

State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2014

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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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2014 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.ptab.illinois.gov 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 via the "Appeal Status Inquiry" link.

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 2014 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.

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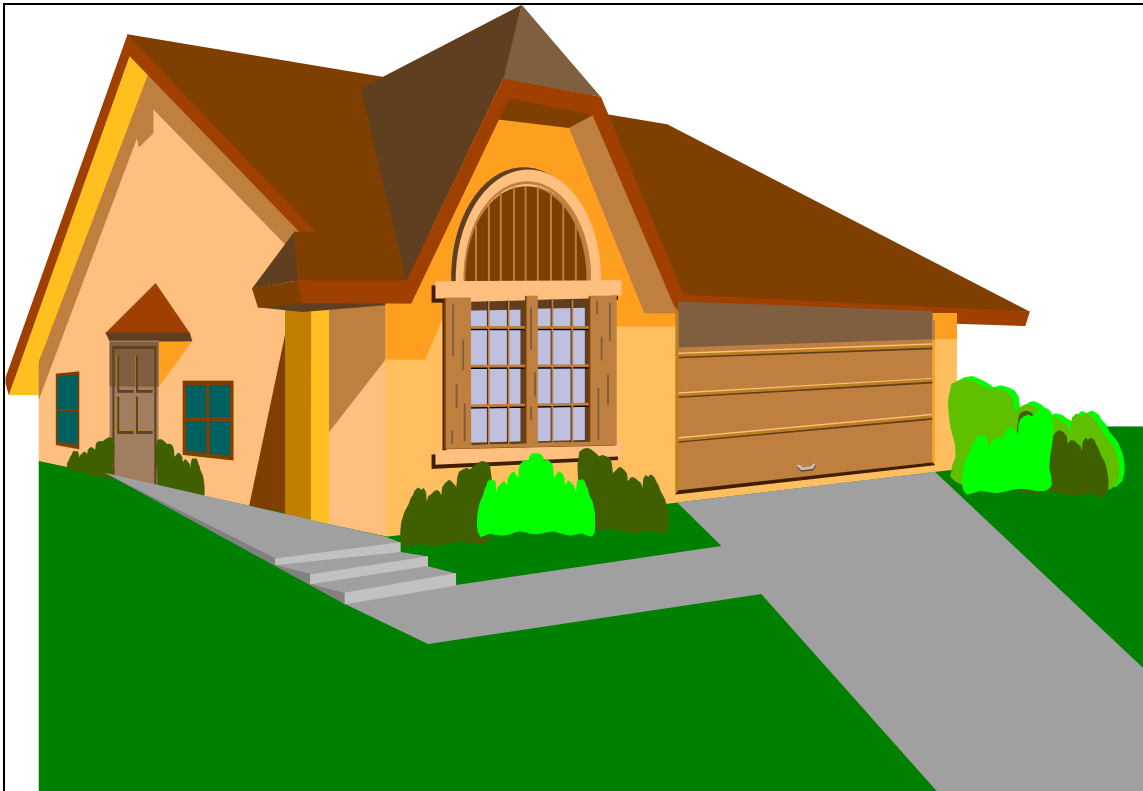
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PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2014 RESIDENTIAL 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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APPELLANT:	<u>Bristol Park Condominium Assoc.</u>
DOCKET NUMBER:	<u>09-00107.001-R-3 thru 09-00107.122-R-3</u>
DATE DECIDED:	<u>February, 2014</u>
COUNTY:	<u>DuPage</u>
RESULT:	<u>Reduction</u>

The subject property consists of a 121-unit condominium complex.¹ The complex contains three different model types of either two-bedroom or three-bedroom units. The units each contain 1,704 (Windham model), 1,980 (Fenwick model) or 1,981 (Stratton model) square feet of living area. Each building in the complex contains 7 units. The complex was constructed in 2006-2007 on a poured concrete slab foundation with drive-in parking on the first floor. The subject has a frame exterior construction with brick and cedar veneer and is located in Wood Dale, Addison Township, DuPage County.

The appellant appeared through counsel before the Property Tax Appeal Board arguing the fair market value of the individual units were not accurately reflected in their assessed value. In support of this argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraisers Thomas T. Cullerton and Edward V. Kling estimating the individual units had market values ranging from \$220,736.16 to \$256,618.74 as of January 1, 2009 (Appellant's Ex. A). Both Cullerton and Kling signed the appraisal report. Kling has the MAI designation.

As its witness, the appellant called Thomas T. Cullerton of Real Valuation Group LLC. Cullerton has been employed with Real Valuation Group for three years. He graduated from the University of Illinois with a major in Finance and has been appraising property since 1978.

Cullerton testified that all of the units within the condominium complex are very similar. They are stacked with two-car garages, three bedrooms and 2.5 baths generally. Cullerton testified that the smallest unit is the Windham model which contains 1,704 square feet of living area with the Fenwick and Stratton models containing 1,980 and 1,981 square feet of living area, respectively. Cullerton made an exterior inspection of the subject in addition to reviewing the floor plans obtained from the original developer, Pulte.

Cullerton testified that his office did not employ the cost approach to value because it was impractical to find any meaningful land sales of multi-family property with the reason being it was financially unfeasible to build a complex such as the subject. Cullerton further testified that it would have been difficult to determine depreciation caused by external obsolescence. Because of these reasons, he did not feel the cost approach to value was appropriate. Cullerton further testified that his office did not prepare an income approach to value because it is not applicable to the valuation of individual townhome units or residential townhome units. He stated they are not typically purchased for their income producing potential. The appraisers did develop the sales comparison approach to value.

¹ There are 117 units that are the subject matter of this appeal. Pin number 03-04-209-112 was inadvertently deleted as a docket number and was subsequently added to the end of the spreadsheet.

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Cullerton testified they looked at all of the sales within the subject development as recorded and then reviewed the Multiple Listing Service (“MLS”) to see what Pulte and other owners had listed the units for. The appraisers then looked at the trends and opined that as of January 1, 2009, the 1,980 and 1,981 square foot units were selling for prices in the range of \$250,000 or \$127 per square foot of living area. The appraisers next prepared a sales study of all the units, which depicted the median sale price per square foot. The 2006 sales indicated \$167 per square foot of living area; the median sale price for the 2007 sales was approximately \$149 per square foot of living area; and the limited 2008 sales were \$131 per square foot per square foot of living area. Cullerton testified that the median sale price per square foot for 2008 and the first six months of 2009 was \$126.77, wherein they concluded \$127 per square foot of living area, including common land area, was a reasonable value estimate to apply.

In developing their estimation of value, Cullerton testified that they examined eight recent sales within the subject condominium complex (see pages 32-33 of Ex. A). Sale #1, containing 1,981 square feet of living area, was selected because it was not a short sale or foreclosure. It sold in October 2009 for \$253,500 or \$128 per square foot of living area. Cullerton reported the condition of this unit to be good. Sale #2 is a mid-2008 sale that showed a decline from the 2006 and 2007 sale price numbers of a property that was shown as a short sale. Cullerton testified this unit was originally purchased for \$327,000 and declined in value by \$52,000 or approximately 16% from the previous sale. Sale #3 is also a mid-2008 sale that originally sold for \$330,000 which sold in July 2008 for \$300,000; sale #4 originally sold for \$342,000 in June of 2006 and sold again in August of 2008 for \$260,000 or for 24% less; sale #5 is a November 2008 sale that sold in June of 2006 for \$336,000 and then sold for \$251,000 as a short sale through the MLS indicating a 26% decline in value; sale #6 was on the market as of January 1, 2009 and sold for \$250,000 in February 2009 after being originally purchased for \$318,560, which indicated a 22% decrease in value from the original sale and the subsequent sale; sale #7 was a short sale for \$251,000 in May 2009; and sale #8 is a July 2009 sale for \$207,000. Cullerton testified that sale #8 was a smaller unit whose original purchase price was \$275,000 or 25% more than its October 2007 sale price. Pages 33 to 34 of the appraisal report demonstrates the previous values and the declines in values which ranged from 10% to 25% from the previous sales. Cullerton further testified that there was a premium paid for end units which have more windows. The appraisers applied a 2% adjustment for end units. Cullerton stated they tried to exclude bank foreclosed properties. The appraisers applied a unit value of \$127 per square foot of living area with the end units having a 2% positive adjustment applied. The appraisers estimated the individual units had market values ranging from \$220,736.16 to \$256,618.74 or from \$127.00 to \$129.54 per square foot of living area, including common land area as of January 1, 2009 (Appellant's Ex. A).

During cross-examination, Cullerton testified that the typical marketing time for these types of properties was 6 to 12 months. Comparable #1 sold in 25 days, Comparable #2 sold in 70 days as a short sale, comparables #3 and #4 were not listed on the open market, comparable #5 sold in 64 days as a short sale, comparable #6 was on the market for 265 days and sold as a short sale, comparable #7 was on the market for 24 days and sold as a short sale and comparable #8 was on the market for 223 days and sold as a short sale. Cullerton further testified that he did not perform an interior inspection of any of the units and assumed all of the interiors were in good condition.

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During re-direct examination, Cullerton testified that the market times as shown on the MLS may not be correct. He explained that the MLS depicts when a listing began, however, the owner may remove the property from the MLS if they decided not to sell or because it sold. If the property is relisted with the MLS after pulling it out with either the same broker or another broker, they might effect a price change which would depict a new fresh listing. Cullerton testified that it is possible that the marketing times as shown on the MLS do not depict the true marketing time of the property and as such may understate the true amount of time a property is listed. Cullerton testified that USPAP does not require an interior inspection for any appraisal.

During re-cross-examination, Cullerton testified that in the last three years, this is the only appraisal he has performed, however, his office has done several.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment for each individual unit based on model type which ranged from \$111,780 to \$114,190 per unit was disclosed.

The board of review called as its witness, Dawn Aderholt, the Residential Division Manager for Addison Township. Aderholt has the CIAO designation and has worked for the Addison Township Assessor's Office since 1991. In support of the assessments, Aderholt testified that her office submitted a 2007 sales ratio study of 77 sales which indicated a level of assessment of 32.11%. She also submitted additional sales based on the model types. The assessments were segregated based on model type. Aderholt testified that with new construction, such as the subject, typically they are sold by model type which takes into account two-bedrooms, two-and-a-half bath or three-bedroom, two-bath by model type. The additional sales occurred from 2006 to 2007. Aderholt testified that she was familiar with 2008 sales; however, they were not submitted as evidence because they were staying with the 2007 general assessment year.

Aderholt also testified that from 2007 to 2008, her records indicated a 7.6% increase in their assessments from the Supervisor of Assessments. She testified that at that time the values were still showing an increase with a three-year sales ratio study. The board of review's evidence depicts the subject's 2009 assessment was based on the general reassessment of 2007 utilizing 77 sales occurring from 2004 to 2007. The level of assessment was found to be .3211.

The board of review submitted 16 sales located within the condominium complex. The sales contained either 1,128 or 1,601 square feet of living area and sold from September 2006 to November 2007. The units contained either 1,128 or 1,601 square feet of living area and sold for prices ranging from \$275,130 to \$338,085 or from \$243.91 to \$299.72 per square foot of living area, including common land area. The units containing 1,601 square feet of living area were depicted as having an average sale price of \$299,729 and the units containing 1,128 square feet of living area were depicted as having an average sale price of \$301,962.

The board of review also submitted a spreadsheet of the appraisers' eight comparable sales indicating their original sales price in 2006 and 2007 were higher than what the units subsequently sold for in 2008 and 2009. It was argued this was indicative that the sellers were under distress to sell since they accepted less than what they originally paid.

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During cross-examination, Aderholt testified that they did not make any adjustments for end units. Aderholt acknowledged that there were 2008 and 2009 sales, however they were not submitted. 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. 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). The Board finds the appellant has met this burden.

The Board initially finds the best evidence of the size of each individual unit was found in the testimony of Cullerton. He testified that the sizes were determined based on blueprints received from the original developer, Pulte. Aderholt testified that her office never performed an interior field inspection of the subject property, but also relied upon Pulte. The Board finds that based on the testimony herein, the differences in size do not significantly affect the market value as much as the model type. Both parties relied upon the model type to calculate and perform their individual analyses. The appellant contends the subject's assessment for each individual unit is excessive. The Board finds the best evidence of market value in this record is found in the appraisal report submitted by the appellant.

The Board finds the appraisers examined each sale within the complex from 2006 through 2009. The data depicts that in 2009 the median sale price was \$126.26 per square foot and that for 2008 and the first six months in 2009 the median sale price was \$126.77 per square foot. The Board gave greater weight in its analysis to the eight sales submitted by the appellant. These eight sales of units within the subject condominium complex sold close to the assessment date in question from June 2008 to October 2009 for prices ranging from \$207,000 to \$300,000 or from \$121.00 to \$152.00 per square foot of living area after being on the open market from 24 days to 265 days. The appraisers applied a market value of \$127 per square foot with a 2% adjustment for end units. The Board finds this value to be reasonable and proper after examination of the data in this record. The Board finds the testimony of Cullerton to be more credible and is supported by the data contained within the appraisal report.

The Board gave little weight to the board of review's three-year sales ratio study from 2004 through 2007. In an attempt to support the subject's assessment, the board of review presented an assessed value to sale price ratio study. The Board finds this type of analysis to be flawed for multiple reasons. The Property Tax Appeal Board finds it can give little credence to this evidence. The Property Tax Appeal finds that the board of review failed to present substantive documentary evidence to support their opinion regarding the fair market value for the individual condominium units as of the assessment date in question. The Board further finds the proper method to calculate assessment to value ratios for ad valorem taxation purposes is by using a property's prior year's assessment divided by its arm's-length sale price. The board of review failed to use recent sale prices, but instead, relied upon sales occurring in 2006. The Board finds the sales ratio study does not provide credible value for any unit under appeal.

In this same context, the Board finds the board of review's sales ratio study was not performed on a countywide basis, the properties selected were not random, and the board of review did not

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properly edit the data. Peacock v. Property Tax Appeal Board, 339 Ill.App.3d 1060, (4th Dist. 2003). The Board finds the courts have held that in determining whether to use a township or county sales ratio, considerations of practicality dictate the use of the county ratio. People ex rel. Kohorst v. Gulf, Mobile & Ohio R.R. Co., 22 Ill.2d 104, 174 (1961). The courts look to the county as a whole in order to determine whether the property at issue is being assessed in accordance with the constitutional guaranty of equity and uniformity of taxation. Additionally, the courts have held that "even if the studies show a disparity in the levels of assessment of residential property within the same township, we cannot find that the evidence shows that a township level of assessment, rather than a countywide level, is the proper one. In re App. of County Treasurer (Twin Manors), 175 Ill.App.3d 562, (1st Dist. 1988). Thus, a review of case law indicates that the courts look at the "assessment level for the county as a whole" rather than selective properties in a given area, as the board of review did in this instant appeal.

The board of review also submitted 16 sales located within the condominium complex; however, these sales occurred from September 2006 to November 2007. The Board finds it problematic the board of review failed to submit any 2008 or 2009 sales of individual units within the subject condominium complex, even though they existed, or sales of other condominiums located within the subject's immediate market area as evidence to support the assessments. The Board finds these 2006 and 2007 sales are too remote in time to be indicative of the subject unit's market value as of the assessment date in question, particularly in light of evidence of a downward trend in prices. The Board gave these sales little weight in its analysis. The board of review argued that the appellant's evidence related to declining values as found from the original purchase price paid in 2006 and the subsequent sale price in 2008 and 2009 indicate the sellers were under distress to sell since they accepted less than what they originally paid. The Board gave this contention no weight. Instead, the Board finds this supports the appellant's claim that the market value for these units in this condominium complex were substantially declining in 2009 as compared to their original purchase price in 2006. Further, the Board finds the board of review failed to refute the sales submitted by the appellant as not being indicative of an arm's-length transaction. Even though several of the sales were not on the open market for the typical marketing times for this type of property, the Board finds the sales, including short sales, which Cullerton testified were on the open market from 25 to 265 days, were consistent as being an arm's length transaction.

The Board finds the appellant's appraisers clearly demonstrated a decline in market values for the units from the original purchase price to the 2008-2009 subsequent date of sale. The appellants also pointed out that the units are very similar in nature with only subtle differences in model type. The appraisers estimated the market value for each individual unit based on square footage of living area with a 2% adjustment for end units, which the Board finds is proper and just.

The Board finds the appraisers' estimated market value for each condominium unit ranged from \$220,736.16 to \$256,618.74 or from \$127.00 to \$129.54 per square foot of living area, including common land area. The subject's assessment reflects an estimated market value ranging from \$335,373.53 to \$342,604.26 or from \$212.01 to \$297.32 per square foot of living area, including common land area, which the Board finds is higher than is justified by the 2008 and 2009 market activity.

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The Board finds, based on this evidence, the appellant has demonstrated the subject's assessment is excessive by a preponderance of the evidence and a reduction in the subject's assessment is warranted commensurate with the appraisal report.

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APPELLANT:	Byron Township
DOCKET NUMBER:	11-00386.001-R-1
DATE DECIDED:	April, 2014
COUNTY:	Ogle
RESULT:	Reduction

The subject property consists of a one-story, four unit brick apartment building. The building was constructed in 1981 and contains 4,320 square feet of building area. Each unit contains 1,080 square feet of living area. The building was constructed over a concrete slab foundation. Amenities include a four-car detached garage and four small patios. The dwelling is situated on 19,418 square feet of land area. The subject property is located in Byron Township, Ogle County.

The appellant, Byron Township, submitted evidence before the Property Tax Appeal Board claiming the subject property is under-valued and is not uniformly assessed. The subject's land assessment was not contested.¹

In support of the undervaluation claim, the Byron Township Assessor submitted an analysis of three suggested comparable sales located in Byron, Illinois, like the subject, however their proximate location in relation to the subject was not disclosed. The comparables consist of one-story brick apartment buildings that contain two or four apartment units and were built in 1982 or 1985. Two comparables have central air conditioning and one comparable has four small patios. The buildings range in size from 1,755 to 3,240 square feet of building area. Their lot sizes were not disclosed. The comparables sold from July 2006 to May 2008 for prices ranging from \$119,000 to \$183,000 or from \$56.48 to \$67.81 per square foot of building area including land.

To demonstrate the subject property was not equitably assessed, the Byron Township Assessor submitted an analysis of five suggested comparables located on the same street as the subject. The comparables consist of one-story brick apartment buildings that contain four apartment units and were built from 1979 to 1985. One comparable has a 1,800 square foot garage. The buildings range in size from 2,450 to 3,572 square feet of building area. The comparables have improvement assessments ranging from \$44,974 to \$58,200 or from \$16.29 to \$18.93 per square foot of building area. The subject property has an improvement assessment of \$55,913 or \$12.94 per square foot of building area.

Byron Township argued the subject parcel is undervalued in relation to current generally accepted assessment practices. The township argued the owners purchased the subject property in 2005 for \$245,000. The township argued the subject's assessment had already been reduced as a result of a negative equalization factor of .9747 applied to all residential and commercial properties in 2011, prior to the board of review further reducing the subject's assessment. The township assessor argued Byron Township has a 2010 three-year median level of assessment of 34.19% and a coefficient of dispersion of 9.57.

¹ The intervenors are the property owners and taxpayers.

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The appellant also submitted the final decision issued by the Ogle County Board of Review regarding the subject property. The subject property had a final assessment of \$66,500, which reflects an estimated market value of \$200,301 when applying Ogle County's 2011 three-year median level of assessment of 33.20%.

Based on this evidence, Byron Township requested an increase to the subject's assessed valuation from \$66,500 to \$80,323, which reflects an estimated market value of approximately \$240,969 or \$55.78 per square of living area including land.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessment of the subject property as required by section §1910.40(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.40(a). Therefore, the board of review was found to be in default pursuant to section §1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a)).

The intervenors, Bradley and Ann Auker, submitted rebuttal evidence and an appraisal to demonstrate the subject's assessment was not correct.

The intervenors acknowledged they purchased the subject property in 2005 for \$245,000; however, they argued the housing crisis from 2007 to 2011 devastated the real estate market and property values have declined 30%. The intervenors argued the township's assessment comparable 4 shows the subject property is still inequitably over-assessed. The intervenors argued most apartment buildings in Byron Township are over-assessed in relation to their fair market value based on sales that occurred in 2012.

To demonstrate the subject property is overvalued, the intervenors submitted an appraisal of the subject property. Utilizing the sales comparison and income approaches to value, the appraisal report estimated a fair market value for the subject property of \$190,000 as of December 22, 2011.

Under the sales comparison approach to value, the appraiser selected four suggested comparables that are located from 12.76 to 13.99 miles from the subject property in Rockford, Illinois. The comparables consist of one-story, two-story or bi-level brick or brick and frame apartment buildings that contain four apartment units and were built from 1957 or 1984. Three comparables have full unfinished basements and one comparable has a full basement finished with two apartments. Three comparables have central air conditioning and three comparables have from two to seven-car detached garages. The buildings range in size from 3,444 to 5,227 square feet of building area and are situated on lots that range in size from 9,715 to 16,660 square feet of land area. The appraiser reported the comparables have gross monthly rents ranging from \$1,875 to \$2,815. The subject was reported to have a gross monthly rent of \$2,585. Comparables 1 through 3 sold in September or October of 2011 for prices ranging from \$168,000 to \$200,000 or from \$38.26 to \$51.97 per square foot of living area including land; or from \$42,000 to \$50,000 per rental unit; or from \$16,667 to \$22,375 per rental bedroom. The sales represent gross rent multipliers ranging from 71.05 to 76.99. Comparable 4 was listed for sale on the open market for \$185,000 or \$52.89 per square foot of building area including land; or \$46,250 per rental unit; or \$26,429 per rental bedroom. The offering price represents a gross rent multiplier of 98.67.

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The appraiser adjusted the comparables for differences when compared to the subject in condition, building size, foundation type, number of rooms and parking. The adjustments resulted in adjusted values ranging from \$181,930 to \$192,760 or from \$45,483 to \$48,190 per rental unit or from \$15,161 to \$27,424 per rental bedroom. Based on these adjusted values, the appraiser estimated the subject property had a fair market value of \$190,000 or \$47,500 per rental unit.

Under the income approach to value, the appraiser analyzed three rental comparables located in close proximity in Byron, Illinois. The rental comparables had varying degrees of similarity when compared to the subject. The comparables had gross monthly rents ranging from \$2,180 to \$2,500. Based on this data, the appraiser concluded the subject's market rent to be \$2,500 per month. Using a gross rental multiplier of 76.00, as extrapolated by the comparable sales, the appraiser calculated the subject property has an estimated market value of \$190,000 under the income approach to 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 subject's assessment is warranted.

The appellant, Byron Township, argued the subject property is under-valued. 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). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant has not met this burden of proof. The Board finds the intervenors have demonstrated the subject's estimated market value as reflected by its assessment is excessive and a reduction is warranted.

The appellant, Byron Township, submitted three suggested comparable sales in an attempt to demonstrate the subject property was undervalued. The intervenors, the property owners and taxpayers, submitted an appraisal report to demonstrate the subject property's assessment was excessive. The board of review did not submit any evidence in support of its assessment of the subject property as required by section §1910.40(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.40(a)). Therefore, the board of review was found to be in default pursuant to section §1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a)).

The Property Tax Appeal Board finds the appraisal submitted by the intervenors is the best evidence of the subject's fair market value contained in this record. The Board finds the appellants' appraiser developed the sales comparison and income approaches to value. Under the sales comparison and income approaches to value, the appraiser utilized comparables with varying degrees of similarity when compared to the subject. The Board finds the appraiser made logical and reasonable adjustments to the comparables for differences when compared to the subject in arriving at a final opinion of value for the subject property of \$190,000 as of December 22, 2011.

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The Board gave little weight to the raw sales data submitted by the appellant, Byron Township. The Board finds comparables 1 and 3 are considerably smaller in building size when compared to the subject. In addition, the Board finds the assessor failed to disclose the land sizes of the comparables for comparison to the subject, which further detracts from the weight of this evidence. More importantly, the Board finds the comparables submitted by the appellant sold in either 2006 or 2008, which are dated and less reliable indicators of market value as of the subject's January 1, 2011 assessment date.

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

The appellant submitted descriptions and assessment data for five suggested assessment comparables for the Board's consideration. The Board finds all of the suggested comparables are smaller in building area when compared to the subject. The comparables range in size from 2,450 to 3,572 square feet of building area whereas the subject property has 4,320 square feet of building area. The comparables have improvement assessments ranging from \$16.29 to \$18.93 per square foot of living area. The subject property has a revised improvement assessment² of \$12.15 per square foot of living area, which falls below the range established by the comparables contained in this record on a per square foot basis. The Board finds the subject's lower per square foot improvement assessment is well justified. Accepted real estate valuation theory provides that all other factors being equal, as the size of the property increases, the per unit value decreases. Likewise, as the size of a property decreases, the per unit value increases. Based on this record, the Board finds no further change in the subject's improvement assessment is warranted beyond the assessment reduction granted based on market value considerations.

As a final point, the Board gave no weight to attachments 9 and 10 submitted by the appellant. The attachments show Byron Township has a 2010 three-year median level of assessment of 34.19% and a 2010 coefficient of dispersion of 9.57 (see attachments 9 and 10). The Property Tax Appeal Board finds this 2010 statistical assessment level information is not germane to this 2011 assessment appeal. Moreover, the Board finds these types of statistical analyses are not dispositive in determining whether the individual property that is subject matter of an appeal is equitably assessed or undervalued. The Board finds these types of ratio analyses evaluate the accuracy of assessed values in comparison to the marketplace as a whole, not the individual subject property that is the matter of this appeal. The Board finds sales ratio studies and coefficient of dispersion are one of the primary tools for measuring mass appraisal performance. This tool is commonly used to calculate equalization factors or to determine whether assessors are entitled to additional compensation. (35 ILCS 200/4-20). Again, the Board finds this evidence is not demonstrative that the individual subject property in this appeal is undervalued and not uniformly assessed.

² The subject has a revised improvement assessment of \$52,493 or \$12.15 per square foot of building area based on the assessment reduction granted from the appraisal submitted by the intervenors.

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APPELLANT:	John Carron
DOCKET NUMBER:	11-02436.001-R-1
DATE DECIDED:	February, 2014
COUNTY:	DuPage
RESULT:	Reduction

The subject property is improved with a one-story single-family dwelling of frame construction containing 1,987 square feet of living area. The dwelling was constructed in 1971. Features of the home include a partial unfinished basement, a fireplace and a 420 square foot garage. The property has a 20,000 square foot site and is located in Downers Grove, Downers Grove Township, DuPage County.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted evidence disclosing the subject property was purchased on April 28, 2011 for a price of \$310,000. As part of the appeal, the appellant completed Section IV - Recent Sale Data of the appeal disclosing the parties to the transaction were not related, the property was sold using a Realtor from the firm of Patrick & Paul, the agent was Carolyn Duffy, the property had been advertised on the open market through the Multiple Listing Service.

In further support of the transaction the appellant submitted a copy of the Settlement Statement and the Multiple Listing Service data sheet which reported the property had been on the market for 24 days prior to its sale. The data sheet indicates an original list price of \$349,000 followed by a price reduction to \$339,000 prior to the conclusion of the sale/closing on April 28, 2011 the sale price of \$310,000. Also of note, the remarks on the data sheet concerning the subject property provide that:

Better than new Ranch style home situated on large treed lot * New in 2011: Kitchen with all maytag appliances, ceramic kitchen and foyer floors, paint, roof, garage door, electrical outlets/switches and cover plates & hard wired smoke detectors, base trim & vent covers, door knobs, drywall & insulation (R15 walls/R38 ceilings) * Refinished hardwood floors * Upgraded electrical panel * LG Washer & Dryer * WOW!

Based on the foregoing evidence, the appellant requested a reduction in the subject's assessment so as to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeals" wherein the subject's total assessment of \$146,530 was disclosed. The subject's assessment reflects a market value of \$442,021 or \$222.46 per square foot of living area, including land, when applying the 2011 three year average median level of assessment for DuPage County of 33.15% as determined by the Illinois Department of Revenue.

The board of review submitted a memorandum asserting that the subject dwelling had extensive remodeling done in January 2011. The memorandum further asserted that all properties in the

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same neighborhood code "are calculated using the same cost manual and market driven neighborhood cost modifiers (NCM)."

The memorandum further asserted that the subject property was transferred by Sheriff's Deed in November 2010 (copy attached); the bank REO sale was December 2010 for \$125,000 "due to a condition issue" (a copy of the Warranty Deed was attached). Next, the memorandum reported an effort to apply Section 1910.94 of the rules of the Property Tax Appeal Board in that on May 14, 2013, Chief Deputy Assessor for Downers Grove Township Joni Gaddis issued a letter, sent via certified mail, to the appellant (1) requesting a copy of the purchase appraisal and (2) requesting an interior and exterior inspection of the property by calling the assessor's office within 10 days. The copy of the attached receipt reflects delivery on June 7, 2011. The memorandum asserts that as of June 12, 2013 the appellant had not responded.

In support of the subject's estimated market value based on its assessment, the board of review submitted information on three comparable sales located in the same neighborhood code assigned by the assessor as the subject property. The comparables are improved with one-story dwellings of frame or masonry construction that range in size from 1,414 to 1,909 square feet of living area. The dwellings were constructed from 1953 to 1974 with one comparable having been remodeled in 1996. Two of the comparables have either a full or a partial basement, one of which is 25% finished. Each home has a fireplace and a garage ranging in size from 483 to 576 square feet of building area. The comparables have sites ranging in size from 17,993 to 35,988 square feet of land area. The comparables sold in June or September 2010 for prices ranging from \$316,000 to \$410,000 or from \$192 to \$290 per square foot of living area, including land, rounded.

The memorandum concluded with the following statement, "The assessor is requesting an adjustment to a market value of \$377,530 or \$190/SF based on comparable sales in the neighborhood, due to the limited exposure time of the subject on the open market." However, the board of review indicated on the "Notes on Appeals" that it was not willing to stipulate in this matter and thus, the board of review presumably was requesting confirmation of the subject's assessment in this matter.

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.

As an initial matter, the assessor's letter request for an inspection and the concomitant request to apply the provisions of Section 1910.94 of the Board's rules regarding the description, physical characteristics or condition of the subject property will be addressed. The cited rule states:

- a) No taxpayer or property owner shall present for consideration, nor shall the Property Tax Appeal Board accept for consideration, any testimony, objection, motion, appraisal critique or other evidentiary material that is offered to refute, discredit or disprove evidence offered by an opposing party regarding the description, physical characteristics or condition of the subject property when the taxpayer or property owner **denied a request made in writing by the board of review or a taxing body**, during the

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time when the Board was accepting documentary evidence, to physically inspect and examine the property for valuation purposes.

- b) **Any motion made to invoke this Section shall incorporate a statement detailing the consultation and failed reasonable attempts to resolve differences over issues involving inspection with the taxpayer or property owner.**

(86 Ill.Admin.Code §1910.94(a) & (b)). (Emphasis added).

As the inspection request was made by the township assessor and not by the DuPage County Board of Review, the provisions of Section 1910.94(a) are not applicable to this proceeding. Moreover, as there was no motion by the DuPage County Board of Review to invoke the provision with the inclusion of details of the consultations and the inability to resolve differences over issues related to an inspection with the appellant, the Property Tax Appeal Board further finds that the "motion" is incomplete and insufficient on this record. In summary, the record reveals no basis to apply the provisions of Section 1910.94(a) regarding the description, physical characteristics or condition of the subject property.¹

For 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, **a recent sale**, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). (Emphasis added.) The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). **A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value.** Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). (Emphasis added.) Furthermore, the sale of a property during the tax year in question is a relevant factor in considering the validity of the assessment. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 375 (1st Dist. 1983). (Emphasis added.)

The Board finds the best evidence of market value to be the purchase of the subject property on April 28, 2011 for a price of \$310,000. The appellant provided evidence demonstrating the sale

¹ It is further noted that the appellant provided no substantive evidence in his case-in-chief concerning the condition of the subject dwelling.

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had the elements of an arm's length transaction. The Board finds the purchase price of \$310,000 is below the market value reflected by the assessment of \$377,530.

The Property Tax Appeal Board further finds the board of review did not present any evidence to challenge the arm's length nature of the transaction beyond noting that the property was on the market for 24 days prior to its sale. There also was no evidence presented by the board of review to refute the contention that the purchase price was reflective of market value at the time of sale.

While Illinois courts have stated that the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances, there was no such evidence of "other circumstances" provided by the board of review in this proceeding beyond the argument related to the time on the market of 24 days. (See Ellsworth Grain Co. v. Illinois Property Tax Appeal Board, 172 Ill.App.3d 552 (4th Dist. 1988)). Based on this record, the general public had the same opportunity to purchase the subject property at any negotiated sale price. Other recognized sources further demonstrate the fact a property must be advertised or exposed in the open market to be considered an arm's-length transaction that is reflective of fair market value. Black's Law Dictionary (referencing Bourjois, Inc. v. McGowan and Lovejoy v. Michels (citation omitted)), states:

. . . the price a property would command **in the market**" (Emphasis added). This language suggests a property must be publicly offered for sale in the market to be considered indicative of fair market value.

The Board finds there are other credible sources that specify a property must be advertised for sale in the open market to be considered an arm's-length transaction. The Dictionary of Real Estate Appraisal [American Institute of Real Estate Appraisers, *The Appraisal of Real Estate*, 8th ed. (Chicago American Institute of Real Estate Appraisers, 1983), provides in pertinent part:

The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale; The property is exposed for a reasonable time on the open market.

Additionally, the Property Assessment Valuation, 2nd edition, states: Market value is the most probable price, expressed in terms of money, that a property would bring **if exposed for sale in the open market** [emphasis added] in an arm's-length transaction between a willing seller and a willing buyer; a **reasonable time is allowed for exposure to the open market**. [emphasis added]. (International Association of Assessing Officers, Property Assessment Valuation, 2nd edition, Pgs. 18, 35, (1996)).

In summary, the Property Tax Appeal Board finds that the board of review failed to adequately rebut the apparent arm's-length nature of the sale transaction in that the only evidence of record is that the buyer and seller were not related, the property was open and exposed on the market for a period of time of 24 days and sold for \$310,000 on April 28, 2011, four months after the assessment date at issue of January 1, 2011, after having been offered for sale initially for \$349,000. It is further noted that both the final sale price and the offering price were both lower than the subject's estimated market value based on its assessment.

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The board of review provided three comparable sales that occurred in June and September 2010 for prices ranging from \$316,000 to \$410,000 or from \$192 to \$290 per square foot of living area including land, rounded. The Property Tax Appeal Board further finds that two of the three comparable sales presented by the board of review sold for prices less than the subject's estimated market value of \$377,530 as reflected by its assessment. Based upon analysis of the data presented, the Board finds these sale comparables presented by the board of review neither support the subject's estimated market value nor do they overcome the arm's length nature of the subject's sale transaction as displayed in this record.

Since the appellant presented evidence showing the subject property was advertised for sale and exposed to the open market through the Multiple Listing Service in an arm's-length transaction, the Property Tax Appeal Board finds the subject's April 2011 sale price of \$310,000 was reflective of its market value.

Based on this record the Board finds the subject property had a market value of \$310,000 as of January 1, 2011. Since market value has been determined the 2011 three year average median level of assessment for DuPage County of 33.15% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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APPELLANT:	<u>Samuel Clementz</u>
DOCKET NUMBER:	<u>10-01745.001-R-1</u>
DATE DECIDED:	<u>April, 2014</u>
COUNTY:	<u>Kendall</u>
RESULT:	<u>Reduction</u>

The subject property is improved with a one-story condominium unit of brick and frame exterior construction that contains 1,150 square feet of living area. The dwelling was constructed in 2006. Features of the home include central air conditioning, two bathrooms and a one-car garage. The property is located in Yorkville, Bristol Township, Kendall County.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted information on three comparable sales described as one-story condominium units of brick and frame construction that contain 892 or 1,049 square feet of living area. The dwellings were constructed in 2006 and 2007. The comparables are located in the same complex as the subject property. Features of the comparables include central air conditioning, one or two bathrooms and a one-car garage. The comparables sold in June and November 2009 for prices ranging from \$77,970 to \$93,000 or from \$87.41 to \$90.67 per square foot of living area, including land. The appellant also submitted seven additional Multiple Listing Service sheets which contained limited descriptive information for condominium units which sold in October and November 2009. These units sold for prices ranging from \$51,000 to \$81,000. Based on this evidence, the appellant requested a reduction in the subject's total assessment to \$26,666.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$40,313 was disclosed. The subject's assessment reflects a market value of \$120,987 or \$105.21 per square foot of living area, including land, when applying the 2010 three year average median level of assessment for Kendall County of 33.32% as determined by the Illinois Department of Revenue.

The board of review presented information on four comparable sales improved with one-story condominium units of brick and frame exterior construction that contain 1,150 square feet of living area. The dwellings were constructed in 2006 and 2007. The comparables are located in the same complex as the subject property. Features of the comparables include central air conditioning, two bathrooms and a one-car garage. The comparables sold from April 2009 to November 2009 for prices ranging from \$81,000 to \$111,000 or from \$70.43 to \$96.52 per square foot of living area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant submitted a letter objecting to the board of review's argument

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.

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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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (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.

The Board finds the parties submitted seven suggested sale comparables for consideration. The Board finds the appellant also provided an additional seven Multiple Listing Service sheets as evidence, but limited descriptive data for these properties was given. As a result, no weight was given to this evidence. The Board gave less weight to the appellant's comparables #2 and #3. These comparables are smaller in size than the subject and have one bathroom, unlike the subject property. The Board finds the remaining five comparables submitted by both parties have varying degrees of similarity when compared to the subject in location, size, style, exterior construction, features and age. These properties also sold most proximate in time to the assessment date at issue. Due to the similarities to the subject, these comparables received the most weight in the Board's analysis. The comparables sold for prices ranging from \$81,000 to \$111,000 or from \$70.43 to \$96.52 per square foot of living area, including land. The subject's assessment reflects a market value of \$120,987 or \$105.21 per square foot of living area, including land, which is above the range established by the best comparable sales in this record. Based on this record the Board finds the appellant did demonstrate by a preponderance of the evidence that the subject was overvalued and a reduction in the subject's assessment is justified.

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APPELLANT:	Leonard DiCristofano
DOCKET NUMBER:	08-23930.001-R-1 thru 08-23930.002-R-1
DATE DECIDED:	July, 2014
COUNTY:	Cook
RESULT:	No Jurisdiction

The subject property is described as having two improvements situated on a 5,000 square foot parcel. Improvement #1, identified by parcel number 14-32-101-051, is a 120 year old, two-story, mixed-use building containing one ground level storefront and three one-bedroom apartment units.¹ Improvement #2, identified by parcel number 14-32-101-050, is a 124 year old, two-story multi-family building with two one-bedroom apartment units. Each building has individual heating, air conditioning, hot water and electrical service.

The appellant's attorney filed the appeal contending overvaluation based on an appraisal and recent purchase of the subject. In support of this contention, the appellant's attorney submitted a one page RESPA statement indentifying the purchaser as Colin Hebson. The appellant's attorney also submitted an appraisal completed by Property Valuation Services with a date of valuation and inspection of August 26, 2008. The appraisers indicated a final opinion of value for the two properties of \$790,000. Page two of the appraisal indicates the appraisal was completed to assist in the lending decision process, while page six of the appraisal indicates the two properties: were under contract for a total price of \$610,000; not listed on the open market; and the buyer approached the seller directly to purchase. The appraisal contains a copy of the sale contract that lists Colin Hebson as the purchaser. The petition, however, lists the appellant as Leonard DiCristofano.

The board of review filed equity comparables for both parcels. They also submitted a printout from the Cook County Recorder of Deeds website indicating the sole Grantee for the subject property is Colin Hebson.

After reviewing the record and considering the arguments of the parties, the Property Tax Appeal Board finds it does not have jurisdiction over the subject property and hereby dismisses the appeal.

Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) provides in part that:

In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property, and for all property in any county other than a county with 3,000,000 or more inhabitants, any *taxpayer* dissatisfied with the decision of a board of review. . . as such decision pertains to the assessment of his or her property for taxation

¹ The Board of Review incorrectly listed this parcel's property description as having five residential apartment units. As the appellant's appraisal and the Board of Review's photograph indicate otherwise, the appellant's description prevails.

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purposes. . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review. . . appeal the decision to the Property Tax Appeal Board for review. . . . (Emphasis added.)

In accordance with this statutory authority, section 1910.10(c) of the rules of the Property Tax Appeal Board provides in part that:

Only a *taxpayer or owner of property* (emphasis added) dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes . . . may file an appeal with the [Property Tax Appeal] Board.

86 Ill.Admin.Code §1910.10(c). These provisions clearly provide that only a taxpayer, owner or taxing body with a tax revenue interest may initiate an appeal before the Property Tax Appeal Board to challenge a decision of the board of review relating to the assessment of the property.

The evidence in this record disclosed the appellant named in the petition was Leonard DiCristofano, however, the record clearly shows Colin Hebson is the owner. No evidence was presented by either party that would indicate Leonard DiCristofano is a taxpayer, owner, or a taxing body with a tax revenue interest that would have standing to initiate this appeal before the Property Tax Appeal Board to challenge the decision of the Cook County Board of Review as it pertains to the assessment of the subject property.

For these reasons the Property Tax Appeal Board finds it does not have jurisdiction over the appeal and hereby dismisses it.

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APPELLANT:	Paul Egan
DOCKET NUMBER:	10-34012.001-R-1
DATE DECIDED:	January, 2014
COUNTY:	Cook
RESULT:	No Change

The subject property consists of 1,197 square feet of land improved with an 11-year old, three-story, masonry, attached, single-family dwelling. The appellant argues that the market value of the subject property is not accurately reflected in the property's assessed valuation and that the subject is inequitably assessed as the bases of this appeal.

In support of the market value argument, the appellant submitted a summary appraisal report of the property located next to the subject. This appraisal included a sales comparison approach to value. The appraisal never mentioned the subject property or estimated a value for the subject property.

In the sales comparison approach, the appraiser analyzed the sales of three properties and the appellant included four additional sales. The properties are described as two or three-story, masonry, attached, single-family dwellings with various amenities. The properties range in age from 10 to 18 years and in size from 1,176 to 1,847 square feet of living area. They sold from November 2005 to March 2011 for prices ranging from \$334,000 to \$525,000 or from \$207.20 to \$373.30 per square foot of living area, including land.

In support of the equity argument, the appellant included the assessment information on the four sales comparables not listed in the appraisal. These three-story, masonry, attached, single-family dwellings have improvement assessments ranging from \$22.42 to \$28.93 per square foot of living area. Based on this evidence, the appellant requests a reduction in the subject's assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was \$55,047 with an improvement assessment of \$49,362 or \$29.04 per square foot of living area were disclosed. The subject's total assessment reflects a market value of \$615,738 or \$362.19 per square foot of living area using the Illinois Department of Revenue median level of assessment for class 2, residential property of 8.94% for tax year 2010.

To support the subject's assessment, the board of review submitted detailed descriptive and assessment data on four suggested equity comparables. These properties are described as three-story, masonry, attached, single-family dwellings with various amenities. The properties range: in age from 7 to 14 years; in size from 1,376 to 1,535 square feet of living area; and in improvement assessments from \$31.84 to \$34.48 per square foot of living area. Based upon this evidence, the board requested confirmation of the subject's assessment.

After considering the arguments and reviewing 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. National City Bank of Michigan/Illinois v. Illinois Property

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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 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 Board concludes that the appellant has not met this burden and that a reduction is not warranted.

The Board gives no weight to appraisal's estimate of market value as the appraisal does not address the subject property. The appraiser did not inspect the subject and the adjustments made in this appraisal are not reflective of the subject's condition. The intended use of the appraisal was not to estimate the value for other properties. However, the PTAB will look at the raw data submitted in this appraisal as well as the four additional comparables and compare it to the subject.

The appellant presented descriptive and sales information on a total of seven suggested comparables. The Board finds the appellant's comparables from the appraisal and comparables #1 and #2 from the grid similar to the subject and sold closest to the lien date at issue. These properties sold from November 2009 to March 2011 for prices ranging from \$334,000 to \$439,000 or \$207.20 to \$373.30 per square foot of living area, including land. In comparison, the subject property's assessment reflects a value of \$615,738 or \$362.19 per square foot of living area, including land, which is within the range established by the comparables on a square foot basis. Therefore, after considering adjustments and the differences in the comparables when compared to the subject, the Board finds the subject's market value is supported and a reduction to the subject's assessment is not warranted.

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

The parties presented a total of eight properties suggested as comparable. The PTAB finds all the comparables similar to the subject in size, design, construction, location, and/or age. These properties range: in age from 7 to 15 years; in size from 1,376 to 1,847 square feet of living area; and in improvement assessments from \$22.42 to \$34.48 per square foot of living area. In comparison, the subject's improvement assessment of \$29.04 per square foot of living area is within the range of these comparables. Therefore, 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 improvement assessment is not warranted.

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APPELLANT:	Elizabeth Funteas
DOCKET NUMBER:	11-02853.001-R-1thru 11-02853.002-R-1
DATE DECIDED:	May, 2014
COUNTY:	DuPage
RESULT:	No Change

The subject properties consist of two contiguous parcels of land that contain 1.61 and 2.29 acres of land area, respectively. One parcel is improved with a single-family dwelling. The subject properties are located in Addison Township, DuPage County, Illinois.

The appellant appeared before the Property Tax Appeal Board through legal counsel¹ claiming assessment inequity with respect to the subject parcels' land assessments as the basis of the appeal. The appellant did not challenge the improvement assessment associated with parcel 06-09-410-015. In support of the inequity argument, the appellant submitted information on three suggested equity comparables located in close proximity to the subject. The comparables contain from 14,300 to 38,850 square feet of land area and have land assessments ranging from \$6,380 to \$42,500 or from \$.45 to \$1.22 per square foot of land area. The appellant's counsel calculated the subject parcels contain 170,450 square feet of land area and have a combined land assessment of \$227,480 or \$1.33 per square foot of land area.

Appellant's counsel argued the comparables are located on the same block as the subject. Appellant's counsel argued the subject parcels' assessments should not exceed the uniform assessed value of the neighboring comparables. Appellant's counsel argued parcel 03-09-410-008 is landlocked because there are no easement agreements that would allow access. Based on this evidence, the appellant requested reductions in both the subject parcels' land assessments.

Under cross-examination, Relias agreed he combined both properties in his assessment analysis although they are separate parcels. He agreed one of the subject parcels was improved with a dwelling. Relias agreed the appellant owns both parcels under appeal. Relias agreed all the comparables are considerably smaller in size when compared to the subject parcels.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the land assessment for the subject parcels of \$93,910 (03-09-410-008) and \$133,570 (03-09-410-015). In support of its assessments, the board of review submitted information on three equity comparables. The evidence was prepared by Dawn Aderholt, Deputy Assessor for Addison Township. After qualification, the Board accepted Aderholt as an expert witness.

The comparables are located within 1.5 miles of the subject. The comparables contain from 1.59 to 1.78 acres of land area and have land assessments ranging from \$92,740 to \$103,820 or from \$58,325 to \$58,327 per acre of land area. The subject parcels contain 1.61 and 2.29 acres of land area and have land assessment of \$93,910 and \$133,570 or \$58,329 and \$58,328 per acre of land area, respectively.

¹ At the hearing, appellant's legal counsel was sworn as a witness. Relias testified he is a licensed real estate broker; he selected the comparable properties; and his attorney fee was contingent based on the outcome of the appeal.

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Aderholt testified the subject properties were valued and assessed as individual parcels. She testified parcels that are one acre or larger are valued at \$175,000 per acre. She testified the subject parcels can be legally subdivided in the Village of Wood Dale. Aderholt testified she did not use smaller lots as comparables because they could not be subdivided. Aderholt testified that parcel 03-09-410-008 is not landlocked because it is owned by the same person who owns the adjoining parcel 03-09-410-015 that is also under appeal. Based on this evidence, the board of review requested confirmation of the subject parcels' assessments.

Under cross-examination, Aderholt agreed the comparables are not located in the subject's neighborhood code, but are located on Wood Dale Road north of the subject. The subject properties and neighboring properties are zoned residential. Lots that are smaller than one acre are valued and assessed based on the typical lot size in a neighborhood using the site methodology. She testified appellant's comparable #1 received a reduced land assessment because it was determined to be an unbuildable lot due to presence of a natural gas line.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. (86 Ill.Admin.Code §1910.65(b)). The Board finds the appellant failed to overcome this burden of proof and no reduction in the subject parcels' land assessments are warranted.

The Board finds the board of review submitted the most similar land comparables when compared to the subject parcels. These comparables contain from 1.59 to 1.78 acres of land area and have land assessments ranging from \$92,740 to \$103,820 or from \$58,325 to \$58,327 per acre of land area. The subject parcels contain 1.61 and 2.29 acres of land area and have land assessments of \$93,910 and \$133,570 or \$58,329 and \$58,328 per acre of land area, respectively. The Board finds the subject parcels' land assessments are supported by the land assessment comparables submitted by the board of review.

The Board gave little weight to the assessment comparables submitted by the appellant due to their smaller land sizes when compared to the subject parcels. Furthermore, the Board finds the land comparables submitted by the appellant are not assessed using the same methodology as the subject parcels. The deputy township assessor testified parcels that are one acre or larger are assessed at \$175,000 per acre. Aderholt testified lots smaller than one acre are valued and assessed based on the typical lot size in a neighborhood using the site methodology. The Board finds the appellant presented no credible evidence that would demonstrate the assessment methodology employed by the assessor was incorrect. Finally, the Board finds it problematic that appellant's legal counsel prepared the evidence and testified before the Board in this matter. Section 1910.70(f) of the rules of the Property Tax Appeal Board provides:

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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 §1910.70(f)).

Based on this record, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject parcels were inequitably assessed and no reduction in the subject parcels' land assessments are warranted.

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APPELLANT:	<u>Russell Hinnen</u>
DOCKET NUMBER:	<u>11-00400.001-R-1</u>
DATE DECIDED:	<u>March, 2014</u>
COUNTY:	<u>Will</u>
RESULT:	<u>Reduction</u>

The subject parcel of 8,925 square feet of land area with a pond view is improved with a two-story frame and brick exterior constructed dwelling built in 2004.¹ The dwelling contains approximately 2,780 square feet of living area with a full unfinished basement of 2,075 square feet of building area. Additional features of the dwelling are central air conditioning, a fireplace and an attached three-car garage. The subject property also has a deck with an above-ground pool. The subject property is located in Bolingbrook, DuPage Township, Will County.

The appellant's appeal is based on overvaluation and included a letter noting that the subject property was the subject matter of an appeal previously before the Property Tax Appeal Board. A copy of the Board's decision in Docket No. 08-01265.001-R-1 was attached. Based upon equity and the weight of the evidence for that 2008 assessment appeal, the Property Tax Appeal Board found the correct assessment of the subject property to be \$119,664 giving most weight to the appellant's appraisal with an opinion of the estimated market value of the subject property of \$360,000 as of January 6, 2009. In the letter, the appellant asserted that a 5% increase in the value of the subject property "is not supportable given the current climate within the housing market."

For this 2011 assessment appeal, the appellant submitted an appraisal estimating the subject property had a market value of \$295,000 as of November 17, 2010. The appraisal was prepared by Kurt Wessel, a State of Illinois Certified Residential Real Estate Appraiser. In estimating the market value of the subject property the appraiser developed the sales comparison approach to value.

In discussing the subject site, the appraiser noted the property adjoined a pond along its rear lot line and "this was considered to be a somewhat premium location and view for this market area."

In the report, the appraiser provided information on three comparable sales and two active listings located from .06 to .66 of a mile from the subject property. The comparables are described as two-story dwellings of frame or frame and masonry construction that range in size from 2,700 to 3,755 square feet of living area. The dwellings were new to 9 years old. Features of the comparables include a full basement, two of which have finished area, central air

¹ In a letter, the board of review through the township assessor reported the subject site consists of 12,976 square feet of land area "abutting a large detention pond at rear"; "the builder reports a living area of 2,778 square feet"; "home built in 2003." The Property Tax Appeal Board finds the best evidence of the subject's descriptive information was provided in the appraisal which included a schematic drawing and an inspection of the property as compared to the statements in the letter from the township assessor along with a copy of the subject's property record card which had little descriptive data on the document. As to the lot, the property record card has a legal description, but no specified site size and there is also no substantive data in the "building record" portion of the document beyond an illegible schematic drawing.

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conditioning, a fireplace and an attached two-car or a three-car garage. The comparables have sites ranging in size from 8,775 to 9,790 square feet of land area. Three of the comparables sold in April or June 2010 for prices of \$275,000 or \$300,000 or from \$76.39 to \$111.11 per square foot of living area, including land. The listings had asking prices of \$289,900 and \$300,000 or \$105.42 and \$103.45 per square foot of living area, including land, respectively. After making adjustments to the comparables for differences from the subject, including, but not limited to, either \$10,000 or \$20,000 upward adjustments for view as compared to the subject's pond location, the appraiser estimated the comparables had adjusted prices ranging from \$269,500 to \$312,000 or from \$74.86 to \$115.56 per square foot of living area, including land.

Based on this evidence, the appellant requested a reduction in the subject's assessment to approximately reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$126,100 was disclosed. The subject's assessment reflects a market value of \$379,705 or \$136.58 per square foot of living area, including land, when applying the 2011 three year average median level of assessment for Will County of 33.21% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review submitted a letter from the DuPage Township Assessor outlining several criticisms of the appellant's appraisal. First, the subject's site size is purportedly erroneous (see footnote #1). Second, sale #3 is "an invalid sale - bankruptcy." Third, comparables #4 and #5 are "active listings." Fourth, the assessor reported the subject property is not in a Special Services Area (SSA)² for infrastructure, whereas comparable #5 is in an SSA. The assessor wrote regarding this issue, "As such their annual 'tax' has an additional \$1,714 burden not incurred by the subject site. But the appraiser makes no adjustment for that extra burden. It would be a positive adjustment."

Based on the foregoing assertions that the appellant's appraisal is flawed, the township assessor on behalf of 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 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (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.

The Board finds the best and only evidence of market value in the record to be the appraisal of the subject property submitted by the appellant. The board of review failed to submit any market

² 35 ILCS 200/27-5, et al.

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value evidence to support its assessment of the subject property. In contrast to the board of review's submission, the appellant's appraiser developed the sales comparison approach to value and the sales utilized by the appraiser were similar to the subject in location, size, style, exterior construction, features, age and/or land area. These properties also sold most proximate in time to the assessment date at issue and the appraiser made adjustments to the listings for sales/financing concessions to adjust for the fact the properties had not yet sold. Furthermore, the appraised value of \$295,000 is below the market value reflected by the assessment of \$379,705.

The Property Tax Appeal Board finds the appellant submitted an appraisal of the subject property with a final value conclusion of \$295,000 as of November 17, 2010, while the board of review submitted no appraisal or market value evidence, but only criticized various aspects of the appellant's appraisal. The Property Tax Appeal Board finds the criticisms presented by the board of review through the township assessor are irrelevant to a market value determination or criticized factual statements which were not sufficiently supported to overcome the facts presented in the appraisal.

The criticism of the subject's purportedly incorrect site size has been addressed previously; in the absence site size information on the subject's property record card, the Board has determined the best evidence was presented by the appellant's appraiser concerning the subject's site size.

It is particularly significant that the board of review provided no sales data to refute the sales and listings which were contained in the appraisal report and occurred relatively close in time to the assessment date of January 1, 2011.

The last criticism raised by the township assessor concerns the 'tax burden' of comparable listing #5. 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). 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 Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428 (1970). The Property Tax Appeal Board is without jurisdiction to determine the tax rate, the amount of a tax bill, or the exemption of real property from taxation. (86 Ill.Admin.Code §1910.10(f)). In this appeal, the board of review/township assessor provided no substantive market data to support the contention that the SSA status of comparable listing #5 did or would affect the sales price of this property. Therefore, on this record, the Property Tax Appeal Board finds that the board of review has failed to support this criticism of the appraisal with any substantive market data.

While the board of review raised several criticisms and/or shortcomings it perceived in the appellant's appraisal, in the end the Property Tax Appeal Board finds that as outlined above and despite those criticisms, the appraisal submitted by the appellant estimating the subject's market value of \$295,000 is the best evidence of the subject's market value in the record. Moreover, the

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appraisal's estimated opinion of value was not substantively challenged with any market value evidence presented by the board of review.

Based on this record the Board finds the subject property had a market value of \$295,000 as of January 1, 2011. Since market value has been determined the 2011 three year average median level of assessment for Will County of 33.21% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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APPELLANT:	<u>Golden Hwang</u>
DOCKET NUMBER:	<u>10-02002.001-R-1</u>
DATE DECIDED:	<u>January, 2014</u>
COUNTY:	<u>Kane</u>
RESULT:	<u>Reduction</u>

The subject property¹ is improved with a two-story single-family dwelling of frame construction. The dwelling was constructed in 1927. Features of the home include a detached garage. The property is located in Aurora, Aurora Township, Kane County.

The appellant appeared before the Property Tax Appeal Board through legal counsel contending the subject property was overvalued in light of its recent sale. In support of this market value argument, the appellant's counsel filed a brief citing various Illinois cases along with evidence disclosing the subject property was purchased on May 22, 2009 for a price of \$65,000. The appellant completed Section IV - Recent Sale Data of the appeal petition disclosing the parties to the transaction were not related and the property was sold using a Realtor firm of Goldtree Realty with agent Ira Mizell. Furthermore, the property had been advertised on the open market with the Multiple Listing Service for 98 days prior to its sale. Among the remarks on the listing sheet is the statement, "In need of repairs and updates."

No witness was presented by the appellant to testify as to the purchase process, negotiations and/or the condition of the subject property at the time of purchase.

In further support of the transaction, the appellant submitted a copy of the Multiple Listing Service sheet which depicted an original asking price of \$86,900 and a listing date of January 16, 2009 and a subsequent price reduction to \$69,900 prior to its sale. The appellant also submitted a copy of the Settlement Statement which reiterated the date of sale and contractual sales price and two commission payments.

Based on this evidence and applicable case law, the appellant requested a reduction in the subject's assessment to reflect the purchase price.

The board of review submitted its "Board of Review - Notes on Appeal" wherein the subject's total assessment of \$51,242 was disclosed. The subject's assessment reflects a market value of \$153,603, when applying the 2010 three year average median level of assessment for Kane County of 33.36% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

The board of review representative Michael Madziarek contended the subject property was sold "as is" and was noted to be in need of repairs and updates such that the condition of the property was probably fairly poor, if not worse. He further noted that the board of review had no

¹ Descriptive details of the property have been drawn from Multiple Listing Service data sheet submitted by the appellant. The appellant failed to complete Section III - Description of Property. The board of review failed to provide a copy of the subject's property record card (86 Ill.Admin.Code §1910.40(a)).

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additional information regarding the transaction other than what was set forth in the Multiple Listing Service sheet.

In support of the subject's estimated market value as reflected by its assessment, the board of review submitted a copy of a "cancelled" Multiple Listing Service sheet depicting a listing of the subject property on August 28, 2009 for \$134,900 which was cancelled or taken off the market on November 2, 2009. Among the remarks on the document was, "Nicely rehabbed West Side Home with large kitchen, new appliances, 2 car garage, beautiful yard space and great bedroom configurations."

Also attached to the board of review's submission was a printout depicting that in July 2009 a mortgage in the amount of \$90,025 was issued concerning the subject property.

The board of review did not specifically address nor challenge the subject's sale price.

Based on this evidence, the board of review requested confirmation of the subject's estimated market value as reflected by its assessment.²

After hearing the testimony and considering 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 a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. 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 do so. 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the preponderance of the evidence supports a reduction in the subject's assessment.

The Board finds the purchase price of \$65,000 is below the market value reflected by the assessment of \$153,603. The appellant provided evidence demonstrating the sale of the subject property on May 22, 2009 for a price of \$65,000 had the elements of an arm's-length transaction.

² Prior to the hearing, the board of review proposed a reduction in the subject's assessment to \$42,866 which would reflect a market value of approximately \$128,598 which had been rejected by the appellant and thus this hearing proceeded. Given the duty of assessing officials to comply with the requirements of the Property Tax Code and assess properties at 33.33% of fair cash value, the Board finds the proposal by the board of review prior to the hearing is tantamount to an admission that the 2010 assessment of the subject property was in error.

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The subject was advertised for sale and the buyer and seller were not related parties. At the time of sale, the subject property was in need of repairs and updating.

The Property Tax Appeal Board also finds the board of review did not present any substantive evidence to challenge the arm's-length nature of the May 2009 transaction. However, to refute the contention that the purchase price of \$65,000 in May 2009 was reflective of market value as of the assessment date of January 1, 2010, the board of review submitted a copy of a listing for the subject property that occurred in August 2009 and reflected the subject property after rehabilitation with an asking price of \$134,900.

Based on the subsequent listing of the subject property which was more proximate in time to the assessment date, the Board gave less weight to the subject's sale price of \$65,000 that occurred in May 2009 and gave greater weight to the asking price of the subject property that occurred in August 2009. The Board finds the best evidence of the subject's estimated market value as of the assessment date is more accurately reflected in its asking price in August 2009 than in its sale price in May 2009.

Based on this record, the Board finds the subject property is overvalued as of the assessment date of January 1, 2010 and a reduction in the subject's assessment commensurate with the listing price in August 2009 is appropriate.

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APPELLANT:	IPO, LLC
DOCKET NUMBER:	12-02268.001-R-1
DATE DECIDED:	October, 2014
COUNTY:	Winnebago
RESULT:	No Change

The subject property consists of a two-story building of brick construction with 8,320 square feet of building area and consisting of eight apartment units. The building was constructed in 1977. Features of the six 2-bedroom and two 1-bedroom apartment units include an individual "sleeve" air conditioning unit. The property has a 25,522 square foot site and is located in Rockford, Cherry Valley Township, Winnebago County.

Appearing before the Property Tax Appeal Board on behalf of the appellant was its attorney, Julia Mezher, who argued overvaluation with respect to the subject's assessment as the basis of the appeal. In support of this argument the appellant submitted information on three comparable sales and included a brief addressing an income and expense analysis prepared by the appellant's law firm.

The comparable sales data consists of three properties located from 20 blocks to 7-miles from the subject property. Each of the comparables is a two-story apartment building of frame, brick or brick and stone exterior construction. The buildings have either 6 or 8 apartment units which range in age from 38 to 92 years old. The buildings range in size from 5,568 to 7,096 square feet of building area and one of the buildings has a full unfinished basement. One of the buildings has central air conditioning and one of the buildings has individual air conditioning units for the apartments. Two of the buildings have six to twelve outdoor parking spaces and one building has a six-car garage. These comparables sold between May 2007 and December 2012 for prices ranging from \$125,000 to \$210,000 or from \$18.55 to \$29.59 per square foot of building area, including land, or from \$15,625 to \$35,000 per apartment unit, including land. From this data, counsel for the appellant argued that the "average" sale price of the comparables was \$160,000 and thus, the subject's assessment should reflect this average sales price.

For the income and expense analysis in a brief, counsel outlined the "actual income and expenses of the subject property for the 2010, 2011 and 2012 tax years" with the figures for 2012 being "projected to reflect a one year period." Moreover, in a further explanation in the brief, the income data was derived from not only the subject property but also four additional properties with the subject's income "derived" as approximately 21.7% of the "rental" income in the 2010 and 2011 Schedule E filings. From this data of gross income and "allowable expenses" in the brief counsel derived a stabilized net operating income for the subject of \$29,709 to which an overall capitalization rate of 14.17% was applied resulting in a requested market value of \$209,661.

Based on this evidence and argument, the appellant requested a total assessment of \$53,328 which reflects a market value of approximately \$159,984 or \$19.23 per square foot of building area, including land, or \$19,998 per apartment unit, including land in light of the comparable sales. In the alternative, based upon the income and expense analysis, the appellant requested a

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total assessment of \$69,880 or a market value of approximately \$209,640 or \$25.20 per square foot of building area, including land, or \$26,205 per apartment unit, including land.

On cross-examination, counsel acknowledged that she did not personally inspect the comparable sale properties which were presented.

Given questions by the Administrative Law Judge, Ms. Mezher acknowledged that her submission in the brief did not include any rental comparables to establish market rents, her submission did not include any vacancy and collection loss data reflective of the market, and her submission did not include any data to support a market derived capitalization rate.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$81,500. The subject's assessment reflects a market value of \$246,521 or \$29.63 per square foot of building area, land included, or \$30,815 per apartment unit, land included, when using the 2012 three year average median level of assessment for Winnebago County of 33.06% as determined by the Illinois Department of Revenue. Appearing at the hearing on behalf of the board of review was Richard Crosby, member of the board of review.

In rebuttal to the appellant's comparable sales, Mr. Crosby contended the comparable sales were located in a different township and were suburban rather than urban locations. Also, he contended that comparable sale #1 was sold at auction (see PTAX-203 Illinois Real Estate Transfer Declaration depicting that the property was advertised prior to sale although it was an "auction sale"). In addition, in its written submission the board of review disputed consideration of sales that occurred after January 1, 2012 when determining the correct assessment of the subject as of the assessment date of January 1, 2012. Moreover, as comparable sale #2 occurred in May 2007, the board of review contended for assessment purposes as of 2012 only sales from 2011, 2010 and 2009 are considered valid. Also, appellant's comparable sale #3 was reportedly a "short sale."

In support of its contention of the correct assessment the board of review submitted information on four comparable sales located from 2 to 11-miles from the subject, but which reportedly are within Cherry Valley Township like the subject. These comparable two-story brick apartment buildings have either 8 or 11 apartment units which range in age from 34 to 45 years old. The buildings range in size from 7,188 to 10,090 square feet of building area. Three of the comparables have a basement and all of the comparables have "air conditioning."¹ One comparable has a "carport" and one comparable has a "4 basement garage." The sales occurred between August 2010 and May 2012 for prices ranging from \$201,500 to \$330,000 or from \$28.03 to \$36.35 per square foot of building area, including land, or from \$25,188 to \$33,400 per apartment unit, including land.

Based on this evidence and argument, the board of review requested confirmation of the subject's assessment.

¹ Property record cards were not provided for the comparable properties; the board of review contended that the subject and these comparables have "sleeve" air conditioning units.

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On cross-examination, Mr. Crosby acknowledged that his comparable #4 has an additional basement garage feature when compared to the subject property. He further acknowledged that comparables #2 and #3 have eleven apartment units with an equal number of bathrooms as compared to the subject with eight apartment units and an equal number of bathrooms. Additionally, Mr. Crosby acknowledged that board of review comparable sales #2, #3 and #4 have basements whereas the subject building does not have a basement.

Conclusion of Law

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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The parties submitted a total of seven comparable sales to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to appellant's comparable sale #2 due to its substantially older age of 92 years and due to its date of sale having been May 2007, a date more remote in time to the valuation date at issue of January 1, 2012 and thus less likely to be indicative of the subject's estimated market value as of the assessment date. The Board has also given reduced weight to board of review comparables #2 and #3 as each of these buildings have eleven apartment units and consist of larger buildings of 10,090 square feet of building area when compared to the subject.

As to the criticism by the board of review that appellant's comparable #3 was a "short sale," the Board finds that Public Act 96-1083 amended the Property Tax Code adding sections 1-23 and 16-183 (35 ILCS 200/1-23 & 16-183), effective July 16, 2010.

Section 1-23 of the Property Tax Code provides:

Compulsory sale. "Compulsory sale" means (i) the sale of real estate for less than the amount owed to the mortgage lender or mortgagor, if the lender or mortgagor has agreed to the sale, commonly referred to as a "**short sale**" and (ii) the first sale of real estate owned by a financial institution as a result of a judgment of foreclosure, transfer pursuant to a deed in lieu of foreclosure, or consent judgment, occurring after the foreclosure proceeding is complete. [Emphasis added.]

Section 16-183 provides:

Compulsory sales. The Property Tax Appeal Board shall consider compulsory sales of comparable properties for the purpose of revising and correcting assessments, including those compulsory sales of comparable properties submitted by the taxpayer.

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The Board finds the effective date of these statutes is applicable to assessment date at issue, January 1, 2012 and thus, there is no basis to give less weight to a comparable sale property merely because it was a "short sale."

The board of review also criticized appellant's comparable sale #1 as having sold at auction. The board of review's own submission of the PTAX-203 for this transaction clearly establishes that the property was advertised for sale prior to the sale. Thus, from this record, it appears that the general public had the same opportunity to purchase the property at any negotiated price as a consequence of the auction. The book Property Assessment Valuation, 2nd edition, states: Market value is the most probable price, expressed in terms of money, that a property would bring **if exposed for sale in the open market** [emphasis added] in an arm's-length transaction between a willing seller and a willing buyer; a **reasonable time is allowed for exposure to the open market**. [emphasis added]. (International Association of Assessing Officers, Property Assessment Valuation, 2nd edition, Pgs. 18, 35, (1996)). In light of these principles, the Property Tax Appeal Board finds no merit in the implication that a property which sold at an advertised auction is for this reason alone an invalid comparable sale.

Lastly, the board of review contended that the appellant's two comparables which sold in 2012 were "invalid" for purposes of this appeal, but then in its own submission comparable sale #1 presented by the board of review was a property which sold in May 2012. Regardless of the incongruity of the argument given its own evidentiary submission, the Property Tax Appeal Board finds no merit in this argument. While the Board finds assessors are statutorily bound to determine a given property's fair cash value as near as practicable as of the date of January 1 of a given assessment year, Illinois courts have recognized that assessing officials are not barred, as a matter of law, from considering events which occurred after the lien date in assessing properties and subsequent events assessing officials may consider in any individual case will depend on the nature of the event and the weight to be given the event will depend upon its reliability in tending to show value as of January 1. (See Application of Rosewell, 120 Ill.App.3d 369 (1st Dist. 1983)).

The Board finds the best evidence of market value to be appellant's comparable sales #1 and #3 along with board of review comparable sales #1 and #4 where these comparables have superior features of basements and/or garages when compared to the subject property. These four most similar comparables sold between August 2010 and December 2012 for prices ranging from \$125,000 to \$267,200 or from \$18.55 to \$36.35 per square foot of building area, including land, or from \$15,625 to \$35,000 per apartment unit, including land. The subject's assessment reflects a market value of \$246,521 or \$29.63 per square foot of building area, land included, or \$30,815 per apartment unit, land included, which is within the range established by the best comparable sales in this record in terms of overall value, in terms of a square-foot analysis and in terms of a per-apartment unit analysis. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

The appellant through legal counsel also developed an income approach to value using the subject's actual income and expenses. The Board finds this 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:

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[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. As established at hearing through questions asked of Ms. Mezher, the appellant did not demonstrate through any type of expert opinion or documentation 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's counsel 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's legal counsel did not provide such evidence as part of the brief; therefore, the Property Tax Appeal Board gives this purported argument no weight. Furthermore, the Board finds problematic the fact that appellant's counsel purportedly developed an "income approach" to value rather than an expert in the field of real estate valuation. Additionally, the Board finds that an attorney cannot act as both an advocate for a client and seek to provide unbiased, objective evidence of value for that client's property. (See 86 Ill.Admin.Code §1910.70(f)).

In conclusion, 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.

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APPELLANT:	<u>Agnes Jastrzebski</u>
DOCKET NUMBER:	<u>10-34900.001-R-1thru 1-34900.005-R-1</u>
DATE DECIDED:	<u>April, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>Dismissal</u>

The subject property is improved with multiple condominium units located in a three-story, masonry, condominium building.

The appellant appeared before the Property Tax Appeal Board arguing that the fair market value of the subject is not accurately reflected in its assessed value.

The parties each timely submitted evidence in this appeal. Upon proper notice sent, all parties appeared and were sworn. At the commencement of the hearing, the board of review presented a **MOTION TO DISMISS FOR LACK OF STANDING BY THE APPELLANT AS WELL AS THE FAILURE TO BE REPRESENTED BY AN ATTORNEY.** The opposing party argued that the *pro se* appellant does not have standing before the Property Tax Appeal Board citing 86 Ill.Adm.Code §1910.70(c) as the basis of the motion. In the alternative, the party argued that as a non-attorney if the *pro se* appellant has attempted to file on behalf of the actual corporate property owner, then the appellant must be barred from the hearing and the appeal dismissed citing 86 Ill.Adm.Code §1910.70(a-c) as the basis of the argument.

At hearing, the appellant responded by testifying that the subject property is actually owned by a corporation composed of other family members and not herself. She testified that she only manages some of the properties.

After considering the testimony and evidence as well as reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds that this appeal should be dismissed. Section 1910.10(c) of the official rules of the Property Tax Appeal Board states:

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

Further, Section 1910.70(a) of the rules of the Property Tax Appeal Board states in relevant part:

A party shall have the right to represent himself or herself and to be present at and participate in any hearing before the Property Tax Appeal Board. The right to participate shall include the rights to call, examine and cross-examine witnesses and to discuss any evidence properly submitted pursuant to this Part. A party may be represented at the hearing by any person who is admitted to practice as an attorney in this State. Accountants, tax

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representatives, tax advisers, real estate appraisers, real estate consultants and others not qualified to practice law in this State may not appear at hearings before the Board in a representative capacity, and may not conduct questioning, cross-examination or other investigation at the hearing. However, such persons may testify at hearings before the Board and may assist parties and attorneys in preparation of cases for presentation by those parties and attorneys for the Board at hearings. 86 Ill.Adm.Code 1910.70(a)

Moreover, Section 1910.70(b) of rules of the Property Tax Appeal Board states:

As provided in subsection (a), only attorneys licensed to practice law in the State of Illinois shall be allowed to represent a party at a Property Tax Appeal Board hearing. 86 Ill.Adm.Code 1910.70(b)

Further, Section 1910.69(b) of the official rules of the Property Tax Appeal Board states:

When a hearing . . . is ordered by the Property Tax Appeal Board, all parties shall appear for the hearing . . . on the appeal on the date and at the time set by the Property Tax Appeal Board. Failure to appear on the date and at the time set by the Property Tax Appeal Board shall be sufficient cause to default that party. 86 Ill.Adm.Code 1910.69(b)

The Board finds that the undisputed testimony and/or evidence disclosed that the actual owner and taxpayer of the subject property is a corporation. Therefore, the *pro se* individual who signed the petition: is not the actual owner of the subject parcel; is not the taxpayer of the subject parcel; and is not an attorney licensed to practice law in the State of Illinois.

The Board further finds that the disclosed *pro se* appellant does not have standing to represent the corporate owner in this property tax appeal. The Board finds that the appellant failed to secure proper representation at the hearing since the owner of the property is actually a corporation. Therefore, pursuant to Section 1910.69(b) of the official rules of the Property Tax Appeal Board, the appellant is found to be in default and the appeal is hereby dismissed.

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APPELLANT:	Gary Kachadurian
DOCKET NUMBER:	11-03248.001-R-2
DATE DECIDED:	September, 2014
COUNTY:	DuPage
RESULT:	Dismissal

The subject property is improved with a part 2-story and part 1-story single family dwelling of frame exterior construction with 4,251 square feet of living area. The dwelling was constructed in 1901 with additions and renovations completed in 1992. Features of the home include a partial unfinished basement, central air conditioning, three fireplaces and a 529 square foot garage. The property has a 34,908 square foot site and is located in Hinsdale, Downers Grove Township, DuPage County.

The appellant contested the subject's assessment for the 2011 tax year based on both assessment equity and overvaluation. In support of these arguments, the appellant through legal counsel submitted a grid analysis of three equity comparables and an appraisal estimating the subject property had a market value of \$1,560,000 as of July 19, 2010. The appellant also submitted a copy of the final decision issued by the board of review establishing a total assessment of \$655,750. As part of the appeal petition, the appellant requested the subject's assessment be reduced to \$519,948, a difference of \$135,802.

By letter to the parties dated June 11, 2014, the Property Tax Appeal Board set the matter for hearing in accordance with the request for an in-person hearing by both the appellant and the board of review for 1:45 p.m., on August 11, 2014, at the offices of the DuPage County Board of Review in Wheaton, Illinois. The Property Tax Appeal Board further notified the appellant that pursuant to section 1910.98(a) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.98(a)) if the appellant was seeking a change in assessment of \$100,000 or more in assessed valuation, the appellant must provide a court reporter at his own expense.

At the time and date of the scheduled hearing, the appellant's counsel, Mr. Marsico, appeared before the Property Tax Appeal Board. Appearing on behalf of the DuPage County Board of Review was board member Charles Van Slyke and Joni Gaddis, Chief Deputy Assessor of Downers Grove Township. The appellant's counsel advised that the services of a court reporter had not been procured to record and transcribe the proceeding as required by Section 1910.98(a) of the rules of the Property Tax Appeal Board and the terms of the Property Tax Code. (86 Ill.Admin.Code §1910.98(a)).¹ At that time, counsel also orally offered to voluntarily amend the petition to a request below the \$100,000 threshold. Counsel was advised by the Administrative

¹ Section 16-190(a) of the Property Tax Code provides in part:

The Property Tax Appeal Board shall keep a record of its proceedings and orders and the record shall be a public record. In all cases where the contesting party is seeking a change of \$100,000 or more in assessed valuation, the contesting party must provide a court reporter at his or her own expense. The original certified transcript of such hearing shall be forwarded to the Springfield office of the Property Tax Appeal Board and shall become part of the Board's official record of the proceeding on appeal. . . . [Emphasis added.] (35 ILCS 200/16-190(a)).

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Law Judge that such a reduction in the appellant's claim was not allowable at this time. (See County of Coles v. Property Tax Appeal Board, 275 Ill.App.3d 945, 657 N.E.2d 673 (4th Dist. 1995)). Due to the fact that no court reporter was present, the Administrative Law Judge announced that this matter would be dismissed.²

Counsel for the appellant placed an objection to dismissal on the record both as to not having a court reporter present for the hearing and as to not having the appraiser present for hearing asserting, in pertinent part, that the Property Tax Appeal Board as a general rule provides great deference to the taxpayer and has set very "movable parameters" as to what will and will not be considered with the case law finding such determinations to be to the benefit of the taxpayer to consider the merits of the appeal.

Furthermore, counsel for the appellant argued that if the appellant were to supply a court reporter as well as the appraiser, the expenses would far outweigh any savings that could possibly be achieved in the appeal.³ Thus, counsel argued that it "flies in the face" of the whole premise of the Property Tax Appeal Board to default the appellant for not expending more money than could be recovered in tax savings due to the appeal, even if successful.

In response, the board of review's representative requested that the Property Tax Appeal Board abide by its existing rules regarding the necessity of a court reporter for this proceeding.

The Property Tax Appeal Board finds that Section 1910.98(a) of the rules of the Property Tax Appeal Board provides in part that:

In all cases where the contesting party is seeking a change of \$100,000 or more in assessed valuation, the contesting party must provide a court reporter at his own expense... 86 Ill.Admin.Code §1910.98(a).

This rule of the Board mirrors the requirement set forth in Section 16-190(a) of the Property Tax Code governing the record of proceedings before the Property Tax Appeal Board mandating, in pertinent part, that "where the contesting party is seeking a change of \$100,000 or more in assessed valuation, the contesting party must provide a court reporter at his or her own expense." (35 ILCS 200/16-190(a)).

In addition, Section 1910.69(d) of the rules of the Property Tax Appeal Board provides in part that:

Failure of the contesting party to furnish a court reporter as required by Section 1910.98(a) of this Part shall be sufficient cause to dismiss the appeal... 86 Ill.Admin.Code §1910.69(d).

² Given the desire of the appellant to place an objection on the "record," a recording was made of the appellant's objection and the board of review's response.

³ Based upon a question by the Administrative Law Judge as to anticipated property tax savings, appellant's counsel believed the figure to be approximately \$4,500 or a little less.

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Additionally, Section 1910.69(a) of the rules of the Property Tax Appeal Board provides as follows:

Failure of any party to comply fully with all rules and/or specific requests of the Property Tax Appeal Board as provided in Sections 1910.30, 1910.40, 1910.60, 1910.65, 1910.67, 1910.68 and 1910.73 of this Part shall result in the default of that party. 86 Ill.Admin.Code §1910.69(a).

The Board finds the appellant requested a change in the assessment in excess of \$100,000. The amount of change sought is fixed at the instant a petition is filed with the Property Tax Appeal Board and is the difference between the final decision of the board of review and the proposed assessment request set forth by the contesting party on the petition. County of Coles v. Property Tax Appeal Board, 275 Ill.App.3d 945, 657 N.E.2d 673 (4th Dist. 1995). Thus, in light of the case law, the Board finds that the appellant could not amend the appeal petition at the time of the hearing to avoid the requirement to provide a court reporter for the proceeding. The notice of the scheduled hearing was made in accordance with Section 1910.67 of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.67). The Board finds the letter dated June 11, 2014, notified the appellant that a hearing would be held on August 11, 2014. The hearing notice letter stated the time, location and, that pursuant to Section 1910.98(a) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.98(a)), the appellant was further informed of the requirement to engage a court reporter for the hearing.

As established by the statements of counsel at the hearing, the Board further finds that the appellant knowingly chose not to procure the services of a court reporter as required by Section 1910.98(a) of the rules of the Property Tax Appeal Board and Section 16-190 of the Property Tax Code. (86 Ill.Admin.Code §1910.98(a); 35 ILCS 200/16-190) The Board further finds that pursuant to Section 1910.69(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.69(d)), failure to furnish a court reporter as required in Section 1910.98(a) is sufficient cause for dismissal of the appeal. Finally, as set forth in counsel's objection stated at the time and date of the scheduled hearing, the Board finds that appellant's counsel provided no good cause or reason for the failure to have a court reporter present at the scheduled hearing beyond a calculated cost/benefit analysis and thus a determination by counsel/the appellant to not supply the required court reporting services for this appeal hearing.

Based on the aforementioned analysis and pursuant to Sections 1910.69(a) and (d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.69 (a) & (d)) along with the requirements of the Property Tax Code in Section 16-190(a) (35 ILCS 200/16-190(a)), the Property Tax Appeal Board hereby dismisses the appeal and thereby finds no change in the subject's assessment is warranted for 2011.

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APPELLANT:	Knorps a/k/a Nantucket George Homes
DOCKET NUMBER:	09-32164.001-R-1
DATE DECIDED:	January, 2014
COUNTY:	Cook
RESULT:	No Change

The subject has 17,050 square feet of land, which is improved with a one year old, two-story, frame, single-family dwelling. The subject's improvement size is 6,059 square feet of living area, which equates to an improvement assessment of \$23.16 per square foot of living area. The appellant, via counsel, made a contention of law as the basis of this appeal.

The appellant alleges that the subject was granted a model home exemption for the 2008 year and since that time, the subject has not been sold, rented or occupied. The appellant's legal argument is that the subject is entitled to a model home assessment, as described at 35 ILCS 200/10-25.

In support of the model home exemption argument, the appellant's attorney submitted an MLS printout showing that the subject was listed for sale in August 2009. The realtor remarks do not mention any model home status. The property was listed for sale as a single family home. Further, an email from the appellant to the attorney states that he purchased the subject from a "distressed seller" or builder who built it as a speculative home and not occupied in 2008 or 2009. It is unknown whether or not the appellant applied for the model exemption application for 2009. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The Cook County Board of Review submitted its "Board of Review-Notes on Appeal," wherein the subject's improvement assessment of \$140,339 was disclosed. In support of the subject's assessment, the board of review submitted descriptive and assessment information for four properties suggested as comparable to the subject. The comparables are described as two-story, frame or frame and masonry, single-family dwellings. Additionally, the comparables range: in age from one to four years; in size from 5,132 to 5,848 square feet of living area; and in improvement assessments from \$24.72 to \$25.63 per square foot of living area. The comparables also have several amenities. Based on this evidence, the board of review requested confirmation of the subject's improvement assessment.

At hearing, the appellant's attorney submitted a note from the appellant stating that the subject property was never rented in tax years 2008, 2009, and 2010. In contrast, the board of review representative Israel Smith provided MLS printouts showing that the property was offered as a short-term executive rental property and was rented in March 2010; offered for sale by four different realtors from 2006 to 2009, all without any mention of the property being a model home, and lastly, showing the property sold in December 2010. Mr. Smith also argued that the model home exemption was granted to the original builder for 2008 and that it was granted for the purpose of using the property as a model for the intention of building more homes similar to it. Once the original builder, or "distressed seller", as the appellant stated, sold that property to the appellant, the exemption was voided.

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

The Board finds that there is conflicting evidence regarding whether the subject property was rented during the 2009 year, the subject was not used as a model home in 2009, and there is no evidence of any model home exemption application being filed for 2009. Therefore, the Board finds that no reduction is warranted.

The appellant asserts that the subject should be assessed as a model home for tax year 2009. Such an assessment is governed by 35 ILCS 200/10-25, which states, in relevant part:

Model homes, townhomes, and condominium units. If the construction of a single family dwelling is completed after December 29, 1986 or the construction of a single family townhome or condominium unit is completed after the effective date of this amendatory Act of 1994, ***and that dwelling, townhome, or condominium unit is not occupied as a dwelling*** but is used as a display or demonstration model home, townhome or condominium unit for prospective buyers of the dwelling or of similar homes, townhomes, or condominium units to be built on other property, the assessed value of the property on which the dwelling, townhome, or condominium was constructed shall be the same as the assessed value of the property prior to construction and prior to any change in the zoning classification of the property prior to construction of the dwelling, townhome or condominium unit. . . .

The person liable for taxes on property eligible for assessment as provided in this Section shall file a verified application with the chief county assessment officer on or before (i) April 30 of each assessment year for which that assessment is desired in counties with a population of 3,000,000 or more and (ii) December 31 of each assessment year for which that assessment is desired in all other counties. *Failure to make a timely filing in any assessment year constitutes a waiver of the right to benefit for that assessment year.*

Id. (emphasis added).

The appellant did not provide any evidence that a model home application was filed for the subject for tax year 2009. Since there is no evidence that an application was filed, the Board finds that the subject is not entitled to a model home assessment.

According to the evidence, the subject property was offered for sale and rent during the 2009 year and was not used as a speculative home. There is conflicting evidence regarding whether the property was rented in 2009. The subject property was marketed in the MLS as a single-family home for sale and rent and was ready to be occupied upon closing. The model home exemption is granted for properties shown as a model so that potential purchasers can view it and consider building a similar home by the same builder in the same neighborhood. Clearly, this property was not used as a model home in 2009.

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Further, Section 10-25 is clear and unambiguous. Under this statutory law, which required an application to be filed by April 30, 2009, and further states that "[f]ailure to make a timely filing in any assessment year constitutes a waiver of the right to benefit for that assessment year," the Board has no authority to grant a model home assessment to the subject. The Board will not contradict unambiguous statutory law. For these reasons, the Board finds the appellant's argument unpersuasive. As such, the Board finds that the subject is not entitled to a reduction.

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APPELLANT:	Brad Labertew
DOCKET NUMBER:	11-00060.001-R-1
DATE DECIDED:	January, 2014
COUNTY:	Madison
RESULT:	Reduction

The subject property consists of a one-story frame dwelling containing 760 square feet of living area. The dwelling was built in approximately 1960. Features include a crawl space foundation, central air conditioning and a carport. The dwelling is situated on a 2.95 acre lot. The subject property is located in Fort Russell Township, Madison County.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. The appellant challenged the subject's land and improvement assessments. In support of the overvaluation claim, the appellant submitted a lengthy letter addressing various aspects of the appeal, property record cards, photographs, a grid analysis detailing three suggested comparable and three additional comparable sales with no descriptive information.

Comparable 1 submitted by the appellant is located "just across the street" from the subject property. It is comprised of 61.28 acres of vacant land that sold at public auction in October 2011 for \$147,562 or \$2,408 per acre of land area. Applying the per acre sale price of \$2,408 to the subject results in an estimated land value for the subject property of \$7,104 or an assessment of \$2,368. However, the appellant requested the subject's land assessment be reduced to \$283, which reflects an estimated market value of \$849 or \$288 per acre after considering adjustments. The subject had a final equalized land assessment of \$11,950, which reflects an estimated market value of \$35,850 or \$12,153 per acre.

The appellant's letter explained the comparable land sale holds a "preferential assessment as farm land." The appellant argued the comparable land sale is similar to the subject in proximity, land quality and significant portions of the land are located in a flood plain like the subject. The appellant argued the comparable land sale should be adjusted due to its preferential farmland assessment. In order to quantify the adjustment amount, the appellant calculated the subject's property tax liability was \$217 per acre annually whereas the land comparable's property tax liability was approximately \$5 per acre. This results in the subject property having a \$212 per acre higher property tax liability difference than the comparable land sale. To calculate the land adjustment amount, the appellant developed the net present value methodology by using the aforementioned \$212 per acre property tax liability difference, in perpetuity, at a discount rate of 10% or \$2,120. (\$212 divided by .10 = 2,120). The appellant next deducted the \$2,120 amount from the land comparable's \$2,408 per acre sale price to derive a \$288 per acre land market value. These calculations result in an estimated land value for the subject of \$850 or a land assessment of \$283.

Comparables 2 and 3 are located 3 and 2.5 miles from the subject, respectively. The comparables consist of one-story frame dwellings that were built in 1930 and 1940. The comparables do not have basements. Features include central air conditioning and garages that

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contain 216 and 296 square feet of building area. The dwellings contain 816 and 880 square feet of living area and are situated on lots that contain 6,000 square feet or .14 of an acre of land area. The comparables sold in January and February of 2011 for prices of \$10,000 and \$15,000 or \$12.25 and \$17.04 per square foot of living area including land, respectively. The appellant's letter indicates comparable 2 was a "fixer-upper" like the subject, but was rehabilitated after the sale.

The appellant also submitted three sales of properties located in Meadowbrook, which are purportedly located "close to the subject." The appellant provided the address, parcel identification number, sale date and sale price of the suggested properties. The appellant did not provide any descriptive information for the suggested comparables, such as their land size, design, age, exterior construction or features for comparison to the subject. The properties purportedly sold from February to August of 2011 for prices ranging from \$65,000 to \$95,000.

Based on this evidence, the appellant requested a reduction in the subject's total assessment to \$3,994, which reflects an estimated market value of \$11,982 or \$15.77 per square foot of living area including land.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final equalized assessment of \$27,050 was disclosed. The subject's assessment reflects an estimated market value of \$81,207 or \$106.85 per square foot of living area including land when applying Madison County's 2011 three-year median level of assessments of 33.31%.

In response to the appeal, the board of review indicated the appellant purchased the subject property in March 2010 for \$78,775 in an arm's-length transaction. Additionally, the board of review argued appellant's comparable 1 was comprised of farmland without any buildings; comparable 2 was a "rehab" and resold in July 2012 for \$58,000; and comparable 3 was not a valid sale. No explanation was provided as to why comparable 3 was not a "valid" sale. Based on this evidence, the board of review proposed to reduce the subject's assessment to \$26,260 to reflect its March 2010 sale price of \$78,775. The appellant rejected the proposed assessment reduction.

Under rebuttal, the appellant argued comparable land sale 1 is similar to the subject and provides a market value indicator of vacant land. The appellant argued the board of review failed to address any of the other evidence introduced, like the effect of the comparable's preferential land assessment or other factors negatively affecting the value of the subject. The appellant also argued the board of review provided no evidence for the basis that comparable 3 was not a valid sale.

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 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). Proof of market value

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may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant has not met this burden of proof. However, the Board finds the credible evidence submitted by the board of review supports a slight reduction in the assessment of the subject property.

The evidence contained in the record is un-refuted that the subject property was purchased by the appellant in March 2010 for \$78,775, just nine months prior to the subject's January 1, 2011 assessment date. The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the seller is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970). A contemporaneous sale of property between parties dealing at arm's-length is a **relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value.** (Emphasis Added). 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).

Furthermore, section 1-50 of the Property Tax Code defines fair cash value as:

The amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller. (35 ILCS 200/1-50)

The Property Tax Appeal Board finds there is no evidence contained in this record showing the subject sale was not an arm's-length transaction. Based on this record, the Board finds the best evidence of the subject's fair market value is its March 2010 sale price of \$78,775, which is inclusive of any purported negative factors associated with the subject property as argued by the appellant. The subject's assessment reflects an estimated market value of \$81,207, which is slightly higher than its sale price. Therefore, a reduction is warranted. Since fair market value has been established Madison County's 2011 three-year median level of assessments of 33.31% shall apply.

The Board gave little weight to the valuation evidence and various arguments as outline by the appellant for several reasons. With respect to the subject land value, the Board finds the vacant land sale cited by the appellant is not a probative indicator of the subject's land value. The Board finds the land sale was used for agricultural purposes, dissimilar to the subject's residential use. Moreover, the suggested land sale is considerably larger in land area when compared to the subject. Accepted real estate valuation theory provides, all other factors being equal, as the size of a property increases, its per unit value decreases. Likewise, as the size of a property decreases, its per unit value increases. The Board finds the subject's higher per acre land value is well justified given its considerably smaller land size. The Board also gave no weight to the adjustment methodology utilized by the appellant to calculate the adjusted land value to be applied to the subject property. The formula utilized by the appellant is not a recognized valuation technique for real estate valuation purposes. Finally, the Board finds the subject parcel consists of real property including both land and improvements thereon, however, the appellant claims the land is overvalued based upon a single dissimilar land sale. In Showplace Theatre

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Company v. Property Tax Appeal Board, 145 Ill.App 3d. 774 (2nd Dist. 1986), the court held a market value appeal before the Property Tax Appeal Board includes both land and improvements and together constitute a single assessment. In Showplace, although the appellant only disputed the subject's land value based on a recent allocated sale price, the Appellate Court held the Property Tax Appeal Board's jurisdiction was not limited to a determination of the land value alone. In accordance with Showplace, the Property Board Tax Appeal Board is bound to analyze the subject's total assessment in making the determination of whether that assessment was reflective of fair cash value. Again, the Board finds the best evidence of the subject's fair market value is its March 2010 sale price of \$78,775.

The appellant also submitted five suggested improved comparable sales to further demonstrate the subject property was overvalued. The Board finds these suggested comparable sales do not overcome the subject's March 2010 sale price of \$78,775. Furthermore, the Board finds the two comparables for which the appellant supplied descriptive information do not provide reliable indicators of the subject's fair market value. The Board finds the comparables are situated on considerably smaller sites than the subject; the suggested comparables are 20 or 30 years older in age than the subject; and the comparables are located a considerable distance from the subject. The Board gave no weight to the three remaining comparables submitted by the appellant due to the fact the appellant failed to supply descriptions for any type of meaningful comparative analysis.

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APPELLANT:	<u>Eyad Malley</u>
DOCKET NUMBER:	<u>11-00795.001-R-1</u>
DATE DECIDED:	<u>March, 2014</u>
COUNTY:	<u>Will</u>
RESULT:	<u>No Change</u>

The subject property is improved with a two-story single-family dwelling of masonry construction containing 4,936 square feet of living area. Features of the home include a full unfinished basement, central air conditioning, a fireplace and an attached three-car garage of 804 square feet. The property is located in Homer Glen, Homer Township, Will County.

The appellant's appeal filed through legal counsel is based on overvaluation. In support of this argument, the appellant completed Section VI - Recent Construction along with a Certificate of Occupancy issued by the Village of Homer Glen on December 27, 2010, an itemization of construction costs averred to by the appellant and a brief filed by counsel further expounding upon the evidence.

In the appeal petition, the appellant reported the land was purchased in February 2002 for \$84,500. The itemized building costs as sworn to by the appellant reflect a reported total of \$392,417. Within the brief, counsel contended that the "total hard costs to construct the home were \$348,304" with a further explanation that \$44,113 was removed from the total construction costs reported "as these costs were soft costs or not related to the construction of the home." The removed costs included: architect (\$3,950), engineering (\$1,495), impact fees (\$5,043), Village of Homer permits (\$6,788), Homer road/bridge admin fee (\$50), excavating (\$2,000), portable toilet (\$1,121), fence (\$550), insurance (\$2,137), dirt removal (\$1,800), permit extensions (\$1,980), paver walkway (\$2,215), landscaping (\$3,300), dumpsters (\$2,572), appliances (\$8,612) and cleaning (\$500). Also reported in the appeal petition was the estimated value of the appellant acting as general contractor for \$55,000.

Based upon totaling the "hard costs" of \$348,304 plus the appellant's general contractor services of \$55,000, the appellant's counsel asserts the total "hard" construction costs were \$403,304. Adding the assessor's land market value of \$90,009 for the subject parcel to this figure, the appellant contends the property should have a total market value of \$493,313.

Based on this evidence, the appellant requested a reduction in the subject's total assessment to \$164,421 which would reflect the appellant's reported costs of acquisition and construction along with the assessor's estimated land market value at the statutory level of assessment of 33.33%.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$211,878 was disclosed. The subject's assessment reflects a market value of \$637,995 or \$129.25 per square foot of living area, including land, when applying the 2011 three year average median level of assessments for Will County of 33.21% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

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The board of review submitted a two-page letter from Karen Szykowski, Homer Township Assessor, contending specifically that the appellant inappropriately excluded architect, engineering, impact fees, permit fees, road and bridge fees, excavating, service potty, insurance and dumpster fees as these "are costs directly related to the cost to construct the house." The township assessor also disputed the value of the appellant's services as general contractor of 15.79% of the appellant's reported hard construction costs. "We generally estimate this between 12 to 15%" of the entire cost of construction, including those items that were improperly deducted by the appellant.

The township assessor contends that the one page affidavit of the appellant for construction costs fails to include any actual receipts.¹ "We question if these are all the cost since we could not locate anything for the cost of the sidewalks, driveway, and carpeting. Next, the township assessor questions if the appellant performed any of the work."²

Exhibit B consists of a two-page spreadsheet of all two-story homes in Country View Estates sorted by dwelling size. The subject is the largest dwelling.

Exhibit C is a grid analysis of six comparable sales of two-story dwellings "of comparable quality" according to the township assessor. Comparable #6 is located in the subject's subdivision and the remaining properties are located in either Homer Glen or Lockport. The dwellings are of masonry, masonry and stucco or masonry and frame exterior construction. The homes were built between 1997 and 2006. The dwellings range in size from 3,575 to 4,750 square feet of living area. Each home has a basement, three of which are walk-out style. The homes feature central air conditioning, one or two fireplaces and a garage ranging in size from 707 to 1,214 square feet of building area. These comparables sold between February 2010 and January 2011 for prices ranging from \$472,000 to \$750,000 or from \$130.71 to \$178.62 per square foot of living area, including land.

Based on this evidence, the board of review requested confirmation of the subject's estimated market value as reflected by its 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 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds

¹ Section VI of the Residential Appeal petition states in pertinent part "A Contractor's Affidavit/Statement or documentation of the total cost must be submitted to the Property Tax Appeal Board."

² In Section VI of the Residential Appeal petition, one of the pertinent questions is "Was any non-compensated labor performed?" The answer was "no."

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the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

Within Section VI of the Residential Appeal petition, one of the specific questions on the form, below the "total cost" of land and building figures is the following:

Does this amount include all costs incurred for the construction, such as contractor's fees, **architectural or engineering fees, landscaping** of homesite, and/or **building permits**?

(Emphasis added.) The appellant answered the above question as "yes," and yet counsel asserted in the brief that excluded in the total cost figure were amounts for "architect, engineering, impact fees, Village of Homer permits, Homer road/bridge admin fee, permit extensions and landscaping" among other items. The Property Tax Appeal Board finds that each of these enumerated items which were excluded by the appellant, with the exception of appliances (\$8,612) and cleaning (\$500), should have been included in accordance with principles of determining fair market value as these are part and parcel of having a dwelling constructed and are standard costs of construction in addition to the specific instructions in Section VI of the appeal petition to include several of the items which the appellant chose to unilaterally exclude.

Adding back all of the reported costs, but for the cost of appliances and cleaning, the corrected total of the appellant's construction costs would be \$383,305. Assuming 15.79% of those costs are attributable to the appellant's services as general contractor, the value of those services would be \$60,524. Adding in the land value which was accepted by the appellant of \$90,009, the total estimated fair market value of the subject property in light of these recent construction costs including the subject's land value is \$533,838 or \$108.15 per square foot of living area, including land.

The board of review submitted evidence concerning six comparable sales to support the subject's estimated market value as reflected by its assessment. The subject is larger than each of the comparables presented. Accepted real estate valuation theory provides that all factors being equal, as the size of the property increases, the per unit value decreases. In contrast, as the size of a property decreases, the per unit value increases. The six comparable dwellings range in size from 3,575 to 4,750 square feet of living area and sold between February 2010 and January 2011 for prices ranging from \$472,000 to \$750,000 or from \$130.71 to \$178.62 per square foot of living area, including land. Comparables #1, #2 and #3 feature walk-out style basements which is not a feature of the subject dwelling and therefore, these comparables have been given reduced weight in the Board's analysis. The Board finds the remaining three comparable sales presented by the board of review were most similar to the subject. These comparables sold for prices ranging from \$472,000 to \$720,000 or from \$130.71 to \$178.62 per square foot of living area, including land.

In summary, the subject's assessment reflects a market value of \$637,995 or \$129.25 per square foot of living area, including land, which is well-supported by board of review comparable sales #5 and #6 despite the appellant's reported construction and acquisition costs for the land and improvement purportedly totaling \$533,838 or \$108.15 per square foot of living area, including land.

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In conclusion, the Board finds the appellant did not demonstrate by a preponderance of the evidence that the subject was overvalued and a reduction in the subject's assessment is not justified.

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APPELLANT:	David Massoth
DOCKET NUMBER:	10-01267.001-R-1
DATE DECIDED:	May, 2014
COUNTY:	Kendall
RESULT:	Reduction

The subject property consists of a two-story dwelling of frame and masonry construction with 3,038 square feet of living area. The dwelling was constructed approximately in 2004. Features of the home include a full unfinished basement, central air conditioning, a fireplace and a three-car garage. The property has a 9,880 square foot site and is located in Oswego, Oswego Township, Kendall County.

The appellant appeared before the Property Tax Appeal Board contending overvaluation and assessment inequity as the bases of the appeal. In support of these arguments the appellant submitted information on five suggested comparables along with a report of 16 sales with limited information.¹ The five comparables are located in same subdivision as the subject property. The comparables were improved with two-story dwellings that ranged in size from 2,607 to 3,200 square feet of living area. The dwellings were of masonry and frame exterior construction. The comparables have full basements, with three having finished area, central air conditioning, one or two fireplaces and three-car garages. The sales occurred from June 2008 to February 2010 for prices ranging from \$270,000 to \$356,000 or from \$84.38 to \$114.02 per square foot of living area, including land.

Four of these comparables had improvement assessments ranging from \$82,760 to \$101,037 or from \$29.99 to \$32.36 per square foot of living area.

Based on this evidence, the appellant requested total assessed valuation of \$100,000 or a market value of \$300,000 or \$98.75 per square foot of living area, including land. This would reflect an improvement assessment of \$80,279 or \$26.43 per square foot of living area.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$124,328. The subject's assessment reflects a market value of \$373,133 or \$122.82 per square foot of living area, land included, when using the 2010 three year average median level of assessment for Kendall County of 33.32% as determined by the Illinois Department of Revenue. The subject property has an improvement assessment of \$104,607 or \$34.43 per square foot of living area.

Appearing for the board of review was Assistant State's Attorney, David Berault and the Clerk of the Board of Review, Andy Nicoletti.

Berault called Nicoletti as a witness. He testified that the board of review improved comparable sales are located in the same subdivision, approximately one block to one-half mile from the

¹ The information listed for the 16 additional sales were dwelling size, basement size and garage size. Also included was land, building and total assessment but no indication for what year.

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subject property. In support of its contention of the correct assessment the board of review submitted both sales and equity information on four comparables. These comparables are improved with two-story dwellings that ranged in size from 2,476 to 3,038 square feet of living area. The dwellings were of masonry and frame exterior construction. The comparables have full unfinished basements, central air conditioning, one fireplace and three-car garages. The sales occurred from September 2009 to May 2010 for prices ranging from \$290,000 to \$350,000 or from \$103.69 to \$117.12 per square foot of living area, including land.

These comparables had improvement assessments ranging from \$85,336 to \$101,302 or from \$32.45 to \$34.47 per square foot of living area.

Under cross-examination, Nicoletti testified that the appellant's comparable #3 and the board of review comparables #1 and #3 are most comparable to the subject property based on size. Nicoletti testified that the appellant's market value was based on other factors such as a walk out basement and having a finished basement.

As rebuttal, the appellant testified that Nicoletti had incorrect information about the finished basement of the subject. He testified that a building permit was taken out to finish the basement, but the basement was never finished and the permit lapsed.

Conclusion of Law

The appellant initially 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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 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 on grounds of overvaluation.

The Board finds the best evidence of market value to be the board of review comparable sales #1, #3 and #4. These most similar comparables sold for prices ranging from \$313,000 to \$350,000 or from \$103.69 to \$115.28 per square foot of living area, including land. The subject's assessment reflects a market value of \$373,133 or \$122.82 per square foot of living area, including land, which is above the range established by the best comparable sales in this record both in terms of overall value and on a per-square-foot basis. Based on this evidence the Board finds a reduction in the subject's assessment is justified.

The Board gave less weight to the remaining comparables due to differences from the subject for such factors as size, condition and finished basements, unlike the subject. Additionally, two of the comparable sales occurred in 2008, which is more remote in time and thus less indicative of fair market value as of the subject's January 1, 2010 assessment date. The Board gave no weight to the sales report submitted by the appellant. The report contains limited data such as only dwelling size, basement size and garage size. There is no style, exterior construction or other pertinent characteristics information for a complete analysis of these properties to the subject.

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The appellant also contended unequal treatment in the subject's assessment as a 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 and considering the reduction in assessment for overvaluation, the Board finds that the subject property is equitably assessed and no further reduction in the subject's assessment is warranted.

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APPELLANT:	Jacek Mazek
DOCKET NUMBER:	12-04053.001-R-1
DATE DECIDED:	November, 2014
COUNTY:	McHenry
RESULT:	Reduction

The subject property consists of a two-story dwelling of frame construction known as a Dawson model with 3,201 square feet of living area. The dwelling was constructed in 2003. Features of the home include a full unfinished basement, two and a half baths, central air conditioning, a fireplace and an attached two-car garage. The property has an approximately 12,240 square foot site and is located in Cary, Algonquin Township, McHenry County.

The appellant appeared before the Property Tax Appeal Board contending assessment inequity as the basis of the appeal with a challenge to both the land and improvement assessments. At the hearing, the appellant withdrew the challenge to the subject's land assessment.

The appellant testified that the subject property is located in a very small subdivision with only four or five different types of homes. For purposes of his appeal, the appellant stated that he chose two homes in particular that he found to be similar to the subject and determined that the assessments were drastically different. As to his comparables #1 and #2 he noted that each home has an additional full bath as compared to the subject, one comparable has a partially exposed basement and one of the comparables has a full finished basement as compared to the subject's standard, unfinished basement.

In support of his improvement inequity argument, the appellant submitted information on three equity comparables located from .04 to .09 of a mile from the subject. The comparables consist of two-story frame dwellings that were 9 to 11 years old and range in size from 2,905 to 3,200 square feet of living area. Each has a full basement, one of which is finished¹, central air conditioning and a garage of either 400 or 615 square feet of building area as reported by the appellant. One of the comparables also has a fireplace.² These properties have improvement assessments ranging from \$72,285 to \$72,604 or from \$22.69 to \$24.88 per square foot of living area.

Based on this evidence, the appellant requested an improvement assessment reduction to \$71,000 or \$22.18 per square foot of living area.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$102,501. The subject property has an improvement assessment of \$83,262 or \$26.01 per square foot of living area. Appearing at the hearing on behalf of the board of review was Cliff Houghton, member of the board of review along with Tonya Vitous from the Algonquin Township Assessor's Office.

¹ The board of review actually reported that both comparables #1 and #2 have finished basement areas.

² The board of review reported that comparable #1 has two fireplaces, not just one.

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In support of its contention of the correct assessment the board of review through the township assessor submitted a spreadsheet with information on three equity comparables identified as #4, #5 and #6. These properties have improvement assessments ranging from \$87,352 to \$90,128 or from \$27.29 to \$28.26 per square foot of living area

In accordance with the rules of the Property Tax Appeal Board, the board of review's evidence was forwarded to the appellant who then submitted written rebuttal. As part of the rebuttal, the appellant contended that board of review comparable #4 has a paver driveway, in-ground swimming pool and a partially exposed (English) basement, some features which had not been reported in the analysis; comparable #5 had an original sales price of \$80,000 more than the subject dwelling and this property also features a semi-English basement and a backyard with a pond view which had also not been included in the board of review's submission; and comparable #6 also has a in-ground swimming pool and a backyard facing a nature walk, neither of which were addressed in the board of review's submission.

The appellant's rebuttal evidence was forwarded to the board of review which then submitted revised "Board of Review Notes on Appeal" along with a revised grid analysis that acknowledged the pools for its comparables #4 and #6. Also, in a memorandum, the board of review disputed the appellant's description that one of the comparable has a view of a "pond" and instead characterized the water feature as a "man-made retention area" and further disputed the purported "nature walk" as a walkway for grade school children from the subdivision to a school. This revised submission also included a proposed total assessment reduction to \$98,880.

The appellant was informed of this proposed assessment reduction and rejected the proposal contending in pertinent part that the comparables presented by the board of review have significant improvements such as finished and English basements which are not features of the subject property.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The parties presented a total of six equity comparables to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to the appellant's comparable #3 which is a different model dwelling than the remaining five properties. After hearing the testimony and considering the evidence, the Board finds the best evidence of assessment equity to be appellant's comparables #1 and #2 along with board of review comparables #4, #5 and #6, each of which are Dawson model dwellings like the subject. However, each of these homes are superior to the subject by having an additional full bath, an additional fireplace, a finished basement, a partially exposed basement and/or an in-ground

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swimming pool. These five comparables have improvement assessments that ranged from \$72,493 to \$90,128 or from \$22.69 to \$28.26 per square foot of living area. The subject's improvement assessment of \$83,262 or \$26.01 per square foot of living area falls within the range of these five comparables. However, the Board finds the subject's improvement assessment is excessive and not justified given the subject's lower bathroom count, single fireplace, standard unfinished basement and lack of a pool. After considering adjustments for these features, the Board finds that the subject's improvement assessment should fall below the range established by these five comparable Dawson model dwellings.

In conclusion, the Board finds the appellant did demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and a reduction in the subject's assessment is justified.

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APPELLANT:	<u>Wioletta Mieczkowska</u>
DOCKET NUMBER:	<u>11-03384.001-R-1</u>
DATE DECIDED:	<u>August, 2014</u>
COUNTY:	<u>DuPage</u>
RESULT:	<u>Reduction</u>

Statement of Jurisdiction

The appellant timely filed the appeal from a notice of Final Decision issued by the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2011 tax year. The Notice specifically states that "the board revised the assessment to concur with a recommendation by the township assessor" and further sets forth that the appellant may file an appeal with the Property Tax Appeal Board within 30 days. The Notice was dated on March 23, 2012. The appellant's appeal to the Property Tax Appeal Board was postmarked on April 21, 2012.

The board of review postmarked its "Board of Review Notes on Appeal" on or about July 29, 2013 stating, in pertinent part, that the board of review "would like to request that this case be dismissed."¹ In support of the dismissal request, the board of review attached a memorandum from Dawn Aderholt of the Addison Township Assessor's Office. She wrote:

No Board of Review appeal was filed on this parcel. Assessor T change was made due to an upload error from our database to the county in the 2011 General Assessment. . . . Property was not purchased/owned by the appellant until November 9, 2011 which is not only 11 months past the January 1, 2011 lien date but was even past our closing date that year.

The Property Tax Appeal Board finds that the Property Tax Code (35 ILCS 200/16-160) provides:

. . . any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, . . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review . . . , appeal the decision to the Property Tax Appeal Board for review.

The board of review in this proceeding did allege that the taxpayer did not file an appeal with the board of review; however, the board of review did issue a Notice of Final Decision to the appellant Wioletta Mieczkowska, a copy of which was filed by the appellant with the Residential Appeal petition as cited above that was dated March 23, 2012.

¹ Procedural rules of the Property Tax Appeal Board mandate "if the board of review objects to the Board's jurisdiction, it **must submit a written request for dismissal of the petition prior** to the submission of the Board of Review Notes on Appeal and accompanying documentation." [Emphasis added.] (86 Ill.Admin.Code §1910.40(b)).

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Thus, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal and the board of review's dismissal request is denied.

Findings of Fact

The subject property consists of a two-story dwelling of frame and brick construction with 2,019 square feet of living area. The dwelling was constructed in 1938. Features of the home include a partial unfinished basement, central air conditioning, a fireplace and a detached two-car garage. The property has a 37,500 square foot site and is located in Wood Dale, Addison Township, DuPage County.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted evidence disclosing the subject property was purchased on November 9, 2011 for a price of \$150,350. Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$91,530. The subject's assessment reflects a market value of \$276,109 or \$136.76 per square foot of living area, land included, when using the 2011 three year average median level of assessment for DuPage County of 33.15% as determined by the Illinois Department of Revenue.

Besides seeking dismissal of the pending assessment appeal, the board of review provided no substantive documentation to support the subject's assessment with the filing of its "Board of Review Notes on Appeal."

Conclusion of Law

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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 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.

The Board finds the best evidence of market value of the subject property as of January 1, 2011 to be the purchase of the subject property in November 9, 2011 for a price of \$150,350. The appellant provided evidence demonstrating the sale had the elements of an arm's length transaction. The appellant completed Section IV - Recent Sale Data of the appeal disclosing the parties to the transaction were not related, the property was sold using a Realtor from Century 21, the property had been advertised on the open market with the Multiple Listing Service and it had been on the market for eight months. In further support of the transaction the appellant submitted a copy of the Settlement Statement which in part disclosed the payment of brokerage commissions on the sale.

The Board also finds the purchase price of \$150,350 is below the market value reflected by the assessment of \$276,109. The Board further finds on this record that the board of review did not

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present any evidence to challenge the arm's-length nature of the transaction or to refute the contention that the purchase price was reflective of market value.

Based on this record the Board finds the subject property had a market value of \$150,350 as of January 1, 2011. Since market value has been determined the 2011 three year average median level of assessment for DuPage County of 33.15% shall apply. 86 Ill.Admin.Code §1910.50(c)(1).

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APPELLANT:	Stephen & Audry Minor
DOCKET NUMBER:	08-04751.001-R-1
DATE DECIDED:	January, 2014
COUNTY:	DuPage
RESULT:	No Change

The subject property consists of a two-story, brick and frame constructed dwelling that contains 3,692 square feet of living area. The subject was built in 2002 and contains a full, unfinished basement, central air conditioning, a fireplace and a garage containing 627 square feet of building area. The subject is located in Woodridge, Lisle Township, DuPage County, Illinois.

The appellants, through counsel, appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellants submitted an appraisal estimating the subject property had a market value of \$525,000 as of January 31, 2008. Michael J. Zawislak of Michael J. Zawislak Real Estate was called as a witness. Zawislak is a licensed real estate broker in the State of Illinois.

To estimate the market value of the subject property, Zawislak developed the sales comparison approach to value. Zawislak used three sales of residential dwellings that ranged in size from 3,234 to 4,072 square feet of living area. The two story brick or brick and frame comparables range in age from 5 to 18 years old. They feature either partial or full basements with two having finished basement area. Each has central air conditioning and a 3-car garage. The comparables are located within .8 miles of the subject. The sales occurred from May 2007 to February 2008 for prices ranging from \$499,900 to \$581,000 or from \$127.20 to \$160.79 per square foot of living area, land included. In the analysis, Zawislak adjusted the comparables for size and basement finish. After making the adjustments, Zawislak concluded adjusted sales prices ranging from \$513,900 to \$549,000. Based on these adjusted prices, Zawislak estimated the subject's market value of \$525,000 as of January 31, 2008. Based on this evidence, the appellants requested a reduction in the subject's assessment.

During cross-examination, Zawislak admitted that he was not a licensed appraiser in the State of Illinois. Zawislak further testified that he had 25 years' experience selling real estate as a broker, has a Bachelor of Science degree in accounting and has sold over 700 homes. Zawislak admitted that the appraisal report was not prepared in accordance with the USPAP guidelines.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$197,720 was disclosed. The subject's assessment reflects a market value of \$594,289 or \$160.97 per square foot of living area, land included, when applying the 2008 three-year average median level of assessments for DuPage County of 33.27% as determined by the Illinois Department of Revenue.

The board of review submitted a memorandum and information on five comparables to support its assessment of the subject property. The one-story frame comparables ranged in size from 3,501 to 3,672 square feet of living area and were constructed from 2001 to 2005. These properties had partial unfinished basements, central air conditioning and a fireplace. They had

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garages containing either 627 or 688 square feet of building area. The comparables were located in the same neighborhood as the subject. The comparables sold from January 2005 to December 2007 for prices ranging from \$590,000 to \$625,239 or from \$160.68 to \$176.92 per square foot of living area, land included. Based on this evidence, the board of review requested the subject's assessment be confirmed.

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 assessment.

The appellants contend 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 evidence in this record does not support a reduction in the subject's assessment.

The Board finds Michael J. Zawislak is not a licensed appraiser within the State of Illinois. Zawislak admitted that the appraisal report was not prepared in accordance with USPAP guidelines. Therefore the Board gives no weight to the final value conclusion or adjustments contained within the appraisal report submitted by the appellants. The Board, however, will use the raw sales data contained within the report in its analysis.

Both parties submitted ten sale comparables. Appellants' comparable #5 was the same property as board of review comparable #5. The Board gave less weight to appellants' comparables #1, #2, #3 and #4 along with the board of review's comparables #1, #2, #3 and #4 because the Board finds they were dissimilar to the subject in location and/or the date of sale was too remote from the assessment date in question to aid the Board in its determination of the market value of the subject as of January 1, 2008. The Board finds the best evidence of the subject's value in this record is found in the remaining comparables, appellants' #5 and #6 and board of review comparable #5. These properties sold in December 2007 and March 2008 for \$580,000 and \$590,000 or for \$147.32 and \$160.68, respectively, per square foot of living area, including land. The subject's assessment reflects a market value of \$594,289 or \$160.97 per square foot of living area, land included, which the Board finds is only slightly above the established range and is justified after considering the adjustments and differences in both parties' comparables.

Based on this analysis, the Board finds the appellants have not shown by a preponderance of the evidence that the subject was overvalued as reflected in its assessment and therefore no reduction is warranted.

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APPELLANT:	Tarun Mirchandani
DOCKET NUMBER:	09-20107.001-R-1
DATE DECIDED:	August, 2014
COUNTY:	Cook
RESULT:	No Change

The subject property is a residential condominium unit in a 592 unit condominium. The subject is approximately four years old. The subject unit has a .35% ownership interest in the condominium. The property is a class 2-99 residential condominium under the Cook County Real Property Assessment Classification Ordinance (hereinafter "Ordinance") and is located in Evanston, Evanston Township, Cook County. Class 2-99 property has an Ordinance level of assessment of 10% for the 2009 tax year.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument the appellant submitted information on seven equity comparables. The appellant indicated each comparable was a four year old class 2-99 residential condominium. No other descriptive information about the units was provided. Two of the comparables were identified as being located in the subject's building while the five remaining comparables were located in a different building. These properties had total assessments ranging from \$17,400 to \$21,354. The appellant indicated that the comparables had an average total assessment or \$18,489. The appellant requested the subject's total assessment be reduced to \$18,489.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$26,915 was disclosed. The subject's assessment reflects a market value of \$269,150 when applying the Ordinance level of assessment for class 2-99 property.

In support of the assessment the board of review submitted documentation listing the various units in the subject's condominium and their respective percentages of ownership. The document indicated the subject property had a .35% ownership interest in the condominium. The evidence provided by the board of review also included an analysis prepared by Matt Panush, an analyst with the Cook County Board of Review. He indicated the total consideration for 43 of residential units in the subject's condominium from 2006 thru 2009 was \$15,113,121. The analyst deducted \$302,242 or 2% of the total sales prices from the total consideration to account for personal property to arrive at a total adjusted consideration of \$14,809,878. Dividing the total adjusted consideration by the percentage of interest of ownership in the condominium for the units that sold of 16.9% indicated a full value for the condominium property of \$87,632,417. In the document the analyst attributed an incorrect percentage of ownership interest for the subject property. When applying the subject's percentage of ownership in the condominium of .35% to the estimated full value for the condominium results in an estimated market value for the subject unit of \$306,714, which is greater than the market value of the subject as reflected by its assessment.

The board of review evidence also disclosed appellant's equity comparables #1 and #2 had a .24% and a .25% ownership interest in the condominium, respectively, as compared to the subject's .35% ownership in the condominium.

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Conclusion of Law

The appellant contends unequal treatment in the subject's assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989); 86 Ill.Admin.Code 1910.63(e). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not met this burden.

The Board gives no weight to the appellant's assessment inequity argument. First, the Board finds the appellant provided limited descriptions with respect to the subject condominium building and the subject condominium unit. Additionally, the appellant provided limited descriptions with respect to the purported comparables. With respect to the two equity comparables located in the subject building, these comparables had total assessments of \$18,456 and \$19,224. When dividing their total assessments by their respective ownership interest in the condominium of .24% and .25% results in values of \$8,024,348 and \$7,689,600 per percent of ownership, respectively. When dividing the subject's total assessment of \$26,915 by its ownership interest in the condominium of .35% results in a value of \$7,690,000 per percent of ownership, which is between the two equity comparables located in the subject condominium. The Board finds this evidence indicates the subject's assessment is equitable.

With respect to the remaining equity condominium units presented by the appellant that were located in a different condominium, the Board finds the appellant presented no market data to demonstrate the comparables and the subject property were similar in value but assessed at substantially different proportions of fair cash value. The Board finds the appellant failed to demonstrate these comparables and the subject were similar condominiums with similar by-laws, rules, regulations, fee structures, unit sizes, amenities, occupancy rates, parking and locations. As a result, the Board gives this evidence no weight.

The Board further finds the board of review presented a market analysis that supported the assessment of the subject property.

In conclusion, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's assessment was inequitable and a reduction in the assessment is not justified.

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APPELLANT:	<u>Anthony Musillami</u>
DOCKET NUMBER:	<u>08-27288.001-R-1</u>
DATE DECIDED:	<u>September, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>No Change</u>

The subject property consists of a 118-year old, two-story, multi-family dwelling of frame construction with 2,024 square feet of living area. Features of the dwelling include a full basement and a one-car garage. The property has a 2,664 square foot site and is located in West Chicago Township, Cook County. The subject is classified as a class 2 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation and assessment inequity as the bases of the appeal. As to the overvaluation argument, the appellant's attorney submitted a brief which asserted that the subject improvement was partially vacant during the 2008 tax year. In addition, the appellant's attorney submitted an affidavit signed by the appellant stating that the building varied in vacancy levels due to extensive renovations of the building.

In support of the equity argument, the appellant submitted limited and/or incomplete information on three suggested equity comparables.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$42,460. This total assessment reflects a market value of \$442,292 when applying the 2008 three year median level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 9.60% as determined by the Illinois Department of Revenue. The subject property has an improvement assessment of \$16.03 per square foot of living area. In support of its contention of the correct assessment, the board of review submitted information on four suggested equity comparables. Moreover, the board of review's analysis reflects that the subject was purchased in August, 2007, for a price of \$530,000.

Further, at hearing, the board of review's representative argued that the appellant had failed to provide any evidence that the subject property was uninhabitable.

Conclusion of Law

Initially, 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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

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The Board finds unpersuasive the appellant's assertion that an intended vacancy due to an owner's desire to renovate would diminish the subject's market value. In addition, the Board finds that the appellant failed to submit sufficient documentary evidence or testimony on this issue. Lastly, the Board finds that the subject's assessment is supported by the subject's recent purchase in August, 2007, for a value of \$530,000.

Secondly, the taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The Board finds the best evidence of assessment equity to be appellant's comparable #1 and the board of review's comparables #1 through #3. These comparables had improvement assessments that ranged from \$8.00 to \$19.65 per square foot of living area. The subject's improvement assessment of \$16.03 per square foot of living area falls within the range established by the best comparables in this record.

Based on this evidence, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and a reduction in the subject's assessment is not justified.

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APPELLANT:	Princeton Senior Housing LP II
DOCKET NUMBER:	11-03990.001-R-1
DATE DECIDED:	February, 2014
COUNTY:	Bureau
RESULT:	Reduction

The subject property consists of a low-income housing project that qualifies for a tax credit under Section 42 of the Internal Revenue Code. The subject property is located in Princeton Township, Bureau County.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's assessment is not reflective of fair market value in accordance with Section 10-245 of the Property Tax Code. (35 ILCS 200/10-245). In support of this argument, the appellant formulated an income approach to value estimating a fair market value for the subject property of \$527,491. The income approach was calculated in accordance with Sections 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-245 and 10-260).

The appellant also submitted the Bureau County Board of Review's final decision pertaining to the subject property. The subject property had a final assessment of \$226,174, which reflects an estimated market value of approximately \$678,590 when applying the statutory level of assessment of 33.33%. Based on this evidence, the appellant requested a reduction in the subject's assessed valuation.

The board of review did not timely submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property as required by section 1910.40(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.40(a)). Therefore, the Bureau County Board of Review was found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a)).

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 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 subject property consists of a low-income housing project that qualifies for a tax credit under Section 42 of the Internal Revenue Code. The appellant in this appeal formulated an income approach to value estimating a fair market value for the subject property of \$527,491. The income approach to value was calculated in accordance with Sections 10-235, 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-235, 10-245 and 10-260). The

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subject property's assessment of \$226,174 reflects an estimated market value of approximately \$678,590, which is considerably greater than the valuation evidence submitted by the appellant.

Section 10-235 of the Property Tax Code provides that it is the policy of the State of Illinois that low-income housing projects are to be valued based on their economic productivity to their owners to insure that high taxes do not result in rent levels that cause excess vacancies, loan defaults, and loss of rental housing facilities to those that are in most need. (35 ILCS 200/10-235). Section 10-245 establishes the method of valuing Section 42 low-income housing projects in accordance with this policy. Section 10-245 of the Property Tax Code states:

Notwithstanding Section 1-55 and except in counties with a population of more than 200,000 that classify property for the purposes of taxation, to determine 33 and one-third percent of the fair cash value of any Section 515 low-income housing project or that qualifies for the low-income housing tax credit under Section 42 of the Internal Revenue Code, in assessing the project, local assessment officers must consider the actual or probable net operating income attributable to the project, using a vacancy rate of not more than 5%, capitalized at normal market values. The interest rate to be used in developing the normal market value capitalization rate shall be one that reflects the prevailing cost of cash for other types of commercial real estate in the geographic market in which the low-income housing project is located. (35 ILCS 200/10-245).

Section 10-260 also sets forth the methodology in determining the fair cash value for property receiving benefits from low-income housing tax credits. Section 10-260 of the Property Tax Code provides:

In determining the fair cash value of property receiving benefits from the Low-Income Housing Tax Credit authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42, emphasis shall be given to the income approach, except in those circumstances where another method is clearly more appropriate. (35 ILCS 200/10-260).

Here, the record established the subject property is a low-income housing project authorized and constructed in accordance the Federal Housing Act and the Farmers Home Administration (now United States Department of Agriculture, Rural Development Office). The Board finds the subject property shall be assessed according to sections 10-235, 10-245 and 10-260 of the Property Tax Code (35 ILCS 200/10-235, 10-245 and 10-260) in order to meet the objectives and intent of the legislature as set forth in section 10-235 of the Code. (35 ILCS 200/10-235). The Board finds the appellant submitted an income approach to value in which the subject's actual income and expense history were utilized in calculating the subject's net operating income. The appellant also appeared to use a normal market capitalization rate. The Board finds the valuation methodology employed by the appellant conforms to the requirements of sections 10-235, 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-235, 10-245 and 10-260).

The board of review did not timely submit any evidence in support of the assessment of the subject property or refute the valuation evidence submitted by the appellant as required by section 1910.40(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code

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§1910.40(a). Therefore, the board of review was found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a)).

Based on the aforementioned analysis of the record, the Property Tax Appeal Board finds the evidence supports a reduction in the assessed valuation of the subject property commensurate with the appellant's request.

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APPELLANT:	Michael Scaunas
DOCKET NUMBER:	12-01808.001-R-1
DATE DECIDED:	July, 2014
COUNTY:	Lake
RESULT:	Increase

The subject parcel at the time of purchase was improved with a "guttled" two-story dwelling that was built in the 1920's. At the time the property was purchased in July 2012, the home was uninhabitable. The parcel contains approximately 33,125 square feet of lake front land which is located in Antioch, Antioch Township, Lake County.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted evidence disclosing the subject property was purchased on July 16, 2012 for a price of \$45,000. The appellant included a copy of the Multiple Listing Service data sheet which revealed that the property had been listed on the market through a Realtor for a period of 158 days prior to its sale. The list price was \$67,900 which was then reduced to \$49,900 prior to the sale to the appellant for \$45,000. The appellant also reported the expenditure of \$9,500 to have the home demolished. The copy of the Lake County board of Review Notice of Findings also reported that the "residence is demolished as of October, 2012."

Based on this evidence, the appellant requested no change in the subject's land assessment, but requested a reduction to "0" for the subject's improvement assessment presumably to reflect the demolition of the dwelling.

In response to the appeal, the board of review submitted a letter from Martin Paulson, Clerk of the Lake County Board of Review; the subject's property record card, a copy of the Multiple Listing Service data sheet, an aerial photograph of the parcel and a copy of the PTAX-203 Illinois Real Estate Transfer Declaration.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$12,748. The subject's assessment reflects a market value of \$38,961, including land, when using the 2012 three year average median level of assessment for Lake County of 32.72% as determined by the Illinois Department of Revenue. As set forth by the board of review, there is no dispute that the subject property was purchased in July 2012 for \$45,000 and the dwelling was in poor condition with demolition pending.

In support of its contention of the correct assessment and as set forth in the letter, the board of review argued that the demolition of the subject dwelling was going to cost \$9,500 as reported by the appellant and thus, under appraisal theory, the cost of acquiring the parcel was actually the purchase price plus the cost of demolition. As such, the board of review contends that the subject property has a total value of \$54,500.

Based on the foregoing evidence and argument, the board of review requested an increase in the assessment of the subject parcel to reflect a total market value of \$54,500.

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Conclusion of Law

For 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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). On this record, the Property Tax Appeal Board finds an increase in the subject's assessment is warranted.

As to the appellant's claim for a zero assessment on the improvement due to its demolition in October, 2012, Section 9-160 of the Property Tax Code (35 ILCS 200/9-160) is relevant and provides in pertinent part:

The assessment shall also include or exclude, on a proportionate basis in accordance with the provisions of Section 9-180, . . . all improvements which were destroyed or removed. [Emphasis added.]

Section 9-180 of the Property Tax Code provides:

When, during the previous calendar year, any buildings, structures or other improvements on the property were destroyed and rendered uninhabitable or otherwise unfit for occupancy or for customary use by accidental means (excluding destruction resulting from the willful misconduct of the owner of such property), the owner of the property on January 1 shall be entitled, on a proportionate basis, to a diminution of assessed valuation for such period during which the improvements were uninhabitable or unfit for occupancy or for customary use.

. . .

Computations under this Section shall be on the basis of a year of 365 days.

In light of these provisions of the Property Tax Code, where the dwelling was not demolished until October 2012, the subject property would only be entitled to a diminution in assessed value after the demolition. The assessment date at issue in this proceeding is January 1, 2012. As set forth in the Property Tax Code, the structure(s) were to be assessed by the assessing officials until such time as demolition occurred. Moreover, the appellant provided no evidence to support a different improvement assessment than the one set forth by the board of review in light of the condition of the improvement as of January 1, 2012 until the time of demolition. Thus, the Board finds no change in the subject's improvement assessment is warranted on this record.

As to the property's market value, the Board finds the best evidence of market value to be the purchase of the subject property in July, 2012 for \$45,000 plus the expenditure of \$9,500 to demolish the dwelling that was situated on the parcel which was uninhabitable for a total value of \$54,500.

The appellant provided evidence demonstrating the sale had the elements of an arm's length transaction and the board of review did not dispute the sale transaction as being an arm's length

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sale. The appellant completed Section IV - Recent Sale Data of the appeal disclosing the parties to the transaction were not related, the property was sold using a Realtor, the property had been advertised on the open market with the Multiple Listing Service and it had been on the market for 158 days.

In further support of the transaction the board of review submitted a copy of the PTAX-203 Illinois Real Estate Transfer Declaration which depicted that the property was advertised prior to its sale and that it sold in July 2012 for \$45,000. The appellant also reported the expenditure of \$9,500 to demolish the dwelling.

In conclusion, the Board finds the purchase price of \$45,000 plus costs of demolition of \$9,500 are above the market value reflected by the assessment of \$38,961. Thus, based on this record the Board finds the subject property had a market value of \$54,500 as of January 1, 2012. Since market value has been determined the 2012 three year average median level of assessment for Lake County of 32.72% shall apply. 86 Ill.Admin.Code §1910.50(c)(1).

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APPELLANT:	Ronald W. & Judy A. Schubbe
DOCKET NUMBER:	12-00520.001-R-1
DATE DECIDED:	March, 2014
COUNTY:	DeKalb
RESULT:	No Change

The subject property is improved with a two-story dwelling of frame construction containing 2,840 square feet of living area. The dwelling is 115 years old.¹ Features of the home include a full unfinished basement, central air conditioning, a fireplace, a four-car detached garage and two outbuildings. The property has a 5.48 acre site and is located in Dekalb, Dekalb Township, Dekalb County.

The appellants' appeal is based on assessment equity. The subject's land was not contested. The appellants' submitted information on four comparable properties described as two-story dwellings of frame construction that ranged in size from 2,480 to 2,962 square feet of living area. The dwellings are from 79 to 120 years old. The comparables are within a half mile of the subject property. Features of the comparables include a full or partial unfinished basement, a two-car or three-car detached garage and a basement garage. Two comparables have central air conditioning and none of the comparables have a fireplace.² The comparables have from four to nine outbuildings, but their sizes were not disclosed. The appellants contend comparable #1 is the most similar comparable to the subject property. The comparables have improvement assessments ranging from \$13,554 to \$34,523 or from \$5.29 to \$13.92 per square foot of living area. The subject's improvement assessment is \$26,524 or \$9.33 per square foot of living area. Based on this evidence, the appellants requested a reduction in the subject's improvement assessment to \$16,204 or \$5.71 per square foot of living area.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$56,524 was disclosed. After reviewing the appellants' evidence, the board of review offered to reduce the subject's improvement assessment to \$23,260 or \$8.19 per square foot of living area, the average per square foot improvement assessment of the appellants' comparables.

The appellants were notified of the proposed assessment reduction and given thirty (30) days to respond if the offer was not acceptable. The appellants responded to the Property Tax Appeal Board by the established deadline rejecting the proposed assessment. The appellants' reiterated that comparable #1 is the best comparable to use as a comparison.

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.

¹ The property record card submitted shows the four-car garage, central air conditioning, a deck and an open frame porch were added in 1995.

² Property record cards were submitted for the appellants' four comparables. The property record cards do not indicate central air conditioning for any of the comparables. The property record card for comparable #4 indicates a fireplace.

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The appellants contend unequal treatment in the subject's improvement assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989); 86 Ill.Admin.Code 1910.63(e). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have not met this burden.

The Board finds the appellants submitted four comparables. The Board finds the comparables have varying degrees of similarity when compared to the subject in location, size, style, exterior construction, features and age. These comparables had improvement assessments that ranged from \$13,554 to \$34,523 or from \$5.29 to \$13.92 per square foot of living area. The subject's improvement assessment of \$26,524 or \$9.33 per square foot of living area falls within the range established by the comparables in this record. The subject property was updated in 1995 by adding central air conditioning, a deck, an open frame porch and a four-car garage, superior to the comparables contained in this record. Based on this record, the Board finds the appellants did not demonstrate by clear and convincing evidence that the subject's improvement assessment was inequitable and no reduction in the subject's assessment is justified.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables 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.

In conclusion, the Board finds the appellants failed to prove assessment inequity by clear and convincing standard of evidence and no reduction is warranted.

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APPELLANT:	<u>Sumir Shah</u>
DOCKET NUMBER:	<u>11-02165.001-R-1</u>
DATE DECIDED:	<u>February, 2014</u>
COUNTY:	<u>DuPage</u>
RESULT:	<u>Reduction</u>

The subject property consists of a two-story brick and frame dwelling containing 2,613¹ square feet of living area that was built in 1984. Features include a full basement with finished area, central air conditioning, a fireplace and a two-car attached garage. The subject dwelling is situated on a 10,247 square foot lot. The subject property is located in Naperville Township, DuPage County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellant submitted property information sheets and an analysis of four comparable sales located in close proximity to the subject. The comparables consist of two-story frame dwellings that were built in 1984 or 1986. Comparables 1 and 4 have basements that are partially finished and comparables 2 and 3 have unfinished basements. All the comparables have central air conditioning, one fireplace and two-car attached garages. The dwellings range in size from 2,446 to 2,836 square feet of living area and are situated on lots that contain from 10,200 to 14,592 square feet of land area. The comparables sold from October 2009 to November 2011 for prices ranging from \$350,000 to \$423,000 or from \$134.84 to \$161.90 per square foot of living area including land.

In further support of the overvaluation claim, the appellant submitted an appraisal of the subject property prepared by a state licensed appraiser. The property rights appraised were fee simple interest. The appraisal report estimated a market value of \$374,000 as of October 4, 2011, using the sales comparison and cost approaches to value.

Under the cost approach, the appraiser calculated a market value for the subject property of \$420,100. However, the appraiser did not consider the cost approach to be a reliable indicator of market value.

Under the sales comparison approach to value, the appraiser selected four suggested comparable sales and two comparable listings located from .12 to .63 of a mile from the subject property. The comparables consist of two-story brick or brick and frame dwellings that are from 20 to 30 years old. Four comparables have full or partial basements that are partially finished and two comparables have unfinished basements. Other features include central air conditioning and two or three-car garages. The dwellings range in size from 2,446 to 3,349 square feet of living area and are situated on lots that contain from 10,200 to 14,912 square feet of land area. Comparables

¹ The appellant's appraisal report contains a schematic drawing of the subject dwelling depicting 2,613 square feet of living area. The appraisal report indicates the dwelling size was acquired using physical measurements from the appraiser. The board of review submitted the subject's property record card with a schematic drawing showing the dwelling contains 2,704 square feet of living area. However, the board of review did not explain how or who calculated the subject's dwelling size. Based on this record, the Board finds the subject dwelling contains 2,613 square feet of living area.

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1, 2, 3 and 6 sold in May or July 2011 for prices ranging from \$315,000 to \$415,000 or from \$115.13 to \$161.90 per square foot of living area including land. Comparables 4 and 5 were listed for sale in the open market for offering prices of \$369,000 or \$377,900 or \$145.68 and \$149.15 per square foot of living area including land.

The appraiser adjusted the comparables for differences to the subject in sale or financing concessions, land area, finished basement area and garage area. The adjustments resulted in adjusted sale or listing prices ranging from \$338,400 to \$401,800 or from \$111.95 to \$152.73 per square foot of living area including land. Based on these adjusted sales and listings, the appraiser concluded the subject property had a fair market value of \$374,000 or \$143.13 per square foot of living area including land as of October 4, 2011.

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

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$146,620 was disclosed. The subject's assessment reflects an estimated market value of \$442,293 or \$169.27 per square foot of living area including land when applying DuPage County's 2011 three-year median level of assessments of 33.15%. In support of the subject's assessment, the board of review submitted a critique of the evidence submitted by the appellant and three suggested comparable sales.

Although the property rights appraised was fee simple interest in the appellant's appraisal, the board of review argued the intended use of the report was for a refinance transaction and not an opinion of value for "Ad Valorem Assessment" value. The board of review also argued the effective date of the appraisal report was October 4, 2011, which is ten months after the January 1, 2011 assessment date.

The board of review also submitted a critique of the appellant's evidence that was submitted by the township assessor. The township assessor argued comparable sales 1, 2 and 4 occurred in 2011, well beyond the subject's January, 1 2011 assessment date. The township assessor argued comparable sales 1 and 4 are smaller than the subject with smaller basements and comparables 2 and 3 have unfinished basements.

With respect to the appraisal submitted by the appellant, the township assessor argued comparables 4 and 5 have not sold and comparable 6 is not located in the subject's neighborhood code² as defined by the assessor. The township assessor argued all the sales occurred in 2011, which are well beyond the January 1, 2011 assessment date. The township assessor further argued the seller for comparable 3 was a relocation company, which typically will accept a below market offer to liquidate a property, but submitted no evidence to corroborate this claim. The township assessor argued comparables 1 and 6 are larger and comparable 2 is smaller when compared to the subject dwelling. The township assessor argued comparables 1, 3 and 6 lack finished basement area and comparable 2 has a smaller finished basement. Comparable 1 has an in-ground swimming pool, which was not disclosed or adjusted for in the appraisal.

² Appellant's appraiser's comparable 6 is located .63 of a mile from the subject.

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The comparable sales submitted on behalf of the board of review consist of two-story frame or brick and frame dwellings that were built in 1981 or 1986. The comparables have full or partial unfinished basements, central air conditioning, one fireplace and two-car attached garages. The township assessor did not disclose the comparables' land sizes, but described the lots as "cul-de-sac or inside" lots. The dwellings range in size from 2,464 to 2,809 square feet of living area. The comparables sold from May 2010 to February 2011 for prices ranging of \$395,000 to \$449,500 or from \$140.61 to \$175.11 per square foot of living area including land.

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 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). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant has met this burden of proof and a reduction in the subject's assessment is warranted.

The appellant submitted four comparable sales and an appraisal of the subject property. The comparables sold from October 2009 to November 2011 for prices ranging from \$350,000 to \$423,000 or from \$134.84 to \$161.90 per square foot of living area including land. The appraisal report estimated a market value for the subject property of \$374,000 or \$143.13 per square foot of living area including land of October 4, 2011. The board of review submitted three suggested comparable sales that sold from May 2010 to February 2011 for prices ranging of \$395,000 to \$449,500 or from \$140.61 to \$175.11 per square foot of living area including land. The subject's assessment reflects an estimated market value of \$442,293 or \$169.27 per square foot of living area including land. The Board finds that of all the comparable sales contained in this record, only comparable 1 submitted by the board of review, which sold for \$449,000 or \$175.11 per square foot of living area including land, is greater than the subject's estimated market value as reflected by its assessment of \$442,293 or \$169.27 per square foot of living area including land. All of the remaining comparables sold for prices less than the subject's estimated market value as reflected by its assessment. As a result, the Board finds a preponderance of the market value evidence contained in this record shows the subject's assessed valuation is excessive.

In further analysis of the evidence, the Board finds this record contains market value information for 13 suggested comparables, including the six comparables identified in the appellant's appraisal. The Board gave less weight to comparable 3 submitted by the appellant due to its 2009 sale date, which is dated and a less reliable indicator of the subject's market value as of the January 1, 2011 assessment date. The Board also gave less weight to comparable 6 contained in the appellant's appraisal report due to its larger dwelling size when compared to the subject. The remaining comparables, which had varying degrees of similarity when compared to the subject,

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sold or were offered for sale³ for prices ranging from \$315,000 to \$449,000 or from \$115.13 to \$179.11 per square foot of living area. Removing the lowest and the highest sale results in a tighter value range from \$350,000 to \$423,000 or from \$138.33 to \$161.90 square foot of living area including land. The subject's assessment reflects an estimated market value of \$442,293 or \$169.27 per square foot of living area including land, which falls above the range established by the comparable sales. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Board finds a preponderance of the most credible market value evidence contained in this record supports a reduction in the subject's assessment.

In response to the appeal, the board of review and township assessor argued the valuation evidence submitted by the appellant occurred after the subject's January 1, 2011 assessment date and should be given little weight. The Board gave this response little merit and finds DuPage County Assessment Officials are misguided on this particular issue.

The Board finds the valuation date at issue in this appeal is January 1, 2011. Section 9-155 of the Property Tax Code provides in part:

On or before **June 1** in each general assessment year in all counties with less than 3,000,000 inhabitants, . . . the assessor, in person or by deputy, shall actually view and **determine as near as practicable the value of each property listed for taxation as of January 1 of that year**, or as provided by Section 9-180, and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140. . . (35 ILCS 200/9-155).

The Board finds the legislature clearly contemplated subsequent events in the assessment process by inserting the language "On or before **June 1** . . . the assessor, in person or by deputy, shall actually view and **determine as near as practicable the value of each property listed for taxation as of January 1 of that year**. . . and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140."

The Property Tax Appeal Board finds assessment officials are statutorily bound to determine a given property's fair cash value as near as practicable **as of** the date of January 1 of a given assessment year. The Board finds January 1 is the statutorily defined date to determine the correct classification or assessment for any real property in Illinois. However, Illinois courts recognized that **assessing officials are not barred, as a matter of law, from considering events which occurred after the lien date in assessing properties** and subsequent events assessing officials may consider in any **individual case** will depend on the nature of the event and the weight to be given the event will depend upon its reliability in tending to show value as of January 1. Application of Rosewell, 120 Ill. App. 3d 369 (1st Dist. 1983). As a result, no weight was given to the board of review's claim with respect to the appellant's valuation evidence in relation to the subject's January 1, 2011 assessment date.

In fact, the Board finds it problematic that on one hand the board of review alleged that market value comparable sales taking place after the statutory lien date of January 1 should not be considered as credible valuation evidence, but then in defense of its assessment submit a

³ The Board finds the listing or offering price of the comparables set the upper limit of value for these properties.

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suggested comparable sale that sold in February 2011. The Board further takes notice the 2011 comparable sale submitted by the board of review on behalf of the township assessor, sold for \$395,000 or \$140.61 per square foot of living area including land, further demonstrating the subject's estimated market value as reflected by its assessment of \$442,293 or \$169.27 is excessive.

In conclusion, the Board finds the appellant has demonstrated that the subject property is overvalued by a preponderance of the evidence contained in this record. As a result, the Board finds the subject's assessment as established by the board of review is incorrect and reduction is warranted.

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APPELLANT:	Daniel Shaker
DOCKET NUMBER:	11-02445.001-R-1
DATE DECIDED:	February, 2014
COUNTY:	DuPage
RESULT:	Reduction

The subject property is improved with a part two-story, part one-story single-family dwelling of frame construction containing 3,675 square feet of living area. The dwelling was constructed in 1997. Features of the home include a partial unfinished basement, central air conditioning, a fireplace and an 883 square foot garage. The property has a 14,507 square foot site and is located in Hinsdale, Downers Grove Township, DuPage County.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted evidence disclosing the subject property was purchased on August 15, 2011 for a price of \$850,000. As part of the appeal, the appellant completed Section IV - Recent Sale Data disclosing the parties to the transaction were not related, the property was purchased from Frank Tabachka, the property was sold using a Realtor with Prudential Rubloff with agent Tracy Anderson, the property had been advertised on the open market through the Multiple Listing Service and it had been on the market for 191 days.

In further support of the transaction, the appellant submitted a copy of the Settlement Statement and the Multiple Listing Service data sheet. Both documents reiterate the sale date and the sales price as reported by the appellant. The listing sheet further indicates the property was initially listed on January 12, 2011 for an asking price of \$945,000 which was subsequently reduced to \$899,000 prior to its sale for \$850,000.

Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$299,640 was disclosed. The subject's assessment reflects a market value of \$903,891 or \$245.96 per square foot of living area, including land, when applying the 2011 three year average median level of assessment for DuPage County of 33.15% as determined by the Illinois Department of Revenue.

The board of review submitted a memorandum along with additional sales evidence to support the subject's estimated market value as reflected by its assessment. The memorandum pointed out that the subject's sale occurred eight months after the assessment date of January 1, 2011. Next, the memorandum stated, "The DuPage County Board of Review adjusted the 2011 assessment to reflect the 6-20-2011 listing at a market value of \$899,000." The memorandum also reported that the 2012 assessment of the subject property was \$281,600 "with a market value of \$844,884 is reflecting the 8-15-2011 sale."

In further support of the assessment, the board of review submitted information on three comparable sales of improved parcels located in the same neighborhood code assigned by the

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assessor to the subject property. The comparables are improved with part two-story, part one-story dwellings of frame or masonry construction that range in size from 3,177 to 4,261 square feet of living area. The dwellings were constructed from 1989 to 1997. Features of the comparables include a full unfinished basement, one or two fireplaces and a garage ranging in size from 556 to 875 square feet of building area. The comparables have sites ranging in size from 17,806 to 18,200 square feet of land area. The comparables sold from June 2008 to May 2010 for prices ranging from \$825,000 to \$1,175,000 or from \$250 to \$333 per square foot of living area, including land, rounded.

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 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (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.

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 do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). **A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value.** Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). (Emphasis added.) Furthermore, the sale of a property during the tax year in question is a relevant factor in considering the validity of the assessment. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 375 (1st Dist. 1983). (Emphasis added.)

The Board finds the best evidence of market value to be the purchase of the subject property on August 15, 2011 for a price of \$850,000. The appellant provided evidence demonstrating the sale had the elements of an arm's length transaction. The Board finds the purchase price of \$850,000 is below the market value reflected by the assessment of \$903,891.

The Property Tax Appeal Board further finds the board of review did not present any evidence to challenge the arm's length nature of the transaction and in fact "accepted" the sale price in arriving at the 2012 assessment of the property as outlined above. There also was no evidence

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presented by the board of review to refute the contention that the purchase price was reflective of market value at the time of sale.

While Illinois courts have stated that the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances, there was no such evidence of "other circumstances" provided by the board of review in this proceeding beyond the argument related to the time on the market of 24 days. (See Ellsworth Grain Co. v. Illinois Property Tax Appeal Board, 172 Ill.App.3d 552 (4th Dist. 1988)).

The board of review also provided three comparable sales that occurred between June 2008 and May 2010 for prices ranging from \$825,000 to \$1,175,000 or from \$250 to \$333 per square foot of living area including land, rounded. The Property Tax Appeal Board further finds that two of the three comparable sales presented by the board of review occurred 14 and 30 months prior to the assessment date at issue of January 1, 2011. As such, the Board finds these sale prices are too remote in time to be likely valid indicators of the subject's estimated market value as of the assessment date. The remaining comparable sale from May 2010 was of a substantially larger dwelling than the subject and therefore has been given reduced weight in the Board's analysis. In conclusion, based upon an analysis of the data presented, the Board finds these sale comparables presented by the board of review neither support the subject's estimated market value nor do they overcome the arm's length nature of the subject's sale transaction as displayed in this record.

Since the appellant presented evidence showing the subject property was advertised for sale and exposed to the open market through the Multiple Listing Service in an arm's-length transaction, the Property Tax Appeal Board finds the subject's August 2011 sale price of \$850,000 was reflective of its market value.

Based on this record the Board finds the subject property had a market value of \$850,000 as of January 1, 2011. Since market value has been determined the 2011 three year average median level of assessment for DuPage County of 33.15% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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APPELLANT:	<u>Todor Shtilivanov</u>
DOCKET NUMBER:	<u>12-22083.001-R-1</u>
DATE DECIDED:	<u>December, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>Reduction</u>

The subject property is a 36 year-old condominium unit with 872 square feet of living area located within a two-story building of masonry construction. It is located in a condominium complex containing many buildings. The subject property has a 13,093 square foot site, is located in Maine Township, Cook County and is classified as a Class 2 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument the appellant submitted information on four suggested equity comparables and evidence in rebuttal. Each of appellant's comparables was of the same unit number but in different buildings within the subject's condominium complex.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$9,239. The subject property has an improvement assessment of \$8,531 or \$9.78 per square foot of living area. In support of its contention of the correct assessment the board of review submitted information on four suggested equity comparables. Three of the board of review's comparables were of a different unit number in different buildings within the subject property's condominium complex.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). 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 assessment equity to be appellant's comparables #1 through #4. These comparables had improvement assessments that ranged from \$8.73 to \$11.22 per square foot of living area. The subject's improvement assessment of \$12.05 per square foot of living area falls above the range established by the best comparables in this record. The Board notes that the appellant submitted evidence that the subject property and each of his comparables were the identical unit number in different buildings. Based on this record the Board finds the appellant did demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and a reduction in the subject's assessment is justified.

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APPELLANT:	<u>Carmen Titean</u>
DOCKET NUMBER:	<u>11-32811.001-R-1</u>
DATE DECIDED:	<u>July, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>No Jurisdiction</u>

The appellant filed the appeal from a decision of the Property Tax Appeal Board (the "Board") pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185) challenging the assessment for the 2011 tax year. For the following reasons, the Board finds that it does not have subject matter jurisdiction over this appeal, and that the appeal is dismissed.

Section 16-185 of the Property Tax Code states, in relevant part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the board of review or board of appeals or after adjournment of the session of the board of review or board of appeals at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board.

35 ILCS 200/16-185. The appellant purports to have based subject matter jurisdiction on this provision.

The appellant submitted a copy of a previous decision from the Board with docket number 10-25605.001-R-1. In that decision, the Board made findings of fact and conclusions of law regarding the subject's assessment for tax year 2010. The Board's ultimate finding was that the appellant had failed to prove, by a preponderance of the evidence, that the subject was overvalued. Therefore, no reduction was granted, and the subject's assessment as determined by the Cook County Board of Review for tax year 2010 was maintained.

The fact that neither party has raised the issue of subject matter jurisdiction is of no consequence. "The failure of a party to object to the lack of subject matter jurisdiction cannot confer jurisdiction upon the court." Univ. of Ill. Hosp. v. Ill. Workers' Compensation Com'n, 2012 IL App (1st) 113130WC, ¶ 8. "Subject matter jurisdiction cannot be waived, stipulated to, or consented to by the parties." Id. Therefore, the Board is authorized to, *sua sponte*, consider the issue of subject matter jurisdiction, and dismiss the appeal for lack of subject matter jurisdiction.

For the Board to have subject matter jurisdiction over an appeal where the appellant has not first appealed to the local board of review, section 16-185 mandates that the Board have issued a decision "lowering the assessment of a particular parcel after the deadline for filing complaints with the board of review." In the instant appeal, the subject's assessment was not lowered in the previous appeal. Therefore, section 16-185 is not applicable.

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Thus, the appellant must have filed the appeal under section 16-160, which states, in relevant part:

In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property, and for all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, or any taxing body that has an interest in the decision of the board of review or board of appeals on an assessment made by any local assessment officer, may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review or (ii) in assessment year 1999 and thereafter in counties with 3,000,000 or more inhabitants within 30 days after the date of the board of review notice or within 30 days after the date that the board of review transmits to the county assessor pursuant to Section 16-125 its final action on the township in which the property is located, whichever is later, appeal the decision to the Property Tax Appeal Board for review.

35 ILCS 200/16-160. The subject is located in Proviso Township, Cook County. Under section 16-160, the instant appeal must have been filed within 30 days after the board of review's notice to the appellant, or within 30 days after the board of review transmitted the assessments for Proviso Township to the Cook County Assessor. The Board takes judicial notice that the board of review issued the notices for Proviso Township on April 10, 2012, and transmitted those assessments to the assessor on April 18, 2012. The transmittal date is later, and the instant appeal must have been filed within 30 days of April 18, 2012. Thus, the deadline to timely file the instant appeal was May 18, 2012. The postmark on the appellant's submission to the Board is August 7, 2013. Therefore, this appeal was submitted well over a year after the May 18, 2012 deadline.

In summary, the Board finds that section 16-185 of the Property Tax Code is not applicable because the subject's 2010 assessment was not lowered by the Board, and the appeal was not submitted timely under section 16-160. Therefore, the Board does not have subject matter jurisdiction over the appeal, and the appeal is dismissed. The Board makes no findings of fact or conclusions of law based on the evidence submitted by the parties in this appeal.

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APPELLANT:	Kevin & Nicole Willis
DOCKET NUMBER:	10-03081.001-R-1
DATE DECIDED:	January, 2014
COUNTY:	Menard
RESULT:	No Change

The subject property is an unimproved 1.18 acre lot located Menard County, Illinois.

The appellants appeared before the Property Tax Appeal Board claiming assessment inequity regarding the subject's land assessment as the basis of the appeal. In support of this argument, the appellants submitted a grid analysis of four suggested comparables located either "adjoining" or "1 parcel over" from the subject. The comparables were described as "timber lots" ranging in size from 44,866.8 to 626,393 square feet of land area. The comparables have land assessments ranging from \$0 to \$543. The subject's land assessment is \$3,333.

The appellants testified that the subject was one of four parcels which were to be platted as "Phase 2" of Lake Robles Estates. The subject is adjacent to the appellants' improved parcel which is located in "Phase 1" of Lake Robles Estates. The appellants further argue that the subject has no road access and is therefore not available for improvement and should be given a preferential farm assessment like the remainder of "Phase 2 of Lake Robles Estates.

Under cross-examination, the appellants testified that the subject has no farming activity, but neither does the remainder of the land that was to make up "Phase 2" of Lake Robles Estates.

Based on this evidence, the appellants requested a reduction in the subject's land assessment to \$0.

The board of review presented a two-page letter addressing the appellants' comparables, a spreadsheet of 160 parcels from Menard County and a grid analysis of four suggested comparable properties located from "across street" to "<.5 mile" from the subject. The comparables were described as "Vacant" and ranged in size from 27,966 to 60,810 square feet of land area. The comparables have land assessments ranging from \$3,333 to \$8,804.

The two-page letter disclosed that two of the appellants' comparables are farm timber tracts. These properties receive a \$0 farm assessment, due to having less than the \$150 assessment threshold to generate a bill from the County Treasurer. The remaining two comparables receive an original developer's preferential assessment due to their being platted in "Phase 1" of Lake Robles Estates.

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

In rebuttal, the appellants argued that the board of review's comparables are cleared lots that are used as residential yards and are not timber tracts like the subject.

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

The appellants contend unequal treatment in the subject's land 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 appellants have not met this burden.

The Board finds the parties submitted eight comparable properties for the Board's consideration. The Board gave less weight to the appellants' comparables due to their dissimilar land use categories and/or preferential assessments. Two of the comparables are farm timber tracts that receive farm assessments and two are platted residential lots that receive an original developer's preferential assessment as provided by section 10-30 of the Property Tax Code. (35 ILCS 200/10-30). Based on testimony from the appellants, the subject does not have a farm use and was purchased after being platted after plans for "Phase 2" of Lake Robles Estates were abandoned. The Board finds the four comparables submitted by the board of review were similar to the subject in land use and location. These properties were platted and purchased from the original developer and do not receive a preferential assessment. These comparables have land assessments ranging from \$3,333 to \$8,804. The subject has a land assessment of \$3,333, which is within the range of the best comparables in the record. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's land assessment is supported and no reduction in the subject's assessment is warranted.

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APPELLANT:	Frank & Renee Wright
DOCKET NUMBER:	13-00695.001-R-1
DATE DECIDED:	October, 2014
COUNTY:	Vermilion
RESULT:	No Change

The subject property consists of a one and one-half story brick dwelling with 3,190 square feet of living area. The dwelling was constructed in 2005. Features include a full basement with 2,133 square feet of finished area, central air conditioning and attached and detached garages that total 2,261 square feet of building area.¹ The subject property has a 40,075 square foot site. The subject property is located in Newell Township, Vermilion County.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellants completed Section IV of the residential appeal petition pertaining to the subject's recent sale. The subject property was purchased on November 26, 2012 for \$446,550. The property was sold with the assistance of a Realtor; the property was advertised for sale in the open market through the Multiple Listing Service for over 90 days; and the buyer and seller were unrelated. The appellants also submitted a settlement statement (Exhibit B) as supporting evidence of the subject's sale. The appellants did not submit the subject's sales contract or Illinois Real Estate Transfer Declaration.

The appellants claim that the subject's sale included personal property items (Exhibit A) with an estimated value totaling \$150,202. The items include but are not limited to jet skis, a pontoon boat with trailer, home appliances, house electronics/media, portable heating and cooling pack, and garage cabinets. The appellants did not submit a bill of sale or photographs of the items.

In further support of the overvaluation argument, the appellants submitted three suggested comparable sales located in close proximity to the subject. The comparables consist of two-story style dwellings of brick or brick and vinyl exterior construction. Comparables #1 and #2 were built in 2006 and 2002 respectively, but the age for comparable #3 was not disclosed. Two comparables have finished basements and one comparable has an unfinished basement. The comparables have central air conditioning and two and one-half or three car garages. Two comparables have one or two fireplaces. The dwellings range in size from 2,800 to 2,963 square feet of living area and are situated on sites that contain from 26,250 to 37,026 square feet of land area. The comparables sold from February 2012 to November 2013 for prices ranging from \$151,667 to \$359,000 or from \$54.17 to \$122.53 per square foot of living area including land.

The appellants also argued Vermilion County Assessment Officials illegally engaged in "sale chasing" to establish the subject's assessed valuation.

The appellants also submitted the final decision issued by the Vermilion County Board of Review disclosing the subject's final assessment of \$118,772. The subject's assessment reflects an estimated market value of \$356,673 or \$111.81 per square foot of living area including land

¹ See section III of residential appeal petition.

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when applying Vermilion County's 2013 three-year median level of assessments of 33.30%. Based on this evidence, the appellants requested the subject's assessment be reduced to \$109,507, which reflects an estimated market value of approximately \$328,521 or \$102.99 per square foot of living area including land.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessment of the subject property as required by section 1910.40(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.40(a). Therefore, the board of review was found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.69(a).

Conclusion of Law

The appellants contend 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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellants did not meet this burden of proof and no reduction in the subject's assessment is warranted.

The Board gave little weight to the subject's sale price and estimated values for personal property items. The Board finds the settlement statement submitted by the appellants (Exhibit B) did not disclose any value associated with personal property involved in the transaction. The Board further finds the appellants' estimate of value for the purported personal property to be suspect. The value evidence associated with the electronic equipment and household appliances were for cost new items and postdate the subject's sale date. The appellants did not submit or include a bill of sale, a sales contract or Real Estate Transfer Declaration (PTAX-203) detailing the purported personal property items for review included in the transaction. As a result, the Property Tax Appeal Board finds the appellants failed to substantiate their estimate of value for the personal property that was included in the transaction. Additionally, the Board cannot conclusively find that some of the items under contention are personal property due to a lack of substantive documentation regarding the manner in which these items are situated or affixed to the real property. As a result, the Property Tax Appeal Board finds the documentation surrounding the subject's sale fails to substantiate a reduction in the subject's assessed valuation for the items claimed to be personal property.

The Board further finds the comparable sales submitted by the appellants support the subject's assessed valuation. The Board finds comparables #1 and #3 are more similar to the subject in location, age, design, size and features, however the subject is somewhat superior to these comparables in terms of land area, dwelling size and finished basement area. These two comparables sold in September 2012 and November 2013 for prices of \$330,000 and \$359,000 or \$111.37 and \$122.53 per square foot of living area including land. The subject's assessment reflects an estimated market value of \$356,673 or \$111.81 per square foot of building area including land, which is well supported by the two most similar comparable sales contained in the record. The Board gave little weight to comparable sale #2 submitted by the appellants. This suggested comparable sold for \$151,667, which appears to be an outlier considering the sale price of the subject and comparable properties that are contained in this record.

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The Board further finds the assessment officials in this appeal did not "chase" the subject's sale price. The subject's assessment prior to any board of review action reflected a fair market value less than its 2012 sale price.

In conclusion, the Board finds the appellants failed to demonstrate the subject's assessed valuation was excessive. Therefore, no reduction in the subject's assessed valuation is warranted.

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PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2014 FARM DECISIONS



PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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APPELLANT:	John K. & Denise A. Devine
DOCKET NUMBER:	11-02700.001-F-1
DATE DECIDED:	December 2014
COUNTY:	LaSalle
RESULT:	No Change

The subject property consists of 39.52 acres of farmland located in LaSalle County, Illinois.

The appellants appeared before the Property Tax Appeal Board contending assessment inequity as the basis of the appeal. In support of this argument the appellants submitted an assessment grid, two soil survey maps and information on three equity comparables. The appellants' comparable #1 was originally part of the same parent parcel as the subject property. The parent parcel contained approximately 80 acres and was divided into 2 parcels. The subject property is composed of 39.52 acres and appellants' comparable #1 has 39.51 acres. There was no descriptive information for appellants' comparables #2 and #3. The appellants' main argument was on comparable #1 which had been a part of the parent parcel and carries an assessment of \$17,035.

The appellants' called Jeff Flanigan as their witness. Flanigan is the farmer for the subject property and the appellants' comparables. Flanigan testified that he uses the same equipment, seed, fertilizer and herbicides on the subject property and the appellants' comparables. Flanigan and his uncle have farmed these properties for years. Flanigan testified that the yields on the subject property are less than the comparable properties.

Based on the evidence and testimony the appellants' requested a reduction in the subject's land assessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$17,374. The board of review submitted correspondence regarding the appellants' appeal and board of review attachments. The board of review included the Certification of Assessment Year 2011 Farmland Values from the Department of Revenue, 2011 Farmland Assessment Calculation - New Soil Survey (started 2004), soil survey map from 2004, soil survey map from 1972 and 2011 Farmland Assessment Calculation - Old Soil Survey (published May 1972).

Conclusion of Law

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds a reduction in the subjects' farmland assessment is not warranted.

The appellants' argument was unequal treatment in the assessment process or a lack of uniformity in the subject's assessment. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of

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Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). After considering the testimony and analysis of the assessment data, the Board finds the appellants have not overcome this burden.

The appellants argued the subject's farmland assessment is not equitable with other similar farmland parcels. The Property Tax Appeal Board finds this argument carries little weight. The farmland assessment law requires that farmland be assessed in accordance with agricultural assessment provisions detailed in Sections 10-110 through 10-140 of the Property Tax Code (35 ILCS 200/10-110 through 10-140) and according to productivity indices set forth in guidelines promulgated by the Illinois Department of Revenue. In this instant appeal, 2011 Farmland Assessment Calculation - New Soil Survey submitted by the board of review establishes that the board of review followed the guidelines in assessing farmland in the subject's jurisdiction. The appellants did not present any credible evidence such as a revised soil survey map, refuting the soil types identified on the subject parcel; the indices applied to the subject parcel's soils types; or documentation indicating the assessment methodology employed by the board of review was improper. Therefore, the Property Tax Appeal Board finds the appellants did not submit clear and convincing evidence demonstrating a lack of uniformity and have failed to provide a factual basis to support a reduction in the subject's farmland assessment as established by the board of review.

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APPELLANT:	James Goeke
DOCKET NUMBER:	11-04389.001-F-1
DATE DECIDED:	January, 2014
COUNTY:	Stephenson
RESULT:	Reduction

The subject property consists of a farmstead property that is improved with a dwelling and various farm buildings. The subject property is located in Dakota Township, Stephenson County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming the assessments of the farm buildings situated on the subject parcel are incorrect and the dwelling is overvalued and inequitably assessed.

With respect to the farm buildings, the appellant argued assessment officials unfairly valued the buildings due to their poor condition and use. The appellant claims the assessor valued six of the buildings for prices ranging from \$1.00 to \$13.98 per square foot of building area. The assessment amounts for the other seven buildings were not disclosed. The appellant argued, based on his opinion, the buildings should be valued from \$0 to \$3.00 per square foot of building area due to their poor condition and use.

With respect to the subject dwelling, the appellant submitted three suggested comparables. The comparables had varying degrees of similarity and dissimilarity when compared to the subject. The comparables have land assessments ranging from \$4,910 to \$5,890 and improvement assessments ranging from \$20,270 to \$49,900. The comparables sold from August 2010 to August 2011 for prices ranging from \$88,000 to \$115,000.

The appellant also submitted the final decision regarding the subject property issued by the Stephenson County Board of Review. The subject property had a land assessment of \$3,920, an improvement (dwelling and non-farm building) assessment of \$34,910 and a farm building (total) assessment of \$12,590. The subject's farmland assessment of \$556 was not contested. The subject's land and improvement assessment total \$38,830, which reflects an estimated market value of approximately \$116,490. Based on this evidence, the appellant requested reductions in the subject's farm building, land, and improvement assessments.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property as required by section 1910.40(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.40(a)).

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 assessment amounts assigned to the farm buildings are incorrect based on his opinion. The Board recognizes the farm buildings in dispute are in poor condition,

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however; the Board finds the appellant submitted no independent objective valuation evidence that would demonstrate the farm building assessment amounts assigned by county assessment officials were incorrect nor support his opinion as to the valuation amounts requested. As a result, the Board finds the appellant has not met the burden of moving forward with respect to the assessment amounts assigned to the subject's farm buildings that would shift the burden to the board of review. In Commonwealth Edison Company v. Property Tax Appeal Board, 378 Ill.App.3d 901 (2nd Dist. 2008), the court held the appellant never carried its burden of production on such claim and never shifted the burden to the board of review to support its position on the value of the subject property, citing section 1910.63 of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.63). Therefore, this aspect of the appellant's appeal was given no weight.

The appellant also contends assessment inequity and overvaluation with respect to the dwelling and home site. 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). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). After an analysis of the evidence, the Board finds the appellant has met these burdens of proof.

The appellant in this appeal submitted sales and assessment information for three comparables to demonstrate the subject property was overvalued and inequitably assessed. The board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's valuation evidence as required by section 1910.40(a) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.40(a)). Therefore, the board of review was found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a)). The Board has examined the market values and assessment equity evidence submitted and finds that it supports a reduction in the assessed valuation of the subject property commensurate with the appellant's request regarding the dwelling.

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APPELLANT:	Richard Modica
DOCKET NUMBER:	10-01750.001-F-1
DATE DECIDED:	February, 2014
COUNTY:	Stephenson
RESULT:	No Change

The subject property consists of approximately 11.41 acres. The subject contains 8.44 acres of farmland with the remaining 2.97 acres being classified as homesite. The farmland is enrolled in the Illinois Forestry Management Program as “other farmland.” The site is improved with a one-story ranch style dwelling of frame construction and a pole building containing 3,888 square feet of building area. The subject is located in Pearl City, Loran Township, Stephenson County.

The appellant appeared before the Property Tax Appeal Board claiming overvaluation in the assessment of the pole building and an incorrect assessment of the farmland. The appellant is not contesting the residential dwelling assessment or homesite assessment. In support of his claim regarding the farmland, the appellant testified that the farmland assessment went from \$32 to \$35 for no apparent reason. The appellant further testified that the 8.44 acres was planted in trees.

The appellant testified that the size of the pole barn was 50 feet by 72 feet and that he measured the building. As part of his evidence, the appellant submitted a letter from Howard Building Service wherein the size of the pole barn is indicated to be 54 feet by 72 feet with. The letter, dated November 29, 2010 depicts the total cost of construction was \$24,669 less the cost of the concrete floor. The appellant further testified that he built the pole barn for a total cost of \$26,650 in 1998. Based on this evidence the appellant requested the farmland assessment be reduced to \$32 and the pole barn assessment be reduced to \$8,922.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$68,029 was disclosed and allocated as follows: non-farmland \$10,318; non-farm building and improvements \$47,358; farmland \$35; farm buildings \$10,318. In support of the subject's assessment, the board of review submitted a copy of the subject's “Farmland Valuation Card” along with the 2010 equalized assessed value by productivity indices provided by the Illinois Department of Revenue. The “Farmland Valuation Card” depicts the subject's farmland of 7.84 acres has an equalized assessed value of \$26. Ron Kane, clerk of the Stephenson County Board of Review testified that the 2006 farmland productivity indices has increased 10% per year from 2006 to arrive at a farmland assessment for the subject of \$35.

In regards to the farm building, Kane testified the subject's pole barn was assessed using the cost schedules from the Illinois Department of Revenue. The board of review also provided seven comparables of recently built pole barns along with the corresponding building permits. The buildings ranged in size from 576 to 4,000 square feet of building area and ranged in estimated cost to build from \$16,900 to \$70,000 or from \$5.50 to \$29.34 per square foot. Ron Kane testified the subject's pole barn was depreciated using the extraction method. Depreciation was estimated based on 34 years of remaining economic life on a 40 year life cycle for a building in good condition. Kane testified the base cost of \$13.26 per square foot plus entry door, overhead door, concrete floor and insulation costs were then depreciated to \$11.27 per square foot for a

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total assessment which should be \$14,600. The subject pole barn has an improvement assessment of \$10,318 which reflects a market value of \$31,097 or \$7.80 per square foot of building area using the 2010 three-year average median level of assessments for Stephenson County of \$33.18% as determined by the Illinois Department of Revenue. Based on this evidence, the board of review requested the subject's farm building assessment be increased to \$14,600.

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 not warranted. 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). The Board finds the evidence herein does not support a change in the assessment.

The appellant argued that his farmland assessment was increased from \$32 to \$35 for no apparent reason. The board of review argued that the subject's farmland was valued based on the 2006 productivity indices as published by the Illinois Department of Revenue with annual equalized increases of 10% per year from 2006 to 2010. The Board finds the best evidence in this record to support the subject's farmland assessment was presented by the board of review. The appellant did not provide substantive documentary evidence to support his claim, and therefore, no reduction in the subject's farmland assessment is warranted.

In regards to the pole barn, the Board finds the best evidence of the size of the barn is found in subject's property record card and in a letter from Howard Building Service wherein the size of the pole barn is indicated to be 54 feet by 72 feet, or 3,888 square feet of building area. The subject pole barn has an improvement assessment of \$10,318 which reflects a market value of \$31,097 or \$7.80 per square foot of building area. The comparables submitted by the board of review had estimated costs to build ranging from \$16,900 to \$70,000 or from \$5.50 to \$29.34 per square foot of building area. The Board finds the subject pole barn's current assessment of \$10,318 or \$7.80 per square foot of building area is supported by the board of review's comparables given its age. Straight line depreciation for a building built in 1996 with a 40 year life and in average condition would be approximately 35%. The Board gave less weight to the extracted depreciation method as used by the board of review and finds its credibility as being a reliable indicator of depreciation is not well supported in this record; therefore, an increase in the subject pole barn's assessment is not warranted.

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APPELLANT:	<u>Steven & JoAnn Pingsterhaus</u>
DOCKET NUMBER:	<u>12-00058.001-F-1</u>
DATE DECIDED:	<u>May, 2014</u>
COUNTY:	<u>Marion</u>
RESULT:	<u>No Change</u>

The subject 40-acre parcel is improved with a fourteen foot by twenty foot wooden structure/portable building. The building was constructed on site in 2002 and rests on "skids" or railroad ties. Features of the building include an open porch of five feet by twenty feet. There is no water or electric service to the building, however, some power is supplied by a small solar system for a shop light. The subject property is located in Iuka, Romine Township, Marion County, Illinois.

The appellants appeared before the Property Tax Appeal Board contesting the assessment placed on the "portable building" and contending this structure should not be classified and assessed as real estate because it is not resting in whole on a permanent foundation. (Citing to Section 1-130 of the definitions in the Property Tax Code). In support of this argument, the appellants provided a brief with their contentions, a copy of a letter from the Marion County Board of Review dated December 3, 2012 and seven color photographs depicting the building, the railroad ties and the exterior gas line to a portable gas tank.

In the brief, the appellants reported in pertinent part that the building serves as storage for tools needed to complete the appellants' forestry obligation and also temporary shelter from the environment. "The scoring and cutting of selected trees takes place in the winter months and we reside over an hour away from the subject property, and temporary shelter from the elements is vital in the completion of this Forestry management [of the 40-acres of timber that is enrolled in the Forestry Stewardship Program]." At the hearing, the appellants testified that the solar system on the building is used to power one shop light. They also stated that the building was not used as a dwelling.

The appellants further contend that a previous assessor advised the appellants that the subject building was not taxable. At hearing, the appellants further testified that in about 2003 two assessing officials appeared at the subject property, reviewed the structure and having verbally confirmed with the appellants the lack of electricity, water and foundation for the building, declared the structure was not taxable because it is on skids. Additionally, as part of the brief, the appellants report they intend to sell the portable building and build a home on the same site after they retire and thus, the building is temporary and portable.

The appellants further argued that the subject building lacks any footing, foundation or slab under it and thus, the building is not connected/secured to the ground in any way. As such, the appellants contest (1) "being taxed on a portable building due to a size that doesn't exist in the Illinois tax code" and (2) being taxed for a portable building that does not meet the definition of

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"real property" (86 Ill.Admin.Code §1910.5 citing to 35 ILCS 200/1-130 from P.A. 91-502, §5, eff. August 13, 1999)¹ as follows:

Property; real property; real estate; land; tract; lot. The land itself, with all things contained therein, and also all 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 where otherwise specified by this Code. Included therein is any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, **if the structure is resting in whole on a permanent foundation**. Not included therein are low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42. [Emphasis added.]

At hearing, the appellants further argued that in the absence of a new law, decree or other written document, they did not understand how the Marion County assessing officials could simply decree that buildings that meet or exceed a certain size could now be assessed.

Based on this evidence and the argument that the subject structure by definition is not subject to real estate assessment and taxation, the appellants requested that the Property Tax Appeal Board reduce the subject's improvement assessment to \$0 and make no change to the farmland assessment.

On cross-examination, the board of review inquired as to the method by which the structure was brought to the site to which Mr. Pingsterhaus testified that the building was constructed on site on skids. He also stated that as built with the floor structure, the building can be moved by use of a mule. He further testified the building is a storage unit and that, if occasionally he has to stay out there, he stays out there. He noted this was seldom, but he does sometimes stay at the building. When asked what method would be used to move the structure, Mrs. Pingsterhaus stated, "Apparently we would use a mule." Mr. Pingsterhaus further testified that he does not believe the building, such as the porch, would have to be removed or disassembled in order to utilize the mule.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of \$1,792 was disclosed. The subject has an improvement assessment of \$1,670 and a farmland assessment of \$122.

In response to the appellants' legal argument, Patty Brough, Clerk for the Marion County Board of Review and Marion County Supervisor of Assessments, presented a two-page letter with numerous attachments. In the letter, Brough argued that due to the subject structure's large size "it is not easily taken to or removed from the land." She further wrote, "It is the policy of the Assessor that any structure measuring or exceeding 10 feet x 16 feet, are presumed to be fixtures and therefore assessable." In further support of the uniform treatment and proper application of

¹ The Property Tax Appeal Board recognizes that this provision of the Property Tax Code was significantly modified by P.A. 96-1477, §805, effective January 1, 2011, however, those modifications are not relevant to the arguments of this appeal.

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assessment practices under the Freeze Act, Brough included property record cards for 10 properties "throughout the county as evidence that sheds were assessed as real property." She also submitted ten property record cards depicting the assessment of sheds on other parcels in the county. These property record cards depict the assessment of sheds that range in size from 60 to 432 square feet of building area. Furthermore, it appears that five of the parcels have sheds of less than 160 square feet (i.e., 10 feet by 16 feet) which have been assessed in Marion County.

At hearing, Brough further expounded that the county has always assessed sheds, but in 2010 township assessors within the county questioned how small of a shed is too small for purposes of assessment. At that point along with some reviews and reassessments, it came to light that there was some inconsistency among the townships as to whether sheds were or were not treated as assessable and thus, the ten foot by sixteen foot size policy came into effect. Moreover, the new township assessor, who filled a vacancy that had existed for several years, then applied this policy to the subject building and assessed the structure.

As to the alleged portability of the subject structure, Brough included an Affidavit referencing conversations she had with employees of Marten Portable Buildings, Bear Building Supplies, M & M Sales and Woolsey Brothers Farm Supply, each of whom reportedly said "the only sure way to move a shed that size is by a machine called a mule."

Based on the aforesaid policy, the board of review requested confirmation of the subject's improvement assessment.

At hearing, Brough acknowledged that until the instant hearing and testimony from the appellants, her office was unaware that the subject structure had been in existence since 2002. She did further assert that her office has no intention of pursuing assessing the structure for prior years.

At hearing in rebuttal, the appellants cited the letter dated December 3, 2012 from the Marion County Board of Review, which was included in the appellants' initial filing with the Property Tax Appeal Board, stating in pertinent part:

It is the policy of the Assessor that any structure measuring or exceeding 10' x 16', are presumed to be fixtures and therefore assessable.

In written rebuttal, the appellants argue that "Marion County cannot tax a portable building based on its made up size guidelines." As to the comparables presented by the board of review, the appellants note there was no substantive evidence that these purportedly comparable buildings were portable versus having some sort of footing or foundation which annexes them to the ground "making them a permanent fixture." As to the ten comparables which are currently being assessed, the appellants wrote, "If these buildings also do not rest in whole or part on a permanent foundation, per the Illinois Tax Code, this simply proves that we are not the only ones being taken advantage of." contended "the State of Illinois does not tax personal property and it is unjust of Monroe County to arbitrarily assess personal property."

After hearing the testimony and reviewing 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

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based on the statutory definition of real property the subject building is real property which is subject to *ad valorem* taxation.

The appellants argued that the building on the subject property was improperly classified and assessed as real estate in 2012. The appellants argued the structure, which is not permanently affixed to the land, should be considered exempt from assessment and not taxed as real estate. The appellants further contended that the building is portable, thereby inferring that it could be removed at any time. The Board finds that these facts do not alter the fact that the subject building is real property and is being assessed based on a uniform policy to assess such buildings that are at least 10 feet by 16 feet in size. The subject building substantially exceeds the county's size guideline and therefore has been assessed.

The board of review contends the subject building has been treated under the policy in Marion County to tax portable buildings "measuring or exceeding 10 feet x 16 feet." Therefore, the board of review contends the appellants' building should be classified and assessed as real property.

The Property Tax Appeal Board finds the sole issue before this Board is whether the subject building is to 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 defines real property in part as:

The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, . . . (35 ILCS 200/1-130). [Emphasis added.]²

In light of the foregoing definition, the Property Tax Appeal Board finds the subject building, a "structure," was correctly classified and assessed as real property.

In Ayrshire Coal Company v. Property Tax Appeal Board, 19 Ill.App.3d 41 (3rd Dist. 1974), the court addressed the issue of distinguishing between real and personal property. In determining the property classification of heavy machinery and equipment and whether they were annexed to real estate, the court held:

. . . [p]ersons dealing with land and improvements thereon may consider a building thereon as personalty for their purposes, but such treatment as between individuals, does not change essential characteristics of building as realty. Id. at 44-45.

The court emphasized that an examination of the item, not the contractual language or booking practices, should establish the classification of an item. The court in Ayrshire further wrote, "[a] structure has been defined in the broad sense as any construction or piece of work composed of parts joined together in some definite manner." Id. at 45. In addition, the court noted:

² The Property Tax Appeal Board recognizes that this provision was modified as of January 1, 2011 in a manner that does not impact the arguments in this proceeding.

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A building has been defined as a fabric, Structure, or edifice, such as a house, church, shop, or the like, designed for the habitation of men or animals or For the shelter of property. [Capitalization as shown; citation omitted.] Id. at 45.

In the case of In re Hutchens, 34 Ill.App.3d 1039 (4th Dist. 1976), the court noted that the trial court held that:

. . . the manner of the placement of the cabin on blocks and a provision of the lease for plumbing connections between the cabin and a septic tank and a well sufficiently attached the cabin to the land to 'become a part of it.' Id. at 1040-1041.

On appeal, the Fourth District Appellate Court held that as far as property taxes are concerned, the finding of the trial court that the cabin was part of the real estate was not contrary to the manifest weight of the evidence.

After considering the evidence and record including the photographs of the subject building, the Board finds the improvement is a "building" or a "structure" as defined in Section 1-130 of the Property Tax Code (35 ILCS 200/1-130). Thus, based on this record, the Board finds the building is real property and may be assessed as such regardless of its foundation.³

The Property Tax Appeal Board is certainly cognizant of the appellants' aggravation and confusion given that the subject structure had not been assessed for the first ten years of its existence and that the appellants found the county's response(s) perplexing with regard to questions of foundation. In summary, however, the record before the Board does not support any inference of a lack of uniformity in the treatment of structures that are at least 10' x 16' in size, like the subject. Thus, the Property Tax Appeal Board finds the subject building is properly classified as assessable real property. As the appellants made no other challenge to the assessment of the structure, no change in the improvement assessment is warranted.

³ The instant case is distinguishable from those cases where the structure is identified as a vehicle or similar portable structure such that it can be classified based on its physical foundation pursuant to the Property Tax Code. See Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711 (2nd Dist. 1996).

2014 SYNOPSIS – FARM CHAPTER

APPELLANT:	James VanderLaan
DOCKET NUMBER:	11-00762.001-F-2
DATE DECIDED:	December, 2014
COUNTY:	Will
RESULT:	No Change

The subject property consists of an 18 acre tract of land located in Frankfort Township, Will County, Illinois.

The appellant in this appeal sought to reduce the subject's assessment from \$226,157 to \$31,114 or an assessment difference of \$195,043. The appeal pertained to the correct classification and assessment of the subject property. A hearing was scheduled in this matter for October 29, 2014, at 10:45 a.m. in the Will County Office Building, Joliet, Illinois. The notice of hearing was mailed to the parties on August 11, 2014. The hearing notice informed the appellant of his requirement to engage the services of a court reporter for the hearing pursuant to section 1910.98(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.98(a). At the time of the hearing, all parties were present before the Board. However, the appellant failed to procure the services of a court reporter to record and transcribe the proceeding as required by Section 1910.98(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.98(a). Therefore, the hearing was cancelled.

Conclusion of Law

Section 16-190(a) of the Property Tax Code provides in pertinent part:

The Property Tax Appeal Board shall keep a record of its proceedings and orders and the record shall be a public record. In all cases where the contesting party is seeking a change of \$100,000 or more in assessed valuation, the contesting party must provide a court reporter at his or her own expense. The original certified transcript of such hearing shall be forwarded to the Springfield office of the Property Tax Appeal Board and shall become part of the Board's official record of the proceeding on appeal. (35 ILCS 200/16-190(a))

Section 1910.98(a) of the rules of the Property Tax Appeal Board provides in part that:

In all cases where the contesting party is seeking a change of \$100,000 or more in assessed valuation, the contesting party must provide a court reporter at his own expense. 86 Ill.Admin.Code §1910.98(a).

Section 1910.69(d) of the rules of the Property Tax Appeal Board provides in part that:

Failure of the contesting party to furnish a court reporter as required by Section 1910.98(a) of this Part shall be sufficient cause to dismiss the appeal. 86 Ill.Admin.Code §1910.69(d).

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The Board finds that since the appellant failed to provide the services of a court reporter to transcribe the hearing pursuant to section 16-190(a) of the Property Tax Code (35 ILCS 200/16-190(a)) and section 1910.98(a) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.98(a)), the Board hereby dismisses this appeal pursuant to section 1910.69(d) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(d)).

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PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2014 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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APPELLANT:	Hani Asfour
DOCKET NUMBER:	09-22047.001-C-1 thru 09-22047.004-C-1
DATE DECIDED:	December, 2014
COUNTY:	Cook
RESULT:	No Change

The subject property consists of four parcels with 78,957 square feet of land area improved with a one-story building of brick construction with 15,166 square feet of building area. The property is located in Blue Island, Calumet Township, Cook County.

The appellant's argument is based on a contention of law founded on vacancy. According to a brief submitted by appellant's counsel the property was purchased in December 2005 with the intention to demolish the improvement. However, the appellant experienced financial hardship; therefore, demolition of the improvement has not occurred. Counsel also asserted the appellant has been attempting to sell the property and there have been three different contract purchasers. However, all three deals were unsuccessful and the property remained 100% vacant for 2009. Also submitted was a copy of a Cook County Board of Review Commercial/Industrial Vacancy-Occupancy Affidavit signed by the appellant asserting the building was 100% vacant during 2009.

According to counsel the subject's assessment reflects a market value of \$520,418. Due to vacancy, the appellant's attorney asserted that a 10% occupancy factor should be applied to the improvement to arrive at a revised improvement assessment of \$20,642 and a total assessment of \$85,398.¹

The appellant also submitted a copy of the final decision issued by the Cook County Board of Review setting forth the assessment of each property index number (PIN) under appeal.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property. Included in the record was a facsimile submission from the board of review of a stipulation bearing the signature of the appellant's counsel accepting the stipulation and a signature of a board of review representative dissenting to the stipulation. By letter dated March 16, 2012, the board of review was found to be in default.

Conclusion of Law

The appellant's argument was founded on a contention of law in which it was argued the subject's assessment should be reduced due to vacancy. The Board gives this argument no weight and finds the appellant failed to submit sufficient evidence to challenge the correctness of the assessment.

¹ The calculations developed by appellant's counsel as reflected in the brief were based on the original assessment of the subject property as established by the Cook County Assessor totaling \$271,177. The assessment of the property as reflected on the board of review final decision totaled \$106,037.

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Section 1910.63 of the rules of the Property Tax Appeal Board provides in part:

Section 1910.63 Burdens of Proof

- a) Under the principles of a de novo proceeding, the Property Tax Appeal Board shall not presume the action of the board of review or the assessment of any local assessing officer to be correct. However, any contesting party shall have the burden of going forward.
- b) Under the burden of going forward, the contesting party must provide substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property. Failure to do so will result in the dismissal of the appeal.
- c) Once a contesting party has provided evidence or argument sufficient to challenge the correctness of the assessment of the subject property, the board of review shall be required to go forward with the appeal. The board of review must provide substantive, documentary evidence or legal argument sufficient to support its assessment of the subject property or some other, alternate valuation. Failure to do so will result in a decision by the Property Tax Appeal Board based upon the information submitted by the contesting party and, if applicable, the evidence submitted by any intervening party. . . .(86 Ill.Admin.Code §1910.63).

Based on this rule, the appellant, as the contesting party, has the burden of first producing sufficient evidence to challenge the correctness of the assessment. Not until the contesting party provides sufficient evidence or argument to challenge the correctness of the assessment is the board of review required to go forward with the appeal. (See Commonwealth Edison Company v. Illinois Property Tax Appeal Board, 378 Ill.App.3d 901, 914-915, 882 N.E.2d 141, 317 Ill.Dec.567 (2nd Dist. 2008)).

In this appeal the appellant only argued the subject's vacancy during 2009 was sufficient to reduce the subject's assessment. This argument is insufficient to challenge the subject's assessment without a showing the subject's market value was excessive due to vacancy. There is no provision in the Property Tax Code allowing for a reduction in a property's assessment based solely on vacancy. Similarly, there is no provision in the rules of the Property Tax Appeal Board that provides for a reduction in a property's assessment based exclusively on vacancy.

In this appeal the appellant provided no market data to demonstrate the subject's assessment was excessive considering the fact the property was vacant during 2009. Furthermore, there was no market data provided by the appellant that supported appellant's counsel assertion that a 10% occupancy factor should be applied to the subject's improvement assessment. In the brief, the appellant's counsel asserted that the owner was attempting to sell the property and the property had been under contract three times, which ultimately were unsuccessful. Even though these transactions were not completed, the list price and putative sales prices would be indicative of the property's value. The appellant, however, failed to provide any information with respect to

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the list price of these transactions that may have cast some light on the correctness of the subject's assessment based on the property's vacancy.

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

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APPELLANT:	BMO Harris Bank N.A.
DOCKET NUMBER:	11-01361.001-C-2
DATE DECIDED:	June, 2014
COUNTY:	Kane
RESULT:	Reduction

The subject property consists of a one-story bank building of masonry construction that contains 4,774 square feet of building area on a poured, reinforced concrete foundation. The building was constructed in 2004. Features of the building include a lobby with general open office area and teller counters. Other features include private offices, a small conference room, a copy/storage room, a break room, two restrooms, central air conditioning and one vault for safe deposit boxes and teller cash. The property also has a drive-through with six lanes served in part by a pneumatic tube system and with one lane having an ATM. The drive-through has a 2,363 square foot canopy. The site has approximately 35,000 square feet of asphalt-paved parking and is striped to accommodate 28 cars. The property has a 71,656 square foot site and is located at 473 Redington Drive, South Elgin, St. Charles Township, Kane County.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Charlie Hynes and Frank C. Urban of Frank C. Urban & Co. estimating the subject property had a market value of \$1,450,000 as of January 1, 2011. (Appellant's Exhibit #2). The appellant called as its witness Frank C. Urban.

Urban is a State of Illinois Certified General Real Estate Appraiser and has the MAI designation from the Appraisal Institute. Urban stated he conducted a 2011 appraisal of the subject property. He described the subject property as a seven-year-old, free-standing bank branch building of average quality, average condition, with a good drive-through operation and ample parking. He stated the subject improvement has 4,774 square feet of building area and the site had 71,656 square feet of land area, resulting in a land to building ratio of approximately 15:1. Urban was of the opinion this was typical for a suburban branch bank and the land to building ratio was adequate.

Urban determined the highest and best use of the property as improved was continued use as a bank branch. In estimating the market value of the subject property the three approaches to value; cost, income capitalization and the sales comparison, were developed.

Under the cost approach to value the appraiser first estimated the land value using four sales and two listings located in South Elgin, Elgin and St. Charles. The comparables ranged in size from 52,098 to 75,358 square feet of land area. Land comparable sales #1 through #4 sold from June 2008 to April 2009 for prices ranging from \$950,000 to \$1,569,728 or from \$14.21 to \$20.83 per square foot of land area. The two listings had prices of \$700,000 and \$980,100 or \$13.62 and \$15.00 per square foot of land area, respectively. Based on this data the appraiser estimated the subject had a site value of \$16.00 per square foot of land area or \$1,150,000, rounded.

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The Marshall Valuation Computerized Cost Service was used to estimate the replacement cost new of the building improvements to be \$911,596 or \$190.95 per square foot of building area. To this \$170,000 was added for the canopy and drive-through equipment to arrive at a replacement cost new of the building improvements of \$1,081,596. Indirect costs of 2% were added to arrive at a total for direct and indirect costs of \$1,191,486. The appraiser estimated entrepreneurial profit of 8% or \$88,258, which was added to arrive at a total replacement cost new of \$1,191,486.

Physical depreciation was calculated to be \$166,808 using the age-life method with the subject having an effective age of 7 years and an economic life of 50 years. The appraiser determined the subject had no functional obsolescence. In estimating external obsolescence, the appraisers indicated in the report that the sum of the subject's estimated land value and the depreciated value of the building and site improvements was \$2,227,849. They determined the income necessary to support this estimated value was \$182,684 based on a capitalization rate of 8.2%. The appraisers calculated the net operating income to be \$121,260, which was \$61,424 below what was needed. Capitalizing the income deficiency by 8.2% resulted in external obsolescence of \$749,073 or 62.9% of the replacement cost new. Accrued depreciation totaled \$916,253.

The appraiser estimated the site improvements of asphalt-paved parking with related improvements such as concrete sidewalks and landscaping had a contributory value of \$53,171. Subtracting the accrued depreciation from the replacement cost new and adding the site improvements and land value resulted in an estimated value under the cost approach of \$1,480,000 or \$310.01 per square foot of building area, including land.

Three comparable sales and three listings were used in the sales comparison approach to value. The comparables were located in St. Charles, McHenry, Elgin, Carol Stream and Aurora. These properties were improved with branch bank buildings that ranged in size from 3,302 to 7,740 square feet of building area and were constructed from 1994 to 2006. Each comparable was improved with a one-story building and only one comparable had a full finished basement. The comparables had land-to-building ratios ranging from 6.5:1 to 19.1:1. Comparables #1 through #3 sold from December 2010 to April 2011 for prices ranging from \$825,000 to \$1,250,000 or from \$146.15 to \$302.85 per square foot of building area, including land. Comparables #4 through #6 had listing prices ranging from \$1,300,000 to \$2,100,000 or from \$167.96 to \$400.08 per square foot of building area, including land. Urban testified the listings were listed for sale over the period of January 1, 2011. He also indicated that these properties have since sold. Urban testified listing #4 sold in July 2012 for a price of \$83.98 per square foot of building area, listing #5 sold in July 2012 for a price of \$116.08 per square foot building area, and listing #6 sold in April 2012 for a price of \$238.14 per square foot of building area. The appraiser compared the comparables to the subject property and made adjustments for such items as sale conditions, location, age/condition, drive-through, land-to-building ratio and parking. The appraiser estimated the subject property had an indicated value under the sales comparison approach of \$300.00 per square foot of building area, including land, or \$1,430,000.

The final approach developed was the income capitalization approach. In estimating the market rent recent leases and active listings of bank branches, office buildings and restaurants in the subject's general market area were considered. The comparables were located in St. Charles, Lake-In-The-Hills and Batavia. Rental comparables #1, #3, #4 and #5 were improved with one-

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story bank branches that ranged in size from 3,586 to 6,495 square feet and were built from 2003 to 2005. These properties each had a 4 or 5-lane drive-through and had land-to-building ratios ranging from 6.0:1 to 15.4:1. These four comparables had asking rents of \$28.00 and \$36.25 per square foot of building area. Comparable #2 was a two-story bank branch with the second-floor office space renting for \$14.00 per square foot of building area. The lease for comparable #2 was entered in July 2008. Urban testified that rental comparables #1, #3, and #4 had been on the market and available for lease for 21 months. The appraiser estimated the subject's market rent to be \$30.00 per square foot on a net basis resulting in a potential gross income of \$143,220.

The appraisal report stated that CB Richard Ellis Marketview, Chicago First Quarter 2011, reported a vacancy rate of 14.1% for retail properties in the Chicago market area. The appraisers also indicated in the report that in the subject's Kane County submarket the vacancy rate is 14.1%. The report further stated that due to the subject's good corner exposure and location along Randall Road the appraisers stabilized the subject's vacancy and collection loss at 10.0% of potential gross income or \$14,322, resulting in an effective gross income of \$128,898.

The appraisers then deducted expenses for a management fee, reserves for replacement and leasing commissions totaling \$7,638 to arrive at an estimated net operating income of \$121,260. As support for their conclusion of the various expenses the appraisers cited Price Waterhouse Coopers, PwC Real Estate Investors Survey, First Quarter 2011.

The next step in the income approach was to estimate the capitalization rate. The band of investment method and published sources were used to estimate an overall capitalization rate of 8.2%. Capitalizing the net income of \$121,260 resulted in an estimated value under the income capitalization approach of \$1,480,000 or \$310.01 per square foot of building area, including land.

In reconciling the three approaches to value minimal weight was given the cost approach, the income approach was considered a reliable indicator of value and given ample consideration and the sales comparison approach was considered a reliable indicator of value and given primary consideration. Urban testified for this type of property in a fee simple capacity, an investor would be looking at it from the sales comparison approach standpoint. The appraiser estimated the subject property had a market value of \$1,450,000 as of January 1, 2011.

Based on this evidence the appellant requested the subject's assessment be reduced to \$483,285 to reflect the appraised value.

Under cross-examination Urban testified his comparable sale #3 was located significantly north of the subject property, 26 miles, in McHenry County. He was not aware of what happened to the property after purchase. Urban testified that in selecting comparables his parameters included both Cook County and every collar county to search for fee simple sales of bank branches.

Urban testified he looked at leased fee sales but they were not employed in his report because he did not have access to income data to adjust them for what market rents currently were as of the date of valuation. He stated that no one was willing to share the income information on a detailed basis on the leased fee sales.

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With respect to his rental comparables, Urban indicated that comparables #1, #3 and #4 had been available for lease since 2009 and continued to be available as of the date of his report. He also noted the bank branch rental comparables were offered for lease furnished. With respect to the vacancy rate of 10%, Urban testified he considered the subject in a good location along a heavily traveled arterial street.

Urban testified the property rights appraised were the fee simple interest, meaning free of any encumbrances, so they were not looking at leases.

With respect to calculating external obsolescence under the cost approach, Urban explained that what was happening at this point in time was that a lot of banks were closing branches, very few were expanding and a lot of supply was languishing on the market. He indicated that a lot of branches were sitting on good quality properties, with good land-to-building ratios, good condition and no issues; however, there was no interest, selling for fractions of not only of their construction costs but their listing prices.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$755,019. The subject's assessment reflects a market value of approximately \$2,282,100 or \$475.93 per square foot of building area, land included, when using the 2011 three year average median level of assessment for Kane County of 33.23% as determined by the Illinois Department of Revenue.

The board of review called as its witness David Medlin, St. Charles Township Deputy Assessor. In rebuttal, Medlin testified that appraisal sale #3 was purchased by McDonalds and in 2012 a new 4,048 square foot building was constructed. It was Medlin's opinion the purchase was reflective of the land as the original building was demolished. With respect to appraisal comparable sale #1, Medlin testified this property was located a little west of Randall Road and had an inferior location as compared to the subject property. Medlin also indicated that appraisal sale #2 was remodeled and is now used as an office building.

Medlin testified he provided some information on sales in the immediate area of the subject property along Randall Road in South Elgin. The first sale was located at 534 Randall Road, South Elgin. This property was improved with a 5,006 square foot bank branch building constructed in 2006 that sold in May 2011 for a price of \$2,933,333 or \$585.96 per square foot of building area, including land. The second sale provided by Medlin was located at 536 Randall Road, South Elgin. The property was improved with a bank branch building constructed in 2004 with 5,815 square feet of building area. This property sold in April 2011 for a price of \$3,050,000 or \$524.50 per square foot of building area, including land. The witness explained that the properties located at 534 and 536 Randall Road are located within blocks of the subject property and have essentially the same locational attributes. He also testified these two sales continued to be used as bank branches, which indicates there is demand for bank branches on the Randall Road corridor. Medlin's third sale was located at 2402 West Main Street, St. Charles. This property was improved with a bank branch building with 6,495 square feet constructed in 2005. The property sold in March 2008 for a price of \$4,835,000 or \$744.42 per square foot of building area, including land. This property was the same as appraisal rental comparable #1.

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Medlin was of the opinion these three additional sales could have been used to help determine the value for the subject property.

Medlin was of the opinion the subject's assessment, which reflects a market value of approximately \$474 per square foot of building area when using the statutory level of assessments is supported by the sales in the record.

Under cross-examination it was pointed out that both properties located at 534 Randall and 536 Randall Road were located in St. Charles Township. The property at 534 Randall Road had an assessment reflecting a market value of \$371.64 per square foot of building area, land included. The property located at 536 Randall Road had an assessment reflecting a market value of \$371.34 per square foot of building area, including land.

Medlin agreed he did not prepare an income approach to value for the subject property. He also indicated the assessment was derived using the cost approach to value using a source called CAMAvision. The subject's property record card reflected a land value of \$1,289,812 and an improvement value of \$975,474. The property record card reflected that a 3% deduction was made for physical depreciation and no deductions were made for functional and economic obsolescence to the improvements.

Medlin provided copies of the transfer declarations (PTAX-203) for appraisal comparable sales #1 and #2, which indicated the properties were advertised for sale. Form PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A, indicated that appraisal comparable sale #1 was on the market 11 months and was not occupied on the date of sale.

Medlin also provided copies of the Illinois Real Estate Transfer Declaration (PTAX-203) and the Illinois Real Estate Transfer Declaration Supplemental Form A (PTAX-203-A) for the properties located at 534 Randall Road, 536 Randall Road and 2402 West Main Street. These documents indicated 534 Randall Road was not advertised for sale and the improvement was occupied on the date of sale. The additional documentation provided by the deputy assessor from LoopNet indicated this property had a triple net ground lease and the property had 10+ years left on the lease. The forms indicated the property at 536 Randall Road was advertised for sale for six months and was not occupied on the date of sale. The transfer declaration documents indicated that the property at 2402 West Main Street was advertised and 100% occupied or leased on the date of sale. Medlin also agreed this property sold in March 2008, at a time when the economy was in better shape.

The board of review also submitted a list of 14 sales, which included 534 Randall Road and 536 Randall Road to show the appraiser had some other opportunities for sales in the market area to address. The board of review representative noted that the price for 534 Randall Road differed from what the deputy assessor had.

Urban was called in rebuttal and testified that the PTAX documents associated with 534 Randall Road disclosed the property was not advertised and was subject to a triple net land lease.

With respect to the property located at 536 Randall Road, Urban made reference to the sale at page 86 of his report. He indicated that the sale was not used in the appraisal because they were

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not able to confirm the sale; the property sold for 22% more than the list price, a premium inconsistent with other market data; and Chase, the buyer, already operates a branch in the area and expanding to this building involved considerable business value over and above the real estate only. With respect to the property located at 2402 West Main Street, Urban indicated this is one of his rental comparables that was initially available for lease at \$23 per square foot then increased to \$28 per square foot. Urban indicated the March 2008 sale of this property was in a substantially different market.

The appellant also submitted rebuttal comments prepared by Urban on the 14 sales provided by board of review.

Following the hearing the board of review submitted a response to the rebuttal statement as allowed by the Property Tax Appeal Board.

Conclusion of Law

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), 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 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.

The Board finds the best evidence of market value to be the appraisal submitted by the appellant and the testimony provided by the appraiser, Frank C. Urban, estimating the subject property had a market value of \$1,450,000 or \$303.73 per square foot of building area, including land, as of January 1, 2011. The subject's assessment reflects a market value of \$2,282,100 or \$475.93 per square foot of building area, land included, which is above the appraised value.

The appraisal contained three approaches to value to support the market value conclusion. With respect to the cost approach the appraisal included land sales to support the land value. The appraisal also included a detailed description of the cost new calculations and an analysis of the physical depreciation and external obsolescence the subject improvements suffered. In contrast the board of review provided no land sales and no descriptive evidence with respect to developing the cost new and the depreciation analysis. The Board finds the cost approach developed by the appellant's appraiser, although given minimal weight, was more credible than the cost approach contained on the subject's property record card submitted by the board of review.

With respect to the sales comparison the appraiser made adjustments to the sales and listings for sale conditions, location, drive-through, age, condition and land-to-building ratio. In contrast, the board of review provided a list of 14 sales but did not adjust for differences from the subject property. The assessor also provided information on three sales but provided no analysis or adjustments for differences these properties may have had from the subject property. Additionally, it was shown that the deputy assessor's sale at 534 Randall Road was not advertised for sale and was occupied on the date of sale. Furthermore the evidence indicated this

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property had a ground lease with 10 years remaining on the lease on the date of sale. These factors call into question the arm's length nature of the sale and whether the sale was of a fee simple interest. The evidence also showed the deputy assessor's sale located at 2402 West Main Street occurred in March 2008, which was during a superior marketing period, and this property was 100% occupied or leased on the date of sale. Due to the date of sale and occupancy issues, the Board gives this sale little weight. Based on this record the Board finds the sales comparison approach developed by the appraiser was better supported and more credible than the raw sales provided by the board of review.

In the income approach to value the appraiser provided rental comparables to support the estimate of market rent and used two methods to estimate the capitalization rate to be applied to the net income. The Board finds the board of review provided no data or rental comparables to challenge the market rent, vacancy and collection loss or expenses used to calculate the net income. Furthermore, the board of review provided no evidence to challenge the capitalization rate developed by the appraiser. Based on this record the Board finds the board of review did not refute or rebut the estimate of value under the income approach developed by the appellant's appraiser.

In summary, after considering the evidence and testimony provided, the Board finds the best evidence of market value in this record was presented by the appellant. Based on this record the Board finds the subject property had a market value of \$1,450,000 as of January 1, 2011. Since market value has been determined the 2011 three year average median level of assessment for Kane County of 33.23% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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APPELLANT:	Craig Dodd TNT Marine & Storage
DOCKET NUMBER:	11-01146.001-C-1
DATE DECIDED:	January, 2014
COUNTY:	Peoria
RESULT:	No Change

The subject property is a 235,224 square foot site that is improved with four buildings.¹ Building #1 is a one-story pole building that contains 2,520 square feet of building area. Building #2 is a one-story masonry building that contains 840 square feet of building area. Building #3 is a one-story pole building that contains 2,310 square feet of building area. Building #4 is a one-story pole building that contains 4,350 square feet of building area. The buildings are 12 years old. The property is located in Limestone Township, Peoria County.

The appellant's appeal is based on assessment inequity with respect to land and buildings #1 and #2. In support of this argument the appellant submitted information on three comparable properties. The properties have lots ranging in size from 31,799 to 270,072 square feet of land area. The properties were described as being improved with masonry constructed buildings that ranged in size from 1,420 to 5,734 square feet of building area. The buildings ranged in age from 28 to 62 years old. These properties had land assessments ranging from \$8,720 to \$16,990 or from \$.03 to .45 per square feet of land area and improvement assessments ranging from \$8,490 to \$71,930 or from \$5.98 to \$16.99 per square foot of building area. The appellant failed to use the correct assessment amounts from the subject's Final Decision Notice. In addition, the appellant attributed the entire improvement assessment to buildings #1 and #2 and calculated an improvement assessment of \$26.69 per square foot of building area. The appellant requested the improvement on these buildings be reduced to \$66,800 or \$19.88 per square foot of building area.

The appellant's evidence included sales data on the comparables and Multiple Listing Service sheets for two of the comparables. The Board will not consider the sales data contained in this appeal.²

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment totaling \$100,470 was disclosed. Included with the board of review evidence was a copy of the subject's property record card revealing the final assessment for the 2011 tax year. The information disclosed the subject had a land assessment of \$27,950 or \$.12 per square foot of land area and an improvement assessment of \$72,520 or \$7.24 per square foot of building area, using 10,020 square feet of building area.

¹ The appellant originally reported the subject has one building containing 3,360 square feet of building area. In rebuttal the appellant reported the subject contains 9,980 square feet of building area, but submitted no evidence in support. The board of review reported the subject contains four buildings containing 10,020 square feet of building area, and submitted sketches of the buildings from the subject's property record card.

² Section 1910.50 of the rules of the Property Tax Appeal Board states in pertinent part ..."Each appeal shall be limited to the grounds listed in the petition filed with the Board." (86 Ill.Admin.Code §1910.50(a)). The appellant clearly marked "Assessment equity" as the basis of the appeal, not comparable sales.

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In support of the assessments, the board of review presented sales data on five comparable properties from "Loopnet" Commercial Real Estate Online. The board of review presented no assessment information with respect to the comparables. 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 assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989); 86 Ill.Admin.Code 1910.63(e). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not met this burden.

The evidence in the record disclosed the subject property has four improvements. The appellant presented evidence with respect to buildings #1 and #2. The comparables presented by the appellant had varying degrees of similarities with the subject. The comparables had improvement assessments that ranged from \$8,490 to \$71,930 or from \$5.98 to \$16.99 per square foot of building area. The subject had an improvement assessment of \$72,520 or \$7.24 per square foot of building area, which is within the range established by the comparables on a square foot basis. The subject's total improvement assessment is supported due to the subject's superior age and significantly larger size.

As to the subject's land inequity argument, the Board finds the appellant's land comparables had assessments that ranged from \$8,720 to \$16,990 or from \$.03 to \$.45 per square foot of land area. The subject had a land assessment of \$27,950 or \$.12 per square foot of land area, which is within the range established by the comparables submitted by the appellant.

Based on this record the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's land and improvement assessments were inequitable and a reduction in the subject's assessment is not justified.

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APPELLANT:	<u>Crossroads of Riverside, LLC</u>
DOCKET NUMBER:	<u>08-26959.001-C-1</u>
DATE DECIDED:	<u>October, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>No Change</u>

The subject property consists of a one-story, commercial building used as a neighborhood shopping strip center. The building was constructed in 2004. The property consists of a 39,078 square foot site and is located in Proviso Township, Cook County. The subject is classified as a class 5A, commercial property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends that the subject's building size is incorrect. In support of this argument, the appellant submitted a brief, copies of two property record cards for the subject, and a copy of correspondence from the Cook County Assessor's office. Appellant's Exhibit A is a copy of the subject's property record card dated March 23, 2005 reflecting 16,601 square feet of building area. The second property record card dated June 30, 2010 indicated that the subject's building contained 9,820 square feet of building area. Appellant's Exhibit B is a copy of correspondence from the Cook County Assessor's office indicating that a reduction was accorded in tax year 2009 'as a result of a factual change in your property records'. Based on this evidence, the appellant asked for an assessment reduction.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$420,367. The subject's assessment reflects a market value of \$1,106,229, or \$112.65 per square foot of building area when applying the level of assessment for class 5A, commercial property under the Cook County Real Property Assessment Classification Ordinance of 38%.

As to the subject's size, the board of review's cover memorandum stated that the subject's building contained 9,820 square feet of building area.

In support of its contention of the correct assessment, the board of review submitted descriptive and sales data relating to five suggested comparable sales. These properties sold for prices that ranged from \$123.09 to \$364.67 per square foot of building area.

Moreover, the board of review's memorandum stated that the data was not intended to be an appraisal or an estimate of value and should not be construed as such. The memorandum indicated that the information provided therein had been collected from various sources that were assumed to be factual and reliable; however, it further indicated that the writer hereto had not verified the information or sources and did not warrant its accuracy.

The board of review's representative testified that to his personal knowledge for tax year 2008, the subject was accorded some vacancy relief in the form of a 64.8% occupancy factor applied by the board of review. He believed that this reduction is reflected in the total assessed value for

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the subject. The assessor initially accorded the property a total assessment of \$479,075, while the board of review reduced that assessment to \$420,367.

In rebuttal argument, the appellant's attorney asserted that he had no personal knowledge of whether there was a vacancy issue at the subject during tax years 2008 or 2009. In response, the board of review's representative testified that the subject was accorded an occupancy factor of 91.8% in tax year 2009.

Conclusion of Law

The appellant contends that the subject's building size is incorrect and that 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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant *did not meet* this burden of proof and a reduction in the subject's assessment is not warranted.

As to the subject's building size, the Board finds that there is no dispute among the parties on this issue. The parties' evidence indicated that the building contained 9,820 square feet of building area.

As to the overvaluation argument, the Board finds the best evidence of market value to be the board of review's comparable sales. These comparables sold for prices ranging from \$123.09 to \$364.67 per square foot of building area, including land. The subject's assessment reflects a market value of \$112.65 per square foot of building area, including land, which is below the range established by the comparable sales in this record. Furthermore, the Board notes that the appellant did not proffer any market value evidence in support of a requested assessment reduction. Based on this evidence and after making adjustments for pertinent factors, the Board finds a reduction in the subject's assessment is not justified.

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APPELLANT:	Brent Danielson
DOCKET NUMBER:	09-33413.001-C-1
DATE DECIDED:	November, 2014
COUNTY:	Cook
RESULT:	No Change

The subject property consists of a Class 5-99 property as provided by the Cook County Real Property Assessment Classification Ordinance. The subject property is improved with a commercial condominium that is 50 years old and is situated on 29,185 square feet of land area. No other descriptive information for the subject was provided. The subject property is located in Lyons Township, Cook County, Illinois

The appellant submitted an appeal petition before the Property Tax Appeal Board contending assessment inequity and a contention of law as the bases of the appeal. The appellant did not submit any assessment comparables to challenge the subject's assessment, but relied on a contention of law in support of an assessment reduction.

Counsel for the appellant argued that the subject's 2011 assessment was reduced to \$57,021; therefore, the subject's 2009 assessment of \$63,358 should also be reduced to the 2011 assessment amount of \$57,021. In support of this proposition, the appellant's counsel cited Hoyne Savings & Loan Association v. Hare, 60 Ill.2d 84, 322 N.E.2d 833 (1974) and 400 Condominium Association v. Tully, 79 Ill.App.3d 686, 398 N.E.2d 951 (1st Dist. 1979). In Hoyne, counsel argued the court held that a substantial reduction in a subsequent tax bill is indicative of validity of a prior tax years' assessment. In 400 Condominium Association, counsel argued the Illinois Supreme Court cited and followed Hoyne in that a substantial reduction in a subsequent tax bill is indicative of invalidity of a prior years' assessment.

Based on this argument, the appellant requested the subject's assessment be reduced to \$57,021.

The board of review did not timely¹ submit its "Board of Review Notes on Appeal" or any evidence in support of its assessment of the subject property as required by section 1910.40(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.40(a). By letter dated February 2, 2013, the board of review was found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.69(a).

Conclusion of Law

Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case conducted under this Act by an agency shall be the preponderance of the evidence. (5 ILCS 100/10-15). The Board finds the appellant did not meet this burden of proof and no reduction in the subject's is assessment warranted.

¹ The Cook County Board of Review was notified of this appeal on June 15, 2012 and given 90 days to submit its responsive evidence by September 13, 2012. The Property Tax Appeal Board received the board of review response to this appeal on February 14, 2013, which is 154 days past the due date.

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The Board gave no weight to the appellant's contention of law referencing Hoyne and 400 Condominium Association, [citations omitted]. The Board finds in the recent decision of Moroney & Co. v. Property Tax Appeal Board, 2013 IL App (1st) 120493, 2 N.E.3d 522, the Court at ¶46 did not perceive Hoyne and 400 Condominium as standing for the proposition that "subsequent actions by assessing officials are fertile grounds to demonstrate a mistake in a prior year's assessments." In Moroney, the Court wrote in pertinent part:

... in each of those unique cases, which are confined to their facts, there were glaring errors in the tax assessments -- in Hoyne, the assessment was increased on a property from \$9,510 to \$246,810 in one year even though no changes or improvements to the property had occurred (Hoyne, 60 Ill.2d at 89), and in 400 Condominium, assessments on a garage were assessed separately from the adjoining condominium in violation of the Condominium Property Act (400 Condominium, 79 Ill.App.3d at 691). Here, based upon the evidence that was submitted, there is no evidence that there was an error in the calculation of the 2005 assessment. Rather, the record shows that the 2005 assessment was properly calculated based on the market value of the property.

The Property Tax Appeal Board finds the appellant presented no credible evidence showing there were unusual circumstances present in this 2009 appeal relative to the establishment of the subject's assessment for the 2011 tax year. Furthermore, the appellant failed to submit any valuation evidence that would demonstrate that the subject's 2009 assessment was incorrectly calculated or based on correcting glaring errors or in violation of the Property Tax Code.

Based on this record, the Property Tax Appeal Board finds the appellant has not met the burden of moving forward and no reduction in the subject parcel's assessment is warranted. Section 1910.65(d) of the rules of the Property Tax Appeal Board provides in part:

The Property Tax Appeal Board may consider appeals based upon contentions of law. Such contentions of law must be concerned with the correct assessment of the subject property. If contentions of law are raised, the party shall submit a brief in support of his position. (86 Ill.Admin.Code §1910.65(d)).

The Board finds the appellant did not meet these standards in order to shift the burden to the board of review. Section 1910.63 of the rules of the Property Tax Appeal Board provides in part:

Under the principles of a de novo proceeding, the Property Tax Appeal Board shall not presume the action of the board of review or the assessment of any local assessing officer to be correct. However, any contesting party shall have the burden of going forward. (86 Ill.Admin.Code §1910.63(a)).

Under the burden of going forward, the contesting party must provide substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property. Failure to do so will result in the dismissal of the appeal. (86 Ill.Admin.Code §1910.63(b)).

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Once a contesting party has provided evidence or argument sufficient to challenge the correctness of the assessment of the subject property, the board of review shall be required to go forward with the appeal. . . (86 Ill.Admin.Code §1910.63(c)).

In Commonwealth Edison Company v. Property Tax Appeal Board, 378 Ill.App.3d 901 (2nd Dist. 2008), the court held the appellant never carried its burden of production on such claim and never shifted the burden to the board of review to support its position on the value of the subject property, citing section 1910.63 of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.63(a)).

In conclusion, the Board finds no change in the assessment of the subject parcel's assessment is justified based on this record.

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APPELLANT:	<u>Dean Street Offices LLC</u>
DOCKET NUMBER:	<u>09-02789.001-C-3 thru 09-02789.002-C-3 & 10-01699.001-C-3</u> <u>thru 10-01699.002-C-3</u>
DATE DECIDED:	<u>April, 2014</u>
COUNTY:	<u>Kane</u>
RESULT:	<u>No Change & Reduction</u>

For purposes of this appeal and pursuant to Property Tax Appeal Board rule 1910.78 (86 Ill.Admin Code §1910.78), Docket Nos. 09-02789.001-C-3 and 09-02789.002-C-3 were consolidated with Docket Nos. 10-01699.001-C-3 and 10-01699.002-C-3.¹

The subject property is a 362,332 square foot site improved with two multi-tenant office buildings. The first office building (hereinafter “building A”) containing 12 individual units was constructed in 2001 and contains 43,879 square feet of building area. The second office building (hereinafter “building B”) containing 6 individual units was constructed in 2004 and contains 27,449 square feet of building area. The subject also features a retention pond which results in a net usable land area of 313,382 square feet and a net land-to-building ratio of 4.39:1. Exterior construction consists of steel framing and concrete block with face brick and decorative face block. The one-story buildings are fully sprinklered with all tenant spaces opening outward to the parking area. Interiors contain common hallways and restrooms, with building B having a kitchenette. The improvements also have parking for approximately 329 vehicles, including 12 handicap spaces. The subject is located in St. Charles, St. Charles Township, Kane County, Illinois.

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 for each assessment year was submitted with an estimated fair market value of \$7,600,000 as of January 1, 2009 for the 2009 appeal and \$6,700,000 as of January 1, 2010 for the 2010 appeal. The 2009 appeal was presented using a complete summary appraisal based on the three traditional approaches to value and the 2010 appeal was presented utilizing an updated appraisal using the sales comparison and income approaches to value.

Bryan Barus, employed by Suburban Real Estate Services, Inc., was called as a witness. Barus testified that Suburban Real Estate Services, Inc. is a full service commercial brokerage, property management and investment real estate company. Barus is a licensed real estate broker. Barus stated his office provided all physical property management functions, financial functions along with running and operating the subject buildings; basically everything except brokerage services. Barus collected the rents and paid the bills. Barus’ office acted as the interface between the leasing broker and ownership. The leases were negotiated through him and signed by him. Barus testified that he generated monthly financial statements. Kenneth Boone, d/b/a Dean Street LLC, who acquired the property in 2007, is the current owner. Barus testified that at the time Dean Street LLC bought the property, he was representing the seller and then began representing Dean Street LLC after the purchase.

¹ The appellant requested the consolidation with the board of review having no objection.

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Barus testified that he prepared a financial summary (appellant's Exhibit #1). The financial summary references a snapshot in time from the purchase of the building by Dean Street LLC. and a summary of the income and expenses for 2007, 2008, 2009 and 2010. The financial statement depicts a base rent of \$1,001,473 with pass-through collections of \$177,968, resulting in total revenue of \$1,179,441 in 2007. Net operating income was reported to be \$823,505 with occupancy being approximately 94%. Barus testified the subject was purchased for \$11,975,000 in 2007. The financial statement depicts the 2008 net operating income fell to \$650,285 and continued to fall in 2009 and 2010 to \$398,560 and \$412,560, respectively. Barus testified that the major factors contributing to the substantial decrease in net operating income were the economy; some leases that were written when the building was originally built were maturing and rolling over. Also contributing to the decrease was lower achieved rates for new leases along with an increase in real estate taxes and operating expenses. Barus stated that at the time of purchase in 2007, pass-throughs were \$2.72 per square foot and increased in 2009 and 2010 to \$9.85 and \$7.60 per square foot, respectively. The financial statement depicts 65,379 square feet of the subject was occupied in 2007 and fell to 58,422 and 58,156 square feet in 2009 and 2010, respectively.

Barus testified that they lost some tenants to neighboring projects and to a failure of the general business climate. Appellant's counsel next introduced a letter written by Dave Medlin, a St. Charles, Deputy Assessor, and MAI. The letter was marked as appellant's Exhibit #2. The letter depicts four leases were entered into in 2008 which ranged from \$14.50 to \$16.00 per square foot. Barus testified that the leases also contained concessions given by the landlord that ranged from a month of rental abatement per year, per lease, to relocation costs. In addition, there were brokerage transactional costs and construction costs. Barus testified that the rental abatement was computed based on the gross rent and resulted in a discount of approximately \$1.84 per square foot per year. Barus further testified that instead of just reducing the rent without concessions, the higher rent depicted up front supports a refinancing event or a possible sale. Barus explained that this was customary in the industry.

Appellant's Exhibit #3, an appraisal of the subject property with a valuation date of January 1, 2009 was submitted into evidence. Barus testified that leasable units ranged from 1,100 to 1,300 square feet. He also stated that the per-square-foot rent paid per unit varied depending on size, length of term, credit of the tenant, and transaction costs. Barus testified that the owner was generally unsuccessful in renting out the subject in 2008, 2009 and 2010. Barus further stated that a competitor, Corporate Reserve, similar in size to the subject, is in close proximity to the subject. It is a brand new multi-tenant building with "Class A" finishes and development. Barus testified that from 2008 to 2010 the Corporate Reserve was achieving contract lease rates of \$15 to \$16 per square foot.

During cross-examination, Barus acknowledged that a 3,350 square foot unit at the subject rented for \$15 a square foot which was the same rate for a smaller 1,283 square foot unit. Barus testified that the owner's costs were increasing for operation of the building which caused the tenant pass-throughs to increase. Barus further stated that the pass-throughs were not included in the net operating income because they are passed on to the tenant. Barus testified that the competing neighboring office building offered a superior class or quality of building along with a phase-in of real estate taxes and operating expenses because a lot of their building product was

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still under warranty, whereas the subject is older and those costs such as seal coating the driveway and landscaping upgrades increased the subject's operational expenses.

On re-direct, Barus testified that he felt the owner overpaid for the subject based on the marketing propaganda and his unfamiliarity of the local market.

The next witness called by appellant's counsel was Edward V. Kling. Kling is a licensed appraiser and testified regarding his appraisal methodology and final value conclusions using the three traditional approaches to value. Kling has the Member, American Institute Real Estate Appraisers (MAI) designation from the Appraisal Institute. He attained his MAI designation in 2001 and has been appraising property for 25 years, with an emphasis on commercial office property during the last 5 or 6 years. Kling testified that he has done quite a bit of work in the general area of the subject and owns a 30 year old building located a block away from the subject. He has owned the building since 2008 and converted it from a single tenant building to a multi-tenant office building. An appraisal report with a valuation date of January 1, 2009 was marked as appellant's Exhibit #3 and the appraisal report with a valuation date of January 1, 2010 was marked as appellant's Exhibit #4.

Kling described the subject as a multi-tenant, Class A-minus, B-plus single story office facility. Kling testified that the office demand was pretty good in early 2000 and started to slip in 2007/2008 during the time when Lehman collapsed. In August 2007/2008 he noticed that credit became tight, tenants were vaporizing and the values were trending down as people were trying to renegotiate lease rates. Kling further testified that tenant demand for lease space got worse and transaction activity slowed to a crawl. Because of these factors, Kling stated that lease rates and sales prices went down.

Both the 2009 appraisal report and the 2010 appraisal report depict the subject's highest and best use as vacant would be to hold for future development in light of the current oversupply of office product in the St. Charles market, the extended absorption periods and the low market activity. As improved, the reports depict the subject's highest and best use is as currently improved. The reports further depict that because the highest and best use as vacant and as improved is remarkably different, this indicates functional obsolescence in the subject property as noted by the subject's large interior common areas of unleaseable space and lack of separate metering for water services. The reports indicate both of these factors could hinder any attempt of condominium conversion in the future. (Appellant's Exhibit #3 and #4, page 23-24).²

Under the cost approach to value in both appraisal reports, Kling estimated the subject's site value of \$2,021,314 or \$6.45 per square foot of land area. Kling examined three land sales and one listing. The comparables were located in St. Charles, Illinois and ranged in size from 77,972 to 2,195,424 square feet of land area. Three of the properties sold from October 2006 to May 2008 for prices ranging from \$720,000 to \$11,895,212 or from \$5.42 to \$9.23 per square foot of land area. The land listing had a list price of \$1,999,990 or \$5.52 per square foot of land area. Comparable land sale #1 was given a positive adjustment for shape and a negative adjustment for date of sale and size. Comparable land sale #2 was given a negative adjustment for date of sale and size and comparable #3 was given a negative adjustment for date of sale and a positive

² The 2010 appraisal report (Appellant's Exhibit #4) references a highest and best use date of January 1, 2009.

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adjustment for size. The land listed for sale required a positive adjustment for zoning and shape and a negative adjustment for date of sale since it was a listing. After making adjustments, the comparables had adjusted sales/listing prices ranging from \$6.23 to \$6.60 per square foot of land area. Based on his analysis, Kling estimated the subject's land had a unit value of \$6.45 per square foot of land, or \$2,021,314 or \$2,000,000, rounded as of January 1, 2009 in both the 2009 and 2010 appraisal reports. (Appellant's Exhibits #3 and #4, page 36).

Kling used the Marshall & Swift Valuation Service (Section 15, page 17, Average Class C Building) for the subject to estimate a replacement cost new for the improvements of \$7,227,972 or \$101.33 per square foot of building area. Physical depreciation was estimated using the physical age/life method at 6%. Functional obsolescence of 18% was estimated because of the large interior common area, office units not separately metered for water services and lack of private restrooms in all units. Using Korpacz's Investor Surveys for the fourth quarter of 2008 and first quarter of 2009, Kling estimated external obsolescence at 5% for the current economic downturn. Total accrued depreciation using the breakdown method was estimated to be 27% or \$1,951,552 (Appellant's Exhibits #3 and #4, page 42). He next subtracted the depreciation estimate from the estimated cost new to arrive at a depreciated value of the improvements of \$5,276,420. An estimated contributory value of the site improvements of \$300,000 was added to the depreciated value of the improvements along with the estimated land value to arrive at an estimated value under the cost approach of \$7,576,420 or \$7,575,000, rounded or \$106 per square foot of building area, including land.

Kling also developed the income approach to value. Kling examined four rental comparables consisting of office space located in St. Charles and Geneva, Illinois and three listings. The rental comparables ranged in size from 750 to 4,337 square feet of leasable area. The rental comparables were leased for prices ranging from \$12.60 to \$16 per square foot. Pass-through expenses were reported to range from \$4.35 to \$5.38 per square foot. The rental comparables were adjusted for age, quality of build-out, location size and exposure. The three active listings ranged in size from 414 to 3,200 square feet of lease space available for asking rents of either \$14 or \$15 per square foot. The listings were adjusted negatively for being offerings. Based on this data, Kling estimated a market level rent of \$10 per square foot for the subject's larger spaces and up to \$15 per square foot for the smallest units. Based on these market rents, Kling estimated potential gross income for the subject in the report of \$865,001. The appraisal report depicts expense recoveries of \$5.10 per square foot of lease area for taxes, insurance and operating expenses, which are recovered on a pro-rata basis. Expense recoveries were depicted as \$363,314. Korpacz, first quarter 2009 Investor's Report indicated average office vacancy of 21.1% with Colliers B&K reporting Chicago suburban office vacancy at 20.8%. The subject's building A had a 24% vacancy rate as of January 1, 2009 with building B having a 4% vacancy rate. The subject had a total vacancy rate of 16%. Adding the potential gross income (\$865,001) with the expense recoveries (\$363,314) and subtracting vacancy and collection losses (\$196,530) indicated an effective gross income of \$1,031,775. Expenses of \$431,733 for management, real estate taxes, operating expense, insurance, reserves for replacement and legal/accounting fees were subtracted from the effective gross income to arrive at an estimated net income of \$600,052 in each appraisal report. Analyzing a band of investments, mortgage-equity analysis and published sources, indicated an overall capitalization rate of 8.25% and was considered reasonable for the subject. Kling applied this overall capitalization rate to the subject's estimated net income of \$600,052 which indicated a value for the subject under the income approach of

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\$7,273,358 or \$7,275,000, rounded. Kling also developed a loaded capitalization rate by adding an effective tax rate of 2.14% to the overall rate of 8.25% for a total capitalization rate of 10.39% which indicated a value for the subject of \$7,808,932 or \$7,810,000, rounded, using a loaded overall capitalization rate.

Kling next developed the sales comparison approach. Kling examined four comparable sales and one listing of multi-tenant office buildings. The comparables were located in Lisle, Naperville and Aurora, Illinois. The comparables ranged from 1 to 28 years old, with one of the sale comparables being renovated in 1970. The design and exterior construction of each comparable was not disclosed. The comparables were situated on parcels ranging in size from 87,120 to 288,803 square feet of land area, had land-to-building ratios ranging from 2.55:1 to 4.14:1. The comparables ranged in size from 21,022 to 79,211 square feet of building area with four of the comparables selling from January 2007 to August 2008 for prices ranging from \$3,500,000 to \$10,700,000 or from \$79.22 to \$135.08 per square foot of building area, including land. The listing had an asking price of \$2,081,178 or \$99.00 per square foot. Kling adjusted the comparables for differences when compared to the subject for date of sale, size, exterior construction, occupancy, location, land-to-building ratio and condition. Based on these adjustments, Kling estimated a value for the subject property as of January 1, 2009 under the sales comparison approach of \$7,407,290 or \$7,400,000, rounded or \$100 per square foot of building area, including land for building “A” and \$110 per square foot of building area, including land for building “B.”

Kling also prepared an update appraisal for the 2010 tax year using only the sales comparison approach and income approach. Again, the highest and best use of the subject property as vacant was determined to be to hold the subject for future commercial office development. The highest and best use as improved was its continued existing use. In the restricted report, limited details of four sales and two listings were submitted.

The updated sales comparison approach listed four multi-tenant sales located in St. Charles, Aurora and Carpentersville, Illinois. The two listings were located in Elgin and Aurora. All of the comparables had improvements ranging from 6,800 to 56,379 square feet of building area. Four of the comparables sold from February 2008 to December 2009 for prices ranging from \$1,840,000 to \$4,000,000 or from \$68.85 to \$127.07 per square foot of building area, including land. The listings had asking prices of \$690,000 and \$1,200,000 or \$83.64 and \$101.47 per square foot. Four comparables were adjusted upward, one was adjusted downward and comparable number 2 had a net adjustment that was considered equal to the subject. Details of the various adjustments or what was considered was not provided. Based on the adjustments, Kling estimated a value for the subject property as of January 1, 2010 under the updated sales comparison approach of \$6,694,010 or \$6,700,000, rounded or \$90 per square foot of building area, including land for building “A” and \$100 per square foot of building area, including land for building “B.”

Kling also updated the income approach to value for the 2010 tax year restricted appraisal report. Kling estimated rent for the subject spaces at \$10 to \$14 per square foot on a net basis as of January 1, 2010. Detailed information regarding analysis of market rents was not provided. Based on his estimation of market rents, Kling estimated the subject’s potential gross income for 2010 to be \$806,747. Expense recoveries based on \$4.98 per square foot indicated expense

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recoveries of \$355,213. Vacancy was estimated to be 15% which resulted in a total potential gross income of \$1,161,960 less vacancy of 15% or \$174,294 resulting in an estimated effective gross income of \$987,666. Expenses for management, real estate taxes, operating expenses, insurance, reserves and legal/accounting indicated total expenses of \$419,906 which indicated an estimated net income of \$567,760. An unexplained capitalization rate of 8.5% was applied to the estimated net income to indicate a value by the updated income approach of \$6,679,529 or \$6,680,000, rounded.

After giving equal consideration to both the updated sales comparison approach to value and the updated income approach to value, Kling estimated the subject's market value as of January 1, 2010 of \$6,700,000.

Under cross examination, Kling testified that as an appraiser with an MAI designation he complies with USPAP. Kling also testified that under USPAP, as an appraiser, he is required to discuss prior sales history. Kling further admitted that in addition to actually reporting the prior sales history that occurred, he is required to analyze the prior sales history that occurred within three years of his valuation date. Kling next admitted that he did not do that in this case, he only reported a single sale. Kling testified that it did not have any bearing as of the valuation date. When questioned regarding land sale #1, Kling testified that he did not know off hand if it was a sale between related parties. Kling was next questioned regarding what Barus described as a good rental comparable known as "The Reserve." Kling testified that he did not think "The Reserve" was a good rental comparable because it sits in what he described as the middle of nowhere. Kling testified that "The Reserve" was probably the best in the immediate area but it was probably not as good as the subject based on location. Kling further testified that his income analysis did not reflect any rent abatements in his forecast; he just looked at it as straight-up rents as of the valuation date. Kling testified that he did not project the cash flow less monthly lease-off for tenant allowances or brokered commissions. Based on his report, Kling could not determine if he adjusted rental comparable #3 for location. Kling thought rental comparable #3 was similar to the subject in location. Kling testified that he did not compare the estimated expenses in his stabilized income statement with the subject's actual expenses, and admitted they could be higher or lower. Kling testified that based on his training and experience, appraisal methodology allows for an adjustment for leased fee sales when an appraiser is preparing a fee simple valuation, provided the appraiser had access to contract rents or specific information for the buildings. Kling stated an adjustment could be made based on the differences in income or lack of income. While being questioned on this point, Kling testified that he looked at all the information that was provide for the subject property in terms of income and expenses, however, he was not provided with the actual full leases, and therefore, he did not know if there were specific abatements, concessions, et cetera. Kling acknowledged that he utilized the face rent even though he was preparing an analysis in fee simple. Kling agreed with the statement that the best sale comparable is the one with the least amount of adjustments.

During further cross-examination, Kling testified that it would be important to analyze the subject's prior sale in 2007; however, it was a leased fee transaction and was based on cash flows that were written well before the valuation date. Kling acknowledged that he could have analyzed the contracts and taken them back to what the market was, and made some adjustments, but he found it was just as easy, in terms of his income approach to look at what the market rents were as of the valuation date. Kling testified that the income approach is the stronger approach

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to value on a property such as the subject. Kling agreed that it was better to use fee simple sales as opposed to leased fee sales when preparing a sales comparison analysis. Kling admitted that he could have gotten the contract rents from the subject to determine how much of the prior sale of the subject involved leased fee. Kling testified that he received the subject's rent roll while appraising the subject; however, he did not look at the former rent roll of the subject from when it sold previously in 2007. Kling's opinion was that the subject's purchase in May of 2007 for \$11,975,000 was not indicative of the subject's value mainly because it was occupied with leased tenants. Kling agreed that he would have been required to back out the leases from the purchase price in 2007. Kling explained that he had tenants tell him that they were not paying the same rental rates from the date of purchase in 2007 as they were on the valuation date. Kling felt, based on this, that the leased fee transaction from 2.5 to 3 years prior really wasn't relevant to what the market rents were as of the valuation date. Kling could not explain why he used other sales which occurred in 2007 and yet did not use the subject's actual sale in 2007. Kling testified that he would normally include the sale of the subject itself in a case like this, when preparing a sales comparison analysis.

During re-direct, Kling testified that the subject's 2007 sale contained leases that were in place from 2001 through 2007. Kling testified that the economic times in 2007 were vastly superior than the conditions that existed on January 1, 2009 and 2010. Kling further testified that if he were to take those contract rents and restate them for a fee simple analysis, he would have to ignore those rents and re-compute what they would be in today's market. Kling testified that is what they did in his income approach to value. Kling opined that the historical rents provided very little help from an income point of view. Kling further reiterated that the pass-through amounts at the time the subject sold were \$2.72 per square foot and by 2009 and 2010 had increased to \$6 or \$7 per square foot. If Kling had used the subject's 2007 sale, he testified that he would have had to use the pass-through amounts in effect on January 1, 2009 and January 1, 2010. He would have ignored the pas-through amounts in effect at the time the subject was sold. Kling further reiterated that in 2007 the subject had an occupancy rate of approximately 96.5%; however, in 2009 and 2010 the vacancy was between 16% and 20%, which is what he would have used if he utilized the subject's sale in 2007. Kling testified the capitalization rate in 2007 was somewhere around 7% which would have provided no guidance in his derived market capitalization rate in 2009 or 2010 based on what he saw in the market. Kling testified that he would have used the capitalization rates as determined from the 2009 and 2010 market. Kling estimated the subject's net operating income of approximately \$600,000 when in reality the subject's actual net income was \$400,000. Kling testified that had he used the subject's actual net income, he would probably value the subject at \$4,000,000 or \$5,000,000.

Based on the above testimony and evidence, the appellant requested a reduction in the subject's assessment commensurate with the 2009 appraisal and the updated 2010 appraisal reports, respectively.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's 2009 total assessment of \$3,037,775 and 2010 total assessment of \$3,204,418 were disclosed. The subject's 2009 assessment reflects a market value of approximately \$9,119,709 or \$127.86 per square foot of building area, including land, using the 2009 three-year median level of assessments for Kane County of 33.31% as determined by the Illinois Department of Revenue. The subject's 2010 assessment reflects a market value of approximately \$9,605,570 or \$134.67

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per square foot of building area, including land, using the 2010 three-year median level of assessments for Kane County of 33.36%. In support of the subject's assessments, a letter from the St. Charles Deputy Assessor, David Medlin was submitted along with property record cards, land sales, improved sales, transfer declaration sheets and a Korpacz study.

The board of review did not present testimony regarding its submission of evidence, but rather stood on the evidence as submitted.³ Appellant's counsel was allowed to question Deputy Assessor Medlin regarding his submission, which is reiterated below in this decision.

David Medlin has the MAI designation and is the Deputy Assessor for the St. Charles Township Assessor's Office. Medlin's letter depicts the subject consisting of two multi-tenant office buildings containing a total of 70,628 square feet of building area. The buildings are described as being located on a total of 359,369 square feet of land area. The site contains approximately 92,608 square feet of detention and/or wetlands. The letter indicates a net buildable site area of 266,761 square feet or 6.12 acres of land area. Medlin's letter indicates the subject's fair cash value for the subject's 2009 assessment was established using the Camavision software and was supported using sales ratio studies from the three previous year's sales (2006, 2007 and 2008) of office properties found in the market of the subject. The letter further depicts the subject sold in May 2006 for \$12,300,000 or for \$174.15 per square foot of building area, including land. The subject sold again in May 2007 for \$11,975,000 or \$169.55 per square foot of building area, including land. Both sales were described as arm's-length transactions and were above the fair cash value as reflected by its assessment in 2009. A limited grid analysis containing five office building sales was included in the letter. The five sales were located in St. Charles, Geneva, North Aurora and Elgin, Illinois. The sale comparables contained from 8,020 to 54,957 square feet of building area and sold from December 2006 to December 2009 for prices ranging from \$2,200,000 to \$9,900,000 or from \$146.48 to \$274.31 per square foot of building area, including land. The subject's May 2006 sale for \$12,300,000 or \$174.15 per square foot of building area, including land, and its May 2007 sale for \$11,975,000 or \$169.55 per square foot of building area, including land, were also depicted.

Medlin also questioned various aspects of the appraisals submitted by the appellant. Regarding the cost approach and sales comparison approach to value as prepared by Kling; the letter points out that appraisal land sale #1 was an interrelated sale, and therefore, not an arm's-length transaction. In support of this point, a transfer declaration sheet was submitted indicating the seller was Peck Triangle, LLC, with the buyer being Peck Road Venture, LLC, located at the same address as the seller and signed by the same agent. The letter further depicts land sale #2 was incorrectly reported by the appraiser as containing 145,926 square feet of land area, while in fact the transfer declaration sheet attached to the letter depicts the land sale as containing 94,446 square feet of land area, which was supported by the assessor's records. It was reported that land sale #2 contained within the appraisal report split into 2 parcels prior to the sale, and as shown on the attached transfer declaration sheet had an actual sales price of \$1,133,352 for 94,446 square feet of land area or \$12 per square foot.⁴ The letter further depicts the other parcel from the split land sale sold in January 2007 for \$757,422 or \$12 per square foot of land area for 63,104 square

³ The board of review's evidence was substantially the same for both the 2009 and 2010 appeals.

⁴ The appraisal report depicts land sale #2 as containing 145,926 square feet of land area and sold for \$1,133,352 or \$7.77 per square foot of land area. (Appraisal, page 36).

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feet of land area. The letter further indicates land sale #4 is located in an unincorporated area of Kane County and is currently zoned for farming. It was argued that using the corrected information as disclosed above, a land value of \$4,007,808 should have been used instead of the estimated \$2,000,000, which, when added to the estimated value of the improvement, would have resulted in a corrected estimate of \$9,584,228, which is supported by the subject's current assessment. Medlin further points out that Kling improperly adjusted sale comparable #1 downward in his sales comparison approach, even though the sale occurred in August 2008 while a valuation date of January 1, 2009 was being considered. Sale #2 was described in the comments section of the report as being similar in location to the subject; however, Medlin points out that Kling incorrectly made a downward adjustment. Medlin also disagreed with the downward adjustment made by Kling to comparable sale #4 for date of sale when the sale took place in June 2008.

Medlin's letter also criticized Kling's income analysis. Medlin indicates that on page 58 of the appraisal report the actual rents of the subject units indicate the subject's rents varied from a net rent of \$7.60 to \$21.01 per square foot of unit space. Medlin further highlights that only two units were leased for under \$12 net per square foot, with four units leasing for over \$18 net per square foot. Medlin calculated the remaining seven units had net rental rates ranging from \$14.50 to \$17 per square foot. From this data, Medlin points out that on page 58 of the report, the total annual net rent is \$868,005. Medlin argues that this net rental income came from only the occupied rental space of 58,141 square feet. However, the subject is reported to contain 71,328 available square feet of leased area, which means the average net rent in the subject complex was \$14.93 per square foot of building area. Medlin also argued that the theory of economies of scale in regards to rent did not apply within the subject complex. In support of this point, Medlin highlights that a 1,387 square foot unit rented for \$14.50 per square foot in September 2008 with a 3,530 square foot unit renting in May 2008 for \$15 per square foot. Medlin also questioned the overall capitalization rate of 8.25% as determined by Kling. Medlin points out that on page 66 of the report, Kling indicates that the overall rate for comparable sale #1 could not be verified and was derived in 2007. However, Medlin indicates the sale occurred in 2008. Medlin further states in his letter that he was able to discuss sale #1 with the seller of the property and from his discussions learned the property sold for a sub 7% overall capitalization rate. Medlin opined that the 8.25% overall capitalization rate as determined by Kling was too high based on the average rate of 7.7% as indicated in the First Quarter 2009 Korpacz Survey for Chicago Office Market. Medlin's letter indicates that with the understatement of potential rent of the subject units, along with the overstatement of the overall capitalization rate, the concluded value in Kling's appraisal report is under-stated.

During cross-examination, Medlin acknowledged that his letter was not an appraisal report. Medlin testified that he only verified the one sale which indicated a sub 7% capitalization rate and that none of his sales were adjusted. Medlin further testified that even though he only personally verified the one sale, his other sales in the record were supported by the CoStar reports and the transfer declaration sheets. Medlin did not know if his sales were leased fee.

Based on the above evidence and testimony, the board of review requested the Property Tax Appeal Board to confirm the 2009 assessment based on the 2007 purchase of the subject and for the Property Tax Appeal Board to lower the 2010 assessment based on market deterioration from 2009 to 2010.

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The appellant submitted rebuttal evidence consisting of various property characteristic sheets, rent rolls and photographs. Testimony regarding this evidence was not elicited at hearing other than set out above.

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 for 2009 is the subject's sale price in May 2007 and thus no reduction in the subject's assessment is warranted for 2009. For the tax year 2010, the Board finds a reduction is warranted.

Appellant's appraiser, Edward V. Kling testified in support of his appraisal report with a valuation date of January 1, 2009 which estimated the subject's value of \$7,600,000 and his updated restricted appraisal report with a valuation date of January 1, 2010 which estimated the subject's market value of \$6,700,000. The Board finds the estimated values are not adequately supported by the evidence contained in this record.

The evidence revealed the subject sold in May 2006 for \$12,300,000 or for \$174.15 per square foot of building area, including land. The subject sold again in May 2007 for \$11,975,000 or for \$169.55 per square foot of building area, including land. Both sales were described as arm's-length transactions which was not refuted in the testimony or record herein. The Board gave less weight in its analysis to the final value conclusions in Kling's appraisal reports because the board finds the 2009 report contains significant errors which call into question the final value conclusion. As Medlin pointed out, land sale #1 was an interrelated sale, and therefore, not an arm's-length transaction. This was not refuted by the appellant. The information regarding this sale indicating the buyer and seller were related was revealed through a public record, the transfer declaration sheet. The Board finds that with very little due diligence, the appraisers could have discovered these facts and/or chose to not address this issue. Medlin further indicated land sale #2 was incorrectly reported by the appraisers and was split into 2 parcels prior to the sale, and had an actual sales price of \$1,133,352 for 94,446 square feet of land area or \$12 per square foot, and not the \$7.77 per square foot depicted in the appraisal. Again, the Board finds this information, through collection of the transfer declaration sheets, was easily obtainable with very little due diligence and was not addressed by the appraisers. The Board finds Medlin's argument that using the corrected information as disclosed above, a land value of approximately \$4,007,808 should have been used instead of the estimated \$2,000,000, which, when added to the estimated value of the improvement, would have resulted in a corrected estimate of \$9,584,228, which is supported by the subject's current assessment.

In regards to Kling's sales comparison approach, the Board questions Kling's downward adjustment for sale comparable #1 even though the sale occurred in August 2008 while a valuation date of January 1, 2009 was being considered. Further, Kling made a downward adjustment to comparable sale #4 for date of sale when the sale took place in June 2008. The Board finds that while these adjustments may have been required, they were not well supported in the record. In addition, Sale #2 was described as being in a similar location to the subject,

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however, Kling made a downward adjustment for location. The Board finds these adjustments were questionable and not well reasoned or supported in the appraisal report, which again, calls into question the final value conclusion of \$7,400,000 by the sales comparison approach. In addition, Kling testified that the best sale comparable is the one with the least amount of adjustments. Yet, he did not include the subject's May 2007 sale in his sales comparison approach, which would have required no adjustment, even though, he used other 2007 sales. Further, the Board finds the evidence herein indicates USPAP requires an appraiser to discuss the prior sales history of the subject, if any. Kling admitted that in addition to actually reporting the prior sales history of the subject, he is required to analyze the prior sales history within three years. Kling admitted that he did not do that in this case as he only reported a single sale,⁵ leaving out the 2006 sale of the subject.

The Board also gave less weight to the final value conclusion as estimated in Kling's income approach analysis. The Board gave greater weight to Medlin's critique regarding the subject's net rental income. As Medlin pointed out, the actual rents of the subject's units indicate the subject's rents varied from a net rent of \$7.60 to \$21.01 per square foot of unit space. The record disclosed that only two units were leased for under \$12 net per square foot, with four units leasing for over \$18 net per square foot. The total annual net rent is \$868,005, as found on page 58 of the report. The Board agrees that with 71,328 square feet of available leased area, the average net rent in the subject complex was approximately \$14.93 per square foot of building area. Kling estimated the subject's average market rents to be \$12.13 per square foot of leased area. Further, the Board finds the appraisers did not exercise due diligence in preparation of the estimated overall capitalization rate. Kling estimated an overall capitalization rate of 8.25%. On page 66 of the report, Kling indicates that the overall rate for comparable sale #1 could not be verified and was derived in 2007. However, the sale occurred in August of 2008. Medlin testified that he verified this sale with the seller and found the property sold for a sub 7% overall capitalization rate. In addition, the First Quarter 2009 Korpacz Survey for Chicago Office Market indicated an average overall capitalization rate of 7.7% which the Board finds lends credence to Medlin's testimony.

Based on the errors, omissions and lack of due diligence, the Board finds the final estimate of value in Kling's appraisal report for 2009 is not well supported and is not credible. The Board further finds, these errors and omissions were not refuted or addressed at the hearing herein, even though the errors and omissions were submitted to the appellant's appraiser well prior to the hearing. The Board finds that with the understatement of potential rent of the subject units, along with the overstatement of the overall capitalization rate, and the errors and omissions contained within the sales comparison approach, the concluded value in Kling's 2009 appraisal report is under-stated.

Kling also submitted an updated appraisal for the 2010 tax year with an estimated value for the subject of \$6,700,000. The Board gave this updated appraisal report little weight in its analysis. The Board finds the sale comparables lacked detail from which the Board could make a valid comparison to the subject and further finds the adjustment process was not supported in any manner. In addition, the income analysis in the 2010 updated appraisal depicts estimated rent at \$10 to \$14 per square foot on a net basis as of January 1, 2010 with no supporting market data to

⁵ The appraisal only reports the 2007 sale.

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support this claim. Further the Board finds an 8.5% overall capitalization rate was applied without even the slightest discussion of how the rate was determined. The Board finds this updated appraisal report states conclusory estimates which are not supported in this record. Therefore, the board finds the 2010 updated appraisal is not credible, reliable or a fair indication of the subject's fair market value as of 2010. The Board gave this updated appraisal no weight in its analysis.

The board of review relied on the data submitted by Medlin, the Deputy Assessor for St. Charles Township. Medlin submitted a limited grid analysis containing five office building sales. The comparables sold from December 2006 to December 2009 for prices ranging from \$2,200,000 to \$9,900,000 or from \$146.48 to \$274.31 per square foot of building area, including land. The record revealed these sales were not adjusted for differences when compared to the subject, and may have been leased fee sales, with only one having been verified. Based on the lack of detail, lack of adjustments and verification, the Board gave these sales little weight in its analysis.

Having considered both parties' raw sales data, the testimony and evidence herein, the Board finds the appellant has not shown by a preponderance of the evidence that the subject was overvalued as reflected by its 2009 assessment. The subject's 2009 assessment reflects a market value for the subject of \$9,119,709 or \$127.86 per square foot of building area, including land. Both parties submitted comparable sales, which were given less weight by the Board in its analysis for the various reasons cited above. However, the Board finds the unadjusted sales submitted by both parties sold from December 2006 to December 2009 for prices ranging from \$2,200,000 to \$12,300,000 or from \$79.22 to \$274.31 per square foot of building area, including land. The subject's current 2009 assessment reflects a market value for the subject of \$9,119,709 or \$127.86 per square foot of building area, including land, which is well within the unadjusted range of comparables in this record. The Board finds the subject's 2009 assessment is supported by Kling's cost approach to value with corrections to the land sales estimates, the unadjusted sales submitted by both parties, and is more fully supported by the subject's purchase in May 2007 for \$11,975,000 or \$169.55 per square foot of building area, including land. The Board finds that based on the credibility of the witnesses, their testimony and the reports herein, the manifest weight of the evidence supports the subject's current 2009 assessment and no reduction in the subject's assessment for 2009 is warranted.

For the 2010 tax year, the Board finds the testimony herein by both parties indicated a reduction in the subject's assessment was in order based on a downturn in the market. Based on the appraisals submitted by Kling and his final value conclusions, the board finds Kling opined a reduction of 12% was appropriate from 2009 to 2010. The board of review, at hearing requested a reduction in the subject's 2010 assessment from 15% to 20% from the 2009 current assessment. The Board finds based on the testimony herein and evidence in this record, a reduction in the subject's 2010 assessment commensurate with the board of review's request is warranted.

In conclusion, the Board finds the appellant has not demonstrated the subject property was overvalued in 2009 by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review 2009 is correct and a reduction is not warranted. The Board further finds both parties agreed the 2010 assessment indicated the subject

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was overvalued for the 2010 tax year and a reduction is warranted in the subject's 2010 assessment.

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APPELLANT:	<u>Terry Hansen</u>
DOCKET NUMBER:	<u>11-01289.001-C-1</u>
DATE DECIDED:	<u>December, 2014</u>
COUNTY:	<u>Morgan</u>
RESULT:	<u>No Change</u>

The subject property consists of a one-story car wash that contains 2,912 square feet of building area. The building was constructed in 1986. The car wash has two automatic wash bays and four manual wash bays. The subject property has 38,520 square feet of land area. The subject property is located in Jacksonville, Morgan County.

The appellant contends overvaluation and assessment inequity as the bases of the appeal. In support of these arguments, the appellant submitted an analysis of four suggested comparable properties. The analysis was labeled "Actual Comparable Sales of Manual Car Washes Properties." The appellant did not provide any descriptive information with respect to the subject property. The suggested comparables are located in South Roxana, Madison and St. Jacob, Illinois, which are from 70 to 80 miles from the subject property. The comparables sold from March 2003 to February 2011 for prices ranging from \$30,000 to \$122,000 or from \$10.95 to \$72.62 per square foot of building area including land. These comparables have improvement assessments ranging from \$3.20 to \$14.71 per square foot of building area. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject's total assessment of \$76,460.¹ The subject's correct assessment reflects an estimated market value of \$231,167 or \$79.38 per square foot of building area including land when applying the 2011 three-year average median level of assessment for Morgan County of 33.24% as determined by the Illinois Department of Revenue.

In its narrative response, the board of review pointed out that the appellant did not give any information regarding the subject property nor give a reason to show how they arrived at the requested assessment of the subject property. The board of review provided a description of the subject property.

In support of its assessment, the board of review submitted information on three suggested comparable sales of car wash properties. One comparable is located in Jacksonville like the subject while two comparables were located in South Roxana and Quincy, Illinois. Comparable #2 was also used by the appellant. The comparables had varying degrees of similarity when compared to the subject. The comparables sold from February 2011 to August 2013 for prices ranging from \$110,000 to \$375,000 or from \$55.00 to \$115.88 per square foot of building area including land. Comparable #1, which is located in Morgan County like the subject, has an

¹ The "notes on appeal" submitted by the Morgan County Board of Review depicts an incorrect assessment amount for the subject property of \$76,460 for the 2011 tax year. The subject had a final assessment for the 2011 tax year of \$76,840 as depicted by the final decision issued by the Morgan County Board of Review.

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improvement assessment of \$58,500 or \$18.08 per square foot of building area. The subject property has an improvement assessment of \$19,280 or \$6.62 per square foot of building area.

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

Under rebuttal, the appellant attempted to submit a description of the subject property and five new comparable sales to bolster the overvaluation claim. The Board finds it cannot consider these new comparables. Section 1910.66(c) of the rules of the Property Tax Appeal Board states:

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 chief in guise of rebuttal evidence. 86 Ill.Admin.Code §1910.66(c).

Conclusion of Law

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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and no reduction in the subject's assessment is warranted.

The parties submitted five suggested comparable sales for the Board's consideration. The Board gave less weight to comparables #2 through #4 submitted by the appellant. Comparables #2 and #3 are dissimilar to the subject in building area; comparables #3 and #4 are considerably older in age than the subject; and comparables #2 and #3 sold in 2005 and 2006, which are dated and less reliable indicators of value in relation to the subject's January 1, 2011 assessment date. The Board finds the remaining three comparable sales are more similar when compared to the subject in age, design, use, size and most features. One comparable was common to both parties. These comparables sold for prices ranging from \$110,000 to \$375,000 or from \$55.00 to \$115.88 per square foot of building area including land. The subject's assessment reflects an estimated market value of \$231,167 or \$79.38 per square foot of building area including land, which falls within the range established by the most similar comparable sales contained in this record on a per square foot basis. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Board finds the subject's assessed valuation is supported. Therefore, no reduction in the subject's assessment is warranted.

The appellant also contends assessment inequity as a basis to this appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and no reduction in the subject's assessment is warranted.

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The parties submitted limited assessment data for five suggested assessment comparables. The Board gave no weight to the comparables submitted by the appellant. None of the comparables submitted by the appellant were located in Morgan County as is the subject property. In Cherry Bowl v. Property Tax Appeal Board, 100 Ill.App.3d 326, 331 (2nd Dist. 1981), the appellate court held that evidence of assessment practices of assessors in other counties is inadmissible in proceedings before the Property Tax Appeal Board. Moreover, the Court observed that the interpretation of relevant provisions of the statutes governing the assessment of real property by assessing officials in other counties was irrelevant on the issue of whether the assessment officials within the particular county where the property is located correctly assessed the property. Therefore, based on the court's holding in Cherry Bowl, the Property Tax Appeal Board finds the assessments of other car wash properties located in different counties than the subject are not relevant or probative of whether the assessments established by Morgan County assessment officials is equitable. The Board further finds only one comparable submitted by the board of review is located in Morgan County like the subject. This comparable has an improvement assessment of \$58,500 or \$18.08 per square foot of building area. The subject property has an improvement assessment of \$19,280 or \$6.62 per square foot of building area, which is supported by the only pertinent assessment comparable contained in this record. Based on this record the Board finds the appellant failed to demonstrate by clear and convincing evidence that the subject's improvement was inequitably assessed. Therefore, no reduction in the subject's assessment is warranted.

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APPELLANT:	<u>Inland Real Estate Corporation</u>
DOCKET NUMBER:	<u>10-01799.001-C-3 thru 10-01799.002-C-3</u>
DATE DECIDED:	<u>November, 2014</u>
COUNTY:	<u>Kane</u>
RESULT:	<u>Reduction</u>

The subject property consists of two parcels with a combined land area of 350,832 square feet. The property is improved with a one-story neighborhood shopping center constructed in 2002 with a net rentable area of 72,342 square feet. The improvement is divided into 13 units ranging in size from 1,192 to 32,924 square feet of building area. The shopping center is known as the Fabyan Randall Plaza.¹ The property has a land to building ratio of 4.85:1. The property is located at the southeast corner of the intersection of Randall Road and Fabyan Parkway in Batavia, Geneva Township, Kane County.

At the beginning of the hearing the parties stipulated to the qualifications of the appraisers to give opinion testimony, the characteristics of the building and the highest and best use of the subject property.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Thomas W. Grogan of Sterling Valuation Real Estate Appraisers & Consultants estimating the subject property had a market value of \$8,300,000 as of January 1, 2010.

Grogan was called as a witness on behalf of the appellant and identified Appellant's Exhibit #1 as the appraisal of the property he prepared. Grogan inspected the property on August 5, 2011. The witness described the subject property as being located at the corner of Fabyan Parkway and Randall Road, however, Randall Road has no curb cuts to the subject property. He testified that a broker had commented that the lack of curb cuts was one of the prohibitive factors of leasing the central vacant tenant. In estimating the market value of the subject property the appellant's appraiser considered the cost approach, the sales comparison approach and the income approach.

Under the cost approach the first step was to estimate the value of the land using four land sales located in St. Charles, North Aurora, Geneva and Batavia. The comparables ranged in size from 145,926 to 692,604 square feet of land area. The land comparables sold from April 2007 to October 2009 for prices ranging from \$1,133,500 to \$3,230,000 or from \$3.90 to \$12.82 per square foot of land area. Grogan indicated in the report that adjustments were considered for such areas as property rights sold, market trends, financing, location, conditions of sale and physical characteristics. Based on these sales the appraiser estimated the subject land had a market value of \$10.00 per square foot of land area or \$3,510,000, rounded.

Grogan estimated the replacement cost new of the improvements using the *Marshall & Swift Valuation Guide*, which indicated the subject should be classified as a Class C Average Shopping Center, with an adjusted base cost of \$77.63 per square foot of building area, inclusive

¹ The shopping center also includes a free-standing Walgreen's store and a Lumes Pancake House which are not part of the subject parcels.

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of sprinklers. The appraiser adjusted the base cost by an area multiplier and a local multiplier to arrive at an adjusted base cost of \$78.41 per square foot of building area and a building cost of \$5,672,336. To this Grogan added 5% for indirect costs to arrive at a replacement cost new of \$5,955,953. The appraiser then added 5% for entrepreneurial profit to arrive at a total replacement cost new of \$6,253,751.

Using an effective age of 8 years and an economic life of 40 years the appellant's appraiser estimated the subject property suffered 20% or \$1,250,750 in physical incurable deterioration. Due to the use of replacement cost, the appraiser made no deduction for items of functional obsolescence. Grogan made no deduction for external obsolescence but indicated in the report that the local economy was struggling, which he reflected in the estimated land value and thus no further deduction was made for external obsolescence. The depreciated cost new of the building improvements was estimated to be \$5,003,001. Grogan also estimated the depreciated cost of the site improvements to be \$180,000. Adding the various components the appellant's appraiser estimated the subject property had an indicated value under the cost approach of \$8,690,000.

Grogan next developed the sales comparison approach using four sales and one listing of shopping center properties located in Elgin, West Dundee, Aurora and South Elgin. The comparables ranged in size from 41,875 to 238,115 square feet of gross leasable area. The appraisal indicated that comparables #1 through #4 were built from 1961 to 2008 with comparable #3 having an addition in 1994. No age was reported for comparable sale #5. The appraisal indicated that comparable sale #1 was 50% occupied on the date of sale, comparable #3 was 88% occupied at the time of sale and comparable sale #4 was 97% occupied at the time of sale. Comparables #1 through #4 sold from January 2007 to March 2010 for prices ranging from \$6,700,000 to \$24,000,000 or from \$43.44 to \$112.32 per square foot of gross leasable area, including land. Comparable #5 had a list price of \$3,850,000 or \$91.84 per square foot of gross leasable area. Adjustments were made to the comparables for location, gross leasable area, year built, condition, land to building ratio and occupancy. Based on these sales the appraiser estimated the subject property had an indicated value of \$110.00 per square foot of gross leasable area, land included, or \$7,960,000, rounded.

The final approach to value developed by Grogan was the income approach. The first step was to estimate the market rent. Grogan testified that the potential gross income was estimated through the use of market rents and talking with the broker of the property. The witness testified he reviewed the subject property's actual operating and expense statements but those included Walgreens and the Lumes restaurant, therefore, he relied mostly on market derived operating expenses.

Grogan's report also indicated that the subject's October 2010 rent roll disclosed the subject property had a net rentable area of 72,342 square feet with one 1,192 square foot unit vacant for an occupancy rate of 98.35%. He explained that this was misleading because the subject's largest unit with 32,924 square feet, located in the middle of the property, was on a short term lease ending on October 31. Grogan stated in the report that management has had problems leasing this unit since the end of 2008 when the previous tenant, Circuit City, filed for bankruptcy. The appraiser further stated the leasing agent informed him this unit was listed on Loopnet as available for lease for \$12.00 per square foot on a net lease basis, although a more realistic rate is closer to \$8.00 to \$9.00 on a net lease basis. The 1,192 square foot unit was

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available for \$20.00 per square foot on a net lease basis. Grogan also indicated that the most recent leases signed for the subject property were for units ranging in size from 1,192 to 2,250 square feet. The leases were entered from September 2009 to July 2010 for \$5.33 to \$22.00 per square foot, net. The lease at the high end was to Smashburger and included tenant improvement concessions. Three of the leases were for terms of approximately 5 to 6 years while the lease to Vignette Home Décor, at \$5.55 per square foot, was for a term of two years.

Grogan's report also contained five comparables located in Geneva, West Dundee, St. Charles and Warrenville that ranged in size from 31,095 to 171,648 square feet of gross leasable area with available space ranging from 11,200 to 36,143 square feet. The comparables had listing rentals ranging from \$8.00 to \$20.00 per square foot on a net basis.

Grogan testified he estimated three separate market rents: for smaller units less than 5,000 square feet of \$17.50 per square foot on a net basis; medium size units with approximately 10,000 square feet of \$15.00 per square foot net; and the larger unit with 32,924 square feet of \$10.00 per square foot net. Grogan testified the weighted rent for the subject property was \$13.32 per square foot net, for a total potential gross income of \$963,555.

The appraiser then added recoverable expenses which included the tenants' pro-rata share of operating expenses and real estate taxes totaling \$354,441. Adding these components the appraiser arrived at a total potential gross income of \$1,317,996 or \$18.22 per square foot. Grogan testified he estimated the subject's vacancy and collection loss to be 15% through the market. He testified market vacancy rates were approximately 12.1% but due to the subject's long-term problem with leasing the larger central vacant unit he estimated the vacancy and collection loss to be 15% resulting in an effective gross income of \$1,120,297.

Grogan estimated operating expenses using the 2010 edition of the "Income/Expense Analysis for Shopping Centers" published by the Institute of Real Estate Management (IREM). Grogan testified that IREM classified shopping centers into different building sizes and he relied on the range between 50,000 and 99,000 square feet located in region five, which is roughly the Midwest area. The estimated operating expenses totaled \$175,379 included: common area maintenance, \$28,937; services, \$54,257; utilities, \$14,468; insurance, \$10,851; management fee, \$56,015; and replacement reserves, 10,851. Deducting expenses resulted in a net operating income of \$944,917.

The next step was for the appraiser to estimate a capitalization rate. Grogan noted comparable #5 was listed for sale and had a 9.9% capitalization rate. The witness also stated that the Korpacz Real Estate Survey, First Quarter, 2010 had capitalization rates for shopping centers ranging from 7.75% to 11.40%. Grogan also developed the band of investment technique and arrived at a rate of 8.97%. Grogan estimated the subject had an overall capitalization rate of 9%. To this he added an effective tax rate of 2.44% to arrive at a loaded capitalization rate of 11.44%. Capitalizing the net operating income resulted in an estimated value under the income approach of \$8,260,000, rounded.

In reconciling the three approaches to value, Grogan placed minimal weight on the cost approach, secondary consideration on the sales comparison approach and primary consideration on the income approach to value in arriving at an estimated value of \$8,300,000 as of January 1,

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2010. Based on this evidence the appellant requested the subject's assessment be reduced to reflect a market value of \$8,300,000.

Under cross-examination Grogan clarified that he had the operating expenses for the shopping center but there was no allocation between the subject property and the Walgreens and the Lumes restaurant. With respect to the comparable rental listings in the appraisal Grogan indicated they were listings at the time he prepared the appraisal as opposed to the date of valuation. The witness also acknowledged his rental comparable located on Randall Road had listing rents of \$16.00 to \$20.00 per square foot, net.

Grogan also agreed both Randall Road and Fabyan Parkway are major thoroughfares in Kane County. With respect to his land sales the witness indicated that land sales #1, #2 and #3 were interior parcels not located on major thoroughfares. Land sale #4 was a corner parcel located on Fabyan Parkway that sold for \$12.82 per square foot of land area, the highest of his four land comparables.

Grogan testified he made no deduction for functional obsolescence and the external obsolescence was reflected in the estimated value of the land price. The appraiser stated the land sales themselves reflect the economic obsolescence within the market.

Grogan also agreed his comparable sales #1 through #4 were leased fee sales and he had no information about the leases that were in place at the time of sale. He also agreed his comparable sale #5 was a listing and he had no information about the leases that were in place. He made the assumption that the leases were at market value in his analysis.

Grogan testified his rental comparable #1 was roughly thirty miles north of the subject property; rental comparable #2 was roughly twenty miles north of the subject property; rental comparable #3 was six miles north of the subject property; rental comparable #4 was one mile north of the subject property; and rental comparable #5 is roughly ten miles east of the subject property in DuPage County. Rental comparable #4 was closest to the subject property, located along Randall Road and had the highest rental rate.

Grogan also indicated the overall vacancy for the Chicago Retail market in the First Quarter of 2010 was 12.1% and 11.8% for the Far West Suburbs. He selected a vacancy rate of 15%.

Grogan agreed that the large retail space in the subject property is approximately 48% of the subject's leasable area. He also testified this large unit was not leased as of the hearing date (4/23/14). He also explained the short term lease for this area to Spirit Halloween was for three months. On page 15 of his appraisal Grogan reported that for the first quarter of 2010 the Far West Suburbs had a retail vacancy rate of 11.8% while Kane County had a retail vacancy rate of 17.6%. He thought the higher rate in Kane County was due to new construction.

With respect to his estimate of entrepreneurial profit in the cost approach Grogan testified that in January 2010 the economy was struggling, developers were trying to keep costs down, and he believed 5% was fair. The witness also explained that a leased fee sale can reflect market value when the lease reflects the market.

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With respect to the recent lease signings at the subject property, the appraiser agreed the lease to Vignette Home Décor was low at \$5.33 per square foot. He also explained that the lease to Smashburger for \$22.00 per square foot included tenant improvement concessions meaning that ownership or management would make the renovations for Smashburger and then adjust the rent accordingly.

The board of review submitted its "Board of Review Notes on Appeal" on which it stated that it was adopting the evidence of the intervenor. The subject parcels had a combined total assessment of \$3,364,853. The subject's assessment reflects a market value of \$10,086,489 or \$139.43 per square foot of building area, land included, when using the 2010 three year average median level of assessment for Kane County of 33.36% as determined by the Illinois Department of Revenue. Timothy Sullivan, member of the Kane County Board of Review, stated that the board of review would not be presenting any evidence.

In support of its contention of the correct assessment Batavia School Dist. No. 101 submitted an appraisal prepared by Jason A. VanDevelde and James A. Gibbons of Gibbons & Sidhu, Ltd. estimating the subject property had a market value of \$10,050,000 as of January 1, 2010. The intervenor called James A. Gibbons as its witness.

Gibbons described the subject property as a newer community shopping center known as Fabyan Randall Plaza that is located at the southeast corner of the intersection of Fabyan Parkway and Randall Road. The center was constructed in 2002 on an 8.05 acre site. The center has 72,342 square feet of building area and is anchored by a Trader Joe's grocery store and an Office Depot. Also located at the center are two freestanding buildings, a Walgreens and a Lumes Pancake House, which are not part of the subject parcels.

Gibbons testified that Fabyan Randall Plaza, which included the Walgreens and the Lumes restaurant, was transferred in June 2006 for a price of \$26,000,000, inclusive of an outstanding mortgage that was assumed by the buyer. The appraiser testified Randall Road is a major commercial corridor for Kane County. On the northeast corner of Randall Road and Fabyan Parkway intersection, north of the subject property, is a Home Depot. On the northwest corner of the intersection are a Dominick's, a Best Buy, a Michael's, Party City and a PetsMart. Walmart is located on the southwest corner of the intersection. Gibbons testified Randall Road is heavily commercialized and the corridor has a million square feet of retail space. He also testified the overall combined average daily traffic count at Fabyan Parkway and Randall Road is 51,950.

In estimating the market value of the subject property Gibbons developed the three traditional approaches to value. As part of the cost approach he first estimated the value of the land using four comparable land sales located in Batavia, Geneva, St. Charles and North Aurora. The comparables ranged in size from 99,752 to 660,892 square feet of land area and sold from June 2008 to January 2010 for prices ranging from \$1,350,000 to \$7,675,000 or from \$11.22 to \$14.23 per square foot of land area. Gibbons land sale #1 was the same property as Grogan's land sale #4, although they reported different land sizes. Gibbons indicated the land comparables were located within the Fox Valley area in Kane County. He considered adjustments to the comparables for factors such as market conditions, location, size and accessibility. Land sale #1 is a corner parcel located on Fabyan Parkway that sold for \$14.23 per square foot of land area. Gibbons testified land sale #2 was a corner parcel that sold for \$13.53 per square foot and land

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sale #3 is a corner parcel located on South Randall Road that sold for \$11.61 per square foot. Based on these sales Gibbons estimated the subject property had a land value of \$12.00 per square foot of land area or \$4,210,000, rounded.

Gibbons used the *Marshall Valuation Service* in estimating the replacement cost new of the subject improvements. Gibbons used a per square foot replacement cost for a Class C Good Quality Neighborhood Shopping Center building because of the property's construction including elevations, façade, part face brick façade and better than average quality of construction. The base cost was \$89.13 per square foot to which he added \$3.00 per square foot for sprinklers. Gibbons also applied a combined height and size multiplier of .831 and a local multiplier of 1.22 to arrive at a final square foot cost of \$93.40. The building replacement cost was estimated to be \$6,756,977. Site improvements were estimated to be \$700,000 resulting in a total improved replacement cost of \$7,456,977. Gibbons then estimated the subject had an entrepreneurial profit of 15% or \$1,118,547 to arrive at a total replacement cost of \$8,575,523. The witness explained entrepreneurial profit is the incentive for the developer to undertake the venture and is basically the difference between what it would cost and what it would sell for after it is completed. Gibbons was of the opinion a developer would not undertake the process of acquiring the land and constructing a building such as the subject for a 5% return on the investment.

Gibbons testified he deducted 20% for physical incurable depreciation based on an age of 8 years and an expected physical life of 40 to 45 years. The appraiser also deducted 10% for external obsolescence due to the decline in market conditions. Total depreciation of \$2,572,657 was deducted to arrive at a depreciated cost of \$6,002,866. Adding the land value resulted in an estimated market value under the cost approach of \$10,210,000, rounded.

The next approach to value developed by Gibbons was the income capitalization approach. Gibbons testified he was not provided with a rent roll or the historical operating statements for the subject property. He did have information regarding recent leasing activities for the subject property from the Sterling appraisal which showed leases ranging from \$5.33 to \$22.00 per square foot with an average of \$14.10 per square foot. The appraiser testified that if the lease to Vignette Home Décor of \$5.33 per square foot was excluded the average would be \$17.69 per square foot. The witness testified that, based on information found on the internet, Vignette Home Décor used to occupy more space in the center. He assumed that the tenant down-sized and was given a discounted rent on a short-term basis in order to maintain occupancy. Gibbons did not consider the rent of \$5.33 per square foot to be market rent and was an outlier when considering the other rents at the subject property.

Gibbons identified seven comparable rentals located in Geneva, Schaumburg, Yorkville, West Dundee and Woodridge. The leased areas ranged in size from 1,000 to 43,273 square feet with base net rents or asking rents ranging from \$8.38 to \$22.50 per square foot of building area. Rental comparables #1 and #3 were located along Randall Road with rents of \$22.50 and \$17.50 per square foot, net.

Gibbons agreed that Randall Road and Fabyan Road are major thoroughfares in Kane County. He was of the opinion that, all things being equal, he would expect property located on a major

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thoroughfare would lease for more than property located on a non-major thoroughfare because commercial tenants are sensitive to traffic counts and exposure.

Gibbons determined based upon the market data and his experience, that smaller spaces tend to rent for higher amounts, therefore, he broke down rentals based upon size. He determined the smaller spaces at the subject of 10,000 square feet and less would have a rent of \$18.00 per square foot net; the medium size space at the subject from 10,001 to 30,000 square feet would have a market rent of \$16.50 per square foot net; and the large space at the subject property greater than 30,000 square feet would have a market rent of \$10.00 per square foot net. Using these estimates Gibbons determined the subject had an overall average rental of \$13.90 per square foot net and a potential gross income of \$1,005,464.

In the appraisal Gibbons noted the First Quarter 2010 MarketView Chicago Retail report published by CBRE, Inc., reported that the Chicago Metro Area had a vacancy rate of 12.1% and the Kane County market had a vacancy rate of 17.6%. Based on the subject's prime location Gibbons estimated the subject had a vacancy and collection loss of 13% or \$130,710, resulting in an effective gross income of \$874,754.

Gibbons explained that a net lease requires the tenant to reimburse their proportionate share of the operating expenses and the owner would have some minor administrative costs and reserves for replacement. Citing the First Quarter 2010 PwC Real Estate Investor Survey, published by PricewaterhouseCoopers, management fees for national power centers and strip shopping centers averaged 3.10% and 3.43%, respectively, and he used a management fee of 3.50% of effective gross income or \$30,616. The First Quarter 2010 PwC Real Estate Investor Survey, reported that replacement reserves for national power centers and strip shopping centers averaged \$.23 and \$.29 per square foot, respectively. Gibbons estimated reserves for replacement of \$.25 per square foot of building area or \$18,086. Deducting the management fee and reserves resulted in a net operating income of \$826,052.

Gibbons next estimated the capitalization rate to be applied to the subject's net income. Gibbons reported that First Quarter 2010 PwC Real Estate Investor Survey indicated national strip overall capitalization rates (OAR) for institutional quality national regional malls, national power centers and national strip shopping centers ranging from 8.34% to 8.55%. National strip shopping centers, which are most similar to the subject, had OARs ranging from 7.25% to 11.40% with an average of 8.49%. The witness also testified that CBRE's Inc.'s Year end 2009 Capital Markets Cap Rate Survey indicated that capitalization rates for neighborhood community centers in Chicago had rates ranging from 8.00% to 8.50%. Using the band of investment method Gibbons developed a capitalization rate of 7.80%. Using comparable sales #1, #2 and #4, Gibbons extracted capitalization rates from the market of 7.50% to 11.0% with a median average of 8.0% and a weighted average of 8.4%. Gibbons estimated the subject property would have a capitalization rate of 8.0%. To this the appraiser added a partial tax load factor of .3% which was calculated by multiplying the tax load factor by the vacancy rate resulting in a total capitalization rate of 8.3%. Capitalizing the net income resulted in an estimated value under the income capitalization approach of 9,950,000, rounded.

The final approach to value developed by Gibbons was the sales comparison approach using four comparable sales located in South Elgin, Elgin and North Aurora. Gibbons' sales #1 and #4 were

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the same properties as Grogan comparable sales #4 and #1, respectively. The comparables were improved with shopping centers or inline stores that ranged in size from 121,000 to 238,115 square feet of building area and were constructed from 1992 to 2007. The comparables had land to building ratios ranging from 4.42:1 to 5.85:1. The sales occurred from January 2007 to March 2010 for prices ranging from \$19,750,000 to \$24,000,000 or from \$95.75 to \$188.84 per square foot of building area, including land.

Gibbons testified comparable sale #1 was located on Randall Road but was an REO (real estate owned) sale by Key Bank. This property was significantly larger than the subject and not broadly marketed with the buyer given little due diligence time. Gibbons stated that comparable sale #2 was located on the Randall Road retail corridor and was the same age as the subject property. The appraiser's notes in the report indicated the property was not offered for sale on the open market and the buyer had approached the seller directly. The property was reported to have a net operating income per square foot of \$11.04 and a capitalization rate of 7.50%. The witness explained that sale #3 was slightly off Randall Road and was the inline retail space between a Target and JC Penney. Gibbons testified that sale #4 was also located on Randall Road and was 50% occupied at the time of sale. He indicated there was some deferred maintenance with this property and it sold at an 8.0% capitalization rate. Gibbons, emphasizing the importance of location, noted his report contained a map depicting the location of the subject property and the comparable sales along the same retail corridor.

Gibbons testified about the adjustments he made to the sales based on the consideration of such factors as size, market condition, age and location. The appraiser estimated the subject had an indicated value under the sales comparison approach of \$140.00 per square foot or \$10,125,000, rounded.

In reconciling the three approaches to value, Gibbons placed little weight on the cost approach, significant weight on the income approach and significant weight on the sales comparison approach. Gibbons estimated the subject property had an estimated market value of \$10,050,000 as of January 1, 2010.

On cross-examination Gibbons agreed his inspection would have occurred over three years after the valuation date. He also agreed there are no curb cuts to the subject property from Randall Road. Gibbons was also questioned why he reported the size of land sale #1 to be smaller than reported by Grogan as his land sale #4 (the same property) and explained he used a variety of sources to determine the land size and thought the reported land size for the comparable by CoStar Comps was incorrect.

Gibbons further explained that he estimated the subject's vacancy and collection loss to be 13% even though a survey indicated the vacancy rate in Kane County was 17.6% was due to the subject's prime location. Gibbons testified he inspected the subject property on April 22, 2014, and that the 32,000 square foot unit at the subject was still vacant and had been vacant since the time he initially did his report.

Gibbons explained he determined the subject to be of good as opposed to average construction based on the materials used, the facade, the fenestration as well as the quality of the interior and exterior construction.

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Conclusion of Law

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). 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds Batavia School Dist. No. 101 met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the subject's total assessment of \$3,364,853 reflects a market value of \$10,086,489 when using the 2010 three year average median level of assessment for Kane County of 33.36% as determined by the Illinois Department of Revenue. The appellant submitted an appraisal and presented the testimony of the appraiser, Thomas W. Grogan, estimating the subject property had a market value of \$8,300,000 as of January 1, 2010. Batavia School Dist. No. 101 submitted an appraisal and presented the testimony of the appraiser, James A. Gibbons, estimating the subject property had a market value of \$10,050,000 as of January 1, 2010. Both appraisers offered opinions of value below the market value reflected by the subject's assessment. The Board finds the best evidence of market value to be the appraisal and the testimony of the appraiser, James A. Gibbons, presented by Batavia School Dist. No. 101.

With respect to the cost approach developed by the appraisers, the Board finds that Gibbons' estimated land value was better supported through the use of land sales more similar to the subject in location. Additionally, the appraisers had a common land sale located on Fabyan Parkway that sold for either \$12.82 or \$14.23 per square foot of land area, depending on the size of the parcel. Gibbons' estimated site value of \$12.00 per square foot of land area is better supported by this data.

Both appraisers used the *Marshall and Swift Valuation Service* to estimate the replacement cost new of the building improvements. Grogan classified the subject as a Class C Average Shopping Center. Gibbons classified the subject as a Class C Good Quality Neighborhood Shopping Center. Grogan also indicated the adjusted base cost included sprinklers while Gibbons added \$3.00 per square foot as an adjustment to the base cost for the sprinklers. The Board finds Gibbons' testimony with respect to his reasons for classifying the subject as good quality as opposed to average quality was credible and persuasive based on the factors he considered such as materials used, the facade, the fenestration and the quality of the interior and exterior construction. Thus the Board finds Gibbons' estimated replacement cost of the building was better supported.

The Board also finds the appraisers differed in amount of entrepreneurial profit that should be added to the cost new. Grogan estimated entrepreneurial profit to be 5% while Gibbons estimated entrepreneurial profit to be 15%. Gibbons testified that entrepreneurial profit is the incentive for the developer to undertake the venture and is basically the difference between what it would cost and what it would sell for after it is completed. The Board finds Gibbons' opinion that a developer would not undertake the process of acquiring the land and constructing a

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building such as the subject for a 5% return on the investment was credible and logical. Thus the Board gives this aspect of Gibbons' cost approach more weight.

Both appraisers were in near agreement that the subject property suffered from 20% physical depreciation. The appraisers differed with respect to external obsolescence with Grogan asserting that external obsolescence was accounted for in the land sales while Gibbons made a 10% deduction from the building cost new due to the decline in market conditions. The Board finds Gibbons' estimate of external obsolescence attributable to the improvement component is appropriate and should be deducted. In conclusion, the Board finds Gibbons' estimated value for the subject property under the cost approach of \$10,210,000 is better supported than the estimated value developed by Grogan under the cost approach.

With respect to the income approach to value, the Board gives more weight to Gibbons' estimate of value than to that developed by Grogan. Both appraisers consider rental information from the subject property in part in developing market rent. Gibbons however also considered seven rental comparables with six being actual leases and one being an asking rent. Grogan had five comparable leases with four being asking rents and only one being an actual lease. The Board finds Gibbons' use of more actual leases in estimating market rent, on a net per square foot basis, to be more credible.

The Board also finds that Grogan, in calculating the subject's effective gross income added back the real estate taxes and reimbursable expenses. Subsequently, Grogan then deducts operating expenses from the effective gross income to arrive at his estimate of net operating income. The Board finds this process adds elements of conjecture and assumptions not needed in light of the fact that the rental comparables used by Grogan were on a net basis. The Board finds Gibbons' method of estimating the subject's potential gross income and effective gross income using rent per square foot on a net basis is more consistent with his rental comparables. Furthermore, the Board finds that Gibbons' deduction of minimal expenses from the effective gross income to arrive at a net operating income is more reflective of the market and has fewer assumptions, making the calculation more credible.

With respect to the vacancy and collection loss the appraisers were in near agreement. The Board also finds that Gibbons' deduction of minimal expenses from the effective gross income to account for management and reserves for replacement was supported by investor surveys. In conclusion the Board finds that Gibbons' estimate of net operating income of \$826,052 or \$11.42 per square foot of building area is better supported than the estimated net income developed by Grogan.

The Board also finds that Gibbons' estimated capitalization rate of 8.3%, which includes a partial tax load factor to account for the taxes the lessor/owner would be required to pay when the property is vacant, is supported by investor surveys, the band of investment technique and the rate extracted from the market. The Board finds the estimated capitalization rate is appropriate considering the appraiser used rent on a per square foot net basis in developing the income approach to value. In conclusion the Board finds Gibbons' estimate of value under the income approach of \$9,950,000 is better supported.

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The final method developed by the appraisers was the sales comparison approach. The Board finds that Gibbons' estimate of value under the sales comparison approach is better supported through the use of comparable sales located along the Randall Road retail corridor. Additionally, the appraisals had two common sales located at 390-440 South Randall Road, South Elgin and 200-268 South Randall Road, Elgin. These comparables were improved with shopping centers that were significantly larger than the subject property with 234,717 and 238,115 square feet of building area, respectively. These properties sold in March 2010 and January 2007 for prices of \$24,000,000 and \$22,800,000 or \$102.25 and \$95.75 per square foot of building area, respectively. Both appraisers agreed that an upward adjustment was appropriate for the property located at 200-268 South Randall Road, Elgin that sold for \$95.75 per square foot of building area. Gibbons was of the opinion an upward adjust was appropriate for the property located at 390-440 South Randall Road, South Elgin while Grogan was of the opinion a downward adjustment to this sale would be appropriate. The Board finds considering the fact this property is significantly larger than the subject property and the sale was an REO by Key Bank that was not broadly marketed the Board finds Gibbons' conclusion that an upward adjustment to the price is more credible. Based on this record the Board finds Gibbons' conclusion the subject property had an indicated value under the sales comparison approach of \$10,125,000 or approximately \$140.00 per square foot of building area, including land, is better supported.

Based on this record, giving most weight to the appraised value developed and testified to by Gibbons, the Property Tax Appeal Board finds the subject property had a market value of \$10,050,000 as of January 1, 2010. Since market value has been established the 2010 three year average median level of assessments for Kane County of 33.36% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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APPELLANT:	JP Morgan Chase & Co.
DOCKET NUMBER:	08-03430.001-C-3
DATE DECIDED:	January, 2014
COUNTY:	DuPage
RESULT:	Reduction

The subject property is a 243,065 square foot site primarily improved with a one-story single tenant industrial building of masonry exterior construction that was built in 2003.¹ The structure contains 124,680 square feet of building area; has a land-to-building ratio of 1.95:1, is fully sprinkled, has a two story office area containing 9,930 square feet or approximately 8% of total building area, a data center which contains a three foot raised floor, a mezzanine level containing approximately 28,275 square feet used mainly for storage, an 18 foot to 22 foot ceiling clearance, a freight elevator, 6 truck level docks and 37,000 square feet of paved asphalt parking. The subject is located in Elk Grove Village, Addison Township, DuPage County, Illinois.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming assessment inequity and that the fair market value of the subject was not accurately reflected in its assessed value.² In support of these arguments an appraisal was submitted with an estimated fair market value of \$5,800,000 as of January 1, 2008 using the three traditional approaches to value.³

Edward V. Kling, a licensed appraiser, was called as a witness to testify regarding the appraisal methodology and final value conclusion using the three traditional approaches to value. Kling has the Member, American Institute Real Estate Appraisers (MAI) designation from the Appraisal Institute. David M. Rogers, a Certified General Appraiser, inspected the subject parcel in October 27, 2008 and along with Kling developed a cost approach, sales comparison approach and income approach to estimate the subject's market value. The purpose of the appraisal was to estimate the market value of the subject property as of January 1, 2008 for an ad valorem tax assessment appeal. The property rights appraised were the fee simple estate (Appraisal, page 2). The appraisal report depicts the highest and best use of the subject site as vacant is to develop the parcel with industrial improvements. The highest and best use as improved is its existing use as improved (Appraisal, page 20).

Under the cost approach to value, Kling estimated the subject's site value of \$1,944,520 or \$8.00 per square foot of land area. Kling examined four land sales in Roselle, Itasca, Glendale Heights and Carol Stream, Illinois that ranged in size from 142,006 to 428,194 square feet of land area. The sales occurred from April 2006 to January 2008 for prices ranging from \$1,000,000 to \$4,020,000 or from \$7.04 to \$9.83 per square foot of land area. Kling used the Marshall & Swift Valuation Service, Section 14, Page 18, Computer Data Centers, Class C, Type Average, to

¹ The subject improvement was initially purchased in 2002 for \$5,500,000 as a shell industrial building and then fully built out for computers and storage of records as a data processing center (Transcript, page 7).

² Appellant's contention of law argument was withdrawn at hearing and the comparable sales argument was in relation to the sale comparables contained within the appraisal report.

³ For his inequity argument, appellant's counsel relied on examination and evidence presented by the local assessor.

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estimate a replacement cost new for the improvements of \$14,883,523 or \$119.37 per square foot of building area. Physical depreciation was estimated using the age/life method at 6%.

Kling estimated functional obsolescence to be 45% based on excessive build-out of storage areas on the first floor and mezzanine level, excessive wiring capacity due to the data center along with the climate controlled and raised flooring in the warehouse area, all of which were considered super adequacies. Kling testified the subject was improved for a specific use and should the appellant not use the facility any more, it is unlikely another user would come in and be able to utilize the building in its exact configuration as a data center (Transcript, page 8).

External obsolescence was estimated to be 23% because of the current excessively high vacancy rates in the subject's area for the subject's property type. Vacancy rates were reported to be between 17% to 18%; while the normal vacancy rates were reported to be from 5% to 8%. In support of the accrued depreciation estimate, Kling also used the age/economic life method. Effective economic life was estimated to be 25 years and was divided by the estimated economic life of 35 years to arrive at an estimated accrued depreciation of 71% (Appraisal, page 34). With consideration of both methods, accrued depreciation was estimated to be 73%.

The estimated land value of \$1,940,000 was added to the estimated cost new of \$14,883,523 and accrued depreciation of \$10,864,972 was deducted to arrive at a depreciated value of the improvements of \$4,018,551. Site improvements of \$42,000 were added to this amount which indicated an estimated value by the cost approach of \$6,000,551 or \$6,000,000, rounded, or \$48.12 per square foot of building area, including land (Appraisal, page 36).

Kling next developed the sales comparison approach. Kling examined six single tenant comparable sales. Kling testified a single tenant facility will sell for less than a multi-tenant facility because there is more risk involved. The sales were located in Carol Stream, Long Grove, Itasca and Addison, Illinois. The comparables ranged in age from 23 to 36 years old and consisted of five, single tenant industrial buildings and one single tenant showroom/warehouse. They had office build-outs ranging from 4% to 100% of total building area and land-to-building ratios ranging from 1.62:1 to 8.13:1. The sales were situated on sites ranging from 191,664 to 607,226 square feet of land area. The comparables sold from October 2005 to September 2007 for prices ranging from \$2,523,500 to \$6,600,000 or from \$37.37 to \$53.95 per square foot of building area, including land. Kling adjusted the comparables for differences when compared to the subject for proximity to interstate roadway, size, land-to-building ratio, construction quality, age, condition and utility. The comparables had adjusted sales prices ranging from \$43.89 to \$51.71 per square foot of building area, including land. Based on these adjusted sales, Kling estimated a value for the subject property under the sales comparison approach of \$5,859,960 or \$5,860,000 rounded, or \$47.00 per square foot of building area, including land.

In developing the income approach to value the appraisers used six comparable rental properties to estimate market rent. Each comparable was located in Elk Grove, similar to the subject. The rental comparables were each described as industrial buildings. The rental spaces ranged in size from 96,633 to 121,728 square feet of building area; which were located in structures ranging from 121,728 to 698,317 square feet of total building area. Five of the comparables were

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described as being built from 1960 to 2004.⁴ The market rents ranged from \$2.87 to \$6.75 per square foot of building area on a net basis.⁵ The appraisers estimated the subject's market rent to range from \$4.00 to \$4.50 per square foot of building area on a net basis. Based on the specialized build-out being a tenant improvement paid for by the tenant, it was estimated the subject's market rent was \$4.50 per square foot of building area on a net basis, due to the power and cooling add-ons which increase the likelihood for research and development use (Appraisal, page 50). Thus, the appraisers estimated the subject had a potential gross income of \$561,060.

Expense recoveries for such items as pass through real estate taxes and insurance (\$140,888) were added to the potential gross income; and vacancy and credit losses of 12% (\$84,234) were subtracted from the potential gross income to arrive at an estimated effective gross income for the subject of \$617,715. Management fees of 3% (\$18,531), real estate taxes of \$115,952, insurance of \$24,936 and reserves for replacements of \$31,170 resulted in total expenses of \$190,590 which were deducted from the potential gross income of \$617,715 to arrive at an estimated net income for the subject of \$427,125 (Appraisal, page 53).

The subject's estimated net income was converted using an overall capitalization rate to present value. The appraisers used the band of investments method as one method in selecting the appropriate overall capitalization rate. Based on conversations with local lenders, typical financing for the subject property was determined to be 80% loan-to-value, a 6.75% fixed interest rate and a 25 year amortization period with refinancing required after 5 years. The mortgage constant was determined to be 0.0829. Based on the loan percentage of 80%, the equity percentage remaining of 20% was utilized. Considering the risk associated with the investment, the appraisers estimated that capital could be attracted to an investment of the above described characteristics with an anticipated return on equity of 10%. The appraisers next examined the amortization of the loan during the five years until refinancing was required. An adjustment based on the percentage of the loan paid off in 5 years (0.0913) times the loan ratio (0.80) times the sinking fund factor at the 10% equity yield rate (0.1638), indicated an overall capitalization rate of 0.0744 (Appraisal, page 55). The reasonableness of the previously described overall capitalization rate was checked against an overall capitalization rate determined from a debt coverage ratio. The appraisal describes this as the ratio of annual net income to annual debt service required by the terms of the loan (Appraisal, page 55). A ratio of 1.25 means net income is 25% greater than the required annual debt service. The debt coverage ratio is multiplied by the loan constant which is multiplied by the loan to value ratio to arrive at an overall capitalization rate. Using this formula, the appraisers multiplied a debt coverage ratio of 1.20 by the loan constant of 0.0829 and the loan to value ratio of 0.80 which indicated an overall capitalization rate of 0.0796 or 7.96%. The appraisal depicts the Korpacz Real Estate Investor Survey for the last Quarter of 2007 indicated overall capitalization rates ranged from 5.5% to 10% with an average of 7.6%. Utilizing this and the above described methods the appraisers selected an overall capitalization rate of 7.75%. Dividing the estimated net income for the subject of \$427,125 by the estimated overall capitalization rate of 7.75% indicated an estimate of value for the subject using the income approach to value of \$5,511,287 or \$5,510,000, rounded (Appraisal, page 56).

⁴ The age of comparable rental #5 was not disclosed.

⁵ Rental comparable #3 was reported to be \$4.35 on a triple net basis.

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Kling testified they also calculated a loaded overall capitalization rate for the subject wherein the taxes were not expensed out and they basically examined the gross economic rent. In utilizing the loaded overall capitalization rate, they concluded an estimated value for the subject of \$5,700,000 (Appraisal, page 57; Transcript, page 14).

In reconciling the three approaches to value, Kling gave primary weight to the sales comparison approach. The cost approach to value was given less consideration because it was considered to be less relevant to the typical purchaser than the other two approaches. The income approach was also given less weight by the appraisers based on the excessive build-out of the subject property which was opined to make it difficult to estimate a lease rate for the subject. After consideration of the factors involved in each approach, primary consideration was ultimately given to the sales comparison approach and it was opined that the subject's estimated value was \$5,800,000 as of January 1, 2008.

Based on this evidence the appellant requested a reduction in the subject's assessment to reflect the estimated market value of \$5,800,000 as set forth in the appraisal.

On cross-examination, Kling acknowledged that if functional obsolescence was used in the cost approach, that the value would represent value-in-use as opposed to market value. Kling also acknowledged that comparable sale #2 was not located in DuPage County. Kling explained that it was included as a comparable to show it had a 100% office build-out and still sold for the same rate as a typical industrial building. In addition, Kling acknowledged comparable #2 was sold at an auction; however, it was on the market for over a year. Kling could not recall if all of his rental comparables were located in Cook County, however, he testified that they were all in the same market area as the subject is near Elk Grove and that there was very little difference in the rental rates between properties on the DuPage County side of Elk Grove and those located on the Cook County side of Elk Grove. Kling ended his testimony by stating that his estimated opinion of value for the subject would not change, even if all of his rental comparables were located in Cook County.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$2,637,000 was disclosed. The subject's assessment reflects a market value of approximately \$7,926,060 or \$63.57 per square foot of building area, including land, using the 2008 three-year average median level of assessments for DuPage County of 33.27% as determined by the Illinois Department of Revenue. In support of the subject's assessment, the Addison Township Chief Deputy Assessor, Frank Marack, was called as a witness. Marack has been with the Addison Township Assessor's Office since 1979 and has been in charge of assessing commercial industrial property since 1981. Marack described the subject as an industrial type warehouse building containing 124,680 square feet of building area. The subject is located on 243,065 square feet of land area, was built in 2003, has an exterior height of 32 feet, 7,008 square feet of finished office area and is 100% sprinkled. He described the construction as tilt-up or otherwise referred to as poured concrete. The subject was further described as having eight overhead doors and seven load levelers. In support of the assessment, he submitted two grid analyses, one containing 11 sales⁶ and the other being a qualitative adjustment grid.

⁶ Sale comparable #9 sold twice and was depicted as "9a" and "9b."

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Marack testified the 11 comparable sales were each an industrial building located in DuPage County. The sales grid analysis depicts the comparables were located in Elk Grove, Itasca, Bensenville, Wood Dale and Lombard, Illinois. They had land-to-building ratios ranging from 1.56:1 to 2.85:1; exterior construction was depicted as tilt-up, masonry or masonry/metal. The comparables were built from 1976 to 1995 and consisted of one-story or part one-story and part two-story buildings with building heights ranging from 20 to 40 feet and percentage of office space ranging from 4.68% to 16.61% of total building area. The properties sold from March 2006 to July 2008 for prices ranging from \$6,510,000 to \$20,200,000 or from \$47.01 to \$83.59 per square foot of building area, including land. The adjustment grid depicts the sale comparables were adjusted for location, date of sale, size, land-to-building ratio, construction, age, height and percentage of office space. Marack testified that after making adjustments to the comparable sales, he opined the subject had a market value of \$8,727,600 or \$8,730,000, rounded or \$70.00 per square foot of building area, including land. Based on this evidence, the board of review requested an increase in the subject's assessment.

On cross-examination, Marack acknowledged that the "Board of Review Notes on Appeal" depicted the subject's total assessment which reflected a market value of approximately \$7,900,000. Marack testified that at that time, he believed that valuation to be correct. Marack further acknowledged that at hearing, he was arguing that the subject property was worth \$8,730,000. Marack testified that during the mass appraisal, his office came up with an estimated value of \$7,911,791 and once a person appeals to the Property Tax Appeal Board for relief, his office starts from scratch to see what the property is worth. Marack stated that based on the evidence he submitted to the Property Tax Appeal Board, the subject property is worth \$8,730,000. Marack further acknowledged that his comparable sale #1 had an indicated sale price of \$83.59; however, it was valued by the assessor at \$60 per square foot of building area, including land. Marack testified that the difference was the result of utilizing the mass appraisal system and preparing an individual assessment. Comparable sale #3 was shown to have been valued by the assessor's office at \$26.91 and not the \$60.13 as shown on the grid analysis.

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 one 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 manifest weight of the evidence in this record supports a reduction in the subject's assessment.

The appellant's appraisers estimated the subject's market value of \$5,800,000 using the three traditional approaches to value. The Board finds the manifest weight of the evidence presented depicts this estimated value is not 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 \$5,800,000 as of January 1, 2008. The subject's assessment reflects an estimated market value of approximately \$7,926,060 or \$63.57 per square foot of building area, including land. The board of review submitted 11 comparable sales that

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sold for prices ranging from \$6,510,000 to \$20,200,000 or from \$47.01 to \$83.59 per square foot of building area, including land.

During questioning regarding his cost approach to value, Kling testified he deducted 45% or \$6,680,354 from the subject's value based on his estimate of functional obsolescence. Kling testified that the subject's functional obsolescence represents the functional superadequacy that could not be recovered on the open market for such items as excessive build-out of storage areas on the first floor and mezzanine level, the excessive wiring capacity due to the data center along with the climate controlled and raised flooring in the warehouse area. The board of review argued that it was improper to deduct functional obsolescence in a replacement cost new analysis, and further argued that including functional obsolescence in his analysis, Kling was really estimating the subject's value in use, not its fee simple value. The Board finds the textbook published by the International Association of Assessing Officers, describes the proper method for estimating accrued depreciation. "In a replacement cost new estimate, theoretically the cost to replicate the superadequate item would not be included in the cost new estimate. However, the cost to cure the superadequate item is still valid. The measurement would simply be the cost to remove the item less salvage value (if any)." (Property Assessment Valuation, International Association of Assessing Officers, 1996, pp. 164-186.) Another textbook, The Appraisal of Real Estate, 13th Edition, published by the American Institute of Real Estate Appraisers, also specifically refers to curable functional obsolescence caused by a superadequacy. "If the replacement cost of the appropriate . . . [item] is used as the cost basis rather than reproduction cost, the superadequate item would not be included in the substitute property, so there would be no charge for the existing item, nor for the item as installed new. The measure of depreciation due to curable functional obsolescence caused by a superadequacy would be the cost to cure (i.e., the cost to remove the superadequate item less salvage value plus the cost to install the appropriate item)." The Appraisal of Real Estate, American Institute of Real Estate Appraisers, 13th Edition, pp. 434-441. This treatise goes on to depict "the corresponding estimates of total cost using replacement cost would probably be lower than the estimate provided by reproduction cost figures because replacement cost would not include an oversized, atypical . . . [item]. Therefore, less depreciation would be subtracted from the replacement cost estimate than from the reproduction cost estimate to arrive at the same figure. . . . (The Appraisal of Real Estate, p. 441) The Appraisal of Real Estate further depicts "[a] superadequacy in an existing improvement would not be installed in a replacement structure, so the cost of that item would not be included in the estimation of functional obsolescence when replacement cost figures are used." (p. 441). The Board finds the board of review's argument has merit. The appraisal report is void of any reference regarding whether the superadequacy is curable or incurable, and is void as to the cost to cure the superadequacy items described by Kling, the cost to remove the items, including salvage value, if any. The Board finds Kling deducted 45% or \$6,680,354 from the subject's total value without supporting this estimate with the cost to remove the superadequacy items and salvage value, if any. The Board finds this error would be compounded in any cost approach to value estimate. Therefore, the Board gave little weight to the cost approach to value estimate as developed by Kling.

The Board also gave less weight to Kling's estimate of value as indicated by his income approach to value. Kling was unable to testify whether his rental comparables were located in DuPage County or Cook County. Kling testified that if the rental was located outside of DuPage County, it would have a minimal negative impact on its income because of the higher tax burden in Cook

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County. The Board finds the rental comparables used by Kling were not similar to the subject in use. The rental comparables were industrial shell buildings like the subject; however, they did not enjoy the superadequacy items such as excessive build-outs, raised flooring, high capacity wiring and climate control enjoyed by the subject, which allows it to operate as a data center. In addition, the Board finds they are dissimilar to the subject because they have an available rail spur, trailer parking, and/or are significantly older than the subject. Because of the dissimilarities between the subject and the rental comparables, the Board finds the estimate of value as developed by Kling in the income approach is not credible.

Kling testified that he considered the subject to be an industrial building that is built-out for a data center. The evidence revealed the subject was originally constructed in 2002 as a shell industrial building and then purchased by the appellant in 2002 for approximately \$5,500,000 and then retrofitted for its current use as a data center. Kling testified that it was a fairly extensive, expensive build-out. Even though Kling adjusted five of the six comparable sales for the subject's excessive build-out, the Board finds the final estimate of value utilizing the sales comparison approach is not well supported or verified by his cost approach or income approach to values. Because the sales comparison approach to value is not well supported by the other two approaches to value, the Board gave Kling's sales comparison analysis little weight. Therefore, based on the above findings, the Board finds the final value conclusion contained in the appellant's appraisal report is not well supported and is not a reliable indicator of the subject's fair market value on January 1, 2008. Based on this analysis, the Board next examined the raw sales data presented by both parties.

The Board finds the best evidence of the subject's market value is found utilizing the raw sales data from the comparable sales submitted by both parties. Kling utilized six sale comparables while the board of review utilized eleven comparable sales. Based on location, size, land-to-building ratio, age and/or date of sale, the Board finds the best sales in this record which reflect the subject's market value are appellant's sale comparables #3, #4, #5 and #6 along with board of review sale comparables #2, #3, #5 and #6. The subject has 124,680 square feet of building area with the eight sales ranging in size from 108,117 to 148,844 square feet of building area. The subject has a land-to-building ratio of 1.95:1 while the most similar comparables have land-to-building ratios ranging from 1.6:1 to 3.56:1. The subject is 5 years old with the comparables ranging from 18 to 36 years old. These most similar comparables sold from January 2007 to May 2008 for prices ranging from \$4,040,000 to \$9,272,149 or from \$37.37 to \$68.39 per square foot of building area. The subject's assessment reflects a market value of \$7,926,060 or \$63.57 per square foot of building area. The Board finds the appellant's most similar comparables (#3, #4, #5 and #6) required an upward adjustment when compared to the subject based on size, land-to-building ratio, date of sale and/or age. The Board further finds two of the board of review's most similar comparables (#2 and #3) required an upward adjustment when compared to the subject based on size, land-to-building ratio and/or age; and the other two (#5 and #6) required a downward adjustment when compared to the subject based on size and/or land-to-building ratio. The Board finds that none of the comparables were truly similar to the subject. The comparables were industrial buildings, however, the evidence and testimony revealed the subject enjoyed excessive build-out of storage areas on the first floor and mezzanine level, contained excessive wiring capacity to operate as a data center along with climate controlled and raised flooring in the warehouse area. Because of these features, the Board finds the most similar comparables required a downward adjustment when compared to the subject. After considering the

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adjustments and the differences in both parties' suggested comparables when compared to the subject property, the Board finds the subject's assessment is not supported by the most comparable properties contained in this record and a reduction in the subject's assessment is warranted.

The Board further finds the appellant failed to submit equity evidence into the record, and therefore this argument was given no weight in the Board's analysis, and no further reduction is warranted on this basis, other than stated above.

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.

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APPELLANT:	<u>Lake Springfield Properties, LLC</u>
DOCKET NUMBER:	<u>09-05156.001-C-2 thru 09-05156.010-C-2</u>
DATE DECIDED:	<u>December, 2014</u>
COUNTY:	<u>Sangamon</u>
RESULT:	<u>No Change</u>

The subject property consists of ten individual parcels containing approximately 21.6 acres, which includes a 7,200 square foot marina built in 2002 and parking areas for public boaters. The property is located in Springfield, Capital Township, Sangamon County.

The appellant appeared through legal counsel before the Property Tax Appeal Board claiming a contention of law as the basis of the assessment appeal. In the brief, counsel for the appellant contends that the subject properties are entitled to the so called "developer's exemption" as provided by Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). Section 10-30 of the Property Tax Code (herein after "the Code") provides:

Sec. 10-30. Subdivisions; counties of less than 3,000,000.

(a) In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property, if:

- (1) The property is platted and subdivided in accordance with the Plat Act;
- (2) The platting occurs after January 1, 1978;
- (3) At the time of platting the property is in excess of 5 acres; and
- (4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60.

(b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined each year based on the estimated price the property would bring at a fair voluntary sale for use by the buyer for the same purposes for which the property was used when last assessed prior to its platting.

(c) Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose, or upon the initial sale of any platted lot, including a platted lot which is vacant: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining

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property, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. Holding or offering a platted lot for initial sale shall not constitute a use of the lot for business, commercial or residential purposes unless a habitable structure is situated on the lot or unless the lot is otherwise used for a business, commercial or residential purpose.

(d) This Section applies before the effective date of this amendatory Act of the 96th General Assembly and then applies again beginning January 1, 2012.

In support of this argument, the appellant called as its witness Robert Gordon. Gordon testified he is an officer and shareholder of Lake Springfield Properties, LLC. Officially he is the managing member and sole member.

Gordon testified that Lake Springfield Properties, LLC is a leaseholder with the City of Springfield for approximately 21.6 acres of land that was acquired through a Request for Proposal ("RFP"). They currently have a lease for the property and are required to pay property taxes for the subject property.

Gordon testified that at the time they received the Executive Order from the City of Springfield to build a marina, the property was vacant. They started building the marina in 2001 and completed the structure in 2002. At the completion of the structure they received an occupancy permit. Gordon testified that there were no other improvements on the property other than the marina and parking lot prior to the platting and subdivision. The property was subdivided and platted in 2008 creating ten lots and none of the lots had been sold.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessments for PIN 29-03.0-301-001 of \$120,808; PIN 29-03.0-301-002 of \$26,609; 29-03.0-301-013 of \$5,505; and PIN 29-03.0-301-012 of \$1,964; PIN 29-03.0-301-011 of \$3,652; PIN 29-03.0-301-010 of \$15,337; PIN 29-03.0-301-009 of \$26,485; PIN 29-03.0-301-007 of \$7,263; PIN 29-03.0-301-005 of \$13,079; PIN 29-03.0-301-003 of \$2,394 were disclosed. In support of the subject's assessments, the board of review submitted its "Notes on Appeal" stating the subject property does not qualify for an assessment pursuant to Section 10-30 of the Code.

Representing the board of review was Assistant State's Attorney Scott B. Kains. Clerk of the Board of Review, Joseph P. Lindley, was called as a witness. Lindley testified that in 2002 the parent parcel was an exempt city owned parcel. In 2003 a deed was filed "2002-R-45869", changing the classification from "exempt property" to a "class 60" which is "improved commercial property". The property remained the same until 2009 when the parent parcel was vacated and a series of parcels were created due to the subdivision. All of the parcels created were classified as commercial parcels.

Under cross-examination Lindley testified that the status of the property prior to the construction of the marina was tax exempt. The City of Springfield had applied for exempt status. When questioned about improvements on the property at that time, Lindley stated that there might have been, but they applied for exempt status, and if granted, they would not pay taxes on the land or the building. Next, Lindley was questioned about how the properties were assessed. Lindley

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responded that the properties were not assessed as leaseholds. Lindley was then questioned about the only issue as far as the request to be covered under the developers exemption is the issue of vacancy of the property. Lindley responded that the issue had to do with the prior use of the ground and it was carried forward as the type of vacant ground it was prior to the division of the property.

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

There is a single issue in this appeal: whether the preferential assessment provided under section 10-30 of the Code (35 ILCS 200/10-30) applies to the subject parcels. The Board finds that the subject parcels are not entitled to the provisions of Section 10-30 of the Code.

In 2008 when the parent parcel was subdivided and platted, Section 10-30 of the Code (35 ILCS 200/10-30) stated in pertinent part:

(a) In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property, if:

- (1) The property is platted and subdivided in accordance with the Plat Act;
- (2) The platting occurs after January 1, 1978;
- (3) At the time of platting the property is in excess of 5 acres; and
- (4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60. (Emphasis added.)

The parties do not dispute that the subject parcel was platted and subdivided in accordance with the Plat Act satisfying the requirement of Section 10-30(a)(1) of the Code. The parties agree that the subject was platted after January 1, 1978 and at the time of platting the property was in excess of 5 acres thus satisfying the requirements of Sections 10-30(a)(2) and (a)(3). It is solely Section 10-30(a)(4) that is in dispute between the parties.

The record evidence reveals that at the time the parcel was platted in 2008 it was improved. As of 2008, the requirements of Section 10-30 of the Code included that at the time of platting the property must be vacant or used as a farm as defined in Section 1-60 (Section 10-30(a)(4)). The evidence and testimony disclosed the subject property was improved with a 7,200 square foot marina and parking areas at the time of platting. As such, the provisions of Section 10-30 of the Code have not all been met and the Property Tax Appeal Board finds that the subject parcels do not qualify for the developer's preferential assessment provided under Section 10-30 of the Code (35 ILCS 200/10-30) since it was not vacant at the time of subdividing and platting. Therefore, no reduction in the subject's assessment is warranted.

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APPELLANT:	<u>The Pepper Companies, Inc.</u>
DOCKET NUMBER:	<u>08-23946.001-C-1</u>
DATE DECIDED:	<u>April, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>No Change</u>

The subject property consists of a 16,900 square foot parcel of land with minor commercial improvements. The appellant argued that the market value of the subject property was not accurately reflected in its assessed value as the basis of this appeal.

In support of the market value argument, the appellant submitted a copy of a printout indicating the subject was issued a wrecking permit on May 19, 1994. In addition, the appellant submitted a black and white aerial map and an assessor black and white photograph of the subject showing it is a parking lot with blacktop, lighting, and landscaping. Typed on both photographs is a statement that the subject is currently used as a parking lot with no improvements. Based upon this evidence, the appellant requests a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$425,088 was disclosed. This assessment reflects a fair market value of \$1,118,652 when the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5a properties is applied.

In support of the subject's assessment, the board of review presented a printout from the recorder of deed's office showing the subject sold in May 1995 for \$575,000. In addition, the board of review submitted a sales grid listing the sales of seven commercial properties. The properties sold from 2006 to 2008 for prices ranging from \$205,000 to \$10,000,000 or \$57.04 to \$1,127.45 per square foot. The board of review failed to describe any of the comparables.

After considering the arguments and reviewing 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. 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 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 Board concludes that the appellant has not met this burden and that a reduction is not warranted.

The Board finds the appellant failed to present any evidence to show the board of review has incorrectly assessed the subject. The county classified the subject as a commercial property with minor improvement. The appellant's evidence shows the subject is a commercial property with minor improvements being used as a parking lot. Therefore, the Board finds the appellant failed

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to show by a preponderance of the evidence that the subject was incorrectly assessed or that the assessment does not properly reflect the subject's market value and a reduction is not warranted.

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APPELLANT:	Rubloff Shorewood, L.L.C.
DOCKET NUMBER:	11-00380.001-C-3
DATE DECIDED:	October, 2014
COUNTY:	Will
RESULT:	No Change

The subject property consists of a 9.28 acre parcel of land. Over one-half of the subject property is improved with a striped parking lot. The subject property is located in Troy Township, Will County.

The appellant appeared before the Property Tax Appeal Board through legal counsel claiming the subject property was incorrectly assessed as of the January 1, 2011 assessment date based on a contention of law. The appellant contends that the subject parcel was improperly denied the "developer's" exemption in accordance with Section 10-31 of the Property Tax Code (hereinafter Code). (35 ILCS 200/10-31). The appellant argued the subject's assessment should be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance due to the fact that it meets the criteria provided under Section 10-31 of the Code (35 ILCS 200/10-31).

In the legal brief submitted to the Board and argued at hearing, counsel explained that in November 2007, Rubloff purchased the subject parcel from Black Road Investments, LLC, which was a platted lot that was receiving the "developer's" preferential assessment as provided by Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). Black Road Investments, LLC was the original developer that platted and subdivided the subject parcel. At the time of purchase, the property was improved with a parking lot and had an assessment of \$1,653 for the 2007 tax year. In tax year 2008, the appellant received notice that the subject's assessment increased to \$1,199,772 due to the fact the preferential assessment as provided under 10-30 of the Property Tax Code (35 ILCS 200/10-30(c)) terminated due to the initial sale. (Appellant Group Exhibit A). Counsel agreed it was proper to remove the preferential developer's exemption in tax year 2008 due to the subject parcel's 2007 sale (Tr. P.10).

Counsel next cited Section 10-30(d) of the Code (35 ILCS 200/10-30(d))¹, which provides:

This Section applies before the effective date of this amendatory Act of the 96th General Assembly and then applies again beginning January 1, 2012. (35 ILCS 200/10-30(d)).

Counsel argued Public Act 96-480 became effective on August 14, 2009, which amended Section 10-30 of the Code (35 ILCS 200/10-30) and added Section 10-31 of the Code. (35 ILCS 200/10-31). Section 10-31(d) of the Code provides:

This Section applies on and after the effective date of this amendatory Act of the 96th General Assembly and through December 31, 2011. (35 ILCS 200/10-31(d)).

¹ The Board hereby identifies this document as appellant's Exhibit B.

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Counsel argued the appellant's primary contention is that when the subject parcel was assessed in 2011, Section 10-31 of the Code was in effect and applicable to the subject property. Section 10-31 of the Code provides:

(a) In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property, if:

- (1) The property is platted and subdivided in accordance with the Plat Act;
- (2) The platting occurs after January 1, 1978;
- (3) At the time of platting the property is in excess of 5 acres; and
- (4) At the time of platting or replatting the property is vacant or used as a farm as defined in Section 1-60.

(b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance. An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b).

(c) Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining property, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. Holding or offering a platted lot for initial sale shall not constitute a use of the lot for business, commercial or residential purposes unless a habitable structure is situated on the lot or unless the lot is otherwise used for a business, commercial or residential purpose. The replatting of a subdivision or portion of a subdivision does not disqualify the replatted lots from the provisions of subsection (b).

(d) This Section applies on and after the effective date of this amendatory Act of the 96th General Assembly and through December 31, 2011. (Source: P.A. 96-480, eff. 8-14-09.)

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Appellant's counsel argued the subject parcel qualified for the preferential assessment because it was platted in accordance with the Plat Act; the platting occurred after January 1, 1978; at the time of platting the property was in excess of five acres; and at the time of platting the property was vacant or used as a farm as defined in Section 1-60. (35 ILCS 200/1-60). Counsel argued as of the January 1, 2011 assessment date, the subject parcel remained in the same condition when purchased in 2007.

Based on the new amendatory legislation passed in 2009, counsel argued the requirement in subsection (b) states: except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided, "if we stop right there, so platted and subdivided, that brings you back to the four conditions that were satisfied as of January 1, 2011, which is the proper date for determining the assessment of the subject property. It says the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance." (Tr. P 10). Counsel argued the assessment of the subject parcel that was assigned prior to its last transfer or conveyance was the amount of \$1,653 as set forth in the 2008 notice of revised assessment. (See Appellant Group Exhibit A). Counsel argued any initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b). Based on this interpretation of the statute, counsel argued the subject parcel is not disqualified from receiving the preferential land assessment due to the subject parcel's sale in 2007.

Counsel called no witness to describe the subject property or explain how the property was being used.

Appellant's counsel requested the Board take notice of its decision issued under Docket Number 09-00903.001-C-2, which was a similar argument to this instant appeal.

Based on these arguments, the appellant requested the subject's assessment be reduced to \$1,653, which reflects application of Section 10-31 of the Code. (35 ILCS 200/10-31).

Under questioning from the Administrative Law Judge, appellant's counsel did not know if the subject parking lot was used for overflow parking from the Home Depot or if people are parking illegally. Counsel contends the parking is a necessity that appears in any sort of preliminary type of commercial development. He agreed the statute listed its effective date of August 14, 2009. Counsel disagreed that the new legislation did not have language pertaining to retroactivity, but argued there was no language in the statute that did not allow for a preferential land assessment due to a prior sale. Counsel argued there is no language contained in the amendatory statute that did not allow for the preferential land assessment due to a prior sale or that somehow a prior sale disqualifies the subject from a preferential land assessment. Counsel further argued the intent of the law should be considered in determining the subject's correct assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$1,199,772 was disclosed. In support of the subject's assessment, the board of review submitted a plat map of the subject's subdivision, a recorded deed and an Illinois Real Estate Transfer Declaration pertaining to the sale of the subject property. The subject parcel sold

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with another parcel of land in November 2009 for \$7,009,397. The board of review was of the opinion the current owner (Rubloff Shorewood, LLC) was not the original developer and is therefore not eligible for developer's relief pursuant to Section 10-31 of the Property Tax Code.

At the hearing, Assistant State's Attorney Keith Aeshliman deferred to the intervenors, Joliet Twp. H.S.D. #204 and Troy C.C.S.D #30-C, in response to the appeal on behalf of the Will County Board of Review. The Assistant State's Attorney noted the intervenors submitted a memorandum of law and their position is identical to that of the board of review. The board of review adopted the evidence submitted by the intervenors. 86 Ill.Admin.Code §1910.99.

Carl Buck, counsel for Joliet Twp. H.S.D. #204 and Troy C.C.S.D #30-C, adopted the evidence and arguments submitted by the Will County Board of Review and moved to admit the exhibits that were attached to its memorandum of law into evidence. 86 Ill.Admin.Code §1910.99. The adopted board of review evidence was marked as General Board of Review Exhibit A. Intervenors' exhibits include a Plat Map (Exhibit A), General Warranty Deed (Exhibit B), Legal Description (Exhibit C), 2009 Aerial Photograph of the subject's development (Exhibit D), Memorandum of Lease (Exhibit E), Will County Real Estate Multi-Year Inquiry Sheet (Exhibit F), a Special Warranty Deed (Exhibit G), Will County Real Estate Multi-Year Inquiry Sheet (Exhibit H), Will County Real Estate Multi-Year Inquiry Sheet (Exhibit I), a Common Area Maintenance Memorandum and Agreement (Exhibit J), and another Will County Real Estate Multi-Year Inquiry Sheet (Exhibit K).

The intervenors called John Trowbridge as a witness. Trowbridge has been a consultant for the Will County Supervisor of Assessments and Will County Board of Review for ten years. Trowbridge was of the opinion the subject parcel did not qualify for relief under the "developers relief" provisions of the Code because the parcel was purchased in 2007 terminating the preferential land assessment and allowing the assessment to be increased in 2008 to reflect its fair market value as allowed by Section 10-30 of the Code. Trowbridge explained the subject property is part of a commercial endeavor in which a majority of the actual physical area is covered by a parking lot that is used by adjoining property owners. Referring to the aerial photograph of the subject's development, Trowbridge testified over one-half of the subject parcel is improved with a parking lot, which is not a use that is exempt under the "Developers Relief Act". Trowbridge further testified the parking lot is also used in conjunction with the other out lots in the commercial development.

Under cross-examination, the witness agreed the parking lot situated on the subject parcel is an extension from the adjacent parcel that is improved with the Home Depot store and fronts a vacant piece of ground. He was not aware of any business being conducted on the subject parcel. He did not know if Rubloff Shorewood, LLC, was not using the subject parcel for any purposes related to Home Depot. He was not aware that there was no snowplowing, as recent as last year. The intervenors objected to the question because the appellant submitted no evidence to allow them to make that argument. The Board hereby sustains the objection. The Property Tax Appeal Board finds the appellant submitted no independent evidence or testimony that would suggest the parking lot had or had not been snow plowed from 2007 to the date of hearing.

With respect to the memorandum of law submitted by the intervenors, in summary, Buck argued the subject parcel is not entitled to any preferential assessment under Sections 10-30 or 10-31 of

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the Code. Counsel noted the taxpayer did not file an assessment appeal for tax year 2010, nevertheless, the taxpayer is arguing the subject re-qualifies for a preferential land assessment as provided by Section 10-31 of the Code for the 2011 tax year. Counsel argued there are no provisions in Sections 10-30 or 10-31 of the Code that allows for requalification of the preferential assessment once terminated. Counsel argued Section 10-31 of the Code is not applicable because the property is improved with a parking lot; the parking lot was being used in conjunction with commercial purposes that service the outlying lots within the commercial development.² Furthermore, the existence of a parking lot is not one of the allowed improvements listed in Section 10-30 or 10-31 of the Code, which both provide in part:

In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines . . . (35 ILCS 200/10-30(a) and 10-31(a)).

He further noted the Common Area Maintenance Memorandum, which contained the Common Area Maintenance Agreement (CAMA) (identified as Exhibit B in the memorandum), recital (b) states:

By virtue of that certain document entitled "Restriction Agreement and Grant of Easements" which encumbers the Shopping Center and is recorded concurrently herewith ("RAGE"), the Owners have imposed certain restrictions on their parcels and have granted reciprocal easements each in favor of the other with respect to the Shopping Center.

Intervenors' counsel argued the "RAGE" is a cross access agreement for the property owners for the purposes of allowing travel across the subject parcel between, for instance, the McDonalds and Home Depot and so forth. Counsel claimed it is impossible to argue the subject parking is not being used for commercial purposes to grant access to the other parcels within the shopping development.

In rebuttal, appellant's counsel argued the taxpayer is not using the subject parcel in conjunction with any adjacent property and there is no structure on the parcel. Counsel agreed a parking lot is not listed in Section 10-31 of the Code (35 ILCS 200/10-31), but there is nothing that suggests the statute was intended to be exhaustive. In support of this proposition, the appellant counsel cited Outcom, Inc., d/b/a Porlier Advertising v. Illinois Department of Transportation, 233 Ill.2d 324 (2009). Counsel also argued Common Area Maintenance Agreements (CAMA) and Restriction Agreement and Grant of Easements (RAGE) agreements are common in commercial developments.

² As of January 1, 2011, the subject development was improved with a Home Depot store, a McDonald's fast food restaurant and two other commercial buildings, but their names and uses were not identified during the course of the hearing. See Intervenors' Exhibit D.

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Conclusion of Law

The appellant argued that the appellant is a "developer" and contends the Illinois General Assembly enacted new amendatory legislation, Section 10-31 of the Code (35 ILCS 200/10-31), which replaced Section 10-30 of the Code which "re-qualifies" the subject parcel for a preferential land assessment. The appellant did not otherwise challenge the subject's estimated market value as reflected by its assessment. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case conducted under this Act by an agency shall be the preponderance of the evidence. (5 ILCS 100/10-15). The Board finds the appellant did not meet this burden of proof and no reduction in the subject's assessment is warranted.

Based on the facts in this record, the parties did not dispute that the property was platted in accordance with the Plat Act; the platting occurred after January 1, 1978; and at the time of platting the property was in excess of 5-acres when it was subdivided. However, the parties disagreed that the subject property was vacant as of the January 1, 2011 assessment date. The board of review and intervenors contend the existence of the parking lot is an improvement and it is used in conjunction with a business, commercial or residential purpose of the contiguous parcels.

The appellant's counsel agreed the subject parcel, which previously received a preferential land assessment as provided by Section 10-30 of the Code, no longer applied due to the sale of the subject parcel in November 2007. However, the appellant contends the subject parcel should re-qualify for the preferential land assessment because the new amendatory statute enacted under Section 10-31 of the Property Tax Code (35 ILCS 200/10-31). The Board finds there is no support for the appellant's interpretation of the statutes.

Section 10-30(d) of the Code states:

This Section applies before the effective date of this amendatory Act of the 96th General Assembly and then applies again beginning January 1, 2012. (Source: P.A. 95-135, eff. 1-1-08; 96-480, eff. 8-14-09).

In contrast, the new provision of the Code known as Section 10-31(d) states as follows:

This Section applies on and after the effective date of this amendatory Act of the 96th General Assembly and through December 31, 2011. (Source: P.A. 96-480, eff. 8-14-09).

The Property Tax Appeal Board finds the evidence establishes that the appellant, who was not the original developer, was the owner of the subject parcel as of the January 1, 2011 assessment date. The evidence also disclosed that the subject parcel was part of a sale that occurred in November 2007. The 2007 November sale was a transfer from the original developer to the appellant. The appellant's counsel agreed it was proper for Will County Assessment Officials to remove the preferential land assessment provided by Section 10-30 of the Code in 2008 due to the subject's 2007 sale. However, appellant's counsel argued the subject re-qualified for the preferential land assessment for the 2011 tax year due to the amendatory language contained in Section 10-31 of the Code. The Board gave this argument no weight. The Property Tax Appeal Board finds that once the subject parcel's preferential land assessment was terminated in 2008 due to its initial sale, it cannot "re-qualify" for the preferential land assessment as provided by Section 10-31 of the Code. The Board finds the provisions outlined in Section 10-31 of the Code

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do not allow for the subject property to "re-qualify" for a preferential land assessment. The Board finds the subject parcel was not a replatted lot as provided in Section 10-31(a)(4) of the Property Tax Code which provides:

At the time of platting or replatting the property is vacant or used as a farm as defined in Section 1-60. (35 ILCS 200/10-31(a)(4).

The Board finds that as of the January 1, 2011 assessment date the subject parcel was not replatted nor was the property vacant or used for a farm as defined in Section 1-60 of the Property Tax Code. In fact, the Board finds, based on the testimony of Trowbridge and the aerial photograph, the subject parcel was improved with a parking lot as of the January 1, 2011 assessment date and thus, not vacant. The Board further finds the subject parcel's parking lot is not one of the specified land improvements provided by Section 10-31(a) of the Code, which provides:

In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property,. . . (35 ILCS 200/10-31(a).

The Board further finds, based on the testimony of Trowbridge, the subject's parking lot was used in conjunction with other commercial business purposes within the development. The Board finds the aerial photograph shows there were cars in the subject's parking lot and there are three access points that are part of the subject's commercial development. Two of the access points, from Black Road and Brookforest Avenue, must be used to traverse the subject parcel's parking lot to access the Home Depot Store. In addition, the Common Area Maintenance Agreement (CAMA) and the Restriction Agreement and Grant of Easements (RAGE) further demonstrate the subject parcel is used for business and commercial purposes with contiguous property. Section 10-31(b) of the Property Tax Code provides:

Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot,. . . (35 ILCS 200/10-31(b).

The Board further finds the subject parcel does not qualify for a preferential land assessment because it did not sell from one developer to another between the effective of Public Act 96-480, which dates are specified by Section 10-31(d) of the Code, which provides that:

Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance. An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a

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transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b).

Section 10-31 of the Code had an effective date of August 14, 2009 through December 31, 2011. The subject parcel was not part of an initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure from August 14, 2009 through December 31, 2011, but sold in 2007, prior to the effective date of Section 10-31 of the Code being enacted.

Based on this analysis, the Board finds neither Section 10-30 nor 10-31 of the Code is applicable as of the January 1, 2011 assessment date to provide the preferential developer assessment.

The Property Tax Appeal Board further finds that the lack of explicit language to address retroactive assessments mandates that Section 10-31 of the Property Tax Code applies only to those assessments established beginning January 1, 2010 through December 31, 2011. This interpretation is further supported by the Appellate Court's holding in Kennedy Brothers, Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154, 510 N.E.2d 1275 (2nd Dist. 1987).

Appellant further argues the legislative intent would be best affected by not finding that an "initial sale" had occurred under circumstances where the "taxpayers" intended to develop the parcels and were holding the land for sale. As noted previously, the November 2007 transfer referenced in this record was an "initial sale" and thus disqualified the property from the developer's exemption from that point forward, unless the property was replatted. Based on this analysis, the Board finds the board of review properly denied the preferential land assessment as provided under Section 10-31 of the Code.

A complete reading of Section 10-31 seems to provide for additional temporary benefits of the preferential assessment after a sale and/or due to transfers arising out of financial hardships caused by foreclosures or transfers in lieu of foreclosure to help real estate developers avoid rising assessments which result from initial platting and subdivision of vacant land for further development. These circumstances do not apply to the subject property. As noted above, however, given the assessment date of January 1, 2011, Section 10-31 is inapplicable to this appeal and does not override the fact that the subject's "initial sale" occurred in 2007 so as to terminate the preferential assessment allowed by Section 10-30 of the Code.

In conclusion, based on the foregoing evidence and analysis, the Property Tax Appeal Board finds the board of review correctly denied the request for a preferential land assessment as provided by either Section 10-30 or 10-31 of the Code (35 ILCS 200/10-30 & 10-31) for the assessment year at issue.

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APPELLANT:	<u>Towne Centre Equities, LLC & Kent Shodeen</u>
DOCKET NUMBER:	<u>10-01947.001-C-3 thru 10-01947.003-C-3</u>
DATE DECIDED:	<u>March, 2014</u>
COUNTY:	<u>Kane</u>
RESULT:	<u>Reduction</u>

The subject property is composed of three parcels (PINs) consisting of 1,128,204 square feet or approximately 25.90 acres of land improved with 632,005 square feet of asphalt paving. The property is located in St. Charles, St. Charles Township, Kane County.

The appellants are challenging the assessment for the 2010 tax year on the basis that the market value of the subject property is not accurately reflected in the property's assessed valuation.

In support of the market value argument, the appellants submitted an appraisal prepared by Charles G. Argianas of Argianas & Associates, Inc., estimating the subject property had an "as is" market value of \$5,900,000 as of January 1, 2010. In estimating the market value of the subject property the appraiser developed the sales comparison approach to value. The appellants called Mr. Argianas (hereinafter "Argianas") as their witness.

Argianas is self employed and owns the firm of Argianas & Associates, Inc. The witness is licensed as a Certified General Real Estate Appraiser with the State of Illinois and testified he is licensed in 20 states. He has been a commercial real estate appraiser for 35 years. The witness has appraised hundreds of properties in Kane County and has the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute. Argianas identified Appellant's Exhibit #1 as the appraisal of the subject property he prepared. The witness was accepted as an expert in the field of real estate appraisal.

The witness testified the subject property was located east of Randall Road and the north side of Lincoln Highway or Route 38 in St. Charles. The main frontage is the portion on Route 38. He explained the subject property extends to Prairie Street which provides some additional frontage so as to allow dual access to the subject along Lincoln Highway and Prairie Street. The witness explained that to the east of the subject is an apartment complex and to the west is a Jewel/Osco. He further testified that Route 38 is an important east/west commercial arterial thoroughfare.

Argianas testified there were three or four things that are important about the subject property. First, it is located around the corner from the Randall Road corridor, a very important commercial thoroughfare. He asserted that Route 38 used to be more important but traffic patterns change. The witness was of the opinion that you are at a disadvantage when not on Randall Road.

The appellants' appraiser also testified that the real estate market in this area crashed around Halloween 2007 got worse through 2011 and bottomed out in 2012. The witness testified that he had prepared real estate appraisals of shopping centers on Randall Road and the rents were between \$28 and \$35 per square foot but current rents have declined to \$16.50 per square foot on average. The appraiser testified there is a correlation between rental rates and pricing.

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Another issue with the subject property according to the appraiser was that it is too big by itself to be developed by a single development. He asserted that one would not sell this property as of January 1, 2010 on a speculative basis; you would need to have somebody that would have an end user in mind. A final issue according to the witness is that the frontage part of the property would most likely be developed with commercial retail and the back portion of the site would be developed with some kind of multi-family residential.

Argianas testified the subject property is unimproved except for some leftover asphalt pavement from when the property had a retail facility. The appraiser concluded the highest and best use of the property as vacant was to hold as vacant for increased demand to support retail development. (Appellant's Ex. #1, page 39.) In estimating the market value of the subject property the appraiser developed only the sales comparison approach to value.

In developing the sales comparison approach the appraiser used four comparable sales located in Elgin and St. Charles. The comparables ranged in size from 344,560 to 2,178,000 square feet of land area. These properties sold from May 2008 to September 2008 for prices ranging from \$3,445,730 to \$11,895,500 or from \$5.46 to \$11.75 per square foot of land. The appraiser made a negative 30% adjustment to each sale for market conditions to arrive at adjusted prices ranging from \$3.82 to \$8.22 per square foot of land area. The appraiser also made a negative 10% adjustment to comparable #1 for location. Argianas also made negative adjustments of 20%, 20% and 15% for sales #1, #2 and #3 and a positive adjustment of 25% for sale #4, respectively, for size. The adjusted prices ranged from \$4.78 to \$6.99 per square foot of land area. The appraiser estimated the subject property had an indicated value of \$5.50 per square foot of land area or \$6,200,000, rounded. He then deducted \$316,003 as the cost to remove the 632,005 square feet of asphalt to arrive at an "as is" value of \$5,900,000. The appraiser was of the opinion that if someone purchased the subject property they would have to deal with the asphalt. According to Argianas a property that does not have asphalt is cheaper to develop and if someone is going to develop the subject property they are going to have to remove the asphalt.

The witness asserted that the negative adjustment for size is based on the market and economics that dictate that smaller lots sell for more per square foot than larger lots. Conversely, the positive adjustment for size for comparable #4 was based on the concept that larger lots sell for less per square foot.

The appraiser was aware that the subject property was for sale for a price of approximately \$17,000,000. The witness was of the opinion the price is ridiculously high and the property will never sell for that price.

The appraiser also made reference on page 45 of the report to another land comparable composed of 37 acres that was listed in 2010 for a price of \$14,505,480 or \$9.00 per square foot of land area. At the time of the report the property was currently being listed for sale for a price of \$6,205,122 or \$3.85 per square foot. He was of the opinion that this reflects the significant decrease in demand for retail land in the area.

The appraiser also asserted it will take an extended period of time to market the subject property because it is too big and market conditions are tough at this time. He also testified all of the big

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boxes such as Costco, Wal-Mart and Target are already on Randall Road; therefore, there is no reason for the subject property to be developed with a big box. He also did not think this property lent itself to a car dealership due to its location. It was also his understanding that neighbors do not want the property to be developed with retail on the front and multifamily residential on the back end.

Based on this evidence the appellant requested the subject's assessment be reduced to reflect a market value of \$5,900,000.

Under cross-examination Argianas testified at the time he developed his opinion of value he concluded the subject's highest and best use was retail but his opinion changed to part retail use and part multifamily use. In selecting comparables the appraiser wanted to find sales that were two or three years from the valuation date, properties close to the Randall Road corridor, parcels that were 300,000 to 400,000 square feet and properties with utilities, site infrastructure service at least to the property line and properties with retail use. The witness testified he could not prove there would be an adjustment to the comparables for differences in zoning or uses. The witness testified he did not know the exact zoning of the comparable sales; however, he thought the comparables were similar to the subject as commercial properties.

The appellants' appraiser was of the opinion there would be two potential buyers for the subject property. One would be a buyer who had a specific user and were ready to develop the property with an end development. The second type of buyer is one that would purchase the property for speculation. This buyer would need to purchase the property at a cost-effective price because they would have to sit on this property for several years until the end user could be found or they could come up with a development concept that made economic sense.

The appraiser explained that page 29 of the appraisal contained graphs depicting 202 transactions of commercial properties between 200,000 and 3,000,000 square feet within a 20 mile radius of St. Charles that sold from January 1, 2005 and January 1, 2012. These graphs showed that overall prices were higher in 2007 through 2009 with strong declines thereafter.

The appraiser explained there were no building improvements on the subject property. The property was used as the former St. Charles auto mall, which was demolished prior to January 1, 2010. The appraiser indicated on page 20 of the report the subject property sold on September 1, 2008 for \$6,880,000 and sold again on September 15, 2008 for a price of \$3,770,000. He asserted in the report these transactions appeared to be between related entities or investors and not considered reflective of market value. The witness testified that he talked with someone at Shodeen, his client, and was told these were not arm's length transactions, which he accepted. The witness did not know the relationship between either of the parties in the respective transactions.

His report also disclosed the subject property along with two freestanding vacant restaurants, with a total land area of 27.02 acres, were being offered for sale at \$17.7 million or \$15.00 per square foot of land area. It was his opinion the asking price is substantially above the market level as of the effective date of value for the report as well as current market values. The appraiser indicated that he told Ms. Lisa Smith of Shodeen Management that the asking price was too high. According to the witness she agreed but indicated that was not her decision.

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The appraiser agreed he adjusted the comparable sales downward by 51%, 44%, 40.5% and 12.5%, respectively. He agreed the comparables were not perfect considering the magnitude of the adjustments. His 30% downward adjustment for time was due to rental rates for office and for retail going down 20% to 30%.

Under re-direct, Argianas testified there is a correlation between rental values and land values.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$3,795,623 was disclosed. The subject's assessment reflects a market value of \$11,377,767 or \$10.08 per square foot of land area, including the improvements, using the 2010 three-year average median level of assessment for Kane County of 33.36%.

The board of review called as its witness David Medlin, Deputy Assessor of St. Charles Township. Medlin prepared a letter dated April 1, 2013, which was included in Board of Review Group Exhibit #1. On page two of the letter Medlin provided information on five comparable sales located in St. Charles and Elgin that ranged in size from 63,104 to 2,195,511 square feet of land area. These properties sold from January 2007 to September 2008 for prices ranging from \$757,422 to \$11,895,212 or from \$5.42 to \$22.77 per square foot of land area. Medlin sale #1 was the same as Argianas sale #3, located on Randall Road and used to develop a Costco. Medlin testified sales #1 through #4 were used for retail purposes. The witness testified sale #5 was the site of an old industrial building that was torn down. This property is located in an office industrial park and was purchased for some speculative development. Sale #5 was the same comparable as Argianis sale #4. The witness testified that the market turned at the end of 2007 and property values had started to decrease.

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

Under cross-examination Medlin agreed that values continued to go down generally in 2008. He testified that with respect to 2009, it depends on the type of property and he could not make a general statement that values continued to go down, although he thought values of commercial properties went down. He also noted his sale #5 was a "PUD" or a Planned Unit Development, which requires approval by the City or County with respect to what is going to be developed.

Medlin began working with the Township Assessor's Office in July 2009 and received his MAI designation in 2005. The witness agreed his report was not an appraisal. He also agreed his report includes no adjustments to the comparables with respect to time of sale or size.

Medlin also testified he did not supply the CoStar Comp sheets that were included as part of Board of Review Group Exhibit #1. He also testified the improvement assessment is attributable to the asphalt, there were no building improvements. Medlin also explained that in subparagraph 2 on page two of his letter he identified a land comparable sale that was located adjacent to Argianis sale #1. This additional sale was a 5.906 acre site that sold in September 2010 for a price of \$3,087,120 or \$12.00 per square foot of land area. Medlin submitted a copy of the Illinois Real Estate Transfer Declaration (PTAX-203) associated with the sale that indicated the property was advertised for sale and the property was going to be used for auto sales. Medlin submitted this sale to demonstrate there was not necessarily a standard 30 percent downward

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adjustment for time. This property sold in September 2010 for a price of \$12.00 per square foot of land area while Argianis sale #1 sold in July 2008 for \$10.00 per square foot of land area.

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

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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the market data submitted by the parties support a reduction in the subject's assessment.

The subject's assessment reflects a market value of \$11,377,767 or approximately \$10.08 per square foot of land area, including the improvements. The appellant submitted an appraisal and presented the testimony of the appraiser, who relied on the sales comparison approach, and estimated the subject property had an "as is" market value of \$5,900,000 as of January 1, 2010. In support of the assessment the board of review called as its witness the Deputy Township Assessor of St. Charles Township who provided information on five comparable sales, two of which were used by the appellant's appraiser.

The comparables contained in the appellants' appraisal sold from January 2008 to September 2008 for prices ranging from \$3,445,730 to \$11,895,500 or from \$5.46 to \$11.75 per square foot of land area. The five sales submitted by the board of review sold for prices ranging from \$757,422 to \$11,895,212 or from \$5.42 to \$22.77 per square foot of land area. The Board gives little weight to board of review sales #2 and #3 due to size; as a result, the unadjusted range of the remaining sales prices is from \$5.42 to \$11.61 per square foot of land area.

Of the two witnesses only Argianas made adjustments to the comparable sales for time, location and size. The Board gives less weight to testimony of Medlin because no adjustments or consideration were made to his sales for time, location and size. A primary adjustment made by the appellants' appraiser was a negative 30% adjustment to each comparable for market conditions at the time of sale. Both witnesses agreed that the market reached a peak in approximately 2007 and subsequently declined. However, in this record the board of review's witness provided information on a vacant land sale that was located adjacent to the north of appellant's appraisers' sale #1. This sale, with 5.906 acres or 257,265 square feet of land area, sold in September 2012 for a price of \$12.00 per square foot of land area. Appellants' appraisers' sale #1, with 344,560 square feet of land area, sold in July 2008 for a price of \$10.00 per square foot of land area. The Board finds this comparison undermines the appellants' appraiser's conclusion that a 30% downward adjustment for market condition is justified.

The Board finds that excluding the market condition adjustment made by the appellants' appraiser, the adjusted prices for the comparable land sales ranged from \$6.83 to \$9.99 per square foot of land area, with an average price of \$8.01 per square foot and a median price of \$7.61 per square foot of land area. The subject's assessment reflects a market value above each of these figures on a square foot basis.

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The Board further finds the appellants' appraiser's conclusion of value of \$5,900,000 was somewhat undermined due to the fact the property with two freestanding vacant restaurants was being marketed by the owner for \$17.7 million.

In conclusion, after considering the most probative sales in this record, the Property Tax Appeal Board finds that the subject property had a market value of \$7.50 per square foot of land area, or \$8,450,000, rounded. The Board further finds a \$316,000 deduction is appropriate for the removal of the asphalt to arrive at an "as is" market value of \$8,134,000. Since the market value of the subject has been established, the 2010 three-year average median level of assessment for Kane County of 33.36% shall apply.

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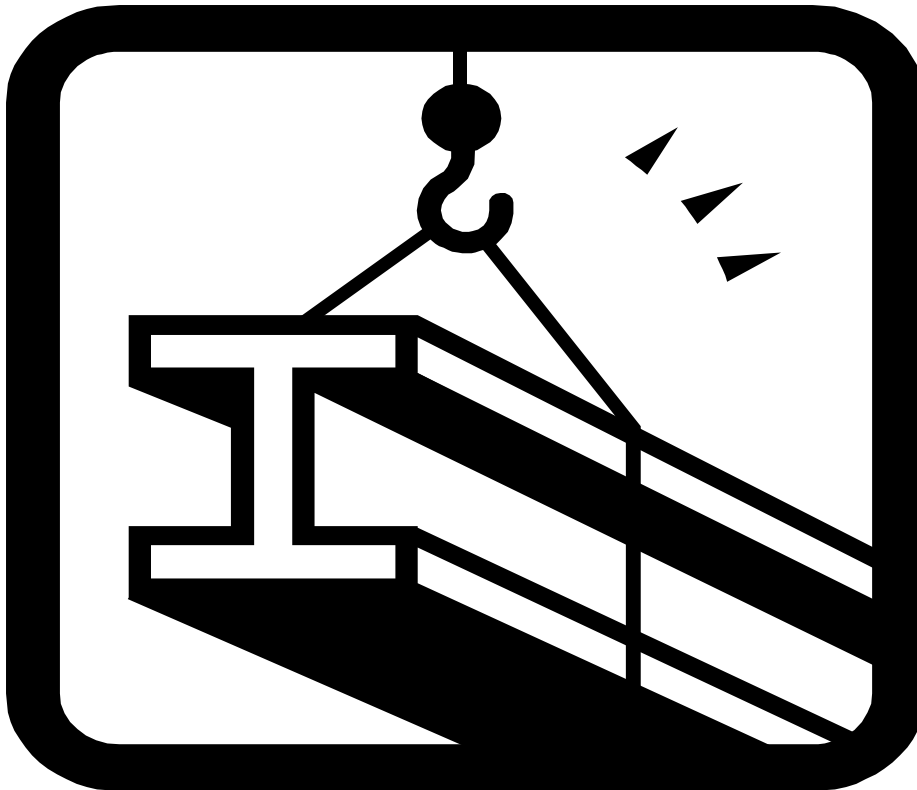
*[Items Contained in Italics Indicate
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PROPERTY TAX APPEAL BOARD
SYNOPSIS OF REPRESENTATIVE CASES
2014 INDUSTRIAL DECISIONS



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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APPELLANT:	<u>Nathan Alfvy</u>
DOCKET NUMBER:	<u>09-24251.001-I-1</u>
DATE DECIDED:	<u>November, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>No Change</u>

The subject property is improved with a one-story industrial warehouse of masonry construction with 34,494 square feet of building area. The building was constructed in 1986. The subject property has a 76,467 square foot site resulting in a land to building ratio of 2.22:1. The property is located in Northlake, Leyden Township, Cook County. The subject is classified as a class 5-93 industrial building under the Cook County Real Property Assessment Classification Ordinance (hereinafter "Ordinance").

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted information on four comparable sales. The comparables were improved with industrial buildings that ranged in size from 31,200 to 40,800 square feet of building area. Three comparables were constructed in 1963 and 1967. The appellant did not provide the age for comparable #3. The comparables had land to building ratios ranging from 1.09:1 to 2.42:1. The sales occurred from March 2006 to December 2007 for prices ranging from \$700,000 to \$1,100,000 or from \$17.50 to \$34.44 per square foot of building area, including land. The appellant requested the subject's assessment be reduced to \$252,582.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$349,725. The subject's assessment reflects a market value of \$1,398,900 or \$40.55 per square foot of building area, including land, when applying the Ordinance level of assessment for class 5-93 property of 25%.

In support of its contention of the correct assessment the board of review submitted information on five comparable sales. The comparables were improved with one-story industrial buildings that ranged in size from 31,080 to 36,360 square feet of building area. The buildings were constructed from 1918 to 1970. These properties had land to building ratios ranging from 1.76:1 to 2.42:1. The sales occurred from October 2004 to January 2009 for prices ranging from \$1,340,000 to \$1,818,000 or from \$41.23 to \$56.75 per square foot of building area, including land.

Conclusion of Law

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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

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The Board finds the best evidence of market value to be board of review comparable sales #1, #2, #3 and #5. Additionally, the record disclosed that appellant's comparable sale #1 was the same property as board of review comparable sale #1. The difference between the two sales was the board of review sale occurred in January 2009 while the appellant's sale of the same property occurred in December 2007. The Board finds the board of review sale #1 occurred more proximate in time to the assessment date at issue for a price of \$50.00 per square foot of building area, including land, and is given more weight. The Board gave less weight to board of review comparable #4 due to the sale occurring in October 2004, which was not as proximate in time to the assessment date as the best comparables. Less weight was given the appellant's comparables due to the fact the appellant's documentation did not include as complete a description of the comparable properties as did the board of review's documentation. The Board finds the best comparables sold for prices ranging from \$48.18 to \$56.75 per square foot of building area, including land. Even though the subject building was newer than the best comparables in the record, the subject's assessment reflects a market value of \$40.55 per square foot of building area, including land, which is below the range established by the best comparable sales. The Board finds a reduction in the subject's assessment is not justified.

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APPELLANT:	<u>Corporation Southfield</u>
DOCKET NUMBER:	<u>09-00844.001-I-2</u>
DATE DECIDED:	<u>May, 2014</u>
COUNTY:	<u>Lake</u>
RESULT:	<u>No Change</u>

The subject property consists of a vacant 196,891 square foot industrial lot. The subject parcel is located in Shields Township, Lake County, Illinois.

The appellant appeared before the Property Tax Appeal Board by counsel, contending the subject's land is inequitably assessed. The appellant's attorney described the subject property as an irregular-shaped parcel with 50 feet of frontage along the east side of Skokie Highway. The parcel also has frontage along the west side of the Northwestern Railroad. The only access to the subject is from the North and South via Skokie Highway. In support of this argument the appellant provided an assessment grid analysis on three suggested land comparables located less than 1-mile from the subject property. The land comparables contain from 85,813 to 448,668 square feet of land area and have land assessments that range from \$9,474 to \$36,019 or from \$0.03 or \$0.42 per square foot of land area. The subject property has a land assessment of \$262,497 or \$1.33 per square foot of land area. Based on this evidence, the appellant requested a reduction in the subject's assessment to \$13,782 or \$0.07 per square foot of land area.

The appellant's attorney called no witnesses and acknowledged that the comparables were selected by an attorney from their law office and was unavailable for the hearing.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$262,497 was disclosed. The subject property has a land assessment of \$262,497 or \$1.33 per square foot of land area.

In support of the subject's assessment, the board of review submitted a letter addressing the appeal, aerial photographs and property record cards of the appellant's comparables and the board of review's comparables. The board of review also submitted an assessment grid analysis on three suggested land comparables with the same neighborhood assessment code as the subject property defined by the local assessor.

John Paslawsky, representative from the board of review, presented the evidence on behalf of the board of review. Paslawsky explained that two of the comparables are immediately adjacent and one is just south of the subject property. The suggested land comparables contain from 111,949 to 824,591 square feet of land area and have land assessments that range from \$149,250 to \$1,099,345 or \$1.33 per square foot of land area.

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

Under cross-examination, Paslawsky testified that board of review's comparables #1 and #2 have the same property owner as the subject property. Paslawsky stated that they looked for properties in the same neighborhood as the subject, located on Route 41, rail lines and having similar characteristics, such as being zoned industrial. Rail lines are specific to that area.

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Paslowsky testified that two comparables submitted by the appellant are right-of-ways for Commonwealth Edison. The third comparable submitted by the appellant is completely landlocked and almost all wetlands. The appellant's comparable #2 is wetlands. The appellant's comparables are assessed at a lower price per square foot because they have no other use other than right-of ways or wetlands.

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 warranted.

The appellant contends unequal treatment in the subject's land 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 (1989); 86 Ill.Admin.Code 1910.63(e). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not met this burden.

The Property Tax Appeal Board finds the parties submitted six land comparables for consideration. The Board gave less weight to the appellant's three comparables. Comparables #2 and #3 were considerably larger in size and comparable #1 is considerably smaller in size than the subject property. Also, these comparables were not located in the subject's neighborhood code as defined by the assessor. The Board gave less weight to the board of review's comparable #3. This comparable was considerably larger in size when compared to the subject. The Board finds the remaining board of review comparables are the most similar to the subject in location, size and features. Due to their similarities to the subject, these comparables received the most weight in the Board's analysis. These comparables had land assessments of \$291,023 and \$149,250 or \$1.33 per square foot of land area, respectively. The subject's land assessment of \$262,497 or \$1.33 per square foot of land area is supported by the most similar comparables in the record on a per square foot basis. Based on this record the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's land assessment was inequitable and a reduction in the subject's assessment is not justified.

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APPELLANT:	<u>Division Street Place, LLC</u>
DOCKET NUMBER:	<u>08-28087.001-I-3</u>
DATE DECIDED:	<u>September, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>No Change</u>

The subject property consists of a one-story, masonry, industrial building. The building was constructed in 1965. The property has a 688,252 square foot site and is located in Proviso Township, Cook County.

On a procedural note, in opening arguments, the appellant's attorney waived the equity and vacancy arguments, while also asking to strike the actual income analysis data. The assistant state's attorney had no objections to the appellant's requests and the Board granted said requests.

Therefore, the appellant's sole issue is overvaluation as the basis of the appeal. As an ancillary issue, the appellant's pleadings assert that the subject's building contains 481,000 square feet of building area. In addition, the appellant's brief asserts that in 2008 the subject was split into two land parcels, while the second land parcel was donated to the Village of Melrose Park.

At hearing, the appellant's attorney stated that he had no personal knowledge either of what exactly comprised the subject property as of the assessment date of January 1, 2008 or when the second parcel transfer to the Village was completed.

In support of the overvaluation argument, the appellant submitted limited data on one sale listing and three suggested comparable sales. The sale properties, which are all located in Chicago, sold from March, 2007, to December, 2009, for prices that ranged from \$2.03 to \$7.17 per square foot. The improvements ranged in size from 167,000 to 2,000,000 square feet of building area. The printouts stated that the properties were used for industrial manufacturing, self-storage, or food processing. Sale #2 was a single-tenant building, while sale #3 was a multi-tenant building. In addition, the printouts indicated that there were no real estate brokers used by the parties to sales #2 and #4.

As to the sales, the appellant's attorney asserted that sale properties #2 through #4 were chosen due to their proximity to the subject. Moreover, he had no personal knowledge as to whether sale #4 was a leased fee or fee simple transaction.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$2,382,000. The subject's assessment reflects a market value of \$6,616,666 or \$13.07 per square foot of living area, including land, when applying level of assessment for class 5B, industrial property under the Cook County Real Property Assessment Classification Ordinance of 36%. As to the subject's improvement, the board of review's memorandum stated that the building contains 506,064 square feet of building area.

In support of its contention of the correct assessment, the board of review submitted information on five suggested comparable sales. The sale properties, four of which are located in Melrose

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Park as is the subject property, sold from June, 2003, to February, 2007, for prices that ranged from \$16.86 to \$72.98 per square foot. The improvements ranged in size from 300,251 to 500,000 square feet of building area. The printouts stated that the properties were used for industrial manufacturing or distribution, with all five sales containing a multi-tenant building.

Moreover, the board of review's memorandum stated that the data was not intended to be an appraisal or an estimate of value and should not be construed as such. The memorandum indicated that the information provided therein had been collected from various sources that were assumed to be factual and reliable; however, it further indicated that the writer hereto had not verified the information or sources and did not warrant its accuracy.

At hearing, the state's attorney argued that the board of review's sales #1 through #4 are not only all located within the same suburb as is the subject, but that these sales are either on the same street as the subject or located within a one-mile radius from the subject property. He also stated that the sales all contain a similar highest and best use in comparison to the subject. Moreover, he asserted that the subject's value is currently below the unadjusted range of the sale properties; therefore, with adjustments to the raw sales data, the subject would be within the range of these comparables.

As to the appellant's sale properties, the state's attorney argued that appellant's listing sale should be given no weight; that appellant's sale #2 contains 2,000,000 square feet of building area which is approximately 1,519,000 square feet larger than the subject while also being twice as old as the subject's building; that appellant's sale #3 is not only twice as old as the subject but located in Chicago and not Melrose Park; and that appellant's sale #4 has contradictory building square footage on its printouts which should diminish the weight accorded to it.

In rebuttal, the appellant's attorney attempted to submit a document into evidence; however, the board of review objected on the basis that the document was new evidence in the guise of rebuttal. Upon due consideration of the parties' positions, the Board denied the appellant's request to submit new evidence during rebuttal. However, in further rebuttal, the appellant's attorney pointed to data within the printouts relating to additional building square footage in the board's sale #3 square footage as well as the printouts' statements regarding the buyer's motives relating to the board's sale #4.

Conclusion of Law

Section 1910.66(c) of the official rules of the Property Tax Appeal Board states that

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 chief in the guise of rebuttal evidence. 35 ILCS 200/16-180.

Therefore, the Board shall not accord any weight to the appellant's rebuttal document or argument relating to said document.

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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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The Board finds the best evidence of market value to be parties' comparable sales. The Board accorded diminished weight to the appellant's comparables as well as the board of review's comparables #4 and #5 due to a disparity in location, building size and/or age, incomplete data regarding the properties' highest and best uses or the nature of the sales transaction.

The Board accorded most weight to the board of review's comparable sales #1 through #3. These comparables sold for prices ranging from \$17.10 to \$32.47 per square foot of building area, including land. The subject's assessment reflects a market value of \$13.07 per square foot of building area. After making adjustments to this raw data for pertinent factors, the Board finds that the subject's market value is supported by the sale comparables. Therefore, based on this evidence, the Board finds a reduction in the subject's assessment is not justified.

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APPELLANT:	Hercules Forwarding, Inc.
DOCKET NUMBER:	09-21383.001-I-1
DATE DECIDED:	July, 2014
COUNTY:	Cook
RESULT:	No Change

The subject has 342,381 square feet of land that is improved with a 46 year old, one-story, masonry and steel, industrial truck terminal facility. The facility contains 67 dock spaces while the subject's improvement size is 34,600 square feet of building area, and its total assessment is \$552,749. This assessment yields a fair market value of \$2,210,996, or \$63.90 per square foot of building area (including land), after applying the 25% assessment level for industrial properties under the 2009 Cook County Classification of Real Property Ordinance. The appellant, via counsel, argued that the fair market value of the subject property was not accurately reflected in its assessed value as the basis of this appeal.

In support of the market value argument, the appellant submitted a summary appraisal report for the subject property with an effective date of January 1, 2008. The appraiser estimated a fair market value for the subject of \$2,145,000 based on the cost, income, and sales comparison approaches to value. The suggested comparables used in the sales comparison approach sold between August 2003 and November 2004 for prices ranging from \$10,185 to \$32,238 per door. The appraiser also conducted an inspection of the subject. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The Cook County Board of Review submitted its "Board of Review-Notes on Appeal," wherein the subject's final assessment of \$552,749 was disclosed. In support of the subject's assessment, the board of review submitted a property record card for the subject, and raw sales data for six industrial transportation buildings located within ten miles of the subject. The sales data was collected from the CoStar Comps service, and the CoStar Comps sheets state that the research was licensed to the Cook County Assessor's Office. However, the board of review included a memorandum which states that the submission of these comparables is not intended to be an appraisal or an estimate of value, and should not be construed as such. The memorandum further states that the information provided was collected from various sources, and was assumed to be factual, accurate, and reliable; but that the information had not been verified, and that the board of review did not warrant its accuracy.

The comparables are described as one-story or three-story, masonry or concrete, industrial truck terminals. Additionally, the comparables are from 6 to 52 years old and have from 26,633 to 62,541 square feet of building area. The comparables sold between December 2005 and May 2010 for \$1,200,000 to \$12,850,000, or \$21.36 to \$337.88 per square foot of building area, including land.

The board of review also noted the subject was purchased in September 2001 for \$2,600,000, or \$68.86 per square foot, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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After reviewing the record and considering the evidence, the Property Tax Appeal Board (the "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. Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 545 (1st Dist. 2002); National City Bank of Michigan/Illinois v. Prop. Tax Appeal Bd., 331 Ill. App. 3d 1038, 1042 (3d Dist. 2002) (citing Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 313 Ill. App. 3d 179 (2d Dist. 2000)); 86 Ill. Admin. Code § 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652, 655 (1st Dist. 2010); 86 Ill. Admin. Code § 1910.65(c). Having considered the evidence presented, the Board finds that the evidence indicates a reduction is not warranted.

In determining the fair market value of the subject property, the Board finds that all of the comparables' sale dates in the appellant's appraisal are too far removed from the lien date to accurately reflect the subject's market value as of January 1, 2009. As one sale occurred in 2003 and four sales occurred in 2004, there is no sufficient range with which to determine the subject's comparability. As the appraiser indicated that the sales comparison approach was given substantial emphasis in his final analysis, the Board does not find this appraisal to be reliable in establishing a market value for the subject as of January 1, 2009. As a final point, the Board notes that the subject is currently valued at \$32,500 per door, which is within the range of \$31,000 to \$33,000 per door suggested by the appraiser on page 81 of his appraisal.

Accordingly, in determining the fair market value of the subject property, the Board finds that the appellant failed to submit sufficient evidence to show the subject was overvalued. Therefore, the Board finds that the appellant has not met its burden by a preponderance of the evidence and that the subject does not warrant a reduction based upon the market data submitted into evidence.

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APPELLANT:	JP Morgan Chase & Co.
DOCKET NUMBER:	09-04458.001-I-3
DATE DECIDED:	January, 2014
COUNTY:	DuPage
RESULT:	Reduction

The subject property is a 243,065 square foot site primarily improved with a one-story single tenant industrial building of masonry exterior construction that was built in 2003.¹ The structure contains 124,680 square feet of building area; has a land-to-building ratio of 1.95:1, is fully sprinkled, has a two story office area containing 9,930 square feet or approximately 8% of total building area, a data center which contains a three foot raised floor, a mezzanine level containing approximately 28,275 square feet used mainly for storage, an 18 foot to 22 foot ceiling clearance, a freight elevator, 6 truck level docks and 37,000 square feet of paved asphalt parking. The subject is located in Elk Grove Village, Addison Township, DuPage County, Illinois.

The appellant, through counsel, submitted evidence before the Property Tax Appeal Board claiming assessment inequity, contention of law and that the fair market value of the subject was not accurately reflected in its assessed value.² In support of the overvaluation argument an appraisal was submitted with an estimated fair market value of \$5,800,000 as of January 1, 2008 using the three traditional approaches to value.

The appraisal report was prepared by Edward V. Kling and David M. Rogers of the Real Valuation Group, LLC. Kling, a licensed appraiser, has the Member, American Institute Real Estate Appraisers (MAI) designation from the Appraisal Institute. The subject was inspected in October 2008. The appraisers developed a cost approach, sales comparison approach and income approach to estimate the subject's market value. The purpose of the appraisal was to estimate the market value of the subject property as of January 1, 2008 for an ad valorem tax assessment appeal. An "Update of Prior Appraisal Report" dated August 31, 2009 and signed by both Kling and Rogers was submitted into the record. The letter depicts:

We have conducted research of sales data for sites and improvements comparable with the subject occurring since January 1, 2008, and it is our opinion that the subject's value as stated in our original report has not substantially changed. It is therefore our opinion that the subject's value remains at the original amount of \$5,800,000."

(Letter dated August 31, 2009)

¹ The subject improvement was initially purchased in 2002 for \$5,500,000 as a shell industrial building and then fully built out for computers and storage of records as a data processing center (Transcript, page 7).

² Appellant's contention of law argument was not supported by legal argument other than a market value argument contained within a legal brief. Therefore, the Property Tax Appeal Board will not separately address this argument. For his inequity argument, appellant's counsel failed to submit evidence in support of this argument, therefore, this argument will not be addressed in this decision.

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The property rights appraised were the fee simple estate (Appraisal, page 2). The appraisal report depicts the highest and best use of the subject site as vacant is to develop the parcel with industrial improvements. The highest and best use as improved is its existing use as improved (Appraisal, page 20).

Under the cost approach to value, the appraisers estimated the subject's site value of \$1,944,520 or \$8.00 per square foot of land area. Four land sales were examined in Roselle, Itasca, Glendale Heights and Carol Stream, Illinois that ranged in size from 142,006 to 428,194 square feet of land area. The sales occurred from April 2006 to January 2008 for prices ranging from \$1,000,000 to \$4,020,000 or from \$7.04 to \$9.83 per square foot of land area. The Marshall & Swift Valuation Service, Section 14, Page 18, Computer Data Centers, Class C, Type Average, to estimate a replacement cost new for the improvements of \$14,883,523 or \$119.37 per square foot of building area. Physical depreciation was estimated using the age/life method at 6%.

Functional obsolescence was estimated to be 45% based on excessive build-out of storage areas on the first floor and mezzanine level, excessive wiring capacity due to the data center along with the climate controlled and raised flooring in the warehouse area, all of which were considered super adequacies.

External obsolescence was estimated to be 23% because of the current excessively high vacancy rates in the subject's area for the subject's property type. Vacancy rates were reported to be between 17% to 18%; while the normal vacancy rates were reported to be from 5% to 8%. In support of the accrued depreciation estimate, the appraisers also used the age/economic life method. Effective economic life was estimated to be 25 years and was divided by the estimated economic life of 35 years to arrive at an estimated accrued depreciation of 71% (Appraisal, page 34). With consideration of both methods, accrued depreciation was estimated to be 73%.

The estimated land value of \$1,940,000 was added to the estimated cost new of \$14,883,523 and accrued depreciation of \$10,864,972 was deducted to arrive at a depreciated value of the improvements of \$4,018,551. Site improvements of \$42,000 were added to this amount which indicated an estimated value by the cost approach of \$6,000,551 or \$6,000,000, rounded, or \$48.12 per square foot of building area, including land (Appraisal, page 36).

The appraisers next developed the sales comparison approach and examined six single tenant comparable sales. The sales were located in Carol Stream, Long Grove, Itasca and Addison, Illinois. The comparables ranged in age from 23 to 36 years old and consisted of five, single tenant industrial buildings and one single tenant showroom/warehouse. They had office build-outs ranging from 4% to 100% of total building area and land-to-building ratios ranging from 1.62:1 to 8.13:1. The sales were situated on sites ranging from 191,664 to 607,226 square feet of land area. The comparables sold from October 2005 to September 2007 for prices ranging from \$2,523,500 to \$6,600,000 or from \$37.37 to \$53.95 per square foot of building area, including land. The comparables were adjusted for differences when compared to the subject for proximity to interstate roadway, size, land-to-building ratio, construction quality, age, condition and utility. The comparables had adjusted sales prices ranging from \$43.89 to \$51.71 per square foot of building area, including land. Based on these adjusted sales, the appraisers estimated a value for the subject property under the sales comparison approach of \$5,859,960 or \$5,860,000 rounded, or \$47.00 per square foot of building area, including land.

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In developing the income approach to value the appraisers used six comparable rental properties to estimate market rent. Each comparable was located in Elk Grove, similar to the subject. The rental comparables were each described as industrial buildings. The rental spaces ranged in size from 96,633 to 121,728 square feet of building area; which were located in structures ranging from 121,728 to 698,317 square feet of total building area. Five of the comparables were described as being built from 1960 to 2004.³ The market rents ranged from \$2.87 to \$6.75 per square foot of building area on a net basis.⁴ The appraisers estimated the subject's market rent to range from \$4.00 to \$4.50 per square foot of building area on a net basis. Based on the specialized build-out being a tenant improvement paid for by the tenant, it was estimated the subject's market rent was \$4.50 per square foot of building area on a net basis, due to the power and cooling add-ons which increase the likelihood for research and development use (Appraisal, page 50). Thus, the appraisers estimated the subject had a potential gross income of \$561,060.

Expense recoveries for such items as pass through real estate taxes and insurance (\$140,888) were added to the potential gross income; and vacancy and credit losses of 12% (\$84,234) were subtracted from the potential gross income to arrive at an estimated effective gross income for the subject of \$617,715. Management fees of 3% (\$18,531), real estate taxes of \$115,952, insurance of \$24,936 and reserves for replacements of \$31,170 resulted in total expenses of \$190,590 which were deducted from the potential gross income of \$617,715 to arrive at an estimated net income for the subject of \$427,125 (Appraisal, page 53).

The subject's estimated net income was converted using an overall capitalization rate to present value. The appraisers used the band of investments method as one method in selecting the appropriate overall capitalization rate. Based on conversations with local lenders, typical financing for the subject property was determined to be 80% loan-to-value, a 6.75% fixed interest rate and a 25 year amortization period with refinancing required after 5 years. The mortgage constant was determined to be 0.0829. Based on the loan percentage of 80%, the equity percentage remaining of 20% was utilized. Considering the risk associated with the investment, the appraisers estimated that capital could be attracted to an investment of the above described characteristics with an anticipated return on equity of 10%. The appraisers next examined the amortization of the loan during the five years until refinancing was required. An adjustment based on the percentage of the loan paid off in 5 years (0.0913) times the loan ratio (0.80) times the sinking fund factor at the 10% equity yield rate (0.1638), indicated an overall capitalization rate of 0.0744 (Appraisal, page 55). The reasonableness of the previously described overall capitalization rate was checked against an overall capitalization rate determined from a debt coverage ratio. The appraisal describes this as the ratio of annual net income to annual debt service required by the terms of the loan (Appraisal, page 55). A ratio of 1.25 means net income is 25% greater than the required annual debt service. The debt coverage ratio is multiplied by the loan constant which is multiplied by the loan to value ratio to arrive at an overall capitalization rate. Using this formula, the appraisers multiplied a debt coverage ratio of 1.20 by the loan constant of 0.0829 and the loan to value ratio of 0.80 which indicated an overall capitalization rate of 0.0796 or 7.96%. The appraisal depicts the Korpacz Real Estate Investor Survey for the last Quarter of 2007 indicated overall capitalization rates ranged from

³ The age of comparable rental #5 was not disclosed.

⁴ Rental comparable #3 was reported to be \$4.35 on a triple net basis.

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5.5% to 10% with an average of 7.6%. Utilizing this and the above described methods the appraisers selected an overall capitalization rate of 7.75%. Dividing the estimated net income for the subject of \$427,125 by the estimated overall capitalization rate of 7.75% indicated an estimate of value for the subject using the income approach to value of \$5,511,287 or \$5,510,000, rounded (Appraisal, page 56).

In utilizing the loaded overall capitalization rate, the appraisers concluded an estimated value for the subject of \$5,700,000 (Appraisal, page 57).

In reconciling the three approaches to value, the appraisers gave primary weight to the sales comparison approach. The cost approach to value was given less consideration because it was considered to be less relevant to the typical purchaser than the other two approaches. The income approach was also given less weight by the appraisers based on the excessive build-out of the subject property which was opined to make it difficult to estimate a lease rate for the subject. After consideration of the factors involved in each approach, primary consideration was ultimately given to the sales comparison approach and it was opined that the subject's estimated value was \$5,800,000 as of January 1, 2008 and was confirmed as being the same on January 1, 2009 by letter dated August 31, 2009.

Based on this evidence the appellant requested a reduction in the subject's assessment to reflect the estimated market value of \$5,800,000 as set forth in the appraisal and update letter.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$2,637,000 was disclosed. The subject's assessment reflects a market value of approximately \$7,928,443 or \$63.59 per square foot of building area, including land, using the 2009 three-year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue. In support of the subject's assessment, the board of review submitted two grid analyses, one containing 11 sales⁵ and the other being a qualitative adjustment grid.

The sales grid analysis depicts the comparables were located in Elk Grove, Itasca, Bensenville, Wood Dale and Lombard, Illinois. They had land-to-building ratios ranging from 1.56:1 to 2.85:1; exterior construction was depicted as tilt-up, masonry or masonry/metal. The comparables were built from 1976 to 1995 and consisted of one-story or part one-story and part two-story buildings with building heights ranging from 20 to 40 feet and percentage of office space ranging from 4.68% to 16.61% of total building area. The properties sold from March 2006 to July 2008 for prices ranging from \$6,510,000 to \$20,200,000 or from \$47.01 to \$83.59 per square foot of building area, including land. The adjustment grid depicts the sale comparables were adjusted for location, date of sale, size, land-to-building ratio, construction, age, height and percentage of office space. After making adjustments to the comparable sales, the subject was depicted as having a market value of \$8,730,000 or \$70.00 per square foot of building area, including land. Based on this evidence, the board of review requested an increase in the subject's assessment.

⁵ Sale comparable #9 sold twice and was depicted as "9a" and "9b."

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After reviewing the record herein 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 manifest weight of the evidence in this record supports a reduction in the subject's assessment.

The appellant's appraisers estimated the subject's market value of \$5,800,000 using the three traditional approaches to value. The Board finds the manifest weight of the evidence presented depicts this estimated value is not 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 \$5,800,000 as of January 1, 2008. This amount was confirmed as being the same for January 1, 2009 by letter dated August 31, 2009. The subject's assessment reflects an estimated market value of approximately \$7,928,443 or \$63.59 per square foot of building area, including land. The board of review submitted 11 comparable sales that sold for prices ranging from \$6,510,000 to \$20,200,000 or from \$47.01 to \$83.59 per square foot of building area, including land.

The appraisal report submitted by the appellant depicts the appraisers deducted 45% or \$6,680,354 from the subject's value based on the appraisers' estimate of functional obsolescence. The Board finds the textbook published by the International Association of Assessing Officers, describes the proper method for estimating accrued depreciation. "In a replacement cost new estimate, theoretically the cost to replicate the superadequate item would not be included in the cost new estimate. However, the cost to cure the superadequate item is still valid. The measurement would simply be the cost to remove the item less salvage value (if any)."(Property Assessment Valuation, International Association of Assessing Officers, 1996, pp. 164-186.) Another textbook, The Appraisal of Real Estate, 13th Edition, published by the American Institute of Real Estate Appraisers, also specifically refers to curable functional obsolescence cause by a superadequacy. "If the replacement cost of the appropriate . . . [item] is used as the cost basis rather than reproduction cost, the superadequate item would not be included in the substitute property, so there would be no charge for the existing item, nor for the item as installed new. The measure of depreciation due to curable functional obsolescence caused by a superadequacy would be the cost to cure (i.e., the cost to remove the superadequate item less salvage value plus the cost to install the appropriate item)." The Appraisal of Real Estate, American Institute of Real Estate Appraisers, 13th Edition, pp. 434-441. This treatise goes on to depict "the corresponding estimates of total cost using replacement cost would probably be lower than the estimate provided by reproduction cost figures because replacement cost would not include an oversized, atypical . . . [item]. Therefore, less depreciation would be subtracted from the replacement cost estimate than from the reproduction cost estimate to arrive at the same figure. . . ." (The Appraisal of Real Estate, p. 441) The Appraisal of Real Estate further depicts "[a] superadequacy in an existing improvement would not be installed in a replacement structure, so the cost of that item would not be included in the estimation of functional obsolescence when replacement cost figures are used." (p. 441). The Board finds the appraisal report is void of any reference regarding whether the superadequacy is curable or incurable, and is void as to the cost to cure the superadequacy items, the cost to remove the items, including salvage value, if any.

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The Board finds the appraisers deducted 45% or \$6,680,354 from the subject's total value without supporting this estimate with the cost to remove the superadequacy items and salvage value, if any. The Board finds this error would be compounded in any cost approach to value estimate. Therefore, the Board gave little weight to the cost approach to value estimate as developed by the appellant's appraisers.

The Board also gave less weight to the appraisal report's estimate of value as indicated by the income approach to value. The Board finds the rental comparables used by the appraisers were not similar to the subject in use. The rental comparables were industrial shell buildings like the subject; however, they did not enjoy the superadequacy items such as excessive build-outs, raised flooring, high capacity wiring and climate control enjoyed by the subject, which allows it to operate as a data center. In addition, the Board finds they are dissimilar to the subject because they have an available rail spur, trailer parking, and/or are significantly older than the subject. Because of the dissimilarities between the subject and the rental comparables, the Board finds the estimate of value as developed in the income approach is not credible.

The evidence revealed the subject was originally constructed in 2002 as a shell industrial building and then purchased by the appellant in 2002 for approximately \$5,500,000 and then retrofitted for its current use as a data center. Even though the appraisers adjusted five of the six comparable sales for the subject's excessive build-out, the Board finds the final estimate of value utilizing the sales comparison approach is not well supported or verified by the cost approach or income approach to values. Because the sales comparison approach to value is not well supported by the other two approaches to value, the Board gave the sales comparison analysis little weight. Therefore, based on the above findings, the Board finds the final value conclusion contained in the appellant's appraisal report is not well supported and is not a reliable indicator of the subject's fair market value on January 1, 2009. Based on this analysis, the Board next examined the raw sales data presented by both parties.

The Board finds the best evidence of the subject's market value is found utilizing the raw sales data from the comparable sales submitted by both parties. Appellant's appraisers utilized six sale comparables while the board of review utilized eleven comparable sales. Based on location, size, land-to-building ratio, age and/or date of sale, the Board finds the best sales in this record which reflect the subject's market value are appellant's sale comparables #3, #4, #5 and #6 along with board of review sale comparables #2, #3, #5 and #6. The subject has 124,680 square feet of building area with the eight sales ranging in size from 108,117 to 148,844 square feet of building area. The subject has a land-to-building ratio of 1.95:1 while the most similar comparables have land-to-building ratios ranging from 1.6:1 to 3.56:1. The subject is 5 years old with the comparables ranging from 18 to 36 years old. These most similar comparables sold from January 2007 to May 2008 for prices ranging from \$4,040,000 to \$9,272,149 or from \$37.37 to \$68.39 per square foot of building area. The subject's assessment reflects a market value of \$7,928,443 or \$63.59 per square foot of building area. The Board finds the appellant's most similar comparables (#3, #4, #5 and #6) required an upward adjustment when compared to the subject based on size, land-to-building ratio, date of sale and/or age. The Board further finds two of the board of review's most similar comparables (#2 and #3) required an upward adjustment when compared to the subject based on size, land-to-building ratio and/or age; and the other two (#5 and #6) required a downward adjustment when compared to the subject based on size and/or land-to-building ratio. The Board finds that none of the comparables were truly similar to the

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subject. The comparables were industrial buildings, however, the evidence and testimony revealed the subject enjoyed excessive build-out of storage areas on the first floor and mezzanine level, contained excessive wiring capacity to operate as a data center along with climate controlled and raised flooring in the warehouse area. Because of these features, the Board finds the most similar comparables required a downward adjustment when compared to the subject. After considering the adjustments and the differences in both parties' suggested comparables when compared to the subject property, the Board finds the subject's assessment is not supported by the most comparable properties contained in this record and a reduction in the subject's assessment is warranted.

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.

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APPELLANT:	Mid City Truck
DOCKET NUMBER:	10-02541.001-I-1 thru 10-02541.003-I-1
DATE DECIDED:	June, 2014
COUNTY:	DuPage
RESULT:	No Change

The subject property consists of a one-story masonry and metal industrial/manufacturing building with 28,460 square feet of building area of which 1,224 square feet is office area and the remainder is warehouse space. The building was constructed in approximately 1966 with an addition built in 1975 resulting in an effective age of 1968. Features include a sprinkler system, 20 foot ceiling height, 27 overhead doors and 48,535 square feet of asphalt paving. The three parcels combined consist of 183,445 square feet of land area or a 4.211-acre site reflecting a land-to-building ratio of 6.45:1. The subject is located in Addison, Addison Township, DuPage County.

The appellant appeared for hearing before the Property Tax Appeal Board through attorney Panagiota ("Patty") Fortsas, of Elliott & Associates, P.C., contending overvaluation as the basis of the appeal. Besides providing comparable sales data, the appellant also submitted a brief with a purported income and expense analysis.

At the hearing, the only person present on behalf of the appellant was attorney Fortsas. In accordance with Section 16-170 of the Property Tax Code (35 ILCS 200/16-170) and in accordance with the appellant's request for an in person hearing set forth on the appellant's Industrial Appeal petition filed by counsel, the Property Tax Appeal Board scheduled this matter for a hearing in DuPage County. For her opening statement, Fortsas extensively "summarized" all three comparable sales previously submitted and discussed the previously submitted income and expense analysis contained within the brief. When directed to present appellant's case-in-chief, Fortsas stated:

We're [going to] stand on the evidence that we previously submitted to the Property Tax Appeal Board.

To summarize the appellant's written evidence, for the income and expenses analysis, within the brief counsel stated, in pertinent part, "[a]s the subject is substantially owner occupied, a market rent based analysis was performed." Next, commencing on page two of the brief in a section entitled "Argument - Income and Expense Analysis Indicates a Market Value of \$1,250,000," the document at page two begins as follows:

We hereby present an analysis of income and expenses generated by the subject during rent years. This approach involves an analysis of the subject in terms of its ability to provide a net annual income measured in dollars. This estimated net annual income was then capitalized at a rate commensurate with the risks inherent in the ownership of the property in order to arrive at an indication of its market value.

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This "brief" was signed by Joanne P. Elliott, attorney at law.

As part of page two, the "brief" purports to provide "a market rent based income and expense analysis" with income and expenses from the client's tax returns or, if not available, "from income/expense statements provided by our client."

Page three of the "brief" consists of a spreadsheet displaying "actual rent receipts" for the three years of 2009, 2010 and 2011 separately, with a column entitled "stabilized year" and a stated vacancy/credit loss of 10%, various itemized expenses for the three years with figures also in the "stabilized year" column" and a stated net operating income of \$135,531 with a capitalization rate of 9% and a tax load of 1.87% resulting in an indicated market value of \$1,247,242 with a resulting assessed value of \$415,706.

At the bottom of the analysis is a reference to CoStar Reports, copies of which were attached, with purported "asking market rents" for three properties. The available rental space ranged in size from 10,978 to 25,000 square feet with asking rents of \$6.25 or \$6.50 "gross" per square foot.

On page four, counsel stated "[a] base cap rate of 9% was utilized which we submit is reasonable if not conservative given current industrial vacancy rates and general market conditions." The brief also set forth "significant assumptions" of (1) scheduled rental of \$6.50 psf [per square foot] modified gross; (2) stabilized vacancy/credit loss of 10%; and (3) stabilized expenses of 19% of projected rent receipts. Based upon this data, the 2010 proposed assessment for the subject stated at the end of counsel's income and expense analysis was \$416,625.

The appellant also submitted information on three comparable sales in the Section V grid analysis of the Industrial Appeal petition. The comparables are located within 1.5-miles of the subject property. The comparables consist of parcels ranging in size from 33,232 to 89,298 square feet of land area which are improved with one-story masonry or masonry and metal buildings that were constructed between 1976 and 1983. The buildings range in size from 19,005 to 48,000 square feet of building area with office areas ranging in size from 1,680 to 2,790 square feet and the remainder consisting of warehouse space. These three comparables sold between August 2008 and December 2010 for prices ranging from \$715,000 to \$2,100,000 or from \$37.62 to \$45.00 per square foot of building area, including land.

Based upon the foregoing evidence, the appellant requested a reduction in the subject's total assessment so as to reflect a market value of \$1,250,000 or \$43.92 per square foot of building area, including land.

As cross-examination, Fortsas stated that the appellant's brief was prepared by Joanne Elliott who was not present at the hearing. When asked Fortsas asserted that she could not give testimony on the appellant's evidence and stated "it's already in the record." With regard to the income analysis, Fortsas was asked for the effective date of the rental comparables utilized. In reliance upon the CoStar rental comparable sheets, she was unable to specify a lease date other than the printed data sheet date of November 7, 2011. She also acknowledged that the assessment date at issue was January 1, 2010. Additionally, the data counsel had before her did not indicate how long the properties were exposed to the market for rental; Fortsas believed the

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rentals were on a gross basis. She could not explain what "modified gross" as referenced on page 4 of the brief meant.

Counsel was asked if a market analysis of expenses was performed to which she stated that it appeared to her based upon page three of the brief that the expense analysis involved an average of the historical expenses of the subject property. The analysis involved according to counsel market rents consistent with the actual rental rate of the subject property with expenses derived from the subject property. Fortsas also acknowledged that the owner occupies 11,400 square feet of the subject property. When counsel was asked if the owner imputes a market rent or a different rent, she stated "I believe he pays a different rent"; she believes it was "less than market."

While the subject has a land-to-building ratio of 6.45:1, Fortsas did not know if the rental comparables had similar land-to-building ratios as the subject without doing the arithmetic for each of those comparables. Fortsas was asked how the capitalization rate was determined to which she responded, "Based upon similar properties in the area, their expenses, based on internal data in our office."

Fortsas was asked about her familiarity with the subject property. She stated it was an industrial property; she was not quite sure what they do there. Fortsas has not been to the property. The board of review representative indicated to Fortsas that the subject property was a truck terminal which counsel did not dispute given the appellant is "Mid City Truck Body." When counsel was asked if land would be an important feature for a truck terminal, counsel responded, "I don't know; I'm not a witness in this matter; I don't think I have an opinion."

On further cross-examination with regard to the comparable sales presented by the appellant, counsel was asked if comparable sale #1 was a sale/leaseback. Based upon the one-page CoStar listing sheet, counsel asserted there was no indication the transaction was a sale/leaseback. Next, counsel was questioned about the differences in square footage of comparable sale #1 as displayed in the CoStar sheet of 36,600 square feet and the printout from the Addison Township Assessor's website which was also attached of 39,130 square feet. Fortsas opined that the assessor's records are more likely to be accurate for building size.

For appellant's comparable sale #2, based on the CoStar sheet counsel was unable to determine if the transaction was a sale/leaseback. Next, Fortsas was questioned about the differences in square footage of comparable sale #2 as displayed in the CoStar sheet of 48,000 square feet and the printout from the Addison Township Assessor's website which was also attached of 45,710 square feet. When counsel was asked which one was correct, Fortsas stated she did not know.

As to appellant's comparable sale #3, Fortsas was asked about the condition of the property. Referring to the CoStar sheet, Fortsas quoted the condition listed as "deferred maintenance" and when asked what that meant Fortsas said, "I'm not here to testify; I don't know what it means; I'm not [going to] speculate."

Next, Fortsas was asked if surplus land would be important in a comparable sale for comparison to the subject property. Fortsas responded, "I am not an opinion witness."

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The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject parcels of \$514,540. The subject's total assessment reflects a market value of \$1,546,094 or \$54.33 per square foot of building area, land included, when using the 2010 three year average median level of assessment for DuPage County of 33.28% as determined by the Illinois Department of Revenue.

At hearing, the board of review presented the testimony of Frank Marack, Jr., Chief Deputy Assessor of the Addison Township Assessor's Office. Marack has worked with the assessor's office since 1979 and he obtained his Certified Illinois Assessing Official (CIAO) designation in 1981. Marack noted that he has been in charge of the commercial/industrial department since 1984.

Marack testified that the subject property is used as a truck terminal meaning it receives, stores and moves goods. Marack opined that ceiling height was an important characteristic for facilities like the subject as was land-to-building ratio in order to allow ample space for trucks to pull in and out of the facility.

In support of its contention of the correct assessment the board of review, through Marack, submitted information on seven comparable sales located in Bensenville, Elmhurst, Lombard or Addison. Each of the comparables is located within Addison Township and is also within a 1.5 to 3-mile radius of the subject property according to Marack's testimony. Board of review comparable sale #5 was the same property as appellant's comparable sale #1.

These seven comparables consist of either one-story or part one-story and part two-story industrial buildings of masonry, tilt-up or masonry and metal construction. The comparables were built or have effective ages ranging from 1974 to 1984. The buildings range in size from 21,280 to 55,650 square feet of building area and have from 3.54% to 13.56% office space. The comparables have ceiling heights ranging from 16 feet to 25 feet and have land-to-building ratios ranging from 1.62:1 to 4.71:1. The seven comparables sold between June 2007 and September 2009 for prices ranging from \$1,450,000 to \$3,100,000 or from \$42.09 to \$80.83 per square foot of building area, including land.

Marack included a spreadsheet displaying +, - and = adjustments to the comparables for differences from the subject in time, building size, land-to-building ratio, construction, age, exterior height and/or office area. As displayed, Marack's adjustment process resulted in adjusted sales prices ranging from \$53.88 to \$91.34 per square foot of building area, including land. In testimony, Marack contended that the subject's estimated market value based on its assessment falls within the range of these sales and should be confirmed. In Marack's written report, based upon these sales and his analysis, the assessor's office concluded that the subject has an indicated value via the market approach to value of \$67.25 per square foot of building area, including land, or \$1,913,000, rounded.

Based upon the evidence presented, the board of review through its representative at hearing requested confirmation of the assessment of the subject parcels.

On cross-examination, Marack acknowledged that he is not a licensed appraiser and he is not contending that his report rises to the level of an appraisal of the subject property. While Marack

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did not sign the document, he does recall performing the research and gathering the data as presented. The witness acknowledged that he neither analyzed income data nor considered any expense data in his report.

Marack acknowledged that he chose seven sales from the hundreds of industrial sales available in his office and thereby eliminated hundreds of sales in the analysis. While there are no individual copies of recorded sales transactions attached to his report, Marack asserted that his individual comparable sheets, which he prepared, include reference document numbers from the recorded, closed sales from the source cited as the "Assessor's Records/Transfer Declaration" sheets. Other descriptive data regarding the comparables was gathered from the assessor's property record cards.

The witness also acknowledged that all seven comparable sales have superior construction dates as compared to the subject. Marack also acknowledged that his comparable sale #1 was located closer to O'Hare airport than the subject which he also admitted is a relevant consideration when comparing the property to the subject. Given that the township is six miles by six miles, the witness did not believe this comparable #1 was ten miles from the subject property. With additional questioning, Marack further opined that at the relevant time frame a location closer to O'Hare would not necessarily carry a higher market value because at the time there were many industrial restrictions in Bensenville that were initiated by village officials such as if a business closed at an industrial property site the building could only be used "at the same usage." The witness then gave an example that a closed screw making business could only be replaced by a screw making business, not by a bolt making business. In addition, the witness asserted that much of the city of Bensenville was being acquired for the O'Hare expansion.

As to comparable sale #2, Marack did not believe the property was located near the Eisenhower Expressway. As to comparable #3, he acknowledged the property is located closer to O'Hare airport than the subject.

As to comparable #4, Marack acknowledged that the property was not listed on the market for sale prior to the reported sale transaction which means that this possibly was not an arm's length transaction. The witness acknowledged that for a determination of fair market value exposure time in the open market was a relevant factor.

Marack acknowledged that comparable sale #6 which occurred in June 2007 was a different market condition than the lien date of January 1, 2010. Upon further questioning, Marack did not believe that 2007 represented a superior market condition to the lien date of January 1, 2010.

As to comparable sale #7, Marack had no information that the sale was not an arm's length transaction.

With regard to the adjustment process, Marack acknowledged the adjustments were subjective.

On re-direct examination, Marack testified that for purposes of the assessor's office, he is not required to be a licensed appraiser in order to form an opinion of value and "do an appraisal."

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Marack included comparable sale #5 in his analysis because it was chosen by the appellant. All of the comparables lack land-to-building ratios similar to the subject because these were the best available comparables. When comparables are dissimilar from the subject, Marack makes adjustments and the most significant adjustment in these comparable sales was the land adjustment (land/bldg ratio). The subject property has a land value of \$5.25 per square foot.

Marack opined that in the absence of documentation, he could not form an opinion as to whether a sale/leaseback was an arm's length transaction. For the seven chosen sales comparables, Marack verified the sales transactions either through the PTAX-203 Illinois Real Estate Transfer Declaration or through direct contact with the buyer or seller.

In written rebuttal, counsel for the appellant argued the board of review's submission was not signed by the preparer, lacked supporting documentation of the sales data that was presented, the adjustment process lacks factual support and while agreeing that board of review comparable #5 is an appropriate sale for consideration, the appellant disagreed with the adjustments made due to the lack of factual support. The appellant also contended that comparable sale #6 having sold in 2007 was too remote in time to be a valid comparable for the subject as of the assessment date of January 1, 2010. Additionally, based upon submission of a CoStar data sheet, the appellant contends that board of review comparable #4 was not an arm's length sale transaction as there was no listing or buyer's broker for the transaction. Also as to proximity based upon Mapquest driving directions, the appellant contended board of review sale #1 was nearly 10 miles from the subject and also nearer to O'Hare airport than the subject; comparable #2 was nearly 5 miles from the subject and located near the Eisenhower expressway; comparable #3 was over 8 miles from the subject and also near O'Hare airport; and finally comparable #4 was 2.5 miles from the subject.

In closing argument, appellant's counsel argued in part that "certain portions" of the board of review's testimony do not rise to the level required by the rules of the Property Tax Appeal Board in Section 1910.67(l).¹

Conclusion of Law

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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The procedural rules of the Property Tax Appeal Board provide in substantive part that:

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

¹ The cited rule provides in pertinent part, "Appraisal testimony offered to prove the valuation asserted by any party shall not be accepted at the hearing unless a documented appraisal has been timely submitted by that party pursuant to this Part." (86 Ill.Admin.Code §1910.67(l)).

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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 end of justice, an attorney shall avoid testifying before the Board on behalf of a client.

(86 Ill.Admin.Code §1910.70(f)). With the aforesaid procedural rule in mind, the Board finds the appellant's counsel failed to abide by the Board's rule. Attorney Fortsas had no witness present for the hearing and through cross-examination was shown to be unfamiliar with the property, the income and expense analysis and the comparable sales presented. When counsel for an appellant requests an in person hearing before the Property Tax Appeal Board, counsel should present witness(es) with regard to the evidence in support of the petition as envisioned and outlined by the Board's procedural rules. (86 Ill.Admin.Code §1910.67 & §1910.90)

As to the appellant's purported income approach to value, first, the Board finds "Each appeal shall be limited to the grounds listed in the petition filed with the Board. (Section 16-180 of the [Property Tax] Code)." (86 Ill.Admin.Code §1910.50(a)). In this matter, the sole basis of the instant Industrial Appeal petition was comparable sales.² In the "brief," however, the appellant's attorney also purported to develop an income approach to value using some unknown combination of the subject's actual income and expenses with purported market rental support from attached CoStar Reports. Second, the Board finds this 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 type of expert opinion or documentation 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's counsel seems to have 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. Third, 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's legal counsel did not provide sufficient evidence for such an analysis; therefore, the Property Tax Appeal Board gives this purported argument no weight.

² When originally filed, the basis of the appeal was "recent appraisal." Given an extension request to submit evidence, upon submission of evidence, the basis of the appeal was changed to "comparable sales."

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Fourth and perhaps most significantly, the Board finds it highly problematic that appellant's counsel purported to develop an "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. (86 Ill.Admin.Code §1910.70(f)).

Furthermore, in this case, the attorney who appeared for the hearing was not the attorney who prepared the appellant's income and expense valuation evidence and thus attorney Fortsas was unprepared and/or unable to address questions with regard to the submission. In other words, the income and expense analysis in the brief was akin to hearsay. As a result, the Board finds the appellant's income and expense analysis prepared by Joanne Elliott is tantamount to hearsay. Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill. App. 3d 887 (1st Dist. 1983). Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1st Dist. 1971). In the absence of Joanne Elliott being available and subject to cross-examination regarding methods used and conclusion(s) drawn in her income and expense analysis, the Board finds that the weight and credibility of the evidence and the value conclusion of \$1,250,000 as of January 1, 2010 cannot be considered as to the value of the subject property.

As to the board of review's "Market Approach to Value" prepared by Marack and counsel's argument that "certain portions" of the testimony and/or document did not rise to the level of an appraisal, the Property Tax Appeal Board takes judicial notice of the following provision of the Real Estate Appraiser Licensing Act of 2002:

This Act does not apply to a county assessor, township assessor, multi-township assessor, county supervisor of assessments, or any deputy or employee of any county assessor or supervisor of assessments who is performing his or her respective duties in accordance with provisions of the Property Tax Code.

(225 ILCS 458/5-5(e)). There is no evidence in the record that Marack was purporting to perform an "appraisal" of the subject property. As will be shown below, the Board has given no weight to the adjustment process presented by Marack and thus, the Board finds that examination of the raw sales data presented in support of the subject's assessment is no different than the appellant's presentation of raw sales data challenging the assessment of the subject property.

In this matter, the Board finds that the parties submitted a total of nine suggested comparable sales to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to board of review comparable #6 which sold in June 2007 as the date of sale is most distant from the assessment date at issue of January 1, 2010 and thus is less likely to be indicative of the subject's market value. In addition, this comparable along with appellant's comparables #2 and #3 and board of review comparables #1 and 7 all differ substantially in size from the subject building and thus, have been given reduced weight in the Board's analysis.

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The Board has also given no weight to board of review comparable #4 as upon cross-examination, Marack acknowledged there was no evidence that the sale was an arm's length transaction as it had not been exposed on the market prior to the sale.

The Board finds the best evidence of market value to be appellant's comparable sale #1 (which is also board of review sale #5) along with board of review comparable sales #2 and #3. These three most similar comparables range in size from 24,000 to 39,130 square feet of building area while the subject contains 28,460 square feet of building area. These three properties sold between May 2008 and June 2009 for prices ranging from \$42.09 to \$77.08 per square foot of building area, including land. The subject's assessment reflects a market value of \$54.33 per square foot of building area, including land, which is within the range established by the best comparable sales and appears well justified given the subject's much larger land area than any of these otherwise most similar comparables in the record. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

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APPELLANT:	<u>Anoosh Varda</u>
DOCKET NUMBER:	<u>08-29775.001-I-1 thru 08-29775.003-I-1</u>
DATE DECIDED:	<u>May, 2014</u>
COUNTY:	<u>Cook</u>
RESULT:	<u>No Change</u>

The subject property consists of three parcels of land totaling 14,815 square feet and improved with a 45-year old, one-story, masonry, industrial building. The appellant argues that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal.

In support of the market value argument, the appellant submitted an appraisal undertaken by John B. Murphy and Mitchell J. Perlow with Property Valuation Services, LLC. The report indicates Murphy and Perlow are State of Illinois certified real estate appraisers and Perlow holds the designation MAI. The appraisers indicated an estimated market value of \$310,000 as of January 1, 2009. The appraisal report utilized the sales comparison approach to value to estimate the market value for the subject property.

In summarizing the subject property, the appraisal describes the subject as containing 7,200 square feet of building area. The appraisal indicates the property was personally inspected on April 23, 2010 and found the subject's highest and best use to be its current use. The appraisers indicated the subject was purchased in March 2007 for \$750,000. They opined the property was bought above market value and that this sale was the owner's first venture into the real estate market. They discount this sale and did not use it in their analysis. The appraisal further indicates the owner verbally reported that his location was very important to him as a majority of his clients are in this area.

Under the sales comparison approach, the appraisers analyzed the sales of five properties described as one or two-story, masonry, industrial or commercial buildings located within and outside the subject's market area. The properties contain between 4,944 and 16,595 square feet of building area and sold from March 2008 to December 2009 for prices ranging from \$175,000 to \$700,000 or \$35.40 to \$47.24 per square foot of living area, including land. The appraisers adjusted each of the comparables for pertinent factors. Based on the similarities and differences of the comparables when compared to the subject, the appraisers estimated a value for the subject under the sales comparison approach of \$310,000. Based upon this evidence, the appellant requests a reduction in the subject's assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was \$134,018. The subject's assessment reflects a market value of \$352,678 using the Cook County Ordinance level of assessment of 36% for class 5b, industrial property. The board of review lists the subject as containing 6,916 square feet of building area.

In addition, the board of review submitted detailed descriptive and sales data on eight suggested sales comparables described as one-story commercial buildings. These properties range in age from 15 to 88 years and sold from June 2004 to February 2008 for prices ranging from \$335,000

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to \$1,200,000 or from \$55.83 to \$172.41 per square foot of building area. In addition, the board of review submitted a copy of a printout from the recorder of deed's website and the warranty deed indicating the subject sold in March 2007 for \$750,000. Based upon this evidence, the board of review requested confirmation of the subject's assessment.

After considering the arguments and reviewing 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. 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 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 Board concludes that the appellant has not met this burden and that a reduction is not warranted.

In determining the fair market value of the subject property, the Board considered the parties' evidence. The Board finds the appraisers inappropriately discounted the subject's sale and did not use this sale in the analysis. The Board finds the appraisers could have adjusted this sale price to remove the premium paid for the property. In addition, the Board finds the claim that the appellant paid a premium is the opinion of the appellant. For these reasons, the Board gives the conclusion of value within the appraisal no weight.

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 consider the raw sales data from both parties along with the subject's sale information.

The Board gives significant weight to the March 2007 sale of the subject, the appraisers' sale #4 and the board of review's sales #3 and #4. These properties sold from December 2007 to March 2008 for prices ranging from \$47.24 to \$134.40 per square foot of building area. In comparison, the subject's assessment reflects a market value of \$50.99 per square foot of building area, which is within the range of the comparables. In addition, this assessment is significantly below the subject's 2007 purchase price. After considering adjustments and the differences in the comparables when compared to the subject, the Board finds the subject's assessment supports the subject's market value and a reduction in the subject's assessment is not warranted.

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