

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Pullman Wheelworks Association I
DOCKET NOS.: 00-24226.001-C-3 & 01-24623.001-C-3
PARCEL NO.: 25-14-100-040-0000

The parties of record before the Property Tax Appeal Board (hereinafter PTAB or the Board) are Pullman Wheelworks Association I (Pullman), the appellant, by Attorney Paul J. Reilly, of Chicago; the Cook County Board of Review (hereinafter the board of review or the board) by Assistant State's Attorney Charles Cullinan of the Cook County State's Attorney's Office; and the intervenor, the Chicago Board of Education (CBOE), by Attorneys Ares G. Dalianis and Kory A. Atkinson, of the law firm of Franczek Sullivan, P.C., of Chicago.

At hearing, the parties requested that the PTAB consolidate both appeals for years 2000 and 2001. Originally, there existed another appeal for tax year 2002; however, the parties agreed to withdraw the 2002 appeal. The PTAB allowed the withdrawal of the 2002 appeal and the consolidation of the 2000 and 2001 appeals. The intervenor is not a party to the 2000 appeal, and, accordingly, will not be allowed to participate in those matters pertaining to the 2000 appeal. Any intervenor arguments will only be considered by the PTAB as applicable for assessment year 2001.

The subject property consists of a three-story, masonry constructed, flat-roofed, L-shaped, 210-unit residential apartment complex, with an additional 14 units for commercial/storage. The subject is situated on a 445,202 square foot, irregularly shaped, corner land parcel. Of the 210 residential units, all of the leases exist under the Housing and Urban Development's (HUD) Section 8 subsidized housing for low income residents. The subject property was originally constructed in the late 19th century, in approximately the 1890's, and was converted to multi-family in 1981. Prior to 1981

(Continued on Next Page)

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Cook County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: see page 16
IMPR.: see page 16
TOTAL: see page 16

Subject only to the State multiplier as applicable.

PTAB/mmg

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the subject property was used as an industrial facility with a loft style design. The gross building area of the subject property is 294,325 square feet. The subject's 210 units comprise 165,644 square feet net rentable area, and the 14 units comprise 18,460 square feet. Only two of the 14 commercial/storage units are occupied.

The subject is located in the Pullman area of Chicago and has a common address of 901 East 104th Street, Chicago. The subject is located in Hyde Park Township, Cook County, and is zoned R.B.P.D. No. 198. This zoning allows for a maximum of 450 dwelling units, and a minimum 500 parking spaces. The Cook County Assessor classifies the subject as a class 3 multi-family property and the subject is assessed at 33% of its market value. For tax year 2000, the assessor placed an assessed value of \$1,079,098 on the subject and for tax year 2001 the assessor similarly placed the same assessed value of \$1,079,098 on the subject property.

As a 100% HUD development, the subject property's residential units were operated under HUD's 221(d)(3) program, also referred to as the Housing Assistance Program (HAP) and was then converted to a Mark-to-Market (M2M) program. HAP relies upon rents which are "over market." This program's viability was based upon rents that were not market rents but were based upon cost less an amount for operating expenses with an expected 6% return. During the time in question, the subject was in the process of going from a HAP program to a M2M program, wherein the property would be funded by market rents. Market rents were selected in order to provide a debt coverage ratio for the subject's original loan, along with other loans taken out to fund the building's repairs. The rents under the M2M program were lower than the rents available under the HAP program.

The HAP program expired on 132 units on April 1, 2001. The remaining 78 units under the HAP program expired on December 23, 2001. After that time, all units existed on the M2M program. According to the terms of the agreement, once this program conversion takes place any excess cash flow must be used for property repairs and will not be made available to the owners. At the time of the conversion, the subject's mortgage indebtedness on its first mortgage was \$6,738,315. This amount, along with a another mortgage of \$1,498,147, total \$8,236,462, was written down by HUD to a 1.00% simple interest rate amortized over 32 years. Another mortgage of \$2,500,000, earmarked for necessary repairs, was provided at a 7.32% rate over a period of 32 years. This final mortgage is what is commonly termed a "take-out" mortgage. Total debt service on the subject was \$10,736,462.

The parties stipulated to the appellant's appraiser's market value findings of \$3,400,000 for 2000 and \$3,900,000 for 2001 prior to any deductions for deferred maintenance. The sole issue on appeal is whether or not the taxpayer's appraiser properly

deducted "deferred maintenance" from the subject's estimated market value in order to reach a final fee simple value for the subject.

The taxpayer's appraiser opined a value for the subject, prior to deductions, of \$3,400,000 for tax year 2000, and a value for the subject, prior to deductions, of \$3,900,000 for tax year 2001. These figures were reached primarily via the income approach to value estimating the net operating income (NOI) under the M2M program. This HUD program changed "above market" rents from the previous program to "market rents." Once this figure of value is determined it is then discounted to reach the value as of the dates at issue. The taxpayer's appraiser invoked a jurisdictional exception to his appraisals in order to estimate the final fee simple market values for the subject property. The appraiser claims this exception is in keeping with the Illinois Supreme Court's holding in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989). In that case, the court held that the positive and negative effects of a governmental subsidy must be considered to estimate the subject's fee simple market value.

The appellant's attorney, in his opening statement, described how the property operated under the HUD 221(d)(3) program until the year 2001. This program operates under a funding method that met HUD specifications in order to provide a minimal return of 6% after taking into consideration the subject's costs. However, the conditions for the new M2M program include an inspection by HUD and then the property is rehabbed to meet HUD specifications. Then "market rents" are applied to determine the proper contract rents for the subject property.

Attorney Riley went on to state that in light of the Illinois Supreme Court's decision in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989), it was appropriate to value the subject using the new rents approved by HUD, in accordance with the M2M program, which presumed rehabbing the subject. Therefore, the appraiser deducted the costs of renovation to be done sometime in the future, which were not yet necessarily performed for the valuation dates in question.

The Cook County Board of Review waived its opening statement. Intervenor's Attorney Atkinson, in his opening, speaking on behalf of the CBOE for tax year 2001, stated that this case created a "moral outrage" since the appellants had "driven the property into the ground" in an effort to get a reduction in the property's assessment from the PTAB. The first issue to be decided, the attorney opined, is to define "deferred maintenance", and he specifically referred to the definition from the Dictionary of Real Estate Appraisal and the Appraisal of Real Estate. Atkinson stated that in order for an item to qualify as deferred maintenance that item must be in need of immediate

repair. Also, he opined, such an item cannot be deducted in multiple years. Here, in each year, the appellant's appraiser deducted approximately \$2.4 million for deferred maintenance. That is improper, the intervenor claimed, and, further, the taxpayer is not entitled to any reduction in the assessed value. At this point, opening statements were concluded.

The taxpayer began its case-in-chief by calling its witness appraiser, Joseph Ryan, owner of the LaSalle Appraisal Group, Inc. Mr. Ryan is a member of the Appraisal Institute (MAI) and was accepted by the PTAB as an expert in the field of real estate appraisal. Mr. Ryan completed two appraisal reports on the subject property, one for 2000 and one for 2001. The appellant's evidence contained both appraisals, which were entered as Appellant's Exhibits A and B. One, for year 2000, has an opinion of market value of \$3,400,000, prior to deductions; and the other, for year 2001, has an opinion of market value of \$3,900,000, prior to deductions.

Mr. Ryan testified that he had lectured on the assessment of subsidized housing projects and that during his tenure at the Cook County Assessor's Office he was responsible for the valuation of many such properties. He also testified that he was quite familiar with the various HUD programs going back to year 1981. Ryan further testified that he had reviewed all the Cook County properties that were subject to the 221(d)(3) program. Ryan testified that this program was not viable because the properties provided a limited return and that the cost did not equal the value of these types of properties. Rather, most of the rent went to cover the mortgage debt service.

Regarding the M2M program, Ryan testified that this was introduced by HUD to insure that the rents would cover the debt service on the properties. However, in the case of the subject property, the rents were not able to cover the debt service on the mortgages. Moreover, the M2M rents were below those of the HAP program.

Next, turning to the Ryan appraisals' addendums, the appellant focused on a printout of code violations. According to the appraisal, these code violations, totaling \$766,250, are in immediate need to be corrected to avoid the City of Chicago from closing the property. Ryan viewed these costs to correct code violations as deferred maintenance.

Ryan went on to testify that in order for cases such as the subject property to participate in the HUD program, HUD would hire an agent administrator, also known as a Participating Administrative Entity (PAE). In this case that was a company known as Chicago Investment Corporation (CIC). Anita Bundze of CIC had a number of meetings with Ryan and provided him with what he described as "a voluminous number of documents they had assembled on this property."

In the M2M program the PAE does the examinations of the property and makes recommendations to HUD regarding what is required to get the property into the program. HUD would require the owners deal with the administrator in all aspects and implementation of the program. Moreover, HUD required a rehab of the property in order to get it into the M2M program. As a part of this procedure, HUD requires a physical inspection and a Property Condition Assessment (PCA) as outlined in the appellant's appraiser's Architectural Report. At this point, after the condition assessment report was concluded, decisions were made as to the needs of the property. First and foremost, as noted above, there existed immediate needs of some \$766,250 to fix code violations.

In addition to the code violations, the witness testified there also existed short-term needs in the amount of \$1,581,390. Among those needs that encompassed this amount were appliances, cabinets, countertops, and plumbing. These items in need of repair were confirmed by the Lender's Architectural report which was incorporated in with the appraisal. Ryan also considered these items of deferred maintenance.

The appraiser testified that in order to value the subject he used income and expenses that came from the HUD's administrator, which were part of the HUD contract. Renovation of the subject property was a condition of the contract. After the income figure was obtained, subsequent to the rehab, that figure was capitalized into a value as of January 1, 2002. This was required, the witness testified, to comply with the Illinois Supreme Court in the case Kankakee County Board of Review v. Property Tax Appeal Board, *supra*, and that figure serves as a basis for the income that the subject property would realize in year 2002 as part of the M2M program. The capitalization rate for 2000 was 18.85% and for 2001 was 17.79%. After capitalizing the income figure, the subject's market value, prior to deductions for deferred maintenance, was determined to be \$4,069,194 for 2000 and \$4,311,652 for 2001.

This figure reflects the market value of the subject after rehabilitation in the future, in accordance with the adjusted rents prepared by the HUD administrator. These figures were then discounted to a net present value. Therefore, after deductions for deferred maintenance of \$2,347,640 (\$766,250 + \$1,581,390), the appraiser added back the figures for mortgage cash flows which were still part of the HAP program during the two years in question. For year 2000 there was \$534,256 in cash flows; for year 2001 there was \$-0-. Thus, after deductions, the appraiser reconciled the final value estimates as follows: \$1,590,000 for year 2000 and \$1,550,000 for year 2001.

Cross-examination was performed by CBOE's Attorney Ares Dalianis for tax year 2001. The following points were elicited on cross-

examination. First, the appraiser, Mr. Ryan, did not make an interior inspection of the property; rather, his associate Thomas Grogan, State of Illinois General Real Estate Appraiser, made the interior inspection. Both Grogan and Ryan signed the appraisals. Second, a definition of deferred maintenance from the Dictionary of Real Estate Appraisal, Fourth Edition, was entered into evidence as Intervenor Exhibit A. That definition is stated as follows:

"deferred maintenance. Curable, physical deterioration that should be corrected immediately, although work has not commenced; denotes the need for immediate expenditures, but does not necessarily suggest inadequate maintenance in the past." The Dictionary of Real Estate Appraisal, Fourth Edition, by the Appraisal Institute.

Third, the witness was led through those items of recommended expenditures as listed by the Lender's Architectural report, which is part of the taxpayer's appraisal for both years. A cumulative total of the first five years from the 2001 report lists a cost to cure of \$1,581,390. Generally, that amount includes all kitchen and bathroom fixtures and appliances. However, many of these items were recommended as not needing replacement for as long as 15-20 years into the future although such replacements would begin in year one. In summation, the witness testified that of the 13 items recommended for total replacement that only two, kitchen cabinets and kitchen counters, require total replacement in the first five years.

The board's attorney conducted a limited cross-examination of the witness for both tax years 2000 and 2001. The only questions asked by the board elicited that the witness did not personally inspect the subject property. The board's attorney adopted, for tax year 2000, all the questions asked by the intervenor's attorney for year 2001. As noted previously, Intervenor CBOE is not a party for tax year 2000.

On re-direct examination, Ryan testified that the HUD agent, CIC, had determined that a number of items were in need of repair in order to bring the property into compliance with HUD and achieve market rents. Specifically, those were items that the appraiser included in his deductions for deferred maintenance in the amount of \$1,581,390 for each year. At this point, and after re-direct examination, the witness was excused.

The appellant's evidence also included financial statements for the subject property titled "Financial Statements HUD Project No. 071-35369 Pullman Wheelworks Associates I." The document was dated December 31, 2002. The document outlined balance sheets, including profit and loss statements, statements of cash flows, changes in partners' equity (deficit), and reports on compliance with the HUD program. The Certified Public Accountant, Kenneth

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W. Bryant, found the project to be in compliance with all applicable standards for such a property. Noticeable in the report were the following items: Net Fixed Assets, including real estate: \$4,919,759; Current Liabilities \$432,360; Long-Term Liabilities \$11,576,989; and a current Partners' Deficit <\$4,379,578>. This final amount was up from a Partners' Deficit of <\$4,042,424> at the beginning of year 2002.

Following Mr. Ryan's testimony, the CBOE presented its witness, Mr. Neil Renzi, MAI. Mr. Renzi was accepted by the PTAB as an expert in the field of real estate appraisal. This witness was introduced as a rebuttal witness presented to testify to the appraisal methodology utilized in Mr. Ryan's deferred maintenance deduction. Mr. Renzi testified that deferred maintenance, unless repaired, prevents the property from operating under normal conditions and needs to be repaired immediately due to either disrepair or is a functional problem with the real estate. In the event that such maintenance is not undertaken that does not mean that it is not deferred maintenance, but rather may be indicative of poor management, the witness testified. Deferred maintenance costs should be deducted from the final opinion of value, Renzi testified. However, once an item is cured it should not be taken as a subsequent deduction in future years. Items should not be considered ongoing expenses after the repairs are performed, the witness testified.

On cross-examination, attorney Reilly asked the witness if deferred items not taken in one year can be used in a second year as a deduction from valuation. The witness responded affirmatively.

However, the witness further testified that it is inappropriate to use the same items in both years, since that would be double-counting. The witness also testified that deferred maintenance not cured in year one may be more costly in year two and a further deduction may be required from the property's value if the same items existed in year two and were not cured in year one. However, it would still be a deduction from the stabilized value, as long as the deferred maintenance had not been performed, the witness testified. A hypothetical was presented to the witness. The witness testified that at multiple points in time if an item of deferred maintenance was not cured it is still a deduction from the stabilized value for each point in time.

Still, the witness testified that if such maintenance was not cured in year one and was still present in year two, it might be evidence of poor management. Yet, when presented with another similar hypothetical, the witness testified that if part of the deferred maintenance was done in one year and half in the second year that amount of deferred maintenance which was remedied in the first year would not be deductible from the final value for year two.

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After Mr. Renzi's testimony, the intervenors submitted a number of documents to the PTAB. First, the case previously referenced as Kankakee County Board of Review v. Property Tax Appeal Board, supra, was submitted, along with the case Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428, 256 N.E.2d 428 (1970). The intervenor also submitted cases that referenced deferred maintenance from the jurisdictions of Minnesota and Oregon, since, the intervenor elaborated, the courts of Illinois are silent on this issue of deferred maintenance.

The board of review presented its "Board of Review Notes on Appeal." The board of review's assessed value for the subject is \$1,079,098, which translates into a market value of \$3,269,993 using the Cook County Real Property Assessment Classification Ordinance level of 33% for class 3 property, such as the subject, for the years 2000 and 2001. Also, the board submitted a review report of the appellant's appraisal supporting the current assessment for the subject of \$1,079,098 for both years. The review report attached seven suggested comparable sales to support its conclusion.

The board submitted the Cook County Real Property Assessment Classification Ordinance. Said ordinance provides an assessment level of 33% for Class 3 property. The board also submitted case law, In re: Application of Rosewell v. U.S. Steel Corp., 106 Ill. 2d 311, 478 N.E.2d 343 (1985) and In re: Application of County Treasurer v. Twin Manors West of Morton Grove Condominium Association, 175 Ill. App. 3d 564, 529 N.E.2d 1104 (1st Dist. 1988). No brief or any explanation as to each case's relevance to the present appeal was submitted.

Also, the board submitted two reports. The first report is entitled The Illinois Ratio Study for Commercial and Industrial Properties: Review and Recommendations, by Robert J. Gloude-mans and Alan S. Dornfest [hereinafter, the "Dornfest report"]. The "Dornfest report" reviewed and evaluated the procedures and methodology used by the Illinois Department of Revenue in its annual sales ratio studies. The second report is entitled IAAO Technical Assistance Project-Review of the Assessment/Sales Ratio Study Program for the Illinois Department of Revenue, by Roland Ehm [hereinafter, the "IAAO report"]. The purpose of the "IAAO report" was to ascertain compliance with IAAO standards and offer recommendations for improvement.

Connelly, an Illinois State Certified General Real Estate Appraiser, authored the review report submitted by the board of review. The report was dated March 28, 2002. The author of the board of review's report was not tendered as a witness to provide testimony and be cross-examined about his report. The board did not present any other witness.

In closing, the taxpayer's attorney argued that the Property Tax Code and the Illinois Supreme Court require that subsidized

housing properties must be valued per the contract in place on the subject after the implementation of the subject's current M2M program. Accordingly, Mr. Ryan used proper methodology to value the subject under the terms of the M2M program. Moreover, Mr. Ryan used proper methodology to value the property as a post-rehab property using the rents in place that HUD required post-rehab. Therefore, it is only appropriate to deduct the costs of rehab prior to the years it was done as items of deferred maintenance. This, the taxpayer argued, is in keeping with the Illinois Supreme Court mandate in Kankakee County Board of Review, supra.

In closing CBOE argued that this case is an "outrage" because the property owners have "driven the property into the ground." Now, they argued, the property owners come to the PTAB to obtain a refund for their mismanagement. The tenants that occupy this type of property are representative of society's most needy citizens, the intervenor argued, and, based upon the condition of the property, the owners have not provided proper care for society's most vulnerable citizens.

CBOE elaborated on the repairs which were a part of the \$766,250. These items included demolition of a health club that was in complete disrepair, replacing fire doors, entry doors where the security doors did not work, installation of smoke detectors, installation of fire extinguishers, repair balconies, ceilings, and decking, upgrade lighting, and provide window and shade replacement. These are items that should have been repaired in the ordinary course of business, the intervenor argued, and cannot be classified as deferred maintenance.

Kankakee County Board of Review, supra, the CBOE argued, is misinterpreted by the taxpayer. The case stands for the proposition that by looking at the subsidies that are available for these types of properties and, after considering the rents available in the market, it is then necessary to apply those market findings to the subsidy. CBOE argues that the taxpayer's appraiser should not have taken a deduction for items of deferred maintenance.

CBOE went on to argue that the \$2.4 million figure used by the taxpayer's appraiser is not deferred maintenance, as defined. Rather, such a figure can only refer to items in need of immediate repair. Examples include broken windows or HVAC units that are broken or items that are totally physically worn out. These are items that need immediate repair for the building to function properly. CBOE argues that the items used by Ryan as deferred maintenance, and those items that Ryan is claiming as required by the HUD contract, were items that were not required to be repaired immediately, but rather were repaired in some instances by up to 20 years from the date at issue.

Mr. Renzi's testimony of deferred maintenance, CBOE argues, are items that must be repaired immediately. If one waits to repair such items that is indicative of incompetent management. CBOE goes onto argue that in this case you may have something worse than incompetent management, rather, you may have negligent management. According to CBOE, the taxpayer should not be rewarded for its mismanagement of the subject property.

Lastly, in closing, the county's attorney argued for confirmation of the current assessments for both years 2000 and 2001 based upon the following: that the taxpayer's appraisal does not properly present the true meaning of deferred maintenance; that the items referenced by the taxpayer's appraisal can take up to 20 years to cure and are not deferred maintenance; that it is to the benefit of the taxpayer not to conduct any repairs since the costs of the repairs can continually be deducted from the value of the subject; that to continually take this deduction from the property's value would achieve an absurd result. Based upon this argument, the county requested that the appellant not be given any assessment relief and that the assessment values remain as currently established by the board of review.

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

The taxpayer argues that the subject property's market value is not accurately reflected in its assessed valuation. When market value is the basis of an appeal to the PTAB, the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Property Tax Appeal Board 331 Ill.App.3d 1038, 1042, 780 N. E. 2d 691, 695, 269 Ill.Dec.219, 223 (3rd Dist. 2002). 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 and testimony presented, the Board concludes that the appellant has satisfied this burden and that a reduction is warranted.

As previously stated, the issue on appeal is whether or not the taxpayer's appraiser utilized proper methodology when he employed a deduction for deferred maintenance, and if so, was the proper amount deducted. The fee simple market value for the subject, prior to deduction, was stipulated to by the parties. Those figures are \$3,400,000 for tax year 2000 and \$3,900,000 for tax year 2001.

The PTAB finds that the only evidence of the property's market value is the appraisal reports authored by Mr. Ryan. The board of review's evidence in support of the current assessment consists of several comparable properties and seven lines on a memo which appear to be an "analysis." It is certainly not an

appraisal document. Moreover, the board did not produce any witnesses at the time of the hearing to support either this report's findings or to testify in support of the current assessment. The intervenor, CBOE, similarly, did not produce any independent valuation witnesses or any evidence in the form of an appraisal. Rather, the CBOE included in its submissions a "brief and evidence in support of intervention" wherein the intervenor adopts the board of review's comparable sales data and "other evidence." While the intervenor did produce a witness that witness was presented in rebuttal solely to determine if the taxpayer's appraisal methodology was sound when considering deferred maintenance.

Real property must be valued at its fair cash value and the Property Tax Code defines fair cash value as "the amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." 35 ILCS 200/1-150. Furthermore, the Cook County Classification Ordinance further defines market value as the value a property would bring at a voluntary sale. That definition is in keeping with the holding of the Illinois Supreme Court as follows: "fair cash value is synonymous with fair market value and is defined as the price a willing buyer would pay a willing seller for the subject property, there being no collusion and neither party being under any compulsion." Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970).

Similarly, that defines the issue in this case. That is to say the issue is: What would a willing buyer pay for Pullman Wheelworks Associates I, a 210-unit apartment complex under contract for subsidized housing with the HUD, as of January 1, 2000 and, similarly, as of January 1, 2001?

In keeping with Springfield Marine Bank, *supra*, and as is the case here, market value must be determined. Market value is defined in Ryan's appraisal as follows:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they considered their best interests;
3. A reasonable time is allowed for exposure in the open market;

4. Payment is made in terms of cash in U.S dollars or in terms of financial arrangements comparable thereto; and
 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale."
- Uniform Standards of Professional Practice, 2003 edition.

Regarding condition number 5, above, the taxpayer's appraiser employed a jurisdictional exception from customary appraisal practice and used the following case for guidance when valuing the subject property: Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d. 1 (1989) wherein the Illinois Supreme Court held that: "(1) subsidies were to be considered in valuing property; (2) considering subsidies in assessing fair market value did not violate constitutional guarantee of uniformity of taxation; and (3) considering subsidies would not result in double taxation." Kankakee County Board of Review, supra, at 1. The court goes on to state:

"Factors such as the transferability of the subsidy contract, the remaining term of the contract and restrictions on the amount of return on capital investment would certainly affect the value of the property. A valuation approach which considers the subsidy income, but does not consider the negative aspects of a subsidy agreement upon the earning capacity of subsidized property, would be inappropriate." Id. at 16-17.

The taxpayer's appraiser determined that in order to properly value the subject as of the dates at issue one must determine the fee simple stabilized value, less deferred maintenance, plus the after mortgage cash flows, by utilizing facts with the M2M program completely in place and then further discount that figure to the lien date for the years 2000 and 2001. The PTAB finds that reasoning applicable to the present case and in keeping with the Illinois Supreme Court's holding in Kankakee County Board of Review, supra. The PTAB finds that Ryan properly employed this valuation approach in his methodology.

Deferred maintenance are repairs and similar improvements that normally would have been made to a property but were not made to the property in question, thus increasing the amount of its depreciation. Glossary for Property Appraisal and Assessment, International Association of Assessing Officers, 1977, p. 40. Curable physical deterioration, also known as deferred maintenance, applies to items in need of immediate repair on the effective date of the appraisal. Examples include broken windows, a broken or inoperable HVAC system, carpet needing

immediate replacement, a hole in an interior partition, or a cracked lavatory. The item must be replaced or repaired for the building to function as it should. Deferred maintenance is measured as the cost to cure the item or to restore it to new or reasonably new condition. The Appraisal of Real Estate, 12th Ed., The Appraisal Institute, 2001, p. 398.

In the present case, a number of items needed to be considered. First, there exists an expenditure of \$766,250 in order to bring the property into compliance with the City of Chicago's zoning ordinances. That figure includes the demolition of a health club in need of complete removal. Other items that were addressed in this amount were several health, security and safety concerns. Since this amount covers mandatory items of compliance with the municipality, and items of health and safety, in spite of its classification as an immediate expenditure, the PTAB finds this amount is not deductible as deferred maintenance.

Next, the remaining items as outlined in the Physical Needs Over the Term of the taxpayer's appraisal report, Exhibit "D" attached and made a part of both appraisals, outline the costs over a five-year period beginning with year 1. This amount results in a figure of \$1,581,390, as outlined in taxpayer's appraisal. The intervenor produced an exhibit for tax year 2001 that showed a number of these items were not even begun to be repaired during the years in question. However, the intervenor's exhibit is not dispositive of whether or not the item can be classified as "deferred maintenance."

For example, a taxpayer might not be able to afford the cash output at the present time. Here, the taxpayers took out a separate \$2.5 million mortgage for the sole purpose of dealing with the subject's deferred maintenance. Additionally, the subject property is running \$10 million in debt service. The mere fact that certain items are not repaired immediately does not necessarily mean that such items cannot be classified as deferred maintenance, as the board of review and the intervenor would suggest.

Moreover, such items that need repair and/or replacement would most certainly result in a reduction of the sales price that a willing buyer would pay a willing seller, as outlined in those definitions intrinsic to a property's market value, as discussed *herein* in this decision. To think otherwise would be to simply ignore the obvious. Furthermore, even the intervenor's witness, Neil Renzi, MAI, suggested that items not repaired in one year may be compounded and cost more to repair in following years. Therefore, understandably, the deductions for deferred maintenance may actually increase from one year to the next.

Under the current HUD program the owners cannot use the excess cash flow. Rather, they must apply any excess cash flow to repairs. Additionally, they must continue payments on the outstanding mortgages of \$10 million. These limitations seem to

account for the fact that the items of deferred maintenance cannot be immediately repaired.

Still, in keeping with the requirements of the HUD M2M program, the property must be rehabbed by the owners. This added expense must be undertaken by the taxpayer as required by HUD's contract with the property owner. To further exacerbate the situation the rents do not cover the debt service, including operating expenses and the deferred maintenance to bring the subject up to HUD standards.

There exists, as suggested by the taxpayer's appraiser during testimony, that in a number of these types of HUD programs the owners eventually choose not to put any more money into these HUD projects and, subsequently, said properties are foreclosed upon wherein the HUD loses its entire investment. The appraiser for the taxpayers had previously testified to his extensive knowledge of such HUD programs and their viability. In this case, that viability appears to be a major concern for HUD.

In reaching its conclusion, the PTAB reviewed the record and the testimony before it. For tax year 2000, only the taxpayer submitted an appraisal. The valuation as provide by the taxpayer was stipulated to by the parties. For tax year 2000, the board of review did not supply any evidence or testimony to rebut the findings of the appraisal report. Rather, the board of review supplied a limited report with no analysis. Furthermore, since no witness was presented by the board, its evidence is given little weight.

For the year 2001, the PTAB once again reviewed the testimony and the record before it. Again, only the taxpayers submitted evidence in support of valuation. For tax year 2001, the evidence of the board of review remained the same as in 2000 in that no evidence or testimony was presented to rebut the taxpayer's findings. As such, the findings of the board are given little weight.

For tax year 2001, in which the intervenor, CBOE, was a party the intervenor's evidence included the testimony of appraiser Neil Renzi, a brief and evidence in support of intervention, exhibits, and case law submissions. Both the interveners' brief in support of intervention and case law submissions have been discussed in detail, *herein*, and support the appraiser's findings. The case law from other jurisdictions in inapplicable to the present case, as the PTAB finds more than adequate guidance in order to determine the value the subject property based upon opinions from the courts of Illinois and the definitions provided within this decision.

While Neil Renzi, in his testimony, and in response to a number of questions testified that to utilize the same deductions in one year to the next is double-counting that answer must be taken in

the context of his testimony. At the time of examination and cross-examination, the witness was given a number of hypothetical situations during which he requested clarification to properly determine the question posed. As the examinations continued and based upon the witness' responses, the following conclusions can be made. The PTAB finds that if the repairs are done in one year that same deduction cannot be taken in the next. This is the only explanation that can be arrived at as consistent with Renzi's "double-counting" theory and the testimony given.

However, if repairs are not made in year one a deduction may be taken the following year. Moreover, that deduction may be more than the amount taken in the year prior due to compounding. The lack of repairs to the items of deferred maintenance would likely cause to costs to cure be increased. This conclusion is based upon Renzi's testimony that if one were to take a point in time in which items of maintenance were not repaired and another point in time in which the same items were not yet repaired, a deduction may be allowed for each point in time, even possibly allowing for a larger reduction in the subsequent year. Such a matter may be evidence of poor management, but it does not preclude it from being deferred maintenance, by any definition given. Renzi's testimony is in keeping with the findings of the Ryan report.

In order to reach a determination of value, in keeping with the definitions of valuation for such a property as outlined *herein*, and using the Illinois Supreme Court's guidance in such matters, the PTAB must determine what a willing buyer would pay a willing seller for the subject property as of January 1, 2000 and as of January 1, 2001. Such valuation must take into account the condition of the property at the time of the sale. As previously determined, the items of maintenance not performed as of either date in question are properly deducted from the amount that a willing buyer would pay a willing seller. As suggested in the exhibit submitted by the intervenor from The Dictionary of Real Estate Appraisal, it is recommended that items should be corrected immediately; it is not a moral imperative. In accordance with such a determination, the PTAB finds that those items not yet repaired are items of deferred maintenance.

Therefore, the PTAB finds that the items of repair as outlined in the taxpayer's appraisal report's Exhibit D are deductible as items of deferred maintenance from the fair market value of the subject property as presented below.

Therefore, for tax year 2000, the PTAB finds as follows:

1. That the fee simple value prior to deductions, as stipulated by the parties, is \$3,400,000;
2. That the amount of \$766,500 for remedial repairs relative to municipal code violations, health and

- safety issues are not deductible from the fee simple valuation stipulated to in #1;
3. That the amount of \$1,581,390, properly itemized for items of deferred maintenance, is deductible from the fee simple value of the subject property, as stipulated in #1;
 4. That the after mortgage cash flow of \$534,256 is properly added to the fee simple valuation prior to deduction; and,
 5. That the PTAB finds the subject property's market value as of January 1, 2000 is \$2,352,866. Using the Cook County Classification Ordinance and applying the proper percentage of 33% for class 3 property such as the subject yields an assessment of \$776,446 for the subject property as of January 1, 2000.

For the tax year 2001, the PTAB finds as follows:

1. That the fee simple value prior to deductions, as stipulated by the parties, is \$3,900,000;
2. That the amount of \$766,250 for remedial repairs relative to municipal code violations, health and safety issues are not deductible from the fee simple valuation in number #1;
3. That the amount of \$1,581,390 properly itemized as items of deferred maintenance, is deductible from the fee simple value of the subject property as stipulated in #1.
4. That there exists no after mortgage cash flow for the year 2001; and,
5. That the PTAB finds the subject property's fee simple market value as of January 1, 2001 is \$2,318,610. Using the Cook County Classification Ordinance and applying the proper percentage of 33% for class 3 property such as the subject yields an assessment of \$765,141 for the subject property as of January 1, 2001.

Therefore, considering the evidence and the testimony presented, the PTAB finds that the appellant has met its burden of proof by a preponderance of the evidence that the subject property is over assessed for both years at issue.

The assessment for year 2000 is \$1,079,098 which yields a market value of \$3,269,993. The PTAB finds that the subject's correct market value as of January 1, 2000 is \$2,352,866. Applying the Cook County Real Property Classification Ordinance level of 33% of the subject's market value, the PTAB further finds the subject's correct assessment is \$776,446. Therefore, a reduction in the subject's assessment for year 2000 is proper.

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Similarly, the assessment for year 2001 is \$1,079,089 which yields a market value of \$3,269,993 applying the ordinance level of assessment. The PTAB finds that the subject's correct market value as of January 1, 2001 is \$2,318,610. Applying the Cook County Real Property Classification Ordinance level of 33% to the subject's market value, the PTAB further finds the subject's correct assessment is \$765,141. Therefore, a reduction in the subject's assessment for year 2001 is proper. Accordingly, a reduction in the subject property's assessed values for both years 2000 and 2001 is warranted.

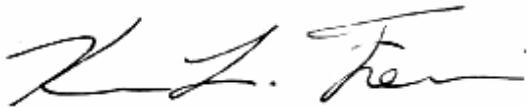
<u>DOCKET NOS.</u>	<u>PARCEL NOS.</u>	<u>LAND</u>	<u>IMPRV.</u>	<u>TOTAL</u>
00-24226.001-C-3	25-14-100-040	\$300,433	\$476,013	\$776,446
01-26423.001-C-3	25-14-100-040	\$300,433	\$464,708	\$765,141

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This is a final administrative decision of the Property Tax Appeal Board are subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



Chairman



Member



Member



Member



Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: September 28, 2007



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

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

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the

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subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.