that ranged in asking price from $12.63 to $30.00 per square foot of rentable area. After adjustments, Dost concluded a rent for the out lots at $20.00 per square foot of rentable area. Dost testified he deducted 10% percent off the asking prices for conditions of rental because asking prices typically are set high in order to allow room for negotiation. He based this figure on a study he performed of asking rents versus contract rents.

Dost stated he estimated vacancy and collection at 6%. He testified he reviewed the subject's vacancy, vacancy rates of surrounding shopping centers located at the subject's intersection, and the *2004 Chicago Retail Market Index Brief*.

As to expenses, Dost testified he analyzed the subject's history, information from the Urban Land Institute, and typical expenses for similar properties as found in Korpacz Real Estate Investor's Survey. Total operating expenses were estimated at $623,815 for an operating income (NOI) at $503,293. Dost opined this figure was consistent with the historical expenses of the subject.

In determining the appropriate capitalization rate (CAP rate), Dost testified he applied three different methods. He stated he reviewed the CAP rates of the sales comparisons which ranged from 9.1% to 11% and Korpacz Real Estate Survey, first quarter, 2004, wherein rates for non-institutional retail strip shopping centers ranged from 8.5% to 12%. In addition, Dost testified that he applied a band of investment analysis. He testified he concluded a CAP rate of 10%. NOI

was then capitalized by this rate to reflect a market value estimate under the income approach of $5,000,000, rounded, for the subject.

In reconciling the various approaches, Dost testified because the subject property is a multi-tenant retail property, an income producing property, the income approach was given primary emphasis; secondary consideration was given to the sales comparison approach.

Under cross-examination, Dost testified, and his appraisal notes, that the subject property's southwest corner is within a flood zone. Dost was presented with Appellant's Exhibit #2; he acknowledged that he does not state the percentage of the property that is within the floodplain and indicated the map he reviewed did not have a layout of the improvements or parcels. Dost testified he did not make a specific adjustment to the comparables for floodplain, but took several factors into consideration. He opined that the exhibit did not clarify which areas were 100 year, 500 year, or zone X flood zones.

As to the land sales, Dost acknowledged that sale #1 was a corner lot and larger than the subject. He testified sale #2 was the weakest sale and he did not place emphasis on this sale. Dost was presented with Appellant's Exhibit #10, a copy of an aerial map for comparable #2 and a copy of a Schiller Park zoning map. Dost agreed the property is located on the edge of a cemetery and opined that the deed restrictions of this property were because of its location. Dost opined sale #3 was inferior to the subject because there were vacant improvements on the property that needed to be demolished.

As to the sales comparables, Dost acknowledged sale #1 was smaller than the subject and located quite a distance away, but he opined that the location was on a primary thoroughfare such as the subject, the property is an interior lot, and does have frontage on two streets. He testified he was not aware of any flood issues or circulation issues for the comparables. Dost was presented with Appellant's Exhibit #11, a copy of the transfer declaration filing for sale #3. Dost acknowledged that the words "Buy Sell" are handwritten on the form. He testified that he did not contact any parties involved in the sale to confirm the sale.

Dost was presented with Appellant's Exhibit #8 in regards to sale #4. The 2001 sale was utilized by the appellant's appraiser while Dost utilized the 2004 sale. Dost opined that the property was worth more than $4,000,000 because the mortgage was for more than that price. He asserted that exchange situations do not mean that much and are common.

As to the income approach, Dost acknowledged that two of the rental comparables are larger than the subject and two are smaller. He also agreed that the comparables are all asking rents from 2005 or 2006. He was questioned extensively in regards to the subject's historical expenses versus the stabilized expenses listed in the appraisal.

Dost asserted he used stabilized taxes for tax recoveries because the leases were on a triple net basis. He testified that loading the cap rate is another method for considering taxes, but would require a prorated factor for the vacancy rate.

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 not satisfied this burden and that a reduction is not warranted.

In determining the fair market value of the subject property for the 2004 tax year, 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.

That having been said, the PTAB then looks to the remaining evidence that comprises the Ryan appraisal and testimony submitted by the appellant and the Dost appraisal and testimony submitted by the intervenor Leyden C.H.S.D. #212.

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). Therefore, the PTAB will give primary weight to the sales comparison approaches within the appraisals.

In totality, the parties' experts submitted nine suggested sales comparables. 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 PTAB gives little weight to appellant's sale #1, the sale of the subject property in 2000. There was significant testimony from all the witnesses that the property was not on the market at the time of sale, but that the appellant, a relation to the grocery store leasing space, approached the landlord to purchase the property. In addition, there were significant upgrades to the property done after the purchase of the property. In addition, the PTAB finds the appellant failed to submit sufficient evidence that the subject's location in a flood plain negatively affects the subject's market value. There was no evidence, including the appellant's own appraisal, which showed any damage to the subject property based on flooding.

The appellant's appraiser testified that, in regards to sale #3, there was a subsequent sale of this property in 2002, closer to the lien date, which was not in the appellant's appraisal. Ryan did not provide any testimony to indicate this sale was not at arm's length. Therefore, the PTAB will use this subsequent sale for this comparable.

The appellant's comparable #4 and the board of review's comparable #4 are the same property, but two different sale dates are used. The appellant used a prior sale in 2001 and the intervenor

used the 2004 sale. The PTAB accords little weight to the 2004 sale due to the fact this property was never offered on the open market, but was part of a 1031 exchange.

The PTAB finds that Appellant's Exhibit #11 is not sufficient evidence to question the arm's length nature of the intervenor's sales comparable #3. The appellant did not provide any testimony to show a clear understanding as to what the words written on the transfer declaration filing meant in regards to the arm's length nature of the sale. Therefore, the PTAB gives weight to this sale.

The remaining sales were also given weight by the PTAB. In total, the seven properties sold between July 2001 and July 2007 had had a sales range of $26.61 to $138.13 per square foot of rentable area, including land. The subject property's current assessment yields a market value of $74.60 per square foot of rentable area which is within the unadjusted range of these comparables.

After considering all the evidence, including the experts' testimony and submitted documentation, as well as the adjustments and differences for characteristics in the appellant's and the intervenor's suggested comparables, the PTAB finds that the subject's current 2004 assessment is 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 correctly valued and that a reduction or increase in the subject's assessment is not warranted.

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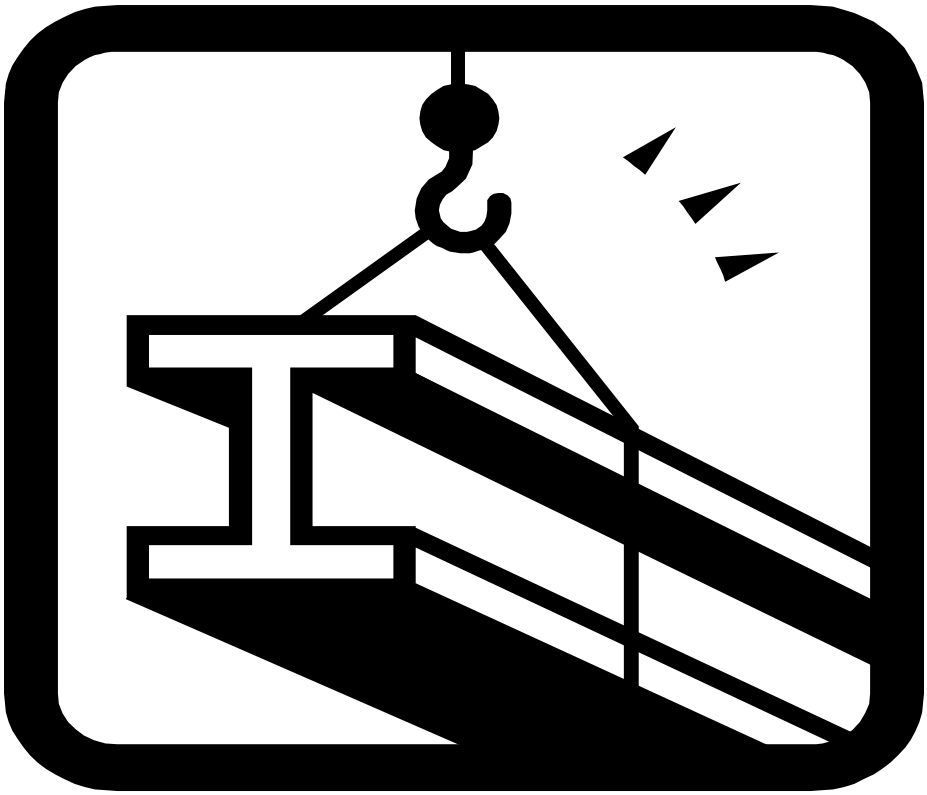
Arguments or Evidence in Opposition to the Appellant's claim]

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2010 INDUSTRIAL DECISIONS



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2010 INDUSTRIAL CHAPTER

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APPELLANT:	**Belleville Shoe Manufacturing**
DOCKET NUMBER:	**06-02259.001-I-3**
DATE DECIDED:	**September, 2010**
COUNTY:	**St. Clair**
RESULT:	**Reduction**

The subject property consists of a 16.37 acre parcel improved with a one-story industrial building containing a total building area of 159,751 square feet. The building was constructed in 1985 with an addition in 2002. The subject is a pre-engineered steel framed building over poured concrete footings with six to eight inch concrete floors. The exterior walls are insulated steel sandwich panels. The subject has clear ceiling heights ranging from 15 feet 5 inches to 20 feet 2 inches. There are 7 exterior dock doors and 10,400 square feet of office space. The building is heated, 60% air conditioned and fully sprinklered. The property is located in Belleville, St. Clair County.

The appellant contends overvaluation as the basis of the appeal. In support of this contention the appellant submitted a narrative appraisal prepared by real estate appraiser J. Edward Salisbury of Salisbury & Associates, Inc. Salisbury was called as a witness.

Salisbury made an interior and exterior inspection of the subject property on February 27, 2007. Salisbury was of the opinion the highest and best use of the subject site as vacant was the present use of the property. The highest and best use of the property as improved was determined to be the continued industrial use. Salisbury developed the three traditional approaches to value in estimating the market value of the subject property.

The first approach to value was the cost approach with the initial step being to estimate the value of the land. In estimating the market value of the land Salisbury used one sale and seven listings. The only land sale was a 3.93 acre parcel located in Belleville that sold in July 2005 for a price of $113,397 or $28,854 per acre. The listings were located in the Illinois cities of Belleville, Dupo, Mascoutah and Cahokia. The listings ranged in size from 3.75 to 439 acres with asking prices ranging from $100,000 to $10,975,000 or from $13,250 to $47,771 per acre. After considering these properties Salisbury was of the opinion the subject parcel had an estimated market value of $30,000 per acre or a total land value of $490,000.

Salisbury next estimated the replacement cost new of the improvements using the Marshall Valuation Service. Salisbury estimated the replacement cost new of the building improvements to be $6,747,642. Salisbury abstracted depreciation using five sales contained in the sales comparison approach to value. His analysis indicated that the newer properties that ranged from 8 to 9 years old had annual rates of depreciation ranging from 6.20% to 8.23%. The two oldest comparables in the depreciation analysis were 22 and 33 years old with annual rates of depreciation of 3.30% and 2.36%, respectively. Salisbury testified that based on the subject building being 16 years old he estimated an annual depreciation rate of 4% for a total deprecation of 64%. Deducting depreciation resulted in a value for the improvements of $2,429,151. Adding the estimated land value resulted in an estimated market value under the cost approach of $2,920,000, rounded.

The next approach to value developed by Salisbury was the income approach to value. In estimating market rent the appraiser used five rental comparables and two rental listings. The properties were industrial properties located in the Illinois communities of Freeport, Danville, Galesburg, Rock Island, Macomb and Salem. The comparables ranged in size from 60,000 to 292,892 square feet of building area and in age from 7 to 31 years old. The two listings had asking rents of $1.00 and $1.95 per square foot of building area. The five rentals had rents ranging from $1.30 to $2.75 per square foot of building area. Based on this data Salisbury estimated the subject property would have an economic rent of $2.75 per square foot, net, for a potential gross income of $439,315. The appraiser estimated the subject would suffer from a 10% or $43,932 vacancy allowance resulting in an effective gross income of $395,383. Salisbury also estimated that the operating expenses an owner would expect to incur to keep the property occupied were 10% of effective gross income or $39,845. Deducting expenses from the effective gross income resulted in a net income of $355,845.

The appraiser next developed an overall capitalization rate to be applied to the subject's net income using information on eleven sales. According to Salisbury these properties had overall rates ranging from 9.8% to 21.6%. He estimated the capitalization rate applicable to the subject property would be 12%. Capitalizing the net income resulted in an estimated value under the income approach of $2,970,000.

The final approach to value developed by Salisbury was the sales comparison approach. Salisbury testified he could not locate any industrial sales in St. Clair County that he thought were arm's length. The appraiser used seven sales and two listings that were located in the Illinois communities of Rockford, Effingham, Machesney Park, Loves Park, Bourbonnais, Macomb and Vandalia. The comparables ranged in size from 72,000 to 292,892 square feet of building area and ranged in age from 6 to 33 years old. The sales occurred from August 2002 to December 2005 for prices ranging from $1,200,000 to $3,495,000 or from $10.87 to $19.91 per square foot of building area. The two listings had asking prices of $2,800,000 and $2,900,000 or $9.56 and $13.78 per square foot of building area, respectively. After considering these properties the appraiser estimated the subject property had an estimated value of $18.00 per square foot of building area or $2,880,000.

In reconciling the three approaches to value, Salisbury gave some weight to the cost and income approaches and considerable weight to the sales comparison approach. He ultimately estimated the subject had a market value of $2,900,000 as of January 1, 2006.

Salisbury was questioned about the sales contained in the board of review information. He testified that he did not use board of review sale #1, located at 3 Amann Court, Belleville, because while investigating the sale he discovered this property was under a long term lease with King Food Products at the time of sale. Salisbury did not use board of review sale #3, located in Millstadt, because this property was under a 25 year lease with DCA Foods at the time it sold in 2005. Salisbury explained this sale involved a sale-lease back, therefore, he did not use the sale. The witness testified he did not use board of review comparable sale #4 located in Mascoutah due to this building having 28,000 square feet of office space and there were four offices spaces being offered for lease at $9.35 per square foot. As a final point Salisbury testified he had never

had an industrial property sell for $93.00 per square foot of building area, the sales price of board of review comparable #2.

During cross-examination Salisbury also testified that board of review sale #1 did not sell in June 2006 for $1,500,000 as reported by the board of review. The witness stated this property did sell in January 2008, which was after the time he had finished his appraisal report.

Based on this evidence the appellant requested the subject's total assessment be reduced to $966,667.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling $1,430,442 was disclosed. The subject's total assessment reflects a market value of approximately $4,292,000, rounded.

As evidence in support of its contention of the correct assessment of the subject property, the board of review submitted information on four comparable sales located in Belleville, Sauget, Millstadt and Mascoutah, Illinois. The board of review indicated that its sale #1 was a 48,100 square foot industrial building that sold in June 2006 for a price of $1,500,000 or $31.18 per square foot of building area. Board of review comparable #2 was described as an industrial building with 32,012 square feet of building area constructed in 1999 that sold in September 2005 for a price of $3,000,000 or $93.71 per square foot of building area. Board of review sale #3 was described as a 62,500 square foot industrial building with a 20 foot ceiling height constructed in 1992. This property sold in June 2005 for a price of $1,240,000 or $19.84 per square foot of building area. The final comparable was a 73,800 square foot building with 28,800 square feet of office space constructed in 1982. This property sold in March 2005 for a price of $1,200,000 or $16.26 per square foot of building area.

The board of review also developed an estimate of annual depreciation using sales #1, #3 and #4. According to the board of review these sales indicated annual rates of depreciation ranging from 1.75% to 2.25%. The board of review was of the opinion the subject should have an annual rate of depreciation of 2.5%, rather than 4% as used by Salisbury, resulting in total depreciation of 40%. The board of review then calculated the subject's estimated value using the cost approach. Using the Illinois Real Property Appraisal Manual, the board of review indicated the subject's replacement cost new was $5,814,300, depreciation was 40% or $2,325,700 and the land value was $25,000 per acre or $414,000. Using these numbers the board of review indicated the subject has a total value of $3,902,600. Based on this estimate the board of review requested the subject's assessment be reduced to $1,300,867.

During the hearing the board of review representative, Patricia Boze, assumed that sale #1 used by the board of review did not actually go through in June 2006.

Under cross-examination Ms. Boze agreed that comparable sale #2 was a truck dealership with service bays. With respect to sale #3, Ms. Boze did not know whether this property was subject to a lease at the time of sale. With respect to sale #1 the witness indicated there was no record of any leases being recorded.

In the board of review's submission it stated that sale #1 was the best comparable. However, at the hearing Ms. Boze agreed this was a contract for sale. The board of review's evidence did include page 1 of 6 of the Contract to Purchase Real Estate associated with comparable #1. Line 20 of the contract to purchase initially had a purchase price of $1,425,000 that was stricken and inserted was a purchase price of $1,500,000 followed by the initials of the proposed seller. The buyer's initials did not follow the amended purchase price. Ms. Boze agreed that this contract may have just been an offer to purchase.

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 assessment of the subject property.

The appellant contends overvaluation as the basis of the appeal. 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 appellant presented the testimony of an appraiser, Salisbury, and submitted his appraisal wherein he estimated the subject property had a market value of $2,900,000 as of January 1, 2006. The appraiser developed the three traditional approaches to value and placed most reliance on the sales comparison approach. The appraisal contained a detailed development and analysis of the three approaches to value in arriving at a final estimate of value. The appraisal contained sufficient information on land sales, the development of the cost approach, numerous rental comparables, data to support the development of the capitalization rate and information on industrial comparable sales that lead to a credible estimate of market value. In conclusion, the Board finds that Salisbury provided credible testimony and the report contained a convincing market analysis that led to a reliable estimate of market value as of the assessment date at issue.

In contrast, the board of review provided information on four comparable sales and a cost approach to value. The Board finds the evidence and testimony disclosed that board of review comparable sale #1 did not actually sell in June 2006 as reported in the documentation but actually sold in 2008. Furthermore, Salisbury testified that both board of review comparables #1 and #3 were under long term leases at the time of their sales, which is why he did not consider these properties. The Board finds these long term leases would need to be considered and analyzed to determine their impact on the purchase price. The evidence further disclosed that board of review comparable sale #4 had 28,800 square feet of office area, which was 39% of its building area. This building was significantly smaller than the subject building and had significantly more office space, which calls into question its comparability to the subject property. As a final point, it was disclosed that comparable sale #2 was being used as a truck dealership with service bays, which is different than the subject's industrial use. The Board finds the comparables submitted by the board of review were not probative or credible in establishing the market value of the subject property.

The Board finds the cost approach prepared by the board of review was not particularly valid or reliable due to the fact that depreciation was abstracted using the previously mentioned sales, which were not representative of the subject property. As a result the Board finds the cost

approach prepared by the board of review not to be persuasive in establishing an estimate of market value for the subject property.

In conclusion, the Property Tax Appeal Board finds the best and most credible evidence of market value in this record was provided by appellant in the form of the appraisal and testimony of real estate appraiser Salisbury. Based on this record the Board finds the appellant demonstrated by a preponderance of the evidence that the subject property had a market value of $2,900,000 as of January 1, 2006. The Board finds a reduction in the subject's assessment commensurate with the appellant's request is appropriate.

APPELLANT:	**Pioneer Hi-Bred International, Inc.**
DOCKET NUMBER:	**05-00476.001-I-3 & 06-00257.001-I-3**
DATE DECIDED:	**January, 2010**
COUNTY:	**Henry**
RESULT:	**Reduction**

The subject property consists of a 69.7 acre parcel improved with twenty four interconnected buildings that were constructed in 1986, 1992, 1994, 1999 and 2003. The buildings are primarily one-story structures but one building is three-story and one building is five-story. The buildings range in size from 280 to 90,000 square feet with clear ceiling heights ranging from 9 to 70 feet. Nineteen of the buildings are of steel frame with steel siding and steel roof construction with concrete floors. The total building area is 320,254 square feet. The subject also has three ear-corn dryers each with a capacity of 30,000 bushels. Each corn dryer contains 12,320 square feet and is constructed with cast-in-place walls and roof. The subject property has asphalt and concrete drives, exterior lighting, fencing and two 100,000 pound truck scales. The property is located in Woodhull, Oxford Township, Henry County.

The 2005 and 2006 appeals were consolidated.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal prepared by J. Edward Salisbury of Salisbury and Associates, Inc., Taylorville, Illinois. Salisbury estimated the subject property had a market value of $7,500,000 as of January 1, 2005. Salisbury was called as a witness on behalf of the appellant.

Salisbury has been a real estate appraiser for over 30 years and has the Certified General Real Estate Appraiser license with the State of Illinois. He has appraised hundreds of industrial properties and has appraised four or five seed plants. The most recent seed plants appraised were located in Princeton, Litchfield and St. Joseph. In appraising the subject property Salisbury had assistance from Mike Phipps (Phipps), project engineer with Pioneer, who provided information on what costs were running and provided cost estimates from engineers on the various buildings that were non-standard. Salisbury inspected the subject property on July 13, 2006, with one of the plant managers and assistant managers who took him through the various buildings and component parts of the facility.

Under *voir dire* Salisbury identified those buildings where he utilized the Marshall Valuation Service (hereinafter Marshall) in calculating the replacement cost new of the buildings and those buildings where he relied on information from Phipps. Using page 47 of his appraisal, marked as Appellant's Exhibit No. 1, Salisbury testified buildings 1 through 6 were a combination of Marshall and Phipps; buildings 7 through 10 Salisbury used information from Phipps; buildings 11 through 12 were a combination of Marshall and Phipps; building 14 was information from Phipps; building 15 was from Marshall; buildings 16 through 18 were from Phipps; buildings 19 and 20 were from Marshall; building 21 was from Phipps; and buildings 22 through 24 were a combination of Marshall and Phipps. Salisbury testified the cost new for the corn dryers was provided by Phipps and the lump sums and scales were a combination of Marshall and Phipps.

Salisbury testified that he provided Phipps with a list of buildings and asked him to search for the newest properties they built for examples of the cost to construct similar buildings. Phipps would provide him sheets that had numbers, such as so many dollars per square foot for those buildings.

Salisbury testified he has the Certified Illinois Assessment Official (CIAO) designation and the Certified Assessment Evaluator (CAE) designation from the International Association of Assessment Officers (IAAO). He has also appraised 150 grain elevators with components that included scales, dryers and offices similar to what is located at the subject property. He also testified there was nothing particularly unique about the warehousing at the subject property that is different from other industrial properties.

Salisbury was offered as an expert in the valuation of industrial properties. The board of review argued that there was no evidence that qualified Salisbury as an expert in the valuation of seed plants like the subject. The Property Tax Appeal Board accepted Salisbury as an opinion witness.

Salisbury identified Appellant's Exhibit No. 1 as his appraisal of the subject property. The purpose of the appraisal was to estimate market value as of January 1, 2005. The subject property was appraised in fee simple with no encumbrances.

In describing the improvements Salisbury testified there is a combination of a series of buildings that were originally constructed with additions added over time. The subject property is used as both a corn seed plant and a soybean seed plant operation. The property has the necessary dryers, dump pits, storage bins and warehousing to store the finished product. The sizes of the buildings were determined through inspection, spot checking and blueprints of the plans for the plant. The witness testified the height of the tall buildings was determined from the plans. Pages 32 and 33 of Appellant's Exhibit No. 1 depict the age and size of the improvements. On page 33 of the appraisal Salisbury indicated the subject had 3,816 square feet of office space, 49,706 square feet of processing space, and 266,732 square feet of warehousing space. Salisbury also calculated the weighted age of the subject buildings to be 12 years old. Salisbury described the improvements as being in good condition with no major physical problems. He was of the opinion there was some functional obsolescence because the subject was built in sections over time. The witness indicated there was little physical obsolescence, just typical wear and tear on the buildings.

The appraiser explained the outside improvements included the dump pits, parking, concrete drives around the buildings and conveyors that conveyed the grain from building to building.

Salisbury testified the highest and best use of the subject was for continued use as a seed plant.

The appraiser testified the subject property is located in a small community situated near an access to an interstate. He testified that the neighborhood and area analysis data in the appraisal partially came from what at one time was known as the Illinois Department of Commerce and Community Affairs. He testified some of the neighborhood data included the Quad Cities area which is more than 10 miles from the subject property. This information discrepancy did not have any effect on his determination of market value.

Salisbury testified he considered all three approaches to value but developed the cost approach and the sales comparison approach. The witness was of the opinion the income approach is not applicable because this type of facility is not leased on a regular basis so there is not income information that can be gleaned to determine a value by the income approach.

The first approach to value developed by Salisbury was the cost approach to value. The initial step under the cost approach was to estimate the site value using two land sales and four listings. The two land comparables that sold had 16.27 and 144.38 acres. The two sales occurred in March 2006 and May 2006 for prices of $1,120,000 and $130,152 or $7,757 and $7,999 per acre, respectively. The four listings ranged in size from 21.80 to 113.00 acres and had listing prices ranging from $150,000 to $1,130,000 of from $5,000 to $12,000 per acre. Based on this data the appraiser estimated the subject site had a value of $7,000 per acre for a total value of $490,000.

The second step under the cost approach was to estimate the replacement cost new of the improvements. In estimating the cost new Salisbury used information from Phipps relating to the actual construction costs for the same type of building at different facilities that were built about the same time as when the subject plant was being appraised. Salisbury testified that for some of the buildings one cannot use a national cost service to cost them out. For example, he used information from Phipps regarding the office building, since it was not typical to have a separate office building in industrial space, which was estimated to have a cost of $75.00 per square foot. He also used information from Phipps with respect to the corn dryers. Salisbury also explained that he went through the buildings to see what buildings he could cost out using Marshall. The total cost of the buildings was estimated to be $16,577,820. The lump sum adjustments, scales and conveyors were estimated to have a cost of $2,955,000. These two components had a total cost of $19,532,820. The three corn dryers were estimated to each have a cost of $2,000,000 for a total cost of $6,000,000.

The next step was to estimate the depreciation associated with the improvements. Salisbury abstracted depreciation using sales 2, 3, 5 and 6 from the sales comparison approach because the land values were known. The appraiser estimated these four sales had total depreciation ranging from 57.8% to 93.0% or annual rates of depreciation ranging from 3.6% to 8.2%. Salisbury estimated the subject had an annual rate of depreciation of 6% for total depreciation of 72%. The replacement cost new of the improvements of $19,532,820 was multiplied by 72% to arrive at total depreciation of $14,063,630, which was deducted to arrive at a depreciated improvement value of $5,469,190. Salisbury also applied 72% depreciation to the total cost of the dryers to arrive at a depreciated value of $1,680,000. Adding the depreciated value of the building improvements and the land value resulted in an estimate of market value under the cost approach of $7,650,000.

Salisbury next developed the sales comparison approach to value. The appraiser testified he initially searched for sales of newer seed corn or seed plants. He located older seed plants which he included in the appraisal. He also included sales of newer industrial buildings including light manufacturing and distribution warehouses. The witness explained these buildings give a good comparison to component parts of the subject property. The industrial comparables were located in the Illinois cities of Bourbonnais, Rockford, St. Elmo, Loves Park, Oglesby, Macomb and Galesburg. The comparables ranged in size from 63,875 to 850,000 square feet and they ranged

in age from 8 to 21 years old. These properties had land to building ratios ranging from 1.91:1 to 7.50:1, ceiling heights ranging from 17 to 38 feet and office areas ranging from 0.0% to 18.20% of building area. The sales occurred from August 2001 to December 2005 for prices ranging from $564,000 to $3,495,000 of from $1.97 to $19.91 per square foot of building area.

The six seed plants included in the appraisal were located in the Illinois communities of Bloomington, Tuscola, Milford and Congerville. Two comparables were located in the Iowa communities of Mt. Pleasant and DeWitt. The comparables ranged in size from 85,236 to 181,890 square feet and ranged in age from 24 to 38 years. These comparables had land areas ranging from 6.84 to 20.40 acres and office areas ranging from .83% to 4.72% of building area. The sales occurred from June 1999 to September 2006 for prices ranging from $390,500 to $1,900,000 or from $2.37 to $11.15 per square foot of building area.

Salisbury was of the opinion the sales of the older seed plants represent a low value in relation to the subject property. He also stated the subject property had some component parts that these older buildings would not have. He testified the industrial sales are newer buildings similar in age to the subject property and give a feel for the market for component parts of the subject property and newer industrial buildings. The appraiser also testified there would be a serious marketing problem if one was to sell the subject property for the same use as a seed corn plant due to marketing plans of other seed companies.

After considering both sets of sales the appraiser estimated the subject building improvements had a market value of $18.00 per square foot of building area or $5,764,572. The appraiser then added the contributory value of the corn dryers as computed under the cost approach of $1,680,000 to arrive at an indicated value under the sales comparison approach of $7,450,000.

The appraiser testified his industrial sale 2 was purchased and acquired through foreclosure. He explained this property was taken back by a bank, which then listed with the biggest broker in Rockford. Salisbury testified the broker stated the property was listed for what they considered a market price. The property was exposed on the market for over a year before the bank accepted an offer. Salisbury was of the opinion the sale represented market value.

In reconciling the two approaches, Salisbury placed very little weight on the cost approach because of the subject's unique features, the construction of additions over time which impacts cost and the calculation of depreciation. Salisbury placed significant weight on the sales comparison approach. His ultimate estimate of value for the subject property was $7,500,000 as of January 1, 2005.

Salisbury was not aware of any significant changes to the property since January 1, 2005 and not aware of any significant changes in the market for similar properties from January 1, 2005. Salisbury did not believe there would be any significant market change between 2005 and 2006.

Under cross-examination Salisbury testified with respect to the way the dryer buildings at the subject property operated to dry the ear corn prior to the corn being conveyed to the sheller. Salisbury identified Board of Review Exhibits 12A and 13 as photographs of the subject property that also depict the dryers. Salisbury identified Board of Review Exhibit 14 as the color version of the subject's site plan as contained on page 13 of his appraisal. Salisbury was questioned with

respect to the buildings located on the subject property and whether they were similar to industrial buildings. Salisbury agreed that the Bulk Building No. 1, Bulk Building No. 2, the sheller building and the corn conditioning tower would not be typical of the industrial sales he used. Salisbury agreed that portions of the warehouse area have air conditioning for the seed and testified that it was not uncommon to find industrial buildings that are air conditioned.

Salisbury identified the soybean receiving area in the middle of the page of Board of Review Exhibit No. 14 as consisting of soybean receiving, soybean bulk and the soybean conditioning tower. Salisbury agreed these buildings had replacement costs ranging from $75.00 to $190.00 per square foot, which are not typical of the comparable industrial sales contained in the appraisal.

Salisbury agreed that most of the costs from Marshall would be associated with the warehouses. He also agreed that the highest and best use of the property is its continued use as a seed production plant. The witness also agreed that in selecting comparable sales they have at least the potential if not identical highest and best use as the subject.

Salisbury agreed that comparable sale 1 was sold out of bankruptcy, it was a warehouse building and its highest and best use is not as a seed production plant. The witness agreed comparable sale 2, located in Rockford, sold subsequent to foreclosure by Alpine Bank and is basically a warehouse building. Salisbury testified the highest and best use of this property was for continued industrial use, not for a seed production plant. Salisbury estimated this comparable, with 6.92 acres, had a land value of $301,000 or $43,497 per acre. Sale 3 was also located in Rockford. The seller was GC/Waldom Electronics but Salisbury could not recall if the seller is still occupying the building. Salisbury indicated if the seller continued to occupy the property after the sale, this would be considered a sale-leaseback. Salisbury was shown the Illinois Real Estate Transfer Declaration associated with this sale, marked as Board of Review Exhibit 15, which indicated the property was not advertised for sale or sold using a real estate agent. Salisbury estimated this comparable, with 28.13 acres, had a land value of $1,125,000 or $40,000 per acre. In calculating depreciation, Salisbury calculated comparable sale 3 as having a residual building value of $414,000 and a replacement cost new of $6,127,440 or $31.65 per square foot of building area. Salisbury agreed that the highest and best use of comparable sale 3 would not be for use as a seed plant.

Salisbury agreed industrial comparable sale 5 was located in an industrial park in Loves Park, which is the northern part of Rockford. Salisbury could not recall who he verified the sale with nor did he do any investigation with respect to the purchaser of the property. Salisbury agreed the highest and best use of this comparable would not be as a seed production facility. He also agreed this comparable was 10 years old at the time of sale, not 8 years as reflected in the appraisal. This comparable had 14.2 acres with an estimated land value of $1,082,466 or approximately $76,000 per acre. Salisbury was of the opinion this comparable had 175,500 square feet with a replacement cost new of $7,078,605 or $40.33 per square foot of building area.

Salisbury indicated comparable sale 6 is located in Oglesby and had deferred maintenance. This comparable is composed of two connected warehouses. Salisbury testified the highest and best use of this comparable would not be as a seed production plant. Salisbury estimated this comparable had a replacement cost new of $2,245,206 or $35.15 per square foot.

With respect to comparable sale 4, located in St. Elmo, Illinois, Salisbury agreed it is located approximately 245 miles south of the subject property. This comparable was used as a warehouse and Salisbury agreed the highest and best use of this comparable would not be as a seed production plant.

Salisbury agreed industrial comparable sale 7 was vacant at the time of sale and its highest and best use was for industrial warehouse use. Salisbury agreed industrial comparable 8 was a warehouse in Galesburg used by Maytag. This property is currently being offered for lease.

Salisbury testified he verified the seed plant sales with Remington Seeds. Salisbury was questioned about the various aspects of the seed plant comparable sales, which were all generally older and inferior to the subject property.

Salisbury testified that depreciation applied to the subject property was 72%, which was applied to the dryers. Salisbury agreed that he did not indicate anywhere in his report that he received construction costs from Phipps.

With respect to the highest and best use, Salisbury explained he tried to make a distinction that the subject property would sell for more as a seed production facility than as a warehousing or industrial use. However, he believed if the property was put on the market for sale, it would sell for some other industrial use.

Under re-direct examination, Salisbury testified he inspected the entire complex. He described the subject as being of steel frame, metal siding and metal roof construction. The majority of the buildings had no insulation. He testified the corn dryers are of poured concrete construction.

Salisbury testified the comparable sales were generally constructed of steel frame, steel siding, steel roofs, or a rubberized roof system with insulated walls, heat and offices. The witness indicated this type of construction would be superior to the subject.

Salisbury indicated that page 37 of his appraisal states that the highest and best use of the subject is for industrial use. Salisbury also testified that under the sales comparison approach he added the contributory value of the grain dryers as calculated in the cost approach. Salisbury agreed that he placed considerable weight on the comparable sales approach and some weight on the cost approach. Salisbury explained that he placed less reliance on the cost approach because it is difficult to develop replacement cost new when you have a multiple-building complex and there are all forms of depreciation in various properties and proper calculation of depreciation is difficult.

Under re-cross Salisbury agreed that he calculated a value under the cost approach based on an average of $25 per square foot for the various warehouse buildings.

The board of review submitted its "Board of Review Notes on Appeal" for each of the years under appeal. For 2005 the subject had a total assessment of $5,412,589, which reflects a market value of $16,312,806 using the 2005 three year median level of assessments for Henry County of 33.18%. For 2006 the subject property had a total assessment of $5,683,219, which reflects a

market value of $16,720,268 using the 2006 three year median level of assessments for Henry County of 33.99%.

The first witness called on behalf of the board of review was the Henry County Chief County Assessment Officer (CCAO) Lindi Kernan. Kernan has served as the CCAO for Henry County since 1996. Prior to her current job she was the CCAO for Mercer County for three years. She also has the Certified Illinois Assessing Official – Intermediate (CIAO/I) designation from the Illinois Property Assessment Institute.

The witness testified there are approximately 30,000 parcels in Henry County of which 240 parcels are improved with industrial buildings. Kernan testified that in establishing market values for industrial properties in Henry County they rely primarily on the cost approach because of the few industrial sales in the county.

Kernan identified Board of Review Exhibit No. 1 as the property record card for the subject property. The witness testified that the section entitled "Division" on page 1 of the exhibit was a brief description of what transpired on the parcel through the years. The front of page 2 of the exhibit, entitled "Summary of Other Buildings", contained the original 1987 valuation of the subject property. The replacement value of the buildings for 1987 as reflected on the exhibit was $6,135,670 with the full value being $5,367,410. The witness testified the original 1987 assessment is not on the property record card. After the witness became the CCAO, the only changes in the assessment of the subject property from 1996 to 1999 were due to township equalization factors that were applied. She explained that in 2000 a significant assessment change was made due to new buildings, that are depicted on the back of page one of Board of Review Exhibit No. 1. She explained that the construction on the buildings began in 1999 but were assessed in 2000. The additions include a 1,200 square foot break room at $110,520 or $92.10 per square foot, a 2,250 square foot stage/probe building at $158,400 or $70.40 per square foot, a 2,250 square foot receiving/scale building at $365,760 or $162.56 per square foot, a 3,150 square foot bulk storage building at $804,870 or $255.51 per square foot, a 4,500 square foot conditioning tower at $4,427,640 or $983.92 per square foot, and a 90,000 square foot warehouse at $1,473,570 or $16.37 per square foot of building area. The total costs were $7,340,760 with a total assessment of $2,446,920. Kernan testified these numbers came from Phipps. Kernan identified Board of Review Exhibits Nos. 4 and 5 as the e-mail correspondence she had with Phipps concerning the cost of the various buildings. The witness testified the numbers on the property record card are 90 percent of the costs of the buildings as reported by Phipps. Kernan identified Board of Review Exhibit No. 6 as a fax that she sent to Jeff Strothcamp of Pioneer Company with the property record card explaining the value on the new portion of the building.

Kernan testified no additions were made to the Pioneer facility from 2000 through 2002. A warehouse was added in 2003 and a partial assessment was done resulting in an assessed value increase of $56,260. The additions included two connecting buildings composed of a 1,200 square feet and a 40,000 square foot warehouse. The witness indicated the total cost was $800,100, or $19.42 per square foot, resulting in an assessment of $266,700. Kernan testified that the costs came from Pioneer. The total assessed value for the subject in 2004 was $5,412,589. Kernan testified the subject's total assessment was the same in 2005 and equated to a market value of $16,237,767 as of January 1, 2005.

The witness also testified that she attempted to have an appraisal prepared for the appeal filed with the Property Tax Appeal Board. She explained that the appraisers she consulted indicated they had done some research and there were no available sales of this type of facility in the Midwest.

Under cross-examination Kernan agreed that Pioneer provided her with the costs to build something. The witness also explained that the property record cards associated with Board of Review Exhibit No. 1 and Board of Review Exhibit No. 6 differed due to being completed at different points in time. Additional information was added to Board of Review Exhibit No. 1. The witness was questioned why she adjusted the figures provided by Phipps on Board of Review Exhibit No. 5 to 90% of the reported costs. She explained that in part that: "It's just what I chose to put it on at." She was questioned with respect to the value of the 90,000 square foot warehouse at $1,473,570 compared to Salisbury's valuation of the same warehouse at $2,250,000 or $25.00 per square foot. The reported cost new of the warehouse building by Phipps was $1,637,300.

With respect to the 40,000 square foot warehouse constructed in 2003, Kernan was shown Board of Review Exhibit No. 11, a tax abatement application from Pioneer to Henry County, identifying the cost at $815,000. Using the property record card, Board of Review Exhibit No. 1, Kernan identified the warehouse had a cost of $776,800. Salisbury reported the cost new of the 40,000 square foot warehouse to be $1,000,000 or $25.00 per square foot. The witness could not recall how she arrived at the figure of $776,800.

Under redirect, Kernan agreed that the values she put on the additions based on the cost data received from Pioneer would have been the costs of those additions at the time they were made, not as of January 1, 2005. Under cross-examination she agreed that the cost or value figures provided her were related to 1999 and 2003, not related to 2005 costs.

The next witness called on behalf of the board of review was board of review member, Steve Carton. Carton is a real estate broker and farmer. The witness testified that he was familiar with the seed plant sales used by Salisbury. He testified that seed plant sale no. 1 did not have grain dryers and the seller retained the research component. It was his understanding this property was not listed for sale prior to its purchase. Carton was not familiar with Salisbury's seed plant sale no. 2. With respect to Salisbury's seed plant sale no. 3 located in Milford, Carton believed this plant was sold with two other properties. He did not believe there had been any production at the Milford plant in the previous years. Carton believed the purchaser moved the processing machinery and equipment from Milford to Indiana. Carton explained the property at Milford is not now being used for seed corn production. Carton described Salisbury's seed plant sale 4 in Mount Pleasant, Illinois, as a warehousing facility. Carton also agreed that Salisbury's seed plant sale 5 was a warehousing facility. To his knowledge neither sale 4 or 5 were listed with a real estate broker. To his knowledge Salisbury's seed plant sale no. 6 was not listed with a broker.

Carton was of the opinion none of the seed plant sales used by Salisbury was comparable to the subject property.

With respect to Salisbury's industrial sales, Carton testified the purchaser of the Loves Park facility, Illinois Growth Enterprises, is a not-for-profit organization and exempt from property taxation. With respect to industrial sale 3, his communication with the seller, GC/Waldom Electronics, revealed they were still at the same address as the comparable sale. The witness did not believe these industrial properties were comparable to the subject property. He also was of the opinion Salisbury's estimate of 72% depreciation was excessive.

Under cross-examination Carton stated he was not an appraiser and did not have a CIAO designation. He also stated he has not been in the subject property. He further testified he had not inspected the comparables in Salisbury's report.

Carton agreed with Salisbury's land value. He agreed that the subject property has a significant amount of warehousing and that the dryers at the subject are a unique feature. He also did not have any market data or facts to show Salisbury's estimate of 72% depreciation was incorrect.

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.

The Board finds the best evidence of market value in the record is the appraised value presented by Salisbury on behalf of the appellant. Salisbury developed the cost approach and sales comparison approach to value in estimating the subject property had a market value of $7,500,000 as of January 1, 2005. He also offered the opinion that there would not be any significant market change between 2005 and 2006.

Under the cost approach Salisbury used a recognized cost manual and data provided by Pioneer through its employee Phipps to estimate the cost new of the improvements. Similarly, the Henry County CCAO obtained cost data about the subject property through Pioneer and Phipps, which seems to corroborate Salisbury's procedure in estimating the cost new for the subject property. Furthermore, Kernan testified that in establishing market values for industrial properties in Henry County they rely primarily on the cost approach because of the few industrial sales in the county, which makes this approach of some relevance in this appeal. A primary difference in the cost approach developed by Salisbury and that developed by the Henry County Assessment Officials as reflected on the subject's property record card, Board of Review Exhibit No. 1, is that Salisbury calculated replacement cost new as of January 1, 2005, while the cost figures in the board of review evidence related to the time when the various buildings were constructed, which predated the assessment dates at issue by numerous years. A second major difference between the two is that Salisbury estimated overall depreciation from all causes for the subject property to be 72%. Although the board of review challenged the accuracy of this amount it did not offer an alternative estimate of depreciation. Significantly, the Board finds that the property record card containing the various values for the building components, includes no calculation

regarding depreciation. Board of Review Exhibit No. 1 has no estimate of the effective age, total economic life or remaining economic life that could be used to estimate depreciation. Additionally, under the cost approach, Salisbury provided an estimate of value for the subject land using comparable land sales. The board of review did not provide any land sales to support the land value as reflected in the assessment.

The Board further finds that the comparable sales contained in Salisbury's report add to the credibility of his final estimate of value. The Board recognizes that although the industrial sales were not similar to the subject in use as a seed production facility, these properties had components similar to the subject, namely the warehousing areas. The subject property had a significant proportion of its building area devoted to warehousing space. Furthermore, Salisbury included sales of older seed plants, which were recognized by the appraiser to be inferior to the subject but add to the credibility of his analysis contained in the sales comparison approach. As a final point, Salisbury added a component for the corn dryers on the subject property, to account for some of the subject's different features, in arriving at a final value estimate under the sales comparison approach. Although the board of review challenged the quality, validity and reliability of the sales, it offered no sales or market data to challenge or refute Salisbury's conclusion of value under the sales comparison approach.

In conclusion, after comparing the evidence and testimony presented by the parties, the Property Tax Appeal Board finds the evidence and testimony presented by the appellant through its appraiser, Salisbury, to be the most credible and best evidence of market value in this record.

Based on this record, the Property Tax Appeal Board finds the subject property had a market value of $7,500,000 as of both January 1, 2005 and January 1, 2006. Since market value has been determined, the 2005 and 2006 three year median levels of assessment for Henry County of 33.18% and 33.99%, respectively, shall apply.

2010 INDUSTRIAL CHAPTER

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