State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2019

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

Wm. G. Stratton Office Bldg.
401 South Spring St., Rm. 402
Springfield, Illinois 62706
(T) 217.782.6076
(F) 217.785.4425
(TTY) 800.526.0844

KEVIN L. FREEMAN
Chairman

MICHAEL I. O'MALLEY
Executive Director & General Counsel

Suburban North Regional Office
9511 W. Harrison St., Suite LL-54
Des Plaines, Illinois 60016
(T) 847.294.4121
(F) 847.294.4799

2019 FOREWORD

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

Should the reader wish to become more completely informed about an appeal than is permitted by a reading of this volume, he or she need only access the Property Tax Appeal Board's website at www.ptab.illinois.gov and click on the link that says "Appeal Status Inquiry." Access to Board records is addressed in Section 1910.75 of the Official Rules of the Property Tax Appeal Board. Additional Property Tax Appeal Board decisions may also be accessed via the "Appeal Status Inquiry" link.

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

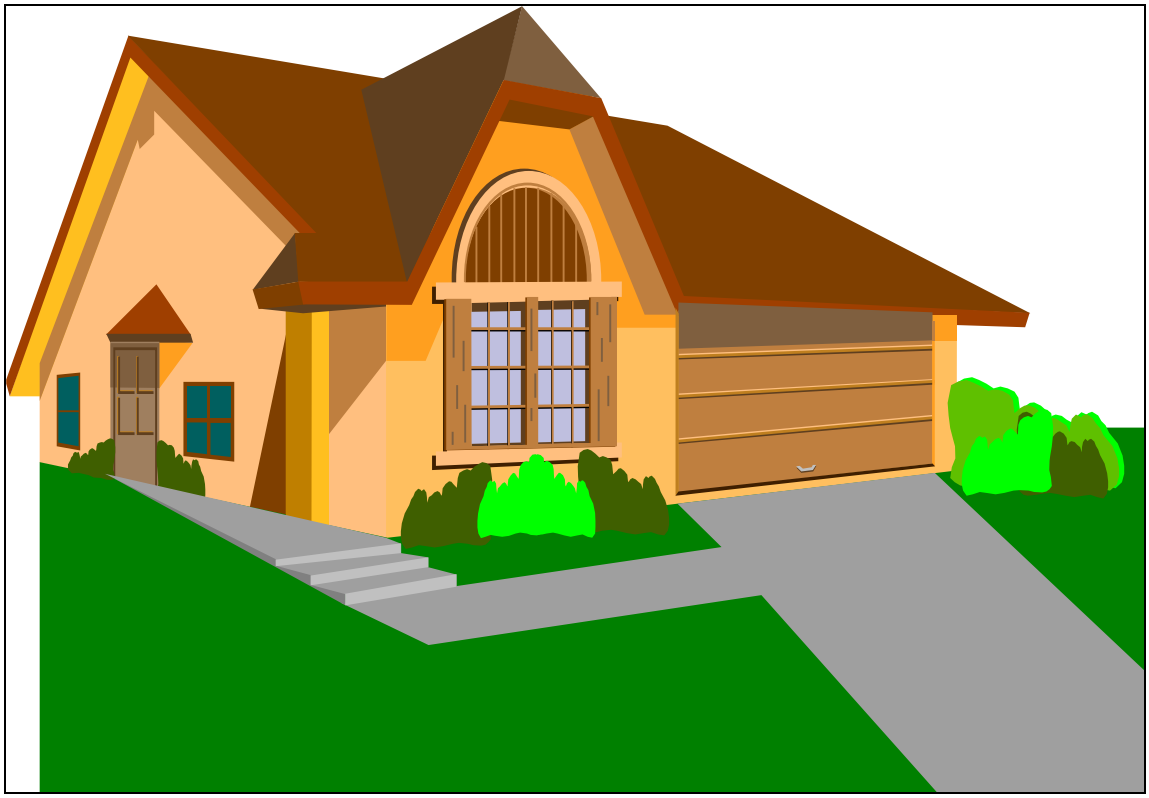
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial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

The Property Tax Appeal Board anticipates this volume of the 2019 Synopsis will continue to aid in the understanding of the issues confronted by the Board, and the kinds of evidence and documentation that meet with success.

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2019 RESIDENTIAL DECISIONS



PROPERTY TAX APPEAL BOARD
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2019 RESIDENTIAL CHAPTER

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APPELLANT:	**Barbara & Salvador Contreras**
DOCKET NUMBER:	**16-00313.001-F-1**
DATE DECIDED:	**October, 2019**
COUNTY:	**Kankakee**
RESULT:	**No Change**

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

The subject property consists of a 5.34 tract improved with a part 1.5-story and part 1-story dwelling of frame construction with 1,948 square feet of living area. The dwelling was constructed in 1925 and features a partial basement with 876 square feet of building area. The property is also improved with a detached garage with 800 square feet of building area. The property has a 2.26-acre homesite and 3.08 acres of farmland. The property is located in Grant Park, Yellowhead Township, Kankakee County.

The appellants' appeal is based on overvaluation. In support of this argument the appellants submitted evidence disclosing the subject property was purchased on April 28, 2015 for a price of $97,000. A copy of the settlement statement provided by the appellants disclosed the property was sold by OneWest Bank N.A. from Austin, Texas. The settlement statement disclosed that a real estate commission totaling $4,850 was paid to Speckman Realty, Inc. Real Living and to Remax 2000. The appellants indicated on the appeal form the parties were not related and the property was advertised by "sign, internet and/or auction." Based on this evidence, the appellants 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 $50,000. The subject has a farmland assessment of $228, which is based on the farmland soil types and productivity indices. (See 35 ILCS 200/10-110 through 10-125). The subject's homesite and building improvements have a total assessment of $49,772, which reflects a market value of $149,510 or $76.75 per square foot of living area, land included, when using the 2016 three-year average median level of assessment for Kankakee County of 33.29% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review submitted a written statement from the Yellowhead/Sumner Township Assessor, Kim Scanlon. Scanlon indicating the acquisition of the property involved a compulsory sale with the property being conveyed to the appellants via a Special Warranty Deed from OWB REO, LLC following a foreclosure. The board of review submission included a copy of a Sheriff's Report of Sale and Distribution, marked as Exhibit C8, disclosing the property was purchased at a public sale on August 20, 2014 by OneWest Bank for a price of $133,306.42. The receipt of sale included in Exhibit C8 disclosed the bid of $133,306.42 and that there was a deficiency totaling $284,292.01.

In support of the assessment, the board of review submitted four comparable sales identified by the township assessor that were improved with one, two-story dwelling and three part one-story and part two-story dwellings that ranged in size from 1,692 to 2,208 square feet of living area. The

dwellings were built from 1870 to 1920. Each home has a basement and a garage ranging in size from 400 to 2,400 square feet of building area. Two comparables are described as having pole buildings and one comparable has a barn. These properties have sites ranging in size from 2.17 to 5 acres. Comparable #1 has a 1.27-acre homesite and 3.73 acres of farmland. The sales occurred from March 2014 to December 2015 for prices ranging from $150,000 to $199,000 or from $80.16 to $117.61 per square foot of living area, inclusive of the land.

The board of review requested the assessment be affirmed.

The appellants' counsel submitted rebuttal comments contending the board of review did not dispute the recent sale of the subject property. Counsel also critiqued the sales presented 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.

The record disclosed the subject property was purchased by the appellants from a bank following a foreclosure for a price of $97,000 or $49.79 per square foot of living area, inclusive of the land. The board of review submitted information on four comparable sales with varying degrees of similarity to the subject property that sold in 2014 and 2015 for prices ranging from $150,000 to $199,000 or from $80.16 to $117.61 per square foot of living area, inclusive of the land. The Board finds the subject's purchase price is significantly below the prices of the sales presented by the board of review supporting the conclusion the price is not representative of fair cash value as of the assessment date at issue.

The Board finds the best evidence of market value in the record to be the comparable sales submitted by the board of review. These comparables were relatively similar to the subject in style, construction, features, age and land area. The subject's assessment for the homesite and related improvements, exclusive of the farmland, reflects a market value of $149,510 or $76.75 per square foot of living area, including land, which is below the range established by the board of review comparable sales. The Board finds that board of review sales #2 through #4 have sites ranging in size from 2.17 to 4.26 acres, none of which is farmland. These three properties sold for prices ranging from $150,000 to $190,000 or from $80.16 to $105.56 per square foot of living area, including land. These three sales demonstrate the subject's homesite and related improvements, including the dwelling, are not overvalued at $149,510 or $76.75 per square foot of living area inclusive of the 2.26-acre homesite. Based on this record the Board finds the subject's assessment as determined by the board of review is correct and a reduction in the subject's assessment is not justified.

APPELLANT:	**Steven Croxford**
DOCKET NUMBER:	**16-05190.001-F-1**
DATE DECIDED:	**June, 2019**
COUNTY:	**Jersey**
RESULT:	**Reduction**

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

The subject property is improved with a one and one-half story dwelling with 1,372 square feet of living area. The original dwelling is approximately 66 years old. Features of the home include a basement, central air conditioning, and a two-car attached garage. The issue in this appeal concerns the two-story addition to the appellant's original main dwelling which is only partially completed and contains approximately 1,000 square feet of living area.[1] Construction on the addition began in 2014. The improvements are located on an 88-acre site in Jerseyville, Mississippi Township, Jersey County.

The appellant, Steven Croxford, appeared before the Property Tax Appeal Board claiming a contention of law as the basis of the appeal.[2] The appellant is not contesting the assessment on the existing residence, homesite, farmland or farm buildings. The appellant is solely disputing the authority of the assessing officials to partially assess the addition to the main dwelling in tax year 2016. In support of this argument, Croxford cited Sections 9-160 and 9-180 of the Property Tax Code claiming that the cited statutes mandate that the addition should not be assessed for any amount until the date that either the occupancy permit is issued, or the addition becomes inhabitable and fit for occupancy.

Croxford testified that he began construction on the addition in 2014. He did all the labor himself with some help from family members; he did not contract out any of the work. Croxford testified that he personally dug out the foundation for the basement and poured the concrete for the foundation. As part of the construction of the addition, he testified that there were no doorway cutouts or any access from the existing house to the addition. Croxford testified that on the assessment date, the addition was made up of only a "shell" consisting of studded walls and roof. It did not have heating or air conditioning, duct work, insulation, electrical wiring, plumbing or fixtures. He also had no doorway cutouts or access from the existing house to the addition. As of the assessment date, Croxford testified that he had spent approximately $50,000 in labor and materials. The appellant submitted pictures depicting the addition as it appeared approximately fifteen months after the assessment date of January 1, 2016. The photographs depict an enclosed two-story studded structure without insulation or drywall. There appear to be two PVC ejection pipes in the lower level indicating partially roughed-in plumbing, however there are no water

[1] The appellant testified that each of the two floors contains 500 square feet of living area. The board of review contends that the addition/renovation contains 1,456 square feet of living area. The Board finds that this discrepancy in the square footage does not prevent a determination on the issue presented.

[2] The appellant marked "Recent construction" on the appeal form as the basis for his appeal. However, his evidentiary submission and testimony at the hearing were based upon a contention of law.

supply lines or plumbing fixtures of any kind. There are two ladders in the lower level which is consistent with Croxford's testimony that the only to access the lower level was through the existing basement and then climbing up ladders to the upper floors since the stairway is obviously not completed as depicted in the photographs. Based on this evidence and the provisions of the Property Tax Code, the appellant requested that no assessment be applied to the addition.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $49,295. The subject property has an improvement assessment of $36,845.

In support of its contention of the correct assessment, the board of review presented a memorandum and evidence consisting of Jersey County Code of Ordinances addressing building codes and permit requirements for building additions. The evidence was prepared by Crystal Perry, Supervisor of Assessments, who was present and testified at the hearing.

Perry testified that the township assessor initially assessed the addition at 100% of market value or approximately $90,500. The township assessor reportedly assumed construction should be completed after 180 days as set forth in the memorandum. After hearing the appellant's appeal, the Jersey County Board of Review reduced the assessment of the addition to 50% of full value or $45,250 based on the addition being only partially complete.

At the hearing, Perry contended that the addition added value to the overall dwelling and therefore should be assessed for the amount of the value added. Perry also testified that the assessed market value for the addition along with the percentage amount of completion was not based on any objective standards but rather personal experience. Based on the foregoing evidence, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The appellant's argument is based on a contention of law. 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. However, 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 Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The appellant argued that Sections 9-160 and 9-180 of the Property Tax Code (hereinafter the Code) govern in this case. The appellant argued that the Jersey County Township assessment officials misapplied the aforementioned sections of the Code as they relate to the assessment of an addition to an existing structure which was only partially complete as of January 1, 2016. The appellant contends that because the building was incomplete and not suitable for occupancy as of

January 1, 2016, there was no statutory authority to assess the addition at any percentage as of that date.

The Property Tax Appeal Board finds that, as of the date of assessment, the addition consisted of a basement foundation, studded walls and a roof. It did not have heating, air conditioning, duct work, insulation, electrical wiring, plumbing or fixtures. There was no doorway cutout and/or means of access from the existing house to the addition. The addition was not habitable. The Board does not find the board of review's determination to be persuasive that the addition was deemed to be 50% complete as of January 1, 2016 based on the foundation, walls and roof being completed. There was no actual physical inspection of the premises and nothing to support the board of review's opinion. Perry testified that the decision to assess the subject at 50% complete was not based on any known industry standards but rather her own experience in conjunction with the building code, rather than the Property Tax Code.

The Property Tax Appeal Board finds the evidence establishes that the subject addition was not complete or habitable as of January 1, 2016. However, the Property Tax Appeal Board finds the board of review was correct in assessing the value of what was present on the subject parcel as of January 1, 2016. Section 9-160 of the Code provides in part that:

> On or before June 1 in each year other than the general assessment year, in all counties with less than 3,000,000 inhabitants . . . the assessor shall list and assess all property which becomes taxable and which is not upon the general assessment, and also make and return a list of all new **or added buildings, structures or other improvements of any kind, the value of which had not been previously added to or included in the valuation of the property on which such improvements have been made,** specifying the property on which each of the improvements has been made, the kind of improvement and the value which, in his or her opinion, has been added to the property by the improvements. The assessment shall also include or exclude, on a proportionate basis in accordance with the provisions of Section 9-180, all new **or added buildings, structures or other improvements**, the value of which was not included in the valuation of the property for that year, and all improvements which were destroyed or removed. . . . (Emphasis added)

35 ILCS 200/9-160.

Under the facts of this appeal, the Jersey County Board of review clearly valued the subject as of January 1, 2016 based on the addition being 50% complete. The Property Tax Appeal Board finds the assessor is authorized pursuant to section 9-160 of the Code to assess the addition at the proper percentage of completion as of the date of assessment.

The Illinois Appellate Court in Long Grove Manor v. Property Tax Appeal Board, 301 Ill.App.3d 654, 704 N.E.2d 872, 235 Ill.Dec.299 (2nd Dist. 1998) construed the workings of Sections 9-160 and 9-180 of the Code. The court held that:

> Section 9-160 requires the assessor to record any new improvements and to determine the value they have added to the property. By its terms, section 9-180,

> applies only after a building has been substantially completed and initially occupied. Reading these two sections together, section 9-160 clearly requires the assessor to value any substantially completed improvements to the extent that they add value to the property. Section 9-180 then defines the time when the improvement can be fully assessed. This occurs when the building is both substantially completed and initially occupied. We note parenthetically that the legislature has amended section 9-180 to provide that an improvement may be fully assessed when it is *either* substantially completed *or* initially occupied.

Long Grove Manor, 301 Ill.App.3d at 656-657.

Subsequently, the Illinois Appellate Court in Brazas v. Property Tax Appeal Board, 339 Ill.App.3d 978, 791 N.E.2d 614, 274 Ill.Dec.522 (2nd Dist. 2003) clarified its holding in Long Grove Manor. The court explained that:

> [W]e clarify that Long Grove Manor stands for the principle that section 9-160 allows the assessor to value **any partially completed improvement to the extent that it adds value to the property, regardless of whether the improvement is "substantially complete."** Furthermore, section 9-180 addresses when the assessor is allowed to **fully** assess the improvement, *i.e.,* when it is "substantially completed or initially occupied or initially used." (Emphasis added)

Brazas, 339 Ill.App.3d at 983.

The Board finds that based on the above case law, the board of review was within its authority to partially assess the appellant's addition based on the value it added to the property but was not authorized to fully assess it because it was not then substantially completed or occupied. In addition, the Board finds that the evidence in this record as well as the testimony of the parties indicates that the addition was less than 50% completed as of January 1, 2016 due to being merely an enclosed "shell" without any reasonable access to the main existing structure and without any features which would render it inhabitable. The Board finds that an assessment for the addition based on being 50% complete as of the assessment date is excessive and, therefore, a reduction of the subject's assessment is warranted.

APPELLANT:	**Warren C. & L. Leanne Fehrman**
DOCKET NUMBER:	**16-01238.001-R-1**
DATE DECIDED:	**August, 2019**
COUNTY:	**McLean**
RESULT:	**No Change**

The subject property consists of a one-story dwelling of vinyl siding exterior construction that has 2,063 square feet of living area. The dwelling was built in 2010. Features include a full basement with 1,547 square feet of finished area, central air conditioning and a 1,023 square foot garage. The subject property is located in the City of Bloomington Township, McLean County.

The appellants contend assessment inequity as the basis of the appeal. The subject's land assessment was not challenged. In support of the inequity claim, the appellants submitted a grid analysis of four assessment comparables. Two comparables are located one block from the subject and two comparables are located 7.3 and 7.9 miles from the subject. The comparables consists of one-story dwellings of vinyl siding or brick front exterior construction that were built from 2001 to 2006. The comparables feature unfinished basements, central air conditioning, one fireplace and garages that range in size from 743 to 1,084 square feet of building area. The dwellings range in size from 2,042 to 2,225 square feet of living area. The comparables have improvement assessments ranging from $56,435 to $68,132 or from $26.89 to $31.87 per square foot of living area.

In a letter further addressing the appeal, the appellants contend comparables #1 and #2 have the same floor plan and are virtually identical to the subject. As background, the appellants explained the subject dwelling is the only home within the subdivision that does not have any brick or stone exterior finish. The appellants argued that, unlike the subject, a majority of the homes in the subdivision have trayed, coffered, vaulted or cathedral ceilings, fireplaces, increased basement wall heights, hardwood floors, crown moldings, and upgraded casing or base moldings. The appellants noted the subject has an oversized two-bay garage, whereas the other homes have three garage bays. The appellants argued the subject's assessment was reduced by the board of review for the 2013 through 2015 assessment years, alleging the assessment reductions were granted based on the assessments of comparables #1 and #2. The appellants argued the subject's 2016 assessment increased by 26.57% while comparables #1 and #2 had assessment increases of 2.40% and 1.34%, respectively. The appellants also raised questions as to how the subject's assessment was calculated. Finally, the appellants raised some concerns regarding the events, evidence and process at the local board of review hearing.[1] Based on this evidence, the appellants requested a reduction in the subject's improvement assessment.

[1] All proceedings before the Property Tax Appeal Board shall be considered *de novo* meaning the Board will only consider evidence, exhibits and briefs submitted to it and will not give any weight or consideration to any prior actions by the board of review or to any submissions not timely filed or not specifically made a part of the record. The Board shall not be limited to the evidence presented to the board of review of the county. A party participating in the hearing before the Property Tax Appeal Board is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the board of review of the county.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject's final assessment of $100,000. The subject property has an improvement assessment of $78,151 or $37.88 per square foot of living area. In support of the subject's assessment, the board of review submitted a grid analysis of seven assessment comparables located within the same subdivision as the subject. The comparables consist of one-story dwellings of brick front or aluminum and vinyl siding exterior construction that were built from 2006 to 2013. Five comparables have partial finished basements, like the subject, while two comparables have a full unfinished basement. Other features include central air conditioning, one fireplace and garages that range in size from 740 to 968 square feet of building area. The dwellings range in size from 1,960 to 2,292 square feet of living area and have improvement assessments ranging from $68,132 to $100,642 or from $31.87 to $46.42 per square foot of living area.

With respect to the evidence submitted by the appellants, the board of review acknowledged comparables #1 and #2 are very similar to the subject, but do not represent valid comparables for assessment purposes. The board of review argued appellants' comparable #1 is located in a different city, township and neighborhood, which is dissimilar and inferior to that of the subject. Appellants' comparable #2 is located on the opposite side of Bloomington and is located in an inferior neighborhood, although to a lesser degree. In support of this claim, the board of review prepared a paired sales analysis of the subject's subdivision (Brookridge Estates) in comparison to appellants' comparable #1's subdivision (Garden Park) and comparable #2's subdivision (Heartland Hills). Six sales of properties located in the subject's subdivision of Brookridge Estates sold from 2013 to 2016 for prices ranging from $314,000 to $425,500 with a median sale price of $176.46 per square foot of living area, including land. Six sales of properties located in Garden Park subdivision sold between 2013 and 2016 for prices ranging from $92,000 to $148,900 with a median sale price of $89.88 per square foot of living area, including land. Seventeen sales of properties located in Heartland Hills subdivision sold between 2013 and 2016 for prices ranging from $165,000 to $260,000 with a median sale price of $135.32 per square foot of living area, including land.

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

Conclusion of Law

The taxpayers argued 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.

The record contains 11 assessment comparables for the Board's consideration. The Board gave less weight to the comparables submitted by the appellants. Each comparable has an unfinished

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Each appeal shall be limited to the grounds listed in the petition filed with the Board. (Section 16-180 of the Code). (86 Ill.Admin.Code §1910.50(a)).

basement, inferior when compared to the subject's finished basement. In addition, and notwithstanding the dwellings are somewhat older than the subject, comparables #1 and #2 are not located within close proximity, being 7 miles distant from the subject. The Board finds the board of review submitted credible market value evidence in the form of a paired sales analysis that demonstrates appellants' comparables #1 and #2 are located in inferior subdivisions in terms of market value and are therefore not similar to the subject.[2] The median sale price for properties located in the subject's subdivision was calculated to be $176.46 per square foot of living area, including land, whereas the median sale price of properties located in appellants' comparables #1 and #2's subdivisions was lower at $89.88 and $135.32 per square foot of living area, including land, respectively. The Board also gave less weight to comparables #2, #4 and #7 submitted by the board of review as comparables #2 and #4 have inferior unfinished basements and comparable #7 has a superior swimming pool, which is dissimilar compared to the subject.

The Board finds the remaining four comparables that were submitted by the board of review are more similar to the subject in location, design, age, dwelling size and most features, recognizing each comparable has a fireplace but a smaller garage. They have improvement assessments ranging from $83,217 to $100,642 or from $40.81 to $46.42 per square foot of living area. The subject property has an improvement assessment of $78,151 or $37.88 per square foot of living area, which falls below the range established by the most similar assessment comparables contained in the record. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is well supported. Therefore, no reduction in the subject's improvement assessment is warranted.

The appellants further argued the subject's 2016 assessment increased by 26.57% while comparables #1 and #2 had assessment increases of 2.40% and 1.34%, respectively, which is inequitable. The Board finds this type of argument is not a persuasive indicator demonstrating assessment inequity by clear and convincing evidence. The Board finds rising or falling assessments from assessment year to assessment year on a percentage basis do not indicate whether a particular property is inequitably assessed. Actual assessments together with their salient characteristics must be compared and analyzed to determine whether uniformity of assessments exists. The Board finds assessors and boards of review are required by the Property Tax Code to revise and correct real property assessments annually, if necessary, that reflect fair market value, maintain uniformity of assessments, and are fair and just. This may result in many properties having increased or decreased assessments from year to year of varying amounts and percentage rates depending on prevailing market conditions and prior year's assessments.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with

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[2] The supreme court in Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 169 N.E.2d 769, discussed the constitutional requirement of uniformity. The court stated that "[u]niformity in taxation, as required by the constitution, implies equality in the burden of taxation." (Apex Motor Fuel, 20 Ill.2d at 401). The court in Apex Motor Fuel further stated: "the rule of uniformity ... prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. [citation.] In this context, the supreme court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent level. Kankakee County Board of Review, 131 Ill.2d at 21.

a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented 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.

Based on this analysis, the Board finds the appellants failed to demonstrate the subject property was inequitably assessed by clear and convincing evidence. Thus, no reduction in the subject's assessment is warranted.

APPELLANT:	**Aneta Genova**
DOCKET NUMBER:	**16-02840.001-R-1**
DATE DECIDED:	**November, 2019**
COUNTY:	**Lake**
RESULT:	**No Change**

The subject property consists of a two-story dwelling of wood siding exterior construction that was built in 1980. The dwelling contains 2,340 square feet of living area. Features include a partial finished basement, central air conditioning, two fireplaces, a gazebo and a 440-square foot attached garage. The subject has an 8,625 square foot site. The subject property is located in Vernon Township, Lake County.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. In support of the overvaluation claim, the appellant submitted a grid analysis of three comparable properties located from .07 to .47 of a mile from the subject. The comparables consist of two-story dwellings of wood siding exterior construction that were built from 1975 to 1981. The comparables have partial finished basements, central air conditioning, one fireplace and garages with 400 or 440 square feet of building area. The dwellings range in size from 2,264 to 2,348 square feet of living area and are situated on sites that contain from 8,019 to 10,322 square feet of land area. The comparables sold from March 2014 to October 2015 for prices ranging from $340,000 to $495,000 or from $144.80 to $211.54 per square foot of living area including land.

The appellant also claimed a "contention of law" as an alternative basis of the appeal. In support of this claim, the appellant cited an excerpt from the 2016 Rules of the Lake County Board of Review, which states:

> Tax Years other than the General Assessment Year. Tax Year 2016 is not a general assessment year for Lake County. Aside from substantial cause, assessed values from the 2015 general assessment are expected to be carried forward through 2018 subject to the Chief County Assessment Officer equalization factors in accordance with state statute (35 ILCS 200/9-160, 16-80 and 16-185). An assessment appeal based upon prior year Board of Review decisions should contain the 2015 Notice of Finding from the Board.

The appellant submitted the final decision issued by the Lake County Board of Review for the 2015 tax year showing the subject's assessment was reduced from $141,585 to $131,653.

Based on this evidence, the appellant requested a reduction in the subject's assessment to $131,653.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject property of $140,776. The subject's assessment reflects an estimated market value of $424,536 or $181.43 per square foot of living area, including land area, when applying Lake County's 2016 three-year average median level of assessment of 33.16%. The notes

on appeal also depict a 1.0693 equalization factor was issued in Vernon Township for the 2016 tax year.

With respect to the evidence submitted by the appellant, the board of review noted comparables #1 and #2 sold in 2014, 19 to 21 months prior to the subject's January 1, 2016 assessment date. The board of review also argued appellant's comparable #3 supports the subject's assessment.

In support of the subject's assessment, the board of review submitted six comparable sales located from .099 to .539 of a mile from the subject. One comparable was also used by the appellant. They consist of two-story dwellings of wood siding exterior construction that were built from 1975 to 1984. Five comparables have unfinished basements and one comparable has a partial finished basement. Other features include central air conditioning, a fireplace and a garage ranging in size from 400 to 462 square feet of building area. The dwellings range in size from 2,193 to 2,456 square feet of living area and are situated on sites that range in size from 6,138 to 10,322 square feet of land area. The comparables sold from April 2015 to October 2015 for prices ranging from $410,000 to $450,000 or from $173.05 to $205.20 per square foot of living area including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

One of the bases of the appellant's appeal was a contention of law. 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).

The Board finds the appellant's legal argument has no merit. The excerpt cited by the appellant states in pertinent part:

> Aside from substantial cause, assessed values from the 2015 general assessment are expected to be carried forward through 2018 subject to the Chief County Assessment Officer equalization factors in accordance with statute (35 ILCS 200/9-160, 16-80 and 16-185).

As an initial matter, the Board finds sections 9-160 and 16-185 of the Property Tax Code are not applicable in this appeal. (35 ILCS 200/9-160 and 16-185). Section 9-160 of the Code pertains to new or added improvement or improvements which were damaged or destroyed. (35 ILCS 200/9-160). Section 16-185 of the Code pertains to decisions issued by the Property Tax Appeal Board; establishing jurisdiction for a subsequent tax year(s) appeals; and in some instances, carrying forward the Property Tax Appeal Board's decision wherein a reduction in the assessment was granted subject to equalization. There was no evidence in the record that any of these circumstances applied in this appeal.

The Board further finds, though the final assessment is not binding on the Property Tax Appeal Board, the Lake County Board of Review followed its rules and their statutory mandate in this appeal.

Section 16-80 of the Property Tax Code provides:

> In any county with fewer than 3,000,000 inhabitants, if the board of review lowers the assessment of a particular parcel on which a residence occupied by the owner is situated, the reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless the taxpayer, county assessor, or other interested party can show substantial cause why the reduced assessment should not remain in effect, or unless the decision of the board is reversed or modified upon review. (35 ILCS 200/16-80).

The record shows the subject property is an owner-occupied residence and for the 2015 tax year the board of review reduced the subject's assessment to $131,653. The record also shows an equalization factor of 1.0693 was issued in Vernon Township for the 2016 tax year, where the subject property is located. Applying the 1.0693 equalization factor to the subject's reduced assessment for the 2015 of $131,653, as established by the board of review, results in an assessment of $140,776. ($131,653 x 1.0693 = $140,776). The Board finds the subject's assessment for the 2016 tax year reflects an assessment of $140,776 commensurate with the relevant provisions of 16-80 of the Property Tax Code. (35 ILCS 200/16-80).

The appellant also contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant did not meet this burden of proof and no reduction in the subject's assessment is warranted.

The record contains eight comparable sales for the Board's consideration with one common comparable submitted by the parties. The Board gave less weight to comparables #1 and #2 submitted by the appellant as these comparables sold in 2014 and are dated in relation to the subject's January 1, 2016 assessment date to be considered indicative of market value. The Board finds the remaining six comparable sales are more similar to the subject in location, land area, design, age, dwelling size, and most features and sold more proximate in time to the subject's assessment date. These comparables sold from April to October 2015 for prices ranging from $410,000 to $450,000 or from $173.05 to $205.20 per square foot of living area, including land. The subject's assessment reflects an estimated market value of $424,536 or $181.43 per square foot of living area, including land, which falls within the range established by the most similar comparable sales contained in this record. After considering adjustments to the comparables for differences to the subject, the Board finds the subject's estimated market value as reflected by its assessment is supported. Therefore, no reduction in the subject's assessment is warranted on the grounds of overvaluation.

APPELLANT:	**Weston Griffith**
DOCKET NUMBER:	**16-34708.001-R thru 16-34708.003-R-1**
DATE DECIDED:	**October, 2019**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a one-story masonry garage building containing 3,240 square feet of gross building area. The building is divided into two sections, with one section being used as an apartment. It is located in Thornton Township, Cook County, and is classified as 5-93 industrial property under the Cook County Real Property Assessment Classification Ordinance with a level of assessment of 25%.

The appellant submitted evidence with the Property Tax Appeal Board contesting the assessment of the subject property. The appellant contends that the subject is a commercial garage with an apartment and, therefore, should be reclassified as a 2-12 mixed-use property under the Cook County Real Property Classification Ordinance with a level of assessment of 10%.

In support of this contention, the appellant submitted color photographs of the interior and exterior of the subject property. The appellant also submitted a letter from the City of Harvey indicating the subject is being used as residential property.

The appellant also contends overvaluation as the basis of appeal. The evidence indicates the subject property was purchased by the appellant on September 29, 2015 for $50,000, or $15.43 per square foot, including land. It does not appear that the property was listed for sale on the open market and no realtors were involved in the transaction. The property was purchased in a cash transaction and quit claimed via a Deed-In-Trust. The settlement statement provided was not detailed. Based on this evidence, the appellant requested an assessment reduction to $5,000.

The board of review submitted its "Board of Review-Notes on Appeal" wherein the subject's total assessment was $12,500. The subject's final assessment reflects a fair market value of $50,000 when the Cook County Real Property Assessment Classification Ordinance level of assessment of 25% is applied. The board also submitted the property characteristic card for the subject indicating that the subject property has received a 17.6% occupancy factor for the 2016 tax year. At full occupancy, the assessed value would be $29,573, indicating a market value of $118,292. This county printout also indicates a Class 5-80 classification for the subject property, which indicates an industrial minor improvement. In addition, the board of review submitted raw sales data on nine industrial properties suggested as comparable. The sales occurred between May 2014 and April 2016 for prices ranging from $72,500 to $1,090,000 or from $57.82 to $139.00 per square foot of building area. The board also included a map depicting the location of the subject in relation to the suggested comparables. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In written rebuttal, the appellant included a property record card with conflicting classification information, as well as a printout with the definitions of each classification from the Cook County

Assessor's office under Joseph Berrios. The appellant's attorney also argued that the board's comparables should be given no weight as they are unadjusted and not similar in characteristics to the subject property.

At hearing, the appellant's attorney stated he was not aware of how the appellant became aware the subject property was for sale. He indicated the subject was used as a motorcycle club prior to a fire. The board of review rested on their written 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 did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant contend that the subject property should be reclassified as a Class 2-12 due to its commercial/residential usage in the building. The Cook County Real Property Classification Ordinance indicates that Class 2 property is defined as "real estate improved with a building put to commercial and residential use, of six or less units where the building measures less than 20,000 square feet of above grade space." It further defines *Real estate used for commercial purposes* as "any real estate used primarily for buying and selling of goods and services, or for otherwise providing goods and services, including any real estate used for hotel and motel purposes" while *Real estate used for industrial purposes* is defined as "any real estate used primarily in manufacturing, as defined in this section, or in the extraction or processing of raw materials unserviceable in their natural state to create new physical products or materials, or in the processing of materials for recycling, or in the transportation or storage of raw materials or finished physical goods in the wholesale distribution of such materials or goods for sale or leasing."

Having considered the evidence presented, the Board concludes that the appellant has not provided sufficient evidence to warrant a change in the subject property's classification.

The board of review's most recent property record card, as submitted in their case-in-chief, reflects a classification of 5-80, an industrial minor improvement. The appellant has submitted photographs of the subject, however, the building usage is not clearly depicted. Under the ordinance, a Class 2-12 property must have commercial and residential usage, not industrial usage. The Board finds that under the facts of this appeal, the appellant did not satisfy the burden of challenging the correctness of the assessment by proving that the subject is used for commercial as opposed to industrial purposes.

Additionally, the Board gives little weight to the board of review's evidence as the data are merely raw sales data that have not been adjusted for market conditions including time, location, age, size, land to building ratio, parking, zoning and other related factors. This evidence also fails to address the appellant's misclassification argument.

It should also be noted that the subject is receiving an occupancy factor for the 2016 tax year. As applied, the subject's current market value is $50,000, which is reflective of the subject's recent purchase price.

In conclusion, after considering the evidence submitted, the Board finds a reduction in the appellant's assessment is not supported based on this record.

APPELLANT:	**John Harney**
DOCKET NUMBER:	**15-22603.001-R-1**
DATE DECIDED:	**January, 2019**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a 2,250 square foot parcel of land improved with a 132-year old two-story frame single-family dwelling containing 2,594 square feet of building area. The property is located in Lake View Township, Cook County and is a class 2 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 argued that the subject received a certification of rehabilitation and received the Historic Residence Assessment Freeze for the lien year in question. In support of this, the appellant submitted a copy of the Certificate of Rehabilitation issued to him by the Illinois Historic Preservation Agency for a rehabilitation period of January 2013 through December 2013, color photographs of the exterior and interior of the subject, copies of documents from the 2012 board of review level appeal, the deed for the bulk purchase of the subject and the adjacent property, copies of February 29, 2012 appraisals for the subject and the adjacent property, the multiple listing database printout showing the offering for the subject and the adjacent property; and the bulk sales contract. The appellant argued that the subject's base year is 2013 based on the certification of rehabilitation. The appellant requests a reduction in the assessment consistent with the Historic Residence Assessment Freeze Law.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $77,136. The subject's assessment reflects a market value of $771,360 using the Cook County Real Estate Classification Ordinance level of assessment for class 2 property of 10%.

In support of the assessment, the board of review submitted four sales comparables and a supplemental brief. The board of review argues that the subject was accorded landmark status in 2015 and that the base year should be 2015. In addition, the board argues that, if the Board finds that 2013 is the base year, as the 2013 assessment year included vacancy based on the subject's rehabilitation work, which should be removed prior to setting any assessment. In support of this, the board of review included a county printout for the subject.

In rebuttal, the appellant submitted a letter asserting that the subject was rehabilitated in 2013 and this should be the base year. The appellant indicates that, prior to the rehabilitation, the subject was in poor condition as depicted in the photographs and the 2012 appraisal.

Procedurally, this matter was consolidated with 15-23390.001-R-1 for hearing purposes only without objection from the parties.

At hearing, the appellant's witness, James Ronan, testified he is a general contractor and he purchases properties for resale and rehabilitates some of them. He testified he has had a real estate broker's license since 2001 and works in the Lincoln Park area of Chicago. Mr. Ronan testified he purchased the subject property in 2012 along with the adjacent property and started rehabilitating the properties in early 2013.

He described both the subject property and the adjacent property as being in poor condition and were fenced off because they were a hazard to the community. He testified there was no drywall, electric, heating, plumbing, or interior and exterior stairs in either building. Mr. Ronan testified that the windows were boarded up and the buildings were uninhabitable. Ronan opined that the buildings were in a "shell" condition.

Mr. Ronan testified that, before he purchased the properties, they were in receivership and demolition court as the buildings were structurally unsound. He testified that he had to petition the court to remove the properties from a demolition list. He testified that the photographs depict the condition of the buildings prior to the start of rehabilitation. Mr. Ronan testified that he completed the rehabilitation of the buildings in early 2014 and sold the properties.

Under cross-examination, Mr. Ronan acknowledged that the properties were purchased by his corporation. He testified that the properties were sold to the respective appellants of each appeal. He testified that the properties sold in December 2013 and in 2014. Mr. Ronan testified he did not recall appealing the assessment for vacancy. He acknowledged that he did apply for the building permit which included the certificate of rehabilitation and that he did not make any application for a landmark assessment freeze.

In clarifying for the Board, Mr. Ronan testified that he applied for the building permit. He indicated that the Historic Preservation Agency would then approve the building permit and issue the certificate of rehabilitation.

The board of review's representative, Dartesia Pitts, testified that the certificate of rehabilitation was for 2013, but was dated 2014. She argued that the base value should not include the vacancy that was granted in light of the rehabilitation. Ms. Pitts presented the *Board of Review's Exhibit #1*, board of review printouts of the subject property showing an improvement market value of $728,700, and an occupancy factor of 10% for an improvement assessment of $7,287. She argued that the landmark freeze is a benefit for owner-occupied properties and that the subject was vacant. Ms. Pitts testified that removing the vacancy factor would increase the assessment higher than the 2014 and 2015 assessment years. She opined that the comparables submitted by the board of review support the current assessment.

Under cross-examination, Ms. Pitts testified that the subject property did not have a board of review level appeal for 2013. She could not indicate what section of the property tax code allowed for a vacancy factor. Ms. Pitts clarified that the board of review's evidence from a computer printout lists an "L" on the right side that indicated the landmark status. She further testified that the "P" indicates the subject received a building permit during that year.

Ms. Pitts clarified the board of review's arguments that the base year should be 2014 because the landmark status was granted in 2014. She argued in the alternative that, if the base year is determined to be 2013, the vacancy factor should be removed for determining the market value.

In closing, the appellant's attorney argued that the base year, as determined by the statute, is the year the rehabilitation commenced, which is 2013. He further argued that the county assessor established a market value for the subject and that there was no testimony from the assessor that the 2013 assessment was based upon a vacancy. He argued that that there is no application of a vacancy factor allowed under the property tax code and that no party appealed the 2013 assessment.

In conclusion, Ms. Pitts argued that the appellant is asking for a double benefit of both the landmark status and the occupancy factor applied to the subject improvement which goes beyond the incentive of the landmark statue.

Conclusion of Law

The appellant contends the subject is a landmark property and should receive a reduction in the assessment consistent with the law. The Board finds that the subject property received a Certificate of Rehabilitation under the Historic Residence Assessment Freeze Act. This Act states:

> "[P]roperty certified pursuant to this Historic Residence Assessment Freeze Law shall be eligible for an assessment freeze, as provide in this Section, eliminating from consideration, for assessment purposes, the value added by the rehabilitation and limiting the total valuation to the base year valuation . . . the valuation for purposes of assessment shall not exceed the base year valuation for the entire 8-year valuation period." 35 ILCS 200/10-45.

The Board finds the subject received the Certificate of Rehabilitation with the rehabilitation period being from January 2013 through December 2013.

Section 10-40 of the Property Tax Code (35 ILCS 200/10-40) provides in part:

> (h) "Fair cash value" means the fair cash value of the historic building, determined on the basis of the assessment officer's property record card, representing the value of the property prior to the commencement of rehabilitation without consideration of any reduction reflecting value during the rehabilitation work.
>
> (i) "Base year valuation" means the fair cash value of the historic building for the year in which the rehabilitation period begins but prior to the commencement of the rehabilitation and does not include any reduction in value during the rehabilitation work.

Therefore, the Board finds the base year for the subject property under the Historic Residence Assessment Freeze law is 2013, but that the value is determined prior to the commencement of the rehabilitation.

In determining the market value, the appellant argues that the 2013 assessment as determined by the assessor at $19,437 should apply while the board of review argues that the 10% vacancy factor granted to the subject's improvement in light of the rehabilitation should be removed to arrive at a 2013 base year assessment of $85,020.

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 arguments. The Board finds there is an issue as to the subject's valuation for the base year. The Board of Review's Exhibit #1 discloses a market value for the subject, without consideration for the rehabilitation, of $850,200. However, the appellant's appraisal and sale evidence contradict this value. Therefore, the Board finds there must be a determination of the subject's value for 2013.

The Board finds the best evidence of market value of the subject prior to the commencement of rehabilitation is the appraisal of the subject submitted into evidence by the appellant, along with the documentation on the sale of the subject and the adjacent property. The appraisal estimated a value for the subject of $350,000 as of February 29, 2012. The appraisal takes into consideration the condition of the subject in applying the sales comparison approach to value. The evidence shows a combined sale price for the subject and adjacent property of $850,000 which is reflective of the appraisals.

Based on this record, the Board finds the subject property had a market value of $350,000 for the base year 2013 prior to rehabilitation. The Board further finds that this 2013 value is applicable to the 2015 assessment due to its residential landmark freeze status. Since market value has been determined, the Cook County Real Property Assessment Classification Ordinance for class 2 property of 10% shall apply and a reduction is justified.

APPELLANT:	**Kenneth & Jessica Horstman**
DOCKET NUMBER:	**16-01110.001-R-1**
DATE DECIDED:	**July, 2019**
COUNTY:	**Winnebago**
RESULT:	**No Change**

The subject property consists of a one-story ranch-style residential dwelling of aluminum and vinyl exterior construction that has 2,200 square feet of living area. The dwelling was constructed in 2007. The home features a full basement with a finished area, central air conditioning, a fireplace and an 872-square foot garage. The subject has a 50,530-square foot site. The subject property is located in Rockford, Harlem Township, Winnebago County, Illinois.

The appellant, Jessica Horstman, appeared before the Property Tax Appeal Board claiming overvaluation and assessment inequity as the bases of the appeal. In support of both arguments, Horstman testified that she prepared Section V of the Appeal form which included eight comparable properties located in the same neighborhood code as the subject property. Horstman testified that the eight comparable properties are being used to support both overvaluation and assessment inequity arguments. The comparables consist of one-story, split-level or two-story colonial-style residential dwellings of frame and vinyl, frame and wood, frame and masonry or brick exterior construction that were built from 1959 to 1979. The comparables feature full or partial basements with five comparables having finished areas. The eight comparables also feature central air conditioning, one or two fireplaces and garages that range in size from 528 to 864 square feet of building area. The dwellings range in size from 1,529 to 2,273 square feet of living area and are situated on sites that contain from 1.10 to 1.87 acres of land area. The comparables sold from December 2013 to January 2016 for prices ranging from $148,000 to $180,000 or from $79.19 to $111.18 per square foot of living area including land. The comparables have improvement assessments ranging from $37,688 to $54,982 or from $20.85 to $29.53 per square foot of living area.

The appellants also submitted Multiple Listing Service listing sheets for all eight comparables. Finally, the appellants prepared a spreadsheet containing fifty properties in the same neighborhood as the subject indicating that only four properties (including the subject) had assessment increases in 2016. (Appellants' Exhibit #1). Horstman contended that this constitutes evidence of unequal and inequitable assessment of like properties. Horstman testified that the subject's assessment should be based on the median sale price per square foot of the eight comparables submitted. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject property of $66,000. The subject's assessment reflects an estimated market value of $197,902 or $89.96 per square foot of living area including land area when applying Winnebago County's 2016 three-year average median level of assessment of 33.35%. The subject property has an improvement assessment of $58,689 or $26.68 per square of living area.

In support of the subject's assessment, the board of review submitted five comparable sales and seven equity comparables all located within the same neighborhood code as the subject. The five comparable sales submitted by the board of review were also submitted by the appellant. They consist of one-story single-family dwellings of brick, frame or masonry and frame exterior construction that were built from 1974 to 1979. The comparables have full basements, three of which have a finished area. The comparables also have central air conditioning, one or two fireplaces and attached garages ranging in size from 576 to 864 square feet of building area. The dwellings range in size from 1,592 to 2,274 square feet of living area. Their site sizes were not disclosed. The comparables sold from July to December 2015 for prices ranging from $160,000 to $180,000 or from $78.05 to $111.18 per square foot of living area including land.

The seven equity comparables consist of one-story single-family dwellings of frame, brick or aluminum and vinyl exterior siding that were built from 1976 to 1994. Board of review equity comparable #6 is the same property as appellants' comparable #5. The equity comparables feature full basements with four having finished areas. The comparables also have central air conditioning, between one and three fireplaces and attached garages ranging in size from 552 to 1,034 square foot of building area. The comparables' improvement assessments were not disclosed. The improvements' market values were reported to range from $145,872 to $182,631 or from $64.15 to $77.01 per square foot of living area.

The evidence was prepared by Jeannie Vich, Rockford Township Assessor, who was present and testified at the hearing. Vich testified that the appellants' home is the newest dwelling in the neighborhood and that its assessed value still falls within the range of the comparable sales as well as the equity comparables submitted by the board of review. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The appellants contend the market value of the subject property is not accurately reflected in its assessed valuation as a basis of the appeal. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 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 met this burden of proof.

As an initial matter, the Property Tax Appeal Board gave no weight to the appellants' argument that the Board should use the median sale price per square foot of living area, including land, of those comparables deemed best in determining fair market value of the subject. Contrary to this argument, the decision of the Property Tax Appeal Board must be based upon equity and the weight of evidence, not upon a simplistic statistical formula of using the median sale price per square foot of living area, including land, of those comparables determined to be most similar to the subject. (35 ILCS 200/16-185; Chrysler Corp. v. Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Mead v. Board of Review, 143 Ill.App.3d 1088 (2nd Dist. 1986); Ellsworth Grain Co. v. Property Tax Appeal Board, 172 Ill.App.3d 552 (4th Dist. 1988); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989)). Based upon the foregoing legal principles, there is no indication that a median sale price per square foot is the fundamental or primary means to determine market value.

The parties submitted a total of eight comparable sales for the Board's consideration with various degrees of similarity to the subject. The Board gave less weight to appellant's comparables #1, #2, #3, #4, #7 and #8 due to their significantly smaller size of living area when compared to the subject. In addition, appellant's comparables #7 and #8 have a dissimilar split-level and two-story designs, respectively, when compared to the subject's one-story dwelling. The Board finds appellant's comparables #5 and #6 (which are the same properties as board of review sale comparables #1 and #2) are more similar to the subject in location, design, dwelling size and features. However, these comparables are inferior to the subject in that their basements are unfinished, unlike the subject and they are older in age having been built in 1974 and 1979 compared to the subject which was built in 2007. These comparables sold in August and December 2015 for prices of $160,000 and $180,000, respectively, or $78.05 and $79.16 per square foot of living area including land. The subject's assessment reflects an estimated market value of $197,902 or $89.96 per square foot of living area, including land, which is above the range established by the most similar comparables in this record. However, the Board finds that given the subject's newer age and finished basement when compared to the most similar comparables in this record, the subject's assessment that is above the highest comparable in the range is justified. After considering adjustments to the comparables for any differences when compared to the subject, the Board finds that a reduction in the subject's assessment is not warranted.

The appellants also 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 parties submitted for the Board's consideration a total of fourteen suggested equity comparables with various degrees of similarity to the subject property. The Board gave less weight to appellant's comparables #1, #2, #3, #4, #7 and #8 due to their significantly smaller size of living area when compared to the subject. In addition, appellant's comparables #7 and #8 have a dissimilar split-level and two-story designs, respectively, when compared to the subject's one-story dwelling. The Board finds the best evidence of equity assessment to be appellant's comparables #5 and #6 along with board of review equity comparables. In that these comparables are most similar to the subject in location, site size, dwelling size, design and features. However, they are all inferior to the subject due to their older ages when compared to the subject considering that they were constructed between 1974 and 1994 when compared to the subject's newer construction in 2007. These most similar comparables have improvement assessments ranging from $46,983 to $60,877 or from $21.38 to $25.67. The subject's improvement assessment of $61,096 or $29.13 per square foot of living area is above the range of the most similar comparables in the record. However, given the subject's superior age when compared to the most similar comparables in this record, the Board finds that the subject's higher assessment is supported. Therefore, the Board finds that a reduction to the subject's assessment based on assessment inequity is not warranted.

APPELLANT:	**Michael & Diane Kurasz**
DOCKET NUMBER:	**17-05530.001-R-1**
DATE DECIDED:	**July, 2019**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property consists of a one-story "bungalow" style dwelling of frame exterior construction that contains 1,080 square feet of living area. The dwelling was built in 1923 and features a partial unfinished basement. The dwelling is situated on a 9,350 square foot site. The subject property is located in York Township, DuPage County.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellants submitted a restricted appraisal of the subject property prepared by a state licensed appraiser. The appraisal report conveys an estimated market value for the subject property of $122,000 or $112.96 per square foot of living area, including land, as of January 1, 2017, using only the sales comparison approach to value. The report was developed and signed in December 2017.

Under the sales comparison approach to value, the appraiser identified three suggested comparable sales located from .28 to .65 of a mile from the subject. The comparables were described as "Vintage" in design, however, photographs depict the comparables are one or one and one-half story dwellings of frame or brick exterior construction. The dwellings range in size from 807 to 1,334 square feet of living area and are situated on sites ranging in size from 9,815 to 18,663 square feet of land area. The dwellings are from 67 to 102 years old. Two comparables have full or partial finished basements, with one comparable having exterior access. One comparable has an unfinished basement. Two comparables have central air conditioning. Comparable #1 has a garage in poor condition and comparable #3 has a two-car garage. The appraiser described the subject as being in "fair to average" condition while the comparables were described as being in "poor, fair or fair to average condition." The comparables sold from November 2015 to December 2016 for prices ranging from $120,000 to $138,000 or from $89.96 to $171.00 per square foot for living area including land. The appraiser adjusted the comparables for differences from the subject in land area, condition, dwelling size, finished basement area, central air conditioning and garage area, resulting in each having an adjusted sale price of $122,000. Based on these adjusted sales, the appraiser concluded the subject property had a fair market value of $122,000 or $112.96 per square foot of living area, including land, as of January 1, 2017.

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

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $65,000 was disclosed. The subject's assessment reflects an estimated market value of $195,020 or $180.57 per square foot of living area, including land, applying DuPage County's 2017 three-year average median level of assessment of 33.33%.

In support of the subject's assessment, the board of review submitted an analysis of the three comparable sales used by the appellants' appraiser and seven additional comparable sales. The evidence was prepared by the township assessor. The evidence shows the comparables selected by the appellants' appraiser had resold from May 2016 to August 2017 for prices ranging from $199,900 to $295,000 or from $187.31 to $247.71 per square foot for living area, including land.

The seven additional comparables consist of one-story "bungalow" style dwellings of frame or aluminum siding exterior construction that range in size from 738 to 1,090 square feet of living area that were built from 1916 to 1953. The dwellings are situated on sites ranging in size from 6,900 to 10,700 square feet of land area. The dwellings are located in the same neighborhood code as the subject as defined by the local assessor. Six comparables have full or partial unfinished basements and one comparable has a full, partially finished basement. Two comparables have central air conditioning and two comparables have a fireplace. The comparables have detached garages that range in size from 216 to 528 square feet of building area. The comparables sold from March 2015 to November 2017 for prices ranging from $148,500 to $280,000 or from $147.32 to $284.55 per square foot of living area, including land.

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

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). Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellants did not meet this burden of proof and no reduction in the subject's assessment is warranted.

The appellants submitted an appraisal report estimating the subject property had a fair market value of $122,000 as of January 1, 2017. The board of review submitted an analysis of the three comparables used by the appellants' appraiser and seven additional comparable sales.

The Property Tax Appeal Board gave diminished weight to the appraisal submitted by the appellants. The Board finds it suspect that the appellants' appraiser chose to use sale dates of the comparable that sold from November 2015 to December 2016 for prices ranging from $148,500 to $280,000 or from $89.96 to $171.00 per square foot for living area, including land. The unrefuted evidence submitted by the board of review indicated that these same comparables resold closer in time to the subject's January 1, 2017 assessment date for considerably higher sale prices. They resold from May 2016 to August 2017 for prices ranging from $199,900 to $295,000 or from $187.31 to $247.71 per square foot for living area including land. The appraisal report was developed and signed in December 2017. The appraiser did not disclose or provide any explanation as to why the sales that occurred closer in time to the assessment date and effective date of the appraisal were not utilized. This factor alone undermines the credibility of the appraisal report.

Notwithstanding the prior, the Board finds the appellants submitted a Restricted Use Appraisal report. The top of page 1 of the report disclosed: "The report is limited to the sole and exclusive use of the client. The rationale for how the appraiser arrived at the opinions and conclusions set forth in this report may not be understood properly without additional information in the appraiser's workfile. The purpose of this appraisal report is to provide the client with a credible opinion of the defined value of the subject property, given the intended use of the appraisal." In the addendum of the appraisal, the intended user and intended use of the appraisal was disclosed as being "Michael Kurasz and DuPage county Board of Review." "No additional Intended Users are identified by the appraiser." The Property Tax Appeal Board was not identified as an intended user of the appraisal report. The Board recognizes that Standards Rules 2-2(c)i of the Uniform Standards of Professional Appraisal Practice (USPAP) states:

> **The Restricted Use Appraisal Report is for client use only.** (Emphasis added.) Before entering into an agreement, the appraiser should establish with the client the situations where this type of report is to be used and should ensure that the client understands the restricted utility of the Restricted Use Appraisal Report. USPAP 2016-2017 Edition, The Appraisal Foundation, U-25.

Thus, the Board finds that the document submitted by the appellant is restricted to the use of the appellant and DuPage County Board of Review only and cannot be used by any third party, such as the Property Tax Appeal Board to determine the correct assessment of the subject property.

With respect to the seven comparable sales submitted by the board of review, the Property Tax Appeal Board gave less weight to comparables #2, #3 an #7 as the sales of comparables #2 and #3, which occurred in March and September of 2015, are dated and less indicative of market value as of the subject's January 1, 2017 assessment date and as comparable #7 is a considerably newer dwelling when compared to the subject. The Board finds the remaining four comparables submitted by the board of review are more similar to the subject in location, land area, design, dwelling size, age, and most features and sold more proximate in time to the subject's January 1, 2017 assessment date. These comparables sold from October 2016 to November 2017 for prices ranging from $148,500 to $218,800 or from $147.32 to $284.55 per square foot of living area, including land. Excluding comparable #1, which appears to be an outlier, creates a narrower range of sales prices from $210,000 to $218,800 or from $197.25 to $284.55 per square foot of living area, including land. The subject's assessment reflects an estimated market value of $195,020 or $180.57 per square foot of living area, including land, which is well supported by the most similar comparable sales contained in this record. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Board finds the subject's assessed valuation is justified and no reduction is warranted. Based on this analysis, the Property Tax Appeal Board finds the appellants failed to demonstrate the subject property was overvalued by a preponderance of the evidence.

APPELLANT:	**Music D. Milovanovic**
DOCKET NUMBER:	**16-06082.001-R-1**
DATE DECIDED:	**April, 2019**
COUNTY:	**McHenry**
RESULT:	**Reduction**

The subject property consists of a tri-level style dwelling of vinyl siding exterior construction that has 1,044 square feet of living area. The dwelling was constructed in 1984. The home features central air conditioning, a finished lower level and a one-car attached garage. The subject has an 8,750 square foot site. The subject property is located in McHenry Township, McHenry County.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted information pertaining to the sale of the subject property. The appellant completed Section IV of the residential appeal petition. The appeal petition depicts the subject property sold for $85,012 in January 2015; the sale did not involve family members or related corporations and the property was advertised for sale through the Multiple Listing Service for 153 days with the assistance of a Realtor. The appellant failed to submit the sales contract, settlement statement or Real Estate Transfer Declaration associated with the sale of the subject property. Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect its sale price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject property of $42,794. The subject's assessment reflects an estimated market value of $128,549 or $123.13 per square foot of living area, including land area, when applying McHenry County's 2016 three-year average median level of assessment of 33.29%. The board of review evidence shows the subject’s sale was a foreclosure.

In support of the subject's assessment, the board of review submitted an analysis of three comparable sales. The evidence was prepared by the township assessor. The comparables consist of tri-level style dwellings of frame exterior construction that were built in 1984 or 1988. The comparables have central air conditioning, finished lower levels and a one-car or a two-car garage. The dwellings range in size from 900 to 1,140 square feet of living area and are situated on sites that contain from 8,820 to 13,581 square feet of land area. The comparables sold from September 2015 to May 2016 for prices ranging from $124,000 to $170,775 or from $108.77 to $189.75 per square foot of living area, including land. Based on this evidence, the board of review offered to reduce the subject’s assessment to $38,330, which reflects an estimated market value of approximately $114,990 or $110.14 per square foot of living area, including land.

The appellant was notified of this suggested agreement and given thirty (30) days to respond if the offer was not acceptable. The appellant responded to the Property Tax Appeal Board by the established deadline rejecting the proposed assessment.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation as a basis of the appeal. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 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 supports a reduction in the subject's assessment.

The appellant presented information pertaining to the subject's 2015 sale price of $85,121 which occurred almost twelve months prior to the January 1, 2016 assessment date. The board of review submitted three comparable sales with varying degrees of similarity when compared to the subject. They sold from September 2015 to May 2016 for prices ranging from $124,000 to $170,775 or from $108.77 to $189.75 per square foot of living area, including land. Based on these sales, the board of review offered to reduce the subject's assessment to $38,330, which reflects an estimated market value of approximately $114,990 or $110.14 per square foot of living area, including land. The Board finds the subject's foreclosure sale price of $85,012 to be suspect and calls into question the arm's-length nature of the transaction, which is not reflective of market value given the credible comparable sales submitted by the board of review. Furthermore, appellant's counsel failed to submit the sales contract, settlement statement or Real Estate Transfer Declaration associated with the sale of the subject property, which further detracts from the weight of the evidence. Nonetheless, giving some weight to the subject's sale price and some weight to the comparable sales submitted by the board of review, the Board finds the assessment proposed by the board of review of $38,330, which reflects an estimated market value of approximately $114,990 is appropriate. Therefore, a reduction in the subject's assessment is warranted.

APPELLANT:	**Kenneth Numerowski**
DOCKET NUMBER:	**13-34415.001-R-1**
DATE DECIDED:	**February, 2019**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a two-story dwelling of masonry construction that is 42 years old. The dwelling is situated on a 10,125 square foot site. The property is located in Hanover Township, Cook County. The subject is classified as a class 2-11 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of appeal. In support of this argument, the appellant submitted a closing statement listing the Seller as Bank United. The appellant's evidence indicates the subject property sold pursuant to a foreclosure on February 28, 2011 for $95,000, or $24.05 per square foot, including land. The property was sold using a Realtor and was listed on the open market for five months. The appellant also indicated that the transfer was not between family members or a related corporation.

As further evidence of the subject's fair market value, the appellant also provided an appraisal valuing the subject at $175,000 as of January 1, 2013. The appraisal included five sales, one of which was that of the subject property. Based on this evidence, the appellant requested an assessment reduction to $9,500.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $31,801. The subject's assessment reflects a market value of $318,010, or $80.51 per square foot, including land, when applying the assessment level of 10% as established by the Cook County Real Property Classification Ordinance. In support of its contention of the correct assessment, the board of review submitted three sale comparables. The grid sheet also reflected the sale of the subject in February 2011 for $95,000. Based on this evidence, the board requested confirmation of the subject's assessment.

In written rebuttal, the appellant's attorney argued that the appraisal and recent sale of the subject should be given more weight than the board of review's sale comparables.

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 that the sale of the subject in February 2011 for $95,000 was a "compulsory sale" through the documentation submitted by the parties. 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.

Additionally, 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.

Bd. of Educ. of Meridian Cmty. Unit Sch. Dist. No. 223 v. Ill. Prop. Tax Appeal Bd., 2011 IL App (2d) 100068, ¶ 36 (citing Chrysler Corp. v. Ill. Prop. Tax Appeal Bd., 69 Ill.App.3d 207, 211 (2d Dist. 1979)).

The Board finds that the sale of the subject is a compulsory sale, in the form of a foreclosure, based on the settlement statement, Special Warranty Deed and appraisal which were submitted by the appellant.

In considering the compulsory sale of the subject, the Board may look to the market value evidence submitted by the parties to determine whether the purchase price was at the subject's fair market value. 86 Ill.Admin.Code §1910.65(c). Such evidence may consist of the sales of comparable properties. 86 Ill.Admin.Code §1910.65(c)(4); see, Calumet Transfer, LLC v. Ill. Prop. Tax Appeal Bd., 401 Ill.App.3d 652, 655-56 (1st Dist. 2010) ("[The Board] allowed the [intervenor] to challenge the arm's-length nature of the transaction by offering evidence of comparable property sales. This was permissible under paragraph (4) of section 1910.65(c).")

In determining the fair market value of the subject property, the Board gives no weight to the appraiser's valuation conclusion as the appraiser included the sale of the subject property as one of the five comparable properties used in reaching the subject's market value conclusion. In using the sale of the subject property that is the subject of this appeal, the appraiser skewed his conclusion of value, especially given that the sale of the subject was a compulsory sale.

The Board, however, will consider the remaining four sale comparables contained in the appraisal without regard to the appraiser's value conclusion, as well as the board of review's sale comparables. The Board finds that the appellant's comparables #2, #3, and #5, as well as board of review comparable #1, are similar to the subject in various factors. These comparables sold for unadjusted prices ranging from $26.21 to $91.27 per square foot of living area, including land. In comparison, the subject's sale price reflects a market value of $24.05 per square foot, including land, which is below the range of the sale comparables. Moreover, the current assessed value

reflects a market value of $80.51 per square foot of living area, including land, which is within the range of the best comparables. After considering adjustments for differences in the comparables when compared to the subject, the Board finds the subject's per square foot value is supported and a reduction in the subject's assessment is not warranted.

APPELLANT:	**Rod & Lorraine Ohlrogge**
DOCKET NUMBER:	**16-01288.001-R-1**
DATE DECIDED:	**August, 2019**
COUNTY:	**Will**
RESULT:	**No Change**

The subject property consists of a one-story dwelling of frame construction that has 2,300 square feet of living area. The dwelling was built in 2015. Features include a full basement, central air conditioning, a fireplace and a 1,460 square foot garage. The subject parcel is also improved with a 9,000 square foot pole barn that was built in 2010.[1] The subject property is located in Manhattan Township, Will County.

The appellants contend assessment inequity as the basis of the appeal.[2] The subject's land assessment was not challenged. In support of the inequity claim, the appellants submitted a grid analysis of three assessment comparables located from ½ of a mile to 3 miles from the subject. The comparables are comprised of one-story dwellings of frame or masonry construction that are from 19 to 36 years old. The grid analysis depicts the comparables do not have a basement. The comparables have central air conditioning, one fireplace and garages that contain from 672 to 945 square feet of building area. The dwellings range in size from 2,585 to 2,800 square feet of living area. The comparables have improvement assessments ranging from $83,700 to $123,550 or from $31.58 to $44.83 per square foot of living area. Based on this evidence, the appellants requested a reduction in the subject's improvement assessment to $93,288.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject's final assessment of $152,050. The subject property has an improvement assessment of $123,000, however, the improvement assessment includes the assessment for the 9,000 square foot pole barn which has an assessed value of $25,000. Therefore, the subject's residence and ancillary improvements has a residual assessment of $98,000 or $42.61 per square foot of living area.

In support of the subject's assessment, the board of review submitted a grid analysis of eight assessment comparables and a letter addressing the appeal. The evidence was prepared by the Manhattan Township Assessor. The comparables are located within 1.5 miles of the subject. The comparables consist of four, one-story dwellings, two, part one and one-half and part one-story dwellings, and two, one and one-half story dwellings. The dwellings are of frame, masonry or frame and masonry construction that are from 1 to 72 years old. Seven comparables have full or partial unfinished basements and one comparable has a partial finished basement. All of the comparables have central air conditioning; five comparables have one or two fireplaces; and each comparable has an attached garage that range in size from 565 to 1,536 square feet of building area. Five comparables are also improved with a barn and two comparables have an extra detached

[1] The appellants did not disclose that the subject parcel was improved with a pole barn. The subject's property record card that was submitted by the board of review depicts the pole barn has an assessed value of $25,000.

[2] The appellants' attorney also indicated that comparable sales was an alternative basis of the appeal but did not submit any comparable sales evidence to support this claim.

garage. The dwellings range in size from 1,624 to 2,784 square feet of living area. The comparables have improvement assessments ranging from $68,700 to $141,000 or from $37.37 to $55.99 per square foot of living area.

The township assessor asserted comparable #8 was most similar to the subject, but its pole building is assessed as part of the farm at $75,000. The residential improvements are assessed at $116,650 or $45.13 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 taxpayers argued 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.

The record contains 11 assessment comparables for the Board's consideration. The Board gave less weight to the comparables submitted by the appellants. All the comparables are older dwellings when compared to the subject. In addition, comparables #1 and #3 are located 3 miles from the subject, which is not proximate in location. The Board also gave less weight to comparables #1, #3, #4, #5, #6 and #7 submitted by the board of review. Five of these comparables are older dwellings than the subject, which is new construction, and four of the comparables are dissimilar in design when compared to the subject. The Board finds the two remaining comparables submitted by the board of review are more similar to the subject in location, design, age, dwelling size and most features, noting the improvement assessment for comparable #8 excludes the assessment associated with the pole barn. They have improvement assessments of $95,900 and $116,650 or $38.75 and $45.13 per square foot of living area. The subject property's residence, excluding the assessed value associated with the pole barn of $25,000[3], has a residual improvement assessment of $98,000 or $42.61 per square foot of living area, which falls between the improvement assessments of the most similar assessment comparables contained in the record. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is supported. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds that the appellants failed to overcome this burden.

[3] Again, appellants' attorney failed to disclose the existence of the pole barn or challenge its associated assessment of $25,000.

APPELLANT:	**Sheridan Court Assoc.**
DOCKET NUMBER:	**15-24784.001 R-2 thru 15-24784.019-R-2**
DATE DECIDED:	**October, 2019**
COUNTY:	**Cook**
RESULT:	**Dismissed – Lack of Standing**

The subject properties consist of 19 individually owned residential dwellings with an association known as the Sheridan Court Association that maintains and administers the property. The appellant, Sheridan Court Association, filed its appeal based on lack of assessment equity for 19 parcels. The subject properties are located in Chicago, Lake View Township, Cook County.

The Board finds the appellant, Sheridan Court Association, timely filed its appeal on March 3, 2016 following a Final Decision issued by the Cook County Board of Review on February 2, 2016. On May 3, 2016 the Cook County Board of Review was notified of this appeal and given 90 days to file its response.

On August 3, 2016. the Cook County Board of Review filed its Notes on Appeal and evidence in this matter. On November 2, 2016, the parties were given notice that all evidence was received. On July 13, 2018, this matter was then set for hearing on September 5, 2018. The board of review submitted a Motion to Dismiss for Lack of Standing on September 4, 2018 and the appellant requested a postponement of the hearing to respond to this motion. This response was received on September 10, 2018 and the board of review replied on October 1, 2018.

The Cook County Board of Review argues that it has properly filed this motion under Section 1910.64 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.64 (b)) which states:

> that all other motions [other than motions for extensions of time in which to file evidence] shall be in writing setting forth the arguments and authorities relied upon to permit the Board to make a decision with or without oral argument, at its discretion.

The board of review then argues that this motion is timely filed, and the issue has not been waived because it is based on an affirmative defense and not subject matter jurisdiction, which is a distinct legal doctrine under Illinois law. The board argues that the Illinois Supreme Court ruled "issues of standing and ripeness do not implicate our subject matter jurisdiction." Lebron v. Gottlieb Memorial Hosp., 237 Ill.2d 217,252-253, 930 N.E.2d 895, 916 (2010).

Finally, the board of review argues that as the petitioner, Sheridan Court Association, is not the owner or taxpayer it cannot be allowed to properly file an appeal before the Property Tax Appeal Board. 86 Ill.Admin.Code §1910.60(a))

The board of review further cites a prior decision of the Property Tax Appeal Board in Docket Number 13-29612.001-R-2, et al., issued on September 18, 2015, finding that a townhome

association is not a taxpayer, owner or taxing body and does not have standing to file an assessment appeal. (Hickory Rowhomes Homeowners Association, Docket No. 13-29612.001-R-2 through 13-29612.011-R-2, dated 9-18-15). After determining that the townhome association was not the taxpayer or owner of the 11 parcels on appeal, the Property Tax Appeal Board found in light of its rules that only a "taxpayer," or "those granted statutory standing" may file an appeal before the Property Tax Appeal Board. Since a townhome association did not qualify as any of those entities, the appeal was dismissed.

In response to the motion, the appellant argued that the motion was not timely raised and, therefore, the board of review waived the right to raise a lack of standing defense as required under Section 1910.40(b) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.40 (b)) states:

> If the board of review objects to the Board's jurisdiction, it must submit a written request for dismissal of the petition prior to the submission of the Board of Review Notes on Appeal and accompanying documentation.

The appellant argued that the rule, on its face, states that a written request to dismiss must be filed within the 90 days after notice of the appeal is given and filed prior to the submission of Notes on Appeal and accompanying evidence. 86 Ill.Admin.Code §1910.40 (b). The appellant argued that the board of review's failure to follow this rule resulted in its forfeiture of any right to object to standing.

The appellant then argued that the motion should be denied because the board of review allowed Sheridan Court Association to file an appeal and be granted relief at the county level and that the board of review submitted its Notes on Appeal. The appellant argued that these affirmative actions show that the board of review acknowledged the appellant had an interest in the outcome of the controversy. The appellant argued that the Lebron case supports that these actions show that the board of review did not assert a lack of standing in the underlying appeal. Lebron at 252.

Sheridan Court Association argued it has statutory authority to act for the owners/member of the association because the rules address "other similar entities" as included in ownership. The appellant agued it is an entity with an interest in the outcome of the controversy as created by the Common Interest Community Association Act (CIC Act). The appellant argued that the CIC Act defines community associations as "real estate other than a condominium or cooperative with respect to which any person by virtue of his or her ownership of a partial interest or unit therein is obligated to pay for the maintenance, improvement, insurance premiums or real estate taxes of common areas described in a declaration which is administered by an association. 765 ILCS 160/1-1 et. al.

The appellant argues that standing is granted under the CIC Act by the duties enumerated under the act which includes "(j) the board shall have standing and capacity to act in a representative capacity in relation to matters involving the common areas or more than one unit, on behalf of the members or unit owners as their interests may appear." Id. The Sheridan Court Association By-Laws empower the association to act on the behalf of its members in any matter where the respective interests of the members are deemed similar and non-adverse to each other and, the appellant argued, this includes filing an appeal before the Property Tax Appeal Board.

The appellant argued that the Hickory Rowhomes Homeowners Association Appeal, Docket No. 13-29612.001-R-2, differs from the instant appeal in that the appellant did not respond to the board of review's timely motion to dismiss and so the Property Tax Appeal Board did not address whether that appellant had statutory authority to represent its members. The appellant argued that the Property Tax Appeal Board rules allow for its representation as "other similar entities" under Section 1910.30(d) of the rules Property Tax Appeal Board. 86 Ill.Admin.Code §1910.30(d).

Next, the Sheridan Court Association argued that caselaw supports a broader use of the term "owner" under Kankakee County Board of Review v. Property Tax Appeal Board, which held that "title refers only to a legal relationship to the land, while ownership is comparable to control and denotes an interest in the real estate other than of holding title thereto." 316 Ill.App.3d 148, 152 (3rd Dist. 2000). The appellant likened the association's ownership to a trust beneficiary that controls the management of property.

Finally, the appellant argued that public policy and administrative practicality require the appellant's standing based on the official rules of the board of review and the Property Tax Appeal Board. The appellant argued the board of review's rules allow for condominium associations and "the like" as needing an attorney for representation and that both the board of review and the Property Tax Appeal Board would prefer an appeal filed by an association than hundreds of separate appeals filed by individual taxpayers.

The appellant submitted the By-Laws of Sheridan Court Association and the Official Rules of the Cook County Board of Review in support of these arguments. The board of review also argued that the board of review and the Property Tax Appeal Board are governed by completely different statutes and the Property Tax Appeal Board is a body of record while the board of review is not.

The board of review replied to this response and argued that the appellant's reference to the county level appeal is irrelevant as all appeals before the Property Tax Appeal Board are de novo proceedings. 86 Ill.Admin.Code §1910.50 (a).

The board of review cites a prior order of the Property Tax Appeal Board in Docket Number 11-23192.001-R-1, issued October 6, 2017, ruling that the board of review's motion was proper and timely and that Section 1910.64 of the Property Tax Appeal Board Rules is the correct application for a motion to dismiss for lack of standing. (Lake Maryanne Homeowner's Association, Docket No. 11-23192.001-R-1 through 11-23192.008-R-1, order dated October 6, 2017). The board of review argued that, under the Property Tax Appeal Board Rules, only jurisdictional issues may be time-barred and that standing issues may be raised at any time before trial.

The board of review further argued that the CIC Act differs from the Condominium Property Act in how standing is conferred on an association and that the CIC Act states "[t]he board shall have standing and capacity to act in a representative capacity in relation to matters involving the common areas or more than one unit, on behalf of the members or unit owners as their interests may appear." 765 ILCS 160/1-30 (j). However, it is the Condominium Property Act that specifically grants the condominium association board the standing to act on behalf of the unit owners in seeking relief in connection with the assessment or levy of taxes. 765 ILCS 605/10 (c). The board of review argued that the CIC Act does not include this language. It argued that ownership for condominiums is determined by percentage of ownership while the townhomes in

this appeal are individually owned and only these individually owned homes are under appeal. After reviewing the record, the Property Tax Appeal Board finds that the appellant does not have standing and appellant's appeal is dismissed.

First, the Board finds that the board of review properly filed its motion pursuant to Section 1910.64 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.64 (b)) which states:

> that all other motions [other than motions for extensions of time in which to file evidence] shall be in writing setting forth the arguments and authorities relied upon to permit the Board to make a decision with or without oral argument, at its discretion.

The Board finds that the board of review's motion is based on lack of standing and it is proper for the Board to review and rule on this motion.

Second, the Board finds only taxpayers and those granted statutory standing may pursue an appeal (citing Kankakee County Board of Review v. Property Tax Appeal Board, 316 Ill.App.3d 148 (3rd Dist. 2000); First National Bank v. Mid Central Food Sales, Inc., 129 Ill.App.3d 1002 (1st Dist. 1965)).

The Board further finds Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) states in relevant part:

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

Section 1-150 of the Property Tax Code (35 ILCS 200/1-150) defines a taxing district as:

> Any unit of local government, school district or community college district with the power to levy taxes.

Section 1910.10(c) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.10(c)) states:

> **Only a taxpayer or owner of property** dissatisfied with the decision of a board of review **as such decision pertains to the assessment of his property for taxation purposes**, or a taxing body that has a tax revenue interest in the decision of the board of review on an assessment made by any local assessment officer, may file an appeal with the Board. [Emphasis added]

Section 1910.60(a) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.60(a)) further states in relevant part:

> **Any taxpayer or owner of property** dissatisfied with a decision of the board of review as such decision pertains to the assessment of his or her property may appeal that decision by filing a petition with the Property Tax Appeal Board . . . [Emphasis added]

The court in Kankakee County Board of Review v. Property Tax Appeal Board, 316 Ill.App.3d 148 (3rd Dist. 2000), in determining whether a party that initiated an appeal before the Property Tax Appeal Board had standing as an owner or taxpayer, stated:

> Title refers only to a legal relationship to the land, while ownership is comparable to control and denotes an interest in the real estate other than that of holding title thereto.

Id. at 152, citing (People v. Chicago Title & Trust Co., 75 Ill.2d 479 at 489 (1979)).

The Kankakee court further found:

> Especially in tax law, "[t]he key elements of ownership are control and the right to enjoy the benefits of the property. Revenue collection is not concerned with the "refinements of title"; it is concerned with the realities of ownership."

Kankakee at 152.

The Board further finds Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) and Section 1910.10(c) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.10(c)) are clear: only a "taxpayer", "owner" or "taxing district having an interest in the decision of the board of review" may file an appeal before the Property Tax Appeal Board. The Board further finds the appellant, Sheridan Court Association, is not a "taxpayer", "owner" nor a "taxing district" as defined in the Code, nor is it granted leave to file an appeal before the Board pursuant to the rules of the Property Tax Appeal Board.

The Board gives little weight to the appellant's argument that the appellant should be allowed to file an appeal before the Property Tax Appeal Board because an appeal was filed at the county level with the board of review. Section 1910.50(a) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(a)) states:

> All proceedings before the Property Tax Appeal Board shall be considered de novo meaning the Board will consider only the evidence, exhibits and briefs submitted to it, and will not give any weight or consideration to any prior actions by a local board of review or to any submissions not timely filed or not specifically made a part of the record.

Any appeal before the Property Tax Appeal Board is governed by the Property Tax Code and the rules established by the Board. The rules established at the county level do not apply.

Fourth, the Board finds the Common Interest Community Association Act (CIC Act) does not authorize the Sheridan Court Association to file a petition with the Property Tax Appeal Board. The Condominium Property Act specifically allows for representation in regard to separate taxation by authorizing "the board of managers acting on behalf of all unit owners [to] have the power to seek relief from or in connection with the assessment or levy of any such taxes." (765 ILCS 605/10 (c)). The CIC Act is void of any language in regard to separate taxation and does not authorize any representation in connection with the assessment or tax levy. Moreover, the definition of a common interest community focuses on the common areas. 765 ILCS 160/1-5.

Fifth, the Board gives no weight to the appellant's argument that public policy requires that the Sheridan Court Association be allowed to appeal individual homeowners' assessments. When individual appeals are filed, these appeals may be consolidated for hearing purposes to promote judicial economy if they involve the same property or common issues of law and fact. (86 Ill.Admin.Code §1910.78). The Board finds the taxpayers are not prohibited from filing an appeal on their own behalf and are required to follow the rules of the Property Tax Appeal Board in determining their access to an appeal.

Finally, pursuant to Section 1910.90(i) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.90(i)), the Board may take judicial notice of previous decisions issued by the Board.

Section 1910.90(i) of the rules of the Property tax Appeal Board states:

> The Property Tax Appeal Board may take official notice of decisions it has rendered, matters within its specialized knowledge and expertise, and all matters of which the Circuit Courts of this State may take judicial notice.

The Board furthermore takes judicial notice of Docket Nos. 13-29612.001-R-2 through 13-29612.011-R-2 and 11-32192.001-R-1 through 11-32192.008-R-1.

Therefore, based on the conclusion that Sheridan Court Association is not a taxpayer, owner or taxing body, the Board finds the appellant does not have standing to file an assessment appeal and the Property Tax Appeal Board **grants** the Motion To Dismiss For Lack of Standing; **case dismissed**.

APPELLANT:	**Donna & Kenneth Van Barriger**
DOCKET NUMBER:	**16-01819.001-R-1**
DATE DECIDED:	**October, 2019**
COUNTY:	**DeKalb**
RESULT:	**Reduction**

The subject property consists of an 8.77-acre parcel that is improved with a residence and farm buildings.[1] The subject property has a 1.72-acre homesite and 7.05-acres of farmland. The subject property is located in Sandwich Township, DeKalb County.

The appellants presented a legal argument before the Property Tax Appeal Board claiming the subject's 2016 assessment was incorrect as a matter of law. The appellants requested the Property Tax Appeal Board carry forward its prior year's decision as provided by section 16-185 of the Property Tax Code. (35 ILCS 200/16-185). The record shows the Property Tax Appeal Board issued a decision lowering the subject's assessment to $44,926 the prior tax year under Docket Number 15-02135.001-R-1. The appellants' counsel asserted the subject property is an owner-occupied residence and that the 2016 tax year is within the same general assessment period. Based on this argument, the appellants requested the subject's assessment as determined by the Board for the 2015 tax year be carried forward to the 2016 tax year pursuant to section 16-185 of the Property Tax Code. (35 ILCS 200/16-185).

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $75,084. In support of its contention of the correct assessment, the board of review argued that the subject's 2015 assessment as determined by the Property Tax Appeal Board cannot be "rollover" due to the fact there is no record for the annual homestead exemption.

In rebuttal, the appellants' attorney submitted a brief and assessment records showing the subject property has been owner-occupied since being purchased in 2014.

In response to the rebuttal, the board of review submitted a letter further expounding upon the facts to the appeal. The board of review explained that the appellants had a new farm building constructed that was placed on the assessment roll for the 2016 tax year in the amount of $19,431, in addition to an existing farm building with an assessment of $11,833. For the 2016 tax year, the subject had a total farm building assessment of $31,264. The response further shows that for the 2016 tax year the subject's non-farmland (homesite) assessment was changed from $17,086 to

[1] The subject property had a newly constructed farm building that was placed on the assessment roll for the 2016 tax year in the amount of $19,431. The appellant did not disclose the existence of the new farm building or challenge the assessment associated with the farm buildings. For the prior 2015 tax year, the subject had an existing farm building assessed at $11,833. The parcel also had a 7.05-acres of farmland assessed at $2,343 for the 2015 tax year. Neither the appellant nor the board of review disclosed these facts for the prior tax year under Docket Number 15-02135.001-R-1.

$12,182, inclusive of the 2016 township equalization factor of 1.048100. The board of review provided no explanation as to why the land assessment was changed.

The appellants' attorney responded by requesting that the board of review's sur-rebuttal be stricken from the record because it contains additional evidence and arguments. The Board hereby denies the request that the response be stricken from the record. The Board finds the response from the board of review provides clarity of the evidence and facts of the appeal not disclosed by the appellants' counsel. Appellants' counsel further argued that, in the board of review calculations, it added farmland and farm buildings values, but those assessed values were included in the total assessment of $44,926 in the 2015 decision issued by the Property Tax Appeal Board decision.[2]

Conclusion of Law

The appellants raised a contention of law asserting that the assessment of the subject property as established by the Property Tax Appeal Board for the prior 2015 tax year should be carried forward to the 2016 tax year pursuant to section 16-185 of the Property Tax Code. (35 ILCS 200/16-185). When a contention of law is raised the burden of proof is a preponderance of the evidence. (5 ILCS 100/10-15). The Board finds the appellants met this burden of proof with respect to only the subject's improvement assessment.

The appellants argued the Property Tax Appeal Board's decision for the 2015 tax year should be carried forward to the 2016 tax year pursuant to section 16-185 of the Property Tax Code. (35 ILCS 200/16-185). The Board finds the record shows the subject property was the matter of an appeal before the Property Tax Appeal Board the prior tax year under Docket Number 15-02135.001-R-1. In that appeal, the Board issued a decision lowering the subject's assessment to $44,926. The decision only pertained to the subject's non-farmland assessment (homesite) of $17,086 and improvement assessment (residence) to $27,840.

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

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

The Board finds section 16-185 of the Property Tax Code (35 ILCS 200/16-185) is partially controlling in this matter. Based on the statutory mandates of section 16-185 of the Property Tax

[2] The Board finds counsel's assertion to be factually incorrect. The Board finds its decision issued for the 2015 tax year only pertained to the subject's land (homesite) and non-farm improvements (residence). Again, for the 2015 appeal, the appellants' counsel did not disclose the existence of a farm building or farmland or their corresponding assessments. For the prior 2015 tax year, the subject had a farm building assessment for an existing farm building of $11,833 and a farmland assessment of $2,343. These assessments were not challenged or included in the Board's decision for the 2015 tax year under Docket Number 15-02135.001-R-1.

Code (35 ILCS 200/16-185), the Board finds its decision for the 2015 tax year shall be carried forward to the subsequent 2016 tax year, but only as it applies to the subject's improvement (residence) assessment. The Board finds the evidence in the record shows the subject property is an owner-occupied residence and that the 2015 and 2016 tax years are within the same general assessment period. There is no evidence in the record showing that the subject property 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 that the decision of the Property Tax Appeal Board was reversed or modified upon review. For these reasons, the Property Tax Appeal Board finds that a reduction in the subject's improvement assessment is warranted to reflect the Board's prior year's decision of $27,840 plus application of the 2016 equalization factor of 1.0418100 or an improvement assessment of $29,179. (27,840 x 1.048100 = 29,179).

The Board further finds the subject's non-farmland assessment (homesite) of $12,182, which includes the of the 2016 equalization factor of 1.0418100, remains in effect.

The Board further finds it was appropriate by DeKalb County Assessment Officials to add the newly constructed farm building assessment to the 2016 assessment roll as provided by sections 9-160 and 9-180 of the Property Tax Code. (35 ILCS 200/9-160 and 9-180).

APPELLANT:	**Waverly Holdings LLC**
DOCKET NUMBER:	**16-02812.001-R-1**
DATE DECIDED:	**January, 2019**
COUNTY:	**Ogle**
RESULT:	**No Change**

The subject property consists of a two-story dwelling of frame exterior construction that has 1,550 square feet of living area. The dwelling was built in 1904. The home features a partial unfinished basement, central air conditioning and a 216-square foot garage. The subject has an 8,800 square foot site. The subject property is located in Forreston Township, Ogle County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellant completed Section IV of the residential appeal petition. The appeal petition depicts the subject property sold for $18,432 in October 2014. The seller was reported to be Fannie Mae; the sale did not involve family or related parties; and the property was advertised through the Multiple Listing Service. The sale was a result of foreclosure. The appeal petition further revealed the dwelling was renovated subsequent to the sale for a cost of $2,500 and was occupied in March 2015. The specific details and the extent or degree of renovation were not disclosed. The appellant submitted the Real Estate Transfer Declaration associated with the sale of the subject property.

In the cover letter dated March 13, 2017, counsel asserted that no other changes or modifications to the property have been made, nor have any conditions relative to the property changed in any substantive fashion. The appellant's evidence shows the subject property had an assessment of $17,386 for the 2016 tax year, which reflects an estimated market value of $52,494 or $33.87 per square foot of living area, including land, when applying the 2016 three-year average median level of assessment for Ogle County of 33.12%. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" but did not disclose the subject's final assessment. In support of the subject's assessment, the board of review submitted eight comparable sales. The comparables consist of one and one-half or two-story dwellings of frame exterior construction that were built from 1905 to 1943. The comparables have unfinished basements and garages that range in size from 400 to 726 square feet of building area. The dwellings range in size from 1,149 to 1,833 square feet of living area and have sites that contain from 8,184 to 12,800 square feet of land area. The comparables sold from June 2015 to December 2016 for prices ranging from $61,500 to $97,000 or from $34.92 to $56.61 per square foot of living area, including land.

In further support of the subject's assessment, the board of review submitted a copy of a Zillow.com listing of the subject property dated November 2017. The listing describes the subject as recently updated, including painting, carpeting, vinyl flooring, refinished hardwood flooring, water heater, exterior doors and windows. The subject property was offered for sale for $59,900

or $38.65 per square foot of living area, including land. 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 no reduction in the subject's assessment is warranted.

The Board gave less weight to the subject's sale price. The subject's sale occurred in October 2014, which is somewhat dated and less indicative of market value as of the January 1, 2016 assessment date. Additionally, the subject's sale was a result of foreclosure, which calls into question the arm's-length nature of the transaction.[1]

The board of review submitted eight comparable sales to support its assessment of the subject property. The Board gave less weight to comparables #3, #4, #5 #7 and #8 due to their dissimilar one and one-half story design and/or newer age when compared to the subject. The Board finds the three remaining comparables were more similar to the subject in land area, design, age, dwelling size and features. These comparables sold from June 2015 to April 2016 for prices ranging from $74,000 to $78,000 or from $49.46 to $51.83 per square foot of living area, including land. The subject's assessment reflects an estimated market value of $52,494 or $33.87 per square foot of living area, including land, which falls below the range established by the most similar comparable sales contained in this record. The Board further finds the appellant's overvaluation argument is undermined by the subject's Zillow.com listing price of $59,900 or $38.65 per square foot of living area, including land. The Board finds the most similar comparable sales and listing price demonstrate the subject's 2014 sale price was not reflective of market value as of the January 1, 2016 assessment date.

Based on this analysis, the Board finds the appellant failed to demonstrate the subject property was overvalued by a preponderance of the most credible market value evidence contained in the record. Therefore, no reduction in the subject's assessment is justified.

[1] The Board takes notice it reduced the subject's assessment based on its sale price for the prior tax year under Docket Number 15-01421.001-R-1. However, in that appeal the only evidence of value in the record was the subject's October 2014 sale price due to the fact the Ogle County Board of Review was found to be in default for failure to submit evidence to refute the appellant's argument or support its assessment of the subject property.

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PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2019 FARM DECISIONS

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

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2019 FARM CHAPTER

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APPELLANT:	**Bruce Konzelman**
DOCKET NUMBER:	**16-00327.001-F-1 thru 16-00327.004-F-1**
DATE DECIDED:	**October, 2019**
COUNTY:	**Kankakee**
RESULT:	**No Change**

The subject property consists of four parcels of farmland, one of which is also improved with a residence, homesite and outbuildings. The parcels reportedly contain a total of approximately 293 acres which are located in Pembrooke Township, Kankakee County.

The appellant contends the assessment of the subject farmland was excessive and should, by statute, have not increased from the prior assessment year by more than 10% as the basis of the appeal. No dispute was specifically raised as to the homesite, residence and/or outbuilding assessments on parcel 10-19-03-400-001.[1]

In support of this legal argument, the appellant submitted a brief, production records, and a soil map. In the brief, the appellant/attorney contended that increases in the assessed valuation of farmland is "limited to ten percent (10%) of the prior year's assessment" citing section 10-115(e) of the Property Tax Code [hereinafter "Code"]. (35 ILCS 200/10-115(e)) The brief quoted the relevant statutory provision from subsection (e) as providing "any increase . . . in the equalized assessed value per acre by soil productivity index shall not exceed ten percent (10%) from the immediate preceding year soil productivity index . . . ."

Also cited in the brief was Dietz v. Property Tax Appeal Board, 138 Ill.Dec. 746 (4th Dist. 1989) which upheld the decision of the Property Tax Appeal Board that the assessing officials had followed the plain meaning and legislative intent of the Code. The relevant section of the Code in the Dietz case provided that the "increase or decrease in the aggregate equalized assessed value of all farmland in any county" for 1984 and 1985 was held to 10% of the previous year's figures. [*citing to* Ill.Rev.Stat.1985, ch. 120, par. 501e].

For this appeal, the appellant/attorney contended that the assessed value of the subject's farmland could not increase by more than ten percent (10%) from the prior year. As such, as part of the appeal, the appellant/attorney requested farmland assessments for the four subject parcels that reflected only ten percent (10%) increases in the farmland assessments from the 2015 assessments for the farmland portions of these parcels.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessments of the subject parcels were presented. The board of review asserted in its documentation that the farmland assessments were calculated based on the soil productivity

[1] In Exhibit A, the appellant outlined the percentage increases from 2015 to 2016 that were issued as to each parcel ranging from 20% to 25.76%, with the highest percentage increase being on parcel 10-19-02-400-001, which includes other improvements.

indexes that had been certified to Kankakee County and that a change in subsection (e) of section 10-115 of the Code as of July 25, 2013 provided that:

> . . . any increase or decrease in the equalized assessed value per acre by soil productivity index shall not exceed 10% from the immediate preceding year's soil productivity index certified assessed value of the median cropped soil . . . .

(35 ILCS 200/10-115). In response to this appeal, the board of review submitted a brief prepared by Erich M. Blair, Kankakee County Supervisor of Assessments/Clerk of the Kankakee County Board of Review. In this brief, Blair asserted that the median cropped soil in Illinois was PI 111. Also included with the brief was a document entitled "Certified Values for Assessment Year 2016 ($ per acre)" which states at the bottom of the table on the document: "10% Increase at PI 111 is $21.86." In light of the statutory language cited and the soil PI table (a copy of which was submitted), Blair asserted that each PI assignment was increased by $21.86 for assessment year 2016.

The board of review further reported that the only changes for tax year 2016 that were made to parcel 10-19-03-400-001 concerning the non-farm values of that parcel "were exclusively a result of the equalization factor applied to all properties" with the same use code as this parcel; neither the farmland nor the farm buildings had any equalization factor applied. The equalization factor that was applied to the homesite and residential dwelling was 1.0450 as depicted in the copy of the PTAX-204-S/A 2016 Report on Equalization of Local Assessment by Chief County Assessment Officer (CCAO) that was submitted.

Based on the foregoing evidence and argument, the board of review requested confirmation of the assessments of the subject parcels.

Conclusion of Law

The appellant made a single contention of law as the basis of 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." 5 ILCS 100/10-15. 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. Therefore, the Board finds the standard herein is a preponderance of the evidence and the Board further finds the appellant did not meet this burden of proof on this record such that a reduction in the subject's assessment is not warranted.

The appellant asserts that the assessment on the subject parcel of farmland needs to be reduced to reflect an increase of no more than 10% from the prior 2015 tax year assessment in accordance with section 10-115 of the Property Tax Code (Code). At all times relevant hereto, Section 10-115 of the Code provides in pertinent part that:

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

. . .

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

The first issue to be addressed on this record is the correct statutory provision of subsection (e) that was applicable as of tax year 2016. The Property Tax Appeal Board finds that subsection (e) of section 10-115 for purposes of the appellant's argument provided:

> (e) the equalized assessed value per acre of farmland for each soil productivity index, which shall be 33-1/3% of the agricultural economic value, or the percentage as provided under Section 17-5; but any increase or decrease in the equalized assessed value per acre by soil productivity index **shall not exceed 10% from the immediate preceding year's soil productivity index certified assessed value of the median cropped soil**; in tax year 2015 only, that 10% limitation shall be reduced by $5 per acre;

[Emphasis added.] 35 ILCS 200/10-115. (P.A. 88-455, Art. 10, § 10-115, eff. Jan. 1, 1994. Amended by P.A. 91-357, § 61, eff. July 29, 1999; P.A. 98-109, § 5-50, eff. July 25, 2013).

The evidence disclosed that the board of review and assessing officials applied the "Certified Values for Assessment Year 2016 ($ per acre)" as provided reflecting a "10% increase at PI 111" of $21.86 as provided in the documentation supplied by the board of review. The Board further finds the appellant did not submit any evidence that challenged the soil types, farmland classification or use, number of acres, PI, and EAV per acre used by the Kankakee County assessment officials in calculating the farmland assessments for each parcel under appeal. Furthermore, the appellant did not rebut the board of review's evidence in any manner nor refute the contention of the applicable statutory language of Section 10-115 as of tax year 2016.

Based on this record, the Property Tax Appeal Board finds assessments of the subject farmland parcels as established by the board of review are correct and no reductions in the respective farmland assessments are warranted.

APPELLANT:	**Palazzini Family Revocable Trust c/o Sandra Halpin**
DOCKET NUMBER:	**14-00589.001-F-1**
DATE DECIDED:	**June, 2019**
COUNTY:	**Grundy**
RESULT:	**No Change**

The subject parcel of 39.67 acres consists of two farmland classifications. The dispute in this appeal centers on the amount of assessable tillable acreage and the amount of other/right-of-way acreage of the subject parcel after a recalculation of parcel size by the assessing officials. The property is located in Greenfield Township, Grundy County.

The appellant trustee, Sandra Halpin, appeared before the Property Tax Appeal Board with her husband, Don Halpin, claiming the classification of tillable acreage and right-of-way acreage of the subject tract of land as depicted by the Grundy County Board of Review for tax year 2014 were incorrect. The appellant asserts that the Grundy County assessing officials made an erroneous calculation of the classification of the farm acreage after a split of the parcel which reduced the total size of the parcel by .33 of an acre of cropland. (35 ILCS 200/10-125)

As set forth in the record, the parties agree that the subject parcel was previously known as parcel 12-27-300-003 containing 40 acres of land. After a split "due to a judgment giving the adjoining property owner of parcel 12-27-300-005 an additional 11 feet of land" [or .33 of an acre] from parcel 12-27-300-003, the subject parcel was reduced to 39.67 acres of land and assigned a new parcel number of 12-27-300-009 which is now on appeal.

The appellant argued that the subject tract, as a result of the mandated split, is now .33 of an acre less in cropland than before the split was recorded. Prior to the split, the subject parcel had a farmland assessment of $9,520, but after the split, when the parcel was slightly smaller, the subject property had an increased total assessment for 2014 of $9,556, or $36 higher than its previous year's assessment, due to an increase in cropland acreage and a decrease in right-of-way acreage.

The parties in this appeal agree that the subject parcel is entitled to a farmland assessment based upon its use. The sole question presented on this record is the correct division of the 39.67 acres for assessment purposes between tillable acreage and other/right-of-way acreage. The appellant contends that no change should have been made to the 2 acres of right-of-way that had been recorded since 1977. The appellant contends the only acreage change should have been a reduction of .33 acres of tillable farmland acreage for a new total of 37.67 acres of tillable farmland.

The appellant contends that based upon information from Stephanie Kennedy, previous Clerk of the Board of Review, the assessing officials used a new measuring system to determine road area and farmland acreage on any property which "changes hands." The appellant contends that under this system "a pencil line is three feet wide" and thus is not as accurate as a survey of the property. Additionally, since the assessing officials were not using this new measuring system on all farmland parcels in the county, but only selectively applying the measuring system to a small segment of properties in the county, the appellant contends the use of this new measuring process

was inequitable and a violation of Rule #8 of the Grundy County Board of Review Rules of Government dated August 20, 2014 (copy attached to appellant's Farm Appeal petition). Rule #8 provides:

> Complaints as to the equality of assessments between townships or in any portion of the county may be made, but the same shall contain such facts as will enable the Board to equalize the same.

In further support of the argument, the appellant submitted an aerial photograph with a handwritten notation that the USDA Farm Service Agency records the subject parcel as 37.60 acres of tillable farmland and 2.0 acres of road and ditch (right-of-way). The appellant also submitted copies of two Grundy County Individual Soil ID Land Reports, respectively, for parcels 12-27-300-009 and 12-27-300-003. As set forth on these printouts, before the split, the parcel known as 12-27-300-003 had 38 acres of tillable soil and 2 acres of public roadway for a total of 40 acres. As reported on the printout, after the split, the parcel now known as 12-27-300-009 was recorded as having 38.17 acres of tillable soil and 1.5 acres of public roadway for a total of 39.67 acres of land.

The appellant contends that the original measurements established by the assessing officials in 1977 should be applied for tax year 2014 with a deduction of .33 of an acre of tillable farmland acreage. The appellant acknowledged that neither party to the proceeding has employed a professional surveyor to measure to the subject property.

Based on the foregoing evidence and argument, the appellant requested a decrease in the subject's assessment to $9,520 as it had been before the split of the parcel.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total farmland assessment of $9,556 was disclosed. At hearing, the board of review was represented by Thomas L. Hougas, the clerk of the Grundy County Board of Review and Grundy County Supervisor of Assessments.

In support of the subject's farmland assessment, the board of review submitted a memorandum, data from the "ROW calculation from farm program," an aerial photograph of the subject parcel along with surrounding parcels, before and after the parcel split printouts for the subject parcel and before and after parcel maps.

The Grundy County Board of Review contends that after the split occurred the subject farmland was "recalculated on the current boundary lines." The board of review further reported that previously calculations were made manually with a planimeter and soil overlays, taking an average of three measurements to arrive at a calculation for a parcel. "Starting in 2012, we switched to a computerized farm program that measures the parcels for us, which is a much more accurate method of determining the new soil/land use calculations." Hougas opined that the GIS maps currently in use have a high degree of accuracy pinpointing the data to an exact longitude and latitude.

For the subject parcel, when the calculations were performed after the split the "ROW" or 'right of way' for the parcel was determined to be 1.51 acres, not the previously determined 2 acres that had been calculated by hand. In concluding the memorandum, the board of review noted that the

appellant benefited for many years from the calculation error that understated the amount of tillable acreage and overstated the amount of right of way area.

As to the appellant's inequity argument, the board of review contended that it was not economically feasible to remeasure all parcels at a single point in time. Hougas testified that every property that has been remeasured since 2012 has been done using the GIS system, including the subject property. The order of making changes to measurements start with properties that request changes and then secondly, properties the officials are able to get to for recalculation when time permits and resources are available. Hougas estimated that 95% of the parcels in Grundy County have been verified with the GIS system as of the date of hearing in mid-2018; Hougas did not have an estimate as of January 1, 2014, the assessment date of this appeal, but suggested it may have been 40% of parcels that had used the GIS measurements. While Hougas appreciated the appellant's equity argument, it was not a circumstance where the taxpayer was singled-out for remeasurement. Instead, it was an occasion where the new technology was available for use in calculating the subject parcel's farmland area after the split. Hougas further testified that for county budgetary reasons, it is not feasible to hire State certified surveyors to go into the field, measure individual parcels and provide an individual surveyor's report for every individual parcel in the county. Instead, the county relies exclusively on legal descriptions that are recorded in the Recorder's Office with use of the GIS system.

On cross-examination, the appellant asked whether the individuals performing the GIS mapping functions were certified surveyors or otherwise certified. Hougas testified that the head of the GIS mapping department has a Master's degree in geo-informational services, but is not a State certified surveyor. When questioned further about the burden placed upon the property owner to hire a surveyor to question the county's determination, Hougas testified that, as in any case with a discrepancy, if evidence were brought forward to contradict the county's determination, the county would certainly correct it.

The ALJ followed up asking what the assessing officials did in response to the appellant's contention that the calculations were incorrect. At the time of the local board of review hearing, Hougas was a member of the board of review and instructed staff members to double check the measurements which was also done as part of the review of the appeal at the time.

The board of review also called Deborah Ritke, an Assessment Tech I employed in that position for about a year and a half by Grundy County. Her duties include ensuring all legal documents are in place for combinations and splits within Grundy County. The individual who performed the recalculation of the subject property in 2014 was Jana Finch [phonetic], who is no longer employed by Grundy County. Finch was the individual who trained Ritke.

Ritke testified that after a split or combination of a farm parcel, the property is digitally measured for land use with a farm program that is run on the parcel, including review of aerial photography to determine cropland, other farmland/right-of-way and/or homesite areas. In her job, Ritke then 'edits' the overlay accordingly with the land use map.

As to the subject parcel for 2014, the property had to be reassessed since it was now a different size parcel after the split. The subject property, using GIS, measured more cropland and less right-of-way than the previous measurement and it was assessed accordingly. When asked by the

Administrative Law Judge (ALJ) whether the township assessor makes an actual visual inspection to determine what is cropland and what is not, Ritke testified there is no field inspection.[1] Instead, the assessing officials rely solely upon aerial GIS. The aerial photography is done 'when the leaves are down' in winter or early spring.

On cross-examination, the appellant established that Ritke or someone in her position must manipulate the digital GIS program to establish a starting point for a given line to distinguish between ditch/roadway and/or farmland areas. Ritke contended that the measurement line(s) applied in her GIS work involves very small fragments, but she could not pinpoint an exact figure in terms of inches or feet.

The appellant also asked Ritke how she distinguished between grass and a growing crop on the aerial photography. Ritke testified that her assignment was to determine tillable ground and right-of-way areas. The witness was also asked whether the road ditch areas are included in the right-of-way to which Ritke responded that the line was placed where the road was dedicated.

At the request of the ALJ, Ritke reviewed the aerial photograph of the subject parcel that was presented by the board of review with its evidence. Ritke testified that as part of the GIS mapping, the technician selects a parcel number, such as the subject property. For this aerial photograph, the computer has delineated the right-of-way areas on the west and south sides of the subject parcel and noted the remainder to be cropland. She further testified that the computer knows, due the land use map, the distinction between right-of-way and cropland, each of which are then assessed accordingly in terms of soil types and where the boundary lines are in terms of the different soil types. Upon further questioning, Ritke acknowledged that as the operating technician, she or another technician determined how 'wide' the right-of-way would be for the subject parcel.

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

As rebuttal testimony, Don Halpin reported his previous work experience that was admittedly 'some time ago' with the Farm Service Agency with use of digital technology to determine land sizes. In Halpin's experience, the lines applied by the FSA office at that time were about three feet wide. He further contended that the technician operating the computer must place the points on the mapping system. Halpin asserted that a computer does not on its own set forth lines on an aerial photograph.

Conclusion of Law

In summary, the appellant appealed the assessment of the subject parcel in part under the category of a contention of law to the Property Tax Appeal Board for tax year 2014. The land assessment issue was raised as a question of proper classification between cropland and right-of-way. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

[1] Hougas interjected that there is no township assessor for the subject property's township; the assessment is done at the county level.

> 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 appellant argued the subject's farmland assessment is incorrect because the amount of land considered tillable cropland has been overstated while the amount of land considered right-of-way was incorrectly decreased by use of modern GIS technology rather than continuing use of manual measurements that were established in approximately 1977. The appellant argued that the subject's farmland assessment should be returned to its tax year 2013 assessment as the size of the parcel was decreased to account for 0.33 acres of cropland that were split or removed from the parcel.

The Board finds the appellant failed to refute the farmland calculation made by the assessing officials for the subject parcel. The appellant requested the subject's assessment be decreased by $36 to continue to reflect a classification of 2.0 acres of right-of-way and 37.67 acres of tillable farmland. The Board finds the best evidence in this record of the subject's farmland measurements is the testimony and evidence presented by the board of review and is further supported by the aerial photographs presented by the board of review with GIS calculations. The Board finds the testimony and photographs depict the assessable right-of-way is made to the center of roadway as compared to the previous manual manner of determining parcel size with use of a planimeter with multiple calculations. Therefore, the Board finds the best evidence of the subject's proper classification to be 1.5 acres of right-of-way and 38.17 acres of tillable farmland. Therefore, the Board finds the subject's assessment as found by the board of review is correct and no change in the subject's farm classification is warranted.

The taxpayer also contends in part assessment inequity as a 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 no reduction in the subject's farmland assessment is warranted on grounds of a lack of assessment uniformity.

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

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

> Within this constitutional limitation, however, the General Assembly has the power to determine the method by which property may be valued for tax purposes. The constitutional provision for uniformity does [not] call ... for mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute in its general operation. A practical uniformity, rather than an absolute one, is the test.[citation.]

Apex Motor Fuel, 20 Ill.2d at 401. In this context, the Supreme Court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent level. Kankakee County Board of Review, 131 Ill.2d at 21.

The appellant contends that it was inequitable for the assessing officials to utilize GIS measuring technology as to the subject parcel in 2014 when this measuring technology was not being uniformly applied to all parcels in Grundy County simultaneously. The evidence on record indicates and was not refuted that GIS measuring technology was implemented in 2012 by the Grundy County assessing officials and has been consistently used since that date for purposes of new measurements and checking/correcting of existing records. By the time of hearing in 2018, most of the parcels in Grundy County have been remeasured using GIS technology.

Based on this record, the Board finds no evidence of a lack of uniformity in the application of the GIS measuring system to the subject parcel and thus, no change in the subject's assessment is warranted on this basis.

APPELLANT:	**William & Sherrie Robotham**
DOCKET NUMBER:	**16-00480.001-F-1**
DATE DECIDED:	**November, 2019**
COUNTY:	**Kane**
RESULT:	**Reduction**

Appellant's Historical Assessment Data/Manipulation Argument

As an initial matter raised by the appellants, the appellants submitted Letter Attachment A along with supporting documentation outlining the historical assessments of the subject parcel from 2011 through and up to the 2016 assessment that is the subject matter of this pending appeal. As set forth in the documentation, the appellants contend for tax year 2015 that were 20% reductions in the assessments applied to both the land in the Conservation Stewardship Program along with a 20% reduction in the homesite land assessment, but then there was an increase of 44.1% in the subject's improvement assessment (residence and other structures). The appellants contend that this 'migration' of value to the improvement assessment (non-farm buildings) results "in a higher tax bracket" since the improvements reflect 33-1/3% of fair cash value as compared to the 5% of fair market value applicable to the land in the Conservation Stewardship program.[1]

The board of review responded to this aspect of the appeal with a multi-page letter prepared by Blackberry Township Assessor Uwe R. Rotter which addressed Letter Attachment A. The township assessor reported that a review of 2014 land value assessments of rural properties in the township revealed a lack of uniformity. Thus, for tax year 2015 a revised land value table was established to standardize rural residential parcels as depicted in Attachment D to the letter. For tax year 2015, the subject 6.79-acre parcel was assessed as: 1st acre homesite $24,271 + 2nd acre $16,179 + 3rd acre $8,090 + 3.79 acres $20,439 (3.79 acres x $5.393[/acre]) = $68,979. The township assessor also addressed the appellants' contention regarding the increases in the dwelling's assessment from tax year 2013, along with the 2015 reassessment, based upon sales data for the prior three years.

At the time of hearing, the Administrative Law Judge (ALJ) advised the appellants that the Property Tax Appeal Board's jurisdiction is limited to determining the correct assessment of the subject property for the tax year on appeal (35 ILCS 200/16-180). In this regard, there are mandatory time limits with regard to the filing and pursuit of assessment appeals before the Property Tax Appeal Board such that the Property Tax Appeal Board lacks jurisdiction to consider matters related to tax years, such as 2015, that have not been timely appealed (35 ILCS 16-160 and 16-185) and which were argued/questioned in Letter Attachment A. To the extent that the appellants complain of a revaluation of the subject property in 2015, as mandated by the Property Tax Code, 2015 was the beginning of the general assessment cycle or quadrennial in Kane County

[1] As stated in the procedural rules of the Property Tax Appeal Board in pertinent part, the Board "is without jurisdiction to determine the tax rate, the amount of a tax bill, or the exemption of real property from taxation." (86 Ill.Admin.Code §1910.10(f)).

(35 ILCS 200/9-215) which requires assessing officials to revalue properties at least once every four years as reported in the "Board of Review – Notes on Appeal."

Therefore, the Property Tax Appeal Board will not further address in this decision these arguments made by the appellants concerning analysis of prior year's assessments set forth in Letter Attachment A on the basis that the Property Tax Appeal Board lacks jurisdiction. The Board's jurisdiction is limited to determining the correct assessment of the subject property for the tax year appealed in this matter which will be addressed as follows.[2]

Findings of Fact

The subject property has been improved with a one-story, single-family dwelling of frame and brick exterior construction containing approximately 2,469 square feet of living area.[3] The dwelling was built in 1988 and features a full unfinished basement, central air conditioning, a fireplace, an attached two-car garage with 672 square feet of building area and a detached three-car garage/outbuilding with 832 square feet of building area. The parcel consists of a 6.79-acre site of which 1.05 acres is deemed to be the homesite area for the subject residence. There are 5.74 acres of the subject parcel which are qualified for assessment under the Conservation Stewardship Law (35 ILCS 200/10-400 through 10-445). (See also Publication 135, Preferential Assessments for Wooded Acreage published by the Illinois Department of Revenue). The property is located in Elburn, Blackberry Township, Kane County.

As an initial matter, there is no dispute between the parties that 5.74 acres are entitled to a preferential assessment under the Conservation Stewardship Law. In accordance with Section 10-420 (35 ILCS 200/10-420), when five (5) or more contiguous acres of land are managed and approved under Section 10-415, the acreage is "valued at 5% of its fair cash value." The evidence presented by the Kane County Board of Review established that the "farmland" assessment of $60,169 set forth in the assessment of this property represents the 5.74 acres afforded the Conservation Stewardship assessment. Due to computer programming issues, the $60,169 for "farmland" technically overstates the actual assessment applied to the land; the subject conservation land is actually taxed at an assessment of $9,025 in order to reflect the valuation provided by Section 10-415 of the Property Tax Code.

The appellants appeared before the Property Tax Appeal Board at hearing contending overvaluation, in principle, as the basis of the appeal. In part, as discussed previously, the appellants believe value had been removed in prior year(s) from the land held in Conservation Stewardship and placed on the residence which resulted in higher taxation for the appellants. As

[2] Furthermore, as has been noted by the Property Tax Appeal Board in previous decisions, the mere fact that an assessment increases from one year to the next does not of itself establish that the assessment is incorrect. To demonstrate the assessment at issue is incorrect, the taxpayer needs to submit relevant, credible and probative market data to establish the market value of the property as of the assessment date at issue. In this regard, the appraisal and comparable sales data presented by the appellants in this matter will be fully analyzed in weighing the record evidence for this 2016 tax year appeal, along with the evidence presented by the board of review and the appellants' rebuttal filing, along with the testimony presented at hearing.

[3] While there is a slight size discrepancy between the subject's property record card maintained by the assessing officials and the schematic drawing prepared by the appellants' appraiser, the Property Tax Appeal Board finds on this record the slight size dispute does not prevent a determination of the correct assessment.

set forth in the Residential Appeal petition,[4] the appellants requested increases in the assessments of both the "farmland" (land in Conservation Stewardship) and the "homesite", while seeking a decrease in the assessment of the residence. In the appeal petition, the appellants requested a total assessment for the subject property of $136,530 which would be an overall reduction from the 2016 assessment of $170,545. In support of these arguments, the appellants submitted an appraisal and five suggested comparable sales, along with additional supporting documentation and arguments.

Appraisal

The appraisal submitted by the appellants was prepared by Robert Pihera, Certified Residential Real Estate Appraiser. The appellants called Pihera as their witness for hearing. The appraiser utilized the comparable sales approach in estimating the fair market value of the subject property as $410,000 as of January 1, 2016.

The appellants' appraiser described the subject parcel as consisting of 7.3 acres of land area[5] located in unincorporated Elburn and fronts a busy thru-road "causing it some external obsolescence." In testimony, Pihera noted it was a very difficult property to appraise. The appraisal was performed for fee simple property rights and, thus, the land was valued at market value with no consideration given to the Conservation Stewardship. As to the subject dwelling, the appraiser noted that while the home was built in 1988, it had an effective age of 10 years and was described as containing 2,425 square feet of living area which was supported by a schematic drawing in the appraisal report.

The only data set forth in the cost approach section of the appraisal report is an opinion of site value of $225,000 or approximately $30,822 per acre based upon the appraiser's conclusion of 7.3-acre subject site. The report states, "site value was based on similar comparable vacant land sales." As part of the Addendum in the report, Pihera wrote, "Cost Approach had no effect on valuation . . . ." Based upon questioning by the ALJ, Pihera testified that he arrived at the land value set forth in the Cost Approach by examining land sales for the prior five or six years to determine a trend based on variances in lot sizes.

Pihera utilized the sales comparison approach to value and analyzed four comparable properties located in Elburn or Batavia. The properties were located within 3.88 miles of the subject. The appraiser stated in the Supplemental Addendum that there were very few similar sales on acreage available in the subject's immediate area and, thus, the search parameters were expanded, including sale #3 in Geneva Township. The comparable parcels range in size from 1.06 to 5 acres of land area and have been improved with a two-story and three, one-story dwellings of frame or brick and frame exterior construction. The homes were from 15 to 38 years old and range in size from 1,703 to 3,369 square feet of living area with basements, three of which have finished areas. Each

[4] In order to properly record the various types of assessments placed on the subject property, the Property Tax Appeal Board has recorded this appeal as a "Farm" appeal petition designating the matter with an "F" in the docket number so as to properly record the "farmland," "homesite," "residence" and "outbuilding" assessments applied by the Kane County assessing officials.

[5] Both according to the records of the assessing officials and the appellants in Section III of the appeal petition, the subject parcel consists of 6.79 acres. Therefore, the appellants' appraiser overstated the land size of the subject parcel by .24 of an acre.

home has central air conditioning and a two-car or a three-car garage. Three of the comparables each have one or two fireplaces. The appraiser also reported the comparable properties have various additional amenities. Comparable #1 has a 2,016 square foot pole barn/arena; comparable #2 has a pole barn and an in-ground swimming pool; comparable #3 has an additional two-car garage; and comparable #4 has an in-ground swimming pool. As to the subject property, Pihera reported no observed "modernization/upgrades," but noted each of the comparable homes had flooring "modernization/upgrades" and comparables #1 and #2 also had updates to the kitchen and kitchen/bath, respectively. The four comparables sold between December 2014 and July 2015 for prices ranging from $322,000 to $517,500 or from $133.00 to $189.08 per square foot of living area, including land.

As part of the report, Pihera made adjustments to the comparable properties when compared to the subject. Each comparable was afforded an upward adjustment to account for lesser acreage when compared to the subject property; the adjustment made was approximately $10,000 per acre of land area. At hearing, Pihera testified the first acre had the greatest value and the additional acres would not add much value and he also considered how much frontage and/or depth the parcel would have. He also testified that he obtained his land values based upon land sales that are contained within his work file. In the Addendum, Pihera explained sale #3 was adjusted for its typical residential view as compared to the tranquil private area view of the subject and sales #1 and #2. Small upward adjustments were also made to the three frame dwellings for differences in exterior construction when compared to the subject's brick exterior. Sale #2 was adjusted upward for age "for the added wear and tear of time versus the subject." Varying adjustments were made for bathroom count and gross living area square footage ($40 per square foot) along with adjustments for differences in basement size and/or basement finish. In testimony, Pihera described the adjustment for dwelling size as being a "market-based adjustment," not cost, by averaging out differences found in comparable sales. The appraiser also made adjustments for differences in porch/patio/deck, modernization/upgrades and other amenities. After adjustments, the appraiser estimated the comparables had adjusted sale prices ranging from $399,380 to $460,900 or from $125.18 to $234.52 per square foot of living area, including land. From this data, the appraiser opined a market value for the subject property of $410,000 or $169.07 per square foot of living area, including land, based upon the appraiser's dwelling size determination of 2,425 square feet.

During his testimony, the ALJ asked Pihera to explain his use of a two-story dwelling for sale #2 as compared to the subject one-story home. He explained that sale #2 was a large acreage property and with the limited available comparable data, on a busy street with prairie area views, like the subject.

Appellants' Comparable Sales

In the Section V grid analysis of the Residential Appeal petition, the appellants provided evidence concerning five comparable properties located in Sugar Grove or Elburn which were within 4.58 miles from the subject property. The comparable parcels range in size from 1.05 to 4 acres of land area and have been improved with one-story dwellings of vinyl or brick exterior construction. The homes were from 6 to 48 years old and range in size from 2,184 to 2,902 square feet of living area with full basements, three of which have finished areas. Each home has central air conditioning and a garage(s) ranging in size from 662 to 1,010 square feet of total building area. As to each of

the five comparables on a separate grid, the appellants outlined "other improvements" describing various amenities and/or design features. The comparables sold between April 2013 and June 2015 for prices ranging from $315,000 to $400,000 or from $118.37 to $170.43 per square foot of living area, including land.

During the hearing, the ALJ asked Pihera to review the Section V comparable sales grid presented by the appellants and address whether he considered these sales for the appraisal. Pihera liked the appellants' comparables #1 and #2, but he found the dates of sale to be older. Appellants' sale #4 was a bit far from the subject being 4.5 miles away, according to Pihera.

Based on the foregoing evidence and argument, the appellants requested a total assessment of $136,530 which would reflect a market value of $409,631 at the statutory level of assessment of 33.33%. (35 ILCS 200/9-145)

On cross-examination, the board of review asked Pihera about his determination that land was valued at $10,000 per acre. Pihera testified that based upon his analysis of comparable sales and the land values, he concluded that $10,000 per acre was supported with the first acre being the most valuable and that subsequent additional acres had reduced value(s). He also considered the frontage and whether the land was buildable.

Pihera was also questioned about his cost approach data that presented a land value of approximately $30,000 per acre of land. In light of the cost approach, he was asked why $30,000 per acre was not used for the land adjustment. Pihera answered that the land of the subject property was valued at $30,000 per acre. Pihera agreed that bracketing the high and low is an important concept in performing an appraisal, but at the time of this appraisal report, he was unable to find properties with larger acreage.

Next, Pihera was asked about the downward adjustments applied for modernization/upgrades to each of the comparable dwellings in the report. He testified the adjustments were market derived. Pihera was further asked, in light of the comparable dwellings being in 'average' condition, when were the modernization/upgrades performed on the respective comparable dwellings. Pihera responded that all the homes were shown as 'average' with a separate line for modernization/upgrades to depict comparisons for each comparable to the subject that had no observed modernization/upgrades. The age adjustment Pihera made was based upon a ten-year period. When questioned further about the age adjustment applied to comparable sale #4, Pihera acknowledged that the $10,000 downward adjustment probably should have been only $5,000. Pihera was also asked if there are differences in the market between three-bedroom and four-bedroom homes. He opined that he did not see such a difference and instead, the difference he observed was based upon the size of the entire home. At the time of this appraisal report, Pihera contended his market adjustment for bathroom count was appropriate, but he acknowledged that currently the adjustment for bathroom count is higher.

When the appraiser was questioned about the parcel size determination of 7.3 acres of land, the appellants answered with the assertion that "everyone owns to the middle of Fabyan Parkway" and based upon survey data related to the appellants' purchase of the subject property.

When asked about appraisal sale #2, Pihera acknowledged that he did not know that comparable was within the floodplain. However, the appraiser also questioned whether the dwelling on the property was within the floodplain. The Blackberry Township Assessor spoke up during the hearing indicating that the home on this property had a 20% reduction due to the floodplain of the land. When questioned about this property backing to the railroad, Pihera testified that he did not observe a railroad backing up to this comparable. Upon examining the location map contained within the appraisal report, Pihera asserted the railroad was some distance from comparable sale #2's parcel boundaries.

Board of review evidence/argument

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $170,545. In the course of the hearing, it was revealed that the Kane County assessing officials have recorded the subject land that is assessed under the Conservation Stewardship Law as "farmland" with an assessment of $60,169 (reflective of 1/3 of fair cash value); pursuant to the Property Tax Code, this portion of the parcel has an assessment for purposes of taxation of $9,025.

In light of the assigned full market value of the land in the Conservation Stewardship program along with the homesite and residence, the subject's total assessment of $170,545 reflects a market value of $512,609 or $207.62 per square foot of living area, land included, when using the 2016 three year average median level of assessment for Kane County of 33.27% as determined by the Illinois Department of Revenue and the dwelling size of 2,469 square feet as reported by the assessing officials.

In response to the appellants' appeal, the board of review submitted a four-page letter prepared by the Blackberry Township Assessor, Uwe R. Rotter along with a copy of the subject's property record card, a grid analysis of five comparable sales (one of which was presented in the appellants' appraisal report and one of which was presented in the appellants' grid analysis), maps separately depicting the location of each parties' comparables in relation to the subject property, a Rural Residential Land Table and a parcel map along with the PTAX-203 Illinois Real Estate Transfer Declaration related to the sale of one 5.12 acre vacant parcel at Fabyan Parkway and Main Street in Elburn for $250,000.

As part of the letter, Rotter noted that the subject property has three full bathrooms as compared to four of the five comparables presented by the appellants in the Section V grid analysis. Additionally, the subject dwelling has a deck and two garages which differs from several of the Section V comparable properties. Rotter also wrote, "The intricacy of the roof-lines and the detail placed in the materials and general design used in the appellant[s'] home suggests that the subject's quality, and therefore value, is greater than that of the taxpayer's comparables #2, #3, #4 and #5" in the Section V grid analysis.

As to the appellants' appraisal report, besides an argument about the adjustment process not being done properly (Assessor's letter p. 2), there was a contention that appraisal sale #3 was not located in Blackberry Township and "was not available for this office to use in our sales analysis." Rotter also noted that appraisal sale #2 was a two-story residence as compared to the subject one-story dwelling. As to the appraiser's land value adjustment of $10,000 per acre, Rotter contended the

per-acre price in Blackberry Township is "closer to $50,000 market value as is shown" in attachment D concerning rural land values. In this regard, Rotter contended that a parcel four properties south of the subject consisting of 5.29 acres of residential land sold in May 2014 for $250,000 or $47,259 per acre (Attachment E). At hearing, the township assessor indicated that this parcel was being farmed. Furthermore, there was nothing to indicate that this comparable parcel had any restrictions like the subject's Conservation Stewardship agreement.

In support of its contention of the correct assessment the board of review through the township assessor submitted information on five comparable sales located within 5.11-miles from the subject. At the hearing, the board of review representative briefly touched on each of these comparables. In the summary, the representative acknowledged that the dwelling on board of review comparable #2 was superior to the subject in size and walkout basement feature. The representative also stated that board of review comparable #5 was of a different "caliper or class" as the subject property and should be disregarded. The comparable parcels presented by the board of review range in size from 3.89 to 5.02 acres of land area and have been improved with one-story dwellings of frame, brick, brick and frame or "other" and stone exterior construction. The homes were built between 1988 and 2007 and range in size from 2,347 to 3,122 square feet of living area with basements, three of which have finished areas; one basement is a walk-out style and one basement is a lookout style. Each home has central air conditioning, a fireplace and a garage ranging in size from 672 to 1,008 square feet of building area. Four of the comparables have "farm buildings" totaling in size from 2,016 to 12,288 square feet of building area. The comparables sold between May 2013 and June 2015 for prices ranging from $400,000 to $1,000,000 or from $170.43 to $343.88 per square foot of living area, including land.

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

In rebuttal at hearing, appellants William and Sherrie Robotham testified that the one vacant land sale presented by the board of review has a fairly flat topography. In comparison, he testified that the subject parcel is not flat; the subject parcel has a sixty-foot elevation difference from one corner to the other corner of the parcel. The appellants testified that the subject property drains towards an 11 acre vacant lot that is currently for sale which only is buildable on half of the property because it floods due to drainage from Fabyan Parkway, area farm fields and retention pond from Mill Creek. Mr. Robotham argued that the board of review's vacant land sale comparable with its flatter topography would carry a higher value than the subject property.

As to the comparable sales data presented by the board of review, the appellants' appraiser Pihera testified that the overall condition of these suggested comparable homes will bring the price per square foot up as compared to the subject dwelling that is "pretty vanilla." For instance, Pihera noted that board of review sale #3/appellants' comparable #1 has vaulted ceilings which is not a feature of the subject dwelling. Pihera contended that the board of review comparable dwellings each have more custom interiors including, that kitchens are modern with modern flooring.

In written rebuttal, the appellants submitted a twelve page, single-spaced typed letter along with supporting attachments. In rebuttal, the appellants disputed that comparability of the dwellings presented by the board of review in terms of dwelling size, quality and amenities, including finished basements that is not a feature of the subject dwelling (Attachment F. Comparables

presented by the board of review also have outbuildings of various sizes whereas the subject has only a detached three-car garage/outbuilding.

As to the assessor's criticism that appraisal sale #3 was not located in the subject's township, the written rebuttal assertion of Pihera is that this property was selected for its design, bracketing dwelling size, condition and location being closest to the subject than any other comparable in the appraisal.

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

Section 10-400(a) of the Property Tax Code provides:

> In all counties, except for Cook County, beginning with assessments made in 2008 and thereafter, managed land for which an application has been approved under Section 10-415 that contains 5 or more contiguous acres is valued at 5% of its fair cash value. (35 ILCS 200/10-400(a)).

Section 10-415(a)(b) of the Property Tax Code provides:

> A taxpayer requesting special valuation of unimproved land under this Division must first submit a conservation management plan for that land to the Department of Natural Resources for review. The Department of Natural Resources shall review each submitted plan for compliance with the standards and criteria set forth in its rules. (35 ILCS 200/10-415(a)).
>
> Upon approval, the Department of Natural Resources shall issue to the taxpayer a written declaration that the land is subject to a conservation management plan approved by the Department of Natural Resources. (35 ILCS 200/10-415(b)).

Section 10-420(a) of the Property Tax Code provides:

> In all counties, except for Cook County, beginning with assessments made in 2008 and thereafter, managed land for which an application has been approved under Section 10-415 that contains 5 or more contiguous acres is valued at 5% of its fair cash value. (35 ILCS 200/10-420(a)).

The parties agree that 5.74 acres of the subject property was certified under the Conservation Stewardship Law. Therefore, it is undisputed that 5.74 acres of subject property is qualified to receive a preferential farmland assessment of 5% of its fair cash value as provided by section 10-400(a) and 10-420(a) of the Property Tax Code. (35 ILCS 200/10-400(a) and 35 ILCS 200/10-

420(a)). The underlying question before this Board is determining the subject's fair cash value which includes applying the 5% level of assessment to 5.74 acres of the subject parcel.

The Board finds the best evidence of market value to be the appraisal submitted by the appellants. The Board gave little weight to the five comparable sales presented by the appellants in the Section V grid analysis due to the dated nature of the sales and/or the distant location(s) of the properties when compared to the subject. The Board has also given little weight to the unadjusted comparable sales #1, #2 and #3 presented by the board of review; the board of review at hearing withdrew consideration of sale #5. Lastly, the Board finds that board of review sale #4 is distant from the subject and presents a dated sale from May 2013.

The subject's assessment of $170,545 reflects a market value of $512,609 or $207.62 per square foot of living area, including land, which is above the appraised value of $410,000 or $166.06 per square foot of living area, including land. The Board finds the best evidence of market contained in this record was the appraisal submitted by the appellants with an opinion of market value for the subject property of $410,000 as of January 1, 2016 along with the testimony of the appraiser. The Property Tax Appeal Board finds the appraisal and testimony from Pihera were credible and persuasive. He articulated that it was difficult to find suitable comparables to the subject property but also explained why the chosen comparables were adjusted in various ways. In other words, Pihera provided credible testimony as to his value conclusion and articulated the adjustments that were made along with the bases for those adjustments. When questioned on an apparent inconsistent adjustment, Pihera honestly acknowledged the error in his testimony.

While the board of review through the township assessor presented criticisms of the appellants' appraisal report, those criticisms are not persuasive when the board of review ultimately presented only three improved comparable sales, one of which was contained in the appellants' appraisal report. The main thrust of the response presented by the board of review were perceived deficiencies in the appraisal submitted by the appellants. Notwithstanding those criticisms, the appraiser provided competent responses to issues raised by the board of review. The efforts of the board of review as an opposing party to refute the appraisal valuation with criticisms does not nullify or shift the burden of proof or demonstrate the subject's assessment is correct. The Property Tax Appeal Board is not to afford *prima facie* weight to the findings and conclusions of fact made by the board of review (Mead v. Board of Review of McHenry County, 143 Ill. App. 3d 1088 (2nd Dist. 1986); Western Illinois Power Cooperative, Inc. v. Property Tax Appeal Board, 29 Ill. App. 3d 16 (4th Dist. 1975). The decision of the Property Tax Appeal Board must be based upon equity and the weight of evidence. (35 ILCS 16-185; Commonwealth Edison Co. v. Property Tax Appeal Board, 102 Ill. 2d 443 (1984); Mead, 143 Ill. App. 3d 1088.) A taxpayer seeking review at the Property Tax Appeal Board from a decision of the board of review does not have the burden of overcoming any presumption that the assessed valuation was correct. (People ex rel. Thompson v. Property Tax Appeal Board, 22 Ill. App. 3d 316 (2nd Dist. 1974); Mead, 143 Ill. App. 3d 1088.)

In summary, a reduction in the assessment of the subject property is warranted to reflect the appellants' appraised value conclusion.

APPELLANT:	**Susan & David Sebastian**
DOCKET NUMBER:	**16-01194.001-R-1**
DATE DECIDED:	**August, 2019**
COUNTY:	**Will**
RESULT:	**No Change**

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

The subject property consists of a one-story dwelling of brick exterior construction constructed in 2005. Features of the home include a full unfinished basement, central air conditioning, one fireplace and a three-car attached garage. The property is also improved with a metal clad pole barn with 4,942 square feet of building area. The property has a site with approximately ten acres and is located in Beecher, Washington Township, Will County.

The appellants contend overvaluation as the basis of the appeal. In support of this argument the appellants submitted an appraisal estimating the subject property had a market value of $260,000 January 1, 2014. The appraisal was prepared by Eric Sladcik, a certified general real estate appraiser. The property rights appraised were the fee simple interest and the use of the appraisal was for the estimation of value for tax assessment purposes.

The appraiser described the dwelling as having 2,600 square feet of above grade gross living area. Features of the home include a full unfinished basement, central air conditioning, and a three-car attached garage. The appraiser also noted the property is also improved with a detached steel pole barn to the rear of the home.

In estimating the market value of the subject property, the appraiser developed the cost approach to value and the sales comparison approach to value. Under the cost approach, the appraiser estimated the subject had a site value of $70,000. Using 2,600 square feet of living area, the appraiser estimated the dwelling had a replacement cost new of $344,100. The appraiser estimated the subject suffered from physical depreciation of $39,325 and external obsolescence of $104,880 for total depreciation of $144,205 resulting in a depreciated cost of the dwelling of $199,895. Adding the land value and the estimated value of the site improvements of $20,000 resulted in an estimated value under the cost approach of $289,900.

The appraiser also estimated the subject's value under the sales comparison approach using three comparable sales improved with two one-story brick dwellings and one two-story dwelling that range in size from 2,300 to 2,700 square feet of living area. The dwellings range in age from 7 to 26 years old. Each comparable has a basement with two having finished area, central air conditioning and a three-car garage. One comparable has a fireplace. These properties have sites ranging in size from 13,250 to 23,200 square feet of land area. The sales occurred in March 2013 and May 2013 for prices ranging from $210,000 to $242,000 or from $87.50 to $95.65 per square foot of living area, including land. The appraiser made adjustments to the comparables for

differences from the subject property in land size, view, age and features resulting in adjusted prices ranging from $257,500 to $272,500. Based on these sales the appraiser arrived at an estimated value under the sales comparison approach of $260,000.

In reconciling the two approaches to value, the appraiser placed most weight on the sales comparison approach and arrived at an estimated value of $260,000 as of January 1, 2014.

Based on this evidence, the appellants requested the subject's assessment be reduced to $86,658.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $143,185. The subject property has a farmland assessment of $1,229. The farmland assessment is based on the land's agricultural economic value and not market value. (See 35 ILCS 200/10-110 through 10-145.) The subject's dwelling, homesite and pole building have assessments of $104,007, $15,640 and $22,239, respectively, for a combined total assessment of $141,886, which reflects a market value of $426,597 when using the 2015 three-year average median level of assessment for Will County of 33.26% as determined by the Illinois Department of Revenue.

The board of review provided a copy of the subject's property record card containing a schematic diagram of the dwelling with dimensions and calculations disclosing the dwelling has 3,830 square feet of ground floor living area with a 911-square foot attached garage. The pole barn is depicted as having 4,942 square feet of building area. The assessment of the dwelling and homesite total $119,647 reflecting a market value of $359,732 or $93.92 per square foot of living area, including land. When including the pole barn, the total assessment is $141,886 reflecting a market value of $426,597 or $111.38 per square foot of living area, including land.

In support of the assessment, the board of review submitted information on six comparable sales identified by the township assessor, which includes four comparables that were used at the board of review level appeal. The comparables used at the board of review level appeal have been designated comparables #3 through #6 before the Property Tax Appeal Board. Five of the comparables were improved with one-story dwellings and one was improved with a double-wide mobile home that range in size from 1,544 to 2,632 square feet of living area. The dwellings were constructed from 1987 to 2007. Five of the properties have basements, each has central air conditioning, one has a fireplace, and each has a garage ranging in size from 506 to 1,101 square feet of building area. Comparable #1 has a 2,601 square foot pole barn, comparable #2 has an additional 576-square foot detached garage and comparable #6 has a 2,192-square foot pole barn. The comparables have sites ranging in size from 13,250 square feet (.30 acres) to 10 acres. The sales occurred from March 2013 to August 2016 for prices ranging from $209,250 to $270,000 or from $91.95 to $174.31 per square foot of living area, including land.

Based on this evidence, the board of review requested no change be made to the assessment.

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.

As an initial matter, the Property Tax Appeal Board finds the subject dwelling has 3,830 square feet of living area. The appellants' appraiser stated the dwelling had 2,600 square feet of living area but provided no sketch or measurements to support this conclusion. The board of review submission indicated the subject dwelling had 3,830 square feet of living area and provided a copy of subject's property record card with an addendum containing a sketch of the subject dwelling with dimensions and calculations establishing the subject dwelling has 3,830 square feet of living area. The Board finds the best evidence of the size of the dwelling was provided by the board of review and finds the subject dwelling has 3,830 square feet of living area.

The Board gives little weight to the conclusion of value contained in the appellants' appraisal due to its finding that the subject dwelling has 3,830 square feet of living area and not 2,600 square feet of living area as used in the appraisal. Furthermore, the sales used in the appraisal did not occur proximate in time to the assessment date at issue and the effective date of the report precedes the tax year in question by two years.

The Board finds the best evidence of market value to be board of review sales #1, #2 and #6. The Board finds that these comparables have dwellings that are smaller than the subject dwelling, one of the dwellings is improved with a double-wide mobile home, and two comparables have dwellings older than the subject dwelling. However, each comparable has either 5 or 10 acres of land area and either a pole barn or an additional detached garage. These board of review comparable sales sold for prices ranging from $145.78 to $174.31 per square foot of living area, including land. The subject's dwelling, homesite and pole building reflect a market value of $426,597 or $111.38 per square foot of living area, including land, when using a dwelling size of 3,830 square feet of above grade gross living area, which is below the range established by the best board of review comparable sales on a per square foot basis. These sales support the conclusion that the subject property is not overvalued. Little weight was given board of review sales #3, #4 and #5 as these properties sold in 2013, which is not proximate in time to the assessment date at issue. In conclusion, the Board finds the subject's assessment is well supported considering the property's age, size and features. Based on this evidence, the Board finds the assessment of the subject as established by the board of review is correct and a reduction in the subject's assessment is not justified.

APPELLANT:	**Thomas & Lea Sommers**
DOCKET NUMBER:	**15-00401.001-F-1**
DATE DECIDED:	**January, 2019**
COUNTY:	**Fayette**
RESULT:	**No Change**

The subject property is a 40-acre site composed of a .97-acre homesite, 20.96 acres of cropland, 17.59 acres of permanent pasture and .48 acre of roadway. The property is also improved with two pole barns that have 1,350 square feet of building area and 432 square feet of building area, respectively. Additionally, the property is improved with a hoop barn with 1,800 square feet of building area that was constructed in 2014. The property is located in South Hurricane Township, Fayette County.

A consolidated hearing was held with Docket No. 15-00402.001-F-1 as the appellants were contesting the assessments of the hoop barns located on each property. Separate decisions will be issued for each appeal.

The appellants appeared before the Property Tax Appeal Board contesting the assessment of the hoop barn. The appellants marked recent construction as the basis of the appeal, however, the appellants also submitted assessment information on three comparables to demonstrate assessment inequity. In their written submission and at the hearing the appellants contended the hoop barn is not permanently fastened to the ground and should not be assessed. The appellants explained the subject hoop building is attached to large concrete blocks that measure two feet by two feet by six feet that weigh approximately one ton. The concrete blocks were set in place by a crane after the concrete blocks were delivered on site by a truck. The contractor was present at the site when they were delivered and set them in place when the blocks were taken off the truck. The blocks are sitting on the ground resting in place by their own weight and are not attached to each other.

The appellants explained there was no ground preparation other than making sure no block was higher than another. The exterior fabric is a vinyl type of covering that has a 25-year warranty, which is pro-rated. The structure has framing of steel piping or bars and cables that the fabric is attached to. The cables are to be tightened periodically to keep the pipes in place. The appellants explained that they have to check to make sure the cables that help support the structure remain tight to maintain the warranty. The steel framing is bolted to the blocks. The fabric has a loop at the end where steel piping is inserted which is attached to the blocks with webbed straps that can be ratcheted down to keep the cover tight and connected to the frame. The ratchets are bolted to the concrete blocks.

In their written narrative and at the hearing, the appellants explained this hoop barn is used to store hay and equipment. They asserted in the statement that when they are no longer capable of bailing hay, they plan to sell the building and equipment.

Ms. Sommers explained that when they looked to construct these hoop buildings, they were told by someone in the supervisor of assessments office that if the structures were not fastened to the

ground by concrete, asphalt, poles, piers, tethers, rods or anchors they would be tax exempt. The appellant testified that they looked for other buildings that were built the same way and found that they were not being assessed. To support this statement, the appellants identified three comparables located within six miles of each of their buildings.

The appellants identified Exhibit A as a photograph of the smaller hoop building. This structure is open at one end and closed at the other end. The appellants identified group Exhibit B as four photographs depicting the concrete blocks and the method by which the fabric is attached to the blocks. Exhibit B-1 depicts the concrete block sitting on crushed lime and depicts the straps attached to the fabric and connected to the blocks. Mr. Sommers explained the ratchets are similar to tie-down straps used to strap down loads. Mr. Sommers did not know the purpose of the two-by-four that ran along the top of the concrete blocks. Group Exhibit C included two photographs depicting the interior of the building and the method by which the steel framing is attached to the concrete blocks. Mr. Sommers explained that there is a steel plate attached to the block that has a piece that the metal piping fits over.

The appellants testified that the cost of the smaller building was $13,000 to $15,000, the cost of the blocks was approximately $50 each; and the cost of the installation was $8,000 to $10,000.

The appellants identified three comparables, which were used in each appeal. The photographs of the comparables were depicted on group Exhibit D. Ms. Sommers testified the comparables depicted on Exhibit D-1 (comparable #2) and D-2 (comparable #1) were hoop buildings with the fabric attached to concrete blocks, similar to the subject property, while the comparable depicted on Exhibit D-3 (comparable #3) has the fabric fastened to the ground. The appellants provided copies of the property record cards and aerial photographs of each comparable depicting the hoop buildings located on the respective properties. Ms. Sommers asserted that the property record cards did not depict that the hoop structures located on the respective comparables were being assessed.

The appellants explained that they selected to use the hoop structures rather than a pole building due to cost and real estate tax advantages that they thought were present. Ms. Sommers asserted there would have been no question that there would have been taxes associated with a pole building. The appellants stated that they own the underlying land.

In summary, the appellants contend the subject hoop structure should not be assessed because it is not permanently fastened to the ground, and/or alternatively, similar hoop structures were not being assessed.

Appearing on behalf of the board of review were board members Vernon Barzle, Keith Schaal and Harold Baumann, as well as the Fayette County Chief County Assessment Officer (CCAO) Cindi Lotts. Ms. Lotts testified that the evidence and argument for each appeal was the same. The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $6,171.

The CCAO testified this parcel had a farm building assessment of $3,854 of which $1,080 is the assessment associated with the hoop building. She explained that the property record card depicts

a value of $3,600 for the hoop barn but the level of assessment for the farm building was 30% resulting in an assessment of $1,080.

The CCAO testified that the argument appears to be that of classification of the subject buildings as real property or personal property. Ms. Lotts explained that these types of buildings started to appear in Fayette County in approximately 2004. She explained that the Illinois Real Property Appraisal Manual from the Illinois Department of Revenue, which they use, did not have a cost schedule for hoop buildings; therefore, as a result the assessment officials used cost data from Diamond Shelters to compute the value. She further testified that all assessors have been advised to assess these types of buildings throughout the county, although she was not arguing that there were some buildings in various townships that were not being assessed. She also explained that one of her employees may have told the appellants that a structure would not be assessed if it was not attached to the ground. The CCAO did indicate that this was the standard they used until the Property Tax Appeal Board issued a decision in Docket No. 12-00058.001-F-1, finding that a portable building was to be assessed.

The CCAO acknowledged that the three comparables identified by the appellants had hoop buildings that were not assessed in 2015, however, these buildings are now assessed. The board of review submitted the property record cards on sixteen properties located throughout the county to demonstrate these types of structures are being assessed. Each property record card identified a hoop building or a Coverall as being assessed. Ms. Lotts explained that a Coverall was a name brand of a hoop building. Based on this evidence, the board of review requested confirmation of the assessment.

Conclusion of Law

Initially, the appellants raise a contention of law with respect to the assessment of the hoop building as real estate. The appellants argued that the subject building is not permanently fastened to the ground and should not be assessed as real estate but should be exempt from taxation. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under the Illinois Administrative Procedure Act by an agency shall be the preponderance of the evidence. (5 ILCS 100/10-15). The rules of the Property Tax Appeal Board do not provide for the standard of proof where a contention of law is raised; therefore, the standard of proof with respect to this argument is a preponderance of the evidence.

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

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon . . . . (35 ILCS200/1-130.

The court in Ayrshire Coal Co. v. Property Tax Appeal Board, 19 Ill.App.3d 41, 45, 310 N.E. 2d 667, 671 (3rd Dist. 1974) noted that:

> A building has been defined as a fabric, structure or edifice, such as a house, church, shop, or the like designed for the habitation of men or animals or for the shelter of property. (Citation omitted.)

The court also stated:

> A structure has been defined in the broad sense as any construction or piece of work composed of parts joined together in some definite manner. Any form or arrangement of building or construction materials involving the necessity or precaution of providing proper support, bracing, tying, anchoring, or other protection against the pressure of the elements. Id. At 45.

"Structure" is also defined as something made up of a number of parts that are held or put together in a particular way. The American Heritage Dictionary, Second College Edition (1985).

Furthermore, annexations, when made by the owner, must be presumed to be made with the design of their permanent enjoyment with the realty and as an accessory to it. Ayrshire Coal Co. at 45.

In the case of In re Hutchens, 34 Ill.App.3d 1039, 341 N.E.2d 169 (4th Dist. 1976), a cabin was purchased by a lessee and transported to a leased site where it was set up on pillars of concrete blocks and shimmed up with shingles with the provision of the lease for plumbing connections between the cabin, septic tank and a well. The trial court determined the cabin was sufficiently attached to the land to 'have become part of it.' The Appellate Court of Illinois, Fourth District, found that the trial court's finding that the cabin was part of the real estate was not contrary to the manifest weight of the evidence even though the cabin could be removed without substantial damage to the land and even though the lessee had the right to do that.

In accordance with these precepts, the Property Tax Appeal Board finds the hoop barn is real property as defined in the Property Tax Code subject to real estate assessment and taxation. The hoop barn is a structure composed of concrete blocks, steel framing, steel cable and a fabric covering. Each concrete block weighs approximately one ton and the framing of the structure is attached to the blocks through steel framing and cables. The exterior fabric is attached to the concrete blocks through a ratcheting system with the ratchets being attached to the blocks. Even though the concrete blocks are not attached to any base but rest on the ground through their own weight, the Board finds the hoop barn is a building or structure subject to assessment and taxation. The hoop barn is used by the appellants, who own the underlying land, to shelter hay and equipment from the elements. Based on this record, the Board finds the Fayette County assessment properly classified and assessed the hoop building as real estate.

Alternatively, 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 on this basis.

The appellants submitted information disclosing that three similar hoop buildings were not being assessed for the 2015 tax year. The board of review countered this argument through the testimony

of the CCAO who explained that the township assessors have been instructed to assess these types of structures, although the three identified by the appellants were apparently not assessed, but that mistake has now been corrected. Additionally, the board of review provided the property record cards on sixteen properties located throughout the county disclosing that similar hoop structures are being assessed. Although the appellants identified three hoop barns that were not being assessed, the board of review submission and testimony disclosed that the policy is to assess such structures as real property. The Board finds the evidence did not demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction with respect to the assessment of the hoop buildings. 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 on this basis.

As a final point, the appellants provided testimony that the hoop building cost approximately $21,000 to $35,000, excluding the cost of the concrete blocks which were $50 each. The assessment of the hoop building is $1,080, which reflects a contributory value of the farm building of approximately $3,240 when applying the statutory level of assessment, which is significantly below the construction cost. The Board finds the assessment of the hoop building is not excessive in relation to its contributory value to the farming operation.

In conclusion, the Property Tax Appeal Board finds the assessment of the subject property as determined by the board of review is correct and a reduction is not warranted.

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PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2019 COMMERCIAL DECISIONS

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

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2019 COMMERCIAL CHAPTER

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APPELLANT:	**1150 W Irving Park RE, Inc.**
DOCKET NUMBER:	**16-05751.001-C-1**
DATE DECIDED:	**July, 2019**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a gas station/convenience store and a car wash with 1,488-square feet of building area, including the car wash.[1] The improvements were constructed in 1988. Features of the subject property include a 912-square foot canopy-covered gas station/convenience store with a 10-foot ceiling height in addition to a 576-square foot car wash. The property has a 28,750-square foot site located on a corner lot equating to a land to building ratio of 19.32 to 1. The subject property is located in Itasca, Addison Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through the owner and by counsel contending overvaluation as the basis of the appeal. At the beginning of the hearing, the appellant made a Motion to Strike from admission into the evidence all documents submitted by the Township Assessor. In support of his Motion, the appellant submitted a brief along with an Appendix containing documents and exhibits in support of his motion. The appellant argued that the township assessor is not a licensed appraiser and therefore has no statutory authority to make specific adjustments to the sale comparables and give an opinion of market value of the subject property. Appellant argued that "[i]n setting forth an opinion of value, [the Chief Deputy Township Assessor, Frank A. Marack, Jr., C.I.A.O.] is seeking to perform the role of an appraiser without the experience, training, and state license to do so." (p. 7 of the Appellant's Motion to Strike).

The board of review filed a "Response of the DuPage County Board of Review to Appellant's Motion to Strike" arguing that the Marack report (including his adjustments made to the comparable sales in order to arrive at the subject's market value) does not purport to be an appraisal, rather, it provides material and relevant documents commonly relied upon to arrive at the value of the property for assessment purposes.

The Board finds that the documents prepared by Marack (including his "Market Approach to Value") are within the scope of his authority as the Chief Deputy Township Assessor. A well-grounded exception in the Illinois Real Estate Licensing Act allows assessors to testify regarding the value of subject property as well as the comparables. Section 5-5(e) of the Real Estate Appraiser Licensing Act states as follows:

> This Act does not apply to a county assessor, township assessor, multi-township assessor, county supervisor of assessments, or any deputy or employee of any county assessor, township assessor, multi-township assessor, or county supervisor of assessments who is performing his or

[1] The parties differ as to the size of the subject's total building size which includes the car wash. The Board finds the slight discrepancy will not impact the Board's decision or its analysis in this appeal.

> her respective duties in accordance with the provisions of the Property Tax Code.

225 ILCS 458/5-5(e)

The appellant argued that the above exception is not applicable because Marack was not performing duties under the Property Tax Code. The Board finds this argument unpersuasive. As the Chief Deputy Township Assessor, Marack's job is to assess values of properties. The "Market Approach to Value" prepared by Marack was prepared pursuant to his duties as an assessor under the Property Tax Code in support of the assessment of the subject property. There is no evidence in the record that Marack was purporting to perform an "appraisal" of the subject property. Moreover, the Board finds that the documents prepared by the Chief Deputy Township Assessor and submitted by the board of review (including any assessment of market value) goes to the weight of the evidence, not its admissibility. As will be shown below, the Board has given little weight to the "plus" or "minus" adjustments presented by Marack. Therefore, the Board finds that examination of the sale comparables presented in support of the subject's assessment is permissible.

Consequently, the Board finds that the appellant's Motion to Strike is denied.

In support of overvaluation argument, the appellant, Mr. Binu Poothurail, appeared and testified before the Property Tax Appeal Board. Poothurail testified that he purchased the subject property in 2012. Subsequent to the purchase, the municipality constructed a median in the street in front of the subject gas station making it more difficult for customers driving in westbound lanes to turn into the gas station. This resulted in a noticeable loss of traffic flow and, therefore, business income, which reduced the overall value of his property. The appellant also testified that the height of the convenience store is limited by the canopy above it, resulting in a lower height and less space for merchandise, advertising and curb appeal. The convenience store is also smaller in square feet of building area and shorter in height than most gas station convenience stores, thus reducing the potential gross income and market value of the subject property.

In further support of the overvaluation argument, the appellant submitted a summary appraisal report of the subject property prepared by Andrew G. Harigan, MAI, and reviewed by Susan Z. Ulman, MAI, of Zimmerman Real Estate Group, LTD. The purpose of this appraisal assignment was to estimate market value as defined by the Uniform Standards of Professional Appraisal Practice (USPAP). The intended use of the appraisal was for the sole purpose of assisting the client in connection with the estimate of market value of the subject property in order to arrive at an equitable assessed valuation for purposes of real estate taxation. The interest valued was the fee simple estate. The final conclusion was that the subject property had a market value of $550,000 or $370.00 per square foot of building area or $19.00 per square foot of land, inclusive of the building, as of January 1, 2016.

The appellant called Susan Z. Ulman, MAI as its second witness. Ulman is a State of Illinois Certified General Real Estate Appraiser and has been given the MAI designation by the Appraisal Institute. She has been appraising real estate for over 35 years. Ulman testified at the hearing that she conducted a review appraisal of the subject property. She described the subject property as consisting of two buildings; being a gas station with a convenience store containing approximately

912 square feet of building area and a car wash with approximately 576 square feet of building area. Ulman testified that being a gas station, she would be looking at measure of land per square foot in preparing her report. In order for someone to purchase gas, they have to drive into the gas station, and there has to be someplace for them to drive onto the site. Once the parking lot is full, it can no longer accommodate any additional customers. The indicator of how many customers it could accommodate is different than with a retail store which may accommodate more bodies into the store itself. Ulman testified that she personally conducted an exterior inspection of the subject property in January 2017.

Ulman determined the highest and best use of the property as improved was continued use as a gas station. In estimating the market value of the subject property, the cost approach and the sales comparison approach were developed.

In developing the cost approach, Ulman did a valuation of the land separate from the valuation of the building. In valuing the land, Ulman evaluated three land sales and two listings. Ulman testified that the two listings eventually sold two years after the subject's January 1, 2016 assessment date. The board of review objected to the additional evidence being introduced on two grounds. First, that using comparable sales after the lien date (assessment date) is inappropriate and, second, that the subsequent sales constitute new evidence not previously provided. The Property Tax Appeal Board finds that comparable sales after the assessment date are typically admissible and go to the weight of the evidence, not its admissibility. However, the two comparable listings being subsequently sold was new evidence as it was not submitted with original evidence or provided to the board of review prior to the hearing and is thus inadmissible. The Board finds a party to an appeal may not introduce new evidence at hearing and, therefore, the board of review's objection is sustained. Section 1910.67(k)(1) of the rules of the Property Tax Appeal Board provide:

> k) In no case shall any written or documentary evidence be accepted into the appeal record at the hearing unless:
>
> 1) Such evidence has been submitted to the Property Tax Appeal Board prior to the hearing pursuant to this Part;

(86 Ill.Admin.Code §1910.67(k)(1))

In further analysis of the cost approach, Ulman testified that the subject property had an estimated land value of $9.39 per square foot of land or $270,000. In addition, she estimated the cost of parking lot and other site improvements to be $30,000. In estimating the replacement cost new of the building improvements, the appraiser used the *Marshall Valuation Computerized Cost Service*. The subject property was described as an average quality class C gas station, with a base cost of $121.49 per square foot of gross building area. The estimated effective age was 30 years old. The subject also has a Class C canopy with an area of approximately 19,500 square feet with a base cost of $39.72 per square foot. Given the average economic life of this type of canopy being 20 years and the estimated effective age of the canopy of 8 years, this equated to a remaining economic life of 12 years. In addition, the subject has a class C car wash with a building area of approximately 576 square feet with a base cost of $115.94 per square foot. Car washes tend to have an economic life of 20 years. The estimated effective age of the subject car wash was 8 years,

equating to a remaining economic life of 12 years. Deducting the total amount depreciated attributable to the subject from all causes, the cost of improvements was estimated to be $247,654. Adding to this the estimated land value of $270,000 plus site improvements of $30,000 equates to an estimated market value under the cost approach of $550,000, rounded.

Ulman testified that she also developed the sales comparison approach in arriving at the value of the subject property. Ulman identified comparable gas station sales which were similar in terms of location, age, building size, lot size, land-to-building ratio and condition. Ulman testified that she had considered the three sale comparables submitted by the board of review but excluded them due to all three being leased properties and "[p]eople pay differently for leased properties." In addition, board of review comparables #1 and #2 were portfolio sales or sales of several parcels bundled together and thus not a good indicator of market value in comparison to the subject property.

Under the sales comparison approach to value, Ulman utilized five comparable sales and one listing. The comparables were located in Downers Grove, Naperville, Carol Stream, and Addison. These properties were each improved with a gas station with a convenience store that ranged in size from 792 to 7,566 square feet of building area. Five of the buildings were constructed from 1971 to 2000. The age of one of the properties was not disclosed. The comparables had a land-to-building ratio ranging from 6.31 to 55.11. Comparables #1 through #5 sold from May 2013 to October 2016 for prices ranging from $400,000 to $1,140,000 or from $96.80 to $921.72 per square foot of building area, including land. Comparable #6 had a listing price of $450,000 or $210.38 per square foot of building area, including land. The comparables also had sales prices or listing prices ranging from $15.34 to $17.16 per square foot of land with building. The appraiser made adjustments for such items as sale conditions, size of convenience store, location, age/condition, car wash, land-to-building ratio and lot size. The appraiser estimated the subject property had an indicated value under the sales comparison approach of $550,000 or $370.00 per square foot of building area, including land.

In reconciling the two approaches to value, more weight was given to the sales comparison approach, with the cost approach given secondary value. The income approach was considered an unreliable indicator of value in this case due to the predominance of full or partial owner occupancy, and the accompanying limited impact income and expense considerations have on the decision-making process for buyers and sellers.

Based on this evidence, the appellant requested the subject's assessment be reduced to $183,315 to reflect the appraised value.

Under cross-examination, Ulman first testified as to the distance the comparables were from the subject. She also testified about the various adjustments she made to the comparables taking into account location, site size, building size and age. She personally conducted an interior and exterior inspection of the subject property. Ulman also testified under cross-examination that she had experience appraising gas stations and that she analyzed the locations of the comparables, along with car count or car traffic, to determine if one location was inferior or superior and that she considered this information but did not present any data in her report. Ulman also testified that the subject's convenience store had a relatively short ceiling height due to the canopy above the building. She stated that, in her professional opinion, a taller ceiling height is a more desirable

feature of a convenience store due to the ability to display larger advertisements as well as sell more merchandise such as candy and bubble gum.

On re-direct exam, Ulman clarified that she emphasized price per square foot of land area by calculating 28,750 square feet of land area and multiplying this number by $19 per square foot to arrive at the market value. An alternate way of arriving at the market value is to multiply the total square feet of the convenience store plus the car wash (1,488) by $370 per square foot of building area, including land, which equates to approximately the same market value as the former method of calculation.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $283,260. The subject's assessment reflects a market value of approximately $850,886 or $571.83 per square foot of building area, land included, or $29.60 per square foot of land, including building, when using the 2016 three-year average median level of assessment for DuPage County of 33.29% 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 located in Bensenville, Elmhurst and Elk Grove Village. These properties were each improved with a gas station and a convenience store that ranged in size from 1,924 to 2,960 square feet of building area and were constructed from 1971 to 2002. One of the properties also featured a car wash. The comparables had sites ranging in size from 15,780 to 32,321 square feet of land area resulting in land-to-building ratios ranging from 8.20:1 to 13.09:1. The comparables sold from July 2013 to June 2016 for prices that ranged from $1,250,000 to $1,525,000 or from $1,924 to $2,960 per square foot of building area, including land, or $40.82 to $95.06 per square foot of land area, inclusive of building. The board of review also submitted the property record card for the subject property and copies of the PTAX-203 Illinois Real Estate Transfer Declaration form for the subject property and the three comparable sales.

In addition, the board of review submitted a “summary of salient facts” prepared by the Chief Deputy Assessor for Addison Township, Frank a. Marack, Jr., C.I.A.O. Marack also prepared a “Market Approach to Value” describing the adjustments he made to the sale comparables in arriving at the subject’s price per square foot and the market value. For the subject and each of the comparables, Marack compiled descriptive facts and a grid analysis. Finally, Marack prepared a summary sheet of adjustments made to the comparables in the form of “plus”, “minus” or “equal” symbols to reflect whether a particular feature of the comparable sale is superior, inferior or equal to the subject, respectively. The sale comparables grid contains three sales with varying degrees of similarity to the subject property. With adjusted prices ranging from $55.92 to $133.56 per square foot of land area, inclusive of building, Marack arrived at an estimated value of $1,625,000 or $56.52 per square foot of land area, inclusive of building.

The board of review called Frank A. Marack, Jr., C.I.A.O., Chief Deputy Assessor for Addison Township, as its witness. Marack testified that he prepared all the evidentiary documents submitted on behalf of the board of review. He testified that the three comparable sales support the assessment. On cross examination, Marack was questioned about his qualifications and it was confirmed that he is not a licensed appraiser. Marack testified that the purpose of the report and the documents he prepared was to “estimate fair market value” of the subject property as of January 1, 2016. His final estimate of value was approximately two times that of the subject’s current

assessed value but that there were no increases in the subject's assessment in the following two years.

Further on cross-examination, Marack testified that out of hundreds of sales in his office, he considered the three comparable sales as most similar to the subject and, therefore, most reflective of market value. Upon further cross examination regarding the PTAX-203 Illinois Real Estate Transfer Declaration form for the three comparable sales, it was established that board of review comparable #2 was conveyed via a Quit Claim Deed by the appointed Bankruptcy Trustee pursuant to Chapter 11 of the US Bankruptcy Code. Board of review comparable #3 was likewise conveyed via a Quit Claim Deed in a fulfillment of an installment contract. Marack testified that, based on the comparables he chose and the adjustments he made, the fair cash value of the subject property (which is different from "market value") as of January 1, 2016 was $1,625,000. He distinguished "fair cash value" which is based strictly on the three comparables to "market value" which is based on specifically defined arm's length transactions. Therefore, he was not concerned what a sale price would be between a willing buyer and a willing seller.

On re-direct examination, Marack stated that he made appropriate adjustments (just like the appellant's appraiser) based on a number of factors such as research of the market, experience, comparable sales, and many more factors taken together. The value conclusion for the subject property was greater than the assessed value of the subject because it was done on an individual basis, on its own merits, for the purpose of preparing a report, unlike the assessed value of the subject which is based on a mass appraisal of approximately 32,000 parcels of property. The assessed value of the subject fits right in with uniformity. Based on this evidence, the board of review requested a 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. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002), 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the best evidence of market value to be the appraisal submitted by the appellant, along with the testimony provided by the appraiser, Susan Z. Ulman, MAI, of Zimmerman Real Estate Group, LTD. She estimated the subject property had a market value of $550,000 or $370.00 per square foot of building area, including land, or approximately $19.00 per square foot of land, inclusive of the building, as of January 1, 2016. The subject's assessment reflects a market value of $850,886 or $571.83 per square foot of building area, land included, or $29.60 per square foot of land area, including building, which is above the appraised value.

The appraisal contained two approaches to value to support the market value conclusion. With respect to the cost approach, the appraisal included land sales to support the land value. The appraisal also included a detailed description of the cost new calculations and an analysis of the physical depreciation and external obsolescence from which the subject improvements suffered.

In contrast, the board of review provided no land sales and no descriptive evidence with respect to developing the cost new and the depreciation analysis to rebut this aspect of the appellant's evidence. The Board finds the cost approach developed by the appellant's appraiser, although given minimal weight, was more credible than the information contained on the subject's property record card submitted by the board of review.

With respect to the sales comparison approach, the appraiser made adjustments to the five sales and one listing for sale conditions, location, height of convenience store, car wash, age, condition and land-to-building ratio. In contrast, the board of review provided three sale comparables, two of which were conveyed by Quit Claim Deeds, one sold by a Bankruptcy Trustee and the other prepared in the fulfillment of an installment contract entered into three years prior. Although the Chief Deputy Township Assessor made adjustments for differences when compared to the subject property, the Board gave reduced weight to the specific dollar amount adjustments and his opinion of value considering the nature of the comparable sales. The appellant’s appraiser testified that all three comparables were leased sales thus calling into question whether their purchase prices are reflective of market value. Furthermore, board of review comparables #1 and #2 were portfolio sales or sales of several parcels bundled together and thus not a good indicator of market value in comparison to the subject property. Finally, board of review comparables #2 and #3 were conveyed by Quit Claim Deeds, one sold by a Bankruptcy Trustee and the other in fulfillment of an installment contract and therefore not reflective of market value. Based on this record, the Board finds the sales comparison approach developed by the appraiser was better supported and more credible than the three comparable sales provided by the board of review.

After considering the evidence and testimony provided, the Board finds the best evidence of market value in this record was presented by the appellant. The Board finds that the appellant has demonstrated by a preponderance of the evidence that the subject was overvalued and, therefore, a reduction in the subject's assessment is warranted.

APPELLANT:	**Ralph Beck**
DOCKET NUMBER:	**16-01444.001-C-1**
DATE DECIDED:	**November, 2019**
COUNTY:	**Coles**
RESULT:	**Reduction**

The subject property consists of a one-story commercial building of brick, vinyl and wood exterior construction with approximately 2,847 square feet of building area utilized as an office/retail property.[1] The structure was built in 1954 and has two retail/office units with individual utilities. Features include a concrete slab foundation, two air conditioning units, two forced air furnaces and 2,900 square feet of concrete paved parking areas with a total of 10 parking spaces. The property has a 7,000 square foot corner site with a land-to-building ratio of 2.43:1. The property is located in Mattoon, Mattoon Township, Coles County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a 57-page appraisal prepared by Stanley D. Gordon, Illinois Certified General Real Estate Appraiser, estimating the subject property had a market value of $105,000 as of January 9, 2017. The appraiser reported the subject has an industrial zoning classification and has a highest and best use as commercial property as an office/retail facility with minimal parking under current zoning regulations (Appraisal, p. 24-25).

Gordon reported that subject property last sold in January 2013 for $60,000. No further details of the sale were reported by either the appellant or the board of review. He also asserted that the north retail unit "is in need of extensive remodeling" and reported that the south retail unit had been remodeled (Appraisal, p. 29). While there was no functional obsolescence apparent, Gordon opined that there was both external and economic obsolescence of 10% due to the property's location in a secondary commercial neighborhood of Mattoon.

In estimating the subject's land value, Gordon considered four commercial sales, one of which was improved at the time of sale, that occurred in Mattoon between December 2010 and March 2016. The comparable parcels range in size from 14,420 to 149,411 square feet of land area. The sales prices ranged from $60,000 to $220,000 or from $1.43 to $4.16 per square foot. As to sale #2, Gordon made an adjustment for the car wash building and opined an adjusted land-only sale price of $2.08 per square foot. As to sale #3, the appraiser contended that sale price of $4.13 per square foot was high "because the next-door neighborhood [*sic*] wanted it for expansion of their business." Given the buyer's interest in sale #3, Gordon gave this sale minimal weight and considered the remaining sales most relevant in opining a land value for the subject of $2.25 per square foot of land area or $16,000, rounded.

[1] The appellant's appraiser reported a building size of 2,880 square feet which was supported by a schematic drawing depicting a rectangular building in the report (Appraisal, p. 30). The assessing officials included a property record card with a schematic drawing that indicated a building size of 2,847 square feet with a slight cut-out on one corner depicting the building as slightly less than a rectangle. The Board finds the slight size discrepancy does not prohibit a determination of the correct assessment of the subject property on this record.

The appellant's appraiser outlined the cost approach to value concluding an estimated market value of $107,000. The appraiser estimated the reproduction cost new of the improvements to be $160,800. The appraiser estimated depreciation to be $77,036 consisting of 42% physical depreciation and 10% external obsolescence resulting in a depreciated improvement value of $83,764. The appraiser also estimated the site improvements had a value of $7,250. Adding the various components including the land value of $16,000, the appraiser estimated the subject property had an estimated market value of $107,000, rounded, under the cost approach.

After analyzing data related to three comparable sales of properties located in Mattoon, the appraiser opined a market value for the subject of $109,000 under the sales comparison approach. The comparable parcels range in size from 5,684 to 14,000 square feet of land area and were improved with buildings ranging in size from 1,520 to 4,687 square feet. The buildings range in age from 28 to 62 years old and the largest building had a substantial unfinished area. After making a downward adjustment to sale #2 for effective age and an upward adjustment to sale #3 for its unfinished area, Gordon gave most weight to sale #1 due to similarity in location, with some weight to sale #2 and lesser weight to sale #3, resulting in an estimated a fair market value for the subject of $37.75 per square foot or $109,000, rounded, under the sales comparison approach.

Gordon also prepared an income approach analysis noting both units of the subject property were leased as of the valuation date at issue with a total monthly rent of $1,700 or $20,400 per year or $7.08 per square foot per year, where the owner pays the real estate taxes, insurance, all maintenance/repairs, snow removal, water, sewer, trash and management fees (Appraisal, p. 50). Gordon asserted that a rent of $7.08 per square foot per year was considered to be market rents and typical. In the absence of available operating statements for competing properties, Gordon established an expense and income statement using income and expenses from the subject property owner "as well as the appraiser's experience in the market." Gordon estimated the subject's potential gross annual income to be $20,400, less a vacancy allowance of 15% or $3,060 per year, resulting in an effective gross income of $17,340.

Next, Gordon projected expenses based upon his review of the owner's income and expense statements, as well as IRS returns for 2014 and 2015. Insurance was estimated by Gordon at $1,300 per year, maintenance and repairs at 5% of effective gross income or $870 per year, rounded, and management fees at 10% or $1,735. Other expenses for water and sewer at $30 per month or $360 per year and trash at $25 per month or $300 per year were also estimated by the appraiser. Finally, Gordon estimated reserves for replacements to be $1,147 per year. After deducting estimated expenses, the appraiser concluded a net operating income figure of $11,628.

The next step in the income approach to value is to capitalize the net operating income to derive an estimate of value. After examining available rates, Gordon determined an overall capitalization rate of 11.3% including the tax load. When applied to the net operating income of $11,628, the appraiser opined an estimated market value of the subject property by the income approach of $103,000, rounded.

In reconciling the three approaches to value, Gordon gave most weight to the sales and income approaches in concluding an estimated market value for the subject of $105,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $39,168 as reflected in the Notice of Final Decision on Assessed Value that was issued on February 2, 2017.[2] The subject's assessment reflects a market value of $117,976 or $40.96 per square foot of building area, land included, when using the 2016 three year average median level of assessment for Coles County of 33.20% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review submitted a letter critiquing the appellant's appraisal report in several respects. The board of review contended the stated zoning of the subject property was in error; the board of review disputed the assertion that the north unit was in need of remodeling; and disputes the application of external obsolescence given other findings in the appraisal report. In the land sales data, the board of review criticized the use of a much larger property and the purported extraction of a car wash facility to opine a land value from an improved sale. The board of review criticized the adjustment for effective age made to appraisal comparable sale #1 and criticized consideration of sale #3 as a dissimilar office/warehouse when compared to the subject "professional office building." For the appraiser's income approach analysis, the board of review questioned whether use of the subject's rents was truly reflective of market rents in the absence of any supporting data, whether a 15% vacancy rate was appropriate and the lack of data on the development of the capitalization rate. Finally, the board of review noted that the opinion of value was as of January 9, 2017 whereas this appeal concerns a lien date of January 1, 2016. The board of review also asserted that the appellant told them in their local hearing that he would not sell the property for the appraised value and that the units had been remodeled.

In support of its contention of the correct assessment, the board of review also submitted information on four comparable sales, three of which were located in Mattoon and one which was located in Charleston. Board of review comparables #1 and #2 were the same properties as the appellant's appraisal improved sales #1 and #2. The comparable parcels range in size from 5,684 to 15,040 square feet of land area and were improved with buildings ranging in size from 981 to 1,680 square feet. The buildings range in age from 20 to 67 years old and comparable #2 has a full unfinished basement. The comparables sold between August and December 2016 for prices ranging from $62,000 to $132,500 or from $40.78 to $99.92 per square foot of building area, including land. The board of review erroneously calculated the sale price per square foot of comparable #2 by using both the above-grade and basement areas of the structure, thereby reducing by half its calculation of price per square foot of above-grade building area.

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

In written rebuttal signed by both the appellant and the appellant's appraiser, it was reported that only the south unit of the subject building has been remodeled. In further support, the rebuttal asserts that there was no statement made at the local hearing asserting remodeling of the north unit; with the rebuttal, the appellant reports that the north unit is infested with extensive termite damage as shown in attached photographs which condition was unknown at the time of the appraisal report.

[2] Mathematically, there is an error in the total stated on the "Board of Review – Notes on Appeal" setting forth an erroneous total assessment of $39,160.

As part of the rebuttal, the appraiser concedes the zoning of the subject was erroneously stated as industrial instead of C-3/Service Commercial. It was further argued that this difference does not affect market value as either use allowed the subject's current use. It was further argued that the land value based on sales was reasonable and the capitalization rate was based upon published data from Cushman & Waksman concerning commercial retail and office space in the Midwest region of the United States along with the appraiser's experience in this market area.

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 appraisal submitted by the appellant with an estimated market value of the subject of $105,000 as of January 9, 2017. The Property Tax Appeal Board has reviewed the appraisal report and finds it to be a credible indication of the value of the subject property using the three traditional approaches to value along with adjustments and the bases for those adjustments that appear to be reasonable in most instances. In contrast, the subject's assessment reflects a market value of $117,976 or $40.96 per square foot of building area, including land, which is substantially above the appraised value and not supported by the unadjusted dissimilar comparable sales presented by the board of review.

The board of review presented criticisms of the appellant's appraisal report along with four comparable sales, two of which were in the appellant's appraisal report with adjustments for differences, in order to justify the estimated market value of the subject property as reflected by its assessment. The Board has given little weight to board of review sale #3 due to its significantly smaller building size and substantially older age. The Board has also given reduced weight to board of review sale #4 due to its distant location from the subject property and significantly larger land area. The main thrust of the response presented by the board of review were perceived deficiencies in the appraisal submitted by the appellant. The comparable sales evidence and criticisms of the appraisal presented by the board of review fail to overcome the detailed appraisal report presented by the appellant.

The decision of the Property Tax Appeal Board must be based upon equity and the weight of evidence. (35 ILCS 16-185; Commonwealth Edison Co. v. Property Tax Appeal Board, 102 Ill. 2d 443 (1984); Mead v. Board of Review of McHenry County, 143 Ill. App. 3d 1088 (2nd Dist. 1986)). A taxpayer seeking review at the Property Tax Appeal Board from a decision of the board of review does not have the burden of overcoming any presumption that the assessed valuation was correct. (People ex rel. Thompson v. Property Tax Appeal Board, 22 Ill. App. 3d 316 (2nd Dist. 1974); Mead, 143 Ill. App. 3d 1088).

On this record, the Board finds the subject property had a market value of $105,000 as of the assessment date at issue. Since market value has been established, the 2016 three-year average

median level of assessments for Coles County of 33.20% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**Champaign Midtown Plaza, LLC**
DOCKET NUMBER:	**16-00038.001-C-1**
DATE DECIDED:	**May, 2019**
COUNTY:	**Champaign**
RESULT:	**Reduction**

As of January 1, 2016, the subject property was improved with a 1.5-story single family dwelling of frame construction with 896 square feet of ground area. The dwelling was constructed in 1898. The property is located in Champaign, City of Champaign Township, Champaign County.

The appellant's appeal is based on a contention of law. The appellant contends the subject improvements were demolished during 2016 and, pursuant to Sections 9-160 and 9-180 of the Property Tax Code (35 ILCS 200/9-160 & 9-180), the improvement assessment should be reduced on a pro-rated basis using 365 days. Included with the appellant's submission was an affidavit from Daniel H. Hamelberg, Manager of The University Group, LLC ("The University Group"). Hamelberg stated that The University Group was the general contractor for a project involving six (6) collective and adjoining properties. Hamelberg declared the properties included parcels with property index numbers 46-21-07-354-001, 46-21-07-354-003, 46-21-07-353-008, 46-21-07-353-001, 46-21-07-353-007, and 46-21-07-354-002. The affiant asserted that the project included the demolition of all improvements previously located on the properties. Hamelberg claimed the demolition of the improvements on the properties occurred over the course of several days and was completed on June 15, 2016.

Appellant's counsel also submitted a Voluntary Destruction of Real Estate Improvements form, signed by counsel and dated 9-8-16, asserting that all the improvements reflected on the subject's property record card were demolished in the 2016 assessment year. Based on this record the appellant's counsel requested the subject's improvement assessment be reduced to $9,530.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total equalized assessment for the subject of $61,080. The subject improvements had an equalized assessment of $21,210.

The board of review stated it denied the appeal at the local level due to the voluntary demolition associated with the above referenced properties. The board of review asserted that Section 9-180 of the Property Tax Code relates to properties which were, "destroyed and rendered uninhabitable or otherwise unfit for occupancy or for customary use by accidental means." The board of review contends the above-referenced properties were not destroyed by accidental means but were rather demolished to construct a mixed-use commercial building. It explained that voluntary destruction forms are provided to taxpayers as a way to notify the local township assessor of the demolition for the following assessment year to ensure that the destruction of improvements does not go unnoticed.

In conclusion the board of review stated that no claim is being made that the improvements were destroyed by accidental means such as fire or natural disaster, rather, the improvements were

destroyed as part of a coordinated project. The board of review contends no reduction in the assessment for the 2016 assessment year is warranted.

In rebuttal, appellant's counsel argued that, in contravention of the Illinois Property Tax Code, the Champaign County Board of Review contends that a diminution or proration in assessed value is permitted only for the involuntary destruction of improvements. Counsel argued Section 9-160 of the Property Tax Code provides in pertinent part that an assessment shall "include or exclude, on a proportionate basis in accordance with the provisions of Section 9-180, . . . all improvements which were destroyed or removed" in a calendar year. Counsel further asserted that Section 9-180 of the Property Tax Code goes on to provide that "[w]hen, during the previous calendar year, any buildings, structures or other improvements on the property were destroyed and rendered uninhabitable. . . the owner of the property on January 1 shall be entitled, on a proportionate basis, to a diminution of assessed value for such period during which the improvements were uninhabitable or unfit for occupancy or for customary use," with computations under this section calculated "on the basis of a year of 365 days." Appellant's counsel also referenced three decisions issued by the Property Tax Appeal Board where the improvement assessment was prorated following the voluntary demolition of the improvements. Based on this record the appellant requested the subject's improvement assessment be reduced for the 2016 tax year.

Conclusion of Law

The appellant raises a contention of law with respect to the application of Sections 9-160 and 9-180 of the Property Tax Code to the improvement assessment after the voluntary demolition of the improvements to make way for new construction. Where a contention of law is made the standard of proof is the preponderance of the evidence. (See 5 ILCS 100/10-15). The Board finds the appellant met this burden of proof and a reduction in the subject's improvement assessment is justified.

Section 9-160 of the Property Tax Code (35 ILCS 200/9-160) provides in pertinent part:

> Valuation in years other than general assessment years. . . The assessment shall also include or exclude, on a proportionate basis in accordance with the provisions of Section 9-180, . . . all improvements which were destroyed or removed.

Furthermore, Section 9-180 of the Property Tax Code (35 ILCS 200/9-180) provides in part:

> Pro-rata valuations; improvements or removal of improvements. . .
>
> When, during the previous calendar year, any buildings, structures or other improvements on the property were destroyed and rendered uninhabitable or otherwise unfit for occupancy or for customary use by accidental means (excluding destruction resulting from the willful misconduct of the owner of such property), the owner of the property on January 1 shall be entitled, on a proportionate basis, to a diminution of assessed valuation for such period during which the improvements were uninhabitable or unfit for occupancy or for customary use. . .
>
> Computations under this Section shall be on the basis of a year of 365 days.

The Board finds that Section 9-160 of the Property Tax Code provides for a proportionate assessment when an improvement is either destroyed or removed. The only preclusion to the proportionate assessment due to the removal of the improvements is if the improvement destruction is the result from the "willful misconduct" of the owner of the property. The voluntary removal of a building or structure to make way for the construction of a new improvement by the owner of the property is not "willful misconduct" but a management decision by the owner to enhance the value and use of the property. The Board finds the fact that the owner voluntarily removed the improvement does not preclude the proportionate improvement assessment as provided by Sections 9-160 and 9-180 of the Property Tax Code.

The affidavit provided by the appellant established that the demolition of the improvements on the properties occurred over the course of several days and was completed on June 15, 2016. The fact that the improvements were removed in 2016 was not disputed by the board of review. Additionally, the appellant did not provide any evidence that the improvement assessment was incorrect, other than it should be prorated. The Board finds the subject property had an equalized improvement assessment of $21,210. Using a 365-day year, there were 199 days remaining from the date the improvements were removed. The Board finds the improvement assessment should be reduced by 54.5% (199/365) for the 2016 tax year resulting in a prorated improvement assessment of $9,650.

APPELLANT:	**Dakin Self Storage**
DOCKET NUMBER:	**15-34364.001-C-2**
DATE DECIDED:	**April, 2019**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of an approximately 43,835 square foot, rectangular, corner parcel of land improved with a three-story, masonry, commercial building used as a self-storage facility. The subject property is located in Jefferson Township, Cook County. The subject is classified as a class 5-97, special commercial structure/property under the Cook County Real Property Assessment Classification Ordinance.

At the hearing, the Board elaborated on two procedural points. First, the Board noted that on August 27, 2018, which was prior to hearing, the appellant had moved to consolidate the 2015, 2016 and 2017 property tax appeals for hearing. Upon review of the three files, the Board denied the appellant's request. In a written response, the Board explained in detail that the evidentiary period in the 2016 and 2017 appeals had not concluded; and therefore, the latter two years of appeal were not ready to move forward to hearing.

Second, the Board noted that even though the subject property is a special commercial property, that the appellant submitted the 2015 petition on a residential property appeal form. Therefore, the Board corrected the appellant's scrivener error and correctly docketed this appeal.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal by the Peterson Appraisal Group estimating the subject property had a market value of $2,890,000 as of January 1, 2015. The appraisal, while developing all three traditional approaches to value, only provided a value estimate for two approaches: the cost approach with a value estimate of $3,465,000 and the income approach with a value estimate of $2,890,000.

At hearing, appellant's attorney stated that he was not calling either of his appraisers as witnesses in this proceeding. The board of review's representative raised a hearsay objection, not to the timeliness of the appellant's evidence submission, but to the fact that the preparer of the appraisal was not being called as a witness in this proceeding. The appellant's response was that the appraisal was the appellant's primary evidence.

The Board sustained the board of review's hearsay objection and indicated that the appraisal was in evidence, but that the Board would not accord any weight to the adjustments and conclusions within the report due to the absence of the preparer to be examined regarding the methodology used therein.

The appraisal indicated that the subject's improvement was built in 2012 and contained approximately 95,403 square feet of gross building area, with 665 units in total and 69,125 square

feet of net rentable area. It stated that Peterson personnel conducted an inspection of the property on August 22, 2015 and included interior and exterior photographs of the property.

In developing the sales comparison approach, the appraisal reflects raw sales data on four properties identified as self-storage buildings. They were located in Chicago, Melrose Park, Chicago Heights, and Frankfort, while the subject is located in Chicago. The properties sold from May 2011 to November 2014 for prices that ranged from $23.95 to $34.03 per square foot. They ranged from 30 to 53 years of age and ranged in size from 20,250 to 100,359 square feet of building area. The appraisal stated that "self-storage facility values are driven by the income characteristics of a property and that rent or expense information for the comparables limits the value of this data." Therefore, no conclusions can be drawn based upon this sales comparison approach.

The appraisal also stated that the sales comparison approach to value is a method whereby actual sales of similar properties are compared to the property being appraised. However, it stated later therein that "given the lack of financial data of comparable sales, the reliability of this approach is reduced." Moreover, in the report, the appraisal indicated that "no conclusion was drawn in the sales comparison approach since these properties trade based on the business attributes of the property and the income/expense statements of the comparables was not available."

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $869,293. The subject's assessment reflects a market value of $3,477,172 or $36.49 per square foot of building area, using 95,280 square feet, when applying the 25% level of assessment for class 5, special commercial property under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted unadjusted descriptive and sales data on six suggested sale comparables. The properties were located in either Chicago or River Grove and contained improvements identified as "specialty/self-storage" facilities. They ranged in age from 1 to 95 years of age and in improvement size from 51,975 to 145,000 square feet of building area. The properties sold from December 2012 to April 2015 for prices that ranged from $76.72 to $203.98 per square foot. The printouts reflect that sale #1, #2, and #6 were part of either a bulk sale or a portfolio sale.

At hearing, the board of review's representative argued that the subject's current market value of $36.49 per square foot is well under the sales range of the six sales of specialty/self-storage facilities submitted by the board of review. On cross-examination, she testified that she had no personal knowledge of how long the subject or the board's sale properties had been in business.

Thereafter, she asserted that in the cost approach to value developed by the appellant's appraisers, raw market data is used which reflects a market value that is almost the same as that estimated by the board of review. She further argued that since the subject property was of recent construction and is a special purpose property, that the cost approach raw data also supports the board of review's current position that the subject property is fairly assessed. Moreover, she testified that the board of review and the assessor's offices look at self-storage facilities as a special type of building.

Further, the appellant was accorded a 30-day period after receipt of the board of review's evidence within which to submit any written rebuttal evidence. The appellant did not submit any rebuttal evidence. Nevertheless, at hearing, the appellant's attorney asserted that a self-storage building is like any other business where the longer the business has been in place, certain goodwill and community acceptance of that business is built into the value. He argued that the subject property is new and that vacancy is an issue that does affect the valuation of 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 did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

In viewing the totality of the market value evidence, the Board finds that the appellant failed to call either of the two signatory appraisers whose work product was submitted as a witness. Specifically, the appraiser was not present at hearing to testify as to his/her qualifications, identify the work, testify about the contents of the evidence and the conclusions reached or to be cross-examined by the opposing party and the Board. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated, however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has objected to the appellant's appraisal as hearsay. Therefore, the Board finds the appraisal hearsay and the adjustments and conclusions therein are given no weight. However, the Board will consider the raw sales data submitted by the parties.

Initially, the Board finds that even though sale comparables were located by the appellant's appraisers, their appraisal reflects that they indicated that no value estimate under this approach due to the absence of financial documents such as actual income and expenses of these properties. The Board finds this methodology flawed and unpersuasive. The appraisers' statements were not only unsupported in the written report, but the appellant's failure to provide either of the appraisers to testify at hearing further taints the uncorroborated statements therein. Common appraisal and

assessing theories provide accepted methods for extracting business value from a property sale, where appropriate.

Further, the courts have stated that where there is credible evidence of comparables sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App. 3d 207 (2nd 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.

Therefore, the Board will also place significant weight on the sale comparables submitted into the record. In totality, the parties' submitted raw sales data regarding 10 suggested comparables. The Board finds the appellant's sale #1 and board of review sale comparables #3, #4, and #5 are all specialty, self-storage properties located in Chicago, as is the subject property, and are most comparable to the subject. In addition, these properties ranged in building size from 35,266 to 88,000 square feet of building area. These properties sold from June 2012 to April 2015 in an unadjusted range from $34.03 to $146.19 per square foot of building area.

The subject's assessment reflects a market value of $36.49 per square foot of building area, which is within the unadjusted range established by the best comparable sales in the record. After making adjustments to the comparables for pertinent factors including, but not limited to, location and/or proximity to the subject, sales date in proximity to assessment date, building age, building size and/or amenities, the subject's market value is still at the low end of the range established by these comparables. Based upon this evidence, the Board finds a reduction in the subject's assessment is not justified.

APPELLANT:	**Terry Lydon**
DOCKET NUMBER:	**16-06768.001-C-1**
DATE DECIDED:	**May, 2019**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a one-story, three-unit, commercial building of concrete block and masonry construction with 4,810 square feet of building area. The building was constructed in 1981. Features of the building include a concrete slab foundation, central HVAC throughout, and a sprinkler system. The property has a site with approximately 30,000 square feet of land area, resulting in a land to building ratio of 6.24:1. The property is in Naperville, Lisle 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 $580,000 as of January 1, 2016. The appraisal was prepared by certified general real estate appraisers David Conaghan and Gregory Nold. The purpose of the appraisal was to develop an opinion regarding the market value of the fee simple interest as of January 1, 2016. The appraisal was to be used for ad valorem tax assessment purposes. The property rights considered in the appraisal make up the fee simple estate. The property was inspected on December 29, 2016 and the report was dated January 10, 2017.

The appraisers reported that the subject property was recently listed in CoStar with an asking price of $1,049,000 or $218.09 per square foot of building, for the land and building. Due to the lack of interest, or any prospective buyers, the owner took the property off the market after 28 months of exposure. The appraisers further stated that marketability for sale of the subject property is diminished due to chronic vacancy issues that result primarily from the poor placement of the building improvement on the site where only a small portion of the parking is in front of the building and the neighbor to the north is positioned in a way that significantly reduces visibility from this direction. They further noted that the subject's current occupancy leaves only two side spaces available, which have been difficult to rent in the current market.

The appraisers determined the highest and best use of the property as vacant would be to hold the site for future development of a small to medium sized commercial building. The highest and best use of the site as improved was determined to be its continued use in its present configuration as a commercial building.

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

Using the income approach, the appraisers first estimated the subject's market rent using six rental comparables, which included four leases and two listings, with rents ranging from $16.18 to $21.50 per square foot per year, on a modified gross basis where the tenant pays the utilities. The appraisers estimated the subject's market rent to be $20.00 per square foot on a modified gross

basis where the tenant pays the utilities. The potential gross income (PGI) was estimated to be $88,200. The appraisers estimated the subject's vacancy and collection loss to be 10% of PGI or $8,820, resulting in an effective gross income (EGI) of $79,380. With respect to expenses, the appraisers estimated management fees to be 5.0% of EGI or $3,969; common area maintenance (CAM) to be $2.50 per square foot or $12,025; legal and professional fees of $2,000 per year; and replacement reserves of $.20 per square foot or $962. Total expenses were estimated to be $18,956 and, after being deducted from EGI, resulted in a net operating income (NOI) of $60,424.

Using the mortgage equity technique, the appraisers estimated the subject's capitalization rate to be 8.00%. The appraisers then added a tax load of 2.4% to arrive at a loaded capitalization rate of 10.4%. Dividing the NOI by the capitalization rate resulted in an estimated value under the income capitalization approach of $580,000, rounded.

Under the sales comparison approach to value, the appraisers used five comparable sales located in Naperville, Lisle and Aurora. The comparables are improved with one-story commercial buildings that range in size from 5,490 to 10,071 square feet of building area. The comparables were constructed from 1967 to 2000. These properties had sites ranging in size from 20,026 to 65,679 square feet of land area with land to building ratios ranging from 3.65:1 to 7.57:1. Comparable #1 has 3 units and comparable #5 has 4 units. The sales occurred from March 2014 to December 2015 for prices ranging from $620,000 to $1,100,000 or from $88.75 to $125.00 per square foot of building area, including land. The appraisers adjusted the comparables for location, size, land to building ratio, and age/condition, resulting in adjusted prices ranging from $106.50 to $120.15 per square foot of building area, land and building. Using this data, the appraisers estimated the subject property had an indicated value under the sales comparison approach of $117.50 per square foot of building area or $565,000, rounded.

In reconciling the two approaches to value, the appraisers gave primary emphasis to the income capitalization approach and secondary consideration to the sales approach to value to arrive at an estimated market value of $580,000 as of January 1, 2016. Based on this evidence, the appellant requested the subject's assessment be reduced to $193,333 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 $286,060. The subject's assessment reflects a market value of $859,297 or $178.65 per square foot of building area, land included, when using the 2016 three-year average median level of assessment for DuPage County of 33.29% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted an income approach to value developed by the Lisle Township Assessor's office using the same market rent as the appellant, with the exception that it also applied the rent to the 400 square feet of common area and used a loaded capitalization rate of 7.74% which was calculated using a capitalization rate of 7.5% and a tax load of .24%. The income approach had a PGI of $96,200; a vacancy and collection loss of 10% of PGI or $9,620; an EGI of $86,580; expenses of 23.9% of EGI; and a NOI of $65,887. Capitalizing the NOI by 7.74% resulted in an estimated value of $851,000, rounded. The board of review argued this analysis was supportive of the subject's assessment.

The appellant submitted rebuttal comments from appraiser Gregory Nold in which he asserted that the stabilized income and expenses included in the appraisal analysis are market supported and in agreement with local real estate considered similar to the subject 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 market value to be the appraisal submitted by the appellant. The appellant's appraisers developed both the sales comparison approach to value and the income capitalization approach to value. The board of review provided no comparable sales or rebuttal evidence to refute the appellant's appraisers' analysis under the sales comparison approach to value. The Board has examined the sales used by the appellant's appraisers and finds the analysis is credible and the value conclusion is well supported using this approach.

With respect to the income approach to value, the board of review accepted the appellant's appraisers' estimate of market rent of $20.00 per square foot, the vacancy and collection loss percentage, and the expense ratio. The board of review did differ with respect to the capitalization rate, however, the Property Tax Appeal Board finds the board of review erred in the calculation of the effective tax rate. The appellant's appraiser calculated the effective tax rate to be 2.40% (7.2085% tax rate x .3333 level of assessment). The tax load factor used by the board of review was .240%, which appears to be an error. If the correct tax load factor is applied in the board of review analysis, the loaded capitalization rate would be 9.90% and the estimated market value would be $665,525, which is below the market value reflected by the assessment. Nevertheless, the Board finds the income approach to value developed by the appellant's appraisers was well documented with market data and the value conclusion is well supported.

After considering the appellant's appraisal and the revised income approach presented by the board of review, the Property Tax Appeal Board finds the subject property had a market value of $580,000 as of the assessment date at issue and a reduction to the subject's assessment is justified.

APPELLANT:	**NAI Hiffman**
DOCKET NUMBER:	**16-23008.001-C-3 thru 16-23008.004-C-3**
DATE DECIDED:	**November, 2019**
COUNTY:	**Cook**
RESULT:	**Dismissed**

The subject parcels, with a combined land area of approximately 152.73-acres, have been improved with three buildings containing a gross building area of 1,690,214 square feet and a net rentable area of 1,468,200 square feet. The main headquarters building (2000 Building) is a four-story, multi-wing structure containing an estimated 1.3 million square feet of gross building area and was constructed in 1991 with renovations performed in 2005. The 2001 Building (2001 Lakewood) is a six-story suburban office building containing approximately 287,000 rentable square feet and was constructed in 1993. The Institute Building is a one-story structure that contains approximately 43,700 square feet including a 150-person auditorium, various conference rooms and meeting spaces and was built in 1989. The combined property is the former AT&T Center which had originally been developed as the corporate headquarters campus for Ameritech, which was subsequently acquired by SBC Global Communications, which was later acquired and took the name of AT&T. The property was vacated as of August 2016. The property is classified as a class 5-91 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant, NAI Hiffman, timely filed the Commercial Appeal petition following a Final Decision issued by the Cook County Board of Review. The appeal was filed through legal counsel concerning the four above-referenced parcel numbers. Both the Commercial Appeal petition and counsel's cover letter were postmarked on December 27, 2016. The letter requested a 60-day extension of time to submit evidence in support of the appeal. On October 19, 2017, an Incomplete Checklist along with a letter was issued to appellant's counsel advising that the appellant was granted 30-days to provide certain missing data along with the appellant's evidence.

When timely responding to the incomplete checklist on November 17, 2017, the appellant, through counsel, modified the appellant's name in the Commercial Appeal petition to "in the care of NAI Hiffman" and contended overvaluation based upon two recent appraisal reports that were also simultaneously filed. The first appraisal report prepared by LaSalle Appraisal Group, Inc. opined an estimated market value of the subject property of $25,750,000 as of January 1, 2016. The second appraisal report prepared by CBRE Valuation and Advisory Services opined an estimated market value of the subject property of $19,500,000 as of January 1, 2017.

By a letter dated February 22, 2018, the Property Tax Appeal Board notified the Cook County Board of Review of the pendency of this appeal and granted the board of review until May 23, 2018 to file its responsive evidence or a written request for an extension of time to submit evidence. Also, due to the amount in controversy in this appeal, in that same letter the board of review was required to notify all affected taxing districts as shown on the last available tax bill. The "Certificate" reflecting that notification was due to be filed with the Property Tax Appeal Board by March 24, 2018.

The Cook County Board of Review timely requested an extension of time to respond to this pending appeal. On May 16, 2018, the Property Tax Appeal Board granted a FINAL 60-day extension of time to submit evidence. Thereafter, the Cook County Board of Review timely filed its "Board of Review – Notes on Appeal" and responsive evidence.

On October 1, 2018, the Cook County Board of Review filed its "Certificate" reflecting that on September 28, 2018 all taxing districts were notified of this pending appeal.

On or about November 12, 2018, the Village of Hoffman Estates filed its Request to Intervene in this proceeding through in-house counsel. Along with the intervention, the Village of Hoffman Estates filed its Motion to Dismiss for Lack of Standing.

Although counsel for the intervenor served the motion upon both the appellant's counsel of record and the Cook County Board of Review, by letter dated January 10, 2019 in accordance with applicable procedural rules, the Property Tax Appeal Board served the dismissal motion upon counsel for the appellant and required a response by January 25, 2019. The appellant timely responded to the motion and the intervenor replied. The pending motion is ripe for ruling.

Intervenor's Motion to Dismiss

In accordance with section 1910.64 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.64), the intervenor, the Village of Hoffman Estates, seeks to have the appellant NAI Hiffman dismissed with prejudice. The dismissal motion recognizes that the appeal was initially filed in the name of "NAI Hiffman" and when the evidence was filed by the appellant, the name on the appeal petition was modified to be "in the care of NAI Hiffman." The intervenor asserts in its motion that both "NAI Hiffman" and "in the care of NAI Hiffman" were neither the owner(s) nor the taxpayer(s) of the subject property.

The intervenor affirmatively states that at all times relevant to this proceeding, MB Hoffman Estates, L.L.C. was the owner and taxpayer of the subject property, not NIA Hiffman. The intervenor argues that the relevant portion of section 16-160 of the Property Tax Code (35 ILCS 200/16-160) provides as follows:

> In counties with 3,000,000 or more inhabitants, . . . any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, . . . may . . . appeal the decision to the Property Tax Appeal Board for review. [Emphasis added.]

Furthermore, the applicable procedural rules of the Property Tax Appeal Board at section 1910.10(c) (86 Ill.Admin.Code §1910.10(c)) provides:

> Only a taxpayer or owner of property dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes . . . may file an appeal with the Board. [Emphasis added.]

The intervenor also noted in its motion that the procedural rule applicable to "intervention" similarly defines a taxpayer/owner of property as provided in section 1910.60 of the Board's rules (86 Ill.Admin.Code §1910.60(a)). Finally, the intervenor's dismissal motion cited to the prior Property Tax Appeal Board decision issued in Hickory Rowhomes Homeowners Association, Docket Nos. 13-29612.001-R-2 through 13-29612.011-R-2 (September 18, 2015) for the proposition that only taxpayers and those granted statutory authority may pursue an appeal before the Property Tax Appeal Board.

Since the named appellant is neither an owner nor a taxpayer, the intervenor contends the purported appellant does not have standing to pursue this appeal under the Property Tax Code or applicable case precedent. As neither "NAI Hiffman" nor "in the care of NAI Hiffman" have standing to pursue this appeal, the matter should be dismissed.

Appellant's Response

In the response filed by counsel, "Now comes the Appellant, NAI Hiffman (hereinafter Appellant)"[1] contending that the subject property was developed as the corporate headquarters for Ameritech and sold to Highland REIT in 2005 in a sale-leaseback agreement. The response further contends that after AT&T vacated the property in August 2016, foreclosure proceedings began in September 2016 which resulted in the property being in receivership as of the date of the instant appeal.

At Paragraph 5 of the response to the dismissal motion, the appellant reported:

> Per *Information Statement of Highlands REIT, Inc. dated April 25, 2016*, filed with the SEC as Exhibit 99.1 to Highlands REIT's publicly available April 25, 2016 8-K, "we anticipate that it will be difficult to lease this property . . . ."

In support of the appellant's standing to pursue this appeal, counsel submitted Exhibit A identified as an excerpt of the Service Contract "that defines terms for assessment appeals of the subject property" which consists of one page with some redactions. Exhibit A defines "agent" as NAI Hiffman Asset Management LLC, an Illinois limited liability company, and "owner" as Robert Assoian, Court Appointed Receiver per order dated September 12, 2016 in U.S. Bank National Association, successor in interest to Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Capital I, Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-TOP21 v. MB Hoffman Estates, L.L.C., a Delaware limited liability company; Unknown Owners; and Non-Record Claimants, Case No. 16 CH 10977 pending in the Circuit Court of Cook County, Illinois, Department Chancery Division, Mortgage Foreclosure/Mechanics Lien Section, appointed by order therein effective September 19, 2016.

The response contends that the "appellant has properly completed its assessment complaint by describing the taxpayer as 'in the care of NAI Hiffman,' which serves as agent for the owner." (See

[1] See Appellant's Response to Intervenor's Motion to Dismiss for Lack of Standing which does not refer to the appellant as "in the care of NAI Hiffman" until responsive paragraph #6 despite the Commercial Appeal petition filed with the appellant's evidence.

Paragraph 11 of response). Based on the foregoing, the appellant's response contends that the dismissal motion is flawed as it fails to consider that the subject property is in receivership due to a default on mortgage payments by prior ownership. The response argues that the dismissal motion's theory would be that "no property in receivership would be able to contest real property assessments before the Property Tax Appeal Board."

Therefore, the appellant requests denial of the dismissal motion, or, in the alternative, if it is determined that the complaint does not adequately describe the owner of the property, that the appellant be granted leave to file an amended complaint.

Intervenor's Reply

Contrary to the appellant's assertions in response to the pending dismissal motion filed by the intervenor, the intervening taxing district contends that at the time the instant appeal was filed, the owner of the subject property was MB Hoffman Estates, L.L.C. (MB Hoffman) and not the Receiver. Furthermore, at no time have either the Receiver or the appellant NAI Hiffman been the "owner" of the subject property.

Exhibit A attached to the reply is a copy of a Special Warranty Deed recorded on November 17, 2005 in which MB Hoffman became the owner of the subject property. The reply further asserts that "Highlands REIT" was never the owner of the subject property. The intervenor contends that in accordance with Exhibit B, MB Hoffman remained the owner of record up through May 18, 2017 when Judge Simko confirmed the sale of the subject property to U.S. Bank National Association, successor in interest to Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as Trustee for the Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-TOP21 (hereinafter referred to as U.S. Bank).

The intervenor further agrees with the appellant that a foreclosure proceeding was brought by U.S. Bank against MB Hoffman, et al., on August 19, 2016 in Cook County Circuit Court as case number 2016 CH 10977 (the foreclosure action). Attached to the intervenor's response is Exhibit C, a copy of the order of September 12, 2016 (Receivership Order) entered by Judge Simko who appointed Robert Assoian of NAI Hiffman Asset Management LLC to act as receiver of the subject property. The intervenor contends that the Receivership Order did not transfer ownership of the property from MB Hoffman to the Receiver. The intervenor further noted at Paragraph 9 of the Receivership Order, but for ***explicit*** court approval, the receiver was not to employ attorneys. [Emphasis added.] The intervenor further reports that nothing in the court record on the foreclosure action reveals any authorization to engage legal services for the filing of an appeal before the Property Tax Appeal Board. Exhibit D is a copy of a motion the Receiver did file on November 1, 2016 to retain legal counsel, but nothing requests leave to hire counsel for the filing of an appeal before the Property Tax Appeal Board. Exhibit E reflects the court order authorizing the motion to retain legal counsel as requested by the Receiver, but no other authorizations.

The intervenor contends that, since the Receiver is not the actual owner, it was MB Hoffman that continued as the owner of the subject property until conveyance by a Sheriff's Deed (Exhibit F) which conveyed title to U.S. Bank on or about June 19, 2017.

The intervening taxing district further contends that NAI Hiffman was not authorized by the court under the Receivership Order to pursue an appeal of the assessment before the Property Tax Appeal Board. Moreover, as depicted in Exhibit H, on July 6, 2017, more than four months prior to the filing of the appellant's 'amended' Commercial Appeal petition, the Receiver was discharged of his duties and his bond was terminated by court order (Termination Order). As such, the intervenor contends that neither the Receiver nor the appellant had authority by court order to file the instant appeal petition or continue with the litigation.

In summary, the intervenor requests dismissal of this pending appeal as the appeal was not filed by an "owner" of the subject property and/or the agent of the receiver did not have court authority to file this appeal before the Property Tax Appeal Board.

Conclusion of Law

The question posed in this pending appeal is whether the appellant has standing to pursue this appeal before the Property Tax Appeal Board. Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) provides in part that:

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

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

> Only a ***taxpayer or owner of property*** [emphasis added] dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes . . . may file an appeal with the [Property Tax Appeal] Board. (86 Ill.Admin.Code §1910.10(c)).

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

In response to the dismissal motion, the appellant has argued that a Service Contract between the Receiver (Robert Assoian, et al.) and the "Agent" NAI Hiffman is sufficient to authorize the appellant to file the instant appeal. The intervenor cited in its pleadings to the case of Wiswall v. Kunz, 173 Ill. 110 (1898) for the following finding:

> A receiver is a person appointed by the court, as an officer of the court, whose function it is to hold possession and control of property which is the subject-matter of litigation, and to dispose of the same, or deliver it to such person or persons, as may be directed by the court. Ordinarily he is a person who is indifferent as between the parties to the cause, and who is to hold possession of the property or funds in litigation *pendente lite*, when it does not seem reasonable to the court that either party should hold it. He is not the owner of the property so in his possession. Property held by a receiver is liable to assessment for taxation. While it should be assessed to the receiver, yet the fact that it is assessed in the name of the party for whom the receiver holds possession does not affect the validity of the tax; and it is within the power of the court appointing the receiver to allow the amount of the tax, as a claim against the receiver, and order the same paid by the receiver to the tax collector. The taxes upon this property in the hands of the receiver, assessed after his appointment, may properly be regarded as part of the costs and expenses of the receivership, and may be ordered paid in full, as other costs and expenses. (Id. at 111)

The intervenor's responsive pleading further cited to provisions of Illinois law concerning possession during foreclosure (735 ILCS 5/15-1704(b) concerning the authority of receivers. "Under Illinois law, title to land sold under a mortgage foreclosure remains in the mortgagor until conveyance of the deed to the purchasers." Agribank, FCB v. Rodel Farms, Inc., 251 Ill.App.3d 1050 (3d Dist. 1993).

Additional assistance in determining ownership has been found by the Property Tax Appeal Board by reviewing the appellant's appraisal evidence filed in this proceeding. On page 11 of the LaSalle Appraisal Group report it was stated concerning the "intended user of the appraisal" as follows:

> The appraisal report is intended to be used by MB Hoffman Estates, LLC and their legal counsel. Ms. Jennifer Gilbert ordered the appraisal on the behalf of ownership. [Emphasis added.]

Similarly, in the CBRE appraisal report on page 1, the appraisers stated, "Per the title report provided, title to the property is currently vested in the name of MB Hoffman Estates, L.L.C., who acquired title to the property in November 2005, as improved for a reported acquisition price of approximately $305MM." [Emphasis added.] The CBRE report proceeds to depict, based on published reports, that MB Hoffman is an entity related to Inland Real Estate, now known as InvenTrust Properties; this latter entity transferred its membership interest in the LLC to an affiliated REIT known as Highlands REIT, an apparent strategy to shift underperforming assets into a separate REIT in order to bolster/protect/maintain the reported returns on the performing REIT assets. The CBRE appraisal further indicates there have been no transfers of property ownership during the previous three years. This report also states, "**The property is to be marketed for sale or lease by NAI Hiffman**." [Emphasis added.] (Id.)

In conclusion, the Property Tax Appeal Board finds the evidence in this record disclosed the appellant named in the petition, either as "NAI Hiffman" or "in the care of NAI Hiffman," was never the owner of the subject property. No evidence was presented by the appellant that would

indicate either "NAI Hiffman" or "in the care of NAI Hiffman," was a taxpayer. There is also no argument or indication that either of these named appellants was a taxing body with a tax revenue interest that would have standing to initiate this appeal before the Property Tax Appeal Board to challenge the decision of the Cook County Board of Review as it pertains to the assessment of the subject property.

For these reasons the Property Tax Appeal Board finds the appellant, initially named in the appeal as NAI Hiffman and subsequently named in the appeal when the evidence was filed as "in care of NAI Hiffman," does not have standing to file the instant appeal and hereby **dismisses** the pending appeal.

APPELLANT:	**West Suburban Bank**
DOCKET NUMBER:	**15-01066.001-C-2**
DATE DECIDED:	**March, 2019**
COUNTY:	**Kane**
RESULT:	**Reduction**

The subject property consists of a one-story branch bank building of part face brick and part synthetic stucco exterior construction with 4,614 square feet of building area and a concrete slab foundation. The building was constructed in 2001 and is in average overall condition. Features include a lobby with an open central area, perimeter private offices, and a safe deposit box vault with private viewing room. The facility also has teller counter areas and a drive-up teller counter with windows facing five drive-up/ATM lanes that are covered by a canopy. The property has a 46,102 square foot site resulting in a land-to-building ratio of 9.99:1. The subject is located in South Elgin, Elgin Township, Kane County.

The appellant appeared at hearing before the Property Tax Appeal Board through attorneys, Daniel B. Pappano and Christopher B. Kaczynski, asserting overvaluation as the basis of this appeal. In support of the overvaluation argument, the appellant submitted a 62-page appraisal report along with addenda pages that was prepared by Donald P. DiNapoli of Real Valuation Group. For purposes of the hearing, counsel for the appellant identified the written appraisal report as appellant's Exhibit A. Additional signatories on the appraisal report from the same firm were Peter D. Helland and Edward V. Kling. The additional signatories were described in the report as providing "data support and market opinions in a review capacity." (Exhibit A, p. ii, 5)

The appellant called appraiser DiNapoli, an Illinois Certified General Appraiser, for testimony concerning the appraisal report. The witness testified that he is self-employed and has been affiliated with Real Valuation Group since 2002 to present. DiNapoli has 30 years of appraisal experience and is a candidate with the Appraisal Institute. The parties stipulated to the witness' qualifications. (TR. 9-12)[1]

The purpose of the appraisal was to estimate the retrospective market value of the subject for *ad valorem* tax assessment purposes. DiNapoli inspected the subject property on September 17, 2015 both on the exterior and interior, except the vault; photographs the witness took are part of the appraisal report and accurately reflect the property as of the date of inspection. (TR. 13-15; Exhibit A, p. 1, 5)

The witness testified that in preparation of an appraisal report, the appraiser should review trends in the market, in this case, for bank branch buildings. In reviewing trend data, DiNapoli found an increasingly weak market with declines primarily due to digital banking, mergers and acquisitions. He also considered the potential for functional obsolescence of bank branch buildings. The witness also found foreclosure sales and REO transactions. Related to the market trend, DiNapoli identified some branch bank buildings that were sold for alternative uses, such as comparable sale

[1] References to the transcript of the proceedings will be indicated by "TR." Followed by page citation(s).

#5, which was sold for a medical office conversion. The witness also noted that he has seen numerous sales where bank branches were adapted for alternative uses. (TR. 17-19)

According to DiNapoli, the subject property is located along a commercial corridor of Randall Road and on the northeast corner of Stearns Road. Randall Road is a main thoroughfare in South Elgin. The subject is an out lot site of a Jewel/Osco shopping center with access from westbound Stearns Road and through the shopping center lot; there is not direct access for eastbound Stearns Road traffic. The appraiser described the subject as a second-tier site because the property does not have Randall Road frontage and is not located on a signalized corner; he opined that the subject is less desirable due to its lack of direct frontage on Randall Road. These characteristics would affect the value of the subject as compared to a property that has first row frontage. DiNapoli also testified that another structure could be built in front of the subject, which would further reduce exposure. (TR. 19-20, 22-23; Exhibit A, p. 14-15)

The appraiser reported that the subject property as observed suffered from no deferred maintenance. Moreover, there were no functional issues observed for bank branch use. DiNapoli further reported that bank branch facilities are user-specific properties "that will require renovation to accommodate any alternate retail or office use." (Exhibit A, p. 24

DiNapoli testified that the concept of highest and best use in an appraisal assignment "speaks to the most reasonable and likely use of the property, a legal use, [where] the property would be put to its highest value." In making the determination, the appraiser must consider what is physically possible, what is legally permissible, what is financially feasible and what is the most maximally productive use which speaks to the highest value return to the land. In light of these standards, DiNapoli determined the highest and best use of the subject property as vacant would be for commercial, non-speculative use and as improved, the highest and best use was continued use as a branch bank or for a readaptive or alternative use based upon sales of bank branch properties, such as a medical use or an office-type use. In testimony, DiNapoli further opined that the canopy over the drive-up lanes and/or the pneumatic tubes in those lanes would most likely not offer value to a typical office or adaptive use for a medical office. (TR. 23-25; Exhibit A, p. 27-29)

Furthermore, in highest and best use analysis, the appraiser on page 29 of the report wrote:

> The subject building has a user-specific build-out as a bank branch given the drive-thru facilities, teller stations, and centralized lobby. National banking institutions typically develop their own buildings to conform to a market standard. The drive-up facilities would not offer any value to a typical office or retail user in an adaptive re-use scenario. Due to this, economic life is somewhat limited, and there is functional obsolescence noted.

(Exhibit A, p. 29)

The appraiser used all three traditional approaches to value in estimating the value of the subject property. One approach developed by DiNapoli was the cost approach. The initial step in this approach was to estimate the value of the land as if vacant. He identified six land sales located in St. Charles and Oswego, one with the same street address has two sales, one which was a split from a larger parcel (sales #2 and #3). While the proximity of the land sale comparables to the

subject was not stated in the report, the comparables were described as commercial lots with varying levels of exposure and accessibility located along retail corridors. DiNapoli testified that land sale comparables are preferred to be similar in location, but also in appeal. The comparable land sales ranged in size from 31,605 to 145,490 square feet of land area. The sales occurred from March 2012 to August 2014 for prices ranging from $283,274 to $900,000 or from $5.55 to $13.67 per square foot of land area. Qualitative adjustments were made resulting in adjusted land sale prices ranging from $9.33 to $11.17 per square foot of land area. On page 32, based upon the foregoing data, the appraiser indicated the subject's unit price would be $9.50 per square foot of land area or $440,000, rounded. (TR. 26-28; Exhibit A, p. 30-32)

Next, for the cost approach, DiNapoli's report reflects that he estimated the subject's replacement cost new using a cost manual and he also testified, "in addition to having experience with new construction costs." Based upon the Marshall & Swift Valuation Service (Section 15, Page 21, Bank Branches, Class C, Average Quality), DiNapoli began with a base cost of $158.93 per square foot of building area with an addition adjustment of $12.50 per square foot for sprinkler and drive-thru canopy. This initial adjusted base cost of $171.43 per square foot was further adjusted by a local cost multiplier of 1.150 and a current cost multiplier of 1.010 to arrive at an adjusted base cost of $199.12 per square foot which resulted in a total cost estimate of $918,721. (TR. 28; Exhibit A, p. 34-35)

Accrued depreciation is considered to be a loss in value from physical deterioration, functional obsolescence and/or external obsolescence. As to external obsolescence, DiNapoli wrote that "demand for bank branches has declined dramatically over the past few years as consolidation, reduced lending, and bank failures have all contributed to the decline in demand for banking locations." (Exhibit A, p. 24, 35)

Furthermore, despite its construction in 2001, the appraiser reported the subject had an effective economic age of 24 years given the subject's special-use design and function. The appraiser also reported a typical economic life of 40 years. Given this data, DiNapoli opined accrued depreciation of 60%. The appraiser also calculated accrued depreciation through use of the market extraction method using rental data from in-house information and the Multiple Listing Service, among others. This analysis resulted in an estimate of 70% depreciation. From these respective estimates, DiNapoli concluded accrued depreciation of 65%. Deducting accrued depreciation of 65% from the replacement cost new or $597,169 plus the contributory value of depreciated site improvements of $46,000 along with adding the land value resulted in an estimated value of $810,000, rounded, under the cost approach. (TR. 28-29; Exhibit A, p. 35-39)

The appraiser also performed the income capitalization approach which is an analysis of comparable bank rentals to derive a net income that is then capitalized to estimate market value. DiNapoli testified that he has in-house information on rentals based upon leases, along with examination of the Multiple Listing Service and with other sources such as CoStar and LoopNet. The first step under this approach was to estimate the subject's market rent. (TR. 29-31; Exhibit A, p. 53)

Six rental comparables were summarized on page 54. The properties were located in St. Charles, Downers Grove, Batavia and Naperville. The buildings range in square footage from 2,603 to 6,300 square feet of building area. Limited data on age and condition were presented for the

comparables as depicted on page 54 of the report. No data on land-to-building ratios and limited information on location was provided in the appraisal. The six comparables had gross or estimated gross rental rates reportedly ranging from $21.67 to $30.82 per square foot of building area. DiNapoli concluded that "[t]he middle of this range is considered most indicative of gross market rent for the subject property" and, therefore, opined a market rent of $26.00 per square foot on a gross basis for the subject property resulting in a potential gross rental income of $119,964. (Exhibit A, p. 54-55)

To estimate vacancy and credit loss, the appraiser examined CBRE, 1st quarter vacancy rates for office properties in the subject's sub-market area which were 18.9% and retail vacancies that were 11%. He also reported that CoStar indicated a 1st quarter office vacancy rate of 13.9% and retail vacancy of 10.7%. Additionally, Colliers reported office vacancy for the subject's sub-market of 18.6%. DiNapoli reported that the subject property has a highly user-specific configuration which is primarily office finish. The appraiser opined longer marketing periods would be anticipated during tenant turnover and concluded an 11% of potential gross rental income for the vacancy and credit loss or $13,196, which resulted in an effective gross income calculation of $106,768. (Exhibit A, p. 55)

DiNapoli next set forth a 3% of effective gross income expense for a professional management company fee along with an estimated insurance expense of $.30 per square foot of building area or $1,384; a reserves expense estimate of $.40 per square foot which examined Realtyrates.com survey data that ranged from $.22 to $.82 per square foot and a legal; and an accounting expense estimate of $3,000. Making these deductions resulted in a net operating income of $97,335. (Exhibit A, p. 56-57)

The final step under the income approach is to estimate the capitalization rate to be applied to the subject's net income. Using the band of investment method resulted in a capitalization rate of 8.66%. The appraiser also considered an overall rate from the debt coverage ratio which result in a capitalization rate of 8.21%. DiNapoli also consulted *RERC* which depicted rates ranging from 7.1% to 9.8% for various first tier and second tier properties. In light of the foregoing data and the subject's "somewhat specialized improvements" resulting in limited appeal to alternate users, the appraiser established a base capitalization rate of 8.5%. To the chosen capitalization rate, DiNapoli calculated the load factor of 3.94% to account for the effective tax rate which resulted in a loaded capitalization rate of 12.44% which was applied to the net income calculation of $97,335 and resulted in an estimated market value for the subject property of $780,000, rounded, under the income approach to value. (TR. 32-33; Exhibit A, p. 57-60)

DiNapoli also developed the sales comparison approach as part of this appraisal assignment. He testified that this approach relies upon the concept that a willing buyer would not pay more for a property than they would pay for a similar property. The appraiser utilized five 'fee simple' sales located in St. Charles, Carol Stream, Plainfield and Aurora. In order to identify the sales, the appraiser used CoStar, the Multiple Listing Service and appraisal records. The five comparables were verified as arm's-length transactions by the appraiser or the appraisal firm. The land sizes range from 60,300 to 73,616 square feet of land area which were improved with branch bank buildings that were 7 to 12 years old. The structures range in size from 3,171 to 5,815 square feet of building area. The sales occurred from March 2012 to February 2013 for prices ranging from $350,000 to $1,250,000 or from $108.46 to $224.01 per square foot of building area, including

land. Next, DiNapoli made qualitative adjustments to the comparable sales for financing, sale conditions, date of sale, location, size/land-to-building ratio, construction/quality, age/condition and other/utility matters when compared to the subject property. As described on page 43 of the report, sale #2 was owned by the FDIC at the time of sale and was, therefore, part of a trend at the time in the branch bank real estate market involving REO sales. While sale #3 was also an REO sale, DiNapoli testified the fact this property was listed on the market for nearly three years 'tempers' the REO nature of the sale given the exposure time on the market. Comparable sale #5 was converted/adapted for office use which the appraiser asserted was not unusual for bank branch facility sales. The adjustment process resulted in net adjustments to the comparable sales data ranging from -25% to +50%. As a result of the adjustment process, DiNapoli estimated adjusted sales prices ranging from $139.29 to $168.01 per square foot of building area, including land. From this data, the appraiser opined the value of the subject to be $165.00 per square foot of building area, including land, resulting in an estimated market value of $760,000, rounded, for the subject property under the sales comparison approach to value. (TR. 33-41; Exhibit A, p. 40-51)

In reconciling the three value approaches as set forth in the appraisal report, DiNapoli placed primary consideration on the income and sales comparison approaches. In testimony, the witness stated primary consideration was given to the sales data since it involves market information. He further noted the cost approach was given secondary consideration due to the difficulty in deriving depreciation from all causes. The appraiser arrived at a reconciled estimate of market value of $770,000 as of January 1, 2015. (TR. 41-42; Exhibit A, p. 61)

Based on this evidence, the appellant requested a reduction in the subject's total assessment to $256,641 which would reflect the appraised value conclusion at the statutory level of assessment of 33.33%.

The appellant's appraisal witness was subjected to extensive cross-examination by Kane County Board of Review member, Michael Madzierak. (TR. 42-74)

On cross-examination by the board of review, when asked if the cost approach to value was not reliable, DiNapoli testified the approach was given secondary consideration. The witness testified that the cost approach includes valuation of the building, the land and site improvements. Although not a Member of the Appraisal Institute, DiNapoli gets publication and continuing education training from the organization. The witness testified that both the Appraisal Institute and USPAP were good sources of information for appraisers. DiNapoli testified that an *ad valorem* appraisal, like the instant report, could be done for new construction, fee simple or a leased-fee basis and would be done in the same manner applying the same rationale whether performed for a tax appeal purpose or otherwise. (TR. 44-47)

Madzierak asked the witness why there was no calculation for entrepreneurial profit included in DiNapoli's cost approach to value. In response, DiNapoli asserted the issue was considered in the last paragraph on page 39 of the report when stating, "Under current market conditions, the highest and best use as vacant is non speculative [*sic*] development or to hold. We have considered the concept of entrepreneurial incentive. We conclude it is minimally present for this property type under current economic conditions." DiNapoli further explained that he did not believe entrepreneurial profit was applicable for the special-use property; the witness further explained that a special-use property is typically built for use by, as an example, West Suburban Bank. The

witness further testified that entrepreneurial incentive is the additional value/incentive to build a bank branch such that once built, in theory, the finished product could be sold for an additional 5% to 15%. DiNapoli testified that for a retail strip center in a stronger market, entrepreneurial profit would be more likely, but he noted the current market trend does not involve rising values. Furthermore, he testified, for the current market, an average bank branch building would be 2,700 square feet, not 4,614 square feet like the subject; as such, the witness opined the property would not be expected to achieve a higher return because it would be overbuilt for the market. (TR. 47-50; Exhibit A, p. 39)

DiNapoli was questioned about how he made his selection of comparable property sales from the various sources that were used. The witness testified that he did not use all sales that were similar; he selected the sales that were the most indicative sales, that would indicate a fee simple value. The witness was aware of additional sales, including leased fee sales, which he did not utilize. He opined that for a leased fee sale, the appraiser must confirm the lease terms; without those lease terms, the appraiser cannot make adjustments to determine value.[2] The sales selected occurred in 2012 and 2013 and were considered by DiNapoli to be the most similar properties; since the date of valuation is January 1, 2015, DiNapoli would not utilize sales that occurred in 2015. (TR. 51-54)

The witness was asked about the development of capitalization rates. DiNapoli testified that capitalization rates are derived from market indicators, including sales cap rates when available. The sales presented in the appraisal report were fee simple sales and, thus, did not provide capitalization rates and DiNapoli did not have enough information on those sales to impute a capitalization rate. (TR. 56-57)

DiNapoli testified for a matched pair analysis, he would "extract an adjustment indication by comparing the comparables to each other." (TR. 57)

The appraiser was asked to explain the determination on page 24 of the appraisal that the subject was in average condition with no deferred maintenance as compared to the cost approach determination that the property is 65% depreciated. DiNapoli testified that this is the difficulty in the cost approach; in addition to physical depreciation, there are also functional considerations due to it being a specialized property and external depreciation considerations which include trends in the market. DiNapoli acknowledged examples where a sold bank branch results in the canopy being left in place and used for parking, but it is "not as efficient." (TR. 58-61)

As to appraisal comparable sale #5 which was converted to medical office use after purchase, DiNapoli testified that he did not consider what the purchaser did after buying the property. Such a property that needs to be converted for use speaks to the special-use of a property like a bank branch. (TR. 61-62)

[2] DiNapoli further expounded concerning one leased fee sale property that occurred in May 2013 at a price of more than $700 per square foot and sold again in September for $148 per square foot; he subsequently learned that there was $210,000 worth of office furniture and other items included in one of the sales and there was a buyout of the lease which speaks to a leasehold value.

The witness was asked why the rental comparables in the income approach to value were dated from 2011 and 2012 for an appraised value in 2015. DiNapoli testified the rental comparables selected were the most comparable because they are similar as bank facilities or former bank branches and are indicative of rent or asking rents. He opined further that a lease from 2011 is indicative of what the rental value is for the subject, in addition to the rentals from 2012 and 2014. DiNapoli testified that use of these rental comparables was reasonable in his opinion. He further noted the comparable data is limited for bank leases as compared to a typical retail property type. DiNapoli's objective was to use the most relevant data; the data in the appraisal was deemed to be relevant and indicative of what the rental rate would be for the subject property. As to rental comparable #1 with a 2012 lease date, the appraiser testified that he made an upward qualitative adjustment and considered all of the rental comparables. (TR. 63-70)

Counsel for the intervenor posed no cross-examination questions to the witness.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject property of $442,050. The subject's assessment reflects a market value of $1,327,079 or $287.62 per square foot of building area, land included, 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 submitted information prepared by Steven Surnicki, the Elgin Township Assessor, consisting of a one-page cost approach to value, a one-page income approach to value and a three-page grid analysis depicting eleven comparable sales. For purposes of the hearing, the board of review called Surnicki as its witness. He has been a licensed real estate appraiser since 1991 and became a Certified General Real Estate Appraiser in 2004. Surnicki has been working in the township assessment office since 2006, was first elected in 2010 as the township assessor, and holds the Certified Illinois Assessment Officer (CIAO) designation. For valuation of the subject property, Surnicki opined that equal greatest weight should be placed upon the income and cost approaches to value with least weight given to the sales comparison approach. Surnicki testified there are two types of bank sales: empty bank buildings, such as FDIC sales from 2011 and 2012, and rarely are there sales of banks that were still functioning as banks, which reflect investment grade, same highest and best use. The witness further opined that the downturn of bank branches was a function of consolidation in the banking industry and not truly a problem with the real estate market. (TR. 78-79, 86-87)

At hearing, Surnicki testified that the cost approach to value was deemed relevant because the subject is a 15-year-old building and there are not many sales of this type of building. The cost approach data prepared by Surnicki depicts an average effective physical age of 12.5 years, an average useful life of 47.5 years, and an average physical depreciation of 26%. The data depicts use of the Marshall Valuation Service, Section 15, Page 20, dated November 2015 for a Class C, bank branch of average quality. The data depicts a base cost of $169.86 per square foot with a "composite multiplier" of 1.252 resulting in a "total hard cost" of $212.66 per square foot of building area or $981,235. Next, an addition of $74,017 was calculated for the 2,288 square foot canopy along with addition of $51,000 for landscaping, paving, fencing, etc. This data resulted in a total "hard costs" estimate of $1,106,252 to which "soft costs" calculated as 2% for miscellaneous (financing charges, consultants, impact fees, etc.), 5% for indirect costs (marketing & lease-up)

and 10% for entrepreneurial incentive or $110,625 were added resulting in a reported total replacement cost new of $1,294,315. (TR. 80)

Surnicki testified entrepreneurial incentive is "the fee or cost of somebody to build a building to have it be able to sell it, collect rent or to occupy." The witness agreed the concept reflects someone having an 'incentive' to build the property. In the cost approach, Surnicki included 10% for entrepreneurial incentive. (TR. 80-81)

The Surnicki cost approach also depicts a deduction of 35% or $453,010 for physical depreciation; Surnicki made no depreciation deduction for either functional obsolescence or external obsolescence. After the deduction for depreciation, the depreciated cost of all improvements calculated by Surnicki was $841,305 with an addition of land value of $653,495 for a total value under the cost approach analysis of $1,495,000, rounded. He testified the land value was approximately $14.50 per square foot. (TR. 81)

Surnicki opined that the income approach was one of the more valued approaches for this type of property "because a lot of bank branches are actually developed by an individual that leased out to banks." He further testified that in reviewing sources like CoStar, leased fee sales will often display the NOI [net operating income] per square foot that may range from $30 to $50 per square foot, although that figure would be after deductions for expenses, including real estate taxes. Surnicki also stated there is a difference between appraisal practice and valuation for assessment purposes; in his role as township assessor, Surnicki contends he is to be estimating market rent on a bank for the subject property. The legal requirement is to assess the property in its current use and not a speculative use as of January 1. Therefore, as he reviewed the sales data, he pulled out rental data and NOI information along with any marketing materials or any bank branches "that would have any type of income or NOI, and then translate that to the property." (TR. 81-83)

Surnicki prepared an income approach to value depicting a rental rate of $35.00 per square foot of building area "as of January 1, 2015." To develop this rental rate, he used leased fee sales as depicted in the board of review's evidence.[3] This rate resulted in a reported potential gross income of $161,490 from which a vacancy and collection loss of 10% or $16,149 was deducted. The resulting effective gross income of $145,341 was then reduced by expenses of 5% for a management fee or $7,267 and reserves for replacements of $693 which resulted in a net operating income figure of $137,381. Next, the data depicts the application of a capitalization rate of 8.5% to this net operating income figure which results in an indication of value under the income approach of $1,620,000, rounded. (TR. 83)

The board of review submission also included a grid analysis of comparable sales data consisting of eleven properties. Eight of the comparables were located in North Aurora, Batavia, South Elgin, St. Charles and Carpentersville in Kane County and comparables #9, #10 and #11 were located in the McHenry County communities of Crystal Lake, Algonquin and Lith. The buildings range in size from 2,996 to 10,781 square feet of building area. The buildings were constructed from 1992 to 2006 and are located on sites ranging in size from 32,234 to 93,205 square feet of land area.

[3] The board of review sales grid analysis depicts 11 properties that sold between March 2011 and September 2014. Therefore, it is unclear on the record how Surnicki "developed" rental rates as of January 1, 2015. (TR.84-86)

The sales occurred from March 2011 to September 2014 for prices ranging from $1,000,000 to $4,475,000 or from $210 to $989 per square foot of building area, including land, rounded.

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

On cross-examination, when asked if he prepared the one-page income approach analysis, Surnicki initially testified, "It's my office. I'm responsible for it, but I also have employees." When advised that it was a 'yes' or 'no' question and asked whether he personally prepared the document, Surnicki said, "Yes." He likewise testified that he personally prepared the cost approach data and selected the comparables for the sales comparison approach. (TR. 88)

As to the income approach, Surnicki acknowledged that while he testified that he utilized rental comparables, there are no rental comparables in evidence from the board of review. (TR. 88)

As to the comparable sales, when asserted that sale #1 was not advertised, Surnicki first responded, "I think everything is for sale in a bank world," but when pressed he acknowledged that he had no proof it was advertised. Likewise, sale #2 was not advertised and may have been a leased-fee sale, from one bank to another bank. Sale #3 according to Surnicki' s notes had a broker involved, but he did not speak to the broker; he did not know if the transaction was the purchase of property by the tenant, but it was a leased-fee sale. Comparable #5 was a sale by the FDIC as an REO bank sale. The witness was unaware if sale #7 was purchased by the tenant as he had not researched the sale other than checking information on the township assessor's website. Sale #8 was a leased-fee transaction, but Surnicki did not know how many years were remaining on the lease. (TR.89-93)

On redirect examination, Surnicki affirmed that brokers advertise listings which would thus be deemed to be 'on the market.' The witness also opined that generally speaking, an REO sale will sell for less than a market sale. (TR. 95-96)

For purposes of this appeal, the intervening taxing district, Elgin School District No. U-46, through its counsel of record, Ares Dalianis, submitted a brief with data on five comparable sales of bank branch properties located in the general vicinity of the subject. No witness was called at hearing for this data and the intervenor rested on its written submission. (TR. 96)

The intervenor's comparable sales are located in the communities of Lake in the Hills, St. Charles, Algonquin and Carpentersville; intervenor sales #1 and #3 are the same properties as board of review sales #11 and #10, respectively. The five buildings range in size from 3,038 to 8,500 square feet of building area. Based upon documentation attached to the grid analysis, four of the buildings were constructed from 1995 to 2007; no age was reported for intervenor sale #4. The comparables are located on sites ranging in size from 26,254 to 93,218 square feet of land area and the sales occurred from May 2013 to November 2015 for prices ranging from $2,100,000 to $4,700,000 or from $247.06 to $994.44 per square foot of building area, including land.

Based on this data, the intervening taxing district requested that the assessment of the subject property either be confirmed or increased.

In a five-page written rebuttal filing with attachments, the appellant's counsel outlined criticisms of the data presented by the opposing parties. Initially, counsel argued that both the board of review and the intervenor submitted data on raw sales prices of purportedly comparable properties to support the assessment of the subject property without any consideration of adjustments for various differences. Furthermore, the board of review's submission of sales data lacks any supporting documentation. Appellant argues that this sales data from the opposing parties should be given no weight by the Property Tax Appeal Board.

Next, the appellant's rebuttal filing argues that four of the eleven sales presented by the opposing parties (board of review #1, #4, #6 and #10/intervenor #3) support a reduction in the subject's estimated market value based on its assessment.

As to the sales data, the appellant made additional arguments why several of the comparable sales presented by the board of review and/or intervenor should be disregarded in the Property Tax Appeal Board's analysis. Appellant provided documentation as to board of review sale #3 that this was not advertised prior to sale (Exhibit A). Appellant also argued that eight of the transactions were leased fee sales (board of review #3, #7, #8, #9 and #11 along with intervenor #1, #2, #4 and #5). Exhibit B depicts that board of review sale #9 was deemed by the Algonquin Township Assessor's Office to not be a qualified sale and Exhibit C depicts that the St. Charles Township Assessor characterized intervenor sale #2 as a sale leaseback transaction. In rebuttal, appellant's counsel argued that leased fee sales which involve 'older rents' above current market levels must be adjusted to reflect fee simple interest which neither of the opposing parties did in their submissions.

Exhibits D through J consists of township printouts for board of review sales #2, #8, #9, #10 and #11, three of which were also presented as intervenor sales #5, #3 and #1, along with intervenor #4. The properties are located in both Kane and McHenry Counties. Based upon the varying assessments of these properties, counsel for the appellant argued the data "establish that the local assessing officials have set the 2015 assessments of these properties substantially below the alleged sales prices." The analysis is further outlined in a chart depicting "alleged sales price" ranging from $2,100,000 to $4,475,000 with "2015 Assessor Fair Market Value[s]" ranging from $1,195,225 to $1,802,650.

Exhibit K depicts the August 2016 resale of board of review comparable #7. The board of review reported the December 2012 sale of this property for $1,123,600. The asking price for resale began at $750,000 and resulted in an August 2016 sale for $450,000. From this data, the appellant's counsel argues that the December 2012 sale was an inflated leased fee transaction which is not reflective of fee simple market value.

Appellant's Exhibit L further confirms data contained in supporting documentation filed by the intervenor concerning its sale #2. While the intervenor reported the May 2013 sale price of this property for $4,700,000, there was a September 2013 sale of this property for $750,000. The appellant contends that this more recent sale supports the appellant's valuation request in this matter.

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 appellant presented a narrative appraisal using the three traditional approaches to value, as well as the supporting testimony of the appraiser, Donald DiNapoli, who arrived at an estimated market value of $770,000 as of the assessment date at issue. The board of review presented the testimony of the township assessor, Steven Surnicki, who prepared a cost approach and an income approach and set forth eleven improved sales in support of the assessment. Additionally, the intervening taxing district set forth data on five improved sales, of which three of the properties were also presented by the board of review. After reviewing the record and considering the testimony of the witnesses, the Property Tax Appeal Board finds the best evidence of market value to be the appraisal submitted by the appellant.

Initially, the Property Tax Appeal Board finds the appellant's appraisal report provided a credible estimate of value of the subject property. The appraiser placed equal weight upon the income and sales comparison approaches to value and gave less weight to the cost approach to value due to the difficulty in calculating depreciation, while the township assessor, on behalf of the board of review, opined that greater weight should be placed upon the cost and income approaches to value, with lesser weight given to the sales comparison approach. The Board finds that the assessor's opinion of the relative merits of the three approaches to value in the context of a property tax appeal proceeding is contrary to case law. The courts have stated that, where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill. App. 3d 207 (2nd Dist. 1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill. App. 3d 9 (5th Dist. 1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. Therefore, the Board gives little credence to the opinion of Surnicki as to the relative merits of the approaches to value and finds greater weight shall be given to the appellant's appraiser's bases for valuing the subject property.

The appellant's appraiser developed the cost approach to value using land sales to arrive at an estimated land value of $9.50 per square foot of land area. The Kane County Board of Review presented no land sale data to support the land value estimate and the assessor testified that the subject's land value was approximately $14.50 per square foot of land area. The appellant's appraiser also developed the replacement cost new of the building improvement, starting with an adjusted base cost of $171.43 per square foot of building area. The appraiser added components for a local cost multiplier and a current cost multiplier resulting in an adjusted base cost of $199.12 per square foot of building area or $918,721. DiNapoli then made deductions for depreciation from various causes of 65% or $597,169 and added the contributory value of depreciated site improvements and the land value for an estimated value of $810,000 under the cost approach.

Through the township assessor, the Kane County Board of Review developed a cost approach to value starting with a base cost of $169.86 per square foot of building area. The assessor next added both current and local cost multipliers to arrive at an adjusted base cost of $212.66 per square foot of building area or $981,235 to which the assessor added $74,017 for the canopy and $51,000 for site improvements which resulted in total hard costs of $1,106,252. Next, the township assessor added 'soft costs' including entrepreneurial incentive to raise the total replacement cost new to $1,294,315. The township assessor then deducted 35% for physical deterioration resulting in a depreciated improvement value of $841,305 to which the land value of $653,495 was added for a total value under the assessor's cost approach calculation of $1,495,000, rounded. Of these two cost approaches to value and in light of the testimony associated with each approach, the Board finds the appellant presented the more credible and supported cost approach to value on this record and, thus, the board of review failed to adequately refute the appellant's appraiser's cost approach to value.

DiNapoli also developed an income approach to value in which he arrived at a market value estimate of $780,000, rounded. The appraiser began with an estimated market rent of $26.00 per square foot of building area, on a gross basis. In contrast, the Kane County Board of Review presented the income approach prepared by Surnicki which estimated the subject's market rent to be $35.00 per square foot of building area. There were no supporting rental comparables in the submission of the board of review, whereas DiNapoli provided data on six rental comparables, the highest one of which was $30.82 per square foot, on a gross basis. On this record, the Board finds the DiNapoli estimate is well supported by rental comparable data where the average rental rate was approximately $25.69 per square foot. The Board further finds the parties did not differ substantially on the estimates of vacancy and collection loss and expenses. While the parties differed on their respective calculations of the capitalization rate, the Board finds that the board of review did not present any substantive data to support its capitalization rate whereas DiNapoli outlined the data that he considered in developing his capitalization rate. In summary, the entire value conclusion under the income approach drawn by the Elgin Township Assessor is found by the Property Tax Appeal Board not to be a credible or a reliable indicator of the subject's estimated market value.

All three parties to this appeal submitted comparable sales data. Only the appellant's appraiser made adjustments to the five comparable sales he presented in the appraisal report to account for differences when compared to the subject property in arriving at an estimated market value of the subject property of $165.00 per square foot of building area, or $760,000. DiNapoli's estimated value of $165.00 was above all but one comparable sale in his appraisal report on a per-square-foot basis.

The Kane County Board of Review presented a grid analysis of eleven raw, unadjusted, comparable bank sales, five of which occurred in 2011, or up to approximately four years prior to the January 1, 2015 assessment date at issue in this proceeding. After giving reduced weight to board of review sales #1, #3, #4, #5 and #6 for being dated sale transactions, the Board finds that the remaining six suggested comparable sales range from $195 to $989 per square foot of building area, including land, the majority of which are more than Surnicki's estimated replacement cost new of the building and land of approximately $324.00 per square foot of building area; only board of review sale #10, which is more than twice the size of the subject building, reflects a per-square-foot sale price less than the estimated replacement cost per square foot, including land, in Surnicki's

cost approach. The Board also finds that the appellant questioned and submitted documentation to support criticisms of many of the board of review sales as being dated and/or leased-fee transactions.

Finally, the intervening taxing district also presented a grid analysis of five raw, unadjusted, comparable sales, three of which were also presented by the board of review. As to the intervenor's evidence, the Property Tax Appeal Board strongly questions the reliability of intervenor sale #2 reported as a May 2013 sale for $4,700,000, which clearly appears to be an outlier given all the other sales data in the record, particularly when the appellant's rebuttal evidence, along with the intervenor's supporting documentation for this sale, depicted a subsequent sale in September 2013 for $750,000; the intervenor's submission using the earlier and substantially higher sale appears to have been a clear attempt at deceiving the reader about the sale transaction information for this property.

Considering the sales comparison approach to value developed by DiNapoli and the sales presented by both the board of review and the intervening taxing district, the Property Tax Appeal Board gives more weight to DiNapoli's analysis.

In conclusion, the subject's assessment reflects a market value of $1,327,079 or $287.62 per square foot of building area, including land, which is above the appraised value. The Board finds the subject property had a market value of $770,000 as of the assessment date at issue. Since market value has been established the 2015 three-year average median level of assessments for Kane County of 33.31% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**Woodman's Food Market, Inc.**
DOCKET NUMBER:	**15-04700.001-C-3 and 16-01289.001-C-3**
DATE DECIDED:	**July, 2019**
COUNTY:	**Winnebago**
RESULT:	**Reductions**

For purposes of this appeal and pursuant to Property Tax Appeal Board Rule 1910.78 (86 Ill.Admin Code §1910.78), Docket No. 15-04700.001-C-3 was consolidated with Docket No. 16-01289.001-C-3 for purposes of oral hearing.

ANALYSIS

The subject property consists of a grocery store situated on 15.84 acres or approximately 689,947 square feet of land area described as an anchor parcel with 770 feet of frontage along Spring Brook Road and 382 square feet of frontage along McFarland Road. The subject warehouse grocery store operates as a Woodman's Grocery Store and was built in 2000 using precast concrete and contains 209,174 square feet of building area. The subject has a land to building ratio of 3.30:1. The subject's foundation consists of poured concrete and the subject features a flat rubberized membrane roof, gas fired heat and cooling throughout the entire building with cooled storage/display areas, a wet sprinkler system and two, six fixture restrooms. The property is located in Rockford, Rockford Township, Winnebago County, Illinois.

The appellant appeared through counsel before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of this argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraisers Edward V. Kling and Peter D. Helland of Real Valuation Group, LLC, estimating the subject property had a market value of $5,500,000 as of January 1, 2015 (Appellant's Exhibit No. 1) and $5,500,000 as of January 1, 2016 (Appellant's Exhibit No. 4).[1]

As its witness, the appellant called Peter Helland, who has been appraising property since 2005. Helland testified that he has prepared between 60 and 70 appraisals per year and is licensed in Illinois, Wisconsin and Iowa. He has the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute as well as the AI-GRS designation, which is a general review designation.[2]

Helland described a "big-box" store as typically being a single-tenant retail building that generally ranges in size from 60,000 square feet to over 200,000 square feet of building area and can include smaller buildings from 25,000 to 60,000 square feet of building area as junior anchors, which can get lumped into the "big-box" category. Helland stated warehouse distributors are stores like

[1] The appellant utilized the same appraisal for both the 2015 and 2016 tax appeals with a 2015 Appraisal Report Addendum dated March 24, 2016 (Appellant's Exhibit No. 2) and a 2016 Appraisal Report Addendum for a valuation date of January 1, 2016 (Appellant's Exhibit No. 3).

[2] The parties stipulated that the appraisers in this hearing are recognized as experts in the field of real estate valuation. This stipulation was accepted by the Property Tax Appeal Board.

Costco and Sam's Club on the larger end of the spectrum with "super stores" like Meijer, Super Walmart and Target that are large in size, but not quite as large as the warehouse stores. Lower end stores would include hardware stores and department stores ranging from 75,000 to 80,000 square feet of building area.

Helland has appraised "big-box" stores for almost a decade and has previously testified in administrative hearings. Helland has appraised corporate accounts such as Jewel Osco, Home Depot, Farm & Fleet, Woodman's and Kroger. Helland testified he was not aware of any "mega big-box" (stores over 160,000 square feet) fee simple sales in the greater Rockford Metropolitan Statistical Area (MSA) or far northwest suburbs of Chicago within the last six years. In addition, Helland is not aware of any being built without a tenant in place or being leased in that time period of six years.

Helland inspected the subject property on October 2, 2015 in order to estimate the market value of the fee simple interest in the subject as of January 1, 2015. Helland described market value as the most probable price in a competitive market that includes properties available to be purchased and available to be leased. He stated the standard of market value is the fee simple terms for this property type, for the intended use and purpose, and with that, its market occupancy of market rates (Appellant Exhibit No. 1, page 4). When asked about the difference between market value and market price, Helland testified that basically market price is the factual record of the transaction and the market value is an estimate based on transactions, the information, other income information and the cost approach. He stated they use the market prices and other data to come up with a market value. Helland testified the price paid for a property and market value may not be the same thing. Helland then generally described the Rockford MSA as bordering Wisconsin and being located immediately west of the Chicago MSA. Helland stated the subject's location is considered its own MSA but can include Stephenson County and Freeport to the west. Rockford MSA was described as essentially Winnebago County. On page 13 of his report (Appellant's Exhibit No. 1), Helland stated that as of January 1, 2015 the economic recovery in Rockford had been slower than other sections in Illinois. He described the outlook for the area as basically stagnant, no real growth, no further decline. He testified the area was stabilized at that time with little new development taking place in terms of new construction.

Helland described the subject site as an anchor site of the neighborhood, being the largest retail structure along the greater Perryville Road corridor. Helland described the subject site as being slightly irregular in shape because of the two intersecting roads and a gas station out-lot that remains in place. In regard to functional obsolescence, Helland testified that warehouse stores the size of the subject typically have additional hookups for cooled storage and food prep that a grocery store would not have. Helland stated the construction style of the subject essentially mimics an industrial building with precast concrete and little ornamentation. Further, Helland stated the immense size of the subject does not lend itself to be subdivided as the depth of the subject building makes it difficult to subdivide beyond maybe two to four units.

When discussing external obsolescence, Helland testified that a number of grocery stores throughout Illinois had begun to struggle and were completely bankrupted and closed down. He stated the trend was towards discount retailers that had grocery and other goods, such as Walmart, Target and so forth, as well as high end specialized grocers like Whole Foods, Fresh Market and Trader Joe's. As for "big-box" stores, there was not the absorption of the stores that became

available because of the increased competition from places like Amazon. Helland testified that while a number of retailers had buildings from 100,000 to 140,000 square feet, there were no active users of buildings or little market activity for buildings exceeding that size.

As to the subject, Helland reiterated that the warehouse style with limited façade detail and precast concrete walls would require extensive renovation by an alternate user. He stated the building depth of 320 to 335 feet limits the potential for dividing the building into smaller units of more than roughly 50,000 to 60,000 square feet.

Helland found the subject's highest and best use is the existing use of the improvements. As vacant, Helland found the highest and best use as vacant would be to hold for retail development because of its well-located site as an anchor site. He stated the subject has dual access from two roadways and has surrounding retail development along Perryville Road. However, the size of the parcel and the cost of development was not married with what someone could recover. Helland noted that the subject's highest and best use as improved is different from his highest and best use conclusion as vacant because a building of the subject's size and scope would be unlikely to be built there. He stated parcels of the subject's size in its location are typically a traditional-sized anchor building with a retail shopping center that accompanies it and profits from the added exposure, not a single 209,000 plus square foot owner/user building.

Helland developed the three traditional approaches to value to estimate the subject's market value. In developing the cost approach to value, Helland first examined land sales with three primary factors being sales within Winnebago County, comparable zoning/potential use and size. The next criteria used was recent sales. Helland testified that all sales were from April 2013 and December 2013, and he notes there was no significant market change between that time and January 1, 2015.

Helland utilized four land sales. Sale number 1 was located on Harrison Avenue in Rockford, which he found comparable to the subject as it has frontage along three roadways. Helland noted that land sale number 1 was a bank-owned Real Estate Owned (REU) sale and was not vacant at the time of sale and would require additional expense. Helland testified the bank-owned REO sale was typical for land sales at the time for this size of property. Helland adjusted land sale number 1 upward because of the added cost of redevelopment. Land sale number 2, also a bank-owned sale, had frontage along three roadways, is commercial-zoned land along Alpine Road in Rockford and has adjacent commercial development. Helland applied minimal negative adjustment to this sale. Land sale number 3 is a commercial-zoned property containing approximately 8-acres of land area in Roscoe. This sale is surrounded by residential development with primary road frontage. This sale did not have multiple road frontage. Helland stated this sale was near the high-end for vacant land sales. He made a minimal negative adjustment to this sale. Land sale number 4 was located in Machesney Park and was included because it was located on a secondary artery in Machesney Park with primary surrounding development being a mix of industrial and residential. Helland found the value of this property was enhanced because a Menard's was located just south of the property. Page 33 of Helland's report (Appellant's Exhibit No. 1), depicts four land sales ranging in size from 139,454 to 407,663 square feet of land area which sold from April to December 2013 for prices ranging from $140,000 to $550,000 or from $1.00 to $1.59 per square foot of land area. The comparables had adjusted sale prices ranging from $1.15 to $1.55 per square foot of land area. Helland opined an estimated unit value of $1.50 per square foot of land area was appropriate which resulted in an estimated land value for the subject of $1,035,000, rounded.

In developing the subject's replacement cost new, Helland testified he used Section 13, Class "C" of the Marshall & Swift Valuation Service. Base cost was determined to be $45.50 per square foot of building area with a $2.20 adjustment for sprinklers and canopy. A perimeter adjustment for economies of scale was applied along with a height, local and current multiplier, resulting in an estimate replacement cost new of $48.35 per square foot of building area. Multiplying this by the subject's size of 209,174 square feet of building area resulted in an estimated replacement cost new for the subject of $10,114,220 (Appellant's Exhibit No. 1, page 36).

Utilizing the subject's chronological age of 15 years, Helland testified he used an economic age/life method to estimate the subject's depreciation with economic life considered to be 25 years in total. Helland testified this was based on what he had seen in the marketplace based on sales, renovations and lease interests. Helland estimated the subject's depreciation to be 60%. Helland testified he included an Addendum to his 2015 report to include market extraction depreciation in his cost approach to value. Helland stated he included all six sales from his sales comparison approach to value and also three additional sales. Helland stated he used the recorded sales price of each transaction and utilized the building size and site size. He stated he multiplies the site size by the estimated land value to extract out how much of the sale price was related to the land.

From there, he used the remaining improvement value and took the estimated replacement cost, which is the size of each building and multiplied it by the estimated replacement cost per square foot of each building. Helland stated the difference equates to dollars of accrued depreciation or the cost to build new and how much total dollar depreciation had occurred over the lifespan. He then looked at the chronological age of each building and divided that number by the percent of depreciation for each property. Helland found that the trend indicated that buildings between 35 and 39 years of age had between a 2.6% and 2.7% annual rate of depreciation with 24-year-old buildings having an annual deprecation rate of 3.75%. Helland found 16-year-old buildings had an annual depreciation rate of 4%. From this analysis, Helland testified he added the subject's estimated land value of $1,035,000 to the estimated replacement cost new of $10,114,220, less 60% depreciation of $6,068,532 to arrive at a depreciated value of the improvements of $4,045,688. Contributory site value improvements ($528,000) for paving, lighting, signage, fencing and landscaping were added which indicated an estimated value for the subject by the cost approach of $5,600,000, rounded, or $26.77 per square foot of building area, including land (Appellant's Exhibit No. 1, Page 39).

Helland next developed the sales comparison approach to value. Helland testified he looked for sales in the entire Rockford MSA concentrating on the largest sales of retail single tenant structures. Helland utilized six sales in the Rockford market. The six sale comparables were located in Loves Park, Machesney Park and Rockford. They ranged in age from 24 to 39 years old and were situated on sites ranging from 4.02-acres to 14.67-acres or from 175,100 to 638,938 square feet of land area. The comparables had land-to-building ratios ranging from 4.08:1 to 6.40:1. The comparables sold from May 2011 to April 2015 for prices ranging from $675,000 to $1,000,000 or from $6.73 to $23.28 per square foot of building area, including land. After making various adjustments for property rights, sale conditions, location, building size, construction quality and age, the comparables had adjusted unit prices ranging from $10.10 to $23.54 per square foot of building area, including land. (Appellant's Exhibit No. 1, page 53)

Helland also examined four additional sales from the western fringe of the Chicago market MSA. The sales were located in Woodstock, Aurora, Crystal Lake and Oswego. These comparables ranged in size from 66,000 to 141,325 square feet of building area and were constructed from 1981 to 2007. These comparables sold for prices ranging from $2,832,500 to $4,000,000 or from $25.83 to $48.48 per square foot of building area, including land. The sale dates for these comparables were not provided. Helland also provided four listings of big box retail warehouse buildings within north central Illinois. The listings were located in Rockford Freeport, Elgin and McHenry and ranged in size from 41,817 to 118,107 square feet of building area. The listings were built from 1910 to 1992 and had list prices ranging from $295,000 to $3,900,000 or from $7.05 to $33.74 per square foot of building area, including land. Helland testified that the additional sales information and listings were provided to support his market valuation since his original six sales comparables required significant positive adjustments due to age. Helland stated that based on his adjusted primary sales in the Winnebago County market as well as the additional sales and listings, he felt comfortable at his estimation for the subject of $25.00 per square foot of building area. Helland testified that they also gave significant consideration to the total sales price to conclude his estimated value under the sales comparison approach of $5,200,000. Helland noted that the six primary sales he used transacted between $675,000 and $1,000,000. Helland stated the subject's market value exceeded anything that had been purchased in the Rockford market in the four years leading up to the valuation date. (Appellant Exhibit No. 1, pages 55, 56)

Helland next developed an income capitalization approach to value. Helland noted the subject is an owner/user property, so there was no contract rent in place. Helland testified he examined his records for the largest retail leases of any recent vintage in similar MSA's but had none that exceeded 100,000 square feet in size in Winnebago County. They had a smaller building with a five-year lease for $9.50 gross per square foot, but the building was less than 40,000 square feet in size. Helland utilized four other sales located in Normal, Bloomington, Aurora, Rockford and St. Charles. All of the rental comparables ranged in size from 39,450 to 109,890 square feet of building area and rented on either a net or gross lease from $4.00 to $9.50 per square foot of building area. Helland's report depicts an adjusted rental range from $3.00 to $5 per square foot of building area (page 59, Appellant's Exhibit No. 1). Helland then opined a rental rate of $4.50 gross/economic basis per square foot of building area for the subject was appropriate. Helland testified that the former Home Depot in Aurora leased for a slightly higher price than his estimate, but he felt it was the most recent relevant rental rate.

Helland determined a 10% vacancy rate was appropriate based on the general 5-year leases with a six-month marketing time, which equated to 10% of the lease term. Based on the subject's historical data and his knowledge of the expense levels for similar properties, Helland utilized 3% for management expenses ($25,415), insurance costs of $0.05 per square foot ($10,459), common area maintenance at $0.25 per square foot ($52,294), reserves for replacements of $0.10 per square foot and legal/accounting expenses of $5,000. Helland's report depicts the subject's potential gross income of $941,283 from which he subtracted 10% vacancy and collection losses of $94,128 to arrive at an estimated effective gross income of $847,155. He then deducted total expenses of $114,084 to arrive at an estimated net operating income for the subject of $733,070. (Appellant's Exhibit No. 1, page 62)

Helland testified they extracted capitalization rates from larger sales of retail properties in central and western Illinois which were primarily shopping centers. The sales were located in Sterling,

Savanna, Rockford and Ottawa and sold or were listed from September 2013 to January 2014 for prices ranging from $2,266,337 to $3,650,000. The comparables ranged in size from 43,913 to 70,521 square feet of building area and had capitalization rates ranging from 8.00% to 10.28%. Helland noted the active listing in Rockford has a capitalization rate of 9.8%. Helland testified they also examined RERC fourth quarter 2014 sale data. The report depicted third-year retail across the Midwest ranged from 9.6% to 9.7% for investment grade properties. From these factors, Helland opined an overall capitalization rate of 9.5% was appropriate. Helland testified that the band of investments method at 9.38% also supported his estimation. Using the local tax rate of 14.982% and multiplying it by the assessment ratio of 33.33% derived an effective tax rate of 4.99% which was added into the base rate of 9.5% for a total gross capitalization rate of 14.49%. Applying this to the subject's estimated net operating income resulted in an estimated income approach to value for the subject of $5,100,000. (Appellant's Exhibit No. 1, pages 63 – 65)

In reconciliation, Helland testified that primary consideration was given to the sales comparison approach to value because the subject is a single tenant owner/user property and because this approach had the most data available for him. Helland stated supporting consideration was given the cost approach to value based on the four local land sales which depicted a compelling land value from 2013. Helland testified he was comfortable with his depreciation model and felt it was well supported based on market activity. Based on a lack of local rental data for properties the size of the subject, secondary consideration was given the income approach to value. Based on reconciliation of the three approaches to value, Helland estimated the subject's market value as of January 1, 2015 at $5,500,000. (Appellant's Exhibit No. 1, page 66)

Helland testified that for 2016, he also estimated the subject market value to be $5,500,000 as shown in his additional report (Appellant's Exhibit No. 4) which was prepared in August of 2016. Helland stated he was looking for additional sales data, land sale data, rental comparables capitalization and vacancy data that occurred from the previous valuation date of January 2015 to the added valuation date of January 2016. Helland testified they came across some additional improved sales he felt were relevant. Helland stated they did not find any compelling capitalization rate data that had changed or new vacancy rate data. Helland testified they did not have any additional rentals and did not have additional relevant vacant land sales. Helland stated the new data was improved sales. Helland found the former American TV & Appliance building located in Rockford as being of primary relevancy. The building contains 118,307 square feet of building area, is situated on 461,649 square feet of land area and was 24 years old. The comparable sold in September 2015 for $3,200,000 or $27.05 square feet of building area, including land.[3] Helland further testified they adjusted this comparable because American TV & Appliance had closed its 11 stores across multiple states which reflected their motivation to sell. In addition, this comparable was adjusted for its location along State Street which was offset by its age. Helland testified that the American TV & Appliance was in a superior location when compared to the subject.

Helland also supplemented his 2016 valuation data with supporting sales of "big-box" retail warehouse stores in Kane County. Helland stated a former Target store near Spring Hill Mall sold for $16 per square foot of building area, including land, in July 2015. Further, in July 2015, a

[3] Helland testified that the unit price of $24.75 was in error based on a miscalculation of including the mezzanine area. This amount was corrected to reflect $27.05 per square foot of first floor building area, including land.

former Walmart store along Randall Road in Elgin, 118,548 square feet in size, sold for $2,000,000 and had a projected $1,500,000 renovation for a net sale of $29.52 per square foot of building area, including land. Additional sales also included a former Dominick's store, which was 15 years old and sold for $32 per square foot of building area, including land, in April 2016. Helland's report, page 1 of his addendum, depicts that in April 2016, Farm & Fleet purchased a former Lowe's store in Elgin with just under 140,000 square feet of building area, that was 10 years old, and sold for approximately $38 per square foot of building area. (Appellant's Exhibit No. 4, page 1) Helland testified this comparable had been vacant for five years prior to its sale. Helland stated this comparable was superior to the subject in location because the traffic count was considerably higher with a number of affluent subdivisions nearby and, most notably, it being adjacent to Menard's and Meijer along a primary corridor. Helland reiterated that these additional sales supported his January 1, 2016 estimate of $5,500,000 or $25 per square foot of building area for the subject given the size and location of the subject on McFarland in Rockford. (Appellant's Exhibit No. 4, page 11)

During cross-examination, Helland testified that the subject does not have the traffic flow that sale number 1 has, which is why he felt that age was a much more important factor in his adjustments. Helland stated comparable sales numbers 2 and 3 were included informationally because of their size and scope of their existence in the market, even though they are not stand-alone properties. Helland then confirmed his adjustments for his vacant land sales based on questions from board of review representative, Thomas Ewing. Helland testified that if the subject were divided up into 3 separate sections, it would leave three 70,000 square foot units that would be longer than they would be wide. Helland testified that in regard to his adjustments for his comparable sales, the data in Rockford for a one-to-one comparison was not that good. So, he utilized qualitative measures and weighted them in terms of their overall impact. When asked why he did not gross up the net leases, Helland explained that the reason he used gross instead of net was to capture the impact of the 14.982% tax rate. Helland testified that he needed a gross rental rate because the net lease is a pass-through wherein the tenant would pay the taxes. Helland testified that he took the lease that he was most familiar with at $4.82 gross, knowing that it was the largest building lease that he had, and with the subject being larger in an inferior location and based on traffic exposure, he knew he was going to be less than $4.82 at $4.50 per square foot of building area.

Helland then reiterated that his vacancy rate was determined because the subject is an owner occupied/single tenant property, which would mean either 100% occupancy or zero. For his analysis, marketing time for a building of the subject's size was estimated at 6 months based on estimates from the brokerage side of his office. Leases for re-developed property were on five-year terms. His estimate utilized 6 months marketing divided by 60 months of lease to derive a 10% vacancy rate for a single tenant building based on his market experience. Helland testified that in his sales comparison approach to value, he placed most emphasis on the sales located on Indian Trail, Aurora and Oswego because of their size when compared to the subject. Helland agreed that two of his comparable sales in Machesney Park were located in Tax Increment Financing (TIF) districts which generally means they have been declared blighted areas. Helland stated he gave those sales significant positive adjustments and that they were generally chosen based on their size when compared to the subject, however, he would not give them primary consideration in his analysis.

During re-direct examination, Helland explained that he did not make market adjustments for the time period from 2011 to 2015, even though the market was increasing, because during that time period a number of store closings were occurring. Helland stated that some things improved while other factors were negative. Helland testified that Real Estate Owned (REO) sales improved, but the demand for junior anchors and large anchors got worse. Helland did not examine the subject as being subdivided based on its highest and best use as a single tenant owner. However, if the subject went dark, there were no single tenant users in the market looking to rent or buy 210,000 square foot buildings in the Rockford MSA.

Based on this evidence and testimony, the appellant requested the subject's assessment be reduced for both the 2015 and 2016 tax years to reflect a market value of $5,500,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessments of the subject property for tax year 2015 of $2,676,399 and for tax year 2016 of $2,399,760 were disclosed. The subject's assessments reflect estimated market values of $8,030,000 or $38.39 per square foot of building area including land when applying Winnebago County's 2015 three-year average median level of assessments of 33.33% and $7,195,682 or $34.40 per square foot of building area including land when applying Winnebago County's 2016 average three-year median level of assessments of 33.35% as determined by the Illinois Department of Revenue. At hearing and in support of the subject's assessment, the board of review stood on the documentary evidence in the record and called no witnesses.

Counsel for intervenor, Rockford School District #205, called John C. Nelson, a Certified General Appraiser, as its first witness. Nelson has the MAI designation from the Appraisal Institute. He has been engaged in appraisal work for 33 years and has had his MAI designation for 2.5 years. Nelson has appraised residential, commercial, scale residential, agricultural, industrial, commercial office and commercial retail properties. Nelson has appraised "big-box" stores similar to Menard's and Target and shopping centers anchored by "big-box" stores. Nelson described "big-box" stores as having over 100,000 square feet of building area. Nelson generally works in the entire northern Illinois area and in Winnebago County, with auxiliary work in Boone, DeKalb, Jo Daviess, Whiteside, Lee and Ogle Counties. Nelson prepared an appraisal of the subject property with a valuation date of January 1, 2015 (Intervenor's Exhibit No. 1) and an addendum to that report with a valuation date of January 1, 2016 (Intervenor's Exhibit No. 2).

Nelson conducted an inspection of the subject property that was limited to the interior public areas and the exterior of the building along with site improvements. Nelson testified he sought comparable sales information and market information to lead to a highest and best use for the subject property. Nelson stated he sought comparable sales of land vacant and land ready for development as well as comparable sales of "big-box" stores. Nelson testified he found local land sales that were eventually developed for "big-box" use, which he considered to be of prime importance in his analyses of both highest and best use and of land value. Nelson found a limited number of sales in the local area that were REO and distressed sales, and therefore, he conducted a broader search for sales of improved properties that included Kentucky, Missouri and Iowa.

Nelson was able to find sales in McHenry County which he considered comparable to the subject. Nelson concluded the subject's highest and best use to be a continuation of the "big-box" retail use. Nelson described the subject as a single-story mega grocery store containing 209,174 square

feet of building area with an upper mezzanine office area. Nelson stated the subject is situated on approximately 16 acres essentially at the corner of McFarland Road and Spring Creek Road in the northeast quadrant area of Rockford. Nelson testified the subject is located along Perryville Road with County Highway 11 frontage that is the most recently developing commercial district in the Rockford area over the last 15 years.

Nelson prepared a cost approach to value and a sales comparison approach to value for the subject property. Nelson stated his vacant land sales were of the scale to allow for development of commercial "big-box" stores and were eventually occupied by "big-box" stores in excess of 100,000 square feet of building area. Nelson's land sale No. 1 is located on the northeast corner of Perryville Road and Rote Road and is approximately 0.9 miles south of the subject property. Land sale No. 1 sold for $5,900,000 or $7.32 per square foot of land area. Nelson stated this property contained 805,686 square feet of land area and sold in April 2014. Sale No. 2 is located in Machesney Park and contains 794,578 square feet of land area which sold in October 2013 for $2,759,400 or for $3.47 per square foot of land area. This sale was sold to Meijer Stores, Limited. Sale No. 3 is located in Rockton and contains 913,018 square feet of land area and sold in June 2011 to Farm & Fleet of DeKalb for $2,328,500 or for $2.55 per square foot of land area. Nelson testified this sale is located along a fairly low traffic count intersecting street and is a neighboring property to a Walmart store. After making various adjustments to the land sales for location, size, sewer/water, zoning, topography and utility. Nelson opined indicated unit values ranging from $3.22 to $4.06 per square foot of land area, which indicated an estimated unit price for the subject of $3.55 per square foot of land area or $2,450,000. (Intervenor's Exhibit No. 1, pages 31 - 33)

In his cost approach analysis for the subject's improvement, Nelson costed the subject on the basis of possible substitution rather than costing it at the higher supermarket, mega supermarket cost. Nelson testified he used the normal mega warehouse cost which does not include heating and cooling and no sprinkler or fire suppressant system. Nelson derived a cost of the building of $57.59 per square foot of building area and calculated a deduction for lack of food service normally found in a mega warehouse store to arrive at a total replacement cost new of $11,732,570. (Intervenor's Exhibit No. 1, pages 31 - 33)

Nelson estimated physical depreciation of 34% and functional obsolescence of 10%, with economic obsolescence of 25%, to arrive at a total depreciated cost for the subject of $5,204,233. Nelson then added depreciated site improvements of $481,075 and his estimated land value of $2,450,000 which indicated a value for the subject of $8,220,929 or $8,220,000, rounded. (Intervenor's Exhibit No. 1, pages 33 - 35)

In developing his sales comparison approach to value, Nelson utilized four comparable sales. The sales were located in Rockford, McHenry, Woodstock and O'Fallon. The comparables ranged in size from 95,420 to 141,436 square feet of building area and sold from August 2013 to September 2015 for prices ranging from $2,100,000 to $6,700,000 or from $22.01 to $47.37 per square foot of building area, including land. Nelson testified very few sales were found in the Rockford area. Nelson stated there is a fairly extreme differential in the economic and marketing conditions between the west side of Rockford versus the northeast quadrant of Rockford. Nelson adjusted the comparables for location, building area, site, quality, age, condition, features, parking ratio and economic conditions to arrive at adjusted sales prices ranging from $31.39 to $37.27 per square foot of building area, including land, which indicated an estimated value for the subject of $34.35

per square foot of building area, including land, or $7,200,000. Nelson's report depicts sale No. 4 was a leased fee sale. Nelson gave primary consideration to sale No. 1 based on its market location in relation to the subject. Sales No. 2 and No. 3 suburban received significant consideration being located in a far western Chicago area. Sale No. 4 received least consideration as it was a leased fee sale and was considered least similar to the subject. (Intervenor's Exhibit No. 1, pages 37 - 47)

Nelson also considered leased fee sales in Portage, Indiana and Greensburg, Indiana and his sale No. 4 in O'Fallon. Nelson considered these sales set the upper limit of value for the subject. The leased fees sales sold from August 2014 to December 2016 for prices ranging from $6,930,000 to $14,084,500 or from $53.31 to $76.74 per square foot of building area, including land. Nelson testified he did not prepare an income approach to value for the subject because he felt it was not appropriate for a property type which is primarily for fee simple ownership owner-occupied property. (Intervenor's Exhibit No. 1, page 49)

Nelson further testified that he prepared a 2016 addendum to his original report with a valuation date for the subject as of January 1, 2016. Nelson found the January 1, 2016 valuation was consistent with his estimated value as of January 1, 2015 utilizing additional data. The additional data consisted of a "big-box" Lowe's store sale shortly after January 1, 2016. This one-story masonry property is located in Elgin and contains 136,280 square feet of building area. The comparable is situated on a 708,286 square foot site. Nelson testified the comparable is located in a superior area in a higher demographic area of west Elgin on a well-traveled roadway. Nelson stated the property was vacant for 5 years and was influenced by a very restrictive deed that named several stores that it could not be sold to. Nelson testified the deed restrictions almost demanded the sale be made to Farm & Fleet. Nelson made a significant adjustment for the deed restrictions. Nelson opined the fair market value for the subject as of January 1, 2016 as $7,200,000. (Intervenor's Exhibit No. 2)

During cross-examination, Nelson stated he wrote 3-4 appraisals for properties over 100,000 square feet of building area in the five years prior to the valuation dates in these appeals. Nelson stated that if he could not verify a sale, he would not put that in his report. Nelson admitted that he did not inspect his comparable number 4 located in O'Fallon. Nelson further admitted that the purchaser for his sales number 1 and number 2 paid additional monies for road improvements but could not answer where in his report the additional purchase fees were reported. Nelson admitted he used the Illinois Department of Transportation method to allocate unit values for buildings, including land. Nelson further admitted that someone told him that it was a violation of USPAP, however, he explained that he had never received objection for his methodology when in a court proceeding. Nelson agreed that prior to the hearing, it was not acknowledged that he used the Illinois Department of Transportation's standards in preparing his sales comparison approach to value. Nelson agreed that a reader of his sales comparison approach analysis would have a difficult time following his adjusted indicated unit prices. Nelson further admitted that for sale number 2, his statement of "no adjustment" for location was in error, however, it would not change his final opinion of value. Nelson agreed that his sale number 3 included two sale transactions with two different buildings, which he lumped together as one sale. Nelson testified his sale number 4 was a leased fee sale. Nelson admitted that he did not research market rents to determine if the lease for sale comparable number 4 was reflective of market rents. Nelson could not recall why he used a 2016 Marshall and Swift report for his multipliers in his 2015 valuation.

For his 2016 addendum report, Nelson admitted that he made no adjustments for the Lowe's store even though the City of Elgin provided a tax incentive rebate of approximately $800,000 to $1,000,000 per year. Nelson agreed that the tax rebate from the City of Elgin would affect the market value of that sale. Nelson admitted that as of January 1, 2015, the subject was not receiving any tax rebates.

In rebuttal, Appellant called Michael S. MaRous, president of MaRous & Company, as its witness. MaRous & Company is an Illinois corporation specializing in real estate valuation consulting. MaRous has worked at MaRous & Company for 38 years. He is a General Certified Real Estate Appraiser in six or seven states including Illinois and holds the MAI designation with the Appraisal Institute and has an SRA designation along with a CRE counselor's designation. MaRous testified he writes approximately 250 – 400 appraisals per year, primarily in the Chicago area and throughout the State of Illinois. He also does significant work in Iowa, Wisconsin and Minnesota. MaRous was retained to review the 2015 Davidson and Associates appraisal report of the Woodman's Food store and prepared a review report marked as Appellant's Exhibit No. 6. He also prepared a review of the 2016 Davidson and Associates appraisal report of the Woodman's Food store marked as Appellant's Exhibit No. 7.

MaRous testified that a "big-box" store is basically a large, fairly flexible, generally concrete or brick structure with junior sizes ranging from 25,000 to 30,000 square feet, mid-level from 50,000 to 75,000 and then "big-box" being anything over 100,000 square feet in size. For buildings over 150,000 square feet in size, they were considered large "big-box." MaRous stated these structures generally have exposed ceilings but that Target, Kohl's and Woodman's do not, however, they drop their ceilings with wide-based sizes, concrete floors, significant store depths and generally single tenant retailers. MaRous began appraising "big-box" stores 35 years ago throughout central Illinois and the Chicago area. He has appraised stores such as Sam's Walmart, Kohl's, Woodman's, Jewel, Dominick's, Lowe's, Home Depot, Costco, Macy's, Marshall Field's and Best Buy. MaRous stated he has interviewed market participants to understand what was driving the market, supply and demand, function and trends. MaRous testified that Amazon and e-commerce are changing the entire focus of the industry. MaRous testified that some retailers just could not compete which is causing an over-supply of space. From 2011 to 2015, MaRous stated Rockford was typical with 150,000 people with the metro area being stable, however, they were faced with the same issues of older supply and were vulnerable to spaces in the market. MaRous stated that from 2011 to 2016, there were no sales of "big-box" stores over 160,000 square feet. He also stated there were no leases for a single tenant, and that, if anything, they were broken up into smaller units.

When asked if the subject would sell, MaRous stated that he could not see any buyers. Buyers such as call centers have moved out to Cambodia, India and Canada. Further, he stated churches buy these structures, but usually want higher ceilings for the congregation. MaRous felt the subject would be difficult to sell because stores such as Meijer's and Walmart typically want their own layout and depth. He stated most retailers want from 50 to 100 feet deep in depth. MaRous testified that it would cost $30 to $60 per square foot to divide the subject up, which would include de-mising the walls, separate HVAC and separate electric. He stated that removing the ceiling would require redoing the lighting, electric, sprinklers and HVAC. In addition, repainting would cost approximately $12 to $18 a square foot and at 200,000 square feet would cost $2.5 to $4.0 million just to get to an 18 square foot of ceiling height. MaRous did not believe Meijer's would

want to buy the subject as they prefer their own layout. MaRous stated the subject has secondary visibility on two smaller streets with a traffic count a little over 9,000 cars per day.

MaRous' report depicts that the Nelson report draws no attention to the subject's extremely large building area and provides no analysis of the market dynamics that impact "big-box" retail, particularly a building in excess of 200,000 square feet with an average building depth of 330 feet. Further, the two market approaches utilized by Nelson do not adequately represent or reflect the market-tested and market-proven dynamics that impact an oversized "big-box" retail store like the subject. Therefore, MaRous opined the value opinion of the subject property in Nelson's report was not credible or market supported.

MaRous found Nelson's land sale No. 1 was superior to the subject and understated. MaRous also opined that a downward adjustment should have been made to sale No. 2 based on its superior location. MaRous found that Nelson's report was relatively minimal in regard to the land sales data by not providing PIN numbers and not providing sale verification, particularly for sale No. 1 and sale No. 2 which involved the same seller and buyer. MaRous could not verify the two sales. MaRous found that the reported $3,300,000 tax incentive and a $689,000 tax abatement for sale No. 1 was not reported by Nelson nor analyzed. Further, MaRous stated Nelson did not analyze why sale No. 1 sold for over two times the unit price of sale No. 2 when the two parcels appeared to be very similar. MaRous opined Nelson did not give the appropriate consideration to the land sales for their respective out-lot parcels and, therefore, the opinion of value conclusion of $3.55 per square foot is overstated and the estimated land value estimate of $2,450,000 was too high.

Further, MaRous found Nelson's functional obsolescence was far too low given the subject's extremely large "big-box" retail building size. MaRous' report depicts that Nelson's value conclusion vis-a-vie the cost approach of $8,220,000 is equivalent to $39.30 per square foot for the 209,174 square feet of building area, including land, which he found was significantly higher than could be supported using proper appraisal techniques. He found the cost approach presented by Nelson was not reliable as the land value was overvalued and functional obsolescence extremely low.

In regard to Nelson's sales comparison approach to value, MaRous found that the downward adjustments for size were far too small. MaRous opined that the magnitude of the understatement of building size adjustments was significant enough on its own to render Nelson's reported opinion of value unreliable. MaRous strongly disagreed with Nelson's methodology based on the land values of the respective underlying improved sales with positive adjustments because the improved sales were superior to the subject property. MaRous found no evidence was presented to support the supposed difference in land values between the improved sales and the subject property. The MaRous review report depicts improved sale No. 1 utilized by Nelson contains two smaller approximately 9,000 square foot tenant spaces, which would have a much higher unit value than the subject. MaRous stated these units would appeal to a much larger market and would command a much higher rental rate than a larger "big-box" space. Therefore, since they were superior to the subject, they would require a downward adjustment, whereas Nelson made a positive adjustment because the two spaces were vacant.

In regard to improved sale No. 2, a former Target store, MaRous found it had a superior finish, a more attractive façade and significantly less store depth than the subject. In addition, sale No. 2

had direct frontage on a major arterial in an area of significant modern retail development. MaRous found no justification or support that the unit sale price for sale No. 2 of $22.01 per square foot of building area would support an adjusted unit price of $34.42 per square foot of building area for the subject property. MaRous felt Nelson should have given more deference to size as opposed to age for improved sale No. 3. MaRous found improved sale No. 4 used in Nelson's analysis was inappropriate because it was located 300 miles from the subject in O'Fallon. Further, sale No. 4 was a leased fee sale with an existing income stream with a triple A tenant.

MaRous' s report depicts the three fee-simple improved sales in Nelson's report reflect an over value range from $2,100,000 to $3,357,000 or an average sale price of $2,885,667. MaRous found the overall estimated value of $7,200,000 for the subject property was double the top of his valuation range and approximately 2.5 times the average sales price. MaRous testified that Nelson should have included an adjustment grid in his 2016 report, the same as he did in his 2015 report. MaRous found the Lowe's store sale in the 2016 Nelson report to be in a far superior location with higher traffic counts which is attached to a shopping center with strong demographics in a very modern retail district. MaRous would make a downward adjustment to this sale based on location. He stated Nelson should have adjusted for the sales tax rebate reported to be worth $2.5 million.

Conclusion of Law

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds that reductions in the subject's assessments for 2015 and 2016 are warranted.

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). The Board finds the evidence in the record supports a reduction in the subject's assessments for the 2015 and 2016 tax years.

The appellant submitted an appraisal estimating the subject property had a market value of $5,500,000 as of January 1, 2015 and January 1, 2016. The Winnebago County Board of Review submitted various data and a 2012 appraisal report for a Woodman's Food Market located in Janesville Wisconsin, without supporting testimony. The board of review failed to support its estimated 2015 market value of $8,030,000 or $38.39 per square foot of building area including land, and its estimated 2016 market value of $7,195,682 or $34.40 per square foot of building area, including land, with any other substantive evidence.

The Board finds the appellant submitted credible appraisals prepared by Helland which supported the estimated final opinions of value with testimony. The Board finds Helland made logical adjustments to the comparables where appropriate and verified his data with market participants, brokers and/or owners. On the other hand, the Board finds Nelson on behalf of the intervening taxing district did not adequately support his adjustments or methodology within his appraisal report or through his testimony. The Board finds his testimony was evasive, defensive and not verifiable, and, therefore, not credible testimony from which a reliable indicator of value could be ascertained.

The evidence depicts all three appraisers, Helland, Nelson and MaRous, agreed that the sales comparison approach is the best approach to value for the subject property. It was well established that generally speaking, smaller buildings sell for higher unit prices and require a downward adjustment when compared to the subject. It was further generally agreed that stores in the far northwest suburbs of Chicago are generally superior retail locations when compared to stores in Rockford and also require a downward adjustment. Both valuation appraisers utilized a sale on State Street in Rockford. In addition, both appraisers analyzed the Lowe's sale in Elgin, however, they disagreed over the appropriate adjustments. The Board gives little weight to Nelson's sale No. 4, which is a leased fee sale in O'Fallon. The Board finds Nelson did not adequately analyze this sale. The Board questions the utilization of adjustments using IDOT condemnation techniques as Nelson did, which was predicated on relative land sale values for which he failed to include the land values for three of his four comparable sales. The Board further finds the quantitative adjustments utilized by Nelson were not well supported in his appraisal report or explained in his testimony. The evidence depicts Nelson's base cost in his cost analysis may be incorrect wherein he added an additional $4.97 for heating and air-conditioning which was shown to be already included in the base cost by Marshall & Swift (see Appellant's Exhibit No. 7).

Further, the Board gives little weight to the evidence submitted by the board of review in support of the subject's assessments as the written evidence was not supported at hearing with testimony from the preparer of said evidence. The Board finds the evidence from the board of review was not subject to cross examination or presented for verification upon review.

Based on the above analysis, the Board finds the best evidence in this record of the subject's market value are the appellant's appraisals prepared by Helland which estimates the subject's market value of $5,500,00 as of January 1, 2015 and as of January 1, 2016. Since market values have been determined, the 2015 three-year average median level of assessments of 33.33% and the 2016 average three-year median level of assessments of 33.35% for Winnebago County shall apply, respectively.

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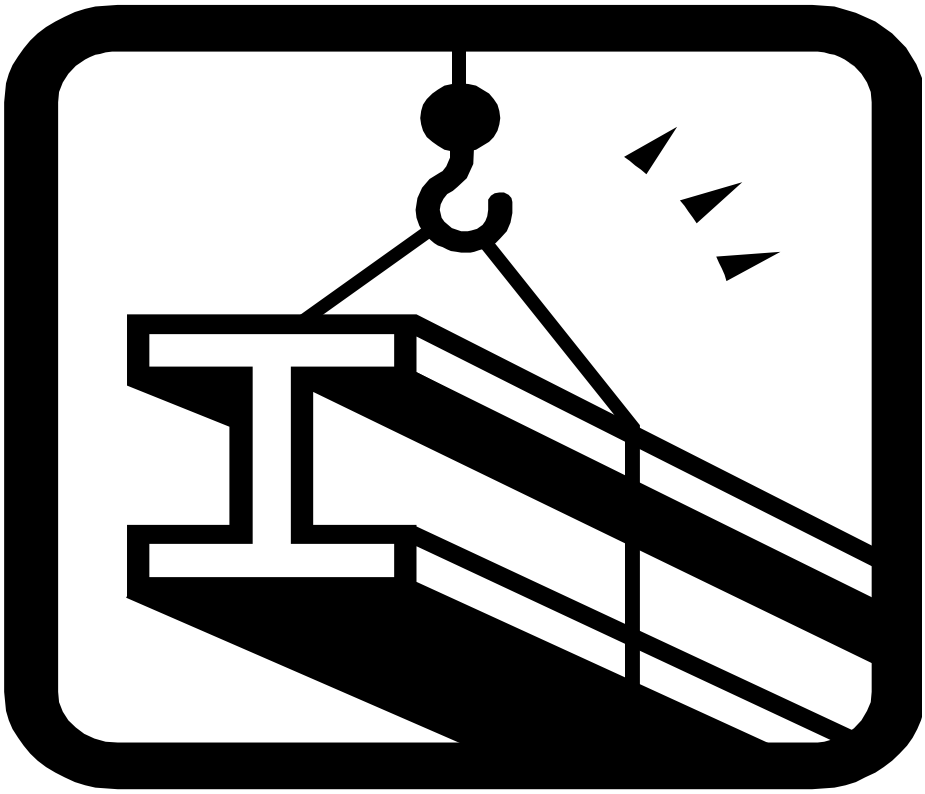
PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2019 INDUSTRIAL DECISIONS



PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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APPELLANT:	**Chicago Granite & Marble**
DOCKET NUMBER:	**14-30916.001-I-1**
DATE DECIDED:	**January, 2019**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a 45-year-old, one-story warehouse of masonry construction. The parties differed as to the size of the gross building square footage. The property has an 80,806 square foot site located in Franklin Park, Leyden 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 utilizing the sales comparison, income capitalization and cost approaches of valuation. The appraisal estimated the subject property had a reconciled market value of $1,300,000 as of January 1, 2013. The appraiser included a letter reaffirming the opinion of value would be the same as of January 1, 2014. The appellant requested a total assessment reduction to $325,000 when applying the 2014 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance.

Peterson Appraisal Group appraised the subject's fee simple property rights. The subject consisted of a two-tenant occupied industrial warehouse. The report contained the opinion that the highest and best use of the subject as vacant would be for future development of an industrial building; and, as improved, was its continuation of its current use. The appraisal report was based on the sales comparison, income capitalization and cost approaches. It calculated the subject to contain 55,208 square feet of gross building area.

Gary Peterson (hereinafter "Peterson"), president of Peterson Appraisal Group, testified that Matthew Kang (hereinafter, "Kang") prepared the report. Peterson testified that he reviewed the entire report, confirmed its opinions and signed it as supervising appraiser. Kang listed five land sales to develop the cost approach. He concluded that the estimated market value of the land only for the subject property was $5.00 per square foot, for a total land value of $404,030, rounded to $405,000. After determining the replacement value of the building and applying various measures of depreciation to it, and then adding back the land value, Kang opined that the subject had a $1,371,959 market value, rounded to $1,370,000 based on the cost approach. However, Kang opined that this approach is unreliable because the subject exhibited significant physical deterioration resulting in functional obsolescence. This rendered estimating depreciation unreliable. Kang gave the cost approach no emphasis.

As to his development of the income capitalization approach, Kang selected five comparable industrial warehouse properties, each located in Franklin Park, Leyden Township, Cook County, Illinois. Based on these comparable rental properties, Kang determined a stabilized gross potential rent for the subject at $5.30 per square foot of gross leasable space. The resulting effective gross potential income was $292,394, rounded. Kang estimated stabilized operating expenses to be 73.26% or $192.789 of effective gross income, resulting in net operating income before real estate

taxes of $192,789. He then estimated an 8.20% capitalization rate by using the band of investments technique. Investor surveys disclosed a capitalization rate range between 7.00% and 11.00%. Using both capitalization rate techniques, Kang opined the applicable overall capitalization rate was 9.00%. His estimated tax load was 8.537%%. The resulting overall loaded capitalization rate was 17.537%. By applying this rate to net operating income before taxes, Kang estimated market value based on the income capitalization approach at $1,099,327, rounded to $1,100,000.

To develop the sales comparison approach, Kang relied on six improved industrial warehouse properties. These comparable properties sold from January 2011 through November 2012 for prices ranging from $15.07 to $25.51 per square foot of gross building area, including land. Kang applied adjustments to each of the comparable properties based on many factors, including location, building size, date of sale, land-to-building ratio and age. He opined that the subject had a market value of $24.50 per square foot of building area, including land, to arrive at a gross value of $1,352,596, rounded to $1,355,000.

Kang gave no weight to the cost approach and the most weight to the sale comparison approach. He gave secondary weight to the income capitalization approach. His reconciled estimate of market value was $1,300,000. Peterson testified that he reviewed the entire report, verified all data in it, confirmed its opinions, and signed it as the supervising appraiser.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $392,267. The subject's assessment reflects a market value of $1,569,068 when applying the 2015 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance. The board of review's Notes on Appeal stated the subject contained 60,498 square feet of gross building area. In support of its contention of the correct assessment, the board of review submitted information on five unadjusted suggested sale comparable properties of industrial warehouses.

In its rebuttal brief, the appellant reaffirmed the request for an assessment reduction.

The hearing commenced with appellant's counsel calling Peterson to testify as an expert witness. The appellant and the board of review stipulated to Peterson's qualifications as an expert in the theory and practice of real estate appraisal of industrial properties located in Leyden Township. The Administrative Law Judge (hereinafter, "ALJ") accepted the stipulation to Peterson's expert qualifications. Peterson then testified as to the appraisal of the subject.

Peterson testified that Matthew Kang (hereinafter, "Kang") of his office prepared the appraisal report and appraised the subject's fee simple property rights. Peterson signed the appraisal and testified that he supervised Kang's work and verified the data and conclusions in the report. Peterson personally authored the 2014 update letter. He testified that the highest and best use of the subject as improved would be the continuation of its current use. Peterson then testified that the appraisal report was based on the standard sales comparison, income capitalization and cost approaches. Peterson testified how each of the approaches were developed and how its conclusions were determined. Peterson relied mostly on the sales comparison approach and gave the income capitalization approach secondary weight. He gave the cost approach diminished weight. His opinion of the subject's market value was $1,300,000 as of January 1, 2013, updated as of January 1, 2014.

The board of review representative objected to the appraisal report prepared by Kang as hearsay because Kang was not present to testify to it under cross-examination. The ALJ reserved ruling and took it under advisement.

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 appraisal disclosed the dwelling contained 55,208 square feet of gross building area. The appraiser personally inspected and measured the subject's building exterior and interior on January 14, 2014. The Board finds this calculation to be the most reliable evidence of the subject's improvement gross square footage.

The Board overrules the board of review's hearsay objection to the appraisal report because it was authored by Kang. Peterson testified that he reviewed Kang's work to confirm the accuracy of the data and reasonableness of the conclusions and opinions contained in it. Peterson authored the January 1, 2014 update letter.

The Board finds the best evidence of market value to be the appraisal submitted by the appellant. Peterson testified that the report disclosed the development of the three standard approaches to valuation, giving most weight to the sales comparison approach. The report contained detailed data and explanations of how each of these approaches was developed. The opinions of market value were explained and not effectively rebutted by the board of review.

After considering all of the documentary evidence, the testimony at hearing, and the credibility of the witnesses, the Board finds appellant has sustained its burden of proof by a preponderance of the evidence that the subject property was over-assessed. The Board finds the best evidence of market value to be the appraisal submitted by the appellant, as updated by the appraiser's letter reaffirming the opinion of value as of January 1, 2014. The Board finds that the subject property had a market value of $1,300,000 as of the 2014 assessment date. Since market value has been established, the 2014 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance shall apply.

APPELLANT:	**The Coca Cola Company**
DOCKET NUMBER:	**15-32499.001-I-3 thru 15-32499.005-I-3**
DATE DECIDED:	**February, 2019**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of five parcels of land totaling 968,921 square feet and improved with one, one and part-two, and three-story, four building, industrial facility constructed in stages from 1972 to 1991 and containing a total of 517,877 square feet of building area. The property is located in Niles Township, Cook County and is a class 5 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant, through counsel, appeared before the Property Tax Appeal Board (the Board) arguing that the fair market value of the subject is not accurately reflected in its assessed value. In support of this argument, the appellant submitted an appraisal report with a valuation date of January 1, 2013. The appellant presented the testimony of the appraisal's author, Terrence McCormick with McCormick & Wagner, LLC. Mr. McCormick testified he is the co-owner of McCormick & Wagner, is an Illinois certified general real estate appraiser, and holds the MAI designation from the Appraisal Institute. The parties then stipulated to McCormick as an expert witness in the valuation of real estate and was accepted as such by the Board.

McCormick testified he inspected the property on January 7, 2011 and January 8, 2014. He testified that he valued the property as of January 1, 2013 which is the first year of the triennial assessment cycle. He briefly described the improvements and the land. He testified that the subject is two parcels on either side of Oak Park Avenue with a total land-to-building ratio of 1.87 to 1. McCormick further described the improvements as four, freestanding buildings with the first building built in 1976 and containing 331,365 square feet. He testified the second largest building was constructed in 1972 and contains 112,000 square feet, the third building was built in 1973 and contains 65,000 square feet, and the fourth building contains 10,000 square feet and is utilized as a truck maintenance and repair building. He testified the total square footage of the improvements is 517,877 and the weighted average age is 38 years old situated on a pad site of approximately 132,313 square feet or 3.038 acres. McCormick testified the ceiling heights range from 19 to 24 feet.

McCormick opined the highest and best use for the subject as vacant is industrial use and the highest and best use as improved is continuation of its existing use as a manufacturing/warehouse facility. He opined an estimated economic life of 60 years with an effective age of 40 years and a remaining economic life of 20 years.

McCormick developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $11,550,000, rounded, while the income approach indicated a value of $11,190,000, rounded. The sales comparison approach indicated a value of $11,390,000, rounded. The appraiser concluded a market value of $11,350,000 for the subject property as of January 1, 2013.

In determining the subject's land value, McCormick testified he analyzed five comparable land sales and after adjustments for various differences selected a unit value of $5.00 per square foot for the subject to arrive at an estimated land value of $4,840,000.

Using the Automated Marshall & Swift Commercial Estimator, the appraiser estimated the reproduction cost new to be $44,756,531. In establishing a rate of depreciation, McCormick testified he analyzed the eight sales comparables included in the sales comparison approach. The appraisal indicates an annual rate of depreciation between 1.8% and 2.7%. McCormick applied an annual rate of depreciation to the subject of 2.2% or 85%. McCormick testified this depreciation rate was then applied to the reproduction cost new for a depreciated cost of $6,713,480. The land was then added back in which resulted in a final value estimate of $11,550,000, rounded, under the cost approach.

Under the income approach, McCormick testified he considered seven rental comparables. These properties ranged in rental size from 73,198 to 169,000 square feet of building area and had asking rentals from $2.60 to $3.75 per square foot on a triple net basis. McCormick testified he estimated a rental rate of the subject at $2.75 for a gross rent of $1,424,162.

McCormick testified that he applied a 10% vacancy and collection rate which reflects an effective net income of $1,281,746. He testified he deducted 2% each for management and reserves for replacement for total net income of $1,230,476.

In determining the appropriate capitalization (CAP) rate, McCormick testified he utilized the band of investment technique as well as the market extraction method which analyzes the eight sales used in the sales comparison approach. In the appraisal, McCormick he reviewed the eight sales comparables and analyzed them relative to sale price and the net operating income that could be anticipated. The appraisal indicates overall CAP rates ranging from 10.7% to 12.3%. The band of investment method yielded a rate of 10.6%. McCormick testified he applied an overall CAP rate of 11% to estimate the market value for the subject under this approach at $11,190,000, rounded.

The final method developed was the sales comparison approach. McCormick testified he analyzed eight sales of improved properties. The properties range in building size from 51,400 to 305,000 square feet and sold from December 2010 to October 2013 for prices ranging from $1,600,000 to $5,373,000, or from $14.75 to $31.13 per square foot of building area, including land. The properties ranged in age from 33 to 43 years and in land to building ratio from 1.43:1 to 2.62:1.

McCormick testified that the comparables are primarily manufacturing buildings and that smaller buildings were included to take into consideration the multi-building composition of the subject. McCormick then described each comparable. He did acknowledge that the sales were all one building sales versus the subject's four building complex and that sale #6 was a leased fee sale with one and one-half years left on the lease. McCormick testified he made adjustments to the comparables for pertinent factors to estimate a value for the subject of $22.00 per square foot of building area, including land, which yields a value for the subject property under the sales comparison approach of $11,390,000, rounded.

In reconciling the various approaches, McCormick testified he gave least weight to the cost approach because of the age of the subject and that this approach is typically least considered by market participants. He testified he gave secondary consideration to the income approach and the most weight was placed on the sales comparison approach. After reconciliation, the appraisal estimated the value for the subject property as of January 1, 2013 to be $11,350,000.

Under cross-examination by the board of review, McCormick testified he has appraised the subject at least three times. He testified he inspected the subject along with John Wagner and that Mr. Wagner took the photographs of the subject. McCormick testified that he did not take any photos of the interior of the subject as they did not let him bring a camera inside. He testified that he did not get any rent roll information from the owner as the subject is owner-occupied. McCormick testified he measured the building and then created the drawings within the report based off those measurements. He opined that the condition of the three-story building was average. McCormick testified that building #1 has over 300,000 square feet of building area and had an adequate number of overhead doors at 28. He testified that the ceiling height on this building ranged from 22 to 24 feet and it was 22 feet at the overhead doors. McCormick testified building #2 had 22 overhead doors while building #3 had eight.

McCormick testified that the subject is located within the north suburban market and that the O'Hare market is another market. He acknowledged the subject was located within a five-mile radius of three expressways.

Regarding the land sales, McCormick testified he looked for industrial land sales within Cook County that sold within close proximity to the date of value. He did not recall the initial number of land sales yielded by the search. He acknowledged this initial search yielded more than 10 land sales and he decided which of these sales to include in the report. McCormick testified land sale #3 occurred in 2010, but opined that the market in 2010 for industrial properties was no worse than it was in 2013. He acknowledged that three of the land sales were located over 25 miles away from the subject. He testified that his main search parameter was size.

As to the depreciation, McCormick testified that he used the market extraction method because it's the best indicator of estimating depreciation. He testified the property was still being used in 2016 and that no substantial work had been done on it since the previous inspection.

McCormick testified that he picked the rental comparables to use and that he did not utilize any rental comparables that he recently appraised. He acknowledged he did not perform any interior inspections on the rental comparables, but testified that he used the physical characteristics that were listed on the broker's sheets. He testified that six of the seven comparables are from the O'Hare market. McCormick agreed that all the comparables were asking rents and that some of the rental space was within a multi-tenant occupancy building. He testified he made adjustments for these factors.

McCormick testified that he determined the vacancy and collection loss percentage. He testified that 3.3% of the subject had not be utilized since 2006 but that there were other portions of the buildings that had been vacant before the prior inspection. He testified he did not calculate the exact percentage of vacancy in the buildings because it's irrelevant. McCormick named the sources

he used to determine his vacancy and collection rate. He testified these sources estimated rates from 6.4% to 9.65%

As to the CAP rate, McCormick testified he utilized the band of investment technique and the market extraction method. He testified that the sales used in the market extraction method had CAP rates near his chosen 11% or, for some, above it. He acknowledged that he determined the CAP rates. He testified that brokers would not have any rate information as these properties were not leased at the time of sale with the exception of sale #6. He testified that he used the income provided for sale #6 to determine that CAP rate. McCormick then reviewed his band of investment technique. He testified that a longer amortization rate would lower a CAP rate. He testified that he used the 15-year amortization rate based on the remaining economic life of the subject.

McCormick reiterated he gave the most weight to the sales comparison approach. He testified that sale #1 is 10% the size of the subject. He further explained that the ceiling height for the warehouse portion of this property is 24 feet. He acknowledged that sale #2 was located within an inferior market and that it is set up for food processing. McCormick testified that sale #3 was located in the O'Hare market and about 25% of the building is used for cooler and freezer space whereas the subject has 5% cooler space. He testified that the deterred maintenance for sale #3 was average for its age. McCormick testified that sale #4, located in the O'Hare market, was 52% office space. He testified that sale #4 is in an inferior location and has inferior ceiling heights. He testified that sale #6 has less office space than the subject and that sale #7 occurred in February 2011. He agreed that sale #7 was located in the O'Hare market. McCormick testified that sale #8 had the lowest unit sale price. He acknowledged that this building was subsequently demolished in 2014 or later and turned into a land sale. He further testified that the date of his report was January 2014, a year after the date of value and prior to any demolition of this building.

On re-direct, McCormick testified that he determined a 10% vacancy and collection rate based on a review of the average market rates and comparing those to the subject as an older, larger manufacturing warehouse facility. He testified that the rental comparables were asking rents but stated that typically actual rental rates fall below asking rates.

McCormick testified that, based on his experience and expertise, industrial property owners who use their property for manufacturing do not permit interior photographs of their property. He testified that if you are allowed to take pictures, they would often review the pictures and give back what could be used.

McCormick testified that he confirmed each of his sales with a party to the transactions. He testified that at the time sale #8 occurred, the property was advertised based on its physical characteristics and not based on redevelopment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $4,272,476 was disclosed. This assessment reflects a fair market value of $17,089,904 or $33.00 per square foot of building area, land included, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 25% for Class 5 industrial property is applied.

In support of this market value, the board of review submitted information on five sales comparables. These properties ranged in size from 303,473 to 527,661 square feet of building area and sold from February 2010 to August 2014 for prices ranging from $13,875,000 to $28,440,000 or from $34.22 to $61.92 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.

In support of the interveners' position, the intervenors submitted a summary appraisal of the subject prepared by Neil Renzi with Renzi & Associates (Renzi Appraisal). The parties stipulated to Renzi's qualifications as an expert in the valuation of real estate and he was accepted as such by the Board.

The appraisal utilized the three traditional approaches to value to estimate the value of the subject property at $17,200,000 as of January 1, 2013. This appraisal was marked as *Intervenor's Exhibit #1*.

Renzi testified he performed an inspection of the exterior and surrounding area of the subject on April 15, 2015 and September 21, 2018. He described the metropolitan area around the subject. He testified that the Chicago metropolitan area has one of the largest industrial markets in the nation and that Niles benefits from an excellent transportation system. He then described the subject. He testified the condition of the subject's exterior was good and that he relied upon the McCormick & Wagner appraisal to determine the interior was in average condition. Renzi testified that the subject's highest and best use as improved would be continuing as an industrial facility for a single user. The appraisal indicates an estimated economic life of 50 years with an effective age of 38 years and a remaining economic life of 12 years.

Renzi developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $17,560,000, rounded, while the income approach indicated a value of $16,950,000, rounded. The sales comparison approach indicated a value of $17,300,000, rounded. The appraiser concluded a market value of $17,200,000 for the subject property as of January 1, 2013.

In determining the subject's land value, Renzi testified he analyzed five comparable land sales that took place from September 2009 and December 2013 and had land sizes from 183,254 to 1,604,467 square feet. These properties sold for prices ranging from $6.72 to $12.98 per square foot. He testified that after removing the two sales at the low end of the range, the adjusted sales range was from $8.73 to $12.98 per square foot. He testified he removed the two low end properties because they were inferior to the subject. He testified he concluded a land value of $8.00 per square foot for the subject to arrive at an estimated land value of $7,750,000.

Using the Marshall Valuation Service Cost Manual, Renzi estimated the replacement cost new to be $40,885,150. Using the age-life method, Renzi testified he depreciated this value by 76% a depreciated cost of $9,812,436. The land was then added back in which resulted in a final value estimate of $17,560,000, rounded, under the cost approach.

Under the income approach, Renzi testified he analyzed six actual rents and testified to their location. These properties range in rental size from 123,244 to 256,629 square feet of rentable area for rental rates from $2.75 to $6.51 per square foot of rentable area. Renzi testified to the adjusted

rental rate range to conclude a rent for the subject at $3.25 per square foot of building area for a potential gross rental income of $1,683,100.

Renzi testified he estimated vacancy and collection loss (V&C) at 8% based on a review of the subject's market and reports for Northern Cook County. This resulted in an effective gross income (EGI) of $1,548,452 for the subject. Renzi testified there was minimal management for this type of property and estimated management expenses at 2%, charged $31,000 for expenses during vacancy, and $0.10 per square foot for reserves for replacement which resulted in a net operating income (NOI) of $1,434,452 for the subject.

To estimate the capitalization rate, Renzi testified he extracted rates for three of his sales comparables for a market extraction method, relied upon investor surveys, and applied the band of investment technique. He testified the market extraction rates ranged from 6.64% to 9.5% and opined that the 9.5% was higher than necessary for the subject because this was the sale of Caterpillar which was high risk at the time. Renzi testified the published surveys ranged in rates from 5% to 10%. He testified he used a 25-year amortization rate because that is typical in the market. Renzi concluded an overall rate of 8% and applied a partial tax load of .46% which resulted in an indicated value for the subject under the income approach of $16,950,000, rounded.

To estimate a value for the subject through the sales comparison approach, Renzi testified that due to the subject's design and size it is difficult to find comparable properties that relate well to the subject. Renzi analyzed six sales. He described each property. The properties range in building size from 280,947 to 584,301 square feet and sold from May 2012 to September 2013 for prices ranging from $10,400,000 to $23,997,500, or from $33.20 to $62.62 per square foot of building area, including land. The properties ranged in age from 3 to 38 years and in land to building ratio from 1.48:1 to 3.95:1.

Renzi testified that sale #5 was remotely located from the subject but it relates well to the subject and that sale #2 was the sale of a complex of seven buildings. He testified he used sales outside of Cook County because there were not enough sales within Cook County that relate to the subject without going to a completely different type of market.

Renzi described the adjustments made to the comparables for pertinent factors. Renzi testified he concluded a unit value range for the subject of $33.00 to $34.00 per square foot of building area, including land which yields a value for the subject property of $17,089,941 and $17,607,818, respectively and concluded a value under the sales comparison approach of $17,300,000.

In reconciling the approaches to value, Renzi testified they indicated a tight range. The appraisal indicates he placed limited consideration on the cost approach, used the value of the income approach in conjunction with the value from the sales comparison approach to estimate a value for the subject of $17,200,000 as of January 1, 2013.

Under cross-examination by the appellant, Renzi testified that of the 5.2 acres of the subject's building #3, 5 acres is located within a flood plain. He testified he took this into consideration in his overall land value estimates. He acknowledged that this was not specifically stated in the report, but was taken into account.

At to the sales comparables, Renzi testified that sales #1 and #6 were fee simple sales and that the remaining sales #2 through #5 were leased fee sales. He testified two sales were located in northern Cook County. He testified that sale #6 contained 148,000 square feet of building area that was built in 1962 and 235,000 square feet of building area built in 2008. He stated this made the age of this comparable newer than the subject, but opined it was not substantially newer. Renzi acknowledged he only confirmed three of the six improved sales with parties to the transactions.

As to sale #2, Renzi testified that the indicated overall CAP rate of 6.75% which, he opined, was consistent with the market. He testified that because this rate was at market there was no need for an adjustment for the lease fee sale. He acknowledged he did not know what the rent was.

Renzi testified that the rent for sale #3 was $3.11 per square foot of building area and the lease began in 2013 and the rent for sale #4 was $4.50 per square foot of building area on a net basis with a 15-year lease that was executed at the time of sale. He testified that there was a partial leaseback to the seller for a small portion of this building while the other portion of the building was already leased out. He testified that he was unable to get any rental information for sale #5. Renzi reiterated that he estimated a rent for the subject of $3.25 per square foot of building area.

Renzi testified that the rental comparables used were less than 50% the size of the subject. He agreed that, all other things being equal, as size increases unit value decreases. He testified that rental comparable #5 had a rental rate of $2.75 per square foot of rentable area.

Renzi acknowledged that the market extraction method for developing the CAP rate was the most reliable along with the band of investment technique. He explained that if the information was available, solid, and accurate, the market extraction method was the best test of the market; but he also put a lot of credence on the band of investment. He testified his CAP rate was partially based on the sales comparables' leases that were in place at the time the property sold. He acknowledged that sale #2 was a multi-property transaction with seven buildings included in the sale. He testified that, of these seven buildings, some were multi-tenant buildings, and some were single-tenant.

Renzi testified that the sales comparables located in DuPage County are located within 10 miles of the subject with the Kendall County sale located within 40 miles of the subject. He acknowledged he placed most weight on the sales comparison approach and that he developed his CAP rate partially based on the sales within his sales comparison approach. He testified that he did not make any adjustments to the leased fee sales to account for the subject's fee simple valuation because the market data available showed the sales were at market. He acknowledged that he did not know all the rents on the leased fee sales comparables. He reiterated that the realm of the data appeared to show they were at market. He testified that the subject property's buildings are divided by a street and that one of the sales comparables is divided by a street.

In rebuttal, the appellant called Mr. Anthony J. Uzemack. The parties stipulated to Uzemack's qualifications as an expert in the valuation of real estate and he was accepted as such by the Board.

Uzemack testified he reviewed the Renzi Appraisal to support, rebut, and comment on the appropriateness, completeness, authenticity, and credit-worthiness of the appraisal report. He testified he inspected the exterior of the subject property after reading the appraisal. Uzemack described the steps he took in reviewing the appraisal. He opined that the information presented

in the appraisal, and the conclusions reached did not perform and did not adequately represent the property that was under appraisal. He also opined that the approaches to value were in error because the exclusions and lack of presentations of some of the problems inherent to the subject were not brought to the surface, which had a direct impact on the value estimates.

Uzemack testified that building #3 is located within a floodway and would never be replaced today under existing floodway rules and building codes, but he stated that this discussion of the floodplain was omitted from the Renzi report. He testified that this building and the problems it faces would affect the value conclusions.

As to the sales comparison approach, Uzemack opined that the sales lacked comparability to the subject. He testified that the appraisal utilizes large, industrial, building sales, but none of these buildings shared the same characteristics of the subject such as same building size, same locations, and same hindrances found in the subject. He testified that sale #1 was completely renovated, air conditioned, and located in DuPage County. He testified this property was located in an industrial park with room to expand, not in a floodway, not multi-building, and not single-tenant.

Uzemack testified that sale #2 is a multi-building sale, but that the seven buildings included in this sale have allocated sale prices based on each buildings size which are substantially smaller than the subject and each building is leased. He testified that the unit value for this sale is a mathematical calculation not a negotiated unit sale price.

As to sale #3, Uzemack testified this property was located in a different county than the subject and is a high-cube building under a long-term lease. He testified that the appraisal report does not describe the lease or how an adjustment was made. Uzemack testified that the unit value not only includes the real estate, but also the value of whatever is remaining on the lease.

Uzemack testified that sale #4 is a more modern building and singular in nature. He testified it was a leased fee sale with no discussion in the report of the lease. He opined the only characteristic comparable to the subject is the percentage of office space.

As to sale #5, Uzemack testified this property was located far from the subject and is a single-building sale. He testified that it has an excess vacant parcel of land at 19 acres and the building is not similar to the subject in utility, size, shape, form, or use.

Uzemack testified sale #6 is a modern structure that is what the market is looking for today. He opined that there is no comparability with this property other than its location.

As to the cost approach, Uzemack opines that the use of the replacement cost new removes from the appraiser the ability to deduct for functional obsolescence which if found in the subject due to the floodplain. It also does not recognize the multi-building characteristic of the subject.

In the income approach, Uzemack testified that this approach does not accurately reflect the earning potential of the subject because the rental comps differ in size, have better ages and utilities, and are more usable and acceptable to the market. He testified that a CAP rate development from leased fee sales is not indicative of a fee simple value.

Uzemack opined that the Renzi Appraisal did not accomplish what it was originally set or designed because of inaccuracies of the information presented that would adversely impact and change whatever estimated value was arrived at.

Under cross examination by the board of review, Uzemack testified he did not inspect the interior of the subject. He testified that one of the main issues he had with the Renzi Appraisal was how Renzi handled the floodplain issue. He opined that the zoning would not allow building #3 to be replaced today due its location in the floodplain. He acknowledged he did not speak to any government entity about this issue. He testified that he included the CoStar Comps reports and advertisement data on the sales comparables in his review report, but did not write up a detailed account of his analysis in the report because it was not part of the scope of his report. He opined that doing so would be approaching appraising the property. He testified he was not asked to appraise the property. Uzemack acknowledged that the Renzi Appraisal mentions that the property is located within a floodplain.

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, 331Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the 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 and intervenors' appraisal reports and testimony, the board of review's submission, and the appellant's rebuttal documentation and testimony.

The Board finds the board of review's witness was not present or called as a witness to testify about their qualifications, identify their work, testify about the contents of the evidence, the conclusions or be cross-examined by the appellant, intervenor 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 the evidence from the board of review no weight.

The Board then reviewed the two appraisals and the testimony regarding these appraisals to determine the best evidence of the subject's market value as well as the review appraiser's work and testimony.

In the cost approach, the Board finds the subject property is significantly aged and the cost approach is not the most reliable indicator of value. Moreover, both appraisals indicate that this is not an approach that buyers and sellers in this market would utilize in determining a value for the subject and each gave this approach the lease weight in reconciling the subject's value. Therefore, the Board gives this approach little weight.

In the income approach, the Board finds McCormick utilized properties that were listed for rent and not actual leased rental data and some of the rental space was within multi-tenant buildings. In addition, McCormick utilized a vacancy and collection rate that was above market surveys for properties within the subject's market. The Board finds that Renzi utilized leased fee transaction in developing the CAP rate for the subject's fee simple value. In addition, the amortization period utilized by the appellant was longer than the remaining economic life of the subject. The Board finds both income approaches were flawed in some respect and not a reliable indicator of value.

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 give this approach the most weight.

As to the sales comparison approach, the Board finds that four of Renzi's sales were leased fee sales while one of McCormick's sales is leased fee. No adjustments were made for these leased fee sales for property rights. In addition, Renzi used four sales that were located outside of Cook County. The Board finds that, although Renzi testified he used similar markets, Cook County's tax structure differs from other counties which creates a different real estate market based solely on that factor. In the instant appeal, the Board finds it is easier to adjust for physical characteristics than for the differences in markets based on this factor. McCormick testified his sale #8 turned into a land sale after the building was demolished. Although, this occurred after the appraisal report was completed, the Board finds this sale reflects a land sale.

The Board finds the seven remaining sales, McCormick's sales #1 though #6 and sale #7 and Renzi's sale #6, are most reflective of the subject's market value. These comparables sold from December 2010 to September 2013 for prices ranging from $19.10 to $62.62 per square foot of building area, including land. The subject property's assessed value equates to a market value of $33.00 per square foot of building area, including land which is above the unadjusted range of comparables. However, the Board finds the need for significant adjustments to Renzi's comparable #6 due to partial new construction. Therefore, after considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments necessary to the unadjusted sales values, the Board finds that the subject property had a market value of $15,550,000. Since market value has been determined, the Cook County Real Property Assessment Classification Ordinance level of assessments of 25% for Class 5 property shall apply and a reduction is warranted.

APPELLANT:	**Douglas Land Partners LLC**
DOCKET NUMBER:	**16-00463.001-I-1**
DATE DECIDED:	**November, 2019**
COUNTY:	**Kane**
RESULT:	**No Change**

The subject property consists of a 140,699 square foot vacant interior industrial land site with slight variations in grade and is located in Batavia, Batavia Township, Kane County.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted a brief prepared by counsel, along with copies of three amendments to an Agreement for Purchase and Sale, a Settlement Statement and a Special Warranty Deed concerning the sale of two vacant industrial land parcels located directly across the street from the subject parcel. The property which sold is identified as parcel numbers 12-14-400-013 and -019 and contains 416,872 square feet of land area. This neighboring property sold in May 2016 for $1,407,462 or for $3.38 per square foot of land area. Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect a market value of $3.38 per square foot of land area or an assessment not to exceed $158,505.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $232,398. The subject's assessment reflects a market value of $698,521 or $4.96 per square foot of land when using the 2016 three-year average median level of assessment for Kane County of 33.27% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review reported that the single sale of property that was presented by the appellant involved the sale of a partial interest (citing page 1 of the Agreement for Purchase and Sale). Furthermore, the board of review contends that the appellant was the seller of this partial interest in the comparable property as a partial interest holder. Additionally, the board of review noted that the comparable property that sold is nearly three times the size of the subject parcel.

In support of its contention of the correct assessment the board of review submitted information on the current asking price for the subject property of $5.95 per square foot, along with data on four comparable sales located in Elgin, Pingree Grove, Dundee and Aurora. The comparable parcels range in size from 87,120 to 245,874 square feet of land area. The comparables sold between July 2012 and May 2015 for prices ranging from $330,000 to $926,978 or from $3.77 to $7.54 per square foot of land area.

The board of review submission also included a second spreadsheet of seven comparable sales located in Aurora, West Chicago and Batavia which were presumably gathered by the Batavia Township Assessor. The comparable parcels range in size from 55,757 to 891,673 square feet of land area. The comparables sold between March 2011 and May 2015 for prices ranging from $285,220 to $2,950,000 or from $3.31 to $5.42 per square foot of land area.

Based on the foregoing evidence and argument, the board of review requested confirmation of the subject's estimated market value as reflected by its 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.

The parties submitted a total of twelve sales to support their respective positions before the Property Tax Appeal Board. The Board has given little weight to the appellant's single sale of property located in close proximity to the subject due to the comparable's much larger size, sale of only a partial interest, and the fact the seller of the comparable was the appellant in this proceeding. The Board also gave little weight to the appellant's comparable sale property as the evidence did not establish that the sale had the elements of an arm's length transaction. The Board has also given reduced weight to board of review sale #4 and to sales #2 through #7 gathered by the township assessor as each of these sales occurred between 2011 and 2013 which were not proximate in time to the assessment date at issue of January 1, 2016 and thus are less likely to be indicative of the subject's estimated market value as of the lien date. Reduced weight was also given to township assessor sale #1, although more proximate in time, this property consists of 634,843 square feet of land area and was, therefore, substantially larger than the subject property. Accepted real estate valuation theory provides that all factors being equal, as the size of the property increases, the per unit value decreases. In contrast, as the size of a property decreases, the per unit value increases.

The Board finds the best evidence of market value in the record to be comparable sales #1, #2 and #3 submitted by the board of review. These comparables bracket the subject in size, ranging from 87,120 to 245,874 square feet of land area. These comparables were also similar to the subject in location and sold in August 2014 or May 2015, dates more proximate in time to the assessment date at issue. The comparables sold for prices ranging from $330,000 to $926,978 or from $3.77 to $5.55 per square foot of land area. The subject's assessment reflects a market value of $698,521 or $4.96 per square foot of land area, which is within the range established by the best comparable sales in this record, and appears to be particularly well-supported by board of review sale #3 which consists of 108,029 acres and sold in August 2014 for a price of $5.55 per square foot of land area.

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.

APPELLANT:	**MPBP Enterprises, LLC**
DOCKET NUMBER:	**13-22202.001-I-2**
DATE DECIDED:	**June, 2019**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property is a 33-year-old one-story, single-tenant, owner-occupied industrial building of metal clad construction on a slab foundation. The building contains 6,000 square feet of gross area. Features of the building include five overhead garage doors and a small office area of 400 square feet. The property has a 134,876 square foot site and is located in unincorporated Des Plaines, Maine Township, Cook County. The property 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 an appraisal with a January 1, 2013 effective date. The appraiser developed the cost and sales comparison approaches to value. The appraisal disclosed the subject property contained environmental contamination that would cost $730,000 to remove. Consequently, the appraiser valued the subject in two alternative ways: 1) $690,000 as environmentally clean; and 2) of zero value in "as is" condition. On the face of its Industrial Appeal Petition, the appellant requested a total assessment reduction to zero. As an alternative, at hearing the appellant waived the claim of zero value in "as is" condition and requested a market value reduction to $690,000 as if the subject property were environmentally clean when applying the 2013 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant retained Peterson Appraisal Group, Ltd., to prepare an appraisal of the subject. Appraiser Gary Peterson ("Peterson"), with the assistance of appraiser Steven Bickett, inspected the subject in May 2013 for a January 1, 2013 effective date of market opinion. Peterson's scope of work was to appraise the subject as a fee simple property for ad valorem tax assessment purposes. Peterson identified the property as containing a one-story industrial building of 6,000 gross square feet on a 134,876 square foot site in unincorporated Des Plaines, Maine Township. He noted substantial environmental contamination reported by Kd Engineering & Associates ("Kd Engineering"). A copy of the report was appended to Peterson's appraisal. However, Peterson's appraisal was also predicated on the subject being free of environmental contamination and in compliance with applicable building, health and safety codes. Peterson developed the cost and sales comparison approaches to valuation. Peterson did not develop a market value based on the income capitalization approach for three reasons: 1) he and the client, the appellant herein, did not agree on the necessity of that approach; 2) Peterson considered the sales comparison approach most relevant and reliable for the subject's type of characteristics; and 3) that approach would be most useful for a property that would normally be purchased for investment. Peterson considered the highest and best use as improved was its continuing industrial usage, not as an investment. Only for the subject's highest and best use as vacant would it be a speculative investment.

To determine the land-only market value, Peterson selected six land-only sales of comparable properties that sold from October 2009 through September 2012 and one active listing. Peterson disregarded the listing from his opinion of the subject's value. The closed sales ranged from 24,999 to 367,835 square feet of land area for prices ranging from $3.57 to $7.64 per square foot of land area. These properties were in Elk Grove Village, Addison, Streamwood and Schaumburg, Illinois. Peterson's appraisal report included a Land Sale Adjustment Grid disclosing the adjustments he made to the comparable sale properties for various key property characteristics. The entire site of 134,876 square feet of land included 116,876 square feet of what Peterson deemed excess land that he defined as not necessary to support the current improvement. However, he valued the excess land at the same price per square foot as the 18,000 square feet of land used to support the improvement. Based on his analysis, Peterson opined the subject's total land-only market value was $505,000, rounded, or $3.75 per square foot of land. Of this total land-only market value, Peterson determined the market value of the excess land was $440,000, rounded. (See Sales Comparison Approach conclusion). This opinion was assuming the land did not require environmental remediation.

For the cost approach to valuing the improvement, Peterson used the cost estimating service established by Marshall & Swift to calculate the subject's replacement cost new ("RCN") value. By using the Calculator Cost Method from Marshall & Swift, Peterson opined the RCN of the improvement was $328,693. Peterson estimated the subject's effective age at 15 years and its economic life at 45 years to arrive at a 33.00% overall estimated total accrued depreciation. After subtracting the 33.00% total accrued depreciation from the RCN and adding back the $505,000 land value, Peterson opined the subject's cost approach market value was $725,000 as environmentally clean. For an additional calculation, Peterson subtracted the Kd Engineering report estimate of $730,000 for environmental remediation to conclude that the subject had a zero market value in an "as is" condition.

For the sales comparison approach, Peterson selected five improved industrial use properties that sold from March 2011 through December 2012. They ranged from 4,545 to 10,850 square feet of gross building area and sold for prices ranging from $40.00 to $45.70 per square foot of building area, including land. Each of these properties was in Elk Grove Village, Illinois. Peterson's appraisal report included an Improved Sale Adjustment Grid disclosing the adjustments he made to the comparable sale properties for various key property characteristics. Based on his analysis, Peterson opined the sales comparison approach market value of the building was $250,000, rounded, or $42.00 per square foot, including the land supporting the improvement. After adding the $440,000, as rounded, excess land value calculated from the development of the cost approach, Peterson concluded the subject's total market value according to the sales comparison approach was $690,000 as environmentally clean. For an additional calculation, Peterson subtracted the Kd Engineering report estimate of $730,000 for environmental remediation to conclude that the subject had a zero market value in an "as is" condition.

Peterson calculated a final resolution opinion of market value by giving most emphasis to the sales comparison approach. His conclusion of the subject's value was $690,000 as environmentally clean and zero in an "as is" condition.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $237,027. The subject's assessment reflects a market value of

$948,108 when applying the 2013 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance. In support of its contention of the correct assessment, the board of review submitted information on five unadjusted suggested comparable properties that sold from January 2008 through April 2011 for prices ranging from $50.75 to $184.82 per square foot, including land. Each of these properties was in Des Plaines, Illinois. The board of review also submitted the subject's property record cards dated December 1986 and the 2013 face sheet grid. It valued the land at $4.25 per square foot. The property record cards disclosed the subject contained numerous buildings for a total of 18,916 square feet of gross building area. Based on the assumption that the subject contained that amount of gross building area, the board of review's documentary evidence asserted the subject had a $50.12 square foot market value, including land.

Maine Township High School District No. 207 ("Maine THSD") intervened in the instant 2013 appeal.[1] The intervenor submitted information on three unadjusted suggested comparable properties that sold from November 2008 through April 2011 for prices ranging from $86.57 to $155.38 per square foot. These properties were in Des Plaines, Chicago and Elk Grove Village, Illinois. The intervenor also submitted four unadjusted suggested comparable land-only properties that sold from May 2010 through May 2012 for prices ranging from $9.60 to $12.21 per square foot of land. These properties were in Elk Grove Village and Franklin Park, Illinois.

In rebuttal, the appellant argued that the comparable properties submitted as evidence by the board of review and the intervenor should be given diminished weight because they were dissimilar to the subject in various key property characteristics and were based on raw, unadjusted sales data. The appellant reaffirmed the request for an assessment reduction.

The parties stipulated to consolidate the 2013, 2014 and 2015 appeals for a unified hearing on February 1, 2018.[2] Peterson was called to testify as to his appraisal of the subject. The parties stipulated to his qualifications as an expert in the theory and practice of the appraisal of commercial real estate. The Administrative Law Judge ("ALJ") accepted the stipulation. Peterson recited the history of his employment as appraiser, how he inspected the entire subject on May 28, 2013, and his research into the history of the subject. Peterson learned that prior to a fire in 1993 there were other buildings on the subject property, but that after the fire only the currently existing 6,000 square foot industrial building remained. Peterson confirmed from the photographs he took of the subject and from aerial photographs recently obtained from the internet that the subject contained only one 6,000 square foot industrial building at the time he made his May 2013 inspection. Appellant's counsel offered into evidence a four-page copy of the 1986 property record card disclosing the subject contained 18,916 square feet of building area. The ALJ allowed it into evidence as Appellant's Exhibit #1. Peterson observed from page three that a "pole building" was constructed on the subject five years prior to the December 10, 1986 date of the property record card. Peterson said that the age of the pole building is approximately the age of the currently existing 6,000 square foot industrial building. Page four depicts a diagram of one building with 6,000 square feet of area. Peterson testified that this page-four diagram depicts the sole building on the subject property as of the date of his appraisal report.

[1] Maine THSD was the only intervenor in the #13-22202 appeal. Maine THSD and Des Plaines Community Consolidated School District No. 62 ("DPCC") intervened in #14-23375 and #15-21970.

[2] Peterson testified as to the appraisals he prepared for the 2013, 2014 and 2015 lien years in the same hearing.

Peterson testified as to how he developed the cost approach of the subject's valuation. Since there were not many sales of industrial land-only parcels, Peterson had to expand the geographical search area. He selected five recent land-only sales and adjusted them to account for differences. He valued the subject's total land at $505,000 or $3.75 per square foot as if it were environmentally clean. Peterson made a second step to appraise the land in an "as is" condition with environmental contamination. Peterson developed the cost approach for the value of the building by using Marshall Valuation Service. After applying a depreciation factor of 33.00% to the building and adding the land value, Peterson opined the subject's value was $725,000 based on the cost approach.

Peterson selected five recent sales of comparable industrial properties to develop the sales comparison approach. After adjusting them for various key property characteristics, Peterson opined the subject's sales comparison method market value was $690,000 in an environmentally clean condition.

Peterson gave most weight to the sales comparison approach. He did not develop the income capitalization approach because the subject contained an owner-occupied small building on a very large parcel that included mostly excess land. Peterson did not believe that approach would be predictive of value since the most likely purchaser would be an owner-user. After reconciling his opinions of value, Peterson concluded the subject's market value as of January 1, 2013 was $690,000 in an environmentally clean condition.

Prior to cross-examination of Peterson, the ASA offered into evidence the transcript of the hearing proceedings in the PTAB Docket #12-24210.001-I-2. The ASA stated that the 2012 appeal was for the same subject property as in the instant appeal, that Peterson testified in that hearing proceeding, and that the transcript contained testimony on the same comparable properties Peterson selected for the instant appeal. The ASA argued that admitting that information into evidence in the proceedings for the instant lien year would be expeditious. Counsel for the intervenor joined in on the ASA's motion. The ALJ found the transcript as substantive evidence was hearsay; that it was not being offered into evidence for impeachment purposes or any hearsay exception; and that it was for a different lien year in a prior general assessment period. Consequently, the ALJ denied the motion to admit the 2012 transcript into evidence.

During cross-examination by the ASA, Peterson confirmed that he appraised the subject in 2012 as well as the three years consolidated with the instant lien year appeal. He testified that not much had changed about the subject during those three years and that he opined substantially the same cost approach value for each lien year. He inspected the subject only in 2013 but reviewed various public records about it, including property record cards and the Assessor's office. The ASA questioned Peterson about page one of his 2013 appraisal cover letter stating the subject's site of approximately "18,000 square feet is the improved main site." Peterson responded by explaining his reference to 18,000 square feet was not for the improvement but was an estimate of how much of the land was improved as opposed to how much land, 116,876 square feet, was unimproved excess. Peterson explained that the number was only an expression of an estimated land-to-building ratio and that any similarity to the 18,916 square feet of improvements disclosed by the December 1986 property record card was purely random. Peterson testified that he relied on the Kd Engineering report when learning about the subject's history and for developing an opinion of

the "as is" environmentally contaminated condition of the land. He confirmed that his 2013 appraisal report disclosed a total land-only cost approach value of $505,000 as environmentally clean. He testified that he had no independent knowledge of whether the land was contaminated, but that the Kd Engineering report stated it was contaminated and that he relied on that conclusion when making a valuation opinion of the subject in an "as is" condition. The ASA moved to admit the Kd Engineering report as substantive evidence. The ALJ denied the motion to admit since the report was hearsay offered to prove the truth of the matters asserted therein but noted it had already been submitted as an appendix to Peterson's appraisal report. Peterson acknowledged that a business had been operating at the subject and that, in theory, he could have developed an income capitalization approach.

During cross-examination, the intervenor asked Peterson about why he did not develop an income capitalization approach. Peterson responded that he knew he had to develop the sales comparison approach and developed the cost approach because of the amount of excess land at the subject site. He did not develop the income capitalization approach in part because his client, the property owner, did not want to spend the money for that and because Peterson did not believe he needed to develop that approach to do a credible appraisal. The intervenor asked Peterson questions about the color photograph of an aerial view of the subject in his appraisal report immediately after his two-page transmittal letter. Peterson obtained that photograph from Google Earth but does not know when it was taken. Peterson acknowledged that the property owner stored some trucks on the subject property but did not know if the owner derived income from them. However, Peterson stressed that he did not consider the income capitalization approach to be a relative indicator of value. The intervenor asked, hypothetically, if the owner had leased some of his land to store trucks, if that would affect Peterson's opinion of value. Peterson answered that it would be very difficult to find comparable properties that are leased only for the land to determine an appropriate capitalization rate. He stated that parties typically would lease property to use it rather than leasing it for storage, and that there are too little data on market driven capitalization rates for land leases.

On re-direct examination, Peterson testified that he did not complete appraisals of the subject for 2012 and 2016. He also testified that to produce a credible appraisal for a property with as much land as the subject, he would have to do a cost approach as well as a sales comparison approach. He would not have needed to do an income capitalization approach to produce a credible report. Peterson reiterated that he referred to the Kd Engineering report only to opine a value of the property in an "as is" condition and that he did not need to rely on it to opine a value as if environmentally clean. Peterson reiterated his calculations to opine that 18,000 square feet of the land was used to support the improvement and that the remainder land was excess.

The ASA offered into evidence a copy of the PTAB's decision in #12-24210.001-I-2. The ALJ allowed it into evidence as BOR Exhibit #1 to accord to it whatever weight it deserved. Both the ASA on behalf of the board of review and the intervenor rested on the documentary evidence they submitted. The appellant's attorney objected to that documentary evidence as hearsay. The ALJ took the objection under advisement.

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 of review and the intervenor submitted separate briefs to which were appended various comparable properties. The Board accords these properties little weight since there was no evidence of how these properties were selected, what methodology was used to compare them to the subject, or of how conclusions of value were determined.

In contrast, the appellant presented a compelling argument in favor of an assessment reduction based on the appraisal report and the appraiser's testimony. Peterson developed the cost and sales comparison approaches to value. Peterson was cognizant of the Kd Engineering report that the subject's land contained environmental contamination and appended it to the back of his appraisal. However, he appraised the subject in an environmentally clean condition as well as in its "as is" condition with the contamination. Peterson explained his methodology in appraising the subject with each assumption of condition. He also explained how and why he was not constrained to use the engineering report. In his opinion, Peterson did not need to develop an income capitalization approach to accurately appraise the subject's value since he was able to do so with the sales comparison approach. Peterson recognized that he had to appraise the subject by that approach and could dispense with it only by explaining why the sales approach could not reliably value the property. Since Peterson was able to find ample market data from which to select similar comparable properties, he was able to opine the subject's sales comparison approach market value was $690,000. Peterson also testified that the property owner requested that he not spend the time and the expense to develop the income capitalization approach. Peterson stated that such a request from a property owner was common. He believed he had enough data to reliably appraise the subject with the other approaches and comply with the owner's request.

The ASA for the board of review and counsel for the intervenor made the absence of an income approach one of their central arguments that Peterson's appraisal report was not reliable. They pointed out that there was some evidence the subject's owner operated a business on the property by leasing some of the land for truck and trailer storage. Peterson testified that he did not know if the owner derived income from a business, but stressed that he did not consider the income capitalization approach to be a relative indicator of value because it would be very difficult to find comparable properties that are leased only for the land to determine an appropriate capitalization rate. He stated that parties typically would lease property to use it rather than leasing it for storage, and that there are too little data on market driven capitalization rates for land leases.

In Cook County Board of Review v. Illinois Property Tax Appeal Board and Omni Chicago, 2008 WL 2924308 (Ill.App.1 Dist.), *citing* United Airlines, Inc. v. Pappas, 348 Ill.App.3d 563 (1st Dist. 2004), the Appellate Court held "[i]n the absence of market value set by a contemporaneous arm's-length sale, 'the sales comparison approach … is the preferred method and should be used when market data [are] available.'" *Id*. In the instant case, as in Omni, there was no evidence that the subject was a special purpose property for which there would be no reliable market data. Instead, Peterson clearly wrote in his appraisal report and testified at hearing that sufficient market data existed to support the development of a sales comparison approach. Neither the board of review nor the intervenor cited any authority that would require an appraiser to develop an income

capitalization approach. Yet, Peterson went further and clearly explained he could not develop an income approach because of a lack of similar comparable properties for large parcels of leased land necessary to opine a reliable capitalization rate. Therefore, the Board finds the board of review's and the intervenor's arguments without merit.

At the beginning of the hearing, counsel for the appellant withdrew the argument that the subject was contaminated and stated that the appellant would proceed in the appeal as if the subject land was environmentally clean. Neither the board of review nor the intervenor objected to the withdrawal of this issue, even if they would have had any standing to object. Instead, they argued that Peterson's appraisal was unreliable because he relied on the Kd Engineering report, even though Peterson explained that he did not rely on it when opining a market value of the subject as if it were environmentally clean. Peterson testified that he was able to value the subject accurately without the contamination by disregarding the report. In support of its argument that Peterson predicated his appraisal totally on the disregarded report, the ASA sought to enter into evidence the testimony transcript for the 2012 lien year hearing. The ASA did not seek to use this transcript for the limited purposes of impeachment, but wanted it entered as substantive evidence of the issues raised in the instant 2013 lien year appeal. The ALJ denied this motion to enter the transcript as substantive evidence since it was hearsay of prior out-of-court statements used to prove the truth of the matters asserted therein. It is axiomatic that hearsay is not admissible to prove the truth of the matters asserted. *See* Ill. R. Evid. 802. The general rule is that hearsay is inadmissible in an administrative hearing. Spaulding v. Howlett, 59 Ill.App.3d 249, 251 (1st Dist. 1978), *citing* Novicki v. Department of Finance, 373 Ill. 342 (1940). The ASA for the board of review did not cite any authority for the admission of the 2012 transcript as either substantive evidence or as one of the enumerated exceptions to hearsay. *See* Ill. R. Evid. 803. Instead, the entire thrust of both the board of review and the intervenor was to back-door inadmissible evidence of an issue rendered immaterial by counsel for the appellant withdrawing, without objection, the argument for an assessment reduction resulting from environmental contamination. As for the Kd Engineering report, the Board notes that it was already submitted long before the hearing as documentary evidence appended to the appraisal report. Since the appellant withdrew the issue of value resulting from contamination and Peterson testified that he did not rely on the Kd Engineering report to opine a market value of the subject in an environmentally clean condition, the report is not significant to the issues raised.

The ALJ took official notice of the Board's decision in #12-24210.001-I-2 and entered a copy of it into evidence. The ALJ stated that the Board would give that decision whatever weight it deserved. Upon further analysis of that decision, the Board finds it to be of no help in the instant case. The 2012 appeal was not simply of a prior year, it was in a prior general assessment period. Of greater import, the 2012 appeal involved the material issue of reduced market value due to environmental contamination. In the instant 2013 appeal, the only material issue pertaining to market value, and the resulting assessment, was the subject's value as if it were in an environmentally clean condition. Accordingly, the Board accords its 2012 decision little significance to the issues raised in the instant 2013 lien year appeal.

After considering all documentary evidence submitted, the credibility of witnesses and their testimony, exhibits and arguments made by all parties, the Board finds the best evidence of market value to be the appraisal submitted by the appellant. The Board finds the subject property had a market value of $690,000 as of the January 1, 2013 assessment lien date. Since market value has

been established, the 2013 level of assessment of 25.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance shall apply.

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