

**State of Illinois**

# **PROPERTY TAX APPEAL BOARD**

## **SYNOPSIS OF REPRESENTATIVE CASES**

### **DECIDED BY THE BOARD**

*During Calendar Year 2017*

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*Chairman*

**Steven M. Waggoner**

*Acting Executive Director*

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*Springfield*

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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***2017 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](http://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 2017 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.

**BOARD MEMBERS**

**Kevin L. Freeman**  
*Chicago*

**Jim Bilotta**  
*Lockport*

**Robert J. Steffen**  
*South Barrington*

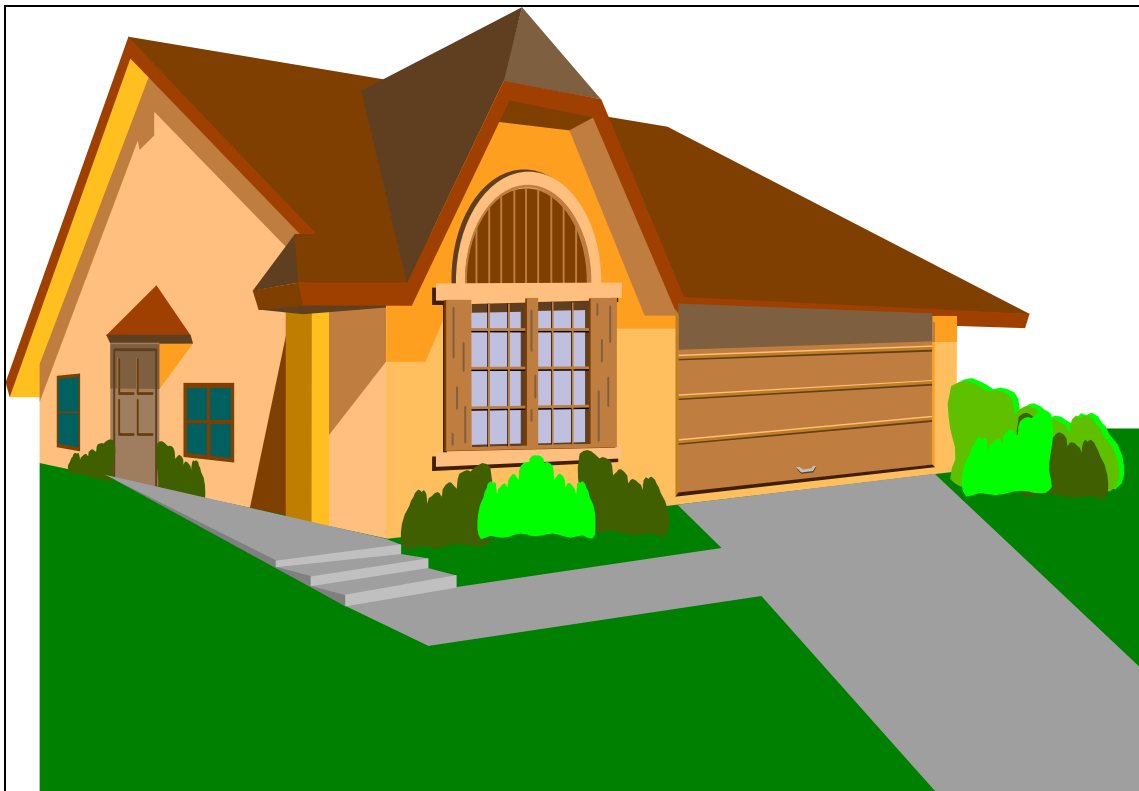
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**PROPERTY TAX APPEAL BOARD**

**SYNOPSIS OF REPRESENTATIVE CASES**

**2017 RESIDENTIAL DECISIONS**



**PROPERTY TAX APPEAL BOARD**  
Section 16-190(a) of the Property Tax Code  
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## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

### 2017 RESIDENTIAL CHAPTER

#### *Table of Contents*

<b><u>APPELLANT</u></b>	<b><u>DOCKET NUMBER</u></b>	<b><u>RESULT</u></b>	<b><u>PAGE NO.</u></b>
1000 Deerfield Road Condominium Assoc.	13-01996.001-R-2 thru 13-01996.011-R-2	No Change/ Dismissal	R-3 to R-5
1831 North Sheffield Condo. Assoc.	15-36974.001-R-1 thru 15-36974.002-R-1	Reduction	R-6 to R-7
Bennett, David	15-05240.001-R-1	Reduction	R-8 to R-10
Bridges, Vasco	12-33492.001-R-1 thru 12-33492.002-R-1	No Change	R-11 to R-12
DaSilva, Jonas	11-28099.001-R-1	Reduction	R-13 to R-17
Fallon, Susan	15-39147.001-R-1	Reduction	R-18 to R-20
Gagliardi, Frank	15-35216.001-R-1	No Change	R-21 to R-22
Galicia, Hugo	15-01096.001-C-1	No Change	R-23 to R-26
Karim, Aminul	14-02402.001-R-1	No Change	R-27 to R-29
Leroy, George & Julia	11-31464.001-R-1	No Change	R-30 to R-31
Markath LLC	14-02408.001-R-1	Reduction	R-32 to R-33
Mevorah, Steven	15-05512.001-R-1	Reduction	R-34 to R-36
MKRS Investments LLC	15-00630.001-R-1 thru 15-00630.002-R-1	No Change	R-37 to R-38
Pittman, Matt	15-05626.001-R-1	Reduction	R-39 to R-40
Rempert, Michael & Linda	15-04927.001-R-1	No Change	R-41 to R-44
Simonian, Paul	14-26641.001-R-1	No Change	R-45 to R-46

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Skrzyniarz, Adam, Wieslaw, & Malgorzata	14-033934.001-R-1	Reduction	R-47 to R-49
--	-------------------	-----------	--------------

<b>INDEX</b>			R-50 to R-51
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## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b><u>1000 Deerfield Road Condominium Assoc.</u></b>
<b>DOCKET NUMBER:</b>	<b><u>13-01996.001-R-2 thru 13-01996-011-R-2</u></b>
<b>DATE DECIDED:</b>	<b><u>October, 2017</u></b>
<b>COUNTY:</b>	<b><u>Lake</u></b>
<b>RESULT:</b>	<b><u>No Change/Dismissal</u></b>

The subject property consists of 11-units located within a 12-unit condominium building. The condominium building was constructed in 1985. The building contains six 1,575 square foot units, four 1,700 square foot units and two 2,005 square foot units.<sup>1</sup> The subject condominium building is located in Highland Park, Moraine Township, Lake County.

The appellant contested these eleven assessments for the 2013 tax year based on overvaluation. In support of this argument, the appellant initially submitted data on two comparable sales, one that occurred in August 2009 and one that occurred in November 2012. Procedurally, the appellant was advised by the Property Tax Appeal Board that the evidence submitted was insufficient to proceed. (86 Ill.Admin.Code §1910.30(k)) In response, the appellant timely amended the evidence with the submission of data on a total of five comparable sales that occurred in 2011 or 2012 that ranged from \$71.30 to \$99.82 per square foot of living area. This submission also repeated the November 2012 sale as comparable #1, which was a 1,575-square foot unit located in the subject building and which was not being appealed; sale #1 reflected a price of \$79.37 per square foot of living area.

As part of this appeal, the appellant also submitted copies of the final decisions issued by the board of review establishing total assessments of \$60,235 for each of the 1,575 square foot units, \$65,015 for each of the 1,700 square foot units and for the two 2,005 square foot units, assessments of \$74,014 and \$76,680, respectively. By applying the \$79.37 per square foot sale price of appellant's comparable #1 to each of the respective units on appeal at the statutory level of assessment, the appellant requested the assessments be reduced to \$41,665 for each of the five 1,575 square foot units on appeal; to \$44,972 for the four 1,700 square foot units on appeal; and \$53,040 each for the two 2,005 square foot units on appeal. Thus, the appellant requested the total assessments of the eleven parcels be reduced to \$494,293, a difference of \$217,636.

As part of the Residential Appeal petition, the appellant marked the box "I would like to present my case in person at a hearing. (Note: Location, date, and time will be determined by the PTAB.)"

By letter to the parties dated May 5, 2017, the Property Tax Appeal Board set the matter for hearing for 1:00 p.m., August 23, 2017, at the offices of the Lake County Board of Review in Waukegan, Illinois before Administrative Law Judge Edwin Boggess. Due to an injury prohibiting travel by the ALJ, the matter was postponed and rescheduled for hearing by separate letters to the parties each dated August 15, 2017. As part of the new Hearing Notice, the

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<sup>1</sup> The one unit within the building that was not appealed is a 1,575-square foot unit which the record indicates sold in November 2012 for \$125,000 or \$79.37 per square foot of living area.

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Property Tax Appeal Board set the matter for hearing for 1:00 p.m., August 28, 2017, at the offices of the Lake County Board of Review in Waukegan, Illinois before ALJ Carol Kirbach. By agreement of the parties and the assigned ALJ, which was confirmed by e-mail on August 25, 2017, the matter was moved for hearing to 9:00 a.m., August 30, 2017. As part of the original Hearing Notices issued on both May 5, 2017 and August 15, 2017, 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 its own expense.<sup>2</sup>

At the time and date of the agreed commencement for hearing at approximately 9:00 a.m. on August 30, 2017, the appellant appeared before the Property Tax Appeal Board by counsel, David C. Dunkin. Appearing on behalf of the Lake County Board of Review was Assistant State's Attorney Matthew S. Fronk along with John Y. Paslawsky, Chief Appraiser of the Lake County Chief Assessment Office on behalf of the Lake County Board of Review. The appellant's counsel advised the ALJ that he did not 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)).<sup>3</sup> Due to the fact that no court reporter was present, the presiding ALJ advised that the matter would be dismissed for failure to provide a court reporter and no hearing was held.

### **Conclusion of Law**

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 or her 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).

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

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<sup>2</sup> Each notice included the following line: "P.S. APPELLANT MUST PROVIDE A COURT REPORTER." (Capitalization in original Hearing Notices)

<sup>3</sup> 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. . . . 35 ILCS 200/16-190(a).

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

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 total 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(s) of the board of review and the proposed assessment(s) 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 (4<sup>th</sup> Dist. 1995). The appellant requested an in person hearing for this appeal. The original 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 matter was rescheduled without objection from the parties and the Board further finds the letter dated August 15, 2017, notified the appellant that a hearing would be held on August 28, 2017; thereafter, the parties and the ALJ agreed by e-mail message(s) to move the hearing to 9:00 a.m., August 30, 2017. Both the original hearing notice letter dated May 5, 2017 and the rescheduling notice dated August 15, 2017 stated the time, location and, pursuant to section 1910.98(a) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.98(a)), informed the appellant of the requirement to engage a court reporter for the hearing. The Board finds the appellant failed to procure the services of a court reporter as required by section 1910.98(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.98(a)) 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. Additionally, when he appeared at approximately 9:00 a.m. on August 30, 2017, the Property Tax Appeal Board finds the appellant's counsel provided no good cause or reason for the failure to have a court reporter present at the scheduled 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)), the Property Tax Appeal Board hereby **dismisses** the appeal.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<u>1831 North Sheffield Condo. Assoc.</u>
<b>DOCKET NUMBER:</b>	<u>15-36974.001-R-1 thru 15-36974.002-R-1</u>
<b>DATE DECIDED:</b>	<u>August, 2017</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of two residential condominium units located in the same condominium building. The property is located in Chicago, North Chicago Township, Cook County. The units are classified as class 2-99 residential condominiums under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating one of the units in the condominium had a market value of \$415,000 as of July 11, 2012. Based on this appraisal and making a 10% deduction to account for personal property and the percentage interest in the common elements, the appellant requested the assessment be reduced to \$70,550 to reflect a combined market value for the two units of \$705,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject property of \$101,376. The subject's assessment reflects a market value of \$1,013,760, when applying the 10% level of assessments for class 2-99 property under the Cook County Real Property Assessment Classification Ordinance.

Included with the board of review submission was a Motion to Dismiss based on the argument the appellant's appraisal rendered an opinion of value well before January 1 of the instant assessment year. The board of review contends the appellant failed to provide "substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment" and such "failure to do so will result in dismissal of the appeal" in accordance with section 1910.63(b) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.63(b)).

The board of review also provided a condominium analysis using a sale of one of the units under appeal that occurred in January 2012 for a price of \$485,000. A deduction of 10% or \$48,500 from the total consideration was made to account for personal property to arrive at a total adjusted consideration of \$436,500. The total adjusted consideration was divided by the purported percentage of interest of ownership in the condominium for the unit that sold of 50% to arrive at an indicated full value for the condominium property of \$873,000. Based on this analysis the board of review indicated it would stipulate to a revised total assessment of \$87,300.

In response to the Motion to Dismiss the appellant asserted that the court in *Cook County Board of Review v. Property Tax Appeal Board*, 334 Ill.App.3d 56, 777 N.E.2d 622 (1<sup>st</sup> Dist. 2002) held:

There is no requirement that a taxpayer must submit a particular type of proof in support of an appeal. The rule [86 Ill.Admin.Code §1910.65(c)] instead sets out

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

the types of proof that *may* be submitted. . . Whether a two-year old appraisal is "substantive, documentary evidence" of a property's value goes to the weight of the evidence, not its admissibility."

The appellant contends the rules of the Property Tax Appeal Board do not require a valuation date to be the same as the lien date and the Property Tax Appeal Board is free to determine whether an appraisal provides "substantive, documentary evidence." The appellant requested the Motion to Dismiss be denied.

The appellant also accepted the board of review proposed stipulation of \$87,300.

### **Conclusion of Law**

The Property Tax Appeal Board will initially address the motion to dismiss filed by the Cook County Board of Review on the basis that the appellant's appraisal, with an effective date of July 11, 2012, was not "substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment." The board of review contends the appellant failed to satisfy the burden of going forward and the appeal should be dismissed pursuant to section 1910.63(b) of the rules of the Property Tax Appeal Board. The Property Tax Appeal Board denies the motion to dismiss finding the appellant's appraisal, which has an effective date that is approximately two years and five months prior to the assessment date at issue, is sufficient evidence to challenge the assessment. The fact the appraisal's effective date is different than the assessment date at issue goes to the weight of the evidence not its admissibility. *Cook County Board of Review v. Property Tax Appeal Board*, 334 Ill.App.3d 56, 59, 777 N.E.2d 622 (1<sup>st</sup> Dist. 2002).

The Board further finds the record in this appeal contains a proposed assessment for the subject property submitted by the board of review. The appellant was notified of this suggested agreement and responded that it accepted the proposed assessment.

After considering the evidence and reviewing the record, the Property Tax Appeal Board finds that the assessed valuation proposed by the board of review is appropriate and a reduction in the assessment is justified.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>David Bennett</b>
<b>DOCKET NUMBER:</b>	<b>15-05240.001-R-1</b>
<b>DATE DECIDED:</b>	<b>July, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of a two-story dwelling of brick and cedar exterior construction with 2,699 square feet of living area. The dwelling was constructed in 1988. Features of the home include a partial basement with finished area, central air conditioning, a fireplace and a two-car garage with 522 square feet of building area. The property has an 8,008-square foot site and is located in Elmhurst, York Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through counsel contending overvaluation as the basis of the appeal. In support of this argument, the appellant called Julia Kari as a witness. Kari is a Certified Residential Real Estate Appraiser licensed in Illinois. Kari has been an appraiser for approximately 20 years. Kari was tendered as an expert in the appraisal of residential properties for ad valorem tax purposes without objection.

Kari testified that she prepared an appraisal of the subject property. The purpose of the appraisal was to develop an opinion of market value of the subject property as of January 1, 2015. Kari provided direct testimony regarding the appraisal methodology and final value conclusion. The appraiser relied on the sales comparison approach to value and the report conveys an estimated market value of \$590,000 as of January 1, 2015.

Kari testified that the subject property has a typical site size of approximately 8,000 square feet for the area except it is a very wide lot and is only 48 feet deep. Kari also testified that the subject property backs to an ingress/egress for York High School and has significant traffic in the morning and afternoons. Kari stated that there is an adverse location to the subject based on the excess traffic. Kari testified that the subject had very limited updates but the home has been well maintained.

Under the sales comparison approach to value, Kari utilized five suggested sales located in Elmhurst from .81 to 1.23 miles from the subject. The dwellings were described as two-story dwellings of frame or brick and frame exterior construction. Each comparable has a basement with four comparables having finished area, central air conditioning and one fireplace. Four comparables have a two-car garage and one comparable has a four-car garage. The dwellings are from 12 to 28 years old. The dwellings range in size from 2,188 to 3,103 square feet of living area and are situated on lots that range in size from 7,263 to 12,000 square feet of land area. The comparables sold from January 2014 to October 2014 for prices ranging from \$545,000 to \$620,000 or from \$196.71 to \$274.22 per square foot of living area including land.

Kari testified that she made adjustments to the comparables for differences when compared to the subject for location, site size, view, age, bathroom count, gross living area, basement finish, lower level bathroom, garage stalls and other amenities. The adjustments resulted in adjusted sale prices ranging from \$581,900 to \$592,700.

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Under cross-examination, Kari explained that the low marketing time happens due to buyers looking in a particular school district or market area.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$220,830. The subject's assessment reflects a market value of \$665,151 or \$246.44 per square foot of living area, land included, when using the 2015 three-year average median level of assessment for DuPage County of 33.30% as determined by the Illinois Department of Revenue.

Representing the board of review was Chairman Anthony Bonavolonta and alternate member Matthew Rasche. Rasche called York Township Deputy Assessor Judy Woldman as a witness.

In support of its contention of the correct assessment the board of review submitted information on five comparable sales prepared by Woldman. The comparables are located in neighborhood codes BCV and 021. Woldman testified that the comparables are improved with two-story dwellings of brick, frame or brick and frame exterior construction and were built from 1950 to 1998. Features include a basement and two-car garage. The grid analysis did not disclose central air conditioning, fireplaces, garage sizes or finished basements. The dwellings range in size from 2,624 to 3,444 square feet of living area and have sites ranging in size from 7,071 to 14,322 square feet of land area. The comparables sold from June 2013 to July 2014 for prices ranging from \$650,000 to \$910,000 or from \$246.27 to \$264.23 per square foot of living area, including land.

Under cross-examination, Woldman testified that the comparables submitted by the board of review are larger than the subject property. Woldman testified that the assessor values the properties according to their neighborhood code.

In rebuttal, Kari stated that the properties located at 114 Oak and 207 Grace both had a major remodel and their quality and condition were superior to the subject. Kari also stated that the property located at 156 Fairview had been remodeled and added a large addition to the property.

### **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 the subject's market value to be the appraisal submitted by the appellant for \$590,000. The Board finds the appellant's appraiser provided credible testimony regarding the selection of the comparables, the adjustment process and final value conclusion. The Board further finds the board of review failed to adequately refute the appraiser's final value conclusion. The subject's assessment reflects a market value of \$665,151, which is greater than the appraised value. Based on this record, the Board finds the subject

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

property had a market value of \$590,000 as of the assessment date at issue. The Board gave less weight to the board of review's unadjusted comparables based on larger dwelling size, older age and lack of information on central air conditioning, fireplaces and finished basements. In addition, two of the sales are dated and occurred in June 2013 and September 2013, which is less indicative of fair market value as of the subject's January 1, 2015 assessment date. Since market value has been established the 2015 three-year average median level of assessments for DuPage County of 33.30% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).



## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>Vasco Bridges</b>
<b>DOCKET NUMBER:</b>	<b>12-33492.001-R-1 thru 12-33492.002-R-1</b>
<b>DATE DECIDED:</b>	<b>July, 2017</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a residential condominium unit and its deeded parking stall. It is part of a condominium association known as the Motor Row Lofts, which has a total of 52 residential units and 50 deeded parking stalls. The property is located in Chicago, South Chicago Township, Cook County. The property is a class 2-99 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant argued that the subject is a landmark property and thus should be the recipient of the historic freeze exemption for the 2012 tax year. It was purchased by the appellant on October 22, 2012 for \$383,000. As evidence, the appellant provided: a memorandum indicating the history of the development; a Real Quest property detail report; an Illinois Historic Preservation Agency Certificate of Rehabilitation for the subject property, dated November 1, 2012; a recorded Special Warranty Deed; an Order Vesting Title for the development; the Historic Preservation Certificate Application for Motor Row Development Corporation dated December 2007; the Certificate of Rehabilitation from the Illinois Historic Preservation Agency for 20 various other units in the development, dated December 11, 2008; and appeal history printouts from the Cook County Board of Review's website indicating a 2008 assessment reduction for the development.

Based on this evidence, the appellant requested that the assessments be reduced pursuant to the Historic Residence Assessment Freeze Law.

The board of review submitted its "Board of Review-Notes on Appeal" wherein the final 2012 assessment of the subject property totaling \$29,435 was disclosed. This assessment reflects a market value of \$303,767 using the Illinois Department of Revenue's 2012 three-year median level of assessment for class 2 property of 9.69%.

In support of the subject's assessment, the board of review also submitted a memo from Fred Agustin, Cook County Board of Review Analyst. The memorandum shows that seven units, or 8.18% of ownership, within the subject's building sold between 2009 and 2012 for a total of \$1,039,051. An allocation of two percent per unit for personal property was subtracted from the aggregate sales price then divided by the percentage of interest of units sold to arrive at a total market value for the building of \$12,453,680. The subject's percentage of ownership, 2.49%, was then utilized to arrive at a market value for the subject units of \$310,097. The board also submitted a grid listing each unit in the development with its assessment data and percentage of ownership in the common elements.

The appellant's Historic Freeze argument was addressed in a written brief, with the Board of Review arguing that the statute does not apply to condominium units, with the relevant part of

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

the Historic Freeze statute attached. As a result of its analysis, the board requested confirmation of the subject's assessment.

In written rebuttal, the appellant's attorney indicated that the January 31 filing deadline could not be met as the appellant did not purchase the subject until October 2012.

### **Conclusion of Law**

The appellant contends that the subject property should receive an assessment reduction based upon the Historic Residence Assessment Freeze Law (35 ILCS 200/10-40 et seq). The appellant provided evidence indicating that the appellant purchased the subject property on October 22, 2012. The Illinois Historic Preservation Agency issued a Certificate of Rehabilitation for the subject units on November 1, 2012.

The Board notes that Section 10-60 of the Property Tax Code states:

It is the duty of the titleholder of record or the owner of the beneficial interest of any historic building which has been issued a certificate of rehabilitation, to file with the chief county assessment officer, on or before January 31 of each year, an affidavit stating whether there has been any change in the ownership or use of such property, the status of the owner-occupant, or, in the case of a cooperative, whether there has been a change in the use of the property or a change in the cooperative form of ownership. If there has been such a change, the nature of this change shall be stated. Failure to file such an affidavit shall, in the discretion of the chief county assessment officer, constitute cause to revoke the certificate of rehabilitation. The chief county assessment officer shall furnish to the owner a form for the affidavit wherein the owner may state whether there has been any change in the ownership or use of the property or the status of the owner. If the chief county assessment officer determines that the historic building is no longer used as an owner-occupied single family residence or an owner-occupied multi-family residence, or that there has been a sale or transfer for value of the historic building other than to the first owner-occupant after the issuance of a certificate of rehabilitation, or that the historic building no longer meets the definition of a cooperative, he or she shall revoke the certificate by written notice to the taxpayer of record, and shall send a copy of that notice to the Department. (35 ILCS 200/10-60)

The appellant purchased the subject property in October 2012, with the Certificate of Rehabilitation being issued on November 1, 2012. Accordingly, the appellant is not entitled to the historic freeze as of January 1, 2012 as the January 31 filing deadline was not met. The appellant properly obtained the freeze for the 2013 tax year. Based upon the evidence presented by the appellant and the foregoing statutory provisions, the Property Tax Appeal Board finds that the appellant is not entitled to the historic freeze for the 2012 tax year, in accordance with the statute.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<u>Jonas DaSilva</u>
<b>DOCKET NUMBER:</b>	<u>11-28099.001-R-1</u>
<b>DATE DECIDED:</b>	<u>August, 2017</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is a condominium unit located with a two-year old, condominium building comprised of three condominium units. The subject unit contains 1,100 square feet of living area and two bathrooms.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation.

At hearing, the appellant's attorney presented an opening argument which is reflected in the Appellant's Hearing Memorandum which also included a copy of the Board's 2010 decision regarding a different subject property, specifically docket #10-30784-R-1, identified as Appellant's Hearing Exhibit #1.

In support of this overvaluation argument, the appellant submitted: a short brief stating the issue; a copy of the subject's two-page settlement statement; a sales comparison grid analysis; an affidavit by Jonas DaSilva; and a copy of the Cook County Assessor's Office, First Quarter 2010 Foreclosure Update. The appellant's evidence reflects that the subject was purchased on December 30, 2010 for a price of \$10,000. The appellant's pleadings also indicated that the property was advertised for sale on the open market, and the sale was not between related parties as reflected on the appellant's affidavit and settlement statement.

In addition, the appellant's pleadings included a sales comparable analysis comprised of three sales which occurred from August 2010 to January 2011 for prices ranging from \$7,850 to \$15,150 or from \$7.00 to \$14.00 per square foot. These condominium units ranged in size from 1,100 to 1,300 square feet, and are located within a one-mile radius of the subject. In support of these sales, copies of each sale's settlement statement and/or Cook County Recorder of Deeds detail sheet were included in the pleadings.

At hearing, the appellant's attorney argued that just because the seller was a financial institution does not mean that the sale was not an arm's length transaction. The appellant's brief cites amendments to the Property Tax Code requiring various assessing bodies to include compulsory sales as reflective of the market. Specifically, whether a recent sale is evidence of fair market value is not dependent on the definition of compulsory sales in the Property Tax Code. The attorney argues that just because a sale fits the definition of a compulsory sale does not mean that the transaction cannot be used to prove the fair market value of a piece of property. Moreover, the appellant's attorney stated that a review of the legislative history indicated that Illinois lawmakers were not attempting to amend the definition of fair cash value, but expand the type of evidence to be accepted and considered by assessing officials when determining the fair market value of a piece of property so that assessed values would actually be consistent with current market values.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

Further, four cases were cited where the Board found that a recent sale of a subject property satisfied all the main elements of an arm's length transaction even though the purchase was from a financial institution. In each case, the Board stated that there was no evidence in the record that the seller was forced to sell the subject property to the appellants for the purchase price offered. Thus, the general public did have the same opportunity to purchase the subject property at any negotiated sale price and Board found each transaction to be arm's length while reducing the appellant's assessment accordingly.

The appellant's attorney also distinguished Calumet Transfer LLC v. Property Tax Appeal Board, 401 Ill.App.3d 652,656 (1<sup>st</sup> Dist. 2010), wherein the Appellate Court did not require an appellant to submit extrinsic evidence to support a recent sale unless evidence is presented by an opposing party challenging the arm's length nature of the offered purchase price. Moreover, the Appellate Court in that appeal rejected the argument that PTAB erred as a matter of law by considering evidence outside of the sale price to determine the property's fair cash value, the Court specifically stated that this argument "assumes the absence of evidence calling into question the arm's length nature of the transaction." Id.

Moreover, on this point, the appellant's attorney asserted that the official rules of the Property Tax Appeal Board do not include any additional requirements for appellants when the evidence consists of a compulsory sale. Rather, it was argued that Section 1910.65(c) allows opposing parties to challenge the arm's length nature of the transaction by offering evidence of comparable sales. Thereafter, she asserts that the appellant would be responsible for refuting the opposition's evidence challenging the arm's length nature of the subject's sale.

Thereafter, the appellant, Jonas Da Silva, was called as a witness. After being duly sworn, Da Silva testified that he has operated several corporations in order to purchase, rehabilitate, and rent residential properties to either own or manage. He then listed the three main corporations that are overseeing real estate properties. He stated that he began purchasing and managing properties in approximately 1994 including from 150 to 200 properties. He indicated that he purchases condominiums, single-family homes and either two-unit or four-unit apartment buildings mainly located in the townships of Lawndale, Humboldt Park, Bronzeville, and Washington Park. He testified that he picks these neighborhoods because they are historically low-income residences and purchase prices are much lower for properties in those neighborhoods.

As to the subject's purchase, Da Silva testified that he personally purchased the subject in December 2010 and that he is unrelated to the seller. He stated that he noticed this property for sale on the multiple-listing service and then he called the listing broker. He also testified that the subject is located in North Lawndale which is not a desirable area to live in. He indicated that there were abandoned buildings and foreclosures within this high crime area. In addition, he stated that he finally quit claimed the unit to one of his employees.

As to the subject's condition, Da Silva testified in this subject's neighborhood many properties suffer from missing plumbing, fixtures and appliances which are usually stolen by others. As to this subject, he stated that this property was a garden unit and that he had to replace the plumbing, appliances, and kitchen cabinets. He also indicated that he invested \$6,000 to

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

renovate the subject after he purchased it. He stated that he believed he purchased the property at market value for the assessment date of January 1, 2011. Based on this evidence, the appellant requested the subject's assessment be reduced to reflect the subject's purchase price or a total assessment of \$1,000.

The board of review submitted its board of review Notes on Appeal indicating the subject's total 2011 assessment reflected a value of \$146,710 or \$133.37 per square foot. The board of review's evidence used two sales to develop an analysis asserting that the subject's market value should be \$183,530. The first sale was actually of the subject property, occurring on August 1, 2008 for a price of \$170,000. Moreover, this condominium analysis reflected that the subject's second sale on December 21, 2010 for a price of \$10,000. The second sale was identified as selling on April 25, 2008 for a price of \$238,000, but with the statement of "no sales information available."

At hearing, the board of review's representative requested that the Board take Judicial Notice of the Board's 2009 decision for a different subject property, specifically docket #09-28240-R-1, a courtesy copy of which was marked for the record as BOR Hearing Exhibit #1. In addition, she rested on the written evidence submissions. She also indicated that she had no personal knowledge of whether the subject's sales were arm's length transactions, she was only aware that the sale details came from the assessor's database.

In written rebuttal, the appellant submitted a brief arguing that the subject's December 2010 purchase was the best reflection of market value; especially since the three sale comparables submitted into evidence support the subject's sale to be at market value. The brief also noted that both of the 2008 sales used by the board of review ultimately resulted in foreclosures. In support of this assertion, the appellant submitted copies of the Lis Pendens for each property, obtained from the Recorder of Deeds website.

Further, the appellant's attorney argued at hearing that the board of review's use of the subject's 2008 sale was less than applicable to the 2011 tax appeal year due to the subsequent 2010 sale of the subject. Thereby, asserting that the 2008 sales were too distant in time to be relevant to the 2011 tax year.

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

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> 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 market value evidence presented, the Board concludes that this evidence indicates a reduction is warranted.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

In determining the fair market value of the subject property, the Board looks to the evidence presented by the parties. The Board finds that the appellant's recent sale, along with supporting testimony, as well as market sales are the best evidence of market value.

A "compulsory sale" is defined as

(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.

35 ILCS 200/1-23. Real property in Illinois must be assessed at its fair cash value, which can only be estimated absent any compulsion on either party.

Illinois law requires that all real property be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is likewise ready, willing, and able to buy, but is not forced to do so.

Board of Educ. of Meridian Community Unit School Dist. No. 223 v. Illinois Property Tax Appeal Board, 961 N.E.2d 794, 802, 356 Ill.Dec. 405, 413 (2d Dist. 2011) (citing Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207, 211, 387 N.E.2d 351 (2d Dist. 1979)).

However, the Illinois General Assembly recently provided very clear guidance for the Board with regards to compulsory sales. Section 16-183 of the Illinois Property Tax Code states as follows:

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.

35 ILCS 200/16-183. Therefore, the Board is statutorily required to consider the compulsory sales of comparable properties, and the Board shall consider the suggested sales submitted by both parties.

In totality, the parties submitted unadjusted data on three sales, with limited data on the board of review's sale #2. Therefore, the Board places most weight on the appellant's three sales which occurred from August 2010 to January 2011 for prices ranging from \$7,850 to \$10,000 or from \$7.00 to \$14.00 per square foot of living area. In comparison, the subject property's sale price reflects a market value of \$10,000 or \$9.00 per square foot of living area which is within the range established by the sale comparables in this record. However, the Board finds that the un rebutted testimony was that needed renovations were made immediately after the purchase amounting to \$6,000. Therefore, the Board finds that the actual sales price of the subject was \$16,000 resulting in a market value of \$14.55 per square foot which is slightly above the

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

established market range. In contrast, the subject's current market value of \$146,710 or \$133.37 per square foot is drastically above the range established by these market sales.

The Board finds especially relevant the thorough, credible and unrebutted testimony of the appellant which indicated that the subject property was advertised for sale on the open market; that the parties were unrelated; that the parties were represented by real estate brokers; that the sale was an arm's length transaction; and that due to the subject's specific market area conditions that the subject's sale price was reflective of the 2011 market. After considering adjustments and the differences in the comparables when compared to the subject, the Board finds the subject's renovated sale price is supported and that a reduction is warranted.

Based on this evidence, the Property Tax Appeal Board finds the subject property had a market value of \$16,000 as of January 1, 2011. Since market value has been determined, the level of assessment as determined by the Cook County Classification Ordinance for class 2, residential property of 10% shall apply. 86 Ill.Admin.Code 1910.50(c)(3).

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<u>Susan Fallon</u>
<b>DOCKET NUMBER:</b>	<u>15-39147.001-R-1</u>
<b>DATE DECIDED:</b>	<u>November, 2017</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject consists of a two-story building of frame and masonry construction with 4,792 square feet of living area. The building is 59 years old. The property has a 3,559-square foot site, and is located in La Grange, Lyons Township, Cook County. The subject is classified as a class 2-95 property under the Cook County Real Property Assessment Classification Ordinance (the "Classification Ordinance").

The appellant contends that the subject should be classified as a 2-11 property, and not a 2-95 property. In support of this argument, the appellant submitted an appraisal dated October 6, 2011. The appraisal states that the subject is one building containing four residential units, and that all four units are leased to tenants. The appraisal also includes black and white photographs of the subject's interior and exterior. One of the photographs of the subject's exterior shows four natural gas meters. The interior photographs depict several different apartment units. The appellant also submitted three lease agreements for three units within the subject.

The appellant also contends assessment inequity as the basis of the appeal. In support of this argument, the appellant submitted information on seven equity comparables.

The appellant also contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted information on seven comparable sales. These sales took place between November 2012 and May 2016 for \$105,000 to \$505,000, or \$64.10 to \$120.14 per square foot of living area, including land. Based on this evidence, the appellant requested a reduction in the subject's assessment to \$50,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$74,618. The subject property has an improvement assessment of \$69,688, or \$14.54 per square foot of living area. The subject's assessment reflects a market value of \$746,180, or \$155.71 per square foot of living area, including land, when applying the 2015 statutory level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 10.00%.

In support of its contention of the correct assessment, the board of review submitted information on four equity comparables and four sale comparables. These sales took place between February 2014 and December 2014 for \$225,000 to \$510,000, or \$198.14 to \$233.86 per square foot of living area, including land.

In written rebuttal, the appellant argued that the board of review's evidence should be given no weight because it was inaccurate in several respects, and that, in any case, the comparables submitted by the board of review are not similar to the subject for various reasons.



## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

At hearing, the appellant argued that the subject is one building with one PIN, and that the subject contains four separate units. The appellant stated that the subject has remained in the same condition since it was purchased, which was prior to the appraisal's effective date of October 6, 2011. The appellant also argued that appellant's sale comparable #1 is very similar to the subject, and is classified as a class 2-11 property. The appellant also reaffirmed the evidence previously submitted.

The appellant also offered into evidence documentation that the subject was recently sold. The board of review representative objected to the admission of this evidence based on Property Tax Appeal Board Rule 1910.67(k), and the Board sustained the objection. The appellant also offered into evidence statements that a recent appraisal opined a market value for the subject, but did not tender a copy of the appraisal. The Board excluded these statements based on hearsay. 86 Ill.Admin.Code §1910.90(g).

The board of review analyst argued that the subject physically looks like four adjacent class 2-95 properties, but that separate townhome properties usually have different PINs. Upon questioning from the Board, the board of review analyst was "uncertain" as to what the subject's proper classification should be.

In oral rebuttal, the appellant argued that the board of review's comparables were not similar to the subject for various reasons.

### **Conclusion of Law**

The appellant argued that the subject's classification was inaccurate. "Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class." Ill. Const. of 1970 art. IX, § 4(b). "Classification refers to the categorizing of real property according to its use, for the purpose of determining at which percentage of fair market value the property should be assessed." People ex rel. Costello v. Lerner, 53 Ill. App. 3d 245, 250 (5th Dist. 1977) (citing People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 195 (5th Dist. 1976)). "Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence." 5 ILCS 100/10-15. Based on the evidence submitted by the parties, the Board finds that the appellant has shown, by a preponderance of the evidence, that the subject's classification as a class 2-95 property is inaccurate.

In accordance with Section 4(b) of Article IX of the Illinois Constitution, Cook County classifies property within it, and applies different assessment levels to different classes of properties. The Illinois Constitution states that the classifications "shall be uniform within each class." The Illinois Appellate Court interpreted this state constitutional provision to mean that real property could be classified according to use. Costello, 53 Ill. App. 3d at 250. As stated above, the subject is classified as a class 2-95 property for tax year 2015. The Classification Ordinance defines a class 2-95 property as an "Individually owned townhome or row house up to 62 years of age." The appellant asserts that the subject is a multi-family building that should be classified

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

as a class 2-11 property. The Classification Ordinance defines a class 2-11 property as an "Apartment building with 2 to 6 units, any age."

Based on the evidence presented, the Board finds that the subject should be classified as a class 2-11 property. The appraisal states that the subject has four units, and that separate tenants occupy each unit. The appellant further submitted the lease agreements for three of the four units, which named three different individuals as the tenants of the three units. Moreover, the appraisal included an exterior photograph of the subject showing that the subject had four natural gas meters. The appraisal also included interior photographs, which show separate living units within the subject. At hearing, the appellant testified that the subject contains four units. Therefore, the Board finds that the appellant has proven, by a preponderance of the evidence, that the subject is not a class 2-95 property, but is, instead, a class 2-11 property.

While the Board finds as such, it has no authority to change the subject's classification in the Cook County Assessor's records, as it is only charged with determining the correct assessment of the subject. 35 ILCS 200/16-180. However, the subject's classification as a class 2-11 property is pertinent to the uniformity and market value arguments raised by the appellant. Thus, the Board will conduct the uniformity and market value analyses whilst using its finding that the subject is a class 2-11 property.

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 meet 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 appellant's comparables #1,<sup>1</sup> #4, and #7. These comparables sold for prices ranging from \$100.94 to \$112.22 per square foot of living area, including land. The subject's assessment reflects a market value of \$155.71 per square foot of living area, including land, which is above the range established by the best comparables in this record. Based on this record, the Board finds the appellant did demonstrate that the subject is overvalued, and a reduction in the subject's assessment is warranted. Since market value has been determined, the Board finds that the subject is now fairly and equitably assessed.

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<sup>1</sup> The Board notes that the appellant submitted the descriptive and sales information for sale comparable #1 twice. The Board has ignored the second submission, as it is duplicative.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>Frank Gagliardi</b>
<b>DOCKET NUMBER:</b>	<b>15-35216.001-R-1</b>
<b>DATE DECIDED:</b>	<b>July, 2017</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of an 8,624-square foot parcel of land improved with a 115-year old, two-story, frame, single-family dwelling containing 2,809 square feet of building area. The property is located in Jefferson Township, Cook County and is a class 2 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends inequity as the basis of the appeal. In support of the equity argument, the appellant submitted four comparables. These properties are one-story frame or frame and masonry single-family dwellings that range in age from 122 to 149 years; in size from 2,416 to 3,338 square feet of building area; and in improvement assessment from \$11.53 to \$13.83 per square foot of building area.

In addition, the appellant argues that the subject's improvement assessment has increased in percentage at a higher rate than the comparable properties or has increased while other properties have seen a percentage decrease. The appellant asserts that the land assessment increased for all properties without a clear explanation as to why.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$51,009 with an improvement assessment of \$42,385 or \$15.09 per square foot of building area. In support of the assessment, the board of review submitted three equity comparables. These properties are two-story frame single-family dwellings that range in age from 112 to 124 years; in size from 2,388 to 2,680 square feet of building area; and in improvement assessment from \$15.22 to \$17.87 per square foot of building area.

### **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).

As to the appellant's percentage increase argument, the Board finds that the appellant's argument that the subject's assessment increased by a greater percentage than other properties does not support his contention of unequal treatment. The cornerstone of uniformity in assessment is the fair market value of the property. Kankakee County Board of Review v. The Property Tax Appeal Board, 544 N.E.2<sup>nd</sup> 762 (1989). Unequal treatment in the assessment process is demonstrated when properties of similar market values are assessed at substantially different

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

levels. The mere contention that assessments among neighboring properties changed from one year to the next at different rates does not demonstrate that the properties are assessed at substantially different level(s) of fair market value. Therefore, the Board gives no weight to this argument.

As to the equity evidence submitted by the parties, the Board finds the best evidence of assessment equity to be the appellant's comparables #2 and #3 and the board of review's comparable #2. These comparables had improvement assessments that ranged from \$11.53 to \$15.22 per square foot of building area. The subject's improvement assessment of \$15.09 per square foot of building area falls within the range established by the best comparables in this record.

The constitutional provision for uniformity of taxation and valuation does not require a mathematical equality. A practical, 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 the Constitution requires is a practical uniformity which appears to exist based on the evidence. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed and a reduction is not warranted.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>Hugo Galicia</b>
<b>DOCKET NUMBER:</b>	<b>15-01096.001-C-1</b>
<b>DATE DECIDED:</b>	<b>June, 2017</b>
<b>COUNTY:</b>	<b>Kane</b>
<b>RESULT:</b>	<b>No Change</b>

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

The subject property consists of a two-story multi-family building of masonry construction consisting of four, 2-bedroom 1-bath, apartment units with a total of 3,514 square feet of living area. The building was constructed in 1952. Features of the building include a basement and a detached brick garage of 1,155 square feet of building area. The property has a 10,890-square foot site and is located in Elgin, Elgin Township, Kane County.

The appellant contends overvaluation as the basis of the appeal designated as a "contention of law." In support of this argument the appellant's counsel developed an estimate of value using the subject's income and expense history for 2012 through 2014 and submitted this analysis as the sole evidence of value for the appeal. The brief included a copy of the appellant's Schedule E, Supplemental Income and Loss statement for each identified tax year.<sup>1</sup>

Appellant's legal counsel argued that the subject's total assessment of \$79,143 reflects an estimated market value of \$237,453 or \$59,363 per apartment unit, including land. In the brief, counsel for the appellant outlined the subject's income and expenses for 2012, 2013 and 2014 and set forth a 3-year average gross income or a stabilized gross income of \$33,703 and stabilized expenses of \$10,312 (based upon a 30% expense ratio). Deducting the expenses from the gross income figure resulted in counsel's determination of a net operating income of \$23,391. Next Attorney Reynolds applied a total capitalization rate of 14.19% (10% cap rate plus 4.19% tax load) to the calculated net operating income figure to arrive at "a Fair Market Value, for the subject, of \$164,841."

Based on the foregoing analysis by counsel, the appellant requested a total assessment of \$54,842 and argued this was reflective of the attorney's estimated fair market value of \$164,841 at the statutory level of assessment of 33.33%.<sup>2</sup>

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$79,143. The subject's assessment reflects a market value of \$237,595 or \$59,399 per apartment unit, land included, when using the 2015 three-year average

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<sup>1</sup> The submission was made in an unredacted form, including personal identifying information of the appellant, which the Property Tax Appeal Board has redacted for security purposes. (5 ILCS 179/1 et seq.)

<sup>2</sup> The correct total assessment at the statutory level of assessment would be \$54,942.

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

median level of assessment for Kane County of 33.31% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review noted disagreement "with the appellant's methodology." The board of review also contended there was no support for the selected capitalization rate and argued that "the trending income shows increases." The submission also included a memorandum from the Elgin Township Assessor's Office noting that the subject is "a non-investment grade property" and arguing that an income approach "is not a reliable indicator of value."

In support of its contention of the correct assessment the board of review through the township assessor submitted information on seven comparable sales of one, four-unit and six, six-unit apartment buildings and also detailed an income analysis in a memorandum from the assessor's office.

The comparable sales are located from 2.18 to 3.79-miles from the subject apartment building. The comparable parcels range in size from 9,148 to 16,117 square feet of land area and are improved with four, two-story and three, three-story apartment buildings that were built between 1963 and 1982. The buildings range in size from 4,224 to 6,336 square feet of living area. Comparable #1 is a four-unit building and the remaining comparables are each six-unit buildings. Comparables #1, #5, #6 and #7 have garages; garage size was only provided for comparables #1 and #7. The sales occurred between August 2013 and October 2015 for prices ranging from \$243,500 to \$415,000 or from \$52,833 to \$69,167 per apartment unit, including land.

For these seven comparables, the grid analysis reported gross rental income for the four unit building of \$41,100 and for the six unit buildings the gross rental income ranged from \$48,933 to \$63,600. The grid also set forth gross rent multipliers (GRM) for the comparables ranging from 5.37 to 7.39. In the memorandum, the assessor reported use of "the subject's yearly rent" of \$40,500. The assessor further stated, "By extracting a GIM from the market data, we have estimated a fair market value of \$243,000 (\$40,500 x 6) or \$60,750 per unit. The suggested fair market value calculated by the GIM is supported by the sales price data found in the sales of similar constructed multi units provided by the assessor's office."

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

### **Conclusion of Law**

The appellant marked a contention of law argument as the basis of the appeal. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

Substantively, the appellant's evidence asserted that the market value of the subject property is not accurately reflected in its assessed valuation based on the preparation by counsel of an income approach to value. 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 appellant's argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses unconvincing and not supported by market derived 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 evidence 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 attempted, one must establish through the use of market data the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. Further, the appellant must establish through the use of market data a capitalization rate to convert the net income into an estimate of market value. The appellant did not provide such evidence; therefore, the Property Tax Appeal Board gives this argument no weight. Similarly, the Board finds that the assessing officials likewise did not provide all of the underlying data necessary to estimate the subject's market value using an income approach.

Furthermore, the Board finds problematic the fact that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion evidence of value for that client's property.

The Board finds the best evidence of market value to be board of review comparable sale #1 which is most similar to the subject in the number of apartment units, although the building is somewhat newer and larger than the subject. This board of review comparable sold in October

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

2015 for \$243,500 or \$60,875 per apartment unit, including land. The subject's assessment reflects a market value of \$237,595 or \$59,399 per apartment unit, including land, which is below the best comparable sale in the record.

Based upon the limited valid market value evidence in the record, the Board finds a reduction in the subject's assessment is not justified.



## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<u>Aminul Karim</u>
<b>DOCKET NUMBER:</b>	<u>14-02402.001-R-1</u>
<b>DATE DECIDED:</b>	<u>January, 2017</u>
<b>COUNTY:</b>	<u>Kane</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of a two-story multi-family dwelling of frame construction with 1,756 square feet of living area. The two-unit apartment building was constructed in 1900 and features a full unfinished basement. The property has a 10,230-square foot site and is located in Elgin, Elgin Township, Kane 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 May 10, 2013 for a price of \$68,900. The appellant disclosed the subject property was purchased from the Federal National Mortgage Association (Fannie Mae) out of foreclosure and the parties were not related. The appellant also indicated the property was sold through a Realtor, the property was listed in the Multiple Listing Service (MLS) and the property had been advertised for sale for 42 days. To document the sale the appellant submitted a copy of the Settlement Statement (HUD-1) which depicted the payment of brokers' fees to two entities, a copy of the MLS listing of the subject property which described the property as being available for cash financing and being REO/Lender Owned, Pre-Foreclosure, and a copy of the Listing & Property History Report. The listing report not only reflects the listing in March 2013 that resulted in the sale of the subject after 42 days on the market, but also depicts the property was again placed on the market on August 6, 2013 for a period of 198 days with an initial asking price of \$159,100 and then again placed on the market in April 2014 for a period of 88 days with an initial asking price of \$169,900.

Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the May 2013 purchase price of \$68,900.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$33,922. The subject's assessment reflects a market value of \$101,898 or \$58.03 per square foot of living area or \$50,949 per apartment unit, land included, when using the 2014 three-year average median level of assessment for Kane County of 33.29% as determined by the Illinois Department of Revenue.

In response to the appellant's evidence, the board of review through the township assessor acknowledged that the subject property was purchased in May 2013 as a foreclosure that was contracted in 42 days which sold for cash in as-is condition. Furthermore, the subject was described as having two units, each with two-bedrooms with one bath.

In support of its contention of the correct assessment the board of review submitted information from the Elgin Township Assessor on six sales of multi-family dwellings with either two or three units that sold from June 2013 to April 2014. These comparables sold for prices ranging from \$125,000 to \$137,000 or from \$45,667 to \$66,250 per unit. Using these sales, the assessor

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

calculated gross rent multipliers (GRM) of 6 or 7, rounded. The assessor also submitted a rental comparable chart using 23 comparables that had unit rents ranging from \$510 to \$1,275 per month. The assessor estimated the subject property would have an annual rent of \$18,000. Applying a GRM of 6 resulted in an estimated value of \$108,000. The assessor argued that the subject's assessment reflects a market value below the sales and the GRM calculation.

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

In written rebuttal, former counsel for the appellant argued that the sale of the subject was an arm's length transaction indicative of its market value. The board of review failed to provide information on the proximity of its comparables to the subject and should thus be given diminished weight. As to the board of review's income analysis, case precedent prefers credible market sales data over a cost approach or an income approach to value.

### **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 appellant provided evidence that the subject property was purchased in May 2013 out of foreclosure for a price of \$68,900 or \$34,450 per unit or \$39.24 per square foot of living area, including land. Although the parties to the transaction were not related and the property was exposed on the open market for 42 days, the Board finds the sales data provided by the board of review calls into question whether the purchase price was indicative of fair cash value. The Board also gave lesser weight to the subject's sale due to the fact the sale did not occur as proximate in time to the assessment date at issue as did the comparable sales that were presented in the record.

The board of review submitted information on six comparable sales, however, comparables #1 through #5 sold most proximate in time to the assessment date from June 2013 to April 2014 and were each two-unit apartment buildings. Board of review comparable #6 was a three-unit building and thus given little weight in the Board's analysis. These five comparables ranged in size from 1,647 to 2,584 square feet of living area. The buildings were constructed from 1880 to 1959 and sold for prices ranging from \$125,000 to \$132,500 or from \$62,500 to \$66,250 per unit or from \$48.37 to \$75.90 per square foot of living area, including land. The subject's purchase price is significantly below these sales calling into question the validity of the sale as being representative of the property's fair cash value. The subject's assessment reflects a market value of \$101,898 or \$50,949 per apartment unit or \$58.03 per square foot of living area, land included, which is particularly well-supported by board of review comparable sales #4 and #5. These two sales are most similar to the subject in size and bracket the assessment date at issue of January 1, 2014; these two properties sold for \$125,000 and \$132,500 or for \$62,500 and \$66,250 per unit or for \$69.23 and \$75.90 per square foot of living area, land included, which is

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

still more than the subject's estimated market value based on its assessment in terms of overall value, on a per unit basis and on a per-square-foot basis.

Furthermore, reviewing the additional data submitted by the appellant in the Listing & Property History Report, the subject property as of January 2014 was being marketed with an asking price of \$169,900 which further indicates that the subject property's estimated market value as reflected in its assessment is reasonable.

Based on this record, the Board finds the appellant failed to establish by a preponderance of the evidence that the subject property was overvalued and the Board finds that a reduction in the subject's assessment is not justified.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<u>George &amp; Julia Leroy</u>
<b>DOCKET NUMBER:</b>	<u>11-31464.001-R-1</u>
<b>DATE DECIDED:</b>	<u>February, 2017</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of a three-story, multi-family dwelling of masonry construction with 2,445 square feet of living area and two units therein. Features include two full and one-half baths and a two-car garage. The property has a 3,125-square foot site and is located in West Chicago Township, Cook County. The subject is classified as a class 2-11, residential 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 three equity comparables. In addition, the appellant's brief asserted that the subject had qualified for the New Homes for Chicago program designed to provide affordable housing for moderate income families. In support, copies of a certificate of compliance, an assumption of mortgage, a covenant of residency, and a letter regarding income qualifications.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$51,249. The subject property has an improvement assessment of \$36,406 or \$14.89 per square foot of living area. In support of its contention of the correct assessment, the board of review submitted information on three suggested equity comparables.

### **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 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 comparables #1 and #3 as well as the board of review's comparables #1 and #3. These comparables had improvement assessments that ranged from \$6.60 to \$25.74 per square foot of living area. The subject's improvement assessment of \$14.89 per square foot of living area falls within the range established by the best comparables in this record. Moreover, the Board finds the appellant failed to submit sufficient evidence to demonstrate that the subject's inclusion in the City's program relates to real estate value. Rather, the appellant's evidence related to income compliance in the City's program. Further, the Board finds the subject's improvement assessment at the low end of the comparables' range may account for inclusion in this program; and therefore, this argument is unpersuasive.

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Based on this record, 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.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>Markath LLC</b>
<b>DOCKET NUMBER:</b>	<b>14-02408.001-R-1</b>
<b>DATE DECIDED:</b>	<b>May, 2017</b>
<b>COUNTY:</b>	<b>Kane</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of a 1.5-story dwelling of frame and masonry construction with 1,620 square feet of living area. The dwelling was constructed in 1927. Features of the home include a full unfinished basement and a detached two-car garage. The property has a 5,663-square foot site and is located in Aurora, Aurora Township, Kane County.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted evidence in Section IV – Recent Sale Data of the appeal petition disclosing the subject property was purchased on March 27, 2014 from the Joseph Corporation for a price of \$35,300. 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 \$17,326. The subject's assessment reflects a market value of \$52,046 or \$32.13 per square foot of living area, land included, when using the 2014 three-year average median level of assessment for Kane County of 33.29% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review asserted that the subject was sold for cash on April 9, 2014 for \$35,300, sold "as-is." Furthermore, the board of review noted that the sale occurred in 2014.

In support of its contention of the correct assessment, the board of review through the township assessor submitted information on three purportedly comparable sales that occurred in 2012 and 2013. The comparables consist of a part two-story and part one-story and two, 1.5-story dwellings of masonry construction. The homes were built in 1923 or 1924 and range in size from 1,720 to 1,809 square feet of living area. Each comparable has a basement, two of the comparables each have a fireplace and each comparable has a garage. The properties sold between July 2012 and January 2013 for prices ranging from \$112,000 to \$128,000 or from \$65.12 to \$70.76 per square foot of living area, including land.

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

In written rebuttal, counsel for the appellant asserted that the subject dwelling has been vacant "at all times relevant to this appeal" and is uninhabitable, "suffering from 70-plus years of deferred maintenance, neglect and obsolescence." The rebuttal asserts the condition requires demolition of the interior and replacement of electrical, plumbing, drain and heating systems, along with fixtures. The purchase was an arm's length sale from a remodeler who had determined it could not complete the project. An affidavit was purportedly supplied to support these facts, although no such affidavit was found in the record.

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Counsel also asserted that the board of review comparables were "inhabited and inhabitable" properties.

### **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 to be the purchase of the subject property on March 27, 2014 for a price of \$35,300. 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 with Re/Max Town & Country and the property had been advertised on the open market with the Multiple Listing Service (MLS). The appellant submitted a copy of the MLS listing reflecting an asking price of \$29,900 and the remark "This home has been gutted in some rooms and ceilings. Newer roof on the back of the home. Cash offers only. AS-IS." Agent remarks were: "This home has had some demolition work done. Ceilings on both floors in some rooms and a couple of walls. Most of the hard work has been completed." Agent notes on the listing stated, "dangerous conditions exist." In further support of the transaction, the appellant submitted a copy of the Settlement Statement reflecting the distribution of brokers' fees to two entities.

The Property Tax Appeal Board finds the purchase price of \$35,300 is below the market value reflected by the assessment of \$52,046. Additionally, the Board finds the board of review did not 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 given the condition issues of the subject dwelling as established by the appellant. Furthermore, the Board finds that the three sales presented by the board of review, which were less proximate in time to the assessment date of January 1, 2014, also do not overcome the best evidence of the subject's market value given the home's partially demolished condition at the time of sale.

Based on this record the Board finds the subject property had a market value of \$35,300 as of January 1, 2014. Since market value has been determined the 2014 three-year average median level of assessment for Kane County of 33.29% shall apply. 86 Ill.Admin.Code §1910.50(c)(1).

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>Steven Mevorah</b>
<b>DOCKET NUMBER:</b>	<b>15-05512.001-R-1</b>
<b>DATE DECIDED:</b>	<b>November, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of a two-story single-family dwelling of brick exterior construction with 5,243 square feet of living area.<sup>1</sup> The dwelling was constructed in 2006. Features of the home include a full basement with 85% finished area, central air conditioning, a fireplace and a three-car garage with 929 square feet of building area. The property has a 14,295-square foot site and is located in Wheaton, Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through council claiming overvaluation as the basis of the appeal.<sup>2</sup> In support of this argument, the appellant called as his witness James R. Gargano, Jr. Gargano is a Certified General Real Estate Appraiser licensed in Illinois. Gargano testified that he has been licensed about 20 years.

Gargano testified that he prepared an appraisal of the subject property. The purpose of the appraisal was to develop an opinion of market value of the subject property as of January 1, 2015. Gargano provided direct testimony regarding the appraisal methodology and final value conclusion. The appraiser relied on the sales comparison approach to value in arriving at his estimate of market value. The appraisal report conveys an estimated market value of \$900,000 as of January 1, 2015.

Under the sales comparison approach to value, the appraiser utilized four suggested sales located in Wheaton from .09 to 1.83 miles from the subject. The dwellings were described as two-story dwellings of brick, brick and cedar or brick, cedar and stone exterior construction. Each of comparables has a basement with two comparables having a finished area and one comparable having a walk-out style basement. Each comparable has central air conditioning, one to three fireplaces and a three-car garage. The dwellings are from 8 to 19 years old. The dwellings range in size from 3,976 to 4,978 square feet of living area and are situated on lots that range in size from 16,328 to 30,695 square feet of land area. The comparables sold from February 2014 to October 2014 for prices ranging from \$810,000 to \$1,150,000 or from \$177.78 to \$247.37 per square foot of living area including land.

Gargano testified that he adjusted the comparables for differences when compared to the subject for "size, design, age location, quality of construction, all those items could be items that impact a buyer's motivations." The adjustments resulted in adjusted sale prices ranging from \$895,000 to \$1,009,600. Based on the adjusted sale prices, Gargano estimated the subject property had a

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<sup>1</sup> The Property Tax Appeal Board finds the best evidence of size was presented by the appellant and located in the appraisal which contained a schematic diagram and calculations of the subject's size. The board of review's evidence did not include a diagram depicting the size of the subject and the related calculations.

<sup>2</sup> During the hearing, the attorney withdrew his comparable sale and assessment inequity arguments relying on the appraisal that was submitted with no objection from the board of review.



## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

fair market value of \$900,000 or \$171.66 per square foot of living area including land under the sales comparison approach to value.

Under cross-examination, Gargano testified that his adjustment for the view of the property was a qualitative adjustment. Gargano testified that his adjustments for quality/condition, basement finish and fireplace were based on either matched pair sales or market-extracted adjustments. Gargano stated that the adjustment for gross living area isolates what the contribution of size alone is being adjusted for and that number in the report is based on \$75 per square foot.

Under re-direct, Gargano testified that the sales comparison approach is the primary approach.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$353,220. The subject's assessment reflects a market value of \$1,060,721 or \$202.31 per square foot of living area, land included, when using the 2015 three-year average median level of assessment for DuPage County of 33.30% as determined by the Illinois Department of Revenue.

Representing the board of review was member Charles Van Slyke.

The board of review called as its witness Mary Cunningham, Chief Residential Deputy Assessor. Cunningham testified that her concern with the appellant's appraisal is the smaller dwelling size when compared to the subject.

Cunningham testified that the assessor's office submitted information on four comparables sales located within District 200 schools. Cunningham testified that they had to go outside of the subject's neighborhood to find comparables because there are only 37 homes in the subject's subdivision. Cunningham testified that the assessor kept within a 500-square-foot range of living area. One comparable was also utilized by the appellant's appraiser. The comparables were improved with two-story dwellings that ranged in size from 4,978 to 5,655 square feet of living area. The dwellings were of frame or brick and frame exterior construction and were built from 1997 to 2007. Each comparable has a basement with three comparables having finished areas, central air conditioning, one or two fireplaces and a two-car or three-car garage ranging in size from 714 to 772 square feet of building area. These properties had sites ranging in size from 18,827 to 133,220 square feet of land area. The comparables sold from March 2013 to August 2014 for prices ranging from \$885,000 to \$1,700,000 or from \$177.78 to \$330.79 per square foot of living area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination, Cunningham testified that the assessor's office does not do an interior inspection unless it is requested by the property owner. The Administrative Law Judge inquired about the excessive land sizes on the board of review's comparables #1, #2 and #3, with Cunningham responding that she was really looking at homes within the 500-square-foot range.

Under re-direct Cunningham testified that she concentrated on the building size because the appeal was also marked as "assessment inequity."

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

### **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 the subject's market value to be the appraisal submitted by the appellant for \$900,000. The Board finds the appellant's appraiser provided competent testimony regarding the selection of the comparables, the adjustment process and final value conclusion. The Board further finds the board of review failed to adequately refute the appraiser's final value conclusion. The subject's assessment reflects a market value of \$1,060,721 which is greater than the appraised value. Based on this record, the Board finds the subject property had a market value of \$900,000 as of the assessment date at issue. The Board gave less weight to the board of review unadjusted comparables based on their larger site sizes when compared to the subject. In addition, comparable sales #2 and #3 are dated and occurred from March 2013 and April 2013, which is less indicative of fair market value as of the subject's January 1, 2015 assessment date. Since market value has been established the 2015 three-year average median level of assessments for DuPage County of 33.30% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>MKRS Investments LLC</b>
<b>DOCKET NUMBER:</b>	<b>15-00630.001-R-1 thru 15-00630.002-R-1</b>
<b>DATE DECIDED:</b>	<b>November, 2017</b>
<b>COUNTY:</b>	<b>Will</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property is improved with a 1.5-story multi-family dwelling of frame construction containing 1,676 square feet of living area. The dwelling was constructed in 1909. Features of the property include two apartments, a crawl space foundation and one fireplace. The property is composed of two parcels with a combined land area of 6,080 square feet and is located in Steger, Crete Township, Will County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of \$48,500 as of January 1, 2013. The appraisal was prepared by Dominick DiMaggio, a certified residential real estate appraiser. In estimating the market value of the subject property, the appraiser used three comparable sales improved with a one-story dwelling and two, two-story dwellings that range in size from 1,781 to 2,628 square feet of living area. Each comparable has two units. The sales occurred in May 2012 and November 2012 for prices ranging from \$35,000 to \$78,000 or from \$19.65 to \$37.21 per square foot of living area, including land. The appraiser's analysis further indicated that the comparables had rentals ranging from \$1,200 to \$1,600 per month and gross rent multipliers ranging from 29.17 to 48.75; prices per unit ranging from \$17,500 to \$39,000; price per room ranging from \$4,375 to \$7,800; and price per bedroom ranging from \$8,750 to \$19,500. Using these various units of comparison, the appellant's appraiser arrived at a market value of \$48,500.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total combined assessments for the subject property of \$27,324. The subject's assessment reflects a market value of \$82,177 or \$49.03 per square foot of living area, land included, when using the 2015 three-year average median level of assessment for Will County of 33.25% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted information on three comparable sales identified by the township assessor that are improved with 1.5-story dwellings that range in size from 1,534 to 1,872 square feet of living area. The dwellings were constructed from 1904 to 1916. Two of the comparables have basements, two comparables have central air conditioning, and two comparables have garages with 588 and 728 square feet of building area, respectively. The comparables are located from .2 and .4 of a mile from the subject property and have sites ranging in size from 3,140 to 9,275 square feet of land area. The comparables sold from June 2013 to November 2014 for prices ranging from \$100,000 to \$142,000 or from \$65.19 to \$75.85 per square foot of living area, including land.

Based on these sales, the board of review requested that no change be made to the assessment.

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

### **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 Board finds the best evidence of market value to be the comparable sales provided by the board of review. The board of review comparable sales were similar to the subject in location, style, age and size. These properties also sold most proximate in time to the assessment date for prices ranging from \$100,000 to \$142,000 or from \$65.19 to \$75.85 per square foot of living area, including land. The subject's assessment reflects a market value of \$82,177 or \$49.03 per square foot of living area, including land, which is below the range established by the best comparable sales in the record but justified considering the board of review comparables had superior features including basements, central air conditioning and garages not enjoyed by the subject property. Less weight was given the appraisal provided by the appellant as it has an effective date of January 1, 2013, two years prior to the assessment date at issue. Furthermore, the comparable sales used to form the basis of the opinion of value contained in the appraisal occurred in May 2012 and November 2012, not proximate in time to the assessment date at issue. Based on this evidence the Board finds the assessment of the subject property as established by the board of review is correct and a reduction in the subject's assessment is not justified.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b><u>Matt Pittman</u></b>
<b>DOCKET NUMBER:</b>	<b><u>15-05626.001-R-1</u></b>
<b>DATE DECIDED:</b>	<b><u>September, 2017</u></b>
<b>COUNTY:</b>	<b><u>DuPage</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property consists of a split-level dwelling of frame construction with 1,314 square feet of living area. The dwelling was constructed in 1956. Features of the home include a 392-square foot basement, one bathroom and a one-car garage. The property has a 6,500-square foot site and is located in Villa Park, York 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 June 15, 2014 for a price of \$60,000. The appellant partially completed Section IV – Recent Sale Data of the appeal petition reporting that the property was purchased from the owner of record, the parties to the transaction were not related and the property was sold by the owner who advertised the property by "sign, internet and/or auction" for an unstated period of time. The appellant also provided a copy of the Settlement Statement which reiterated the purchase date and price; this document also did not reflect the distribution of any brokers' fees in connection with the sale. The appellant also submitted a poor-quality photocopy of a PTAX-203 Illinois Real Estate Transfer Declaration apparently depicting the transfer by Warranty Deed of the subject property for a sales price of \$60,000. 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" disclosing the total assessment for the subject of \$42,050. The subject's assessment reflects a market value of \$126,276 or \$96.10 per square foot of living area, land included, when using the 2015 three-year average median level of assessment for DuPage County of 33.30% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted a grid analysis of the subject property along with information on four comparable sales, two of which were located in the same neighborhood code assigned by the assessor as the subject property. In the grid analysis, the board of review reported the sale price of the subject property as stated by the appellant.

The four comparables consist of split-level dwellings that were built between 1955 and 2014. The homes range in size from 918 to 1,402 square feet of living area with basements ranging in size from 364 to 672 square feet of building area. Each comparable has one or two bathrooms and a garage. The comparables have lots ranging in size from 6,500 to 11,127 square feet of land area. The comparables sold between November 2012 and May 2015 for prices ranging from \$88,000 to \$268,900 or from \$95.86 to \$245.35 per square foot of living area, including land.

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

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

In written rebuttal, counsel for the appellant noted that the board of review did not present any dispute with the recent sale data submitted by the appellant. Likewise, the board of review did not present any evidence that the sale of the subject property was invalid in any manner.

Counsel for the appellant further asserted that it would be inappropriate to consider comparable sales evidence in response to the appellant's overvaluation argument based upon a recent sale. No case law or other citation was provided by the appellant for this latter assertion on a market value argument before 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. 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 purchase of the subject property in June 2014 for a price of \$60,000. The appellant provided evidence demonstrating the sale had the elements of an arm's-length transaction. The appellant completed portions of Section IV - Recent Sale Data of the appeal disclosing the parties to the transaction were not related, the property was sold and the property had been advertised on the open market with a sign, internet and/or auction. None of these assertions were refuted in any manner by the board of review's submission.

In further support of the transaction the appellant submitted copies of the Settlement Statement and the PTAX-203 Illinois Real Estate Transfer Declaration. The Board finds the purchase price of \$60,000 is below the market value reflected by the assessment of \$126,276. The Board finds the board of review did not 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.

To the extent that the board of review submitted four comparable sales to support the assessment, the Board finds that board of review sale #3, which was most similar to the subject property, does not overcome the apparent arm's-length nature of the subject's recent sale transaction. In addition, board of review comparable sale #4 that occurred in 2012 is too remote in time to be indicative of the subject's estimated market value as of January 1, 2015. Board of review comparable sales #1 and #2 were each substantially different from the subject dwelling in age.

Based on this record the Board finds the subject property is overvalued and a reduction commensurate with the appellant's request is warranted, but also recognizing that the DuPage County Board of Review rounds all assessments to the nearest ten.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b>Michael &amp; Linda Rempert</b>
<b>DOCKET NUMBER:</b>	<b>15-40927.001-R-1</b>
<b>DATE DECIDED:</b>	<b>June, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a part two-story and part three-story dwelling of brick exterior construction with 3,266 square feet of living area. The dwelling was constructed in 2005. Features of the home include a full basement with finished area, central air conditioning, three fireplaces<sup>1</sup> and an attached 506 square foot garage. The property has a 9,082-square foot site and is located in Hinsdale, Downers Grove Township, DuPage County.

The appellants contend assessment inequity as the basis of the appeal concerning the subject's improvement assessment; no dispute was raised concerning the land assessment. In support of this inequity argument, the appellants submitted information on four comparables located in the same neighborhood code assigned by the assessor as the subject property. In a brief the appellants contend their comparables are similar to the subject being located near to commercial property or run along the busy Ogden Avenue commercial thoroughfare. The comparables consist of dwellings of multiple story heights of frame, brick or brick and frame construction that were 9 to 16 years old. The comparables range in size from 2,819 to 4,711 square feet of living area. Each comparable has a basement with finished area, central air conditioning, at least one fireplace and garages ranging in size from 641 to 877 square feet of building area. The comparables have improvement assessments ranging from \$196,990 to \$326,090 or from \$66.65 to \$69.88 per square foot of living area.

The appellants also submitted a brief along with three color photographs. In the brief, the appellants assert the subject residential property is "directly adjacent to commercial property along a major commercial thoroughfare." The appellants also report that the subject property was purchased new in February 2005 for \$1,050,000 which "reflects a discounted value due to its location, compared to other comparable homes on the market at that time." The area businesses near the subject include a General Motors building and a Land Rover car dealership/repair warehouse. The appellants contend that the subject property is a noise buffer to the immediate neighborhood for the sounds of the repair shop/customer waiting area. Three photographs depict (1) a commercial brick building as seen from the subject's driveway; (2) a commercial building with parking as seen above and beyond the subject's wooden fenced backyard; and (3) another photograph of the parking lot depicted in the second photograph as seen from the subject's master bedroom window.

Based on this evidence and argument, the appellants requested a reduced improvement assessment of \$207,773 or \$63.62 per square foot of living area.

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<sup>1</sup> While the appellants report the dwelling has three fireplaces, the assessing officials report the dwelling has two fireplaces for assessment purposes.

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$334,530. The subject property has an improvement assessment of \$258,970 or \$79.29 per square foot of living area.

In response to the appeal, the board of review submitted a memorandum and data gathered by the Downers Grove Township Assessor's Office. The assessor contended that the subject property has been afforded both land and building economic obsolescence downward adjustments for location of 10% due to being near commercial properties and 5% for being 400 feet from Ogden Avenue. The assessor further reported economic obsolescence adjustments are based on proximity to Ogden and commercial properties on the following scale applied to both land and building: (1) on Ogden Avenue is -30%; 0 to 300 feet from Ogden is -10%; 300 to 400 feet from Ogden is 5% and (2) 0 to 400 feet from commercial property get an additional -10%.

As to the comparables presented by the appellants, the assessor reported that comparables #1 and #4 each have downward 30% economic obsolescence adjustments to land and building for location on Ogden Avenue. As to appellants' comparables #2 and #3, which are each larger homes and based on the economies of scale would be expected to have lower per-square-foot assessments than the subject; the assessor also reports these two properties have downward economic obsolescence adjustments of 15% and 20%, respectively, due to location near commercial property and locations in close proximity to Ogden Avenue.

In support of its contention of the correct assessment the board of review through the township assessor submitted information on four equity comparables located in the same neighborhood code assigned by the assessor as the subject property. The comparables consist of dwellings of multiple story heights of frame or brick construction that were 6 to 13 years old. The comparables range in size from 3,044 to 3,435 square feet of living area. Each comparable has a full or partial basement with finished area, central air conditioning, two or three fireplaces and garages ranging in size from 440 to 506 square feet of building area. The comparables have improvement assessments ranging from \$275,170 to \$281,360 or from \$80.11 to \$90.47 per square foot of living area. The assessor acknowledged that comparables #1 and #2 are the same style as the subject, but these properties do not have economic obsolescence allowances. Comparables #3 and #4 each have downward 10% adjustments for economic obsolescence due to close proximity to commercial property and being 300 feet from Ogden Avenue, respectively. The submission included a map depicting the location of the subject and both parties' comparables.

Additional assessment differences noted by the assessor in the memorandum include variations in quality of construction, number of fireplaces, number of bathrooms, half baths, fixtures and/or elevators.<sup>2</sup>

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

In written rebuttal, the appellants contend the broad assertions of downward adjustments made to the subject and various comparables do not allow for an appropriate equitable comparison.

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<sup>2</sup> Although not specifically discussed in the assessor's memorandum, the underlying property descriptions attached to the board of review's submission reveal that appellants' comparable #3 has an elevator amenity



## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Furthermore, the appellants contend that board of review comparables #1 and #2 are "nowhere near commercial property or a business district."

As to board of review comparable #3 the appellants contend this property is "located several hundred feet from boutique shops, high end clothing stores and high-end eateries." The appellants assert the commercial property and residential properties are separated by a vast parking lot that is enclosed by an 8-foot commercial fence providing security and privacy to the residential neighborhood.

As to board of review comparable #4, the appellants assert this property is four properties from Ogden Avenue and the commercial properties in the area have cedar fencing providing security and privacy to nearby homes.

In addition, as part of the rebuttal, the appellants submitted data referring to a fifth equity comparable which the appellants apparently presented for tax year 2015 to the DuPage County Board of Review and questioned why the board of review did not present this as one of the appellants' comparables before the Property Tax Appeal Board.

### **Conclusion of Law**

As an initial matter, the appellants are reminded that for this appeal before the Property Tax Appeal Board, the appellants presented only four equity comparables to support their claim in the Section V grid analysis of the Residential Appeal petition. Thus, to the extent that the appellants cited a fifth comparable property in their rebuttal submission, the Board has given this data no consideration for this appeal. Pursuant to the rules of the Property Tax Appeal Board, rebuttal evidence is restricted to that evidence to explain, repel, counteract or disprove facts given in evidence by an adverse party. (86 Ill.Admin.Code §1910.66(a)). Moreover, rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. (86 Ill.Admin.Code §1910.66(c)).

The taxpayers contend 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 appellants did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The parties submitted a total of eight equity comparables to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to appellants' comparables #2 and #3 due to substantial differences in story height and/or dwelling size when compared to the subject dwelling. The Board has also given reduced weight to board of review comparables #1 and #2 as these properties have dissimilar locations when compared to the subject which is impacted by both commercial properties and proximity to Ogden Avenue. However, the Board recognizes that board of review comparables #1 and #2 bracket the subject property in dwelling size and are similar in story height, age, basement size and features with

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

improvement assessments of \$84.04 and \$90.47 per square foot of living area, both of which are higher than the subject's improvement assessment of \$79.29 per square foot of living area.

The Board finds the best evidence of assessment equity to be appellants' comparables #1 and #4 along with board of review comparables #3 and #4. These comparables were the most similar to the subject in location, external obsolescence due to commercial properties and Ogden Avenue along with similarities in age, design, size and/or features. These comparables had improvement assessments that ranged from \$196,990 to \$276,150 or from \$66.65 to \$88.57 per square foot of living area. The subject's improvement assessment of \$258,970 or \$79.29 per square foot of living area falls within the range established by the best comparables in this record.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 20 Ill. 2d 769 (1960). Although the comparables presented by the appellants disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellants have not proven by clear and convincing evidence that the subject property is inequitably assessed.

Turning now to the appellants' argument regarding the perceived lack of uniformity regarding the subject's assessment in light of the subject's location near commercial properties and Ogden Avenue, the appellants contend the subject has a lower market value. Other than considering the external obsolescence adjustments made by the assessing officials, the Property Tax Appeal Board has given these arguments little merit. The record contains no current market evidence to support the appellants' claim regarding the purported loss in value, if such loss exists; the appellants contended that the subject property was purchased in 2005 for a lower price due to its location. The Board finds the appellants failed to present any substantive current market evidence of the subject's current market as impacted by its location. The Property Tax Appeal Board recognizes the appellants' premise that the subject's value may be affected due to the aforementioned factors. However, without credible market evidence showing the subject's assessment was not reflective of fair market value, the appellants have failed to show the subject property's assessment was incorrect. Also, by applying downward adjustments, the township assessor also acknowledged these factors.

Based on this record the Board finds the appellants 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.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b><u>Paul Simonian</u></b>
<b>DOCKET NUMBER:</b>	<b><u>14-26641.001-R-1</u></b>
<b>DATE DECIDED:</b>	<b><u>May, 2017</u></b>
<b>COUNTY:</b>	<b><u>Cook</u></b>
<b>RESULT:</b>	<b><u>No Change</u></b>

The subject property consists of a one-story dwelling of masonry construction with 1,885 square feet of living area. The dwelling is approximately 60 years old. Features of the home include a full finished basement, central air conditioning, two fireplaces and a two-car garage. The property has a 55,505-square foot site and is located in Palos Park, Palos Township, Cook County. The subject is classified as a class 2-04 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 equity comparables. The comparable dwellings are either 58 or 60 years old and contain from 1,830 to 2,318 square feet of living area. The comparables have improvement assessments ranging from \$12,685 to \$15,280 or from \$6.59 to \$7.44 per square foot of living area. When the appellant's attorney completed Section 2c of the residential appeal form, counsel indicated that the subject's improvement assessment was \$18,428 and the total assessment was \$32,304. The appellant's attorney also submitted a copy of the board of review's final decision for the 2014 tax year, dated February 6, 2015, which revealed that the subject's total assessment was actually \$26,298. The appellant requested that the subject's improvement assessment be changed to \$13,082 or \$6.94 per square foot of living area, which would have resulted in an increase of \$660 over the board of review's 2014 improvement assessment of \$12,422 for the subject property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$26,298 was disclosed. The subject property has an improvement assessment of \$12,422 or \$6.59 per square foot of living area. The board of review presented descriptions and assessment information on four suggested comparable properties. The dwellings are from 57 to 59 years old and contain from 1,833 to 2,386 square feet of living area. These properties have improvement assessments ranging from \$13,321 to \$19,815 or from \$6.87 to \$10.65 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Both parties presented assessment data on a total of eight suggested comparables. The Board finds that all of the comparables submitted for this appeal had improvement assessments that were either equal to or higher than the subject's improvement assessment on a per square foot basis. The Board finds the appellant's comparables differed significantly from the subject in foundation and received reduced weight in the Board's analysis. The Board finds the best evidence of assessment equity to be the comparables submitted by the board of review. The Board finds these comparables had basements like the subject, and they were also very similar in location, design, age and living area. These comparables had improvement assessments that ranged from \$6.87 to \$10.65 per square foot of living area. The subject's improvement assessment of \$6.59 per square foot of living area falls below the range established by the best comparables in this record. Based on this record, 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.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>APPELLANT:</b>	<b><u>Adam, Wieslaw &amp; Malgorzata Skryniarz</u></b>
<b>DOCKET NUMBER:</b>	<b><u>14-03934.001-R-1</u></b>
<b>DATE DECIDED:</b>	<b><u>February, 2017</u></b>
<b>COUNTY:</b>	<b><u>Kane</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property is improved with a part 1-story and part 2-story single family dwelling of frame and brick construction with 2,511 square feet of living area. The dwelling was constructed in 2006. Features of the home include a basement, central air conditioning, a fireplace and a two-car attached garage with 670 square feet of building area. The property has a 12,447-square foot site and is located in South Elgin, Elgin Township, Kane County.

The subject property is an owner-occupied residence that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 13-02371.001-R-1. In that appeal the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to \$62,160 based on the evidence submitted by the parties. The appellants based this appeal on a contention of law and asserted that the subject property is owner occupied such that, in accordance with Section 16-185 of the Property Tax Code (35 ILCS 200/16-185), the 2013 assessment determination of the Property Tax Appeal Board should be carried forward to tax year 2014 as both 2013 and 2014 are in the same general assessment cycle in Kane County. (See 35 ILCS 200/9-215).

Based on this evidence, the appellants requested a reduction in the subject's assessment to \$62,160.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$70,983. The subject's assessment reflects a market value of approximately \$213,226 or \$84.92 per square foot of living area, land included, when using the three-year average level of assessment in Kane County 33.29% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review contended that the subject property's "condition has changed since its purchase" and submitted a memorandum prepared by the Elgin Township Assessor's Office along with additional data. The assessor argued that at the time of the 2013 sale, the subject was in "need of repairs and was missing kitchen cabinets." There were also no appliances. Since the time of sale and based upon a visual drive-by inspection, the home is now being occupied. The assessor next asserts:

Therefore, it is reasonable to conclude that the repairs have been made and the condition of the property has changed to be in at least average condition.

As such, the assessor opined that the prior 2013 decision may have been appropriate at the time of sale due to condition, "this same value that the appellant is requesting to rollover for 2014 is no longer accurate or equitable due to the Assessor's evidence, the property being occupied and its change in condition."

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

The township assessor also submitted a copy of the subject's property record card which depicts the address of the subject property and that the "billing" address is the same as the subject property while also naming two of the appellants as the persons to be billed.

Furthermore, the assessor submitted a grid analysis of three comparable sales located within the same subdivision as the subject property. The comparables consist of part 1-story and part 2-story frame or frame with brick trim dwellings that were built in 2006 or 2007. The homes range in size from 2,533 to 2,550 square feet of living area. Each comparable has a basement, a fireplace and a garage ranging in size from 517 to 713 square feet of building area. The properties sold between November 2012 and August 2013 for prices ranging from \$220,000 to \$245,000 or from \$86.27 to \$96.72 per square foot of living area, including land.

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

In written rebuttal, counsel for the appellants noted that the board of review did not dispute the appellants' contention that the subject is owner-occupied residential real estate subject to application of Section 16-185 of the Property Tax Code (35 ILCS 200/16-185).

### Conclusion of Law

The subject property was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 13-02371.001-R-1. In that appeal the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to \$62,160 based on the evidence submitted by the parties.

The appellants' appeal is based upon a contention of law with citation to a single provision of the Code. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63. The appellants in this appeal relied upon Section 16-185 of the Code (35 ILCS 200/16-185) which provides in pertinent part:

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

## **2017 SYNOPSIS – RESIDENTIAL CHAPTER**

Property Tax Appeal Board is reversed or modified upon review. [Emphasis added.]

The board of review did not dispute that the subject property is an owner-occupied dwelling. The Board finds on this record that the prior year's decision should be carried forward to the subsequent year pursuant to section 16-185 of the Code (35 ILCS 200/16-185) and the fact that 2013 and 2014 are within the same general assessment period in Kane County. The record contains no evidence indicating that the assessment year in question is in a different general assessment period. The record also contains no evidence indicating that the subject property sold subsequent to the 2013 tax year determination in an arm's length transaction. Moreover, in light of the terms of Section 16-185 of the Code, the Board has given no consideration to the comparable sales data submitted by the assessing officials or the contention that the condition of the subject property has been improved since the date of the sale transaction. There is no provision within Section 16-185 calling for a change in the assessment of owner-occupied residential real estate "unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review." There was no evidence of the sale of the subject property and there was no evidence that the decision of the Board was reversed or modified upon review.

Moreover, Section 10-20 of the Property Tax Code (35 ILCS 200/10-20) provides that maintenance and repairs to a structure shall not increase the assessed valuation unless the change increases the square footage, materially alters the character and condition of the structure, goes beyond merely prolonging the life of the existing structure or used materials that were greater in value than the replacement value of the materials being replaced. There is no indication in the arguments presented by the board of review that the change in condition, in light of the statutory provision, was anything more than merely restoring the structure from a state of disrepair. Furthermore, to the extent that the changes did materially alter the property, the assessing officials provided no evidence in the form of building permits or costs of repair to substantiate what impact the repairs had on the value of the subject property.

For these reasons and due to the provisions of Section 16-185 of the Code, the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted commensurate with the appellants' request.

## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

### 2017 RESIDENTIAL CHAPTER

#### *Index*

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

<b><u>SUBJECT MATTER</u></b>	<b><u>PAGES</u></b>
<b>Contention of law – historic rehab/condo (35 ILCS 220/10-40 et seq)</b> <i>Comparable sales of units in subject building; argued Historic Freeze statute not applicable</i>	R-11 to R-12
<b>Contention of law – Market analysis by appellant’s attorney</b> <i>Criticisms – attorney data preparation; comparable sales</i>	R-23 to R-26
<b>Contention of law – property classification incorrect</b> <i>Equity comparables and sales comparables</i>	R-18 to R-20
<b>Contention of law – rollover – owner occupied (35 ILCS 200/16-185)</b> <i>Condition changes to property since purchase; comparable sales Rebuttal - did not dispute property is owner-occupied</i>	R-47 to R-49
<b>Equity – comparables (error in reported subject assessment)</b> <i>Equity comparables</i>	R-45 to R-46
<b>Equity – comparables – near busy commercial area/traffic</b> <i>Equity comparables – economic obsolescence applied for location Rebuttal – appellants submitted an additional comparable</i>	R-41 to R-44
<b>Equity – comparables; New Homes for Chicago Program</b> <i>Equity comparables</i>	R-30 to R-31
<b>Equity – comparables; % change between subject &amp; comparables</b> <i>Equity comparables</i>	R-21 to R-22
<b>Overvaluation – appraisal</b> <i>Comparable sales; unadjusted, larger sites &amp; dated sales</i>	R-34 to R-36
<b>Overvaluation – appraisal (dated two years before assessment date)</b> <i>Comparable sales</i>	R-37 to R-38
<b>Overvaluation – appraisal of one unit (two-unit building)</b> <i><u>Motion to Dismiss</u> – opinion of value was before assessment date comparable sale data &amp; proposed assessment reduction</i>	R-6 to R-7



## 2017 SYNOPSIS – RESIDENTIAL CHAPTER

<b>Overvaluation – appraisal with appraiser testimony</b> <i>Comparable sales – unadjusted, larger, older &amp; lack of details</i>	R-8 to R-10
<b>Overvaluation – recent sale</b> <i>Comparable sales</i> <i>Rebuttal – property uninhabitable</i>	R-32 to R-33
<b>Overvaluation (sales) &amp; Equity – challenging property classification</b> <i>Equity comparables and sales comparables</i>	R-18 to R-20
<b>Overvaluation – sale price</b> <i>Comparable sales</i> <i>Rebuttal - board did not dispute validity of recent sale data</i>	R-39 to R-40
<b>Overvaluation – sale price (bank-owned) &amp; comparable sales</b> <i>Comparable sales; compulsory sale (35 ILCS 200/1-23 &amp; 16-183)</i>	R-13 to R-17
<b>Overvaluation – sale price (foreclosure)</b> <i>Comparable sales</i> <i>Rebuttal – arm’s length transaction indicative of market value</i>	R-27 to R-29
<b>Procedure – hearing request &amp; reduction request &gt; \$100,000</b> <i>Appellant did not provide court reporter as required.</i> <i>Case dismissed.</i>	R-3 to R-5
<b>INDEX</b>	R-50 to R-51



**PROPERTY TAX APPEAL BOARD**  
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**2017 FARM DECISIONS**



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## 2017 SYNOPSIS – FARM CHAPTER

### 2017 FARM CHAPTER

#### *Table of Contents*

<b><u>APPELLANT</u></b>	<b><u>DOCKET NUMBER</u></b>	<b><u>RESULT</u></b>	<b><u>PAGE NO.</u></b>
Clay, Jerry, Tim & Jim	11-04384.001-F-1	Reduction	F-2 to F-4
Clay, Helen, Jerry, Jim & Tim	11-04386.001-F-1	Reduction	F-5 to F-7
Edward Sims Jr. Trust	12-01644.001-F-1	No Change	F-8 to F-15
<b>INDEX</b>			F-16 to F-16

## 2017 SYNOPSIS – FARM CHAPTER

<b>APPELLANT:</b>	<b>Jerry, Tim &amp; Jim Clay</b>
<b>DOCKET NUMBER:</b>	<b>11-04384.001-F-1</b>
<b>DATE DECIDED:</b>	<b>June, 2017</b>
<b>COUNTY:</b>	<b>Stephenson</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of an improved farmland parcel of 154.52 acres. The subject property is improved with a single-family residence that consists of a two-story dwelling of frame exterior construction with approximately 2,764 square feet of living area. The dwelling was constructed in 1890. Features of the home include an unfinished basement and a 432-square foot garage. The subject property also contains 16 outbuildings. The homesite contains .55 of an acre. The subject property is located in rural Dakota Township, Stephenson County.

Jerry and Tim Clay appeared before the Property Tax Appeal Board claiming a contention of law regarding the assessment of farm buildings along with overvaluation, assessment equity and recent construction regarding the assessment of the residence as the bases of the appeal.<sup>1</sup> The appellants did not dispute the subject's homesite or farmland assessments but contend that the improvements identified on the property record card as buildings #1, #3, #4, #6, #8, #11 and #15 which consist of a hog house, a dairy barn, a silo, a granary, a shed and two grain bins of various sizes made no contribution to the operation of the farm, as they were vacant or used for non-farm storage and have not been used for livestock farming for many years. In support of the farm building contention, the appellants submitted a letter, photographs and a calculation grid that displays current market value, current price per square foot, building size, requested value, requested price per square foot and reason for reduction. The appellants testified that buildings listed on the property record card as #2, #5, #7, #9, #10, #12 through #14 and #16 are in use or limited use.

In support of the overvaluation and assessment inequity claim of the residence, the appellants submitted photographs and a grid analysis with three improved comparable properties with limited descriptive information located within 5 miles of the subject property. The comparables range in size from 1,472 to 1,932 square feet of living area. Features of the comparables include a basement and a garage. The comparables sold from January 2010 to June 2011 for prices ranging from \$16,500 to \$42,000 or from \$9.31 to \$23.33 per square foot of living area, land included. The comparables have improvement assessments ranging from \$9,150 to \$14,280 or from \$5.08 to \$7.76 per square foot of living area. Jerry Clay testified that he is adding an attached garage and a new kitchen to the existing house. Clay stated that the outside shell for the additions was completed and one-half of the garage was complete and useable in August 2011. Clay testified that the kitchen and remainder of the garage would hopefully be complete sometime in 2012. The appellants did not submit any construction costs, building permits or occupancy permits with their appeal.

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<sup>1</sup> The appellants' appeal form marked farmland assessment classification and productivity as the basis of the appeal. The appellants listed building productivity issue as their reason for appeal. However, the Board will address the contention of law claim detailed in the appellants' evidence.

## **2017 SYNOPSIS – FARM CHAPTER**

Under cross-examination, the appellants' testified that the building assessments that they calculated are based on what it is worth to their operation. The appellants reiterated that the building value is based on what it contributes to the farming operation. The appellants testified that they are not required to get building permits.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment \$89,240 was disclosed. The subject's total assessment for homesite and house is \$40,210 which reflects a market value of \$121,554 or \$43.98 per square foot of living area, land included, when using the 2011 three-year average median level of assessment for Stephenson County of 33.08% as determined by the Illinois Department of Revenue. The subject has an improvement assessment of \$36,060 or \$13.04 per square foot of living area. Representing the board of review was the Chief County Assessment Officer and Clerk of the Board of Review, Ron Kane.

In support of the subject's outbuilding assessment the board of review submitted a property record card with calculations of the outbuildings, photographs and aerial maps of the subject property. Kane testified that all farm buildings in Dakota Township had not been reassessed since 1979. Kane explained how farm building tables were calculated using unimproved and improved sales. Kane testified that the appellants' residence had 1,888 square feet before the improvements and an improvement assessment of \$8.53 per square foot. Kane also testified that the assessment for the house after renovation is \$36,060 and before the renovation was \$16,108.

In support of its contention of the correct assessment the board of review submitted information on four improved comparable properties. The comparables are described as two-story dwellings of frame exterior construction that were built from 1880 to 1900. Each comparable has an unfinished basement. Two comparables have central air conditioning and a fireplace. Three comparables have an attached or detached garage. The comparables have from 1 to 12 outbuildings. The comparables range in size from 2,164 to 2,741 square feet of living area and have sites ranging in size from 7.35 to 18.77 acres. The comparables sold from June 2009 to July 2011 for prices ranging from \$188,220 to \$246,500 or from \$73.64 to \$113.90 per square foot of living area, land included. The comparables had improvement assessments ranging from \$24,780 to \$50,927 or from \$9.18 to \$23.53 per square foot of living area.

The board of review submitted a grid analysis of the appellant's three comparables with complete information. The board of review asserted that the appellants' comparable #1 was an Auction sale, comparable #2 was a HUD sale with many condition issues and comparable #3 was a Bank sale with the house in bad condition. A copy of the PTAX-203 Illinois Real Estate Transfer Declaration was submitted for each of the appellants' three comparables.

Under cross-examination, Kane testified that the farm buildings are not assessed based on their economic contribution to the farm. Kane testified that buildings could still have a contribution to the farm based on income tax purposes.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of the appeal. The Board finds the evidence and testimony in this record indicate the subject's hog house, a dairy barn, a silo, a granary, a shed and two grain bins have been vacant or not used for farming purposes for years

## 2017 SYNOPSIS – FARM CHAPTER

prior to the assessment year at issue in this appeal and made no contribution to the productivity of the subject's grain farming operation.

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

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

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

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

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

The unrefuted testimony of the appellants was that seven of the buildings have been vacant for years or used for non-farm storage prior to the subject's January 1, 2011 assessment date and that they made no contribution to the ongoing grain farming operation on the subject parcel. The Property Tax Appeal Board finds that notwithstanding the board of review's policy of assigning a salvage value to all farm buildings regardless of current use, the subject farm buildings made no contribution in whole or in part to the farming operation and therefore, have no contributory value. For this reason, buildings #1, #3, #4, #6, #8, #11 and #15 shall be assessed at \$0 for the 2011 assessment year.

The Board further finds based on the evidence and testimony, the new addition for the garage and kitchen were not complete and ready for use as of the January 1, 2011 assessment date. The Board finds that the improvement assessment for the residence is to be reduced back to the original assessment prior to the improvements. Based on the evidence and testimony, the Board finds a reduction in the assessment is warranted.



## 2017 SYNOPSIS – FARM CHAPTER

<b>APPELLANT:</b>	<u>Helen, Jerry, Jim &amp; Tim Clay</u>
<b>DOCKET NUMBER:</b>	<u>11-04386.001-F-1</u>
<b>DATE DECIDED:</b>	<u>June, 2017</u>
<b>COUNTY:</b>	<u>Stephenson</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of an improved farmland parcel of 79.52 acres. The subject property is improved with a single-family residence and 17 outbuildings. The subject property is located in rural Dakota Township, Stephenson County.

Jerry and Tim Clay appeared before the Property Tax Appeal Board claiming a contention of law regarding the assessment of farm buildings as the basis of the appeal.<sup>1</sup> The appellants did not dispute the subject's homesite, residence or farmland assessments but contend that the improvements identified on the property record card as buildings #1 through #4, #6, #8 and #12 through #14, a dairy barn, a milk house, three hog buildings, two lean-to's and two grain bins of various sizes made no contribution to the operation of the farm, as they were vacant or used for non-farm storage and have not been used for livestock farming for many years. In support of the farm building contention, the appellants submitted a letter, photographs and a calculation grid that displays current market value, current price per square foot, building size, requested value, requested price per square foot and reason for reduction. The appellants testified that buildings #5, #7, #9, #10 and #15 through #17 are in use or limited use. The appellants testified that building #11 is a grain bin from 1977 and has been moved to a new location and is designated as building #17. The appellants testified that buildings #15 and #16 are new grain bins. The appellants testified that building #15 has a 30-foot diameter and not a 33-foot diameter as currently assessed along with building #16 having a 42-foot diameter and not a 60-foot diameter as currently assessed. The appellants submitted a copy of a "quote and estimate" for both grain bins of approximately \$26,725 and \$38,230, respectively.

Under cross examination, the appellants testified that the quote and estimate for the grain bins is the amount that they paid to Lena Sales, Inc. and B & R Grain Handling, LLC for the grain bins. The appellants stated that they did not have page 2 from Lena Sales Inc. even though the quote states page 1 of 2. The appellants testified that the grain bin known as building #17 was placed on a new foundation.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$91,177 was disclosed. Representing the board of review was the Chief County Assessment Officer and Clerk of the Board of Review, Ron Kane. In support of the subject's assessment, the board of review submitted a property record card with calculations of the outbuildings, photographs and aerial maps of the subject property. Kane testified that barn buildings #1, #2, #3 and #5 are valued based on their salvage value and building #4 is a silo

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<sup>1</sup> The appellants' appeal form marked farmland assessment classification and productivity as the basis of the appeal. The appellants listed building productivity issue as their reason for appeal. However, the Board will address the contention of law claim detailed in the appellants' evidence.

## 2017 SYNOPSIS – FARM CHAPTER

which is depreciated at 99% because silos are obsolete. Kane testified that a letter dated December 15, 2010 addressed to Dakota Township and to Stephenson County from the appellants stated, "Concerning parcel #14-09-25-200-003, I do not give you permission to come onto this property in Dakota Township." Based on this letter, neither the assessor nor any county assessment officials made an inspection of the subject property. Kane testified that no farm buildings in Dakota Township have been reassessed since 1979. Kane explained how farm building tables were calculated using unimproved and improved sales.

Under cross-examination, Kane testified that the farm buildings are not assessed based on their economic contribution to the farm. Kane testified that buildings could still have a contribution to the farm based on income tax purposes.

At the hearing the Administrative Law Judge ordered the board of review to recalculate the value as reflected on the subject's property record card for building #15 a grain bin from a 33' diameter to a 30' diameter, building #16 a grain bin from a 60' diameter to a 42' diameter and #17 a grain bin to remove the effective age of 2010 for a 1977 grain bin on a new foundation. Subsequent to the hearing, the Stephenson County Chief County Assessment Officer submitted the revised calculations.

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

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

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

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

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

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

## **2017 SYNOPSIS – FARM CHAPTER**

The Board further finds the evidence and testimony in this record indicate the subject's dairy barn, a milk house, three hog buildings, two lean-tos and two grain bins have been vacant or not used for farming purposes for years prior to the assessment year at issue in this appeal and made no contribution to the productivity of the subject's grain farming operation. The unrefuted testimony of the appellants was that nine of the buildings have been vacant for years or used for non-farm storage prior to the subject's January 1, 2011 assessment date and that they made no contribution to the ongoing grain farming operation on the subject parcel. The Property Tax Appeal Board finds that notwithstanding the board of review's policy of assigning a salvage value to all farm buildings regardless of current use, the subject farm buildings made no contribution in whole or in part to the farming operation and therefore, have no contributory value. For this reason, buildings #1 through #4, #6, #8 and #12 through #14 shall be assessed at \$0 for the 2011 assessment year. Furthermore, the Board finds that incorrect diameters for the new grain bins, buildings #15 and #16, were used in the calculation of their 2011 assessment. The Board finds a recalculation of the assessments for buildings #15 and #16 with the correct diameters is appropriate along with the correction of the effective age for building #17. The Board finds that the testimony provided by the appellants that buildings #5, #7, #9 and #10 were properly assessed as these buildings were used or had a limited use in the farming operation. In conclusion, a reduction to the farm building assessment is appropriate consistent with the findings herein and the revised calculations provided by the Stephenson County Chief County Assessment Officer.

## 2017 SYNOPSIS – FARM CHAPTER

<b>APPELLANT:</b>	<b>Edward Sims Jr. Trust</b>
<b>DOCKET NUMBER:</b>	<b>12-01644.001-F-1</b>
<b>DATE DECIDED:</b>	<b>May, 2017<sup>1</sup></b>
<b>COUNTY:</b>	<b>Henry</b>
<b>RESULT:</b>	<b>No Change</b>

The subject parcel is comprised of 224.20 acres of farmland.<sup>2</sup> The land is improved with a large farm building and a grain bin. The farm building is a wood-pole frame structure containing 20,736 square feet of building area with a 20-foot wall height. The building was constructed in 2011. The building has a concrete foundation, painted steel siding, a steel roof, electrical and water service. The building is partitioned into two sections. One section is comprised of 7,695 square feet of heated and insulated workshop with four-inch concrete flooring, two floor drains, a 90-square foot office and a 675-square foot mezzanine. The workshop has a 36-foot x 18-foot overhead door and a 24-foot x 18-foot overhead door, both with automatic openers, and two walk-in doors. The other section of the building contains 13,041 square feet of unheated building area with gravel flooring used to store farm machinery. This section has three, 24-foot x 18-foot automatic overhead doors, a double sliding door, a walk-in door and lighting. Five of the six doors have exterior concrete pads that range in size from 784 to 3,000 square feet. Each exterior door in the unheated machine shed area has an interior concrete apron. Site improvements include a septic system with a 1,000-gallon tank and a 300-square foot drain field.<sup>3</sup> The subject parcel is also improved with a 20,000-bushel capacity grain bin that was built in approximately 1984. The subject property is located in Western Township, Henry County, Illinois.

The appellant appeared before the Property Tax Appeal Board with counsel claiming overvaluation and assessment inequity as the bases of the appeal. In support of these arguments, the appellant submitted limited descriptive information for three assessment comparables and an appraisal of the subject property (Exhibit B).

The three assessment comparables are comprised of pole buildings of unknown exterior construction that were reported to be from 8 to 15 years old. The structures contain 4,320 or 4,860 square feet of building area and are reported to have assessments ranging from \$3,283 to \$3,620 or from \$.72 to \$.77 per square foot of building area. The subject was reported to have a farm building assessment of \$96,410 or \$4.65 per square foot of building area which included the assessment amount associated with the grain bin. The appellant presented no testimony with respect to the inequity argument during the hearing.

The first witness called was the appellant Edward Sims Jr. Sims testified that the pole building was constructed in 2011 and, as of January 1, 2012, the bathroom was not completed but was “roughed in.” The bathroom was completed in 2014. Sims testified the septic system, including

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<sup>1</sup> Administrative review action was filed on July 2, 2018.

<sup>2</sup> The appellant did not challenge the subject’s farmland assessment of \$67,760. Farmland assessments in Illinois are not calculated on market value considerations. Land classified as a farm receives a preferential land assessment based on soil typing and productivity indices as provided by the Property Tax Code. (35 ILCS 200/1-60 and 10-110 *et al*).

<sup>3</sup> Based on the testimony from the taxpayer, the subject’s bathroom and septic system was not completed until 2014.

## 2017 SYNOPSIS – FARM CHAPTER

all pipes to the building, was completed in November 2011. Appellant's counsel offered an invoice (Exhibit A) at hearing depicting the cost to install the septic system was \$4,311, without objection. Sims testified that the gravel located around the outside of the building cost approximately "\$5,000 or \$6,000." Sims opined the cost of the gravel didn't have anything to do with the building.

The next witness called was real estate appraiser Michael D. Blean. Blean testified as to his credentials as an appraiser. Blean developed the cost approach to value to estimate the contributory value of the improvements situated on the subject parcel. The appraiser arrived at a final opinion of value for the subject property of \$1,870,500 as of January 1, 2012, which included the 220.24 acres of land. Blean did not consider the cost of the bathroom in the appraisal process.

Under the first step of the cost approach to value, Blean analyzed five land sales. These properties range in size from 60 to 160.16 acres of land area. They sold from November 2010 to February 2012 for prices ranging from \$480,000 to \$1,008,000 or from \$5,300 to \$10,500 per acre of land area. After considering adjustments to the comparables for differences when compared to the subject, the appraiser concluded the subject's land had a market value of \$7,538 per acre or \$1,690,068.<sup>4</sup>

The appraiser next used Marshall and Swift Cost Guide (1<sup>st</sup> Quarter 2014) to estimate the replacement cost of the improvements, which included architecture fees, construction fees, interior finishing, mechanicals (electric, plumbing, gas and HVAC) and contractor's overhead and profit. The shop area was estimated to have a value of \$30.00 per square foot of building area or \$218,700 and the unfinished area was estimated to have a value of \$14.00 per square foot of building area or \$188,244 for a total replacement cost new of \$406,944. The appraiser next concluded the building suffered from functional obsolescence of 40% or \$162,778 and external obsolescence of 20% or \$81,389, resulting in accrued depreciation of \$244,166. Deducting the accrued depreciation of \$244,166 from the estimated replacement cost new of \$406,944 resulted in an estimated contributory value of the pole building of \$162,778. The appraiser next added the estimated value of site improvement for the grain bin of \$7,700, gravel driveway of \$5,000 and 400-amp electrical service of \$5,000, which calculates to a total depreciated improvement value of \$180,478. Adding the estimated land value of \$1,690,068, the appraiser concluded the subject property had an estimated market value of \$1,870,500, rounded, under the cost approach to value. (Exhibit B, p. 36).

The appraiser used one comparable sale to extract functional obsolescence and external obsolescence amounts of depreciation. (Exhibit B, p. 33). Blean testified the sale was an arm's-length transaction since it was advertised through an internet listing by the U.S. Marshals Service. This property was composed of a pole building with 19,584 square feet of building area with an 18-foot wall height, an attached office containing 1,200 square feet of building area, attached apartments containing 882 square feet of living area, an auxiliary structure with 4,608 square feet of building area, three shelters, perimeter fencing, three entries with security gating, enclosed paddocks, private well, septic and 800-amp electrical service. The improvements are

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<sup>4</sup>Again, for purposes of this appeal there was no dispute raised by the appellant concerning the preferential farmland assessment applied to the subject.

## 2017 SYNOPSIS – FARM CHAPTER

situated on 87.82 acres of land area. This property was sold through auction by the U.S. Marshals Service in February 2013 for \$1,134,375 plus \$11,288 in back taxes for a total consideration of \$1,145,663. The appraisal report indicates the buyer was a relative of the former owner. (Exhibit B, p. 33).

The appraiser deducted the comparable property's estimated land value of \$1,022,700 or \$11,645 per acre from the sale price of \$1,145,663, leaving a contributory value for the improvements of \$122,963. The appraiser concluded that the improvements have a replacement cost new of \$969,155. The calculation of the replacement cost new for these improvements was not contained within the appraisal report. Deducting the contributory value of the improvements of \$122,963 from the replacement cost new of \$969,155 results in total accrued depreciation of \$846,192. The appraiser allocated the depreciation amounts to be 24% for physical, 40% for functional and 23% for external. The appraiser provided no evidence or testimony as to how the depreciation percentages were allocated. The subject building was newly constructed so no physical depreciation was applied. The appraiser estimated functional depreciation was 40% because the building was designed specifically for the current owner with features that he opined are "super-adequate" for the size of the acreage. External depreciation was estimated to be 20%. Page 32 of the appraisal states: "In the case of the subject's shop building, the 20' story height and overall size of the structure were specifically designed for the current owner's operations, which include additional farmland [Emphasis Added] and equipment related to construction." Blean testified the premise of the functional obsolescence was "that building on a 224-acre parcel is an over improvement, Mr. Sims also has a construction business unrelated to the farm to store construction equipment in." Blean testified "someone farming 224 acres would not necessarily be a buyer of that (the building) and it is not fair to assume that someone buying it, (A) not have their own building already built, or (B) pay full value for that structure in the way it was constructed."

In summary, the appraiser concluded the farm building situated on the subject parcel had a contributory market value of \$162,778, which excluded the value associated with the grain bin of \$7,700, gravel driveway of \$5,000 and 400-amp electrical service of \$5,000.

Based on this evidence, the appellant requested a reduction in the subject's farm building assessment to \$17,500.

Under cross-examination, Blean agreed that page 14 of the report indicates farm values have increased year to year since 1988. Blean was questioned if it was typical for a farmer to build one building per farm or build one building to incorporate several farms. Blean testified it can vary, but typically there is a base of operation for large farming operations. Blean testified the size of the subject building is not typical. With respect to the comparable sale used to extract depreciation, Blean thought the sale was arm's-length due to the manner it was advertised, but agreed perhaps the sale was not ordinary on behalf of the seller, but from a buyer's perspective had full exposure to the market. With respect to economic (external) obsolescence, Blean testified the depreciation amount applied was more about the limited number of farmers capable enough to purchase something like that. Blean agreed the U.S. Marshals Service is not a typical owner of a horse farm.

Under redirect-examination, the appraiser testified increasing farm values pertain to farmland.

## **2017 SYNOPSIS – FARM CHAPTER**

Under questioning by the Board, the appraiser testified he interviewed the property owner on the day of inspection. He agreed his valuation was based on estimated costs of the building. Blean acknowledged Sims informed him of the actual cost of the project, but it was not disclosed in the report. Blean agreed the actual costs would be a better indicator of value, with the exception of some uncompensated labor performed by Sims, which could have been quantified. Blean testified his estimated cost new of the building mirrored the actual construction cost according to Sims. Blean testified the estimated value of the grain bin was \$7,700, but the valuation process was not contained in the report. Blean agreed he did not include the site improvements in the final value conclusion of the building.

Under-redirect examination, Blean testified the actual cost to construct the building was similar to his estimated cost. Blean agreed the comparable sale used was the best comparable he could find to calculate depreciation. Blean agreed Publication 122 issued by the Illinois Department of Revenue indicates obsolescence should be considered.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject property of \$164,170. The subject property receives a preferential farmland assessment of \$67,760 for the 224.20 acres of land area. The farm buildings situated on the subject parcel have a combined assessment of \$96,410, of which \$93,831 was allocated to the pole building and \$2,579 was allocated to the grain bin. The pole building's assessment reflects an estimated market value of \$280,931 when applying the 2012 three-year average median level of assessment for Henry County of 33.40%. The grain bin's assessment reflects an estimated market value of \$7,722 when applying the 2012 three-year average median level of assessment for Henry County of 33.40%.

In support of the subject's assessment, the board of review submitted limited descriptive information for three assessment comparables and an appraisal of the subject property (Board of Review Exhibit A). Lindi Kernan, Chief County Assessment Officer and clerk of the board of review, presented the evidence at the hearing.

The three assessment comparables are comprised of pole buildings of unknown exterior construction that were built in 2011, like the subject. The structures range in size from 7,776 to 9,660 square feet of building area and have assessments ranging from \$36,068 to \$42,439 or from \$4.20 to \$4.55 per square foot of building area. The subject's pole building has an allocated assessment of \$93,831 or \$4.52 per square foot of building area. The board of review presented no testimony with respect to the assessment equity evidence during the hearing.

The sole witness called on behalf of the board of review was real estate appraiser Joyce A. Webb. Webb testified as to her credentials as an appraiser. Webb developed the cost approach to value to estimate the contributory value of the improvements situated on the subject parcel. The appraiser arrived at a final opinion of value for the subject property of \$2,220,000 as of January 1, 2012, which included the 220.24 acres of land and a contributory value of the farm pole building of approximately \$375,000. Webb was not informed the bathroom was not completed until 2014.

## 2017 SYNOPSIS – FARM CHAPTER

The appraiser analyzed nine land sales as the first step under the cost approach to value. These properties range in size from 47 to 160.16 acres of land area. They sold from December 2010 to December 2011 for prices ranging from \$319,600 to \$1,344,000 or from \$5,300 to \$8,400 per acre of land area. After considering adjustments to the comparables for differences when compared to the subject, the appraiser concluded the subject's land had a market value of \$7,970 per acre or \$1,785,000, rounded. (BOR Exhibit A, p. 8-1 through 8-5).

The next step under the cost approach to value, the appraiser used Marshall and Swift's Marshall Valuation Service to estimate the reproduction cost new of the improvements, which included heating, cooling and ventilation; combined height and size multiplier; current cost multiplier; local multiplier; and historical multiplier. The shop area was estimated to have a value of \$25.61 per square foot of building area or \$199,774. The unfinished machine shed area was estimated to have a value of \$13.46 per square foot of building area or \$175,542. The gravel surrounding the building was estimated to have a value of \$21,311. Concrete for the interior aprons and exterior pads was estimated to have a value of \$28,951. The septic system was estimated to have a value of \$3,544. The grain bin was estimated to have a value of \$33,107. Adding these components, the appraiser concluded the improvements situated on the subject parcel had a reproduction cost new of \$462,229. Upon inquiry, Webb testified Sims did not divulge the actual cost to construct the pole building. (BOR Exhibit A, p. 8-6).

The appraiser did not apply functional obsolescence because the current design of the building functions well. The appraiser did not observe any functional inadequacies, inefficiencies or super-adequacies. The appraiser asserted the property owner indicated the structure was built with a 20-foot wall height because the next combine will be larger and he needs the building to accommodate larger equipment. It was the appraiser's opinion that since the owner has over 600 acres of farmland in Henry County, the structure was built to serve more than just one parcel since it would not be efficient to build a separate shop/machine shed on several parcels. The appraiser did not deduct for external obsolescence since the economic conditions in the local farm market are very strong and farm ground is appreciating in value. The appraiser deducted 90% or \$25,469 for physical depreciation of the grain bin, resulting in a final value conclusion for all improvements of \$435,000, rounded. (BOR Exhibit A, p. 8-7). (Pole building of \$375,316, \$21,311 for gravel lot, \$28,951 for concrete aprons and pads, \$3,544 for the septic system and \$7,638 for the grain bin).

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

Under cross-examination, Webb testified the subject's pole barn is typical and she could not find larger newer pole buildings that had recently sold because farmers do not typically construct a new building and then turn around and sell. She did not analyze sales of older farm buildings to determine if functional obsolescence exists. Webb agreed there is a possibility of a super-adequacy due to the subject's large size. Webb agreed there was a consideration that the appellant owned other farmland in Henry County as part of the appraisal process, which is typical in the farming industry. Webb agreed the bathroom was included in the final value conclusion, but she could not identify the specific value associated with the bathroom. Webb testified she could not find any market evidence that would or would not demonstrate obsolescence existed in the market. Webb opined it was inappropriate to use the comparable sale considered by Blean because it was not an arm's-length transaction. She explained there was not



## **2017 SYNOPSIS – FARM CHAPTER**

a typical motivated seller, the sale price was not reflective of market value, and was not useful in determining functional or external obsolescence. She did not know the condition or analyze the sale of the comparable.

### **Conclusion of Law**

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. The sole issue before the Property Tax Appeal Board is the determination of the correct assessment of the contributory value of the wood pole farm building and grain bin. 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 failed to meet this burden of proof and no reduction in the subject's assessment is warranted.

The appellant submitted an appraisal estimating the subject property has a market value of \$1,870,500 as of January 1, 2012. More specifically, the appellant's appraiser concluded the subject's large pole building had a contributory value of \$162,778 excluding site improvements and the grain bin had a contributory value of \$7,700. The Board gave little weight to the estimate of contributory value of the large pole building for several reasons. Foremost, the Board finds the functional and external obsolescence depreciation amounts applied are excessive and not supported by credible market value evidence. The appellant's appraiser attempted to extract the purported depreciation amounts from a single comparable sale. The Board finds the use of this comparable was not appropriate since the sale was not an arm's-length transaction. 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 Board finds this sale does not meet two of the key fundamental elements of an arm's-length transaction. The Board find this sale was not a voluntary transaction. The Board finds the auction sale was by court order due to criminal activity resulting in forfeiture. (See United States of America v. Rita A. Crundwell, citation omitted). The Grantor was the U.S. Marshals Service. The record also shows the buyer at auction was a relative of the former owner, which further undermines the arm's-length nature of the transaction.

The Board further finds the methodology employed by the appellant's appraiser in an attempt to extract market depreciation in the form of functional and external obsolescence suspect and resulted in flawed conclusions. The appellant's appraiser deducted the comparable's estimated land value of \$1,022,700 or \$11,645 per acre of land area from its auction sale price of \$1,145,663 in order to isolate the contributory value of the improvements so as to calculate depreciation to be applied to the subject's pole building. The Board finds the appraisal contains no market evidence or analysis to support the \$11,645 per acre value that was deducted from the comparable's sale price. The comparable land sales contained within the appellant's appraisal report sold for prices ranging from \$6,445 to \$10,500 per acre, which is less than the per acre value applied by the appraiser of \$11,645 in the extraction analysis. This valuation methodology and calculations resulted in an artificially low contributory value of the improvements that was used to calculate purported market depreciation. Additionally, the Board finds the appellant's

## 2017 SYNOPSIS – FARM CHAPTER

appraiser concluded the subject's land had value of \$7,538 per acre, which is not consistent with the \$11,645 per acre land value used in the extraction analysis. Using the appraiser's per acre value that was applied to the subject property of \$7,538 per acre under the cost approach to value, which was supported by the comparable land sales in the appraisal, would result in a land value for the comparable property of \$661,987. Deducting this estimate of land value from the comparable's sale price of \$1,145,663 results in a contributory value for the improvements of \$483,676, considerably more than the value conclusion by the appellant's appraiser of \$122,963.

Furthermore, the appellant's appraiser calculated the improvements situated on the comparable sale had a replacement cost new of \$969,155. However, the calculations of the depreciated replacement cost new of the improvements was not contained within the appraisal report for review, which further undermines the credibility of the depreciation extraction analysis. Finally, the Board finds the allocation of the physical, functional and external obsolescence extracted from the comparable sale on a percentage basis and applied to the subject was not well explained or supported by any accepted appraisal methodology or objective evidence. Finally, the Board finds the record is void of any credible evidence that external obsolescence exists and should be applied to the subject property.

The Board finds the best evidence of the contributory value of the farm buildings situated on the subject parcel was the appraisal submitted by the board of review. The Board finds the cost approach developed by the board of review's appraiser was more detailed than that submitted by the appellant and better reflects all of the individual components that make up the subject property. The Board finds the board of review's appraiser provided competent testimony that supports the appraisal methodology and final value conclusion as set forth in the appraisal report. The appraiser concluded the large pole building had a contributory value of \$429,122 including site improvements and the grain bin had a contributory value of \$7,369,<sup>5</sup> for a total value of \$435,000, rounded. The subject's farm building assessments reflect estimated market values of \$280,931 and \$7,722, respectively, or a total contributory value of \$288,653, considerably less than the appraisal submitted by the board of review. Since an increase in the subject's assessment was not requested, the Board hereby sustains the subject property's assessment as established by the board of review.

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

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<sup>5</sup> The appellant's appraiser concluded a similar contributory value for the grain bin of \$7,700.

## 2017 SYNOPSIS – FARM CHAPTER

The parties submitted limited descriptions and assessment information for six suggested comparables for the Board's consideration. The Board gave less weight to the comparables submitted by the appellant. These properties are considerably smaller in size and older in age when compared to the subject. The Board finds the comparables submitted by the board of review are more similar when compared to the subject in age and size than those comparables submitted by the appellant. These comparables have assessments ranging from \$36,068 to \$42,439 or from \$4.20 to \$5.46 per square foot of building area. The subject's farm building has an allocated assessment of \$93,831 or \$4.52 per square foot of building area, which falls within the range established by the most similar assessment comparables contained in this record on a per square foot basis. 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. Therefore, the Board finds assessment associated with the subject's pole building is justified and no reduction is warranted.

In conclusion, the Board finds the appellant failed to demonstrate the subject's farm improvements were overvalued by a preponderance of the evidence or inequitably assessment by clear and convincing evidence. Therefore, no reduction in the subject's is justified based on this record.

## **2017 SYNOPSIS – FARM CHAPTER**

### **2017 FARM CHAPTER**

#### *Index*

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

<b><u>SUBJECT MATTER</u></b>	<b><u>PAGES</u></b>
<b>Equity – farm buildings - comparables</b> <i>Equity comparables</i>	F-8 to F-15
<b>Farm buildings – contributory value of outbuildings</b> <i>Valuation policy; comparables</i>	F-2 to F-4
<b>Farm buildings – contributory value; descriptive errors</b> <i>Valuation policy; salvage value</i>	F-5 to F-7
<b>Farm buildings – contributory value; appraisal</b> <i>Appraisal</i>	F-8 to F-15
<b>INDEX</b>	F-16 to F-16

**PROPERTY TAX APPEAL BOARD**

**SYNOPSIS OF REPRESENTATIVE CASES**

**2017 COMMERCIAL DECISIONS**



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## 2017 SYNOPSIS – COMMERCIAL CHAPTER

### 2017 COMMERCIAL CHAPTER

#### *Table of Contents*

<b><u>APPELLANT</u></b>	<b><u>DOCKET NUMBER</u></b>	<b><u>RESULT</u></b>	<b><u>PAGE NO.</u></b>
Autozone, Inc.	09-33777.001-C-2	Reduction	C-2 to C-6
Barrios, Baldomero & Maria	12-03603.001-C-1	No Change	C-7 to C-8
Becherer, Robert	14-02744.001-C-2 thru 14-02744.002-C-2 & 15-01505.001-C-2 thru 15-01505.002-C-2	Reduction	C-9 to C-16
Fidler, Thomas & Jane	15-02633.001-C-1	No Change	C-17 to C-19
First Midwest Bank	12-01097.001-C-2 thru 12-01097.002-C-2	Reduction	C-20 to C-30
Hansen, Terry	12-04382.001-C-1 thru 12-04382.004-C-1	Reduction	C-31 to C-36
Hawkins, Donald	15-03525.001-C-1	Reduction	C-37 to C-39
Klairmont Investments LLC	11-21781.001-C-2 thru 11-21781.002-C-2	Reduction	C-40 to C-44
Nordstrom, Inc.	10-33290.001-C-3	Reduction	C-45 to C-64
<b>INDEX</b>			C-65 to C-65

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b><u>Autozone, Inc.</u></b>
<b>DOCKET NUMBER:</b>	<b><u>09-33777.001-C-2</u></b>
<b>DATE DECIDED:</b>	<b><u>March, 2017</u></b>
<b>COUNTY:</b>	<b><u>Cook</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property consists of a one-story, masonry, commercial building used for owner-occupied, retail purposes. The building was constructed in 2003. The property has a 27,318-square foot site and is located in Lake Township, Cook County. The subject is classified as a class 5A, commercial property under the Cook County Real Property Assessment Classification Ordinance.

For purposes of judicial economy, the subject property's 2009, 2010 and 2011 appeals were scheduled for hearing simultaneously. At hearing, the parties had no objection to the consolidation of the three tax years for hearing purposes, with the knowledge that distinct decisions would be rendered for each tax year under appeal.

Further at hearing, all parties appeared as well as the court reporter and witness after receiving due notice. Nevertheless, the board of review's representative requested that there be a 30-day continuance. After some discussion off the record, the Board ruled on the record that since all parties were present including the parties' sole witness and without good cause shown, that the hearing would proceed. Thereby, the Board denied the board of review's request.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal conducted by Joseph Ryan estimating the subject property had a market value of \$800,000 as of January 1, 2009. However, the appellant asserts that due to a building size discrepancy the appellant is requesting a market value of \$550,000 as of the 2009 assessment date.

Mr. Ryan testified that he is a commercial real estate appraiser who is licensed in the State of Illinois and holds the designation of Member of the Appraisal Institute (MAI) since June 1992. He also stated that he worked for various appraisal agencies after departing from the Cook County Assessor's office in 1985. He indicated that he has completed several hundred appraisal assignments of retail properties. Ryan was offered as an expert in the appraisal of real estate without objection by the parties. Therefore, the Board accepted him as such.

Initially, Ryan testified that he completed an appraisal for the effective date of January 1, 2009 and a transmittal date of September 10, 2010, but that he then updated that appraisal report. He stated that he was given wrong information about the size of the building. He stated that he did not notice that the approximate size of 10,000 was unusual for an Autozone store because the size generally ranges from 7,000 to 10,000 square feet. He indicated that once he found the corrected information that he issued a new report. However, the appellant did not submit this 'updated' report into evidence in the 2009 tax appeal.



## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Under cross examination on this point, Ryan testified that he noticed the discrepancy before the initial appraisal issuance date of September 10, 2010. In addition, he stated that his ‘updated’ appraisal was actually submitted in the 2010 and 2011 appeals for this property. He also indicated that the only error in the 2009 report was the building’s size which was altered in the later report. Ryan testified that he became aware of the square footage error when the appellant’s attorney pointed it out to him. He also stated that the staff appraiser, Linehan, inspected the subject property.

Ryan testified that he estimated the market value of the subject while developing two of the three traditional approaches to value. The value estimated in the income approach was \$800,000 and the value estimated in the sales comparison approach was \$800,000. He stated that the purpose of the appraisal was to estimate the retrospective market value of the fee simple estate of the property for ad valorem taxation. The property was inspected on July 15, 2010 which included an interior and exterior inspection. In addition, the subject was found to be in overall good condition.

Ryan stated that the 2009 market reflected a sales drop due to the economic collapse that began in October 2008. He indicated that the economic collapse caused consumers to spend less and with the lack of available financing caused commercial real estate markets to drop. He indicated that the subject’s neighborhood was the Auburn – Gresham neighborhood. Moreover, he stated that in this neighborhood the real estate market came to a dead halt due to lack of available financing. He stated that this time period was called the greatest economic collapse since the Great Depression in 1929. The subject’s highest and best use as vacant was for commercial use with a retail building, while the subject’s highest and best use as improved was its continued use.

Ryan testified that he did not develop a cost approach because the real estate market was in a free fall from 2006 through 2009; therefore, he could not extract overall depreciation from properties. However, the Ryan appraisal stated that the cost approach was not undertaken due to the subject property’s age.

As to the sales comparison approach, Ryan used four properties which were all single-tenant, retail stores which were the same comparables employed in his appraisal for all three tax years at issue during the hearing. These four properties sold from July, 2006, to December, 2009, for prices that ranged from \$300,000 to \$1,049,097, or from \$40.00 to \$116.39 per square foot of building area. The properties contained improvements that were built from 1985 to 2006. They ranged in building size from 7,009 to 14,050 square feet and in land size from 26,998 to 33,803 square feet of land.

At hearing, Ryan stated that all of the sales were fee simple sales and that he verified the sales data with public records including a real estate transfer declaration and/or CoStar Comps service. As to sale #1, he stated that the property was purchased and converted to an AutoZone store with a fee simple transaction in 2006; and thereafter, sold in a leased fee sale in 2007. In Ryan’s adjustment section of the sales comparison approach, he stated that “commercial properties tend to have an inverse relationship between building size and value per-square-foot; as building size increases, the value of properties on a per square foot basis tends to decrease”.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Under the sales comparison approach to value, Ryan concluded a market value in the 2009 appraisal of \$80.00 per square foot based upon 9,954 square feet, and in the 2010 appraisal of \$100.00 per square foot based upon 5,549 square feet. In addition, he stated that in using the correct square footage for the 2009 tax year would reflect a market value of \$550,000 under this approach to value.

The appraisal also developed the income approach to value by using four asking price rental properties that were either single-tenant or multi-tenant buildings. The Ryan appraisal in the 2009 tax year estimated a potential gross income of \$9.00 per square foot or \$89,586 while deducting 5% for vacancy and collection loss resulting in an effective gross income of \$85,107. Thereafter, he deducted operating expenses resulting in a net operating income of \$75,607 or \$7.60 per square foot. The appraisal indicated that the direct capitalization technique resulted in a 9.50% overall capitalization rate, while the band of investment method resulted in a 9.34% capitalization rate. Ryan applied 9.50% to the subject's net operating income resulting in a market value of \$800,000, rounded.

In reconciling the two approaches to value, Ryan's appraisal accorded primary consideration to the income approach stating that the rental information was considered to be reliable and the most comparable in the marketplace after adjustments with secondary consideration accorded the sales comparison approach for the sales were considered similar in most respects to the subject and the information considered highly reliable. Thereby, the appraisal indicated a final indication of value for the subject of \$800,000 as of January 1, 2009. At hearing, Ryan testified that he generally gives most weight to the sales comparison approach to value especially where the subject is an owner-occupied building. Lastly, in two consecutive questions, Ryan testified that the subject's value as of January 1, 2009 was first, \$800,000 and then, \$550,000.

The board of review's representative requested an opportunity to review the work product of the appellant's appraiser, which was granted while according the appellant's attorney an opportunity to remove any 'privileged' documents from that file. After a recess, the hearing proceeded.

Under cross examination by the state's attorney, Ryan testified to the makeup of his office's staff, while stating that this appraisal assignment was given to staff appraiser, Linehan. Ryan stated that he had not worked on the appraisal, but had reviewed it. He also stated that when the appellant's attorney hired Ryan to perform this appraisal, that the attorney had given the square footage of the subject as 9,949 square feet to Ryan, which in turn was conveyed by Ryan to staff appraiser, Linehan. In addition, Ryan testified that he had conducted an exterior inspection of the subject in 2010 initially stating that the inspection was prior to the 2009 appraisal's transmittal, but later stating that he could not remember. He also stated that he has inspected the interior of other AutoZone stores when he is appraising them, but did not do so for this subject property. Moreover, Ryan testified that when Linehan conducted his interior inspection of the subject that Linehan did not measure out the property.

As to the appraisal, Ryan stated that the four rental properties were obtained from LoopNet and that he did not personally verify the rental data. Further, Ryan testified that he typically checks the accuracy of a property's square footage that has been inspected and signs off on appraisals as being true and accurate. He also stated that he used the same sale comparables for both the 2009 and 2010 appraisals, while testifying that he did not remember if Linehan or he reran the CoStar

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Comps inquiry after knowing that the subject's size was essentially diminished by half. Moreover, he stated that he made no adjustment for size to the sale comparables and that there was no specific or standard size for an AutoZone building.

At the conclusion of the appellant's case-in-chief, the state's attorney moved to strike Ryan's testimony. After hearing the parties' arguments on this point, the Board denied the motion while indicating that the argument actually speaks to the weight to be accorded Ryan's testimony not admissibility.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$438,752. The subject's assessment reflects a market value of \$1,755,008 or \$176.31 per square foot of living area, including land, when applying the level of assessment for class 5A, commercial property under the Cook County Real Property Assessment Classification Ordinance of 25%. The board of review's memorandum indicated that the subject's building contained 9,954 square feet located on a 27,318 square foot site.

In support of its contention of the correct assessment, the board of review submitted unadjusted sales information on four suggested comparable sales that were single-tenant or multi-tenant properties that sold from April, 2004, to March, 2007, for prices that ranged from \$92.25 to \$427.16 per square foot. The properties ranged in building size from 7,784 to 8,672 square feet of retail free-standing buildings.

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. This 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. As a result of its analysis, the board requested confirmation of the subject's assessment.

At hearing, the state's attorney rested on the board of review's written evidence submission.

### **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 initial issue before the Board is the size of the subject's building. The Board finds that the best evidence of size was the appraiser's testimony supported by the appellant's and board of review's evidence in tax years 2010 and 2011 reflecting a building size of 5,549 square feet. Further at hearing regarding the 2009 tax year, the parties were in agreement that the incorrect square footage of 9,954 was reflected in the 2009 evidence submissions by both parties.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Next, the Board finds that the appellant's appraisal with the appraiser's testimony sheds considerable light on the multiple and significant flaws within this appraisal, such as: unverified rental data; inappropriate rental comparables which were asking prices and not actual rentals; lack of development of a cost approach for the subject due to the subject's age, when the subject's actual age was only six years; no building size adjustments in the sales comparison approach; misplaced primary reliance on a flawed income approach to value where this subject property is an owner-occupied, retail store; contradictory testimony at hearing; and admitted omissions in the methodology used to complete this 2009 appraisal.

Moreover, the pivotal flaw of an incorrect building size which was corrected in the 2010 and 2011 tax appeals by this appraiser was timely caught, but not changed prior to the transmittal date of the 2009 appraisal. This failure to explain why the square footage discrepancy was not corrected, coupled with the notice from appellant's attorney to the appraiser prior to the issuance of the 2009 appraisal greatly diminishes any weight to this document. Ryan testified that the subject property was inspected in July, 2010 while estimating a market value for January 1, 2009, but then he testified that the appellant's attorney notified him prior to the transmittal date of the incorrect building size of 9,954 square feet without any remedy prior to issuance. At hearing, he indicated that the actual building size was 5,549 square feet in a less than genuine manner. Overall, the Board finds that Ryan's lack of knowledge of the contents of the 2009 appraisal and/or his contradictory testimony appear that he had little involvement in this appraisal. Therefore, the Board finds that all of these significant errors or omissions taint the minimal adjustments and conclusions within this 2009 appraisal and the Board will give these conclusions of value no weight.

Therefore, the Board will look to the raw sales data submitted by the parties. The Board finds the best evidence of market value to be the appellant's sales comparables #1, #2 and #4. These comparable sales sold for unadjusted prices ranging from \$40.00 to \$116.39 per square foot of building area, including land. The subject's assessment reflects a market value of \$176.31 per square foot of building area, including land, which is above the unadjusted range established by the best comparable sales in the record. The Board accorded diminished weight to the remaining properties due to a disparity in: sales date, proximity to the subject; building age, building size and building usage or tenancy.

The Board further finds that Ryan testified that "commercial properties tend to have an inverse relationship between building size and value per-square-foot; as building size increases, the value of properties on a per square foot basis tends to decrease".

After making significant adjustments for building size as well as for other pertinent factors, the Board finds that the subject was overvalued and that a reduction in the subject's assessment is justified.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b>Baldomero &amp; Maria Barrios</b>
<b>DOCKET NUMBER:</b>	<b>12-03603.001-C-1</b>
<b>DATE DECIDED:</b>	<b>May, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a one-story commercial building with 3,298 square feet of building area that was built in 1984 and 1985. The property has a 28,358-square foot site and is located in Bensenville, Addison Township, DuPage County.

The appellants appeared before the Property Tax Appeal Board through legal counsel contending a recent sale and contention of law. In support of this argument the appellants submitted evidence disclosing a permanent easement was purchased from the subject property on July 14, 2008 for a price of \$230,000. The appellants submitted a warranty deed, a warranty deed in trust, a copy of the easement agreement, and a copy of a PTAX-203 Illinois Real Estate Transfer Declaration for the easement agreement. Furthermore, the appellants' counsel filed a brief citing the Illinois Eminent Domain Act, (735 ILCS 30/10-5-60; formerly 735 ILCS 5/7-121). Based on this evidence, the appellants requested a reduction in the subject's total assessment to reflect the sale of land related to the permanent easement of \$230,000.

The appellants' attorney stated that an agreement to the easement was reached prior to eminent domain action and this was a contention of law case. The easement was to the City of Chicago a for a project known as the O'Hare Modernization Program.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$211,190. The subject's assessment reflects a market value of \$633,824 or \$192.18 per square foot of building area, land included, when using the 2012 three-year average median level of assessment for DuPage County of 33.32% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted limited information on six comparable sales provided by the township assessor. The comparables are improved with commercial buildings of frame or masonry exterior construction that range in size from 1,824 to 7,924 square feet of building area. The comparables sold from February 2008 to June 2011 for prices ranging from \$325,000 to \$1,735,000 or from \$163.81 to \$575.66 per square foot of building area, land included.

### **Conclusion of Law**

The appellants in part have made a contention of law in this appeal. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code § 1910.63.

The Board finds that the contention of law argument was irrelevant since an agreement to purchase the easement was reached prior to any eminent domain action.

The appellants also 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 a reduction in the subject's assessment is not warranted.

The Board gave little weight to the appellants' argument that the selling of a permanent easement to the City of Chicago on July 14, 2008 for \$230,000 should be deducted from the subject's 2012 estimated fair market value of \$633,824 as reflected by its assessment. The Board finds that the appellants failed to provide any market value evidence to support a reduction in value as of 2012 as a consequence of the easement granted and sold in 2008. Moreover, the Board finds that the mere citation to the Illinois Eminent Domain Act (735 ILCS 30 Section 10-5-60) cannot be a substitute for actual market value evidence to support the contention that the property is overvalued in 2012. On this record, the appellants did not provide any other acceptable market value evidence to otherwise challenge the market value of the subject property as reflected by its assessment.

The Board finds the only evidence of market value in the record to be the six comparable sales submitted by the board of review. The comparables sold for prices ranging from \$325,000 to \$1,735,000 or from \$163.81 to \$575.66 per square foot of building area, including land. The subject's assessment reflects a market value of \$633,824 or \$192.18 per square foot of building area, including land, which is within the range established by the comparable sales in this record. Based on this record the Board finds the subject's assessment is reflective of market value and a reduction in the subject's assessment is not justified.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b>Robert Becherer</b>
<b>DOCKET NUMBER:</b>	<b>14-02744.001-C-2 thru 14-02744.002-C-2 &amp; 15-01505.001-C-2 thru 15-01505.002-C-2</b>
<b>DATE DECIDED:</b>	<b>November, 2017</b>
<b>COUNTY:</b>	<b>Logan</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property is improved with a two-story commercial building of concrete block, brick, steel and concrete construction on a concrete slab foundation with 19,933 square feet of building area. The building was constructed in 1979. The building has an electric forced air furnace and central air conditioning. Other features include an elevator, a sprinkler system in the hallways, drive-up window, canopy and an ATM machine. The property has two sites with a combined land area of 72,000 square feet of land area. Parcel No. 08-210-245-00 is the primary parking lot for employees and customers/clients. The property is located in Lincoln, East Lincoln Township, Logan County.

The appellant, Robert Becherer, appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. The appellant testified the subject building was originally constructed as a bank building dedicated almost exclusively to banking. He explained that the local bank was bought by a chain and the building is now a retail front with a lending office and some tellers. The appellant testified the principal tenant is Regions Bank.

In a memorandum prepared by the appellant for the Logan County Board of Review dated February 18, 2015 (marked as Appellant's Ex. #2), he stated that the subject property was converted to an office building with the bank occupying about 40% of the building. The appellant further explained in the memorandum that many of the features of the original building design remain and add considerable operating costs, thereby reducing the value of the building. He stated the subject has two very large and antiquated HVAC units that service the entire building: one for the first floor and one for the second floor. He explained the units are old and in need of regular repair. The appellant asserted that although these units can be updated to newer and more efficient units at a substantial cost (about \$130,000 to \$140,000), it is not economically feasible to retrofit the building into separate rental units so that each bears its own HVAC expenses.

The appellant testified he purchased the subject property in January 2013 in an auction process for a price of \$86,137. He explained that the property had been owned by a large institutional investor, First States Investors 4200, LLC. The appellant testified the seller initially tried to sell the property through a real estate broker, Marcus & Millichap. The appellant submitted a copy of the Marcus & Millichap offering memorandum disclosing an asking price of \$425,000. The offering memorandum indicated the property had a net operating income loss of \$17,490. The attempt to sell the property through the listing was not successful, therefore, the seller contracted with Auction.com, a large international auction house. The appellant testified that the seller continued their relationship with Marcus & Millichap during the auction phase. The appellant testified that there was a lot of information about the property such as profit and loss statements

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

for the preceding years together with a projected profit and loss statement for 2013, the leases were online and an environmental study was available online.

The appellant explained that he tried to decide whether he wanted to buy the property and what he could afford to pay. He testified the property was losing almost \$20,000 a year for three or four years. He thought there were things he could do to cut expenses and then determined how much he could afford to spend for the property to have it produce a reasonable rate of return.

He explained that the property was advertised in advance of the auction and prospective buyers had to register if they wanted to bid. He did not know how many other people were prospective buyers but was pretty sure there was more than one other bidder. He testified that the initial opening price was \$25,000 and the price started jumping and within a few minutes the price was \$70,000 to \$80,000. After each bid the time is extended to allow anybody who was interested in bidding to determine if they want to pay more. The appellant indicated his opening bid was \$30,000. He then would watch the bidding process online to see if another bid came in. If a bid came in that exceeded what he had offered, the appellant would offer a higher bid. He thought he had to bid four times. He thought the auction lasted two days. He ultimately paid \$86,137 for the property. The appellant provided a copy of the PTAX-203 Illinois Real Estate Transfer Declaration (Appellant's Ex. A) associated with the sale, which depicted the price of \$86,137. The appellant's documentation also included a message from Auction.com acknowledging the appellant as being the successful bidder as well as a copy of the Purchase and Sale Agreement (Appellant's Ex. C).

He further explained that following the auction, Regions Bank, the principal tenant, pursuant to its lease had an option to buy the property for the price that the appellant had bid. The appellant testified that Regions had a two or three-day period to determine if it wanted to buy the property. Regions Bank opted not to purchase the property and then he proceeded to close on the property. The appellant provided a copy of the settlement statement dated January 11, 2013 reporting the purchase price of \$86,137 (Appellant's Ex. B). The appellant was of the opinion that the purchase price was indicative of fair cash value both as of January 1, 2014 and January 1, 2015.

Under cross-examination the appellant testified that Marcus & Millichap contacted local brokers. The appellant testified he received a call from David Alexander at Coldwell Banker, who has office space in the subject property, about the property.

To further support the overvaluation argument, the appellant submitted a narrative appraisal prepared by James Riker estimating the subject property had a market value of \$250,000 as of December 31, 2014. Riker is an Illinois Certified General Real Estate Appraiser. He has been an appraiser for approximately 23 or 24 years. Prior to that he had experience as a commercial lender at People's Bank in Bloomington. Riker testified he has had the appraisal license for over 12 years. His primary area of work is about a 40 to 50-mile area with Bloomington-Normal being the hub. He testified that he has performed at least 50 appraisals of commercial properties similar to the subject in the last five years. Of those 50 appraisals, 10 of those would have been in Logan County.

Riker identified Appellant's Ex. #1 as the appraisal he prepared of the subject property. The effective date of the report was December 31, 2014. The witness testified the purpose of the



## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

appraisal was to value the property for taxes and any other considerations. The property rights appraised were the fee simple interest.

The appraiser testified he performed both an interior and exterior inspection of the subject property. He described the subject property as being improved with a two-story building with the Regions Bank being on the first floor and different office spaces were rented to various clients on the second floor. The exterior of the building is of brick construction with steel framing and a slab foundation. The subject property has 19,933 square feet of building area and was constructed in 1979. Features of the building include sprinklers in the common area hallways, an elevator and a vault area. The appraiser testified that the building needed tuck pointing and the mechanical system, heating and air conditioning, were totally outdated. He testified that the electronic heating system was no longer being manufactured and if something went wrong the contractor would try to find used parts. The estimated cost to replace the system was approximately \$150,000. The appraiser also testified the windows were single-pane and some needed to be repaired. He testified that it would cost approximately \$200,000 to replace those windows with more updated windows. The appraiser also testified that the utilities were not separated to where they could be at the tenant's expense. He further testified that the subject building has a multi-purpose use but there are certain limitations because of the bank being on the first floor. The witness also testified that the parking lot needed some repair.

The appraiser determined the highest and best use of the property to be its continued use as multipurpose office space.

In estimating the market value of the subject property, the appraiser performed the cost approach to value, the income approach to value and the sales comparison approach to value.

The first step under the cost approach was to estimate the value of the land using two active listings and one sale. The report contained two active listings located on Woodlawn Road composed of a .67-acre site and a .55-acre site with listing prices of \$5.69 and \$6.25 per square foot of land area, respectively. The appraiser indicated these properties were superior to the subject due to heavy traffic exposure on a four-lane road. He also found one sale of a 24,000-square foot parking lot that sold in January 2014 for a price of \$40,000 or \$1.67 per square foot of land area. Based on this data the appraiser was of the opinion the subject property would have a land value of \$2.00 per square foot or \$144,000.

The appraiser next estimated the replacement cost new of the improvements using the Marshall Valuation Service Cost Handbook, section 15, page 21, Office Buildings. The appraiser calculated the replacement cost new to be \$635,946. Based on an economic life of 50 years and an effective age of 20 years, the appraiser arrived at a physical depreciation factor of 40% resulting in total physical deterioration of \$254,379. The appraiser estimated the subject property suffered from \$200,000 in curable functional obsolescence due to the windows and the mechanical systems. The appellant's appraiser also made a deduction of \$150,000 for economic obsolescence considering the subject's location. Deducting total depreciation of \$604,379 resulted in a depreciated value of the improvements of \$31,567. Adding the land value of \$144,000 resulted in an estimated value under the cost approach of \$175,600, rounded.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

The appraiser thought the total depreciation was excessive but was due to the issues that relate to the subject property and the issues with Lincoln such that the median income level is below the state average; it has lost population from 1970 through 2014 by slightly more than 19%; and major employers have left.

The appellant's appraiser next developed the income approach to value. The appraiser agreed that typically in estimating market rent you go to the market to find rental comparables. In this case he was not able to locate rental comparables, therefore, he opted to use the actual income of the subject property. He further testified he had conversations with two appraisers and realtors from Lincoln, Dan Bach and Gordon Johnson, about whether the subject's income was reasonable. According to the appellant's appraiser they said it seemed to be less than what would be typical. Nevertheless, the appellant's appraiser used a yearly gross income of \$164,484 and deducted \$23,686 or 14.40% for vacancy and collection loss to arrive at an adjusted gross income of \$140,798. The appraiser then deducted expenses totaling \$123,676 to arrive at a net operating income of \$17,122.

Using the band of investment technique, the appraiser arrived at a capitalization rate of 10.00%. The appraiser also reviewed surveys and indicated the average rate for Chicago market for the 3<sup>rd</sup> quarter for 2014 was 6.77% and the average rate for the 4<sup>th</sup> quarter for 2014 was 6.48%. Surveys indicated the average rate for Chicago suburban market for the 3<sup>rd</sup> quarter for 2014 was 8.98% and the average rate for the 4<sup>th</sup> quarter for 2014 was 8.95%. Due to the subject property being located in Lincoln, the appraiser determined there was more risk than in the Chicago market area; therefore, the appraiser selected a capitalization rate of 10%. Capitalizing the net income resulted in an estimated value under the income approach of \$171,200.

The final approach to value developed by the appellant's appraiser was the sales comparison approach to value. The appraiser utilized three sales located in Lincoln. Comparable #1 was composed of two buildings, one of which is a two-story building and the other is a 1.5-story with a combined building area of 13,920 square feet. The buildings were constructed in the 1900s and are of brick construction. The appraiser indicated the buildings had been updated and are in superior condition due to the updates. The comparable sold in 2013 for a price of \$527,500 or \$37.90 per square foot of building area, including land. Comparable #2 was a one-story building built in 1988 of brick and block construction with 4,452 square feet of building area. This property sold in 2014 for a price of \$480,000 or \$107.82 per square foot of building area, including land. The appraiser noted in the report that this was not a good comparable due to the difference in style, location and construction. He testified this property was located along a four-lane arterial road with a higher traffic count. The appraiser testified that he went out and visualized the amount of traffic that went by the comparable and came to realize that it is better than the subject property. The final comparable was improved with a two-story building of brick construction that was built in the 1900s containing 5,168 square feet of building area. The appraiser was of the opinion the construction quality was similar to the subject property. This property sold in 2011 for a price of \$115,000 or \$22.25 per square foot of building area, including land.

The appraiser was of the opinion that comparable #1 was the only one that had a reasonable amount of comparability to the subject property, therefore, he focused on that property. The appraiser gave an overall 55% negative adjustment to this comparable due to its upgrades, which

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

made it like a new building. The appraiser arrived at an estimated value for the subject property under the sales comparison approach of \$17.00 per square foot of building area resulting in an indicated value of \$338,900, rounded.

In reconciling the three approaches to value, the appraiser stated that none of these approaches provide a true indication of value. He testified the sales comparison approach was somewhat distorted because the lack of quality comparables. He also was of the opinion the cost approach and the income approach are on the low side. After considering these approaches to value the appraiser arrived at an estimated value of \$250,000 as of December 31, 2014. The appraiser testified the report had a "typo" on page 44 with respect to the valuation date stated as "December 31, 2015." Mr. Riker did not know that the value of the subject property would change significantly from January 1, 2014, one of the valuation dates at issue.

The appellant's appraiser did not give any weight to the purchase of the subject property that was testified to by the appellant. He did not really consider that the purchase was an arm's-length transaction in that he did not know if they had a willing buyer and a willing seller in the typical manner. The appraiser stated, "We've got somebody that wants to sell it at any price. That's not really typical of the market."

Under cross-examination the appellant's appraiser agreed the subject property was one of the newer buildings in the downtown Lincoln area. He testified his conclusion that the subject's area did not have a lot of vibrancy was based on a review of various sources about Lincoln. The appraiser also testified that his comparable sale #1 does not have an elevator and does not have parking. He also testified his 65% condition adjustment was because of the improvements made to the building. The appraiser also indicated that it was not typical to have an online auction to sell a building.

Based on this evidence the appellant requested the subject's total assessment be reduced to \$28,712 to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total combined assessment for the subject of \$228,880 for tax year 2014 and \$235,730 for tax year 2015. The subject's 2014 assessment reflects a market value of \$685,475 or \$34.39 per square foot of building area, land included, when using the 2014 three-year average median level of assessment for Logan County of 33.39% as determined by the Illinois Department of Revenue. The subject's 2015 assessment reflects a market value of \$709,176 or \$35.58 per square foot of building area, land included, when using the 2015 three-year average median level of assessment for Logan County of 33.24% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment for the 2014 tax year, the board of review submitted information on six comparable sales, with sales #3 and #4 being a combined sale. The comparables were composed of four one-story buildings, a part one-story and part two-story building and a two-story building. The board of review indicated that the comparables ranged in size from 1,136 to 9,520 square feet of building area. The buildings ranged in age from 28 to approximately 100 years old. These properties were located in Lincoln from approximately two blocks to 1.6 miles from the subject property. The comparables have sites ranging in size from 1,200 to 32,550 square feet of land area. The sales occurred from July 2013 to December 2015

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

for prices ranging from \$120,000 to \$527,500 or from \$25.69 to \$158.45 per square foot of building area, including land. Board of review sales #3 and #4 were appellant's appraisal sale #1 and board of review sale #6 was appellant's appraisal sale #2.

With respect to the 2015 tax year, the board of review utilized the same six comparable sales as in the 2014 appeal and provided one additional sale located two blocks from the subject property that was improved with a two-story building of brick construction with 8,000 square feet of building area. The building was approximately 84 years old. The comparable has an 8,000-square foot site. The property sold in April 2016 for \$225,000 or \$28.12 per square foot of building area, including land.

Jane Ryan, member of the board of review, testified that the subject property is a newer building with an elevator and its own parking lot. She testified that most of the downtown buildings have one or two parking spaces behind the buildings for the owner and the rest park on the street. She also asserted that the two-story buildings do not have elevators.

Ms. Ryan further testified that the auction of the subject property lacked local participation and advertising, which indicated to the board of review it was more comparable to a foreclosure. The board of review did not consider the subject's sale to be arm's-length.

With respect to the appellant's appraisal, the board of review was of the opinion the depreciation was excessive. Ms. Ryan testified that because of the parking, the elevator, the age and the quality of construction, the subject is one of the better properties in town. The board of review requested the assessment for each year be confirmed.

Under cross-examination Ms. Ryan indicated that her opinion that the sale was not an arm's-length transaction was based on the perceived lack of local advertising. She was of the opinion that if the property had been marketed locally, it would have sold for more.

### **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 evidence in the record supports a reduction in the subject's assessment.

The evidence disclosed that the subject property was initially marketed through Marcus & Millichap, Real Estate Investment Services, with an asking price of \$425,000. A copy of the Offering Memorandum was submitted by the appellant as Exhibit A attached to his memorandum to the Logan County Board of Review dated February 18, 2015 (Appellant's Exhibit #2). The testimony revealed that Marcus & Millichap was not successful in recruiting a buyer for the subject property. Typically, the asking price sets the upper limit of value. The Board finds the asking price for the subject property is below the market values reflected by the subject's assessments for the 2014 and 2015 tax years, supporting the conclusion the subject property was overvalued for assessment purposes.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

The appellant provided testimony and evidence that he purchased the subject property in an on-line auction for a price of \$86,137 or \$4.32 per square foot of building area, including land. The appellant testified the auction had exposure to the open market and there was much information about the property on-line. He further testified that there was more than one bidder during the auction process. The Board finds, however, the on-line auction calls into question the arm's-length nature of the transaction. The evidence was lacking in establishing the amount of time the property was exposed on the market under the auction format and lacked detail with respect to how well the general public would have known the subject property was for sale. Additionally, the appellant's valuation expert, Mr. Riker, was of the opinion the purchase was not an arm's-length transaction in that he did not know if there was a willing buyer and a willing seller in the typical manner. He testified that the seller wanted to sell at any price, which is not really typical of the market. Furthermore, the auction purchase price of \$4.32 per square foot of building area, including land, is significantly below the sales in this record on a square foot basis, which calls into question whether the price was reflective of fair cash value for assessment purposes. Based on this record the Board finds less weight can be given the auction purchase price in establishing the fair cash value of the subject property for assessment purposes.

The record also has an appraisal submitted by the appellant estimating the subject property had a market value of \$250,000 or \$12.54 per square foot of building area, including land, as of December 31, 2014. The appellant's appraiser utilized the three approaches to value in arriving at his value conclusion. In describing the subject property, the appellant's appraiser testified the subject property had a heating system that was no longer being manufactured and, if something went wrong the contractor would try to find used parts. The estimated cost to replace the system was approximately \$150,000. The appraiser also testified the windows were single-pane, some needed to be repaired, and it would cost approximately \$200,000 to replace those windows with more updated windows. This testimony was not refuted by the board of review. These issues would have a negative impact on the value of the subject property.

Of the three approaches to value developed by the appellant's appraiser, the Board gives most credence to the sales comparison approach to value. With respect to the cost approach to value, the Board finds there was little support for external or economic obsolescence assigned to the subject property. The appraiser asserted in the report that the subject property suffers from a \$.75 per square foot rent loss based on the subject's existing rental rates versus quoted rental rates by owners and real estate agents in conversations with the appraiser. However, the appraiser did not include in the report the rental rates of the various tenants associated with the subject property nor did he provide a listing of comparable rentals identified in the conversations with owners and real estate agents. Furthermore, the physical depreciation and the functional obsolescence were not supported by any market data. This lack of market data to support the depreciation calculation detracts from the weight to be given the cost approach to value.

Similarly, in the income approach to value, the appraiser failed to report any rental comparables to support his estimate of market rent even though he states within the appraisal he had conversations with owners and real estate agents about rental rates. In order to estimate a value under the income approach, rental comparables should be used as a basis to establish market rent to estimate the subject's potential gross income. This lack of rental market data undermines the appellant's appraiser's estimate of value under the income approach to value. Furthermore, a

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

review of the expenses the appellant's appraiser deducted to estimate the subject's net income included \$22,476 for real estate taxes. The preferred method to handle real estate taxes when developing an appraisal for assessment purposes is not to deduct taxes as an expense put to develop an effective tax rate and add it as a component of the total capitalization rate. Furthermore, the appellant's appraiser provided no market data or surveys to demonstrate the expenses deducted from the potential gross income were market based. This lack of market data undermines the weight that can be given the appellant's appraiser's conclusion of value under the income approach to value.

The appellant's appraiser used three comparable sales in the sales comparison approach to value. Two of the sales contained in the appraisal were also used by the board of review. The comparable sales selected by the appraiser were not particularly similar to the subject property in age and size but were located in Lincoln. The appraiser ultimately arrived at an estimate of value under the sales comparison approach of \$338,900. This value conclusion appears supported when considering both the listing price of \$425,000 and giving some minor consideration to the auction purchase price.

The board of review also provided comparable sales in support of the assessment. As with the appellant's appraiser's comparable sales, the Board finds that none of the sales were particularly similar to the subject in size, age and style. Additionally, the board of review did not seem to consider the subject's condition issues relative to the mechanicals and windows so as to make adjustments to the comparables for their possible superior condition relative to the subject property. As noted, the appellant's appraiser also considered two of the sales identified by the board of review, which lends some credence to his conclusion of value under the sales comparison approach to value.

In conclusion, after considering the evidence and testimony provided by the parties the Property Tax Appeal Board finds a reduction in the subject's assessment is warranted so as to reflect a market value of \$338,900 as determined by the appellant's appraiser utilizing the sales comparison approach to value. Based on this evidence the Board finds a reduction in the subject's assessment for each of the tax years under appeal is justified.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b>Thomas &amp; Jane Fidler</b>
<b>DOCKET NUMBER:</b>	<b>15-02633.001-C-1</b>
<b>DATE DECIDED:</b>	<b>August, 2017</b>
<b>COUNTY:</b>	<b>Lake</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property is improved with a one-story building of masonry construction containing 2,272 square feet of building area. The building was constructed in 1975. Features of the property include a full basement, a fireplace and a chain-link fence. The building is used as a day-care center/pre-school. The property has a 15,682-square foot site resulting in a land to building ratio of 6.90:1 and is located in Lake Zurich, Ela Township, Lake County.

The appellants contend overvaluation as the basis of the appeal. In support of this argument the appellants submitted a restrictive use appraisal estimating the subject property had a market value of \$180,000 as of June 3, 2014. The restrictive use appraisal was signed by Andrew J. Richter, a certified general real estate appraiser; Brian Lerch, an associate real estate trainee appraiser; and Rick Hiton, a certified residential real estate appraiser.

The report explained that it omits many of the elements that would be included in a summary appraisal report and further stated:

Use of this report is, therefore, limited to those persons familiar with the limitations placed on our engagement, namely Inland Bank & Trust and their designees, and should not be relied upon by outside parties.

The appraisers also stated in the report that the appraisal has been prepared for Ms. Joan Wilson of Inland Bank and Trust. The client was identified as Mountainseed Appraisal Management. The intended users of the report were identified as Inland Bank and Trust and Mountainseed Appraisal Management as their agent. The intended use of the report was for lending purposes.

The appraisers further stated within the report:

As this restricted appraisal report of our appraisal omits many of the elements which would be included in a self-contained report of an appraisal, its use is restricted to you as our client, or any parties you designate; but it should not be relied upon by individuals not familiar with the limitations imposed upon our assignment, nor without reference to our prior data provided to you for consideration.

In arriving at a market value estimate, the appraisers developed the sales comparison approach to value using five comparable sales improved with two, one-story buildings and three, two-story buildings of masonry construction that ranged in size from 1,780 to 4,600 square feet of building area. The buildings were constructed from 1925 to 1988. One comparable was used as an office, one comparable was used as a restaurant, two comparables were used for retail purposes and one comparable was a mixed-use office/retail and apartment. The comparables were located

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

in Lake Zurich and Long Grove. The properties had sites ranging in size from 6,926 to 24,176 square feet of land area resulting in land to building ratios ranging from 2.26:1 to 7.68:1. The sales occurred from April 2012 to November 2013 for prices ranging from \$169,000 to \$640,000 or from \$85.67 to \$139.13 per square foot of building area, including land. Based on these sales, the appraisers arrived at an estimated value of \$80.00 per square foot of building area or \$180,000, rounded. Based on this evidence the appellants requested the subject's assessment be reduced to \$59,994.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$77,465. The subject's assessment reflects a market value of \$233,469 or \$102.76 per square foot of building area, land included, when using the 2015 three-year average median level of assessment for Lake County of 33.18% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted information on four comparable sales improved with one, 1-story building and three, 1.5-story buildings of frame or brick/masonry construction that ranged in size from 1,440 to 3,542 square feet of building area. The buildings were constructed from 1923 to 1972 and were located in Lake Zurich, Barrington and Long Grove. Three of the comparables had basements. The properties had sites ranging in size from 6,534 to 9,000 square feet of land area with land to building ratios ranging from 2.47:1 to 9.09:1. The sales occurred from December 2014 to December 2015 for prices of \$245,000 and \$250,000 or from \$69.32 to \$170.14 per square foot of building area, including land.

In rebuttal, the board of review argued that the appellants' appraisal comparable sales were from 2012 and 2013. It also argued the appraisal had an effective date that was prior to the January 1, 2015 assessment date. As a final point, the board of review asserted the conclusion of value in the appraisal of \$80.00 per square foot was below the range established by the sales of \$85.67 to \$139.13 per square foot of building area.

The board of review requested the subject's assessment be sustained.

The appellant's counsel submitted rebuttal to the Lake County Board of Review evidence critiquing the sales used by the board of review.

### **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 a reduction in the subject's assessment is not warranted.

Initially, the Board gives little weight to the conclusion of value contained in the appellants' appraisal. The report was identified as a restricted use appraisal done for lending purposes to be used only by the client, Inland Bank and Trust, and Mountainseed Appraisal Management, as



## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

their agent. The report further stated that it omitted many of the elements that would be included in a self-contained report of an appraisal and should not be relied upon by individuals not familiar with the limitations imposed upon their assignment. For these reasons, the Property Tax Appeal Board finds little weight can be given to the conclusion of value contained in the appellants' restricted use appraisal report.

The record contains nine comparable sales that had varying degrees of similarity to the subject property. The sales occurred from April 2012 to December 2015 for prices ranging from \$169,000 to \$640,000 or from \$69.32 to \$170.14 per square foot of building area, including. The sales that occurred most proximate in time to the assessment date had prices of \$245,000 and \$250,000 or from \$69.32 to \$170.14 per square foot of building area, including land. The subject's assessment reflects a market value of \$233,469 or \$102.76 per square foot of building area, including land, which is within the range established by the sales in the record. Based on this evidence, the Board finds the subject's assessment is reflective of the property's market value and a reduction in the subject's assessment is not justified.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b>First Midwest Bank</b>
<b>DOCKET NUMBER:</b>	<b>12-01097.001-C-2 thru 12-01097.002-C-2</b>
<b>DATE DECIDED:</b>	<b>September, 2017</b>
<b>COUNTY:</b>	<b>Kane</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property is improved with a one-story bank building containing a total building area of 6,493 square feet on a slab foundation. The building was constructed in 2004. The building has masonry with face brick exterior walls, reinforced concrete floors, double hung windows in the office area, two bathrooms, carpeting in the office area, vinyl tile in the customer service area and central air conditioning. The site has approximately 35,000 square feet of asphalt paved parking, 6 drives thru lanes and a 2,774-square foot canopy. The property has a 72,310-square foot site resulting in a land to building ratio of 11.14:1. The property is located at the northwest corner of Randall Road and Miller Road and the address is 2250 Randall Road, Carpentersville, Dundee Township, Kane County.

The appellant appeared before the Property Tax Appeal Board through counsel, Mary Kathleen Fitzgerald, contending overvaluation as the basis of the appeal.<sup>1</sup> In support of this argument the appellant submitted a narrative appraisal prepared by real estate appraiser Thomas Grogan of Sterling Valuation Real Estate Appraisers & Consultants, estimating the subject property had a market value of \$925,000 as of January 1, 2012.

Thomas Grogan was called as the appellant's witness. Grogan is a real estate appraiser and has been a professional real estate appraiser since 1991. The witness has been an Illinois Certified General Real Estate Appraiser since 1996 and also has had the MAI designation from the Appraisal Institute since 2004. Grogan has been employed as a real estate appraiser with Sterling Valuation since 2010. The witness testified that he has appraised commercial properties, industrial properties, office buildings and investment grade properties. The geographic area in which he works includes the Chicago area and the six-county surrounding area. He further indicated he has appraised properties in some other counties in the State of Illinois. Grogan testified he has appraised property for some bank financing, potential sale and potential purchase appraisals and for ad valorem tax appeal work. The witness testified he has appraised from 75 to 100 banks over the last 10 years. He agreed that it was fair to say that the bulk of the work that he does is appraisals of bank buildings. Grogan was accepted as an expert without objection.

Grogan testified that his assignment was to estimate the market value of the fee simple estate of the property located at 2250 Randall Road, Carpentersville. He prepared a retrospective summary appraisal identified as Appellant's Exhibit #1. The witness testified the appraisal was

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<sup>1</sup> At the beginning of the hearing counsel requested the Property Tax Appeal Board take judicial notice of certain facts namely that for the 2013 tax year the assessor lowered the subject's assessment to \$396,999 reflecting a market value of \$1,191,116; for the 2014 tax year the assessor lowered the assessment to \$385,207 reflecting a market value of \$1,115,737; for the 2015 tax year the assessment went up to \$396,146 reflecting a market value of \$1,188,557; and in 2016 the Kane County Board of Review lowered the assessed valuation to \$345,511 reflecting a market value of \$1,036,757. The board of review had no objection to the appellant's motion to take judicial notice.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

prepared consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

Grogan inspected the subject property on August 12, 2012 and the day before the hearing in preparation his testimony. The witness testified that in 2012 the interior of the building was inspected and explained he walked through the building taking photographs of the interior. At the time of inspection in 2012 the property was vacant and available for lease through US. Equities. The witness testified the brokers name was Yolanda Vale who informed him that at the time of the valuation date the property had been vacant for the previous two years and was on the market for lease at \$15.00 per square foot on gross basis, but there was no activity on the lease.

The appraiser also testified that the subject property was subsequently listed for sale for an initial listing price of \$2,200,000. The price was lowered to \$975,000 but has not sold. He explained the property has been listed for sale since 2013 and continues to be listed for rent.

In estimating the market value of the subject property, the appraiser developed the cost approach to value, the income approach to value and the sales comparison approach to value.

The first step under the cost approach was to estimate the value of the land using three land sales and three listings. The land comparables were located in Elgin, East Dundee, Sleepy Hollow, Carpentersville and Unincorporated Kane County. The comparables ranged in size from 42,689 to 225,205 square feet of land area. Comparables #1 through #3 sold from June 2010 to December 2010 for prices ranging from \$542,180 to \$950,000 or from \$8.16 to \$14.06 per square foot of land area. The active listings had been on the market from 489 to 2,129 days for prices ranging from \$1,102,626 to \$1,430,000 or from \$5.55 to \$14.97 per square foot of land area. The appraiser made adjustments to the comparables for such factors as being listings, location and land size. Grogan estimated the subject property had a land value of \$10.00 per square foot of land area or \$725,000, rounded.

Grogan testified he used CoStar, LoopNet and the Multiple Listing Service and verified the sales through public records and attempts to contact the buyer, seller or broker. Grogan testified that he was familiar with board of review comparable sale #4 and chose not to use it as a comparable because according to CoStar it was a non-arm's length transaction and was a deed in lieu of foreclosure.

The next step under the cost approach was to estimate the replacement cost new of the improvements using the Marshall & Swift Valuation Guide for a class C average bank building starting with a base cost of \$150.11 per square foot of building area. The base cost was adjusted by a local multiplier of 1.24 to arrive at an adjusted base cost of \$186.00 per square foot to arrive at a building cost of \$1,207,698. To this the appraiser added 5% or \$60,385 for indirect costs to arrive a cost of \$1,268,083. Grogan then estimated the entrepreneurial profit to be 5% or \$63,404, which was added to arrive at a total replacement cost new of \$1,331,487. From this the appraiser deducted 25% or \$332,872 for physical incurable depreciation using a 10-year effective age and a 40-year life expectancy.

Grogan next made a reduction for external obsolescence. He testified external obsolescence reflects the loss of income due to forces outside the building and explained that the way to

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

measure this obsolescence is to capitalize the income loss that occurred because of the adverse market conditions. With respect to the adverse market conditions, Grogan testified that the bank market is changing in that banks are getting smaller and no one is using the typical branch bank as they once were because they are using the internet. The witness testified there is no need for record storage and people don't have to go to a teller but can scan their deposits and their checks into their telephones.

Grogan calculated external or economic obsolescence to be \$850,450 by determining the difference between the subject's stabilized income of \$73,853, based on current market rent, and the income required to support the physically depreciated value of the improvements and the land of \$141,889, which was calculated to be \$68,036. This difference was then capitalized at a rate of 8.0% to arrive at economic obsolescence of \$850,450. Making these deductions results in a depreciated cost new for the building of \$148,165. Adding the value of the site improvements of \$50,000 and the estimated land value of \$725,000 resulted in an indicated value under the cost approach of \$925,000, rounded.

The next approach to value developed by Grogan was the sales comparison approach to value. The appraiser testified that he took steps to find sales of similar types of property that sold in fee simple with a similar location. The witness testified he relied on such companies as CoStar, LoopNet and the Multiple Listing Service (MLS) for the data sources and verified the information through the county or through the buyer, seller or broker when possible. Grogan typically wants to find fee-simple owner-occupied vacant bank facilities that sold in Kane County but, due to the lack of similar types of properties, he also looked at properties with similar characteristics as the subject property. The comparable sales used in the appraisal were all located in Kane County.

Grogan testified it is better to use owner-occupied sales as they would be similar to the subject property. He further testified a leased fee situation is typically based on the lease and not the real estate. He explained that if someone purchases a leased fee investment they would typically look at the strength of the tenant and not necessarily look at the real estate. A purchaser would be looking at the tenant, the term of the lease and the income.

The appraiser also testified that an REO (real estate owned) sale can be a good sale. The witness asserted that in a bank-owned sale the bank is not forced to sell the property and the bank can wait until it finds the price it wants, especially if they have the property marketed for an adequate amount of time.

Grogan developed the sales comparison approach using six comparable sales located in Elgin, Carpentersville, Hampshire, Batavia, North Aurora and Dundee. Comparable sale #1 was improved with a one-story masonry constructed bank/office building containing 7,740 square feet of above grade building area, constructed in 1994, with a full finished basement and 6 drive through lanes. Grogan testified this property had been on the market for approximately two years and is located about four miles south of the subject property. Comparable sale #2 was improved with a one-story masonry constructed commercial building containing 9,000 square feet built in 2006 and being used as a daycare facility. This comparable was listed on the market for approximately one year and is located approximately two miles east of the subject property. Comparable sale #3 was improved with a one-story bank/office building with 2,800 square feet

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

of building area, constructed in 2005, with a full finished basement, two drive through lanes and a 762-square foot canopy. This comparable had been on the market approximately two years and is located approximately 10 miles west of the subject property. Comparable sale #4 was improved with a one-story masonry constructed commercial building with 4,776 square feet of building area built in 2004. Comparable #4 was on the market for approximately one year and is located approximately 18 miles south of the subject property in Kane County. Comparable sale #5 was improved with a two-story masonry constructed bank/office building with 6,246 square feet of above ground living area and a 3,123-square foot finished basement that was built in 2001. Grogan testified that he could not find out how long this property was on the market. The witness testified that this property was not on the market but, according PTAX records, the sale was classified as a market value transaction. This property is located approximately 22 miles south of the subject property. Comparable sale #6 was improved with a one-story masonry constructed office building with 5,040 square feet of building area. Grogan testified this property had been on the market approximately 5 months and was located 4 miles east of the subject property. He further testified that he could not determine the age of this property. The comparables had land to building ratios ranging from 5.57:1 to 19.08:1. The sales occurred from July 2011 to July 2012 for prices ranging from \$325,000 to \$1,313,000 or from \$83.98 to \$210.21 per square foot of above grade building area. The appraiser gave slight upward adjustments to comparables #1, #4 and #6 for their slightly inferior locations; downward adjustments were given to comparables #3, #4 and #6 for their smaller building sizes, while comparables #1 and #2 received upward adjustments for their larger building sizes; comparable #1 received an upward adjustment for its age; and downward adjustments were given to comparables #1 and #6 for their larger land to building ratios while comparable #2 received an upward adjustment for its lower land to building ratio. The appraiser estimated the subject property had a market value of \$140.00 per square foot of building area, land included, for an indicated value under the sales comparison approach of \$910,000.

The final approach to value developed by the appraiser was the income approach to value. The appraiser testified the subject property has been listed for lease for \$15.00 per square foot on a gross lease basis. Grogan testified that, from a tenant's perspective, a gross lease is preferable to a net lease. The appraiser testified he considered the subject's rental listing. In estimating the market rent, Grogan also considered five rental comparables with comparable #1 having a lease that commenced in September 2008, while the remaining comparables were current listings or were available in 2012. The rental comparables were located in the Kane County cities of St. Charles, Algonquin, East Dundee, Geneva and Carpentersville. The rentals ranged in size from 610 to 16,246 square feet and were located in buildings constructed from 1952 to 2007. These properties had rents ranging from \$11.50 per square foot on a gross basis to \$18.00 per square foot on a net basis. The witness testified in this market for this type of property he typically found net leases. The report indicated the appraiser made an upward adjustment to comparable #1 as the lease commenced in 2008 and downward adjustments for the comparables that were just listings. The report further indicated minimal adjustments were made for location; comparables #3, #4 and #5 had upward adjustments for age; and downward adjustments were made to all the comparables for their smaller sizes since they cannot be subdivided. The appraiser arrived at an estimate of market rent of \$13.00 per square foot on a net basis resulting in a potential gross income of \$84,409.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Grogan testified that CB Richard Ellis, 1<sup>st</sup> Quarter 2012 was relied upon to estimate vacancy and collection loss. He testified that vacancy rates for the Northwest Suburban Office were at an overall rate of 25.8%. He indicated in the report that typically, single-tenant properties would not have significant vacancy losses and estimated the subject property would have a vacancy and collection loss of 7.5% or \$6,331, which when deducted from the potential gross income results in an effective gross income of \$78,078.

The appraiser next estimated expenses using investor surveys such as BOMA (Business Owners and Management Association) and the First Quarter 2012 edition of the Korpacz Real Estate Survey. Grogan estimated insurance expenses to be \$.15 per square foot of net rentable area or \$974; a management fee of \$.30 per square foot of net rentable above grade area or \$1,952; and replacement reserves of \$.20 per square foot of above grade area or \$1,299. Making these deductions resulted in a net operating income of \$73,853.

The final step under the income approach was to estimate the capitalization rate. Grogan testified that he relied upon Korpacz and RealtyRates to determine a direct capitalization rate of 8.00%. Using the band of investment technique, the appraiser estimated a capitalization rate of 8.93%. Placing more emphasis on the direct capitalization technique, the appraiser arrived at a capitalization rate of 8%. Dividing the net operating income by the 8% capitalization rate resulted in an estimated value under the income approach of \$925,000.

In reconciling the three approaches to value the appraiser gave least weight to the cost approach, primary consideration to the sales comparison approach and secondary consideration to the income approach. The appraiser arrived at a reconciled estimate of market value of \$925,000 as of January 1, 2012.

Under cross examination Grogan testified that he has appraised 75 to 100 branch bank facilities but did not know how many were performed prior to 2012. The witness also testified that the primary appraiser for the subject property was John Setina. Grogan testified he was the review appraiser but also helped with the report.

Grogan also explained that he chose to use non-bank sales in the sales comparison approach because they used sales of local commercial property, which share similar characteristics, so as not to go out too far geographically and to stay within Kane County. In estimating exposure time, the appraiser listed four bank sales at page 14 of the report, two of which were used in the sales comparison approach to value as sales #1 and #3. Grogan testified that he did not use the sales at 3340 West Main Street, St. Charles and 2853 Kirk Road, Aurora as these were leased fees. He agreed that he was not precluded from using leased fee properties.

Grogan further testified that the subject property was listed for sale after the report was completed and indicated it was listed for sale in 2013. The appraiser further testified the subject property is located in a commercial area with some vacancy which was not excessive. The witness testified that a typical buyer of a bank branch would be another bank. He also stated the type of property he was appraising was a bank facility but he called it an office facility. The witness indicated that his firm typically classify bank branches that are retail oriented as office space.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

The appraiser described the subject property as being in good to average condition for its age. He testified there were not apparent repairs needed or significant renovations required. Grogan testified that there still is some general wear and tear for an 8-year-old building. He could not, however, identify any specific components that suffered from incurable physical depreciation. He also testified that the downside with his method of calculating external obsolescence is that you do rely on some parts of an income approach.

With respect to comparable sale #6, the appraiser indicated this property was similar to the subject in size and land-to-building ratio. The appraiser described comparable sale #6 as an office building while the subject property is a retail banking building with office use. Grogan indicated this comparable has no drive-through, it does not have the amenities that a bank has and it does not have the quality of construction the subject has. He agreed this comparable was inferior to the subject property.

The witness used comparable sale #4 as it has the same physical characteristics as the subject property. Grogan indicated that this comparable was used as a restaurant, a use different than the subject's use. Grogan agreed that using the properties in his report that were identified as banks but were leased fees would be better sales than comparable sales #4 and #6. Of the sales used, Grogan gave greatest weight to sale #5, which sold for approximately \$210 per square foot of above grade building area. The witness also indicated that the area around comparable sale #5 did not seem that built-up when he drove by this property.

The appraiser made no adjustments to the comparable sales for drive-through and indicated there was no value to the drive-through on the subject property. He was of the opinion that drive-throughs are not as important as they used to be.

With respect to REOs, Grogan was of the opinion these are arm's length transactions and not necessarily distressed. Grogan's sales #1, #3 and #4 were identified in the report as REOs. Grogan also believed sale #2 was at market and was not aware that it was a "short sale." Grogan testified he spoke with the seller for comparable #2 and indicated it was privately listed for sale but not actively marketed. He also testified he would not be surprised if the purchaser was a tenant. He further agreed that if a tenant did purchase the property the price might be lower. Grogan testified he has the CoStar sheet for this property and it does not show the transaction as being a short sale. Grogan also asserted there could have been an adjustment for location for comparable sale #3 located in Hampshire. Grogan agreed he made no adjustments to the comparables for drive-through, no adjustments for REOs, no adjustments for "short sales", and no adjustment for a restaurant use to a bank use.

Grogan explained that under a net lease the tenant pays for a majority of the operating expenses. He testified, however, the owner would still pay for some insurance. He also testified that the tenant does not necessarily pay for the management fee in a net lease.

Grogan testified the subject property was on the market for lease for a gross rent of \$15.00 per square foot in 2012. He also testified it was still on the market for \$15.00 per square foot on a gross basis. He also explained that a gross rent is typically higher than a net lease because under a gross lease the landlord is responsible for the operating expenses, therefore, the landlord would charge a higher rent to recover the operating expenses. With respect to the rentals, Grogan

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

testified he used some office rents as well as rents in bank facilities. His rental comparables #1, #3 and #5 were banks or former banks while comparables #2 and #5 are office leases.

The appraiser testified at the time he inspected the subject property in August 2012, the facility was vacant and had been vacant for two years. He also testified the building was vacant today, which indicated to him there is no demand for this size of bank property.

The appraiser also agreed that the age-life method of determining depreciation includes all forms of depreciation.

Based on this evidence the appellant requested the subject's assessment be reduced to reflect a market value of \$925,000, consistent with the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$432,979. The subject's assessment reflects a market value of \$1,298,288 or \$199.95 per square foot of building area, land included, when using the 2012 three-year average median level of assessment for Kane County of 33.35% as determined by the Illinois Department of Revenue.

Appearing before the Property Tax Appeal Board on behalf of the board of review were Michael E. Madziarek, member of the board of review, and Mike Bielak, Dundee Township Assessor. Bielak was called as a witness on behalf of the board of review.

In support of the assessment Bielak identified three bank sales and a land sale located across the street from the subject property that was subsequently improved with a new bank. Bielak was of the opinion that comparable sale #3 was most similar to the subject property. This comparable was improved with a one-story building with 4,335 square feet of building area constructed in 2006, which was used as a bank. The comparable had a 43,124-square foot site resulting in a land to building ratio of 9.94:1 and is located along Route 31 in Carpentersville. The property sold in August 2010 for a price of \$2,930,429 or \$675.99 per square foot of building area, including land. The township assessor testified this comparable is located approximately 3 miles from the subject property. He explained the comparable is located along State Route 31, a north-south corridor, that is inferior Randall Road. Bielak also testified the subject property is located at a corner location at a signalized intersection. The witness was of the opinion that a corner location has more value than an interior location and a signalized corner also has more value than a corner location with no signal. Bielak testified that comparable sale #3 did not have a signalized intersection and was not on a corner.

Bielak also testified that he considers bank branches as office properties rather than retail properties.

The data provided by the board of review disclosed that comparable sale #1 was improved with a 3,216-square foot building constructed in 2009 and was used as a bank. This property has a 30,928-square foot site and is located in Crystal Lake. This property sold in April 2011 for a price of \$2,675,700 or \$832.00 per square foot of building area, including land. The document provided by the board of review described the property as having a tenant and the conditions as "Investment Triple Net."



## 2017 SYNOPSIS – COMMERCIAL CHAPTER

The data provided by the board of review disclosed that comparable sale #2 was improved with a 4,800-square foot building constructed in 2008 and was used as a bank. The property has an 87,120-square foot site and is located in Crystal Lake. The property sold in January 2012 for a price of \$3,200,000 or \$666.67 per square foot of building area, including land. The document provided by the board of review described the property as having a tenant and the conditions as "Ground Lease (Leasehold), Investment Triple Net."

Comparable sale #4 was a land sale located across the street from the subject property with 60,250 square feet of land area that sold in May 2012 for a price of \$1,300,000 or \$21.58 per square foot of land area. This parcel was subsequently improved with a branch bank.

The township assessor testified the subject building is a high-quality, stand-alone bank building with a brick exterior, a high amount of fenestration on the property and several roof pitches and valleys. The witness agreed that construction costs on this type of property would be quite high. Bielak did not think this type of quality would generally be present in an office building. He also testified that in the marketplace basement area is considered inferior to 1<sup>st</sup> level space and 2<sup>nd</sup> floor space is typically inferior to 1<sup>st</sup> floor space.

The township assessor testified that the location of appellant's appraisal comparable sale #2 at 112 Tay River Drive, Carpentersville, Illinois, was in an inferior location within a residential subdivision. The witness explained this property does not even have frontage on a secondary arterial road. Bielak explained this property sits behind a retail center located on Huntley Road and cannot be seen because of the building in front of it.

With respect to appellant's appraisal comparable sale #6, Bielak testified he inspected this property prior to its sale and it was in fair to poor condition, with a musty odor and a bull-pen type atmosphere. He estimated this building was built in the 1960s and was far inferior to the subject property. The witness testified the quality of construction for this building was below average, a basic box. He indicated the comparable had little build-out inside while the subject property has high-finished floors and high fenestration. Bielak further testified the comparable was located in a TIF district, which is developed because of some economic decline and they are trying to bring new growth to the area. He indicated this comparable could be located in a depressed area while the subject property is located in a new, vibrant retail-type corridor.

Under cross-examination, Bielak testified in searching for comparable sales he looked for bank facilities using CoStar and would have seen the CoStar printouts on the comparables. Bielak agreed that sale #1 was approximately half the size of the subject property. He further noted that the condition noted on CoStar that this was an "investment triple net" and indicated it primarily sold for the lease intact. The comparable was located in Crystal Lake, McHenry County.

Bielak testified comparable sale #2 had 4,800 square feet of building area and the subject was bigger. The conditions on CoStar indicate it was a ground lease, leasehold, investment triple net. He explained a ground lease is basically a lease for the land from an owner to the tenant.

Bielak testified that he placed most weight on comparable sale #3 because it was closest in proximity to the subject property. He testified this comparable had 4,335 square feet of building

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

area and was smaller than the subject building. The witness testified that he had seen CoStar on this property. He was questioned about comments on CoStar saying this was part of a portfolio sale of 308 properties that sold for a total of \$3.172 billion. When shown the document, Bielak testified he did not recall seeing that comment. He indicated that if this property sold as part of a bulk transaction it would not have been an arm's length transaction. The witness did not recall who the buyer and seller of this property were.<sup>2</sup>

With respect to sale #4, Bielak testified he did not know anything about the seller or the purchaser. The witness did provide copies of the PTAX-203 Illinois Real Estate Transfer Declaration and the PTAX-203-A Illinois Real Estate Transfer Declaration Supplement Form A associated with this sale.

Bielak agreed that with respect to comparable sale #3, even though it sold for \$2,930,429, the property is assessed as having a market value of \$1,134,404.

The board of review requested the subject's assessment be sustained.

### **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 appropriate.

The appellant presented a narrative appraisal using the three traditional approaches to value as well as the supporting testimony of the appraiser, Thomas Grogan, who arrived at an estimated market value of \$925,000 as of the assessment date at issue. The board of review presented the testimony of the township assessor, Mike Bielak, who identified three improved sales and one land sale in support of the assessment. After reviewing the record and considering the testimony of the witnesses, the Board finds the best evidence of market value to be presented by the appellant.

The appraiser developed the cost approach to value using land sales and listings to arrive at an estimated land value of \$10.00 per square foot of land area. The appraiser also developed the replacement cost new of the building improvement, starting with an adjusted base cost of \$186.00 per square foot of building area. The appraiser added components for indirect costs and entrepreneurial profit and subsequently made deductions for various forms of depreciation. The appraiser arrived at an estimated value of \$925,000 under the cost approach to value. The board of review presented only one unadjusted land sale and did not present any calculations of the

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<sup>2</sup> At the hearing the township assessor was questioned about whether comparable sale #3 was the subject matter of an appeal before the Property Tax Appeal Board under Docket No. 11-01810. The Property Tax Appeal Board takes notice that the decision issued for Docket No. 11-01810 referenced three parcel numbers, 03-17-153-002, 03-17-153-008 and 03-17-153-009, which differ from the parcel number associated with comparable sale #3 which is 03-22-151-013.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

replacement cost new or the depreciation to be assigned to the subject improvement to refute the appellant's appraiser's cost approach to value.

The appellant's appraiser also developed the sales comparison approach to value using six sales of comparable properties to arrive at an estimated value under this method of \$140.00 per square foot of building area, or \$910,000. The Board recognizes that there were some issues with the comparable sales that Grogan selected in that comparable sale #2 was being used as a day care facility, comparable sale #4 was being used as a restaurant, and comparable #6 was an inferior office building. Nevertheless, Grogan attempted to make adjustments to the comparable sales he used to account for differences from the subject property. His estimated value of \$140.00 per square foot of building area was above all but one comparable sale on a square foot basis, which would seem to account for the differences in use, condition and quality of construction of the subject facility in relation to the comparables that he selected.

The board of review provided three unadjusted bank sales. Board of review comparable #1 sold for a price of \$832.00 per square foot of building area, which seems to represent more than the value of the real estate when considering Grogan's estimated replacement cost new of the building component for the subject property of \$186.00 per square foot. Additionally, the CoStar data sheet provided by the board of review disclosed this comparable sale was an "investment triple net", which Bielak indicated meant that this the property sold for the lease intact. Similarly, board of review sale #2 sold for \$666.67 per square foot of building area, including land, which again seems to represent more than the value of the real estate when considering Grogan's estimated replacement cost new of the building component for the subject property of \$186.00 per square foot. The CoStar data sheet for this property also indicated there was a ground lease and the property was an investment triple net, calling into question whether the purchase price was reflective of the value of the real estate. Board of review sale #3 sold for \$675.99 per square foot of building area, which seems to represent more than the value of the real estate when the replacement cost to build a new branch bank similar to the subject building was estimated to be \$186.00 per square foot of building area. Furthermore, there was an issue as to whether this property sold as part of a portfolio of 308 other properties, which calls into question the arm's length nature of the transaction and whether the allocated purchase price was reflective of the fair cash value of the real estate.

Considering the sales comparison approach to value developed by Grogan and the sales presented by the board of review, the Board gives more weight to Grogan's analysis.

Grogan also developed an income approach to value in which he arrived at a market value estimate of \$925,000. The appraiser began with an estimated market rent of \$13.00 per square foot of building area, on a net basis. The Board finds this estimate is well supported given the fact the subject building has been on the market for approximately 7 years with an asking rent of \$15.00 per square foot on a gross basis. Considering that the asking rent would need to be adjusted downward and the gross rent would likewise need to be adjusted downward to convert the rent to a net basis, Grogan's market rent estimate of \$13.00 per square foot of building area, net, is appropriate. The board of review presented no rental comparables to challenge Grogan's estimate of market rent. The Board further finds that Grogan's estimate of vacancy and collection loss, expenses and the capitalization rate were supported with data in the report. The

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

board of review did not present any data to challenge the vacancy and collection loss, expenses or the capitalization rate used by Grogan in the development of the income approach to value.

The Board further finds the fact the subject property has been vacant and available for lease since approximately 2010, and the property has been actively marketed since 2013 and has not yet sold, indicates the lack of demand for this type of property in the subject's area, further supporting the appellant's argument that the subject property is overvalued for assessment purposes.

In conclusion, the Property Tax Appeal Board finds the subject property had a market value of \$925,000 as of January 1, 2012. Since market value has been established the 2012 three-year average median level of assessments for Kane County of 33.35% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b><u>Terry Hansen</u></b>
<b>DOCKET NUMBER:</b>	<b><u>12-04382.001-C-1 thru 12-04382.004-C-1</u></b>
<b>DATE DECIDED:</b>	<b><u>May, 2017</u></b>
<b>COUNTY:</b>	<b><u>Jersey</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property consists of the Wolves' Crossing Golf Course, an eighteen-hole golf course, located in Jerseyville, Jersey Township, Jersey County. Parcel Number (PIN) 04-139-001-05 is designated as being for the clubhouse and maintenance sheds located on the golf course. The clubhouse is composed of a one-story building with 3,312 square feet of above grade building area. The building was constructed in 1993. The clubhouse has a full basement with an integral garage. The property record card provided by the board of review disclosed the two maintenance sheds have 4,860 square feet and 3,645 square feet of building area, respectively.

PINs 04-139-001-06 and 04-139-001-10 make up the Wolves' Crossing Golf Course and have 49 acres and 64.87 acres, respectively.

PIN 04-019-001-00 is an undeveloped tract of land that is part of the Wolves' Crossing Estates Subdivision. The tract has 25.27 acres.

The appellant argued the appeal was based on a contention of law founded on the opinion issued by the appellate court in Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, 953 N.E. 2d 1010, 352 Ill.Dec. 329. He argued that pursuant to this opinion, everything associated with the golf course should be assessed as open space pursuant to section 10-155 of the Property Tax Code (35 ILCS 200/10-155). The appellant's primary focus was with the assessment of the clubhouse located on PIN 04-139-001-05.

During the course of the hearing the supervisor of assessments testified that PIN 04-139-001-05 had a \$0 land assessment because only the building or improvements were being assessed. She testified that the \$53,610 improvement assessment on this PIN was for the clubhouse and that the land assessment was combined with the other parcels.<sup>1</sup> The aerial photograph of PIN 04-139-001-06 depict that the clubhouse and maintenance buildings are actually located on this parcel.<sup>2</sup>

Hansen testified that located in the clubhouse is a pay station to pay the green fees, an area to sit down or congregate, an area where accessories such as tees and golf balls are sold, two restrooms, a game room that measures approximately 8 feet by 12 feet or 14 feet, an office, and a back room used for functions associated with the golf course such as silent auctions. The back room is used from 5 to 15 times per year. There is also a storage area, formerly kitchen area, for beverages and accessories, such as paper cups, for use on the golf course. Hansen testified no meals are prepared in the kitchen. The appellant explained that hot dogs or bratwurst may be

<sup>1</sup> The board of review submitted a copy of the property record card for this parcel which included a sketch of the clubhouse with the various rooms being designated.

<sup>2</sup> The Property Tax Appeal Board makes no finding on the propriety of establishing a separate PIN to assess the building improvements rather than including the improvement assessment with the underlying PIN on which they are located.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

prepared on little machines in the bar area of the clubhouse. Hansen explained that he uses the office area for paperwork associated with the golf course. The appellant explained that the back room is used periodically when tables are set up during golf tournaments. Hansen further explained that in 2012 the area that is designated as a game room was an office; in the last year or two that area has been converted to a room for video gaming. The appellant testified that approximately one-half to two-thirds of the basement area is used to store golf carts, golf cart accessories such as tires and covers, and a power washer. The remaining portion of the basement is sectioned off and heated. The appellant indicated that the heated area in the basement may be used for parties and is currently used to store old golf course records. The appellant asserted that, other than the game room, the entire building is being used for golf related purposes.

The appellant indicated that the maintenance buildings located on PIN 04-139-001-05 house the equipment used to maintain the golf course or are used to provide a place to service the golf course equipment. The newer maintenance building also stores chemicals such as fertilizer and pesticides used on the golf course.

It was the appellant's position that the clubhouse as well as the maintenance buildings are used to facilitate the property being used as a golf course and should have a \$0 assessment as open space.

At the hearing the appellant presented no arguments with respect to the remaining parcels under appeal.

Under cross-examination, the appellant testified the only equipment in the kitchen was a hood and the room was not functional as a kitchen. The appellant testified the kitchen has a sink but that is used to wash golf balls. He also testified there is a washing machine in the basement that is used to wash golf balls. The appellant further testified that the so called "banquet room" (back room) is used predominately for golf related purposes.

The board of review submitted its "Board of Review Notes on Appeal" for each of the parcels under appeal. The submission from the board of review disclosed PIN 04-139-001-05 had a total assessment of \$53,610; PIN 04-139-001-06 had a total assessment of \$22,770; PIN 04-139-001-10 had a total assessment of \$30,140; and PIN 04-019-001-00 had a total assessment of \$15,490.

Called as a witness on behalf of the board of review was the Jersey County Supervisor of Assessments, Crystal Perry. With respect to PIN 04-139-001-05, Ms. Perry was of the opinion that 45% of the clubhouse should be considered open space. In accordance with a written statement submitted to the Property Tax Appeal Board by the previous supervisor of assessments dated August 16, 2014, Perry agreed that the clubhouse had an assessment of \$48,250 that should be lowered to \$40,000 due to condition and lowered another 45% due to its use for open space purposes, resulting in a revised assessment of \$22,000. The witness also agreed that the maintenance sheds had assessments of \$5,360 and \$4,305 that should be reduced to \$0 as they are used to maintain the golf course. In the written submission, the board of review indicated that the bar area, bathrooms, office, some of the storage and the integral garage were being used to maintain the golf course. The board of review was willing to stipulate to a revised improvement assessment on this parcel of \$22,000.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Both the appellant and the board of review were in agreement with the assessments of the remaining parcels under appeal, which are outlined as follows.

With respect to PIN 04-139-001-06 and PIN 04-139-001-10, the parcels that compose the golf course, the supervisor of assessments indicated that both parcels are receiving an open space assessment of \$465 per acre. The supervisor of assessments indicated the open space assessment for PIN 04-139-001-06 was \$22,770 and the open space assessment for PIN 04-139-001-10 was \$30,140.<sup>3</sup>

With respect to PIN 04-019-001-00, the supervisor of assessments testified that the board of review was willing to stipulate to a revised assessment of \$6,455 as a farmland assessment as some of this tract is farmed and the home was no longer on this parcel. The appellant did not disagree with or contest this proposed revised assessment.

### **Conclusion of Law**

The appellant's argument is based on a contention of law that the subject property, specifically the clubhouse, should receive the preferential open space assessment as provided by section 10-155 of the Property Tax Code (35 ILCS 200/10-155). Where a contention of law is made the standard of proof is the preponderance of the evidence. (See 5 ILCS 100/10-15).

The issue in this appeal deals with application of section 10-155 of the Code, the open space statute, to the clubhouse located on the subject golf course. Section 10-155 of the Code provides in part:

§10-155. Open space land; valuation. In all counties, in addition to valuation as otherwise permitted by law, land which is used for open space purposes and has been so used for the 3 years immediately preceding the year in which the assessment is made, upon application under Section 10-160, shall be valued on the basis of its fair cash value, estimated at the price it would bring at a fair, voluntary sale for use by the buyer for open space purposes.

Land is considered used for open space purposes if it is more than 10 acres in area and: . . .

(d) conserves landscaped areas, such as public or private golf courses. . .

Land is not considered used for open space purposes if it is used primarily for residential purposes.

If the land is improved with a water-retention dam that is operated primarily for commercial purposes, the water-retention dam is not considered to be used for

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<sup>3</sup> A copy of the property record card and the 2012 Parcel Information Report submitted by the board of review disclosed that PIN 04-139-001-06 had a full market value assessment of \$95,655 and an open space assessment of \$22,770. A copy of the property record card and the 2012 Parcel Information Report submitted by the board of review disclosed that PIN 04-139-001-10 had a full market value assessment of \$126,625 and an open space assessment of \$30,140.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

open space purposes despite the fact that any resulting man-made lake may be considered to be used for open space purposes under this Section. (35 ILCS 200/10-155).

Both appellant and the board of review agree that the clubhouse is entitled to be considered open space; they disagree on the percentage of the building that is entitled to the open space classification. The appellant contends the entire clubhouse should be considered open space while the board of review contends 45% of the building is entitled to the open space assessment. It is undisputed that the clubhouse is part of a public golf course, which is one of the enumerated uses that qualify for the open space designation as set forth in section 10-155(d) of the open space statute. (35 ILCS 200/10-155(d)).

In Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, 953 N.E.2d 1010, 352 Ill.Dec. 329, (hereinafter "Onwentsia I") the court broadly construed the word "conserve" in section 10-155(d) of the Property Tax Code to mean "to keep in a safe or sound state . . ." or "to preserve." 2011 IL App (2d) 100388 at ¶10, 953 N.E.2d at 1013. The court in construing section 10-155(d) of the Property Tax Code stated:

[T]he plain language of the statute indicates that the legislature intended to grant open-space status not only to land that actually constitutes a landscaped area, but also to land that facilitates the existence of (*i.e.*, conserves) a landscaped area. Id.

The court concluded that the fact that a particular piece of land has some improvement upon it - including in some cases a building - does not preclude the land from being deemed open space. Onwentsia I, 2011 IL App (2d) 100388 at ¶11, 953 N.E.2d at 1014. In construing the statute, the court determined that an improvement does not defeat the open space status unless the improvement is a commercial water-retention dam or a residential use. Onwentsia I, 2011 IL App (2d) 100388 at ¶14, 953 N.E.2d at 1014-1015. The court stated that, "the requirement that land *conserve* a landscaped area is broader and more inclusive than actually *being* a landscaped area." Onwentsia I, 2011 IL App (2d) 100388 at ¶14, 953 N.E.2d at 1015.

The court in Onwentsia I ultimately held "that land, even if it contains an improvement, may be granted open-space status if it conserves landscaped areas." 2011 IL App (2d) 100388 at ¶16, 953 N.E.2d at 1015. The court explained that "[a] golf course typically requires certain appurtenances in order to function, such as parking areas, a building in which to conduct the course business (*i.e.*, a clubhouse), and perhaps a building to support the physical maintenance of the course." Id. The court reasoned that "[s]ince they facilitate the existence of the golf course, and the course conserves landscaped areas, such improvements also can be said to conserve landscaped areas." Id.

The court explained that if an improvement contributes to the nature of the land as a landscaped area, it fits within the statutory definition of open space. The court stated that to the extent improved land facilitates a golf course being a golf course, it conserves a landscaped area. In vacating the decision of the Property Tax Appeal Board and remanding with directions, the court in Onwentsia I determined that the Property Tax Appeal Board had applied an incorrect standard and should have considered whether the land, improved or not (so long as not improved with a



## 2017 SYNOPSIS – COMMERCIAL CHAPTER

residence or commercial water-retention dam), conserves a landscaped area (that is, facilitates the existence of such an area). 2011 IL App (2d) 100388 at ¶18, 953 N.E.2d at 1016.

In Lake County Board of Review v. Property Tax Appeal Board, 2013 IL App (2d) 120429, 989 N.E.2d 745, 371 Ill.Dec. 155, (hereinafter "Onwentsia II") the court again vacated the decision of the Property Tax Appeal Board and remanded the matter with directions. In Onwentsia II the court held the Property Tax Appeal Board's application of the relevant portion of section 10-155 of the Code was overbroad. In construing section 10-155(d) of the Code in Onwentsia II the court stated:

Nothing in the statute indicates that the legislature intended to create an enormous tax shelter whereby any parcel of property associated in some way with a golf course would escape taxation. Moreover, it is axiomatic that we are to construe tax exemptions "narrowly and strictly in favor of taxation" (citation omitted) and the burden to prove a tax exemption lies with the taxpayer (citation omitted). **Accordingly, we hold that "conserve" as it is used in section 10-155 of the Code (citation omitted) must be construed narrowly, and in turn, there must be some substantial nexus between the land for which the exemption is claimed and the landscaped area it is claimed to conserve. That is to say, the improvement in question must directly relate to and thus facilitate the existence of the golf course.** Onwentsia II, 2013 IL App 2d 120429 ¶10 (Emphasis added).

The burden in this appeal was on the appellant to prove the improvements in question, the clubhouse, directly related to and facilitated the existence of the golf course. The testimony provided by the appellant demonstrated that the primary use of the clubhouse related directly to the operation of the golf course. The clubhouse was used to collect green fees; to sell golf accessories such as tees and balls; provided a location for golfers to purchase refreshments; provided restroom facilities for golfers; provided office space to conduct the golf course business activities; provided an area for golfers to congregate before or after golfing; and had a basement to store equipment, such as golf carts, and business records. The testimony provided by the appellant was not refuted by the board of review. The Board finds the testimony provided by the appellant demonstrated there was a substantial nexus between the clubhouse and the golf course. The Board finds the predominate overall use of the clubhouse in 2012 directly relates to the existence of the golf course. The Board finds there was testimony that the clubhouse currently has a room for video gaming; however, the appellant testified this use was not present in 2012 and the room was used for office space at that time. Additionally, the room used for gaming encompasses minimal space in relation to the entire building area. Based on this record the Property Tax Appeal Board finds the entire clubhouse is entitled to an open space designation and assessment in 2012.

The Property Tax Appeal Board further finds the parties were in agreement that the maintenance buildings that were assessed to PIN 04-139-001-05 pertained to conserving the golf course and were entitled to the open space designation. This agreement is supported by the appellant's testimony that the buildings housed golf course tools and equipment, were used to repair the golf course equipment and stored chemicals and fertilizers that were used to preserve the golf course grounds.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

Based on this record, the Property Tax Appeal Board finds PIN 04-139-001-05, assessed as being improved with the clubhouse and maintenance buildings, is entitled to an open space assessment. As held by the court in Consumers IL Water Co. v. Property Tax Appeal Board, 363 Ill.App.3d 646, 844 N.E.2d 71, 300 Ill.Dec. 399 (4<sup>th</sup> Dist. 2006), "section 10-155 of the Code (35 ILCS 200/10-155) provides a single assessment value, and thus improvements do not have their own assessment value." Consumers IL Water Co., 363 Ill.App.3d at 652, 844 N.E.2d at 75, 300 Ill.Dec. at 403. Therefore, the Board finds PIN 04-139-001-05 is entitled to an open space assessment and there should be no improvement assessment associated with the clubhouse and the maintenance buildings.<sup>4</sup>

As noted, the parties were in agreement with respect to the assessments of the remaining PINs under appeal.

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<sup>4</sup> The Property Tax Appeal Board finds that the underlying PIN on which the clubhouse and maintenance buildings area located, PIN 04-139-001-06, is receiving an open space designation and an open space assessment.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b>Donald Hawkins</b>
<b>DOCKET NUMBER:</b>	<b>15-03525.001-C-1</b>
<b>DATE DECIDED:</b>	<b>October, 2017</b>
<b>COUNTY:</b>	<b>DeKalb</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property is improved with a one-story commercial building with a steel clad or aluminum exterior containing a total building area of 7,650 square feet. The building was constructed in 1995. The property is described as having 2,000 square feet of office space and 5,650 square feet of warehouse space. The property is described as having a 7,650-square foot site and is located in DeKalb, DeKalb Township, Dekalb County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted information on five comparable sales described as being improved with one-story buildings of pre-cast concrete, aluminum steel clad or aluminum clad construction that ranged in size from 5,230 to 17,692 square feet of building area. The appellant indicated that comparables #1 through #3 were constructed from 2002 to 2007. The appellant did not report the ages of comparables #4 and #5. The appellant indicated that comparables #1, #3 and #4 had been divided into separate units. The comparables had sites ranging in size from 5,329 to 105,851 square feet of land area resulting in land to building ratios ranging from 1.0:1 to 6.6:1. Comparables #1, #2, #3 and #5 were located in Sycamore while comparable #4 was located in DeKalb. The comparables were reported to have sold from October 2012 to May 2015 for prices ranging from \$200,000 to \$820,000 or from \$34.32 to \$46.35 per square foot of building area, including land. The appellant requested the subject's assessment be reduced to \$81,591, which would reflect a market value of approximately \$244,797 or \$32.00 per square foot of building area, including land, when applying the statutory level of assessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$115,317. The subject's assessment reflects a market value of \$345,986 or \$45.23 per square foot of building area, land included, when using the 2015 three-year average median level of assessment for DeKalb County of 33.33% as determined by the Illinois Department of Revenue.

In response, the board of review asserted it was not considering appellant's comparable #1 as it had a non-existent parcel number. It also contends that appellant's comparable #2 sold at over \$107 per square foot and is much smaller than the subject property. The board of review also stated appellant's comparable #4 is located in an older more industrial neighborhood and is of a lesser quality than the subject property. The board of review asserted it was considering appellant's comparables #3 and #5, with 15,922 and 14,398 square feet of warehouse space, respectively. These two properties sold in April 2015 and June 2014 for prices of \$820,000 and \$730,000 or \$46.35 and \$45.63 per square foot of building area, respectively. In its narrative the board of review indicated the average selling price was \$48.15 per square foot of building area which would yield a market value of \$368,347 and an assessment of \$122,782. However, the average selling price for comparables #3 and #5 is actually \$45.99 per square foot of building area.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

In rebuttal, the appellant stated he identified the correct address for comparable #1 but listed the incorrect parcel number. The appellant provided a copy of the PTAX-203 Illinois Real Estate Transfer Declaration associated with comparable #1 documenting the price of \$200,000. The appellant also conceded that comparable #2 is much smaller than the subject property and withdrew this property from consideration. The appellant further asserted that his comparable sale #3 is a multi-tenant property that is five years newer than the subject building. With respect to comparable sale #4, the appellant indicated this property is located approximately ½ mile west of the subject property and is a two-minute drive from the subject property. The appellant also noted that comparable sale #5 was a newer, built in 2007, and is a pre-cast concrete superior constructed building. In the rebuttal, the appellant made purported adjustments to the comparables for differences from the subject property.

In rebuttal, the appellant also noted the DeKalb County Board of Review submitted no actual market data. The appellant asserted that he would accept a revised assessment of \$84,728 reflecting a market value of \$254,209 or \$33.23 per square foot of building area.

The board of review responded that the adjustments made by the appellant were not consistent, noted the appellant does not appear to be an appraiser and questioned how he came up with the percentage adjustments. The board of review indicated it was willing to stipulate to a revised assessment of \$103,908.

The appellant responded and rejected the proposed assessment and reiterated his willingness to accept an assessment of \$84,728.

The board of review responded that it would stipulate to a revised assessment of \$107,355 based on appellant's comparable sale #3, which it asserts is the most comparable valid sale.

### **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 record contains information on five comparables sales submitted by the appellant to support the overvaluation complaint. The Board finds no weight is to be given comparable sale #2 as the record indicated this building was actually much smaller than the subject building and the appellant requested this comparable be withdrawn from consideration. The four remaining comparables ranged in size from 5,230 to 17,962 square feet of building area. Comparable #1 was most similar to the subject property in size but was superior to the subject in age, being constructed in 2007, has two units and was superior in exterior pre-cast concrete construction; these factors would require downward adjustments. This comparable sold for a price of \$200,000 or \$38.24 per square foot of building area. The three remaining comparables were significantly larger than the subject property, which would require adjustments for size.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Comparable #3 was newer than the subject property and was reported to have 5 separate units, which would require downward adjustments. Comparable #4 was similar to the subject in exterior construction but is divided into four units each with a separate entrance, separate utilities and separate overhead doors, which would require downward adjustments. Comparable #5 was of superior exterior pre-cast concrete construction, which would require a downward adjustment. These three comparables sold for prices ranging from \$550,000 to \$820,000 or from \$34.38 to \$46.35 per square foot of building area, including land. The subject's assessment reflects a market value of \$345,986 or \$45.23 per square foot of living area, including land, which is within the range established by the best comparable sales in this record, but is significantly above that established by the comparable sale most similar to the subject in size. The board of review did not submit any market data to refute appellant's argument. After considering the sales provided by the appellant and the various adjustments that would need to be made to the comparables for differences from the subject property, the Board finds a reduction in the subject's assessment is justified.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<b><u>Klairmont Investments LLC</u></b>
<b>DOCKET NUMBER:</b>	<b><u>11-21781.001-C-2 thru 11-21781.002-C-2</u></b>
<b>DATE DECIDED:</b>	<b><u>March, 2017</u></b>
<b>COUNTY:</b>	<b><u>Cook</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property consists of two parcels of land totaling 28,500 square feet and improved with an approximately 36-year old, two-story, masonry, commercial building. The property is located in Maine Township, Cook County and is a class 5 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted copies of: a purchase agreement with exhibits; an escrow trust disbursement statement; a leasing brochure for the subject; a 2010 income statement; and two rent rolls. These documents disclose the sale of the subject in March 2011 for \$725,000. The appellant also included color photographs of the subject. The appellant requests an assessment based on 25% of the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$309,400. The subject's assessment reflects a market value of \$1,237,600 using the Cook County Real Estate Classification Ordinance level of assessment for class 5 property of 25%.

In support of the assessment the board of review submitted six sales comparables.

The intervenors submitted a brief and eight sales comparables to support the current assessment.

At hearing, the appellant called Mr. Daniel Hyman. Mr. Hyman testified he has been employed in the real estate field for 38 years mainly as a real estate broker. He testified he has had his own company, Millennium Properties, for 20 years and that the duties of this company include brokerage, management, receivership, auctions, and consulting.

Mr. Hyman testified that he is familiar with the subject property in that he was the receiver for the property when it was under foreclosure. He stated that he was appointed as receiver by the courts in April 2009. Mr. Hyman described his duties as receiver and opined his duties were not to over-improve the property, but to maintain the asset. He testified that three bank lenders were involved in the foreclosure: American Chartered Bank, MB Financial, and U.S. Bank. Mr. Hyman then described the ownership of the property prior to the foreclosure.

Mr. Hyman described the subject property as a 1970's era, atrium-style building with parking underneath the building, on ground level. He opined that heating and cooling the building were difficult due to the atrium and that there was insufficient parking under the building. Mr. Hyman also testified that the slit windows only allowed for a tiny amount of outside exposure. He testified that the property has one elevator in the corner. He described the distance of the subject to downtown Des Plaines. Mr. Hyman opined the subject was a C quality building. Mr. Hyman

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

briefly described the rent roll and the tenancy of the building and how the receiver handled maintaining the building.

Mr. Hyman testified that his receivership ended in the last quarter of 2010 when the property was foreclosed on and ownership reverted to the lenders. He testified that the lenders then retained his firm to manage the property and sell it. Mr. Hyman testified that the subject was listed for sale on the open market sometime in 2010. Later in the hearing, Mr. Hyman recollected that the property was listed in September 2009. He testified that the subject had premarketing prior to its listing, but he could not remember the exact date the subject was listed. Mr. Hyman described what premarketing included. He testified that the subject was listed on the market for approximately one and one-half years.

As to the efforts to sell the subject, Mr. Hyman testified that he performed his usual activities of posting the property on all real estate marketing websites, preparing a brochure, sending emails to investors and brokers, and making the property available for showings. He testified he advertises properties in the Wall Street Journal and Crain's. He testified that he and Susan Silver are the full-time employees that worked on this property, but that all the employees knew of the subject's listing and would offer it to their clients. Mr. Hyman testified that there was limited interest in the subject property with less than 10 people asking additional questions regarding the property. He testified that only Imperial Realty expressed a written interest in purchasing the property.

In describing Imperial Realty, Mr. Hyman testified that Al Klairmont acted on behalf of Imperial Realty and made the offer. He estimated that Mr. Klairmont made the offer in the fall of 2010. Mr. Hyman opined that Mr. Klairmont would be a good purchaser for the subject because Mr. Klairmont tends to purchase unusual types of properties that need work. He testified he provided more material to Mr. Klairmont and showed him the property. Mr. Hyman testified that the original offer was not the price at which the property sold, but that the lenders countered. He further testified that there were protracted negotiations and that the final sale price was \$725,000. Mr. Hyman testified that he was never given a deadline by the lenders as to when the property needed to be sold and he was never pressured by the lender to sell the property.

On cross-examination by the board of review, Mr. Hyman denied that he stated the subject was a distressed property, but acknowledged that it was in foreclosure. He acknowledged that as the receiver he submitted reports on the property to the court.

As to the subject's previous owner, Mr. Hyman testified that Mr. Montesano may have purchased the property in 2005 for approximately \$3,500,000. He further testified that he believed Mr. Montesano was running a "scam" and would buy properties at outrageous prices, get a master lease back from the seller, and then forgive the master lease at closing. He testified that Mr. Montesano would then get purchasing credits at closing for work he indicated would be done on the property. He opined that the purchase price was never the true market value. Mr. Hyman acknowledged he was the broker on four purchases with Mr. Montesano, but testified he was not involved in this "scam". He testified that he did not think the process was the right way to do things, but the banks were allowing Mr. Montesano to do this.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Mr. Hyman opined that it is not more difficult to lease a building in receivership. He testified that, as the receiver, he can sign leases and would have funding to do any needed work. He stated that when a property is in foreclosure with no receiver, there are no services being provided while a receiver is maintaining the building. He acknowledged he receives a fee to be the receiver. He also testified that he was being paid to testify at the hearing.

Mr. Hyman testified that he renewed several tenant leases as the receiver. He could not state the amount of commissions that his company received due to entering into leases for the subject. He testified that the information would be contained in the report to the courts, but that he did not have that report with him.

Mr. Hyman testified that his company produced the leasing brochure. He reaffirmed that the subject has limited parking, slit windows, little visibility, and a single elevator. When reviewing the brochure and its description of the subject, Mr. Hyman testified that he was puffing in describing the subject. He testified he promotes the property in the best possible light to try to get the best results, but that he is not going to lie.

In response to questions about the receivership, Mr. Hyman testified that he does not recall the length of time he was the receiver, but that he was involved with the property from his appointment as the receiver until the property sold in March 2011. He testified that his company's standard operating procedure is to advertise a property on the websites. He again reiterated that there was only one interested party. He testified that the bank made a counter offer to Mr. Klairmont based on the desire to increase the sale price. Mr. Hyman testified he was not provided any documents that valued the subject property. He acknowledged that he received a commission of 5% of the sale price when the subject sold.

On redirect, Mr. Hyman clarified that his tenure as the receiver ended when the sheriff's sale was approved by the court and that he immediately became the manager of the property so that there was a seamless transition.

The appellant then called its second witness, Alfred Klairmont. Mr. Klairmont testified he is a real estate owner, developer, and manager. He testified he owns Imperial Realty Company which owns, manages, and leases commercial and industrial properties. He testified that Imperial Realty manages 105 properties with almost all located within the Chicago area, but that ownership of about 100 of those properties is spread out between five or six different corporations that he owns. Mr. Klairmont estimated that his companies have been involved with buying and selling 150 properties. He testified he is not involved in the sale or purchase of properties for companies he does not own.

Subsequently, Mr. Klairmont was asked additional questions in regard to his qualifications. He testified that has been a licensed real estate broker since 1977. He testified that he has been involved in approximately 24 sales that do not involve his own properties. He opined that the market affects what buildings are bought and sold. Mr. Klairmont was denied qualification as an expert in real estate valuation.

Mr. Klairmont described the properties that his companies tend to purchase as upside potential value properties. He testified that these are properties that have problems with vacancy, inferior



## 2017 SYNOPSIS – COMMERCIAL CHAPTER

management, bad luck, or it's wavering and needs new ownership. He opined that buying a distressed property allows for a buy low/sell high mentality. He testified that he defines a distressed property in this context to refer to the property and not the seller. He stated that a property can be distressed and the seller not be distressed.

Mr. Klairmont testified he became familiar with the subject property when Dan Hyman with Millennium Properties contacted him to inform him that the property was for sale. He testified that he has been contacted previously by Mr. Hyman on other properties that were for sale. He testified he receives approximately 300 to 400 phone calls on properties each year. He testified that the pertinent information that he looks for is a photograph of the subject, a rent roll, and a sale price. Mr. Klairmont believed that Mr. Hyman's company was the court appointed receiver and familiar with the management of the property. He testified that he inspected the property and at first did not want to purchase the property based on its location, windows, parking, and insufficient designs.

Mr. Klairmont testified that the market conditions in 2005 were different than in 2010 and that the market had bottomed out in 2010. He testified it was easier to get financing in 2005 than in 2010 even for a property that was non-income producing in 2005.

Mr. Klairmont testified that he became more interested in the building when the broker kept contacting him and then lowered the price of the property. He testified that the lower price did "not ring his bell," but that they came back again with a price that made him "lukewarm" to the property. He testified the negotiation process lasted five or six months. Mr. Klairmont could not remember if the \$725,000 sale price was offered by him or by the sellers. He testified the final purchase price was based on the economics of how much the price was, how much money needed to be invested into the building, and what might the building be worth at a future time if all goes as planned.

When asked why he would not pay more than \$725,000, Mr. Klairmont detailed the items that would need to be repaired, replaced or renovated once he purchased the property. He testified that he was not under any obligation to purchase the property. Mr. Klairmont briefly testified as to the actual vacancy of the subject in 2011.

On cross-examination, Mr. Klairmont acknowledged that he has worked with Mr. Hyman previously and has done approximately six deals with him. He testified that in two other instances Mr. Hyman was the receiver at the time of purchase. He testified that he believes Mr. Hyman knows that he likes upside potential value-added buildings. He clarified that Mr. Hyman has only offered him properties that were listed on the open market. He did not remember if or when he received any physical marketing materials on this property.

Mr. Klairmont testified that he did not have the property appraised for the purchase and that he was not aware of any appraisals on the property. He testified that properties can close quickly when there is a reputable buyer. He acknowledged this was a cash purchase.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

### **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).

In determining the fair market value of the subject property, the Board examined the parties' evidence and the witnesses' testimony.

The Board finds the board of review's and the intervenors' witnesses were not present or called to testify about their qualifications, identify their work, testify about the contents of the evidence and the conclusions, or be cross-examined by the appellant and the Property Tax Appeal Board. Without the ability to observe the demeanor of these individuals during the course of testimony, the Property Tax Appeal Board gives this evidence from the board of review and the intervenors no weight.

The Board finds the best evidence of market value to be the purchase of the subject property in March 2011 for a price of \$725,000. The appellant provided evidence demonstrating the sale met the elements of an arm's length transaction. The witnesses testified that the property was listed on the open market, that there was not much interest in the property by anyone other than the appellant, and that there were protracted negotiations to arrive at the purchase price of \$725,000.

The board of review argued that Mr. Hyman is not credible because he made money off the receivership and sale of the property, was paid to testify, and puffed up the property by advertising the subject in its best light while conversely testifying about the problems with the property. The Board give these arguments little weight and finds Mr. Hyman's testimony regarding the sale of the subject credible and consistent with Mr. Klairmont's testimony. Although both witnesses had trouble recalling dates and times of specific details involving the sale, the sale occurred six and one-half years prior to their testimony. Both witnesses' testimony regarding the elements of fair cash value were consistent and supported the arm's length nature of the sale. The Board finds the purchase price was below the market value reflected by the assessment.

Based on this record, the Board finds the subject property had a market value of \$725,000 as of January 1, 2011. Since market value has been determined the Cook County Real Property Assessment Classification Ordinance for class 5 property of 25% shall apply.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

<b>APPELLANT:</b>	<u>Nordstrom, Inc.</u>
<b>DOCKET NUMBER:</b>	<u>10-33290.001-C-3</u>
<b>DATE DECIDED:</b>	<u>May, 2017</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of an 82,098-square foot pad site improved with a three-story, single-tenant, anchor department store of masonry construction with 202,330 square feet of building area, which was constructed in 1995 and remodeled in 2009. The subject is located in Woodfield Mall, which is a super-regional shopping mall in Schaumburg, Schaumburg Township, Cook County.

At the commencement of the hearing, the Board found that the 2010, 2011, and 2012 appeals involve common issues of law and fact and that a consolidation of these appeals for hearing purposes would not prejudice the rights of the parties. Therefore, pursuant to Section 1910.78 of the Rules of the Property Tax Appeal Board, the Board consolidated docket numbers 10-33290.001-C-3, 11-30413.001-C-3, and 12-34159.001-C-3 solely for hearing purposes, while noting that distinct decisions would be rendered for each appeal year. 86 Ill.Admin.Code § 1910.78.

### **THE APPELLANT’S APPRAISAL AND TESTIMONY OF JOHN C. MUNDIE, M.A.I.**

As to the basis of this appeal, the appellant argued that the fair market value of the subject is not accurately reflected in its assessed value.

In support of the overvaluation argument, the appellant's pleadings included a copy of a summary report of a complete appraisal undertaken by appraisers, John C. Mundie, M.A.I. (“Mr. Mundie”) and Aaron M. Mundie (“Aaron”), both of Mundie & Company, Inc. (the “Mundie Appraisal”). The appellant began its case-in-chief by calling Mr. Mundie as an expert witness. Mr. Mundie testified that he is the owner of Mundie & Company, Inc., is an Illinois certified general real estate appraiser, and holds the M.A.I. designation from the Appraisal Institute. He further testified that he has been an appraiser for over 40 years, and has appraised more than 50 properties that are single-tenant anchor department stores. He stated he has previously been qualified as an expert in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. After *voir dire* of Mr. Mundie, counsel for the appellant offered Mr. Mundie as an expert in real estate valuation. The Board accepted Mr. Mundie as an expert in real estate valuation without objection from the board of review or the intervenors; however, the board of review reserved the right to question Mr. Mundie regarding his qualifications during cross-examination.

The Mundie Appraisal was identified for the record as Appellant’s Exhibit #1. The Mundie Appraisal addressed all three of the traditional approaches to value, while opining an estimated market value of \$11,100,000 as of the effective date of January 1, 2010.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

Mr. Mundie testified that he inspected the interior and exterior of the subject on February 12, 2011. Mr. Mundie described the subject property and its environs, including that the subject's site contained 82,098 square feet with a land-to-building ratio of 0.41 to 1, and an actual age of 15 years. Furthermore, the subject property is improved with a three-story, masonry, commercial, retail building with 202,330 square feet of building area. The structure is an owner-occupied, single-tenant, anchor department store attached to a super-regional shopping mall, and is zoned B5. The appraiser testified that the subject is directly adjacent to a two-level parking deck, but that he did not believe the parking deck was part of the pad site. Mr. Mundie stated that the purpose of the report was to estimate the "as-is" fee simple market value for the subject as of January 1, 2010, and that the intended use was for *ad valorem* real estate tax assessment purposes.

### Highest and Best Use

Mr. Mundie testified that the real estate market, as of January 1, 2010, had just experienced a severe downturn that was probably the worst downturn since the Great Depression. Thus, Mr. Mundie concluded that the subject's highest and best use as vacant would be to hold the property for future development. Mr. Mundie also concluded that the subject's highest and best use as improved was continued use as an anchor department store facility.

### The Cost Approach

The initial step under the cost approach was to estimate the value of the land. In doing so, Mr. Mundie stated that he used an assumed land-to-building ratio of 3.0 to 1.0 because there are cross-easements and adequate parking for the subject property. The appraiser testified that a land-to-building ratio of 3.0 to 1.0 is fairly consistent in the marketplace and would be required by anchor department store occupants. Mr. Mundie testified he considered four land sales of commercial properties that had similar highest and best uses. These properties sold from September 2009 to September 2010 for prices ranging from \$7.29 to \$21.22 per square foot. After making pertinent adjustments, Mr. Mundie stabilized the subject's land value at \$11.00 per square foot, or \$6,675,000, rounded.

Using the Marshall Valuation Service for a type "A/B-Average" anchor department store, the appraiser estimated the reproduction cost new to be \$22,310,977. In establishing a rate of depreciation, Mr. Mundie testified that he analyzed four sales of properties included in the sales comparison approach. This analysis indicated an annual rate of depreciation between 2.77% and 4.52%. Mr. Mundie testified that based on this analysis, he estimated the subject property's average annual rate of depreciation to be 3.75%, which is a total depreciation of 55.0% based on the subject's actual age of 15 years. The appraiser also found an additional 20.0% depreciation due to external obsolescence, for total depreciation from all causes of 75.0%. Thus, the depreciated value of the improvements was estimated to be \$5,577,744. Adding the land value resulted in a final value estimate under the cost approach of \$12,250,000, rounded.

### The Income Approach

Under the income approach, Mr. Mundie testified he reviewed the leases of four rental comparables of anchor department stores in regional or super-regional malls to determine the

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

market rent for the subject, and that these comparables all have a similar highest and best use to that of the subject. These rental comparables ranged in size from 80,535 to 179,860 square feet, and have lease rates of \$3.92 to \$6.00 per square foot of building area. Mr. Mundie described the rental comparables, and testified that he had previously appraised all four of them.

In his testimony, the appellant's appraiser explained that rents for anchor department stores are always based on a percentage of retail sales. Based on the rental comparables and information from the Dollars and Cents of Shopping Centers: 2008, Mr. Mundie estimated the subject would have a percentage rent of 2.25% of retail sales. This estimate is greater than the 2.00% median rate of percentage rent for national department stores found in the Dollars and Cents of Shopping Centers: 2008 study.

Mr. Mundie next analyzed the subject's retail sales, as well as the retail sales of the other four single-tenant anchor department stores in Woodfield Mall. According to Mr. Mundie, the subject's gross sales per square foot increased every year between 2002 and 2007, going from \$286.86 to \$361.14 in sales per square foot. However, the subject's retail sales rate declined in 2008 to \$317.78, and declined again in 2009 to \$313.45. He stated that, while the subject's retail sales have historically been higher, Nordstrom's "is somewhat unique in terms of their marketing and so forth," and this factor caused him to stabilize the sales rate at the lower rate of \$250.00 per square foot. This sales rate was still above the sales rates of the other four anchor department stores at Woodfield Mall, which ranged from \$80.00 to \$175.00 per square foot in 2009. Mr. Mundie also checked his analysis against Dollars and Cents of Shopping Centers: 2008, which showed that, for 63 owned national chain department stores, the median retail sales rate was \$162.91 per square foot. Thus, the subject's annual gross sales projection was calculated to be \$50,500,000, rounded.

Mr. Mundie then applied the subject's annual gross sales projection to the percentage rent figure to arrive at a net annual income for the subject of \$1,136,250, or \$5.60 per square foot of building area. Vacancy and collection losses were estimated to be 3.0%, reserves for replacement were estimated to be 2.5%, and management fees were estimated to be \$0.10 per square foot. Therefore, the stabilized net annual income was estimated at \$1,054,275.

Mr. Mundie then utilized the "band of investment" technique and the "direct" method to determine the subject's capitalization rate. For the "band of investment" technique, Mr. Mundie assumed a 70.0% loan to value ratio, a 7.0% interest rate, a 20-year amortization period, and an equity dividend of 10.0% to arrive at a capitalization rate of 9.5%, rounded. For the "direct" method, Mr. Mundie estimated the net rental incomes for three of the comparable sales found in the sales comparison approach, and used the actual net rental income for Sale Comparable #1. The estimated/actual net rental incomes of these comparables were then divided by the purchase prices to establish a range of capitalization rates from 7.8% to 11.0%. The appraiser stated that he gave more weight to the "direct" method because it included more factual information regarding the anchor department store market, and, thus, he stabilized the subject's capitalization rate at 9.5%. Capitalizing the stabilized net annual income of \$1,054,375 by the capitalization rate of 9.5%, Mr. Mundie arrived at a total value for the subject under the income approach to value of \$11,100,000, rounded.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

### The Sales Comparison Approach

Mr. Mundie next testified that he used four comparable sales of properties that had a similar highest and best use as the subject. Three of the comparables were located in the Chicago Metropolitan area, and one was located in Springfield, Illinois. Mr. Mundie described each of the four comparables. The properties range in building size from 147,896 to 245,720 square feet, and sold from July 2001 to April 2006 for prices ranging from \$4,200,000 to \$9,000,000, or from \$28.40 to \$43.69 per square foot of building area, including land. The properties ranged in age from 21 to 35 years and in land to building ratio from 2.88:1 to 3.23:1. Mr. Mundie stated that all of the comparables are single-tenant anchor department stores, and that three are attached to super-regional malls, while the fourth is attached to a regional mall. Additionally, three of the sale comparables are former locations of Montgomery Ward stores.

Mr. Mundie also testified regarding the details of these transactions. The purchaser of Comparable Sale #1 was the owner of the mall, and it was the sale of a leased-fee estate. Sale Comparables #2 and #3 were both the subsequent sale of the properties after being sold out of the bankruptcy of the prior owner, Montgomery Ward. Sale Comparable #4 was the initial sale of the property following the bankruptcy of the seller, Montgomery Ward. Mr. Mundie stated that, even though this sale was the initial sale out of bankruptcy, he considered it to be an arm's-length transaction because it was acquired through an auction with an open bidding process, in which four or five other potential buyers were vying for the property. Mr. Mundie stated that he obtained the details of this sale after speaking with someone on the "ownership-purchaser side," but that he could not remember this individual's name.

Mr. Mundie also testified that he made certain adjustments to these comparables for date of sale, market appeal/location, age/condition, and number of floors. The appraiser testified that he also made a downward adjustment to Sale Comparable #1 for "investment sale" to account for the transaction being the sale of a leased-fee estate. Additionally, the comparables' sale conditions, zoning, building size, and land to building ratios were considered, but the appraiser concluded that no adjustments were warranted for these factors. The witness testified that, overall, he made no adjustment to Sale Comparable #1, and adjusted the remaining sale comparables upward. After applying these adjustments, Mr. Mundie concluded that the subject's market value under the sales comparison approach to value was \$55.00 per square foot of building area, or \$11,125,000, rounded.

### Reconciliation and Final Estimate of Value

In reconciling the three approaches to value used, Mr. Mundie testified that he gave minimal consideration to the cost approach, and considerable and equal weight to the income and sales comparison approaches. After reconciling the three approaches to value, Mr. Mundie concluded that the subject's market value as of January 1, 2010 was \$11,100,000. Finally, the witness testified that his opinion of value would not differ if the effective date was January 1, 2011 or January 1, 2012.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

### Cross-Examination

Under cross-examination by the county, Mr. Mundie stated that Aaron Mundie is his son, and that at the time the report was prepared, Aaron did not hold the M.A.I. designation from the Appraisal Institute. Mr. Mundie further stated that he and Aaron prepared the report together, but that he had final say in approving its contents.

Mr. Mundie next testified that, prior to completing this appraisal, he had previously appraised the subject property in the past. The assistant state's attorney ("ASA") then tendered a copy of the Uniform Standards of Professional Appraisal Practice, 2010-2011 Edition ("USPAP"), which was marked as Board of Review Exhibit #3, and proceeded to question the witness regarding his compliance with various USPAP provisions. The ASA specifically referenced lines 231 through 236 of page U-8 of the USPAP, which requires the report to disclose whether the appraiser had appraised the property within the previous three years. Mr. Mundie stated that it was his understanding, based on his attendance at courses discussing USPAP, that this ethics rule only applies if the current client is different than the previous client; and that, based on this interpretation of the rule, he did not believe he was required, under USPAP, to make such a disclosure in the report. Mr. Mundie also stated that, while he relied on those previous appraisals in preparing this report, he did not have them in the file that he brought to the hearing. Mr. Mundie stated that USPAP requires appraisers to keep their files for seven years.

Mr. Mundie stated that he and Aaron inspected the subject property, and took photographs of the exterior, which were included in the report; but that no photographs of the interior were taken. Mr. Mundie further testified that he did not pull the permits for the remodel of the subject in 2009, that the appellant did not provide him with the cost of this remodel, and that, in any case, the cost of the remodel was not important in his analysis.

The witness also testified that he has appraised two other Nordstrom properties in the Chicago Metropolitan area on several occasions, and that, while he couldn't recall the exact number, he has appraised Nordstrom properties approximately nine times.

Mr. Mundie stated that three of the sale comparables were former Montgomery Ward stores, and that Montgomery Ward had gone through bankruptcy proceedings. The ASA then tendered a copy of In re Montgomery Ward, LLC, et al, 634 F.3d 732 (3d Cir. 2011), and requested that the Board take judicial notice of this federal appellate court decision. Over objection from the appellant, the Board took judicial notice of this decision, but only for the limited purpose of establishing the date of Montgomery Ward's bankruptcy. The copy of the decision was marked as Board of Review's Exhibit #1. In the recitation of facts, the court in Montgomery Ward stated that Montgomery Ward filed for Chapter 11 bankruptcy twice: once in 1997 and once in 2001. Id. at 735. Mr. Mundie continued his testimony by stating that the bankruptcy proceedings required Montgomery Ward to liquidate its assets. He also reiterated his previous testimony made during direct examination regarding the conditions of the transactions for Sale Comparables #2, #3, and #4. Mr. Mundie also testified that at the time he prepared the report, he did not keep the names of sources he spoke with, including his source for Sale Comparable #4.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

The appraiser stated that the purchaser in Sale Comparable #2 was the mall owner, and that he believed that this was an arm's-length transaction. He further testified that he spoke with Robert Long regarding the transaction, who is employed by the mall-purchaser.

Under cross-examination from the intervenors, Mr. Mundie testified that he did not have a supervisory role in preparing the appraisal.<sup>1</sup>

Mr. Mundie also testified that all of the appraisals he completed for Nordstrom stores were for *ad valorem* real estate tax purposes, and that all of the final conclusions of value in those appraisals would have supported a reduction in the assessments for those Nordstrom properties.

Mr. Mundie testified about the area around Woodfield Mall, and stated that property values in the area were increasing until the onset of the recession. He stated that, in his opinion, that trend will “resurface within the relatively near term.”

The witness then testified regarding the land sale comparables that were used in valuing the subject's land. In particular, Mr. Mundie stated that Land Sale Comparable #2 is zoned O3, which is an office district and allows for hotels and some retail establishments. Counsel for the intervenors sought to refresh the witness's recollection by providing a copy of Section 9-7-3 of Schaumburg's zoning ordinance, which describes the lawful uses for land and buildings in an area zoned O3. The copy of the ordinance was marked as Intervenor's Exhibit #1. After reviewing the zoning ordinance, Mr. Mundie maintained that retail establishments are allowed in areas zoned O3.

Mr. Mundie stated that he relied on the CoStar listing for Land Sale Comparable #2. Counsel for the intervenors sought to refresh the witness's recollection on this point by presenting a copy of the CoStar listing for this comparable, which was marked as Intervenor's Exhibit #2. After reviewing the CoStar listing, Mr. Mundie admitted that some of the information in his report was not the same as the information in the CoStar listing.

With regard to Land Sale Comparable #4, Mr. Mundie stated that he also reviewed the CoStar listing for this comparable, but that he did not recall if the listing stated that the improvement upon the property had an asbestos contamination that significantly reduced the sale price. Counsel for the intervenors provided the witness with a copy of the CoStar listing for Land Sale Comparable #4 to refresh his recollection, and this document was marked as Intervenor's Exhibit #3. After reviewing this CoStar listing, Mr. Mundie admitted that, according to the listing, the

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<sup>1</sup> During this line of questioning, counsel for the intervenors believed that Mr. Mundie testified during the county's cross-examination that he had a supervisory role in preparing the report. However, during the intervenor's cross-examination, Mr. Mundie stated that he had not acted in a supervisory role. The intervenors then asked Mr. Mundie how he would proceed *if* he had acted in a supervisory role, and the appellant objected based on speculation. The record was re-read to ascertain whether Mr. Mundie had testified as such. Finding the witness's previous testimony ambiguous on this point, the Board reserved ruling on the objection, and allowed the intervenors to inquire about Mr. Mundie's speculative role as a supervisor within the scope of an offer of proof. Now, in ruling on the appellant's objection, the Board finds that Mr. Mundie did not testify that he acted in a supervisory role in preparing this appraisal, and, thus, the objection is sustained as being speculative. The witness's testimony reveals that he worked collaboratively with Aaron in preparing the report, had the final say in the contents of the report, and, most importantly, conducted the research and inspections. The testimony elicited during the intervenors' offer of proof is thereby preserved for the record, but is given no consideration in this decision.



## 2017 SYNOPSIS – COMMERCIAL CHAPTER

improvement did have an asbestos contamination, and that he did not include this information in his report.

Mr. Mundie testified that in the cost approach, he used the report's sale comparables to ascertain the market-derived depreciation of the subject, but that all of the sale comparables are older than the subject. To determine the sale comparables' land values, Mr. Mundie testified that he used their land assessments and consulted appraisals he completed within the area around the comparables.

Next, Mr. Mundie testified regarding the rental comparables he used in the income approach to value. He also testified that he completed an appraisal for the subject for 2013, which included the subject's retail sales per square foot for 2010, 2011, and 2012, but that he could not recall the exact figures. Counsel for the intervenors provided the witness with a copy of his appraisal of the subject with an effective date of January 1, 2013 to refresh his recollection, and this document was marked as Intervenor's Exhibit #4. Mr. Mundie testified that the 2013 appraisal for the subject stated that its retail sales per square foot was \$364.00 in 2010, \$378.00 in 2011, and \$394.00 in 2012. Mr. Mundie testified that, in the Mundie Appraisal, he stabilized the subject's retail sales per square foot at \$250.00, and that he checked this figure against the Dollars and Cents of Shopping Centers: 2008 study.

Mr. Mundie next testified that he did not know the retail sales for the inline stores, the traffic counts, or the demographics for the malls where the sale comparables were located. Mr. Mundie also reiterated his testimony regarding the sale conditions for Sale Comparable #4. The witness also testified regarding the adjustments made to his sale comparables.

### Re-Direct

On redirect, Mr. Mundie testified that Sale Comparables #2 and #3 were not sold out of bankruptcy, and that these properties have a similar highest and best use. The appraiser also stated that single tenant anchor department stores routinely remodel their stores every five to seven years as a course of business; and, because of this fact, he did not believe that 2009 remodel of the subject was significant in his analysis. Additionally, Mr. Mundie stated that remodeling an anchor department store does not increase its overall value.

Mr. Mundie stated that an auction and an open bidding process are synonymous terms in his professional opinion, and that Sale Comparable #4 was sold through an open bidding process.

The witness also testified that the retail sales at inline stores, traffic counts, and demographics for the malls of the rental comparables and the malls of the sale comparables were irrelevant factors in his professional opinion; and, therefore, these factors were not included in his analysis.

Mr. Mundie also testified that, while Nordstrom's retail sales per square foot is higher than other anchor department stores, his assignment was to appraise the property in fee simple as though it were vacant and offered for sale or lease. The fact that Nordstrom is the current occupant is not relevant. Moreover, the witness stated that, in his expert opinion, it would be highly unlikely for another anchor department store (other than Nordstrom) to attain the same level of retail sales.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

Based on this evidence, the appellant requested the subject's assessment reflect the appraised value of \$11,100,000 for each of the years under appeal.

### BOARD OF REVIEW'S EVIDENCE

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$4,046,599 was disclosed. This assessment reflects a fair market value of \$16,186,396 or \$80.00 per square foot of building area, land included, when applying the 2010 statutory level of assessment for commercial property under the Cook County Real Property Assessment Classification Ordinance of 25.00%.

In support of this market value, the notes included raw sales information on seven properties suggested as comparable to the subject. These properties range in size from 138,212 to 217,953 square feet of building area. They sold between January 2005 and December 2008 for prices ranging from \$16,500,000 to \$38,050,500, or from \$81.71 to \$219.70 per square foot of building area.

At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. At the request of the assistant state's attorney, and without objection from the appellant or the intervenors, the "Board of Review Notes on Appeal" were admitted into evidence and marked as Board of Review Exhibit #2. As a result of its analysis, the board of review requested confirmation of the subject's assessment.

### THE INTERVENORS' APPRAISAL AND TESTIMONY OF LORRAINE M. APIECIONEK, M.A.I.

The intervenors argue that the subject's assessment as determined by the board of review should be maintained.<sup>2</sup>

In support of the subject's assessment, the intervenors' pleadings included a copy of a summary report of a complete appraisal undertaken by appraiser, Lorraine M. Apiecionek, M.A.I. ("Ms. Apiecionek") of L.M. Apiecionek & Associates (the "Apiecionek Appraisal"). The intervenors began their case-in-chief by calling Ms. Apiecionek as an expert witness. Ms. Apiecionek testified that she has been self-employed at L.M. Apiecionek & Associates for over thirty years, is an Illinois certified general real estate appraiser, and holds the M.A.I. designation from the Appraisal Institute. She further testified that she has appraised more than 600 properties that are retail or department stores. She stated she has previously been qualified as an expert in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. After *voir dire* of Ms. Apiecionek, counsel for the intervenors offered Ms. Apiecionek as an expert in real estate valuation. The Board accepted Ms. Apiecionek as an expert in real estate valuation

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<sup>2</sup> The Board notes that the intervenors' Brief and Evidence in Support of Intervention (the "Brief") is inconsistent on this point. The Brief requests that the subject's assessment be increased (on page 1), be maintained (pages 2 and 5), and at least be maintained (page 3). The Brief's conclusion is on page 5, and requests that the Board "*maintain* the present assessment while denying the requested reduction" (emphasis in original). The Board takes the intervenors' request for relief in the Brief's conclusion at face value, despite its apparent contradiction with other requests for relief scattered throughout the document. Thus, the intervenors did not request that the subject's assessment be increased, but only that it be maintained.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

without objection from the appellant or the board of review; however, the appellant reserved the right to question Ms. Apiecioneck regarding her qualifications during cross-examination.

The Apiecioneck Appraisal was identified for the record as Intervenor's Exhibit #5. The Apiecioneck Appraisal addressed the income and sales comparison approaches to value, while opining an estimated market value of \$16,200,000 as of the effective date of January 1, 2010. The Apiecioneck Appraisal also included a land valuation section. Ms. Apiecioneck testified that the report was prepared consistent with the standards of USPAP.

Ms. Apiecioneck testified that she inspected the interior and exterior of the subject on September 24, 2013. Ms. Apiecioneck described the subject property and its environs, including that the subject is improved with a three-story anchor department store with 202,330 square feet of building area, and is attached to Woodfield Mall, which is a super-regional shopping mall. The appraiser testified that Woodfield Mall has 2.2 million square feet of building area and five anchor department stores. Additionally, it is the number one regional mall in the Chicago Metropolitan area with over 27 million visitors annually, and is one of the top ten malls nationwide. Woodfield Mall is approximately 96.0% to 97.0% leased, with 300 inline stores that have retail sales averaging \$485.00 per square foot, including 30 stores that surpass \$1,000.00 per square foot. Ms. Apiecioneck further testified regarding the demographics and traffic patterns surrounding Woodfield Mall. She stated that all of this information was relevant in her analysis.

### Highest and Best Use

Ms. Apiecioneck testified that the subject's highest and best use as vacant would be to develop it for large-scale commercial use. Ms. Apiecioneck also concluded that the subject's highest and best use as improved was continued use as an anchor department store facility.

### Land Valuation

Ms. Apiecioneck did not undertake a complete cost approach, as she testified that market participants do not rely on the cost approach. However, the report did include an analysis that valued the land. In doing so, Ms. Apiecioneck stated that she used an assumed land-to-building ratio of 3.0 to 1 because there are cross-easements and adequate parking for the subject property. The appraiser testified that a land-to-building ratio of 3.0 to 1 is fairly consistent in the marketplace. Ms. Apiecioneck testified she considered five land sales of commercial properties that had similar highest and best uses. These properties sold from May 2005 to September 2010 for prices ranging from \$14.99 to \$22.96 per square foot. After making pertinent adjustments, Ms. Apiecioneck stabilized the subject's land value at \$16.00 per square foot, or \$9,700,000, rounded.

### The Sales Comparison Approach

Ms. Apiecioneck next testified that she used six comparable sales of properties to estimate a value for the subject under the sales comparison approach to value. All six of the comparables were located in the Chicago Metropolitan area. Ms. Apiecioneck described each of the six comparables. The properties range in building size from 76,427 to 145,605 square feet. Sale Comparables #2 through #6 sold from February 2006 to May 2010 for prices ranging from

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

\$4,073,542 to \$8,981,000, or from \$46.01 to \$78.78 per square foot of building area, including land. Sale Comparable #1 was the sale of a leasehold interest in the improvement only that sold for \$8,200,000, or \$73.15 per square foot of building area, excluding land, which the appraiser adjusted to \$14,400,000, or \$128.46 per square foot of building area, including land. The properties ranged in age from 9 to 29 years and in land to building ratio from 2.31:1 to 4.86:1, with Sale Comparable #1 having an assumed land to building ratio of 3.26:1. Sale Comparables #1 and #5 are attached to super-regional shopping malls. Ms. Apiecioneck stated that not all the comparables are single-tenant anchor department stores, because, in her professional opinion, improvements that contain anchor department stores can have various uses. She further testified as to some examples of former anchor department store facilities being converted to other uses, such as being used as a Value City or Dollar General.

Ms. Apiecioneck also testified regarding the details of these transactions. Comparable Sale #1 was the sale of a leasehold estate of the improvement, while the property is also subject to a separate ground lease. Sale Comparable #2 was vacant at the time of sale, and was formerly a furniture store. Sale Comparable #3 was also vacant at the time of sale, and was purchased for use as a furniture store. This comparable also received a sales tax rebate. Sale Comparable #4 was purchased by JC Penney, but, due to economic reasons, was never developed into one of its stores. Sale Comparable #5 was a leased-fee sale, and the purchaser was the owner of the mall. Sale Comparable #6 was a leased-fee sale, wherein the lessee purchased the property from the lessor with two years remaining on the lease. Ms. Apiecioneck clarified that despite their similar names, the seller, Mart Acquisitions, and the purchaser, Wal-Mart Real Estate Business Trust, were separate entities.

Ms. Apiecioneck also testified that she made certain adjustments to these comparables for property rights/financing, condition of sale, time, location, size, design, parking, and functional utility. The witness testified that, overall, she made no adjustment to Sale Comparable #6, and adjusted the remaining sale comparables upward. After applying these adjustments, Ms. Apiecioneck concluded that the subject's market value under the sales comparison approach to value was \$80.00 per square foot of building area, or \$16,200,000, rounded.

### The Income Approach

Under the income approach, Ms. Apiecioneck analyzed the subject's retail sales. In relying on the Mundie Appraisal, Ms. Apiecioneck testified that the subject's retail sales per square foot averaged \$325.13 from 2002 through 2009. Ms. Apiecioneck then consulted Dollars and Cents of Shopping Centers: 2008, which showed that the median retail sales per square foot for department stores in super-regional malls was \$163.99, with the top two-percent and top ten-percent being \$348.56 and \$256.11, respectively. After considering the information in Dollars and Cents of Shopping Centers: 2008 and the subject's actual retail sales, Ms. Apiecioneck stabilized the subject's retail sales per square foot at \$315.00. The appraiser also consulted Dollars and Cents of Shopping Centers: 2008 to ascertain an applicable percentage rent rate, which was determined to be 2.25%, with the reported median being 2.00%. Thus, the subject's rent was calculated to be \$7.09 per square foot, or \$1,434,014. The rent per square foot was within the range reported for the top two-percent and top ten-percent as reported in Dollars and Cents of Shopping Centers: 2008.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

Next, Ms. Apiecioneck testified she reviewed the leases of eight rental comparables to check whether the market rent for the subject as previously determined was accurate. These rental comparables were all located in the Chicago Metropolitan area, and ranged in size from 50,000 to 160,895 square feet, and have lease rates of \$5.00 to \$9.21 per square foot of building area as of 2010. The appraiser testified that she made adjustments to these comparables for location, size, and date of the lease. Based on this analysis, Ms. Apiecioneck concluded that a rental rate of \$7.05 per square foot was an appropriate market rent for the subject.

Ms. Apiecioneck then made the following deductions from the subject's annual market rent of \$1,434,014. Vacancy and collection losses were estimated to be 3.0%, reserves for replacement were estimated to be \$0.50 per square foot, and management fees were estimated to be 2.0%. Therefore, the net operating income was estimated at \$1,262,009.

Ms. Apiecioneck then utilized the "direct" method and the "band of investment" technique to determine the subject's capitalization rate. For the "direct" method, Ms. Apiecioneck looked to the PriceWaterhouseCooper (2010, Q1) survey, a national survey, and the RERC Investor Survey (2010, Q1), a Chicago market survey. The PriceWaterhouseCooper (2010, Q1) survey showed a range of 7.0% to 10.0%, with an average of 8.86%, while the RERC Investor Survey (2010, Q1) showed a range of 7.0% to 11.0%, with an average of 8.6%. After looking at the capitalization rates for Sale Comparables #1, #5, and #6, and finding that the subject's level of risk is low, Ms. Apiecioneck found the subject's capitalization rate under the "direct" method to be 7.5%. For the "band of investment" technique, Ms. Apiecioneck assumed a 75.0% loan to value ratio, a 6.0% interest rate, a 25-year amortization period, and an equity dividend of 6.96% to arrive at a capitalization rate of 7.5%, rounded. The appraiser stabilized the subject's capitalization rate at 7.5%. Capitalizing the stabilized net operating income of \$1,262,009 by the capitalization rate of 7.5%, Ms. Apiecioneck arrived at a total value for the subject under the income approach to value of \$16,800,000, rounded.

### Reconciliation and Final Estimate of Value

In reconciling the two approaches to value used, Ms. Apiecioneck testified that she gave significant weight to sales comparison approach to value, and found that the income approach to value supported her conclusion under the sales comparison approach. After reconciling the two approaches to value, Ms. Apiecioneck concluded that the subject's market value as of January 1, 2010 was \$16,200,000. Finally, the witness testified that her opinion of value would be the same, if not more, if the effective date was January 1, 2011 or January 1, 2012.

### Cross-Examination

Under cross-examination by the county, Ms. Apiecioneck testified that her report discloses that she has not appraised the subject in the three years preceding the report's effective date, and that such a disclosure is required by USPAP.

Under cross-examination by the appellant, Ms. Apiecioneck testified that she has completed over one dozen appraisals of six different anchor department stores located in regional or super-regional malls, and that the first of these appraisals was completed in 2006. Two of these appraisals were for the department stores, and the remaining four were for taxing districts.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

Ms. Apiecioneck stated that the retail portion of the economy was beginning to recover from the recession during the latter part of 2009, including the report's effective date of January 1, 2010; however, she also stated that unemployment, net lease rates and retail sales (included the retail sales at the subject and the four other anchor department stores at Woodfield Mall) declined, while vacancy rates increased in the Chicago Metropolitan area through 2009, and that this information was included in the report.

The appraiser also testified that she completed an appraisal for the subject with an effective date of January 1, 2014, but could not recall her final conclusion of value in that appraisal. Counsel for the appellant sought to refresh the witness's recollection by providing a copy of that summary appraisal report, which was marked as Appellant's Exhibit #2. Ms. Apiecioneck then testified that her opinion of value for the subject as of January 1, 2014 was lower than the estimate of value in the Apiecioneck Appraisal (which has an effective date of January 1, 2010).

Ms. Apiecioneck also testified that, according to her conclusion as to the subject's highest and best use as improved, stores like Value City and Dollar General are not likely to occupy the subject.

Next, Ms. Apiecioneck testified regarding the locations and zoning restrictions for the land sale comparables. She also testified that none of the land sale comparables were single-tenant anchor department stores, that none were attached to regional or super-regional malls, and that most of them had subsequently been improved with freestanding stores.

Ms. Apiecioneck then testified regarding the sale comparables, including their descriptions, uses, and sale conditions, most of which was also elicited during direct examination. The witness testified that Comparable Sales #2, #3, #4, and #6 were not multi-level, single-tenant, anchor department stores attached to regional or super-regional malls. Ms. Apiecioneck also stated that Sale Comparable #6 was not exposed to the open market prior to the sale, and that Comparable Sale #1 was the sale of a leasehold estate in the improvement only.

The witness then testified that she prepared the report independently. She further stated that the information she received regarding Sale Comparable #1 came from several sources, including Susan Enright ("Ms. Enright"), and that she then verified the information. Upon questioning from the appellant's counsel, Ms. Apiecioneck testified that pages 33 and 34 of the Apiecioneck Appraisal were "copied word for word" from an appraisal report completed by Ms. Enright, and that this text was "possibly" verbatim. Counsel for the appellant sought to refresh the witness's recollection by providing a copy of Ms. Enright's summary appraisal report for the Nordstrom in Skokie, Illinois with an effective date of January 1, 2010 (the "Enright Appraisal"), which was marked as Appellant's Exhibit #3. Counsel for the appellant then questioned Ms. Apiecioneck regarding her statement that she prepared the Apiecioneck Appraisal independently by showing her a copy of the Enright Appraisal; however, the intervenors objected based on relevancy. The Board sustained the objection, but allowed the appellant to present an offer of proof as to how Ms. Apiecioneck prepared her report, which showed that a large portion of pages 33 and 34 of the Apiecioneck Appraisal were verbatim to pages 37 and 38 of the Enright Appraisal.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

Next, the appraiser stated that Comparable Sale #5 was a leased fee sale of a multi-level, single-tenant, anchor department store attached to a super-regional mall, that the purchaser was the mall owner, and that, according to the Cook County Assessor's records, its improvement size was 145,605 square feet. Ms. Apiecioneck stated that she reviewed the CoStar listing for Sale Comparable #5. Counsel for the appellant questioned the witness's recollection on this point by presenting a copy of the CoStar listing for this comparable, which was marked as Appellant's Exhibit #4. After reviewing the CoStar listing, Ms. Apiecioneck stated that the CoStar listing's improvement size was different than the improvement size contained in the report.

Ms. Apiecioneck then testified as to the adjustments made to the sale comparables. She stated that she used an assumed land to building ratio of 3.0:1, and also made adjustments to the sale comparables because they were not adjacent to a parking deck like the subject. The appraiser further testified that, after adjustments, she concluded that the subject's market value per square foot was higher than the unadjusted range for the sale comparables.

With regard to the income approach, Ms. Apiecioneck testified that, while the retail sales figures for the other anchor department stores at Woodfield Mall were available, she did not include these figures in her analysis. The witness further testified that, using the 2009 average of retail sales for the subject and the other four anchor department stores included in the Mundie Appraisal, the retail sales would range from \$165.34 to \$172.34. These figures are 90.0% and 83.0% lower, respectively, than the reconciled retail sales per square foot for the subject of \$315.00 found in her report. Moreover, the reconciled retail sales per square foot for the subject of \$315.00 was 93.0% higher than the national average and 23.0% higher than the top ten found in Dollars and Cents of Shopping Centers: 2008.

Ms. Apiecioneck testified that none of the rental comparables were single-tenant, multi-level, anchor department stores with over 200,000 square feet of building area nor attached to a regional or super-regional mall. The witness further testified that the capitalization rate used in the income approach was lower than the average rates reported in the surveys that were consulted. The capitalization rate used was also higher than the cap rate for Sale Comparable #5, which is the only single-tenant anchor department store attached to a super-regional mall that was used in the analysis.

### Re-Direct

During re-direct, Ms. Apiecioneck stated that all of the rental comparables were department stores, and that she made adjustments to all of them in her analysis. Ms. Apiecioneck further testified that Woodfield Mall is one of the top performing malls in the country, and that the investment risk is lower there for anchor department stores. Thus, the appraiser used a lowered capitalization rate to account for the lower level of risk. Ms. Apiecioneck further stated that the subject's retail sales per square foot increased every year between 2010 and 2012, with an average of \$379.00 per square foot during that time period.

Ms. Apiecioneck also stated that the information regarding Sale Comparable #1 came from George Good, who is a broker with CB Richard Ellis, and Ms. Enright.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

Based on this evidence, the intervenors requested the subject's assessment be maintained for tax year 2010.

### THE APPELLANT'S APPRAISAL REVIEW AND TESTIMONY OF GARY M. BATTUELLO, M.A.I.

In rebuttal, the appellant's pleadings included a copy of a desk review on the Apiecionek Appraisal undertaken by appraiser, Gary M. Battuello, M.A.I. ("Mr. Battuello") of Ramsland & Vigen, Inc. (the "Battuello Review"). The appellant began its rebuttal by calling Mr. Battuello as an expert witness. Mr. Battuello testified that he has been employed at Ramsland & Vigen since 1981, is an Illinois certified general real estate appraiser, and holds both the M.A.I. and AR-GRS designations from the Appraisal Institute. He further testified that he has authored two publications for the Appraisal Journal, has appraised approximately 75 properties that are anchor department stores, and has completed 100 to 150 appraisal reviews. He stated he has previously been qualified as an expert in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. After *voir dire* of Mr. Battuello, counsel for the appellant offered Mr. Battuello as an expert in real estate valuation, theory, and practice. The intervenors conducted additional *voir dire* of the witness, which revealed that he received his Illinois appraiser's license in June 2011. The intervenors then objected to Mr. Battuello's credentials as an expert, as he wasn't licensed as of the date of value of the Apiecionek Appraisal. The Board overruled this objection as the witness was licensed in Illinois at the time the Battuello Review was completed, and accepted Mr. Battuello as an expert in real estate valuation, theory, and practice. The Battuello Review was identified for the record as Appellant's Exhibit #5.

As to the subject's highest and best use, Mr. Battuello testified that the subject is not readily adaptable to be repurposed for some use other than as an anchor department store. He further stated that freestanding stores have more flexibility than anchor department stores in terms of use, repurposing, and even demolishing the improvements altogether. The witness also stated that the cost approach would not commonly be used in appraising an anchor department store.

Mr. Battuello testified that the sales comparison approach in the Apiecionek Appraisal included data and adjustments that were not appropriate, complete, or accurate, and, therefore, the results were not reliable. In particular, the expert stated that Sale Comparable #1 represents the sale of a leased-fee interest in the building only, and that large adjustments were needed to account for the land value. With regards to Sale Comparables #2 and #3, Mr. Battuello testified that these properties had freestanding improvements, which have far more uses and potential purchasers than an anchor department store attached to a super-regional mall. Sale Comparable #4 was not the sale of an anchor department store, and also had a higher land to building ratio. Moreover, this property was purchased by JC Penney, but it was never operated as an anchor department store. Mr. Battuello also testified that Sale Comparable #6 was not an arm's-length transaction, because it was purchased by the tenant, and also that this property was a freestanding store. Mr. Battuello testified that freestanding stores are not generally considered substitute properties for anchor department stores.

The witness testified that some of the adjustments to the sale comparables were questionable. In particular, Mr. Battuello found that using an assumed land to building ratio in conjunction with an adjustment for being attached to a parking deck was a "double adjustment."



## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

With regards to the income approach, Mr. Battuello testified that a potential purchaser will look to what that purchaser can generate in retail sales per square foot at the subject's location, and not necessarily what Nordstrom is able to generate. He stated that Nordstrom and Sears would be outliers on the high and low ends, respectively, of the market. Thus, an average of the anchor department stores at the subject's location would typically be employed in determining the subject's retail sales per square foot, and not the actual retail sales of the subject, as it is an outlier.

Mr. Battuello also testified that the data relied upon in determining the capitalization rate is unreliable. In particular, Mr. Battuello stated that the mortgage market as of January 1, 2010 was "broken," rendering the "band of investment" technique unreliable. Additionally, Mr. Battuello testified that the "direct" method was unreliable because the capitalization rates extracted from Sale Comparable #1 was determined using a leased-fee sale of only the improvement. Furthermore, reliance on the PriceWaterhouseCooper (2010, Q1) survey and the RERC Investor Survey (2010, Q1) was not well placed because these surveys do not address the subject's market.

The witness also stated that, in the decade preceding January 1, 2010, market activity for the anchor department store market came from consolidations, mergers, and regulatory sales. This observation contrasts with the statements in the Apiecionek Appraisal, which stated that market activity came from sale-leasebacks, options in lease agreements, and bankruptcies.

### **Cross-Examination**

During cross-examination from the county, Mr. Battuello stated that every year he completes approximately three to five review appraisals for properties in the Chicago Metropolitan area. He further testified regarding the comparability of other malls in the area to Woodfield Mall. Moreover, Mr. Battuello stated that if a property retains its use after a sale, money is still expended to "rebrand" the property for the new user, including whether another department store purchased and occupied a property that was previously used as an anchor department store.

During cross-examination from the intervenors, Mr. Battuello testified that his criticisms of the Apiecionek Appraisal would apply to the Mundie Appraisal if it had the same alleged deficiencies. Mr. Battuello further stated that distressed properties can be used as rental or sale comparables in an appraisal if used with caution, but that it is probably better to not use such comparables. The witness also testified that he did not look to the retail sales per square foot of the subject for 2010, 2011, and 2012.

### **Re-Direct**

During re-direct, Mr. Battuello stated that the retail sales per square foot of the subject for 2010, 2011, and 2012 would not be relevant for an appraisal with an effective date of January 1, 2010.

### **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

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

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 (3d 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.

In determining the fair market value of the subject property for tax year 2010, the Board considered the Mundie Appraisal, the “Board of Review Notes on Appeal,” the Apiecioneck Appraisal, the Battuello Review, as well as the testimony from all witnesses to determine the best evidence of the subject's market value.

The Board finds the board of review's witness was not present or called to testify about his qualifications, identify his work, testify about the contents of the evidence, and the conclusions or be cross-examined by the parties and the Board. Without the ability to observe the demeanor of this individual during the course of testimony, the Board gives the evidence from the board of review no weight.

Mr. Mundie, Ms. Apiecioneck, and Mr. Battuello all agreed that the cost approach to value would not be useful in determining the fair market value of an anchor department store. The Board agrees, and therefore, no weight was given to the cost approach found in the Mundie Appraisal.

As to the Mundie Appraisal and the Apiecioneck Appraisal, the Board accorded diminished weight in varying ways and degrees to the income and sales comparison approaches in those reports. The Board finds that both appraisals lack sufficient evidence to support their respective conclusions under both of these approaches to value. However, the Board also finds that, using the credible evidence provided in these two appraisals, the Board can craft an appropriate conclusion of value.

The Mundie Appraisal gave the income approach equal consideration with the sales comparison approach, while the Apiecioneck Appraisal accorded the income approach secondary consideration. The appraisers agreed that the subject's percentage rent factor is 2.25%. However, they varied widely on the subject's retail sales per square foot amount that should be applied to this percentage rent factor.

The Mundie Appraisal concluded that the subject's retail sales were \$250.00 per square foot. In reaching this conclusion, the Mundie Appraisal analyzed the actual retail sales for the subject as well as the other four anchor department stores at Woodfield Mall. The figure was then checked against the results published in Dollars and Cents of Shopping Centers: 2008.

The Apiecioneck Appraisal concluded that the subject's retail sales were \$315.00 per square foot. In reaching this conclusion, the Apiecioneck Appraisal analyzed the actual retail sales for only the subject. The figure was then checked against the results published in Dollars and Cents of Shopping Centers: 2008. The Apiecioneck Appraisal states that “the weighted sales average of the mall anchor stores is the best evidence of the fee simple market rent potential of the subject anchor,” but that “[t]he appraiser was not able to ascertain store sales at Woodfield Mall.” However, at hearing, Ms. Apiecioneck testified that these figures were, in fact, available to her, and that she chose not to include them in her report.

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

For its part, the Battuello Review states that “[t]he aggregate anchor store retail sales volumes . . . could have been used to estimate a market rent for the [subject] using a reasonable factor (percent) against some stabilized and reasonable sale volume anticipated to be achieved by a potential anchor occupant at the Woodfield Mall.”

In short, the appraisers and the review appraiser all agree that the method for determining the subject’s retail sales is to look at the retail sales of the subject *and* the other anchor department stores at Woodfield Mall. However, only one appraisal, namely, the Mundie Appraisal, actually employed that method. Ms. Apiecioneck testified at hearing that she had the opportunity to ascertain to retail sales of the other four anchor department stores, but chose not to do so. Such a voluntary omission diminishes the credibility of the Apiecioneck Appraisal on this point. As such, the Board gave the Mundie Appraisal more weight, which stabilized the subject’s retail sales per square foot at \$250.00.

However, the Board also finds that the subject is attached to Woodfield Mall, and that ample testimony was given regarding the superior aspects of the mall. Mr. Mundie testified that Woodfield Mall is considered a good quality shopping center in a very active retail area. Ms. Apiecioneck testified that Woodfield Mall is the number one mall within the Chicago Metropolitan area, and is within the top ten in the United States. Furthermore, she testified that it is a popular tourist destination with approximately 27 million visitors annually. Because of its popularity, Woodfield Mall has almost no vacancies, with 97% to 98% of the retail space leased.

The Dollars and Cents of Shopping Centers: 2008 study relied upon by both appraisers states that the retail sales for the top ten percent of owned national chain department stores in super-regional malls is \$249.38 per square foot. This figure is nearly identical to the Mundie Appraisal’s conclusion. However, the Board finds that a slight adjustment for the superiority of Woodfield Mall is applicable, and that the subject’s retail sales is properly stabilized at \$267.00 per square foot.

Using the subject’s undisputed improvement size of 202,330 square feet and undisputed percentage rent of 2.25% per square foot results in an annual potential gross income for the subject of \$1,215,497, or \$6.01 per square foot.

The Board finds this potential gross income is supported by the evidence and testimony in the record. The parties submitted a total of 12 rental comparables that had rental rates ranging from \$3.92 to \$8.92 per square foot. The Board finds that Rental Comparables #1 and #4 in the Mundie Appraisal, and Rental Comparables #2 and #4 in the Apiecioneck Appraisal were most similar to the subject. In particular, these comparables were all anchor department stores in regional or super regional malls within the Chicago Metropolitan area. The remaining rental comparables were given diminished weight because they were either freestanding stores, attached to a “power center” or “lifestyle center,” or were located outside the Chicago Metropolitan area. The most similar comparables had rents ranging from \$3.92 to \$8.12 per square foot. The Board’s finding that the subject’s rent is \$6.01 falls squarely in this range.

Moreover, the Dollars and Cents of Shopping Centers: 2008 study states that the rent per square foot for the top ten percent of owned national chain department stores in super-regional malls is

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

\$5.86 per square foot. As discussed above, the Board finds that the subject is located in the top ten percent due to Woodfield Mall's superiority. Thus, the Board finds that the Dollars and Cents of Shopping Centers: 2008 study supports the finding that the subject's rent is \$6.01 per square foot.

The appraisers agreed that a nominal 3.0% deduction should be applied to account for vacancy and collection losses. Applying this factor results in an effective gross income of \$1,179,032. The appraisers nearly agreed on the applicable management fee, which the Board finds should be 2.25%. The parties differed on the reserves for replacement, but the Board finds the Mundie Appraisal persuasive on this matter; and, thus, finds that the reserves for replacement is properly set at \$0.10 per square foot. Thus, the Board finds that the subject's net operating income is \$1,132,271.

The appraisers did not agree on the capitalization rate that should be applied to the subject's net operating income. The Mundie Appraisal concluded the capitalization rate should be 9.5%, while the Apiecionek Appraisal concluded the capitalization rate should be 7.5%. Both appraisers utilized the "band of investment" technique and the "direct" or "market derived" technique, which extracted a capitalization rate from the comparables used in the respective sales comparison approaches. The Apiecionek Appraisal also utilized market surveys.

The Board accords little weight to the "band of investment" analyses done by the appraisers. As Mr. Battuello testified, the mortgage market as of January 1, 2010 was "broken." His report further states that "[m]ortgage and equity rates were quite dispersed at this time with real estate and financial markets still in turmoil and not yet stabilized following the 2008-2009 collapse." Thus, this technique was given no weight in the Board's analysis because, based on market conditions as of January 1, 2010, it yields unreliable results.

The Board also accords little weight to the market surveys used in the Apiecionek Appraisal. As Ms. Apiecionek testified, the PriceWaterhouseCooper (2010, Q1) survey looked at national net lease markets. Additionally, according to Ms. Apiecionek, the RERC Investor Survey (2010, Q1) takes into account all retail tenants at regional malls, including the inline tenants. As such, the Board finds reliance on such broad surveys misplaced when looking to the limited anchor department store market, and, therefore, accords them little weight.

Under the "direct" or "market derived" method of establishing a capitalization rate, the parties used a total of seven recent sales. The Mundie Appraisal utilized all four of the sale comparables found in that report, while the Apiecionek Appraisal utilized Sale Comparables #1, #5, and #6 found in that report. The Board notes that Sale Comparable #1 in the Mundie Appraisal and Sale Comparable #5 in the Apiecionek Appraisal are the same sale. These comparables had capitalization rates that ranged from 5.6% to 11.0%. The Board finds Sale Comparables #1 and #2 in the Mundie Appraisal and Sale Comparables #5 and #6 in the Apiecionek Appraisal most similar to the subject in ascertaining an appropriate capitalization rate. These comparables had capitalization rates ranging from 5.6% to 9.7%. The Board gave particular emphasis to Sale Comparable #1 in the Mundie Appraisal/Sale Comparable #5 in the Apiecionek Appraisal, as this was the sale of a leased fee interest in which the actual net rental income could be derived, and it was an anchor department store attached to a super-regional mall. This comparable had a

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

capitalization rate of 7.8%, and the Board finds this figure is within the range of the remaining similar comparables.

Thus, the Board concludes that the subject's net operating income is \$1,132,271 and its capitalization rate is 7.8%, which yields a total market value under the income approach to value of \$14,516,295.

Both appraisers gave primary emphasis to the sales comparison approach to value. This emphasis is in accord with Illinois case law, where the courts have stated that when there is credible evidence of comparables sales, these sales are to be given significant weight as evidence of market value. Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (2d Dist. 1979). The Court further held that significant relevance should not be placed on the cost approach or the income approach especially when there is market data available. *Id.* Moreover, in Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989), the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach.

The Board shall place primary emphasis on the ten sale comparables used by the appraisers. Overall, the Board accorded diminished weight to Sale Comparables #1 and #4 in the Mundie Appraisal, and all of the comparable sales in the Apiecionek Appraisal. Sale Comparable #1 in the Mundie Appraisal/Sale Comparable #5 in the Apiecionek Appraisal was given diminished weight because this was a leased fee sale that sold differing property rights. Sale Comparable #1 in the Apiecionek Appraisal was given diminished weight for the same reason, as this was a leased fee sale of the improvement only, and large adjustments were necessary to account for the separate ground lease that was not part of the transaction. Moreover, Ms. Apiecionek admitted that this portion of her report was "copied word for word" and was "possibly" verbatim from the Enright Appraisal.<sup>3</sup> Thus, the Board finds that Ms. Apiecionek's research and analysis was not her own about this sale comparable, and the appraiser who did conduct the analysis (namely, Ms. Enright) was not present to testify. As such, Comparable Sale #1 was given no weight in the Board's analysis. Sale Comparable #6 in the Apiecionek Appraisal was also given diminished weight for the same reason. Additionally, this property was purchased by the lessee so that it could be remodeled into a larger retail store, indicating that it may not be an arm's-length transaction.

Sale Comparable #4 in the Mundie Appraisal was given diminished weight because this was a sale out of bankruptcy that was sold at an auction, and the conditions of this sale could not be verified by the appellant's appraiser. While Mr. Mundie explained that he spoke with an individual involved to verify the arm's-length nature of the transaction, he was unable to recall that individual's name at hearing, and seemed uncertain as to this individual's role in the transaction. He further testified that he currently records the names of sources he speaks with, but did not do so at the time he spoke with this individual. Thus, it appears that even Mr.

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<sup>3</sup> The Board notes that Ms. Apiecionek testified that her analysis of Sale Comparable #1 was "copied word for word" and was "possibly" verbatim from the Enright Appraisal, and then, after this testimony, the intervenors objected to the continuation of this line of questioning based on relevancy, which the Board sustained. As such, while Ms. Apiecionek's testimony regarding the exact duplication of the text was made during an offer of proof, she did testify as to the similarity (and possibly "verbatim" character) of her analysis and Ms. Enright's analysis of Comparable Sale #1 during cross-examination and outside the scope of the offer of proof.

## **2017 SYNOPSIS – COMMERCIAL CHAPTER**

Mundie agrees that the name and role of this individual is important, since he changed his internal office procedures to account for this omission. While an unnamed source used to verify the conditions of a sale comparable used in an appraisal may not necessarily be detrimental to the veracity of that sale, the Board finds this omission, coupled with the circumspect sale conditions (i.e., the seller was in bankruptcy proceedings), negates the probative value of Sale Comparable #4 in the Mundie Appraisal. Therefore, this sale was given diminished weight in the Board's analysis.

Sale Comparables #2, #3, and #4 in the Apiecioneck Appraisal were given less weight because they were the sales of freestanding properties or are attached to a "power center" and therefore, as sold, have a different highest and best use than the subject. Sale Comparable #2 was used by the seller as a furniture store, and the buyer planned to use it as an office building. Sale Comparable #3 was used by the seller as a home remodeling store, and the buyer planned to use it as a furniture store. Sale Comparable #4 was used by the seller as a "big box" retail store, and the buyer planned to use it as a department store. It is undisputed that the subject is a single-tenant anchor department store attached to a super-regional mall. None of these three comparables meet that same criteria, and, in fact, only Sale Comparable #4 was intended for use as a department store (although such use never materialized). Thus, these comparables were given diminished weight in the Board's analysis.

Therefore, the Board placed most weight on Sale Comparables #2 and #3 in the Mundie Appraisal. These sales contained single-tenant, anchor department stores attached to super-regional malls, which is the same usage as the subject property. Sale Comparables #2 and #3 had building sizes of 254,720 and 147,896 square feet, and sold in January 2003 and September 2003 for unadjusted prices of \$35.33 and \$28.40 per square foot, respectively. In contrast, the subject's market value accorded by the board of review was \$80.00 per square foot. After making adjustments for pertinent factors, not the least of which is location, physical attributes, age, and building size, the Board finds that the subject property had a market value of \$13,151,450 as of the assessment date at issue. Since market value has been established, the 2010 level of assessment for class 5, commercial property under the Cook County Real Property Assessment Classification Ordinance of 25% shall apply. 86 Ill.Admin.Code § 1910.50(c)(2).

## 2017 SYNOPSIS – COMMERCIAL CHAPTER

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### 2017 COMMERCIAL CHAPTER

#### *Index*

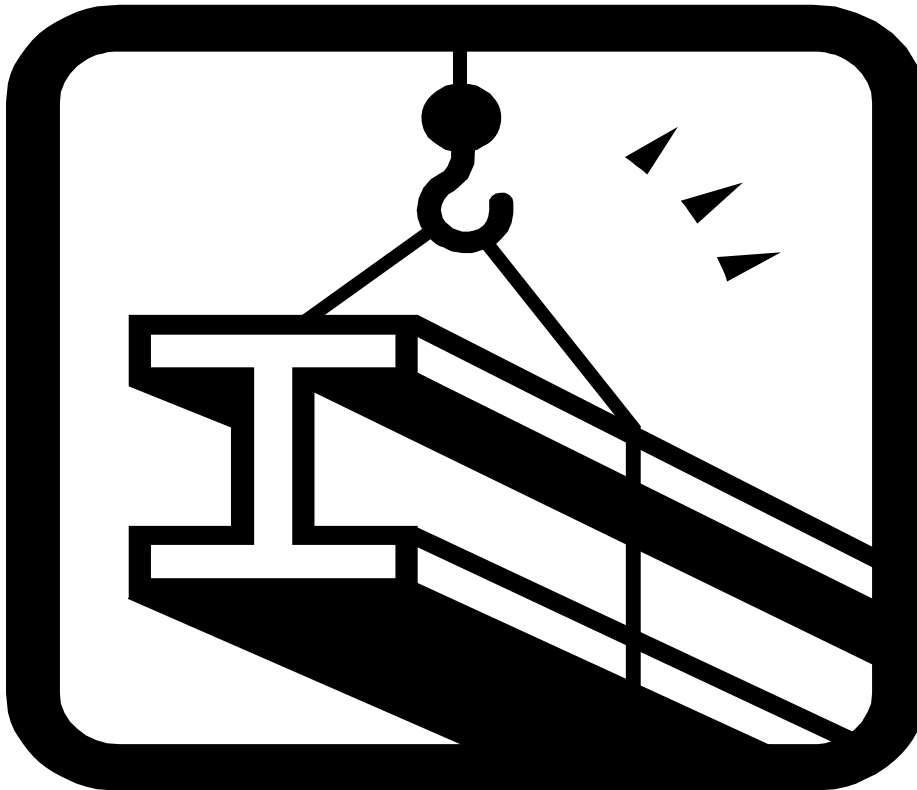
*[Items Contained in Italics Indicate Arguments  
or Evidence in Opposition to the Appellant's claim]*

<b><u>SUBJECT MATTER</u></b>	<b><u>PAGES</u></b>
<b>Contention of Law &amp; Overvaluation – Sale of permanent easement</b> <i>Comparable sales</i>	C-7 to C-8
<b>Contention of Law – Golf course - classification as open space</b> <i>Allocation of “open space” based on percentage use of buildings</i>	C-31 to C-36
<b>Overvaluation – Appraisal - Anchor store in mall</b> <i>Comparable sales. Intervenor’s appraisal</i>	C-45 to C-64
<b>Overvaluation – appraisal (errors and omissions)</b> <i>Comparable sales</i>	C-2 to C-6
<b>Overvaluation – appraisal; bank converted to office building; Recent sale - Online auction purchase.</b> <i>Criticisms of auction as arm’s length transaction; comparable sales</i>	C-9 to C-16
<b>Overvaluation – appraisal – sale of former bank building</b> <i>Comparable sales – location argued</i>	C-20 to C-30
<b>Overvaluation – comparable sales (multi-tenant buildings)</b> <i>Disputed adjustments made by appellant as inconsistent</i>	C-37 to C-39
<b>Overvaluation – recent sale/leased building in receivership</b> <i>Comparable sales. No witnesses for board of review or intervenor</i>	C-40 to C-44
<b>Overvaluation – restrictive use appraisal</b> <i>Comparable sales and criticisms</i>	C-17 to C-19
<b>INDEX</b>	C-65 to C-65





**PROPERTY TAX APPEAL BOARD**  
**SYNOPSIS OF REPRESENTATIVE CASES**  
**2017 INDUSTRIAL DECISIONS**



PROPERTY TAX APPEAL BOARD  
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## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

### 2017 INDUSTRIAL CHAPTER

#### *Table of Contents*

<b><u>APPELLANT</u></b>	<b><u>DOCKET NUMBER</u></b>	<b><u>RESULT</u></b>	<b><u>PAGE NO.</u></b>
Emanuel Acino	10-36502.001-I-1	Reduction	I-2 to I-5
Bohler-Uddeholm Corp.	15-01303.001-I-1	No Change	I-6 to I-7
Chem Processing Inc.	13-03265.001-I-1	Reduction	I-8 to I-11
Jayron Investments, Inc.	13-04772.001-I-1	No Change	I-12 to I-15
Lakeview Realty Group	13-03652.001-I-2	No Change	I-16 to I-19
Margarete Liedtke	12-03969.001-I-1	No Change	I-20 to I-21
MPBP Enterprises, LLC	12-24210.001-I-2	Reduction	I-22 to I-28
Virgil Pontarelli	15-04245.001-I-1 thru 15-04245.002-I-1	Reduction	I-29 to I-31
Donald Sinclair	13-02763.001-I-1	No Change	I-32 to I-35
<b>INDEX</b>			I-36 to I-36

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Emanuel Acino</b>
<b>DOCKET NUMBER:</b>	<b>10-36502.001-I-1</b>
<b>DATE DECIDED:</b>	<b>September, 2017</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of three parcels of land totaling 44,000 and improved with a 32-year old, one-story, masonry, industrial building containing approximately 16,000 square feet of building area. The property is located in Elk Grove Township, Cook County and is a class 5 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant's appeal is based on overvaluation. In support of the market value argument, the appellant submitted an appraisal undertaken by John O'Dwyer of JSO Valuation Group, Ltd. O'Dwyer was the appellant's only witness. O'Dwyer testified he has been a commercial real estate appraiser from 1985 to present and that he was one of the first people to be licensed in Illinois. He testified he appraised approximately 50 buildings within Elk Grove Village during the tax year 2010, but that he also appraised other buildings throughout the United States. He testified he has been a presenter at many conferences and that he is a member of the Appraisal Institute and holds the designation of a MAI. He testified that he has testified at the Property Tax Appeal Board and other state and federal courts. Mr. O'Dwyer was admitted as an expert witness in property valuation without objection.

The appraisal indicated the subject has an estimated market value of \$480,000 as of January 1, 2010. The appraisal report utilized the income and sales comparison approaches to value to estimate the market value for the subject property. O'Dwyer described the subject property as a 16,000 square foot industrial property built in 1978. He testified that the subject has 44 parking spaces. He testified that the subject is a class "D" building based on its construction, age and design. He opined it was a standard, small-time, industrial building within an industrial park.

O'Dwyer testified he inspected the subject on March 25, 2016 and prepared a retrospective appraisal as of January 1, 2010. He testified that he went back in time for leases and sales comparables and that during the inspection he had the owner with him to ask questions about the condition of the building in 2010. O'Dwyer testified that he did not observe any capital improvements during the inspection and, based on discussions with the owner, concluded that there were no capital improvements from 2010 to the time of the inspection.

As to the subject's environs, O'Dwyer testified that the subject is located in an average industrial park within the village. He opined the ingress and egress is a little difficult with Landmeier being a busy road. O'Dwyer testified that the subject had functional obsolescence based on the ceiling heights, air conditioning, driving and parking configurations, lack of sprinklers, windows, and several other needed capital improvements. He opined that the conditions he observed at the time of the inspection also existed in 2010.

O'Dwyer testified that he did not use the cost approach because the subject is older so estimating depreciation is almost impossible and because buyers and sellers do not look to how much it

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

costs to build the subject, but to how the market place would value the building. He testified that the market in 2010 was a tenant market in which leases were shorter and the tenants were dictating the terms. He testified that the real estate market had collapsed by 2010. O'Dwyer went on to describe the real estate market from 2006 to 2010.

Under the income approach, O'Dwyer testified he analyzed the 2010 rent from four comparables within one mile of the property. He briefly described the properties and estimated a gross rent of \$7.50 per square foot of building area. This resulted in a potential gross income (PGI) of \$114,000, stabilized. O'Dwyer testified concerning the subject's actual rents. Vacancy and collection loss was estimated at 10% of PGI for an effective gross income (EGI) of \$108,450. O'Dwyer testified he estimated stabilized expenses at \$33,945 for an estimated net operating income (NOI) at \$74,505.

In determining the appropriate capitalization (CAP) rate, the appraiser utilized market surveys to estimate a CAP rate of 10%. O'Dwyer testified he loaded this CAP rate to account for property taxes to arrive at a loaded rate of 15.38%. He testified he applied this CAP rate to the NOI to estimate the market value for the subject under this approach at \$480,000, rounded.

Under the sales comparison approach, O'Dwyer testified that there were few sales during that time period, but that he analyzed four sales, three of which were located within Elk Grove Village. O'Dwyer again testified to the declining market from 2005 to 2010. He described how he chose these four comparables. He opined that these sales were the most comparable to the subject.

O'Dwyer testified he made adjustments to these comparables for pertinent factors. He described these adjustments. The comparables ranged in sale price from \$28.24 to \$37.76 per square foot of net rentable building area. O'Dwyer estimated a value for the subject at \$30.00 per square foot of building area for a total estimated value under the sales comparison approach of \$480,000.

In reconciling the two approaches to value, O'Dwyer testified that both approaches were strong and gave equal weight to both approaches to arrive at a final estimate of value for the subject as of January 1, 2010 of \$480,000.

Under cross-examination by the board of review, O'Dwyer acknowledged that he inspected the property for the first time in March 2016 and that the appraisal was a retrospective appraisal with a value date of January 1, 2010. He acknowledged that he did not have any direct knowledge of the property in 2010. O'Dwyer testified that the photographs from March 2016 show water damage to the ceiling tiles and that he believed, based on conversations, that there was water damage in 2010. He testified that the settlement and cracks in the foundation did not look new, but were from a previous time period; he opined that it would not be unusual for these cracks to exist in 2010. He further testified that there were no capital improvements made in 2010, but that he has no personal knowledge as to what was done in 2010.

At to the income approach, O'Dwyer testified that the appraisal references a PwC 2015 Outlook even though 2010 information was available, but opined that the 2010 information would not be as positive as the 2015. He also acknowledged that he used a data snapshot from 2014 to arrive

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

at a vacancy rate, but again opined that this snapshot shows that the 10% used is reasonable. O'Dwyer testified that he used industry standard expenses from 2010.

As to the capitalization rate, O'Dwyer acknowledged that he used surveys from 2013 and 2014, but opined that the market had improved by that time period and that the oversight was not critical. He testified more extensively on the capitalization rate.

As to the sales comparison approach, O'Dwyer acknowledged that the appraisal disclosed that there were nine sales in 2009 and 2010, but that he only used three of those sales. He testified that the remaining six sales were not similar to the subject.

On redirect, O'Dwyer testified that a retrospective is when the data used is past data and not current data. He testified that he has to make certain assumptions about a property when performing a retrospective appraisal, but that these assumptions are based on professional expertise. He testified that his conversation with the owner did not show anything inconsistent with his property observations at the time of inspection.

The board of review submitted two "Board of Review Notes on Appeal" documents along with evidence. At hearing, the board of review's representative, Lester McCarroll, testified that he has both sets of documents, but that one set was provided to him from the appellant. The total assessment of the subject of \$183,939 which reflects a market value of \$735,756 using the Cook County Real Property Classification Ordinance level of assessment of 25% for class 5 property. In support of the assessment the board of review submitted a total of eight sales comparables from both packets of evidence. The board of review's memoranda discloses that the data is not intended to be an appraisal or estimate of value and should not be construed as such. In addition, it discloses that the information is assumed factual, accurate, and reliable, but has not been verified and does not warrant its accuracy.

On cross-examination, the board of review's representative acknowledged that the evidence does not include any 2009 sales. He acknowledged that the market has changed from 2005 to 2010 and that values declined. He testified he did not personally gather the board of review's data.

### **Conclusion of Law**

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 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> 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 met this burden and that a reduction is warranted.

In determining the fair market value of the subject property, the Board examined the appellant's appraisal report and testimony and the board of review's evidence.

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

The Board finds the preparer of the board of review's evidence was not present or called to testify about his/her qualifications, identify his/her work, testify about the contents of the evidence, or be cross-examined by the appellant and the Property Tax Appeal Board. Without the ability to observe the demeanor of this individual during the course of testimony, the Property Tax Appeal Board gives this evidence from the board of review no weight.

In determining the fair market value of the subject property, the Board finds the best evidence to be the appellant's appraisal and testimony. The appellant's appraiser utilized the income and sales comparison approaches to value in determining the subject's market value. The witness credibly testified that the cost approach would not be appropriate for the subject property. In addition, the witness's un rebutted testimony was that the subject had no capital improvements from 2010 to 2016 and was in similar condition during that time period. The Board finds the appraisal and testimony to be persuasive for the appraiser: has experience in appraising; personally inspected the subject property and reviewed the property's history; and used similar properties in the sales comparison approach while providing sufficient detail regarding each sale as well as adjustments that were necessary.

Therefore, the Board finds the subject had a market value of \$480,000 for the 2010 assessment year. Since the market value of this parcel has been established, the Cook County Real Property Classification Ordinance for Class 5 property of 25% will apply. Therefore, the Board finds that a reduction is warranted.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Bohler-Uddeholm Corporation</b>
<b>DOCKET NUMBER:</b>	<b>15-01303.001-I-1</b>
<b>DATE DECIDED:</b>	<b>July, 2017</b>
<b>COUNTY:</b>	<b>Kane</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a 213,202 vacant square foot site or approximately 4.89-acres of land area. The subject property is zoned PGI, Planned General Industrial District. The parcel is located in Elgin, Elgin Township, Kane County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by David Conaghan and David Barros, Certified General Real Estate Appraisers. Utilizing the sales comparison approach to value, the appraisers estimated the subject property had a market value of \$535,000 as of January 1, 2015.

The appraisers analyzed five comparable sales located in Elgin or Bartlett, Illinois. The comparable parcels range in size from 186,881 to 367,646 square feet of land area. The comparables sold between June 2012 and March 2015 for prices ranging from \$400,000 to \$575,000 or from \$1.37 to \$2.51 per square foot of land area. The appraisers considered qualitative adjustments to the comparables for differences as outlined on pages 37 and 38 of the appraisal report. From this process, the appraisers estimated the subject's value range to be from \$2.00 to \$2.50 per square foot of land area. The appraisers estimated the subject's market value to be \$2.50 per square foot of land area or \$535,000, rounded.

Based on this evidence, the appellant requested an assessment reflective of the appraisal value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$269,807. The subject's assessment reflects a market value of \$809,988 or \$3.80 per square foot of land area when using the 2015 three year average median level of assessment for Kane County of 33.31% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review through the township assessor submitted an appraisal prepared by Phillip Butler, Certified General Real Estate Appraiser. Utilizing the sales comparison approach to value, the appraiser estimated the subject property had a market value of \$960,000 as of January 1, 2015.

The appraiser analyzed four comparable sales located in Elgin, Illinois. The comparable parcels range in size from 318,459 to 812,098 square feet of land area. The comparables sold between December 2012 and August 2015 for prices ranging from \$1,162,500 to \$3,165,000 or from \$3.65 to \$6.35 per square foot of land area. The appraiser considered adjustments to the comparables for differences as outlined on pages 30 to 32 of the appraisal report. The category of Market Conditions/Time of Sale of the comparables was adjusted upward at a rate of 5% from the date of sale to the date of valuation, based upon information from CoStar of average sale prices of industrial land parcels of 1 to 30 acres in the collar county Chicago metro area which



## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

resulted in adjusted sale prices ranging from \$3.78 to \$6.22 per square foot of land area. From this process, the appraiser wrote, "Each sale requires upward adjustment. downward overall adjustments." (Page 33). The appraiser determined comparable sale #3 as adjusted appeared to be outside the range of value indications. In light of sales #1, #2 and #4, the appraiser estimated the subject's market value to be \$4.50 per square foot of land area or \$960,000, rounded.

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

### **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.

Both parties submitted appraisals of the subject property with opinions of value as of January 1, 2015. Both appraisers solely relied upon the sales comparison approach to value in arriving at their respective opinions. Both appraisers utilized several sales that occurred in 2012, a date remote in time to the valuation date at issue of January 1, 2015. Appellant's appraiser concluded an estimated market value for the subject of \$2.50 per square foot of land area and the assessing official's appraiser concluded an estimated market value for the subject of \$4.50 per square foot of land area.

Given several dated sales considered by both appraisers in arriving at their respective conclusions, the Board has given little weight to these conclusions of value in the appraisal reports finding that they are insufficient to arrive at a reasonable and well-supported opinion of value as of the assessment date of January 1, 2015. With the exception of appraisal sale #3 in the board of review's report and despite substantial differences in land area of the comparables, the Property Tax Appeal Board has placed most reliance upon the three most recent sales in the record drawn from both appraisal reports. These most recent sales sold between December 2014 and August 2015 for prices ranging from \$1.37 to \$3.90 per square foot of land area. The parcels ranged in size from 219,455 to 812,098 square feet of land area.

The subject's assessment reflects a market value of \$809,988 or \$3.80 per square foot of land area for a parcel of 213,202 square feet of land area. The subject's estimated market value of \$3.80 per square foot is within the range of the most recent comparable sales on a per-square-foot basis and appears to be justified when giving due consideration to differences in land area when compared to the subject. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Chem Processing Inc.</b>
<b>DOCKET NUMBER:</b>	<b>13-03265.001-I-1</b>
<b>DATE DECIDED:</b>	<b>March, 2017</b>
<b>COUNTY:</b>	<b>Winnebago</b>
<b>RESULT:</b>	<b>Reduction</b>

The initial issue in this proceeding is the size of the subject building. Taking judicial notice of both this record and the record of Docket No. 14-00174, the Property Tax Appeal Board finds that the subject property consists of a one-story manufacturing facility of steel and concrete construction which contains 34,029 square feet of above-grade building area. Approximately 11,000 square feet is used as office space. The building also features a partial basement of 11,422 square feet of building area.<sup>1</sup> The building was constructed in 1995 and has a 20 foot ceiling height. The property has an approximately 358,641 square foot site and is located in Rockford, Cherry Valley Township, Winnebago County.<sup>2</sup>

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a brief along with Exhibit B depicting limited information on seven comparable sales. In the brief, counsel for the appellant reported the subject property was inspected on May 24, 2013 by Peter Wolfley and the descriptive data for the subject and comparables were obtained from the public record.

As to the subject, the appellant's brief reported that the building was designed for and used as a heat treating and plating facility. As such, the shop area is divided into five walled large areas and a few offices/laboratories given its design for the owner occupant's specific use. The brief also set forth an opinion that the subject's interior design makes it unworkable for most potential buyers which would reduce price and demand. The brief further noted the basement is unfinished, used for storage and has space for pollution control equipment.

In Exhibit B, the comparable parcels range in size from 86,800 to 426,017 square feet of land area and are improved with one-story buildings constructed between 1967 and 2000. The buildings range in size from 23,088 to 76,500 square feet of building area and have ceiling heights ranging from 14 feet to 25 feet. Six of the comparables are used for manufacturing and one is a warehouse. The properties sold between February 2011 and July 2013 for prices ranging from \$400,000 to \$1,750,000 or from \$13.58 to \$25.60 per square foot of building area, including land.

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<sup>1</sup> In Section III of the Industrial appeal petition, the appellant initially reported the building as containing 45,451 square feet of building area, but in subsequently filed rebuttal noted that the above-grade area was 34,029 square feet and the previously reported 45,451 square feet included the basement area. Throughout the board of review's submission, the building is referred to as having 45,451 square feet of "total" building area and in Docket No. 14-00174, the assessing officials further articulate that the basement is useable space and could be seen as useable space to a buyer due to the exposure and outside access along with an overhead door to the basement.

<sup>2</sup> The evidence presented by both parties reflects a land area of the subject parcel of 358,641 square feet, despite that the property record card for the subject depicts a parcel size of 362,651 square feet, rounded.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

For this comparable sales analysis and as outlined in the brief, the appellant utilized a unit of comparison of "the implied price of the building improvements" as calculated by subtracting the assessor's land value for the year of the sale from the sale price and dividing by the property's building square footage. The appellant contended this was done to largely reduce the effect of differing land to value ratios on price which could distort the overall price per square foot price relative to the subject property. The brief noted that the subject has a 10.54:1 land-to-building ratio based upon a building size of 34,029 square feet whereas the comparables range from 2.21:1 to 5.87:1 land-to-building ratios. Using this unit of comparison, the appellant reported the "net building price" per square foot ranged from \$10.62 to \$20.70.

Based on the foregoing evidence and argument, the appellant requested a total assessment of \$333,333 which would reflect a market value of approximately \$1,000,000 or \$29.39 per square foot of building area, including land, based upon a building size of 34,029 square feet.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$369,334. The subject's assessment reflects a market value of \$1,114,130 or \$32.74 per square foot of building area, land included, when using the 2013 three year average median level of assessment for Winnebago County of 33.15% as determined by the Illinois Department of Revenue and based upon a building size of 34,029 square feet of above-grade area.<sup>3</sup>

In response to the appeal, the board of review submitted a memorandum and data prepared by the Cherry Valley Township Assessor's Office. The assessor criticized the appellant's comparables #2, #5 and #6 for being dissimilar in building size to the subject building which contains 34,029 square feet of above-grade building area; the assessor contends that all comparables should fall between 25,000 and 80,000 square feet of building area for comparison purposes to the subject which the assessing officials contend is a 45,451 square foot building, including the subject's basement. Moreover, the assessor noted that all but one of the appellant's suggested comparables were much older than the subject and only two of the comparables have higher ceiling heights than the subject.

In support of its contention of the correct assessment the board of review through the township assessor submitted information on eight comparable sales which included appellant's comparables #1, #3, #4 and #7. The eight comparable parcels range in size from 92,725 to 425,377 square feet of land area and are improved with buildings constructed between 1967 and 2000. The buildings range in size from 29,900 to 76,500 square feet of building area and have ceiling heights ranging from 14 feet to 24 feet. The properties sold between January 2010 and July 2013 for prices ranging from \$520,000 to \$1,925,000 or from \$13.58 to \$35.39 per square foot of building area, including land.

The assessor agreed with the analysis of the appellant which excluded the land value. As a result, the assessor also reported the "net building price" per square foot of the eight comparables

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<sup>3</sup> For its analysis, the assessor and board of review both utilized the total building area of 45,451 square feet which includes the partial basement; the Property Tax Appeal Board finds no support in the record for the inclusion of basement square footage in the calculation of building size in assessment practices.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

ranging from \$10.62 to \$32.30 as compared to the subject's net estimated market value of \$28.40 per square foot of above-grade building area.

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

In written rebuttal, counsel for the appellant argued that due to the specialized nature of the building's use, the "water supplied to the plating tanks must be purified and the used plating liquid has to be cleaned before disposal" with all of this equipment being located in the basement of the subject building. The rebuttal further opines that in the past 40 years, it is nearly impossible to find industrial buildings that have any basement space and as such, the rebuttal opines the basement has limited added value to the property. Furthermore, in rebuttal, appellant contends that the "true" building area is the above-grade area of 34,029 square feet, not the previously reported building size of 45,451 square feet which included the basement square footage.

### 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.

As an initial matter, the Property Tax Appeal Board gives no weight to the parties' analysis of an "implied building value" which subtracts the assessor's land value for the year of sale from the comparable sales data. Instead, the Board finds that an analysis must be made of the sale prices of the comparable properties with appropriate considerations of adjustments for differences between the subject and the comparable properties. In Showplace Theatre v. Property Tax Appeal Board, 145 Ill. App. 3d 774 (2<sup>nd</sup> Dist. 1986), the appellant only appealed the land value. The basis for judicial review was whether Showplace could appeal only the land valuation, thereby limiting the Property Tax Appeal Board's jurisdiction. The Appellate Court affirmed the Property Tax Appeal Board's decision of reducing the subject's land assessment, but increasing the improvement assessment based on its recent sale. The Appellate Court found assessments are based on real property consisting of both land and improvements. An appeal to the Property Tax Appeal Board includes both the land and improvements and together they constitute a single assessment. Likewise, in National City Bank Of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002), the court held the Property Tax Appeal Board was amply justified in giving little weight to valuation evidence since it valued only part of the property. The court did not find any error by the Property Tax Appeal Board in rejecting a "piecemeal approach" by which the petitioner sought to challenge only the valuation of only a portion of the entire property.

For this appeal, the parties submitted a total of eleven comparable sales to support their respective positions before the Property Tax Appeal Board with four comparables being common properties to both parties. The Board has given reduced weight to appellant's comparable

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

#3/board of review comparable #8 and to board of review comparables #1 and #7. The Board finds these three properties differ from the subject in above-grade building size and/or sold in 2010, a date remote in time to the valuation date at issue of January 1, 2013.

The Board finds the best evidence of market value to be appellant's comparable sales #1, #2, #4, #5, #6 and #7 along with board of review comparable sales #2, #3, #5 and #6, where three comparables are common to both parties. These seven most similar comparables range in building size from 23,088 to 42,327 square feet of building area and sold between February 2011 and July 2013 for prices ranging from \$400,000 to \$850,000 or from \$13.58 to \$26.94 per square foot of building area, including land. The subject's assessment reflects a market value of \$1,114,130 or \$32.74 per square foot of above-grade building area, including land, which is above the range established by the best comparable sales in this record and appears to be excessive, even giving due consideration to the subject's newer age, basement area and differences in ceiling height. Based on this evidence the Board finds a reduction in the subject's assessment commensurate with the appellant's request is justified.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Jayron Investments, Inc.</b>
<b>DOCKET NUMBER:</b>	<b>13-04772.001-I-1</b>
<b>DATE DECIDED:</b>	<b>February, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property is improved with a one-story, masonry constructed single tenant industrial building with 11,504 square feet of building area. The building was constructed in 1989. The building contains approximately 21% office build out, 14 foot ceiling clearance, one truck-level dock and one drive-in door. The property has a poured concrete slab foundation, a rooftop HVAC package for the office, ceiling mounted gas fired blowers in the warehouse, four restrooms and is wet sprinklered throughout. The subject site has approximately 8,200 square feet of asphalt and concrete paving. The property has a 32,670 square foot site and is located in Bensenville, Addison Township, DuPage County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of \$675,000 as of January 1, 2011, an appraisal report update estimating the subject property had a market value of \$675,000 as of January 1, 2012, and information on three comparable sales.

The three comparable sales provided by the appellant were improved with one story industrial buildings that ranged in size from 6,240 to 12,150 square feet of building area. The buildings were constructed from 1963 to 1980. The buildings have from 1,050 to 1,360 square feet of office space or office space ranging from 10.2% to 21.8% of total building area. The comparables have sites ranging in size from 19,120 to 23,310 square feet of land area resulting in land to building ratios ranging from 1.88:1 to 3.06:1. The subject property has a land to building ratio of 2.84:1 and 2,392 square feet of office space which accounts for 20.8% of building area. The comparables sold from July 2013 to April 2014 for prices ranging from \$367,700 to \$550,000 or from \$41.26 to \$58.93 per square foot of building area, including land.

The narrative appraisal provided by the appellant was prepared by David M. Rogers, a certified general real estate appraiser, and Edward V. Kling, a certified general real estate appraiser, of Real Valuation Group (RVG). The purpose of the appraisal was to estimate the market value of the subject property as of January 1, 2011. The property rights appraised were the fee simple estate. The highest and best use of the property as vacant was determined to be to hold the property for future industrial development. The highest and best use of the property as improved was the existing use and improvements. In estimating the market value of the subject property the appraisers developed the income approach to value and the sales comparison approach to value.

The appraisers used five comparable sales located in Addison, Elmhurst and Bensenville, Illinois in developing the sales comparison approach to value. The comparable sales were improved with four one-story single tenant buildings and one two-story two tenant building that ranged in size from 12,324 to 19,005 square feet of building area. The buildings ranged in age from 25 to 38 years old. The buildings had from 12 to 18 feet of ceiling clearance, office space ranging

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

from 13% to 36% of building area, sites ranging in size from 29,621 to 68,150 square feet of land area and land to building ratios ranging from 1.78:1 to 3.64:1. The sales occurred from April 2009 to December 2010 for prices ranging from \$37.62 to \$71.27 per square foot of building area, including land. The appraisal also contained four listings ranging in size from 11,500 to 35,770 square feet of building area and that were constructed from 1961 to 1978. These properties had list prices ranging from \$400,000 to \$2,325,000 or from \$34.78 to \$76.60 per square foot of building area, including land. Using this data the appraisers arrived at an estimated value of \$60.00 per square foot of building area, including land, or \$690,000 rounded.

In developing the income approach to value the appraisers used five rental comparables and two listings to estimate the subject's market rent. Each of the comparables was located in a multi-tenant building. The rental comparables ranged in size from 2,000 to 15,000 square feet. Comparables #1 through #5 had rents ranging from \$5.05 to \$15.30 per square foot on a gross or modified gross basis. The two listings had asking rents of \$5.95 per square foot and \$9.95 per square foot on a modified gross basis. The appraisers estimated the subject property had a market rent of \$8.00 per square foot on a gross basis resulting in a potential net income of \$92,032. Vacancy and collection loss was estimated to be 8% of potential gross income or \$7,363 and, after deduction, resulted in an effective gross income of \$84,669. Expenses totaling \$14,286 for management, insurance, reserves, legal and accounting were deducted to arrive at an estimated net income of \$70,383.

Using the band of investment technique the appraisers arrived at a capitalization rate of 8.94%. The appraisers also developed an overall rate of 8.31% using a debt coverage ratio analysis. The appraisers also referenced market reported capitalization rates stating that first tier industrial property rates ranged from 8.5% to 8.9% while second tier properties were reported at 9.5%. The appraisers also stated within the report that another investor survey reported rates ranging from 6.0% to 12.0% with an average of 7.98%. The appraisers estimated the subject had a capitalization rate of 8.5% and added 2.410% for a tax load to arrive at an overall capitalization rate of 10.91%. Dividing the net income by the capitalization rate resulted in an estimated market value under the income approach of \$650,000.

In reconciling the two approaches to value the appraisers gave emphasis to both the sales comparison approach to value and the income approach to value to arrive at an estimated market value of \$675,000 as of January 1, 2011.

In the appraisal update the appraisers concluded the value of the subject property had not substantially changed from the original report and concluded the subject property had a market value of \$675,000 as of January 1, 2012. The update did not include any additional comparable sales or income data.

Based on this evidence the appellant requested the subject's assessment be reduced to \$224,978 to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$252,880. The subject's assessment reflects a market value of \$758,944 or \$65.97 per square foot of building area, land included, when using the 2013 three

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

year average median level of assessment for DuPage County of 33.32% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted a list of nine comparable sales prepared by the Addison Township Assessor's Office. The sales were located in Elk Grove, Wood Dale, Addison, Bensenville and Villa Park. The comparables were described as being improved with one-story, single unit buildings that ranged in size from 9,564 to 15,088 square feet of building area. The buildings were constructed from 1968 to 2001. These properties were described as having building heights ranging from 16 to 24 feet with offices ranging in size from 5.30% to 25.15% of building area. These properties had land to building ratios ranging from 2.23:1 to 3.63:1. The sales occurred from January 2009 to April 2012 for prices ranging from \$665,000 to \$1,256,320 or from \$69.53 to \$101.27 per square foot of building area, land included. Using these sales the assessor's office arrived at an estimated market value for the subject property of \$945,000 or \$82.15 per square foot of building area.

In rebuttal the appellant asserted that the data provided by the board of review were raw/unconfirmed sales. The appellant also argued that all of the comparables have superior ceiling clearance heights compared to the subject property. The appellant further contends that board of review sale #5 had a high sales price due in part to its age, being constructed in 2001.

### **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 Board gave little weight to the conclusion of value contained in the appraisal submitted by the appellant with an effective date of January 1, 2011, which was two years prior to the assessment date at issue. The sales used by the appraisers occurred in 2009 and 2010, approximately two and three years prior to the assessment date. The Board finds these sales are somewhat dated with respect to the assessment date at issue. Similarly, the rental comparables contained in the appraisal had lease dates from 2009 to early 2011. The Board finds these rental comparables, which were used to estimate the subject's market rent, are somewhat dated with reference to the assessment date at issue. Furthermore, the appraisal update provided by the appellant contained no additional data, which would lend support to the appellant's appraisers' conclusion that the value of the subject property had not substantially changed from January 1, 2011 to January 1, 2012. For these reasons the Board finds the conclusion of value contained in the appellant's appraisal and appraisal update are to be given little weight. The record contains no estimate of value for the subject property set forth by the appellant's appraisers for the assessment date at issue.

The record also contains twelve comparable sales submitted by the parties to support their respective positions. The Board gives less weight to sales # 1, #2, #3, #6, #7, #8 and #9 provided by the board of review which occurred in 2009 and 2010, as these transactions did not occur



## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

proximate in time to the assessment date. The Board gives less weight to appellant's sales #2 and #3 as these structures were constructed in 1963 and 1964, and are significantly older than the subject building. The three remaining comparable sales, appellant's sale #1 and board of review sales #4 and #5, were improved with one-story buildings ranging in size from 6,240 to 11,356 square feet of building area. These buildings were constructed in 1980, 1989 and 2001, respectively. These comparables had building heights ranging from 17 to 24 feet and office areas ranging from 21.8% to 25.15% of building area. These properties also had land to building ratios ranging from 2.42:1 to 3.06:1. The sales occurred from October 2011 to April 2014 for prices ranging from \$367,700 to \$1,150,000 or from \$58.93 to \$101.27 per square foot of building area, including land. Board of review sale #4 appears to be most similar with respect to size, age, building height, office area and land to building ratio. This property sold in April 2012 for a price of \$895,000 or \$82.30 per square foot of building area, including land. The subject's assessment reflects a market value of \$758,944 or \$65.97 per square foot of building area, including land, which is within the range established by the best comparable sales in the record and well supported by the best sale in the record. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Lakeview Realty Group</b>
<b>DOCKET NUMBER:</b>	<b>13-03652.001-I-2</b>
<b>DATE DECIDED:</b>	<b>June, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a one-story, single-tenant industrial warehouse building with approximately 15,446 square feet of building area. The building was constructed in 1989 and is approximately 24 years old as of the assessment date at issue. The building has I-beam framing with exterior walls of brick and concrete block construction. The building has a poured steel-reinforced concrete foundation, a clear ceiling height in the warehouse area of 15 feet, 2 interior bed level truck docks, one grade-level drive-in door, 4,480 square feet of office space and a pair of washrooms in the office area. The warehouse area is heated by gas-fired, suspended space heaters but has no central air-conditioning. The office area is heated by gas-fired forced-air furnaces and cooled by central air conditioning. The property has 10,840 square feet of asphalt paved parking lot and driveways. The subject property has a 33,541 square foot site resulting in a land to building ratio of 2.17:1. The property is located in Wood Dale, Addison Township, DuPage County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of \$850,000 as of January 1, 2011. The appraisal was prepared by certified general real estate appraisers Charlie Hynes and Frank C. Urban. Hynes also has the MAI designation from the Appraisal Institute.

The purpose of the appraisal was to develop an opinion of market value of the fee simple interest in the subject property. The appraisers stated that the report was to be used for ad valorem assessment purposes as of January 1, 2011. The appraisers determined the highest and best use of the site as vacant was for development of an industrial building which complies with the current zoning ordinance. The highest and best use of the property as improved was determined to be its current use as an industrial warehouse property. In estimating the market value of the subject property the appraisers developed the three traditional approaches to value.

The first step under the cost approach was to estimate the value of the land using four comparable land sales and two listings that ranged in size from 25,003 to 243,453 square feet of land area. Four comparables sold from June 2009 to April 2011 for prices ranging from \$5.08 to \$9.10 per square foot of land area. The two listings had prices of \$4.27 and \$6.14 per square foot of land area. Using these sales, the appraisers arrived at a land value of \$8.00 per square foot of land area or \$270,000, rounded.

The next step under the cost approach to value was to estimate the replacement cost new of the building improvements using the Marshall & Swift Commercial Estimator software to be \$1,021,078. The appraisers then added 3% of replacement cost new or \$30,632 for indirect costs to arrive at the value of direct and indirect costs totaling \$1,051,710. The appraisers then added 8% of direct and indirect costs or \$84,137 for entrepreneurial incentive to arrive at the total

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

replacement cost new of \$1,135,847. Using the age-life method based on an effective age of 20 years and an economic life of 45 years, physical depreciation of 44.4% of total replacement cost new or \$504,316 was calculated by the appraisers. The appraisers were of the opinion the subject suffered from no functional obsolescence. Comparing the subject's stabilized net operating income with the income necessary to support the subject's land value and depreciated building and site improvements, the appraisers estimated the subject suffered from 7.4% of total replacement cost new or \$84,053 in external obsolescence. The appraisers estimated the depreciated value of the building improvements to be \$547,478. Adding the depreciated value of the site improvements of \$19,200 and the land value to the depreciated value of the building improvements resulted in an estimated value of the subject property under the cost approach of \$835,000, rounded.

The next approach to value developed by the appraisers was the income approach to value. In estimating the market rent the appraisers used four comparables located in Wood Dale and Itasca that ranged in size from 6,246 to 73,140 square feet of building area. The buildings were constructed from 1964 to 1989. The appraisers indicated each comparable was an active listing with rents ranging from \$4.50 to \$6.00 per square foot of building area on a net basis. The appraisers also indicated the subject property was under a lease entered in 2008 for a gross rent of \$4.42 per square foot. The appraisers deducted real estate taxes of \$1.73 per square foot to arrive at a net equivalent rent for the subject property of \$2.69 per square foot of building area. Using this data, the appraisers determined the subject property had a market rent on a triple net basis of \$5.50 per square foot of building area resulting in a potential gross income of \$84,953. Citing data from the publications for the first quarter of 2011 and 2010 with vacancy rates in the Metro Chicago area ranging from 9.5% to 14.5% and for the subject's submarket ranging from 11.59% to 16.2%, the appraisers estimated the subject property suffered from a 10% reduction of potential gross income or \$8,495 due to vacancy and collection loss, which resulted in an effective gross income of \$76,458. Using Price Waterhouse Coopers, in PwC Real Estate Investors Survey, First Quarter 2011, the appraisers calculated expenses for management fees, leasing commissions and reserves for replacement totaling \$5,375. Deducting expenses, the appraisers arrived at a net operating income for the subject property of \$71,083.

The final step under the income approach was to estimate the capitalization rate to be applied to the net income. Using market extraction based on CoStar COMPS from sales closed from January 1, 2008, of DuPage industrial properties for buildings ranging in size from 5,000 to 100,000 square feet, the appraisers reported four rates ranging from 6.9% to 9.2% with an average of 8.3% and a median of 8.5%. Using data from the first quarter 2011, the appraisers estimated the subject had a capitalization rate based on a band of investment analysis of 8.6%. The appraisers also referenced published sources from the first quarter of 2011 that indicated capitalization rates ranged from approximately 8.0% to 10.0%. Based on this data, the appraisers estimated the subject property had a capitalization rate of 8.5%. Capitalizing the net income of \$71,083 by the 8.5% capitalization rate resulted in an estimated value under the income approach of \$835,000, rounded.

The final approach to value developed by the appraisers was the sales comparison approach using four comparable sales and one listing that were located in Wood Dale and Itasca. The comparables were improved with one-story industrial buildings of masonry or masonry and concrete construction that ranged in size from 16,168 to 40,384 square feet of building area. The

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

buildings were constructed from 1974 to 1990. These properties have ceiling heights ranging from 14 to 24 feet; 1 to 3 drive-in doors; 1, 2 or 5 docks; and land to building ratios ranging from 2.4:1 to 3.2:1. The four sales occurred from February 2010 to September 2011 for prices ranging from \$940,000 to \$2,225,000 or from \$53.00 to \$62.67 per square foot of building area, including land. The listing had a price of \$1,950,000 or \$60.94 per square foot of building area, including land. The appraisers made qualitative adjustments to the comparables for differences from the subject for sale conditions, age/condition, ceiling height, truck docks & doors, and land to building ratio. The appraisers estimated the subject property had an indicated value under the sales comparison approach of \$55.00 per square foot of building area, including land, or \$850,000, rounded.

In reconciling the three approaches to value the appraisers stated the cost approach was given minimal weight in the final analysis; the income capitalization approach was afforded ample consideration in the final analysis; and the sales comparison approach was afforded primary consideration in determining a final value. The appraisers arrived at a final estimate of market value of \$850,000 as of January 1, 2011. Based on this evidence the appellant requested the subject's assessment be reduced to \$283,333.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$359,080. The subject's assessment reflects a market value of \$1,077,671 or \$69.77 per square foot of building area, land included, when using the 2013 three-year average median level of assessment for DuPage County of 33.32% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted a report prepared by Frank A. Marack, Jr., Chief Deputy Assessor of Addison Township, using six comparable sales. The comparables sales were improved with one-story industrial buildings of masonry or tilt-up concrete construction that ranged in size from 10,048 to 20,880 square feet of building area. The properties were located in Wood Dale, Addison, Elmhurst and Bensenville. The buildings were described as being constructed from 1966 to 1995. The properties had ceiling heights ranging from 14 to 28 feet; office space ranging from 10.87% to 22.84% of total building area and land to building ratios ranging from 2.34:1 to 4.55:1. The sales occurred from August 2011 to December 2013 for prices ranging from \$830,000 to \$1,480,000 or from \$58.14 to \$82.60 per square foot of building area, land included. Marack also made qualitative adjustments to the comparables for differences from the subject in time of sale, land to building ratio, age, building height and percent of office to arrive at adjusted prices ranging from \$59.64 to \$92.51 per square foot of building area, including land. Based on this data, Marack estimated the subject property had a market value of \$1,170,000 or \$75.16 per square foot of building area, including land, as of January 1, 2013. To document the transactions Marack provided copies of the PTAX-203 Illinois Real Estate Transfer Declaration associated with each sale.

The board of review requested confirmation of the assessment.

In rebuttal the appellant asserted the adjustments to the sales provided by the board of review were not made by a qualified appraiser; board of review sale #4 supports a reduction to the assessment; the board of review did not use the cost approach or the income approach and did not question the appraisers' methods under these approaches to value; and the appellant's

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

appraisers' comparable sales are located closer to the subject property than were the comparables used by the board of review.

### **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 Board gives less weight to the conclusion of value contained in the appraisal submitted by the appellant as the appraisal had an effective date of January 1, 2011, two years prior to the assessment date at issue. With respect to the cost approach to value contained in the report, the appraisers gave this method minimal weight due to the building's age and difficulty in estimating accrued depreciation and remaining economic life, therefore, the Property Tax Appeal Board gives the conclusion of value under this approach little weight. With respect to the income approach to value contained in the appellant's appraisal, the Property Tax Appeal Board finds the rental data, vacancy and collection loss data, the operation expenses and the capitalization rate analysis data were primarily related to the first quarter of 2011, which detracts from its reliability as an indicator of value as of January 1, 2013. With respect to the sales comparison approach to value contained in the appellant's appraisal, the Board finds sales #1, #3 and the listing differed from the subject in size and/or age and are to be given little weight. The Board further finds that appellant's appraisal sale #4 sold in February 2010, almost three years prior to the assessment date at issue and is to be given little weight. For these reasons the Board finds the appellant's appraisal was not credible in establishing an estimate of market value as of January 1, 2013.

The board of review provided a report containing six comparable sales identified by the chief deputy assessor of Addison Township. The Board gave less weight to sale #3 as this property was significantly older than the subject building. The Board also gave less weight to sale #6 due to differences from the subject in construction and ceiling height.

The Board finds the best evidence of market value to be the appellant's appraisal sale #2 and board of review sales #1, #2, #4, and #5. Appellant's appraisal sale #2 was the same comparable as board of review sale #4. These comparables were relatively similar to the subject in age, size and features. The sales occurred from August 2011 to June 2013 for prices ranging from \$830,000 to \$1,375,000 or from \$58.14 to \$82.60 per square foot of building area, including land. The sales most similar to the subject property in age, size, percent of office area and sold most proximate in time to the assessment date was board of review sale #5, which sold in June 2013 for a price of \$1,375,000 or \$71.66 per square foot of building area, including land. The subject's assessment reflects a market value of \$1,077,671 or \$69.77 per square foot of building area, which is within the range established by the best comparable sales in the record. Based on this evidence the Board finds a reduction in the subject's assessment is not justified.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Margarete Liedtke</b>
<b>DOCKET NUMBER:</b>	<b>12-03969.001-I-1</b>
<b>DATE DECIDED:</b>	<b>July, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a part one-story and part two-story industrial building of masonry construction that was built in 1979. The building contains 11,288 square feet of building area. Features include a 2,772 square foot office or 24.56% of office space, 4 overhead doors and 6,832 square feet of asphalt. The building has an exterior height of 16 feet and a land to building ratio of 2.77:1. The property has a 28,750 square foot site and is located in Bensenville, Addison Township, DuPage County.

Margarete Liedtke appeared before the Property Tax Appeal Board contending assessment inequity as the basis of the appeal concerning the improvement assessment. No dispute was raised concerning the land assessment. Liedtke testified that the subject property only has 3 overhead doors instead of 4 as reported by the assessing officials. No evidence such as a photograph of the subject building's overhead doors was submitted. Liedtke also testified that the office area is only 2000 square feet<sup>1</sup> and there is only a tenant on the first floor.

In support of the inequity argument the appellant submitted information on three comparables located within three city blocks from the subject property. The appellant reported that the comparables are improved with brick industrial buildings that contain either 12,000 or 12,360 square feet of building area. The comparables range in age from 36 to 40 years old. The comparables are part one-story and part two-story or one-story buildings. The comparables have office space ranging from 600 to 4,320 square feet of office area or from 5% to 34.95% of the building. The comparables have a ceiling height of 18 or 20 feet and have 3 or 4 loading docks. The appellant reported land to building ratios of 75.03:24.97, 62.57:37.43 and 60.31:39.69.<sup>2</sup> The comparables have improvement assessments ranging from \$69,130 to \$125,190 or from \$5.59 to \$10.43 per square foot of building area.

Based on this evidence and argument, the appellant requested an improvement assessment of \$95,186 or \$8.43 per square foot of building area.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$231,100. The subject property has an improvement assessment of \$171,140 or \$15.16 per square foot of building area.

Representing the board of review was Board Member Carl Peterson. Peterson testified that the board of review reduced the appellant's assessment for 2012 due to the vacancy. Peterson also called Addison Township Chief Deputy Assessor Frank Marack Jr. as a witness.

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<sup>1</sup> If correct, this would represent 17.72% of office area.

<sup>2</sup> The appellant reported incorrect land to building ratios. The correct ratios are: 4.85:1, 2.52:1 and 2.67:1 per the board of review submission.

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

Marack testified that the appellant's comparable #1 had its assessment reduced based on a vacancy reduction and the land to building ratio is unique in Bensenville. Marack also testified that the assessor's office does not value overhead doors.

In support of its contention of the correct assessment the board of review submitted information on six equity comparables prepared by Marack which were located on Industrial Drive, the same as the subject. Marack testified that the comparables are improved with part one-story and part two-story or one-story masonry industrial buildings that range in size from 9,045 to 20,957 square feet of building area and were built from 1972 to 1985. The comparables have office space ranging from 600 to 5,080 square feet of office area or from 6.63% to 37.10% of building area. The comparables have ceiling heights ranging from 15 to 19 feet and have land to building ratios ranging from 2.27:1 to 3.56:1. The comparables have improvement assessments ranging from \$137,240 to \$335,870 or from \$15.17 to \$19.24 per square foot of building area.

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

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

The parties submitted nine equity comparables for the Board's consideration. The Board gave less weight to the appellant's comparables #2 and #3 along with board of review comparables #1 and #3 due to their smaller percentage of office space when compared to the subject. The Board gave less weight to the board of review's comparable #4 due to its larger percentage of office space when compared to the subject.

The Board finds the best evidence of assessment equity to be appellant's comparable #1 along with the board of review comparables #2, #5 and #6. These comparables had varying degrees of similarity when compared to the subject in location, building size and percentage of office space. These comparables had improvement assessments that ranged from \$5.59 to \$18.48 per square foot of building area. The subject's improvement assessment of \$15.16 per square foot of building area falls within the range established by the best comparables in this record. Based on this record 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.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>MPBP Enterprises, LLC</b>
<b>DOCKET NUMBER:</b>	<b>12-24210.001-I-2</b>
<b>DATE DECIDED:</b>	<b>December, 2017</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property is located on a 134,876 square foot parcel of land in unincorporated Des Plaines and consists of a 6,000 square foot industrial building. The property is located in Maine Township, Cook County. The property is a class 5-93 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal completed by Gary Peterson (Peterson) estimating the subject property had a market value of \$690,000 as environmentally clean and of \$0 in “as-is” value as of January 1, 2013. Peterson’s appraisal also concludes that the market value of the subject property as of January 1, 2012 would be essentially the same.

Peterson testified that he is a certified commercial real estate appraiser and holds the designation of Member of the Appraisal Institute (MAI). He further testified that he has been an appraiser for roughly 26 or 27 years and has held the MAI designation for about 20 of those years. Peterson also testified that he is the president of Peterson Appraisal Group. He testified that he has appraised hundreds of commercial properties and has previously testified before the Board on a couple of occasions. Peterson was offered as an expert in real estate theory and practice and after no objection by opposing counsels was accepted as such by the Board.

Peterson performed an interior and exterior inspection of the subject property on May 28<sup>th</sup>, 2013. He testified that the subject’s real land-to-building ratio of 22.48:1 is very high, but because he considers most of the land to be excess land, he found the “more economic” land-to-building ratio to be 3:1. Peterson testified that the subject was constructed in 1980 and is a lower-quality, uninsulated metal building with five overhead doors and a small office that uses well and septic water. He also found that the current use is the subject’s highest and best use. In the alternative, Peterson found that the highest and best use for the subject property as vacant would be “speculative investment in anticipation of future industrial development.” Finally, Peterson testified that he relied on the five-page letter from KD Engineering when reaching his conclusions of value.

In his report, Peterson utilized the cost and sales comparison approaches only. He testified that he did not include the income approach to value because of the seven percent building-to-land ratio, which he stated was atypical for this type of property and would make it very difficult to find good rental comparables. Peterson also stated that typically industrial properties similar to the subject range from 10 to 15 percent in building-to-land ratio. Furthermore, he testified that he did not use any current lease data because he did not find it to be reliable.

In his cost approach to value, Peterson assumed the subject site to be clean and found comparables that were not specifically contaminated. The six comparables that he used sold between October, 2009 and September, 2012 for unadjusted prices ranging from \$3.57 to \$7.64



## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

per square foot of land area. After adjusting for sale date, size, and other pertinent characteristics, Peterson reached a final conclusion of value for the subject's land of \$3.75 per square foot of land. Then, Peterson testified that he used improved land sales to calculate a land value for the subject's improved land that he considered non-excess. Using the Market Value Calculator Cost Method, Peterson estimated indirect costs at 10% as well as accrued depreciation from all sources at 33%. These deductions resulted in a market value of \$725,000. He then deducted an estimated clean-up cost of \$730,000 referencing the addendum for the environmental report and remediation estimates. However, the addenda environmental report states that thermal treatment to remediate would have an estimated cost of \$800,000, while an alternative remediation would cost \$662,000.

Under the sales comparison approach, Peterson used five suggested sales comparables. Those comparables ranged: in size from 4,545 sq. ft. to 10,850 sq. ft. of building area; in sale date between March, 2011 and December, 2012; in age from 1973 to 1988; and in price per square foot from \$40.00 to \$45.70 per square foot of building area. After adjustments for pertinent factors, Peterson reached a conclusion of value for the subject of \$42.00 per square foot of building area or a total of \$252,000, which he rounded to \$250,000. He then added what he considered excess land at a value of \$440,000 for an overall total value for the subject property of \$690,000.

In his reconciliation between the two approaches to value, Peterson gave more weight to the sales comparison approach. He testified that he concluded that the subject is worth \$0 in "as is" condition based on the environmental report prepared by KD Engineering. The environmental report gave two estimates for projected cleanup and Peterson testified that he used the middle, or \$730,000, of the two for purposes of determining the value of the subject in "as is" condition.

On cross examination, Peterson testified that he worked on the appraisal with Steve Bickett, who is an employee of Peterson Appraisal Group. Peterson testified that Bickett has worked for him for over 10 years, but does not possess the MAI designation. Peterson testified that Bickett wrote the report, and Peterson reviewed it and performed the inspection. When asked whether he selected the comparables used in the report, Peterson could not recall, but stated that he does not believe that he did. Peterson also testified that he has appraised hundreds of commercial properties and hundreds of them were contaminated. He further testified that contaminated properties do sell, but contamination is a difficult unit for comparison because of the uncertainty of the level of contamination.

Peterson testified that the current owner of the subject told him that there was a large fire in 1993, but Peterson was not aware of the extent of damage, if any, to the metal structure as inspected in 2013. As far as the levels of contamination and cost of remediation, Peterson testified that he relied entirely on the 5-page report prepared by KD Engineering. He stated that he did not discuss the letter with anyone from KD Engineering or request any supplemental documentation, like the full report prepared in 1999. He stated that he would not know of any contamination either on the subject or any other property unless he is told about it or he sees visible signs of such contamination on site. He also testified that there were no hazard signs or precautions that he had to take when inspecting the property.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

On cross by intervenor's counsel, Peterson stated that he relied on KD Engineering's report for environmental cleanup estimates even though the report specifies "residential cleanup objectives." Peterson testified that the property was not zoned for residential use and there was no information to his knowledge of any possibility of residential use. Furthermore, he testified that the properties surrounding the subject are primarily industrial. Peterson also explained that his understanding is that residential cleanups are more comprehensive than industrial and therefore more expensive. Further, he testified that he did not know whether the US Environmental Protection Agency's (EPA) prior cleanup of the site in the late 90s did not already remediate to industrially permissible standards. Peterson agreed with intervenor's counsel that he would have preferred when preparing the report to use industrial cleanup standards. Finally, Peterson stated that he did not investigate whether any of his comparable sales had any contamination issues.

In addition to the Peterson appraisal, the appellant submitted a five-page soil investigation report prepared by Donald E. Butzen (Butzen), owner of KD Engineering. The appellant's second witness, Butzen, testified that he is an environmental consultant and has worked in the field for about 28 years. His job duties include Phase I, Phase II, soil remediation, and tank removal. He further elaborated that Phase I investigation is a site inspection as well as reviewing all available records. Phase II is the soil investigation performed through the use of a photoionization detector (PID) to drill and analyze soil samples to determine the extent of the actual ground contamination. Finally, Phase III is the tank removal and or soil remediation. Butzen testified that there is no licensing for his position but over the years he has taken and taught continuing education courses. Butzen was offered as an expert in environmental contamination and soil remediation and after no objections by opposing counsels was accepted as such by the Board.

Butzen testified that he was first contacted by the current owner of the subject property, Marty Hadle, in October, 1999. At the time, Butzen testified that he believed Mr. Hadle was in the process of purchasing the property and hired him to perform a Phase II soil investigation of the subject. Butzen drilled 12 Geoprobe at 16-foot depth and submitted them for laboratory analysis. He testified that he tested the levels of semi-volatile, volatile, and metal compounds. He also stated that he did not perform any groundwater testing. Butzen testified that his samples indicated that the horizontal contamination is 220 feet by 70 feet, for a total of 15,400 square feet of surface area or roughly 11% of the subject's square footage, with a vertical contamination of 16 feet. Of the three types of compounds, Butzen testified that only the semi-volatile organic compounds exceed applicable limits. He also stated that the legal limits were exceeded to such a degree that it would not have made a difference which standard he used.

In addition to the soil samples obtained through drilling, Butzen testified that he submitted a Freedom of Information Request (FOIA) to the federal EPA. From that FOIA request, Butzen found out that the federal government performed a cleanup operation in which about 1,000, 55-gallon drums were removed from the property. In addition to removing a large number of chemical contaminants, the federal government treated roughly 88,220 gallons of aqueous wastewater on the property.

After determining that the soil samples collected from the subject exceeded legally permissible levels, Butzen testified that he used the Tiered Approach to Corrective Action (TACO) and the residential standard in making his cleanup estimates. He also testified that he was aware that the

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

property was used and zoned for industrial use only. Butzen explained that the residential standard is used to avoid stigmatizing the property or having to put a commercial deed restriction on the property, which is the requirement if commercial cleanup standards are used.

Butzen testified that his 1999 cleanup estimate was based on two different types of remediation. The first type of remediation, he explained, is using the thermal method, which would entail the excavation of the contaminated soil. After excavation, the soil would be run through an oven to burn off any contaminants and then returned back to the site. The other method that Butzen priced out was excavating the soil, replacing it with clean soil, and taking the contaminated soil to a landfill to be permanently disposed of. Butzen testified that for purposes of pricing out the second method he used the special waste classification. He explained that contaminated soil is classified either as special waste or hazardous waste. Butzen testified that if landfill sampling revealed that the soil was hazardous waste, the price for the second method would be much higher because the landfill would charge more to accept the contaminated soil.

On cross examination by the board of review, Butzen testified that he performed his initial inspection in 1999 and prepared a detailed report pricing out remediation options for the owner of the subject property. He further testified that his five-page letter in 2013 to Peterson was entirely based on the '99 report because to his knowledge no remediation of any kind had taken place from 1999 to 2013. The only other time when Butzen could recall coming out to the property was at the request of the owner to inspect some leaking trucks from a tenant. He also stated that the EPA took the necessary steps to remediate the property to their standards and no further action was required legally from the owner of the subject.

On cross examination by intervenor's counsel, Butzen testified that he does not believe any of the owner's employees to be endangered by being on the property without protective gear because the contamination is "in the ground and 2 or 3 feet down." Butzen further testified that neither the state nor the federal EPA require any other steps to be taken by the owner unless he wants to receive a no-further-remediation (NFR) letter. He also testified that one of the options that is sometimes utilized is to cover the contaminated portion with concrete or a building and thereby create a deed restriction.

On redirect, Butzen testified that even if hypothetically the groundwater was contaminated it would still pose potential risk to employees only if they drink it. In addition, he testified that if the owner was to obtain a NFR letter it would make the property much more marketable.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$247,178. The subject's assessment reflects a market value of \$988,712 or \$164.79 per square foot of building area, including land, when applying the 2012 level of assessments for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 25%.

In support of its contention of the correct assessment the board of review submitted information on five suggested sales comparables. Those comparables varied in size from 16,336 square feet to 20,000 square feet of improved area and sold between April, 2007 and June, 2009 for prices ranging from \$61.41 to \$90.76. The board of review also submitted EPA Title 35 under BOR Exhibit #1 in two separate volumes for the purpose of showing the two separate plans of attack

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

for cleaning up residential and industrial property. At closing, upon request by the board of review and after no objection by opposing counsels, the Board took judicial notice of the Board's Techalloy decision, a courtesy copy of which was identified as BOR Exhibit #2 of Techalloy Co. v. Property Tax Appeal Board, 291 Ill.App.3d 86 (2nd Dist. 1997). The board of review requested, based on Techalloy, that the Board find the taxpayer's case to be insufficient to render a value of zero because it failed to reproduce the entire environmental report as well as evidence of a consent decree with the EPA or an order for any other additionally required remediation.

The intervenors submitted a brief in support of the subject's valuation. Within the brief were included three suggested sales comparables of properties that sold between November, 2008 and April, 2011 for prices ranging from \$86.57 to \$155.38 per square foot of building area. The intervenor's suggested sales comparables also ranged in age from 11 to 40-years-old and in size from 12,129 to 18,615 per square feet of building area. The intervenor's brief also included four suggested land sales that ranged: in sale date from May, 2010 to May, 2012; in square footage from 330,185 to 1,045,440 square feet of land; and in price per square foot of land from \$9.60 to \$12.21 per square foot. At closing, upon request by the intervenors, the Board took judicial notice of two prior Board decisions docket numbers 2002-01244 and 2003-00880. Counsel for the intervenors' argued that the 2002 and 2003 Board decisions adopt the Techalloy ruling requiring an order for remediation by a government agency.

### 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 that the evidence reflects that a reduction in the subject's assessment is warranted.

In determining the fair market value of the subject property for tax year 2012, the Board closely examined the reports prepared by Peterson and Butzen. The Board accords little weight to the board of review's evidence submission for it lacked the preparer's testimony concerning qualifications, methodology regarding data used therein, and conclusions of value. The Board then looks to the remaining evidence that comprises the Peterson report and testimony; Butzen's report and testimony; and the intervenor's suggested comparables.

The Board finds that Peterson's appraisal is decidedly speculative and gives the adjustments and conclusions of value no weight. Peterson testified that no remediation is required from the owner in "as-is" condition, and ad valorem taxation value of a property is in "as-is" condition. The Board also finds that Peterson failed to provide sufficient explanation as to why current income data is unreliable. Testimony at hearing revealed that the property is currently utilized by the owner for his own business and also that parts of the property were rented to a third party. Therefore, the Board finds Peterson's testimony of income unreliability, backed by a brief description in the report stating that the income approach was omitted based on an agreement with the owner and because it is not "critical" to the development of market value, to be insufficient and contradictory.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

The Board further finds that Peterson lacked sufficient knowledge and assumed speculative data as to when the subject was built and which part of the subject, if any, burned down in the 1993 fire. In addition, Peterson testified that he was not aware of whether any of the comparable properties utilized in his report, which he was also not certain whether he personally selected, were contaminated, to what extent, and whether any deed restrictions were placed on them. The Board also finds that Peterson speculated as to how much of the subject property is excess land, particularly when some of that property was leased by a third party for the purpose of parking their vehicles.

The Board is also not convinced that the appropriate methodology for contaminated property valuation is simply to deduct the cleanup costs from the uncontaminated market value on a dollar per dollar basis. Especially when, as here, only a small portion of the subject property is contaminated. Furthermore, there was no showing that the property is unmarketable or suffers from a severe decrease in market value due to the contamination. Peterson himself testified that contaminated properties sell all of the time and his estimate of market value was based on sale comparables that he was not sure whether they had any contamination either. Finally, there was no evidence in the record that the current owner of the subject property experienced any loss of revenue as a result of the contamination. Appellant's own expert testified that the owner's operations did not appear to be inhibited in any way and there were no necessary precautions to working at the subject property by either owner or renter.

The Board gives no weight to Butzen's environmental report. Butzen testified that the owner is not legally required to perform any further remediation by any government agency, either state or federal. The Board further finds that the environmental report incorrectly utilized the speculative residential cleanup standard. In Bloomington Public Schools, District #87, McLean County, Illinois v. The Illinois Property Tax Appeal Board, 379 Ill.App.3d 387, 394, the Court cited In Re Rosewell, 120 Ill.App.3d 369, 375, 75 Ill.Dec. 953, 458 N.E.2d at 126 wherein the court ruled that values which are future in character may not be taken into consideration...where they are so elusive and difficult to ascertain that they have not affected the present market value of the property. Further, this Bloomington decision cited State of Illinois v. Illinois Central Railroad Co., 27 Ill. 64 (1861) wherein the Illinois Supreme Court stated that property should be valued for the purposes for which it was constructed and not for any other purpose for which it...might be used. Bloomington at 394. In the present matter, the Board finds that the appellant failed to disclose any evidence to indicate that the subject property was being considered for an alternative use and necessitated the more comprehensive yet speculative residential standard of cleanup. While Peterson's appraisal refers to this speculative residential standard, his testimony was that the subject's highest and best use was its current industrial use and its highest and best use as vacant is for commercial and industrial development. Therefore, the Board finds any discussion of a residential use as mere speculation. Finally, the Board finds that the five-page letter relied upon by Peterson was based on a 1999 report prepared in an attempt to garner the appellant's business rather than for ad valorem purposes.

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 Board will consider the raw sales data from all parties.

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

As to the parties' 13 comparable sales, the Board finds the appellant's sales comparables #1, #2, #3, #4, and #5, the board of review's comparable #1, and the intervenors' comparable sales #1 and #2 to be similar and most probative in determining the subject's market value. These eight properties sold for prices ranging from \$40.00 to \$150.42 per square foot of building area. In comparison, the subject assessment value reflects a market value of \$164.79 per square foot of building area, which is above the range. After adjustments to the comparables for pertinent factors, the Board finds that the subject's improvement was overvalued and a reduction in the subject's market value is justified.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Virgil Pontarelli</b>
<b>DOCKET NUMBER:</b>	<b>15-04245.001-I-1 thru 15-04245.002-I-1</b>
<b>DATE DECIDED:</b>	<b>March, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of two parcels each improved with a one-story industrial building of masonry construction with 10,588 square feet of building area resulting in a combined building area of 21,176 square feet. Each building was constructed in 1987. Each building has a slab foundation and has a fire sprinkler system. The two buildings face each other and each has five units. Features include an exterior recessed loading dock, 14 foot clear ceiling heights, a 14 foot drive-in door, 300 square feet of office space in each unit and one restroom in each unit. The property has asphalt paving for parking. The two parcels (PINs) have a combined land area of 63,213 square feet. The property is located in Addison, Addison Township, DuPage County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal estimating the subject property had a market value of \$900,000 as of January 1, 2015. The appraisal was prepared by William P. Neberieza, a certified general real estate appraiser.

In the letter of transmittal the appraiser indicated that the purpose of the appraisal was to estimate the retrospective market value of the leased fee estate in the property. The report stated that the leased fee estate is defined as follows:

An ownership interest held by a landlord with the rent of use and occupancy conveyed by lease to others; the rights of lesser (sic) or the leased fee owner and leased fee are specified by contract terms contained within the lease. (Appraisal, p. 6.)

The appraiser determined the highest and best use of the site as vacant would be to improve the site with an industrial improvement. The highest and best use of the subject site as improved was determined to be to maintain the current improvements. In estimating the market value of the subject property the appraiser developed the sales comparison approach to value and the income approach to value.

In developing the sales comparison approach to value the appraiser used four sales located in Addison that were improved with industrial buildings that ranged in size from 12,177 to 37,460 square feet of building area and were constructed from 1967 to 1979. The comparables had sites ranging in size from 23,353 to 120,334 square feet of land area. The sales occurred from August 2013 to May 2015 for prices ranging from \$515,000 to \$1,650,000 or from \$42.04 to \$47.22 per square foot of building area, including land. After making adjustments to the comparables for differences from the subject in building size and land size, the appraiser arrived at adjusted prices ranging from \$40.29 to \$47.22 per square foot of building area, including land. Using this analysis the appraiser indicated the subject property would have a value range from \$40.00 to \$47.00 per square foot of building area or from \$847,040 to \$995,272. The appraiser estimated

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

the subject property had an estimated market value under the sales comparison approach of \$925,000.

Under the income approach to value the appraiser reviewed the subject's rents ranging from \$5.66 to \$12.45 per square foot of building area and four rental comparables with asking rentals ranging from \$6.95 to \$8.00 per square foot of building area on a net or semi-gross basis. The appraiser estimated the market rent to be \$8.00 per square foot resulting in a potential gross income of \$169,408. The appraiser deducted 10% of potential gross income or \$16,940 for vacancy and collection loss resulting in an effective gross income of \$152,468. The appraiser next deducted \$76,902 for expenses, which included \$42,320 in real estate taxes, to arrive at a net operating income of \$75,566. Using the band of investment technique the appraiser arrived at a capitalization rate of 8.40%. Capitalizing the net income resulted in an estimated market value under the income approach to value of \$900,000.

Based on these two approaches to value, giving most emphasis on the income approach, the appraiser estimated the subject property had a market value of \$900,000 as of January 1, 2015.

The appellant submitted copies of the final decisions issued by the board of review disclosing a total assessment of \$408,200, which reflects a market value of \$1,224,600. Based on this evidence the appellant requested the subject's total assessment be reduced to \$319,920.

The board of review did not timely submit its "Board of Review Notes on Appeal" or any evidence to support the assessment of the subject property or to refute the appellant's overvaluation argument.

### **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 only evidence of market value timely submitted in this record to be the appraisal presented by the appellant estimating the subject property had a market value of \$900,000 as of January 1, 2015. The subject's assessment reflects a market value above the only evidence of market value in the record.

The appraiser indicated that the market value of the leased fee estate was estimated. Section 9-145 of the Property Tax Code (35 ILCS 200/9-145) provides in part:

Statutory level of assessment: Except in counties with more than 200,000 inhabitants which classify property for purposes of taxation, property shall be valued as follows:

- a) Each tract or lot of property shall be valued at 33 1/3% of its fair cash value.



## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

Fair cash value is defined in the Property Tax Code 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).

Based on this definition, the Property Tax Appeal Board questions whether the market value of the leased fee estate developed by the appellant's appraiser is truly reflective of fair cash value for assessment purposes.

In estimating the market value of the subject property the appellant's appraiser developed the sales comparison approach to value estimating the subject property had a market value of \$925,000. The appraiser also developed the income approach to value estimating the subject property had a market value of \$900,000. Of the two approaches to value contained in the appraisal, the Property Tax Appeal Board finds the sales comparison approach to be more probative and better reflective of fair cash value. Less weight was given the income approach developed by the appraiser due to the fact that the appraiser deducted real estate taxes as an expense when the more appropriate process to handle this item is to use an effective tax rate as part of the capitalization rate. Additionally, the appraiser did not identify the source used to arrive at the remaining expenses deducted from the effective gross income to demonstrate these expenses were reflective of the market. Based on this evidence and giving more weight to the sales comparison approach, the Property Tax Appeal Board finds the subject property had a market value of \$925,000 as of the assessment date.

The board of review did not timely submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by section 1910.40(a) of the rules of the Property Tax Appeal Board and is found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.49(a) & §1910.69(a)).

In conclusion, the Board finds a reduction in the assessed valuation of the subject property is appropriate.

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<b>Donald Sinclair</b>
<b>DOCKET NUMBER:</b>	<b>13-02763.001-I-1</b>
<b>DATE DECIDED:</b>	<b>August, 2017</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a one-story single-tenant, owner-occupied industrial building of masonry construction with 13,345 square feet of building area and a concrete slab foundation. The building was constructed in 1967. Features include 1,444 square feet of office space (or approximately 11% of the building) and 11,901 square feet of warehouse space with a 16 foot ceiling height,<sup>1</sup> two truck docks and one drive-in door. The property has a 27,600 square foot site or .63 of an acre resulting in a land-to-building ratio of 2.07:1. The property is located in an industrial park in Elk Gove Village, Addison Township, DuPage County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Edward V. Kling. In the appraisal report, the appraiser utilized both the sales comparison and income approaches to value in opining that the subject property had an estimated market value of \$530,000 as of January 1, 2013.

As to the subject building, the appraiser noted the building was in average condition with some minor deferred maintenance, including exterior work of tuck pointing will be needed soon, there was a broken window and also cedar façade that was in disrepair. Kling also described the office area as somewhat dated and the ceiling clearance was below market standards.

The appraiser developed the sales comparison approach to value where six sales located in Addison, Elk Grove Village and Bensenville were examined. The parcels range in size from 23,773 to 50,000 square feet of land area. The comparable buildings were built between 1960 and 1988 and the buildings range in size from 8,960 to 19,342 square feet of building area. Features include office areas ranging from 10% to 32% of building area with ceiling heights ranging from 12 to 18 feet. The properties sold between May 2010 and April 2013 for prices ranging from \$330,000 to \$800,000 or from \$33.71 to \$48.31 per square foot of building area, including land. After considering adjustments for differences from the subject in age, condition, building size, utility and/or other characteristics, the appraiser opined a market value for the subject of \$40.00 per square foot of building area resulting in an estimated market value for the subject of \$530,000, rounded.

Under the income capitalization approach, the appraiser set forth data on four rental comparables of industrial buildings located in Elk Grove Village, Glendale Heights and Bensenville. The comparables were summarized on pages 37 and 38. The buildings range in leased square footage from 4,000 to 13,685 square feet of building area. These comparables had net rental rates ranging from \$4.50 to \$6.94 per square foot of building area. The appraiser concluded that the

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<sup>1</sup> The record presents a discrepancy on the ceiling height of the subject. The appellant's appraiser reported a 16 foot ceiling height whereas the assessing officials on the property record card reported a 19 foot ceiling height for the subject.

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

subject would have a market rent on a gross basis of \$6.25 per square foot resulting in a total potential gross rental income of \$83,406.

Next, the appraiser estimated the subject would have an 8% allowance for vacancy and collection loss resulting in an effective gross income of \$76,734. Estimated operating expenses for the subject of \$15,178 for management, taxes, reserves, legal/accounting and insurance, resulted in effective net income of \$61,556.

The final step under the income approach was to estimate the capitalization rate to be applied to the subject's net income. The appraiser opined that the subject's overall loaded capitalization rate would be 11.57%. Capitalizing the subject's estimated net income of \$61,556 by 11.57% resulted in an estimated value under the income approach of \$530,000, rounded.

In reconciliation, the appraiser gave most weight to the sales comparison approach along with support from the income approach in concluding a value for the subject of \$530,000 as of January 1, 2013.

Based on this evidence, the appellant requested an assessment reflective of the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$201,240. The subject's assessment reflects a market value of \$603,962 or \$45.26 per square foot of building area, land included, when using the 2013 three year average median level of assessment for DuPage County of 33.32% as determined by the Illinois Department of Revenue.

In support of the subject's assessment, the board of review presented a report prepared by Frank Marack, Jr., Chief Deputy Assessor of the Addison Township Assessor's Office. The report provided information on seven comparable sales located in Bensenville, Elk Grove or Addison. Board of review comparable sale #4 was the same property as appellant's appraisal sale #6.

These seven comparables consist of one-story masonry industrial buildings that were built or have effective ages ranging from 1969 to 1987. The buildings range in size from 9,564 to 20,100 square feet of building area and have from 5.95% to 16.96% office space. The comparables have building heights ranging from 14 feet to 18 feet and have land-to-building ratios ranging from 1.77:1 to 3.63:1. The seven comparables sold between September 2009 and December 2013 for prices ranging from \$665,000 to \$1,375,000 or from \$48.31 to \$71.79 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, age, condition and/or building height. Marack's adjustment grid reflected that the locations, number of units and percent of office space were all equal to the subject. As displayed, Marack's adjustment process resulted in adjusted sales prices ranging from \$51.21 to \$68.71 per square foot of building area, including land. In Marack's 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 \$58.00 per square foot of building area, including land, or \$774,000, rounded.

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

Based on this evidence and argument, the board of review requested an increase in the subject's assessment to reflect a market value of \$774,000.

In written rebuttal, counsel for the appellant criticized the unexplained adjustments that were made to the comparable sales that were chosen by Marack. As to board of review sales #1 and #2, counsel noted that multiple downward adjustments resulted in a significant downward adjustment overall. As to the date of sale comparable #3, counsel contended a downward adjustment was warranted and the estimated effective age of this property has not been addressed. Recognizing that both parties presented board of review comparable #4, counsel noted each party presented different adjustment results. Counsel disputed the size adjustment made to sale #5 and argued the buildings are very similar in size. Counsel pointed out that multiple adjustments were made to sale #6 and sale #7 differs from the subject in building size and is a long distance from the subject.

### **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.

Upon examining the appraisal report, the Board finds that while the comparable sales were relatively similar to the subject property, the appraiser's adjustments and rationale appear to be inconsistent. For instance, both parties presented appraisal sale #6/board of review sale #4 which the appraiser described as having a damaged roof at the time of sale in May 2010 due to deferred maintenance (see p. 33 of the appraisal). This sale property is similar to the subject in land area, building area and ceiling height with a sale price of approximately \$48 per square foot of building area, including land. The Board finds that despite the roof being in poor condition for this property, the property sold for \$48.31 per square foot of building area, including land, and required a "minimal" net adjustment according to Kling.

Additionally, Kling reported that the subject's ceiling height was "below market standards," but the Board finds that this assertion was not supported by the majority of the comparable sales set forth in Kling's report. Comparable sales #1, #2, #4, #5 and #6 of the appraisal report had ceiling heights of 13 feet to 14.5 feet, each of which is less than the subject's reported ceiling height of 16 feet. Moreover, the board of review comparable sales reflected ceiling heights of 14 feet to 18 feet, similar to that of the subject, even though the assessing officials report the subject has a 19 foot ceiling height.

Having examined the entire Kling appraisal report, the Board finds that the final value conclusion presented by the appraiser based on the adjustment process results in a determination that the appraiser's final conclusion lacks credibility. In summary, the Board finds that the appraised value is not a reliable indicator of the subject's estimated market value as of the assessment date. As a consequence of this finding, the Board will examine the most similar raw sales presented in the appraisal as compared to the raw sales presented by the board of review.

## **2017 SYNOPSIS – INDUSTRIAL CHAPTER**

As part of this analysis, the Board has given reduced weight to board of review sales #3, #6 and #7 due to differences in age and/or building size when compared to the subject property.

Reviewing the sales in the record presented by both parties that were most similar to the subject and after applying adjustments for differences in age, size and/or other features, the Board finds the best evidence of market value to be the appraisal sales and board of review comparable sales #1, #2, #4 and #5. The comparables sold for prices ranging from \$33.71 to \$71.79 per square foot of building area, including land. Once the high and low end outliers are removed, the range narrows to \$36.83 to \$69.53 per square foot of building area, including land. The subject's assessment reflects a market value of \$603,962 or \$45.26 per square foot of building area, including land, which is within the range established by the best comparable sales in the record on a per-square-foot basis and appears to be well-supported when giving due consideration to differences in age, size and/or features.

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

## 2017 SYNOPSIS – INDUSTRIAL CHAPTER

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### 2017 INDUSTRIAL CHAPTER

#### *Index*

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

<b><u>SUBJECT MATTER</u></b>	<b><u>PAGES</u></b>
<b>Equity – industrial building – comparables</b> <i>Comparables on the same street as subject</i>	I-20 to I-21
<b>Overvaluation – appraisal</b> <i>Comparable sales</i>	I-32 to I-35
<b>Overvaluation – appraisal</b> <i>Comparable sales (no testimony)</i>	I-2 to I-5
<b>Overvaluation – appraisal – as is v. environmentally clean</b> <i>Comparable sales</i>	I-22 to I-28
<b>Overvaluation – appraisal (dated valuation)</b> <i>Comparable sales</i>	I-16 to I-19
<b>Overvaluation – appraisal (dated valuation) &amp; lack of support</b> <i>Comparable sales</i>	I-12 to I-15
<b>Overvaluation – appraisal (leased fee value)</b> <i>Default by board of review</i>	I-29 to I-31
<b>Overvaluation – appraisal – vacant land</b> <i>Appraisal</i>	I-6 to I-7
<b>Overvaluation – comparable sales – "implied building value"</b> <i>Criticisms of sales data &amp; comparable sale "net building price"</i>	I-8 to I-11
<b>INDEX</b>	I-36 to I-36



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