PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Merisant Company
DOCKET NO.: 03-00160.001-I-3 and 04-00464.001-I-3
PARCEL NO.: 03-02-23-100-014

The parties of record before the Property Tax Appeal Board are Merisant Company, the appellant, by attorneys Gregory J. Lafakis and Ellen G. Berkshire of Verros, Lafakis & Berkshire, P.C. in Chicago, the Kankakee County Board of Review by Assistant State's Attorney Teresa Kubalanza, and Manteno Community Unit School Dist. No. 5, the intervenor, by attorneys Scott E. Longstreet and Frederic S. Lane of Robbins Schwartz Nicholas Lifton & Taylor, Ltd. in Chicago.

The Property Tax Appeal Board conducted a consolidated hearing involving the 2003 and 2004 appeals under Docket Nos. 03-00160.001-I-3 and 04-00464.001-I-3. Due to the commonality of the appeals, the Property Tax Appeal Board will issue a consolidated decision for these appeals in accordance with the Official Rules of the Property Tax Appeal Board, Section 1910.78 (86 Ill. Admin. Code, Sec. 1910.78).

The subject property consists of a 17.30-acre site that has been improved with a one-story steel/masonry industrial building that contains 110,834 square feet of building area with clear ceiling heights ranging from 16' to 20' and sprinkled. There is a land-to-building ratio of 6.80:1. The improvements were built in stages from 1989 to 1997 with a weighted average age of 11 years old which are utilized for the manufacturing of sweetener products. There are 83,644 square feet of manufacturing area; 10,000 square feet of warehouse area; and 17,190 square feet of office area. There are also twelve 10' x 12' steel dock doors and one 10' x 12' steel drive-in door. There is also a 180-car blacktop parking lot and a 57,600 square foot concrete paved area for trailer parking with a capacity of 40 trailers. The property is located in Manteno, Kankakee County, Illinois.

The appellant appeared before the Property Tax Appeal Board arguing that the market value of the subject was not accurately reflected in its assessed valuation for 2003 and 2004. In

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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 **Kankakee** County Board of Review is warranted. The correct assessed valuation of the property is:

Docket No.	Parcel No.	Land	Impr.	Total
03-00160.001-I-3	03-02-23-100-014	238,333	1,443,667	1,682,000
04-00464.001-I-3	03-02-23-100-014	238,333	1,466,597	1,704,930

Subject only to the State multiplier as applicable.

PTAB/cck/2-10

support of that argument for both assessment years, the appellant submitted an appraisal estimating the subject property had a market value of $2,380,000 as of January 1, 2003. (Appellant's Ex. 1)[1]

The appraiser, Michael E. Lipowsky, prepared the complete self-contained appraisal report and was the only witness called by appellant. Lipowsky has operated his own appraisal business since 1987 and has been an appraiser since 1985 focusing primarily on commercial and industrial property appraisals. His experience includes appraisals of probably 100 to 200 industrial properties. Lipowsky holds an Illinois Certified General Appraiser license, has the Independent Fee Appraisers Senior (IFAS) member designation from the National Association of Independent Fee Appraisers, and holds the Certified Illinois Assessing Officer (CIAO) designation from the Illinois Property Assessment Institute along with being a Level II certified Indiana Assessor/Appraiser. After *voir dire* and without objection, the witness was accepted as an expert in the evaluation of the subject property.

The purpose of the instant appraisal was to estimate the fair cash value of the subject property as of January 1, 2003. The appraisal did not include the value of the cold storage machinery and equipment of the subject property. (TR. 44) The subject property is located in an area that was formerly the Manteno Mental Health Center property which closed in the early 1980's. After closure, an economic development association known as "Illinois Diversatech" took over the property and structured it for commercial and industrial development; the area is now known as the Diversatech Campus or Diversatech Industrial Park which has I-2 zoning and several industrial users.

Lipowsky inspected both the exterior and interior of the subject property on December 3, 2001 and April 2, 2004; on each occasion he was accompanied by an employee of the appellant company. The property was in average to good condition with only minor deferred maintenance. Based on these observations, the appraiser opined that an average weighted age of approximately 11 years for the improvements should be used throughout the appraisal.

According to the appraiser the highest and best use of the site as vacant would be an industrial use due to the size of the tract, surrounding uses and current zoning. The appraiser's

[1] Intervenor objected at hearing to the witness's testimony about the appraisal report because the report was not signed on either the transmittal letter or the certification page. In support of the objection, intervenor's counsel cited to Sec. 1910.67(l) of the Board's Rules, "[a]ppraisal testimony offered to prove the valuation asserted may only be given by a preparer of the documented appraisal whose signature appears thereon." Lipowsky testified that he probably signed the original report which was probably destroyed in a fire he had. (Transcript (hereinafter "TR.") 21-22, 49) The objection was overruled in light of the presence of the witness who was prepared to testify regarding the report he prepared.

conclusion of highest and best use as improved was as industrial manufacturing or a warehouse use.

In estimating the market value of the subject property, Lipowsky developed the three traditional approaches to value. In summary, he found a number of favorable features of the subject property effecting marketability and value: adequate shipping and receiving docks; adequate land-to-building ratio; gabled roof structure which is less likely to leak; and good exposure on a main state route. He also found a number of unfavorable features which similarly affected the marketability and value of the subject property: no immediate interstate access; the percentage of office area for most operations would be considered an over improvement; and the building has numerous interior walls that would hinder utility for most operations. (Appellant's Ex. 1, p. 21)

Lipowsky testified that he gave the cost approach to value very little if any weight, but performed the analysis pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) to consider all three approaches. (TR. 30) Lipowsky contended that market participants in an industrial setting do not look at the cost approach as a very valid way to base their decision of the correct purchase price of a given property. In estimating the market value of the subject using the cost approach, Lipowsky first estimated the market value of the land as if vacant. Lipowsky used six land sales in Kankakee County that ranged in size from 1.10 to 75.00 acres. Based on a map supplied in the appraisal report, five sales were located in the Diversatech Industrial Park area southeast of Manteno and one sale was located west of Manteno, adjacent to Interstate 57. The sales occurred from December 1998 to April 2000. The land comparables sold for prices ranging from $29,975 to $1,188,000 or from $15,840 to $43,956 per acre. Using these sales and giving primary consideration to Sales #2 ($35,000 per acre) and #6 ($43,956 per acre) due to size and location, Lipowsky estimated a unit value for the subject of $40,000 per acre or $692,000.

In estimating the value of the improvements under the cost approach, Lipowsky utilized replacement cost new using the Marshall and Swift Cost Manual along with correlating the actual construction cost new of known industrial buildings as verification. Lipowsky estimated the improvements (including site improvements of $974,579) had a total replacement cost new of $5,986,085.

Lipowsky next estimated depreciation using several different methods. On a straight line basis with an effective age of 11 years and a physical life expectancy of 35 to 40 years, Lipowsky estimated physical depreciation to be 29%. Lipowsky testified that he considered functional obsolescence primarily being from the existence of numerous interior walls hindering utility for most industrial operations and also the percentage of office area which would be viewed as an over-improvement such that he estimated functional obsolescence to be between 10% and 15%.

(TR. 32) Lipowsky concluded a midrange functional obsolescence of 12.5%. Given that the subject is a limited market property due primarily to its size and that current rental rates do not justify the construction cost of new facilities, Lipowsky considered 5% as a conservative estimate of economic obsolescence. In addition, using market abstraction based on the comparables sales contained in the appraisal, Lipowsky subtracted an estimated land value at the time of sale to arrive at a building residual value and then compared that with an estimated cost to replace the same building at the time of sale. Using this data, Lipowsky estimated the subject would suffer from an annual rate of depreciation of 5.30% per year resulting in total accrued depreciation of 58.3%. Total accrued depreciation under the first method was 46.5%. Lipowsky arrived at a final depreciation conclusion of 55% or $3,292,347 for the subject. Using the foregoing data under the cost approach, Lipowsky estimated the depreciated value of all the improvements to be $2,693,738 to which he added the land value of $692,000 to arrive at an indicated value of $3,385,738 or $3,390,000, rounded.

Lipowsky testified that his income approach was given secondary weight in this appraisal because most industrial facilities of the size of the subject are owner-occupied and not typical facilities to be rented for investment purposes. (TR. 33-34) In his estimate of market value using the income approach, the appraiser analyzed six comparable rental properties located in Kankakee, Rockford, Mascoutah, Rantoul and Champaign, Illinois and ranging in rental amount from $1.84 to $3.50 per square foot, triple net, in order to estimate the subject's market rent. The comparables ranged in size from 40,000 to 174,652 square feet of building area. The buildings were constructed from 1974 to 1999 and had leases that commenced as early as 1992. Based on this data, the witness determined the subject's estimated market rental to be $3.00 per square foot multiplied by the subject's rentable area of 110,834 square feet, the appraiser arrived at a potential gross income of $332,502.

The witness used a 10% allowance factor for vacancy and credit loss, reducing the figure to an income of $299,252. Lipowsky opined a management expense of 5% of effective gross income for the subject or $14,963 based on typical expenses for an industrial facility of this size. (TR. 35) He also had miscellaneous expenses of 1% of effective gross income. Lipowsky also considered two techniques to calculate reserves for replacement and arrived at an allowance of $20,509. Based upon the foregoing calculations, net operating income (NOI) before real estate taxes for the subject was estimated at $260,787, or $2.35 per square foot. Lipowsky utilized the band of investment technique, national surveys and the market extraction rate to arrive at a capitalization rate. (TR. 36) The band of investment technique presented an overall capitalization rate of 11.4%; the Korpacz survey presented rates from 8.0% to 10.0% with an average of 8.82%, but Lipowsky noted the subject presented a higher investment risk based on its age and location; and from the market, Lipowsky found a range of capitalization rates

ranging from 11% to 15%. Applying an overall cap rate of 11%, Lipowsky opined an estimate of value for the subject of $2,370,000, rounded, via the income approach.

Lipowsky testified that he gave significant weight to the sales comparison approach in this appraisal report because that is the way market participants look at property of this size and style. (TR. 36-37) In estimating the market value of the subject property using the sales comparison approach, Lipowsky utilized his database with location, size and age parameters to find seven comparable sales. The comparable sales occurred from November 1999 to November 2003 and were located in Kankakee, Bourbonnais, Ottawa, Rockford, Arcola, and Freeport, Illinois. The comparables ranged in size from 75,000 to 169,150 square feet of building area. Their effective ages ranged from 3 to 21 years old. The comparables had clear ceiling heights ranging from 14 to 42 feet; office space ranging from minimal to 15.90% of total building area; and land-to-building ratios ranging from 3.15:1 to 11.46:1. Six of the comparables were 100% sprinkled. The sales prices ranged from $1,200,000 to $2,465,000 or from $9.70 to $26.72 per square foot of building area.

Lipowsky testified that he considered adjustments for location, size, construction and quality, effective age, office area, clear ceiling height, land-to-building ratio, and whether or not the building was fire sprinkled as major factors. (TR. 38) Lipowsky further testified that the most recent sale information for each property was utilized (prior sales would have no impact) and the vacancy of any of the sales comparables would also have no impact on the reliability of his sales data. On page 33 of his report, Lipowsky depicts that his sales #5, #6 and #7 were given the most reliance due to the similarities in features. (TR. 41-42) Lipowsky further noted that size is a very important factor for sales comparison purposes. (TR. 42) These three most similar properties sold from January 2000 to November 2003 for prices ranging from $18.05 to $22.00 per square foot of building area. Using these three sales, Lipowsky estimated the market value of the subject as $21.50 per square foot of building area or $2,382,931 or $2,380,000 rounded.

After reconciling the three approaches to value, Lipowsky opined a market value for the subject at $2,380,000 as of January 1, 2003. Lipowsky testified that he found no physical changes in the subject facility in his two inspections and opined that there were no changes in the market for this type of property between January 1, 2003 and January 1, 2004 and his valuation would not change. (TR. 44-46) Lipowsky stated his opinion of value was formed in conformity with USPAP, that he has no personal interest in the subject property, and that his fee was not in any way contingent on deriving a certain value for the property. (TR. 46)

Based on the evidence, the appellant felt that a fair a market value of $2,380,000 was supported for the subject property in 2003 and 2004.

On cross-examination by intervenor's counsel, it was pointed out that the subject property is located about one mile from State Route 50 and about two and one-half miles from Interstate 57. (TR. 52-54) It was also established that within this same industrial park, there is also a one-million square foot Sears Regional Distribution Center. (TR. 55) Lipowsky acknowledged that the unfavorable condition of an excessive number of interior walls did not consist of structural walls supporting the building. (TR. 57)

Upon further cross-examination with regard to the cost approach, Lipowsky admitted that the most recent land sale for the January 1, 2003 valuation date occurred two years and eight months prior to the date at issue, although Lipowsky added that was the latest data available for the area. (TR. 57) Lipowsky opined that he properly calculated the building's replacement cost new by separately calculating the manufacturing and office areas of the property due to the excessive size of the office area of the subject property compared to the standards set forth in the Marshall Valuation Service guide. (TR. 57-58) Although he considered the size of the subject property to be an unfavorable factor for purposes of economic obsolescence, Lipowsky did not list size as an unfavorable feature of the subject on page 21 of his report. (TR. 60-61)

In order to perform his market abstraction method of calculating depreciation, Lipowsky had to estimate a land value for each of the sales, estimate a cost new for each of the sales, and estimate an effective age for each of the comparables. (TR. 61-62)

During cross-examination, Lipowsky admitted to a calculation error in depreciation of Sale #6 on page 53 of his report; the correct depreciation should have been 46.5% rather than 53.5% as stated in the report. (TR. 63-64) Thus, the annual rate of depreciation for Sale #6 would be 3.88% rather than 4.46% as stated on page 53. (TR. 66)

As to the income approach analysis, on cross-examination Lipowsky agrees that one of the most important adjustments that must be considered is location of the rental comparables. (TR. 67) Although rental comparable #2 was located in Rockford, Lipowsky opined it has a similar economic environment to the subject. (TR. 67-68) Rental comparable #3 located near St. Louis would be over 200 miles from the subject property; rental comparable #4 would be about 70 miles from the subject; and rental comparables #5 and #6 are located about 80 miles from the subject. (TR. 68-70)

Upon questioning, Lipowsky acknowledged that the market comparables utilized in his capitalization rate analysis were mostly larger than the subject, however, the larger the property the greater the risk and therefore the increase in capitalization rate; however, on page 43, the larger comparables present

capitalization rates ranging from 11.4% to 13.8%. (TR. 73-74) Despite these contentions, Lipowsky concluded a capitalization rate for the subject of 11%.

As to the sales comparables chosen for the appraisal, the comparables ranged from approximately 30 to 115 miles from the subject. (TR. 78-79) While Lipowsky opined a marketing time for the subject of 8 to 24 months, sale comparable #1 had been on the open market vacant for three years before it sold although this was not disclosed in the report. (TR. 79-80) Sale of comparable #2 was in lieu of foreclosure of a property which had been vacant for several years; these facts were not disclosed in the appraisal report. (TR. 80) Admittedly there were multiple transfers of sale comparable #4 just one month prior to the sale reported in the appraisal; these additional transfers, which Lipowsky did not believe to be arm's-length transactions, did not need to be disclosed in the report. The tenant purchased the property for $5.72 million in May of 2001, a month prior to the sale Lipowsky reported. (TR. 80-81) On cross examination, Lipowsky acknowledged incorrectly listing the buyer and seller on sale comparable #6; moreover, the buyer was an adjacent land owner, which fact is not disclosed in the report. (TR. 81-82) Also, Sale #7 was the result of a bank foreclosure and pursuant to a Sheriff's Sale, the bank was the only bidder, but Lipowsky felt this was an arm's-length sale and therefore did not disclose this fact in his report. (TR. 82-83)

During cross-examination, Lipowsky was asked about a sale of the subject in January 1997 for $4,756,080; he advised there was a non-arm's-length transaction involving an option to purchase the subject at an amortized cost based upon the build-to-suit cost for the tenant in which a lease was then bought out. (TR. 83-85)

On re-direct examination, Lipowsky expounded that in the income approach analysis many of the larger rental comparables had capitalization rates higher than 11% and therefore the selection of an 11% rate for the subject reflected consideration of the difference in size. (TR. 86) He further explained that he considered the overall industrial market in the Kankakee area in determining economic and functional obsolescence. Moreover, Lipowsky testified that he considered the conditions of each sale in his sales comparison approach and took into account things such as a sale in lieu of foreclosure; while the foreclosed property sold for $10.87 per square foot, Lipowsky selected a sale price of more than $20.00 per square foot for the subject. (TR. 86-87)

At the close of appellant's case-in-chief, intervenor moved for a directed verdict with regard to the instant 2004 assessment appeal contending that appellant presented no value evidence for the subject property as of January 1, 2004. Appellant responded that the burden of going forward had been met with the submission of the Lipowsky appraisal as of January 1, 2003 in order to challenge the correctness of the 2004 assessment further noting that appellate court precedent supports appellant's position

referencing the Sears decision. In reply, intervenor contended that the vague testimony of Lipowsky regarding market value of the subject as of January 1, 2004 was completely lacking. The motion was taken under advisement.

The Board denies intervenor's motion for a directed verdict. 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. *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.65(c). The Lipowsky appraisal with a valuation date of January 1, 2003 was filed to challenge the assessment date of January 1, 2004 in this matter. In Cook County Board of Review v. Property Tax Appeal Board, 334 Ill. App. 3d 56, 777 N.E.2d 622 (1st Dist. 2002), the court stated "[t]here is no requirement that a taxpayer must submit a particular type of proof in support of an appeal. The rule instead sets out the types of proof that *may* be submitted. . . . Whether a two-year old appraisal is 'substantive, documentary evidence' of a property's value goes to the weight of the evidence, not its admissibility. [citing Department of Transportation v. Zabel, 47 Ill. App. 3d 1049, 1052, 362 N.E.2d 687 (1977) (whether a six-month-old appraisal is sufficient to establish value is for the trier of fact to consider in weighing the evidence)]."

The Board of review presented its "Board of Review Notes on Appeal" in each appeal wherein the subject's final assessment of $1,799,820[2] was disclosed. The assessment translates into an estimated market value of $5,350,238 using the 2003 three-year median level of assessments for Kankakee County of 33.64%; and an estimated market value of $5,383,847 using the 2004 three-year median level of assessments for Kankakee County of 33.43%.

In support of these assessments, the board of review submitted complete appraisals of the subject property as of January 1, 2003 and January 1, 2004 disclosing a final market value for the subject of $5,600,000. The board of review's only witness was appraiser Dale J. Kleszynski, who prepared the reports.

The appraiser has been president and chief appraiser since 1984 of Associated Property Counselors, Ltd., a real estate appraisal and consulting firm located in Palos Heights, Illinois. (TR. 93) He has been an appraiser since 1977 and a certified appraiser in Illinois, Indiana and Michigan. Kleszynski is also a Member of the Appraisal Institute (MAI) and holds the Senior Residential Appraiser (SRA) designation as awarded by the Appraisal Institute. (TR. 93) The appraiser's further qualifications are set forth in three pages within his two appraisal reports denoting his previous appraisal employment experience, the types of appraisals previously performed, courses of instruction taught, and educational background. The parties stipulated to the qualifications of the appraiser who was then qualified as an expert witness.

[2] A typographical error in the Notes was clarified on the record. (TR. 89)

Kleszynski testified that he prepared two complete appraisals presented in summary reports for Lois Meyer, the Manteno-Rockville Township Assessor regarding the subject property with effective dates of January 1, 2003 (Board of Review Ex. 1) and January 1, 2004 (Board of Review Ex. 2). He noted that both appraisals were signed by him as required by USPAP so that the appraiser "will essentially take possession of the work that they've done." (TR. 95) Kleszynski had estimated the market value of the subject to be $5,600,000 as of the 2003 and 2004 assessment dates at issue.

In the respective reports, the appraiser notes that he personally inspected the property on "various dates since 2002." Kleszynski testified, however, that "at one point in time" he inspected the subject property although he could not specify when; inspection may have been in conjunction with prior appraisals done in 2001 and 2002 and not contemporaneously with the instant appraisals. In his reports, he described the subject property as a good quality, one-story masonry and metal panel industrial building of approximately 112,000 square feet constructed in 1989 with various additions through 1998. He said the structure contained approximately 16% office space and featured 13 truck doors, full sprinkler system, and clear ceiling heights ranging from 11' to 24'. He noted the building is divided to accommodate office, processing, maintenance shop and dock applications with additional features of a large cafeteria, men's and women's locker rooms, and private offices along with a dust collection system, laboratory space, and mezzanine office areas. Given a land size of 17.26 acres, the appraiser stated the subject had a land-to-building ratio of 6.73:1.

The appraiser reported that the subject property was transferred in January 1997 for a price of $4,756,080; the transfer declaration is attached in the report's addenda. (Board of Review Exs. 1 & 2, p. 3 & addenda) Further, the appraiser noted that subsequent to the transfer, the owner applied for $1,125,000 in building permits, copies of which were included in the addenda to the reports.

The witness testified that the highest and best use of the subject as if vacant would be for industrial development consistent with the current zoning ordinance as well as area development patterns. Furthermore, the highest and best use of the subject as improved was for its current industrial use.

Kleszynski testified that he considered all three approaches to value in his reports and reconciled his findings based upon the strengths and weaknesses of the analysis and data in order to formulate his opinion of fair market value for the subject property. The appraiser estimated a marketing time for the subject property of 12 to 24 months, which he noted to be typical for similar properties in this market.

In estimating the market value of the subject using the cost approach, Kleszynski first estimated the market value of the land as if vacant. He used four vacant industrial land sales in University Park (Will County), Illinois that ranged in size from 4.830 to 64.0 acres. The sales occurred from April 2002 to May 2003 and sold for prices ranging from $200,000 to $3,048,500 or from $41,408 to $78,989 per acre. In analyzing the data gathered, consideration was given to date of sale, location, accessibility, size, zoning, and other factors such as condition of sale and financing the appraiser considered pertinent as testified to and set forth in each of the written reports on pages 23 and 24. As stated in his reports, the only adjustment he made was for land area or size giving a downward adjustment to the three sales which were smaller than the subject and an upward adjustment to the one sale which was larger than the subject. Using these adjusted vacant land sale prices, Kleszynski estimated a unit value for the subject 17.30 acre parcel of $55,000 per acre or $950,000, rounded.

In estimating the value of the improvements under the cost approach, Kleszynski calculated the replacement cost new using the Marshall Cost Service along with in-house data correlating the actual construction cost new in the market area. Kleszynski testified and reported in his appraisals that while the Marshall Cost Service includes a small amount for entrepreneurial profit, he has interviewed various developers active in the construction of various structures throughout Chicago and Northern Illinois and found that these cost figures do not adequately reflect the local market; Kleszynski added a 10% factor for entrepreneurial profit. (TR. 101-02; Board of Review Exs. 1 & 2, p. 25) Utilizing a building area of 112,000 square feet, for 2003 Kleszynski estimated the improvements had a total replacement cost new of $5,915,840 or $52.82 per square foot of building area and for 2004 those same improvements had a total replacement cost new of $6,034,560 or $53.88 per square foot of building area.

Kleszynski next estimated depreciation. The appraiser estimated an effective age between 8 and 10 years, so for the 2003 report he estimated physical deterioration at 20% using an age/life analysis. For the 2004 report, physical deterioration was estimated at 22%. Additionally, based upon observations of the interior design and utility of the building, Kleszynski applied a functional obsolescence of 5% for both reports to reflect the varied dates of construction and the specialized features found in the property. (Board of Review Exs. 1 & 2, p. 26) The appraiser did not identify any economic obsolescence in the subject property. Through his findings, Kleszynski opined depreciation from all causes to total 25% for 2003 and 27% for 2004. To the depreciated value of the building improvements, Kleszynski added the depreciated value of site improvements in each report of $200,000. Kleszynski then added the land value of $950,000 to arrive at a 2003 value of $5,586,880, rounded to $5,600,000, and a 2004 value of $5,555,229, rounded to $5,550,000.

In his estimate of market value using the income approach, given that the subject is an owner-occupied building, the appraiser researched rental data from the market to estimate the subject's market rent and analyzed six comparable leases for two properties in Manteno and four properties in Kankakee. The comparable leases ranged in rental amount from $2.85 to $6.04 per square foot on a net basis. These rental comparables were constructed from 1974 to 2001 and contained from 19,380 to 57,600 square feet of building area. The leases commenced from July 1998 to 2003. Based on this data, the witness estimated the subject's market rental to be $6.00 per square foot on a semi-net basis. Having found marketing periods ranging from 6 to 18 months and occupancy rates in the similar industrial market range from 5% to 20%, Kleszynski selected a vacancy and collection loss rate of 10%. The appraiser estimated the owner would be responsible for a portion of the real estate tax and insurance expense and he further estimated a management expense at 4% of effective gross income and miscellaneous expenses at 1% of effective gross income.

Utilizing the appraiser's unit rental of $6.00 per square foot for the subject property, when multiplied by the subject's stated rentable area of 112,000 square feet, Kleszynski arrived at a potential gross income of $672,000. Less vacancy and collection losses of 10% reduced the effective gross income figure to $604,800. Kleszynski then deducted an assumed $11,200 as the owner's projected portion of real estate taxes and another $2,000 for insurance followed by deducting $24,192 for management expenses, $11,200 for reserves for replacement, and $6,100 for miscellaneous expenses. (Board of Review's Exs. 1 & 2, p. 33) Kleszynski's report states replacement reserves "are estimated at $11,200 or $0.10 per square foot of gross building area." (Board of Review's Exs. 1 & 2, p. 32) Based upon the foregoing calculations, net operating income (NOI) for the subject was estimated at $550,108, or $4.91 per square foot.

Kleszynski utilized national indices/publications such as Korpacz Survey, Cushman & Whitefield and Appraisal Institute publications, current financing terms, and market data from sales and/or rentals gathered within his office to arrive at a capitalization rate. (TR. 106) From this data, Kleszynski found a range of capitalization rates ranging from 9% to 11.5% for industrial type properties. In addition to the foregoing analysis, the appraiser also completed a simple band of investment technique blending present mortgage rates in the market with expected returns available in alternate investments. Kleszynski testified that he did not extract a capitalization rate from the market because given that the property was more reflective of an owner-user building and that most others in the market were owner-used type properties, he lacked investment information to perform the analysis. (TR. 108) Based upon the methods used, Kleszynski applied an overall capitalization rate of 10% and arrived at an estimate of value for the subject of $5,500,000, rounded, via the income approach for both 2003 and 2004.

Next, the witness testified as to his estimate of value for the subject using the sales comparison approach for both appraisals. Kleszynski utilized five improved sales comparables, three of which were located in northern Will County (Romeoville and Bolingbrook) and two of which were located in Cook County. The buildings were constructed from 1973 to 2001 and had land-to-building ratios ranging from 1.92:1 to 7.01:1. The five sales occurred from January 1998 to July 2002 and the buildings ranged in size from 53,000 to 100,369 square feet of building area. These sale prices ranged from $3,150,000 to $5,671,752 or from $56.51 to $64.91 per square foot of building area, including land.

As itemized on pages 47 and 48 of his reports, Kleszynski considered adjustments to the sales comparables based upon various differences when compared to the subject. Those differences included property rights conveyed, financing, condition of sale, elapsed time, location, land-to-building ratio, building size and physical variations. Through this analysis and as summarized on page 49 of his reports, Kleszynski concluded each sale needed an upward adjustment for elapsed time; sale #1 needed a downward adjustment for land-to-building ratio and the remaining sales needed an upward adjustment for land-to-building ratio; and each sale comparable required an adjustment for physical variations regarding matters such as quality of construction, docks, office space and ceiling heights. After these adjustments, Kleszynski selected a value for the subject of $50.00 per square foot of building area, including land, based upon an 112,000 square foot building, therefore reaching a value estimate of $5,600,000.

In reconciling the three approaches to value and given the nature of the subject building, Kleszynski opined the most relevant analysis was produced by the sales comparison approach to value along with consideration of the income approach to value, with the cost approach only being used as a supportive tool in formulating his conclusion. (TR. 110-11) Based on the foregoing, Kleszynski concluded a market value for the subject of $5,600,000 for both January 1, 2003 and January 1, 2004.

The board of review requested confirmation of the 2003 and 2004 assessments.

Kleszynski was then cross-examined by appellant's counsel. He acknowledged having previously performed an appraisal of the subject property with a valuation date of January 1, 2001. All the appraisals he has done on this property were for *ad valorem* tax purposes and for the use of the Manteno-Rockville Township Assessor for her to evaluate the tax assessment on the subject property; no other use is intended or implied. (TR. 113-14)

The witness was questioned about rental comparable #1, a 30,000 square foot building, which was said to be renting for $6.04 net per square foot, however, based on other evidence in the record,

this property sold in April 2000 for $23.12 per square foot making for a capitalization rate of 26% which is outside the norm for an industrial building expected by the appraiser. (TR. 121-23) As to rental comparable #2, a 57,600 square foot building, Kleszynski was unaware that this property with a net rental rate of $5.52 per square foot, sold in November 2003 for $36.46 per square foot making for a capitalization rate of 15.13% which again is outside the expected range based on the data gathered by the appraiser. (TR. 123-24) Rental comparables #3 and #4 were multi-tenant rental properties. Kleszynski testified that he was not aware that his rental comparable #6, with a net rental rate of $2.85 per square foot, sold in October 2000 for $18.89 per square foot; assuming a single-tenant building, the capitalization rate would be approximately 15%. (TR. 126-27) In summary, Kleszynski contended that the foregoing capitalization rates would have to be further analyzed including possible additional deductions for management and miscellaneous items which would then adjust the net operating income even though he had provided net rental rates for his rental comparables. (TR. 127-30)

On cross-examination, with regard to his sale comparable #2 located in Elk Grove Village which is adjacent to O'Hare Airport, Kleszynski admitted that the economic conditions of Elk Grove Village are stronger than those of Manteno where the subject is located. (TR. 135-36) Also, Bolingbrook, the location of sale comparable #3, has had industrial growth over the last several years making its economic conditions superior to that of Manteno. (TR. 136-37) Sale comparable #4 located in Romeoville, which is also adjacent to Bolingbrook, has in the last several years had industrial growth. (TR. 137) Sale comparable #5 located in Bolingbrook was noted to be in an industrial park; the building was constructed in 2000 and then sold in 2001. (TR. 137-38) Kleszynski acknowledged that despite size and age differences, if he had found comparable sales in Kankakee County it might have been preferable to use those sales to estimate value. (TR. 138)

Kleszynski was next cross-examined by one of the attorneys for intervenor. The appraiser noted that the questions posed by appellant's counsel utilizing net rental rates for his rental comparables multiplied by building square footage would result in an effective gross income figure for the property, not a net operating income. (TR. 139-42)

With regard to the subject property's location, Kleszynski testified he made no deduction for access to Interstate 57 as he found the property to be very well located in terms of access to the interstate system. (TR. 142-43) The subject's location in an industrial park merely means that its improvements are consistent with other improvements in that area and a positive attribute in that roadways are wide enough in the area in order to service truck traffic. (TR. 143) Kleszynski selected two comparable properties, sales #1 and #2, which were food processing facilities to reflect the positive refrigeration capacity/food production capability of the subject. (TR. 143-44)

Kleszysnki made no deduction for office space of the subject finding that at approximately 15% it was not a negative to the property. (TR. 146-47) Moreover, the appraiser made no deduction for the interior walls of the subject property as he did not believe the utility of the property was impacted by the walls or any interior division of the subject. (TR. 147)

In his sales comparison approach, none of the sales considered involved a sale in lieu of foreclosure, sale to an adjacent land owner, or a sale as a result of bank foreclosure. Had any of his sales been affected by those circumstances, he would have discarded them and utilized other data believing sales of those types to be tainted for this analysis. (TR. 151-52)

Upon re-cross examination by appellant's counsel, Kleszynski testified that he was not sure whether his appraisal included the value of any of the machinery and equipment utilized in the refrigerated areas of the building; he considered the fact that the building had areas that were refrigerated via machinery that pumped cold air into those areas which is considered to be real estate and nothing special. (TR. 154-55)

On further re-cross examination, the appraiser testified that USPAP in 2003 would have required consideration of a sale price within either three or five years of the date of valuation; the sale of the subject noted in the appraisals was more than five years old as of the dates of valuation. (TR. 158-59)

Next, the Manteno Community Unit School District No. 5 (School District) presented its witness, Andrew Brorsen, who prepared two appraisal reports on the subject property with valuation dates of January 1, 2003 and January 1, 2004 with opinions of fair market value of $5,000,000 and $5,100,000, respectively (Intervenor's Exs. A & A-1, respectively[3]). The 2003 report is a summary appraisal report and the 2004 appraisal is a complete appraisal presented in restricted use format which must be read in conjunction with the 2003 report. (TR. 169)

The appraiser has been co-owner of the Brorsen Appraisal Service, P.C. in Kankakee since 1978. Brorsen has been an appraiser since 1972 commencing employment with a local savings and loan performing primarily residential appraisals. For a year commencing in 1977, he worked for Doane Agriculture Services, Inc. appraising agricultural properties. Since being self-employed, his appraisal work has been a mixture of residential, commercial and agricultural properties. Brorsen has MAI and SRA designations from the Appraisal Institute and an Accredited Rural Appraiser (ARA) designation from the American Society of Professional Farm Managers and Rural Appraisers along with having

[3] The designations of the two appraisal exhibits have been drawn respectively from the 2003 and 2004 filings by the intervenor, although for purposes of clarity the intervenor re-filed the 2003 appraisal report as Ex. A-2 in docket number 04-00464.001-I-3.

been active in each of those organizations. The witness has both developed and taught courses in the appraisal field. Specifically, as to light industrial properties, Brorsen has appraisal experience since the 1980's both locally and in adjacent counties averaging perhaps ten such appraisals per year over the past 29 years. Without objection the witness was accepted as an expert appraisal witness.

Brorsen testified that an appraiser is required to sign the certification of an appraisal, not the appraisal report itself. The purpose of the signature requirement is for the appraiser to take on the responsibility of the opinion and that they completed the appraisal. (TR. 170-71)

Brorsen inspected the interior and exterior of the subject property on June 8, 2005 for purposes of both reports. He was accompanied by two plant employees during the tour; only exterior photographs were allowed to be taken. The appraiser further testified that he had previously appraised the subject property in 1994 for its then owners, a group of investors who had developed the Diversatech Campus Third Addition; the purpose of that appraisal was an asset evaluation of all their properties. (TR. 172)

The purpose of the instant appraisals was to assist counsel for the Manteno C.U.S.D. No. 5 in tax assessment appeals on the subject property. Other than transfers without value amounts indicated, Brorsen reported from county records no other transfers of the subject's property rights within the most recent three years prior to the effective dates of these appraisals.

In his reports, Brorsen noted the 17.3 acre parcel has been improved with a building of ±110,998 square feet of which ±93,470 square feet is industrial (84%) and of which ±17,528 square feet is office area (16%) making for a land-to-building ratio of 6.79:1. The appraiser opined the improvements to be in good condition, with a good ratio of office to manufacturing space, and meeting or exceeding typical market standards for a food processing facility with supporting warehousing and office space. He reported clear ceiling heights ranging from 16' to 20' and twelve 10' x 12' overhead dock doors with levelers and two 10' x 12' overhead doors at grade level.

Because it is a food processing facility, Brorsen observed the interior to have been finished to Food and Drug Administration (FDA) requirements with special walls, wall covers and drop ceilings to control the airflow in the facility and provide for a climate controlled production area[4] making the industrial section of the facility somewhat unique, but not special purpose. (Intervenor's Ex. A, p. 20; TR. 184) Part of the warehouse is also climate controlled and has a dust collecting area; Brorsen

[4] The appraiser distinguished climate control as merely air conditioned and heated industrial space as opposed to "refrigerated spacing" of a facility. Ordinarily only heat is provided in industrial plants. (TR. 185)

was not shown any refrigerated space at the facility. (TR. 184) This feature enhances the subject's market value. (TR. 185)

For purposes of the appraisals, Brorsen described the subject improvement as having ±111,000 square feet of building area. He further described the original construction as dating back to 1989 with additions in 1990, 1995, 1996, 1998 and 1999 making for an age range of 4 to 14 years; he concluded a weighted age of ±11 years.

Brorsen testified the subject's interstate access via designated truck routes runs to the north to Peotone and to the south to Bourbonnais; while there would be shorter access via Manteno, there is restricted truck traffic through Manteno. (TR. 176) The appraiser opined that the interstate access is not an unfavorable feature of the subject property; all of the properties in the Diversatech Campus have similar access and there were several distribution and/or transportation companies located in the park meaning those companies felt access was not detrimental to the location. (TR. 180-81)

Based upon his experience and interviews with two main local industrial brokers, Brorsen opined a typical market exposure time of six months to about one year for a modern industrial facility in this market. (TR. 174) Brorsen did not find any obsolescence in the marketability of the subject property in that it is a modern facility designed for food processing will all of the features required such as adequate truck docks, security, and land area for growth. (TR. 182-83) He also did not find the ratio of office space to industrial space to be excessive and/or contributing to obsolescence. Moreover, the clean surface walls in the manufacturing area were just partition walls, not load bearing walls, and thus could be removed or moved for a different user. (TR. 189-90)

The appraiser opined the highest and best use of the parcel as vacant would be for some type of industrial development compatible with surrounding uses. Brorsen concluded as long as the value of the whole property exceeds the value of the site as if vacant, the present use would continue to be the highest and best use of the property as improved. Brorsen further noted the present improvements contribute substantially to the value of the property and were therefore judged to be the highest and best use of the property as improved.

Using the cost approach to estimate the market value of the subject, Brorsen first estimated the market value of the land as if vacant by analyzing eight vacant land sales in Manteno that ranged in size from 6.1 to 117.61 acres. The sales occurred from July 1996 to October 2002. The land comparables sold for prices ranging from $125,000 to $1,800,000 or from $15,305 to $49,396 per acre. The appraiser adjusted the prices of Land Sales #3 through #8 upward by 5% per year for time of sale. Based on location, the appraiser made an upward adjustment to Land Sales #1 and #2. An upward adjustment for size was applied only to

Land Sale #3. After these adjustments, in the 2003 appraisal Brorsen found adjusted land sale prices to be between ±$42,000 and ±$50,000 per acre and thus, the appraiser selected the mid-range of $46,000 per acre or an estimated land value for the subject of $795,800. For the 2004 appraisal, Brorsen included one more vacant land sale from March 2003 of 3.94 acres which sold for $128,500 or $32,614 per acre. An upward time adjustment of 5% annually was applied to what was now Land Sale #2 in the 2004 appraisal, but even with the additional land sale, the appraiser's conclusion as to an estimated land value remained unchanged.

To estimate the value of the improvements under the cost approach, Brorsen utilized replacement cost new using the Marshall Valuation Service for both industrial and office space along with consideration of the original 1989 construction costs of the subject. Brorsen had original cost data from his prior appraisal work on the subject performed for the developers which was said to be $6,020,000 or $98.08 per square foot for a 61,376 square foot building; this cost included an allocated land value of $865,000 for a residual improvement cost of $5,155,000. (TR. 192-93) Brorsen's 2003 report further notes the 1990 building permit issued for the subject property for $4.2 million. (Intervenor's Ex. A)

In calculating the replacement cost new, Brorsen relied upon data derived from Marshall under the categories of "light manufacturing industrial" and general "office building" with refinements for various features, the appraisal effective date, locally for the Kankakee area, and he made an addition of 5% for entrepreneurial profit (which had been accounted for in the original construction cost data by the developer). The appraiser testified the developers of the subject had included a nominal amount for entrepreneurial profit[5] and he also considered other data concerning what entrepreneurs expect to get for entrepreneurial profit of from 5% to 20%; he selected the conservative amount of 5%. (TR. 194-95)

From the data, Brorsen estimated the building had a total improvement replacement cost new of $5,665,007 for 2003. For 2004, the cost estimate was updated and resulted in a total improvement replacement cost new estimate of $5,939,295. Site improvements of paved parking lot, driveways, trailer parking, loading dock and entryways along with fencing and landscaping/security resulted in a 2003 replacement cost new estimate of $695,291 and a 2004 replacement cost new estimate of $700,760. Combining the building and site improvements, Brorsen estimated the total replacement cost new to be $6,360,298 for 2003 and $6,640,055 for 2004.

[5] The 2003 report on page 29 notes "the difference in the building permit issued at the time of construction and residual building cost indicates a ±19% entrepreneurial profit may have been charged." (Intervenor's Ex. A)

Although he tested the extraction method of depreciation based upon the sales presented in his sales comparison approach, Brorsen ultimately utilized the age/life method to estimate depreciation. As he testified, under the extraction method he examined his sales data and deducted overall depreciation to try to determine a useful life range. He further noted that the appraiser must have a high degree of familiarity with the sale properties in order to perform this analysis; in this instance, Brorsen had appraised his sales comparables previously and thus had detailed information upon which to determine replacement cost new and extract total life expectancies. (TR. 201-03) Via the extraction method, Brorsen found a median life expectancy of 42 years which he found to be supportive of his life expectancy finding under the age/life method. In his age/life method, Brorsen reported industrial buildings have a useful life expectancy ranging from 35 to 45 years and chose an expected life of 40 years for the subject. Next, based on an average of the actual ages of the subject improvements, Brorsen utilized an effective age of 11 years in his 2003 report and 12 years in his 2004 report. From his observation in considering physical depreciation, there were no signs of major deferred maintenance for the subject improvement. Brorsen then estimated physical depreciation to be 28% as of 2003 and 30% as of 2004 with no functional and/or economic obsolescence.

As to these latter categories of depreciation, the appraiser noted the building met the current market standards and the interior design was not so specialized that it could not be efficiently converted to an alternative use if desired. Moreover, he did not find the ratio of office/employee space to industrial space to be excessive given the overall utility of the space. Finally, although he noted that interstate highway access was 6 to 8 miles away, access was provided by designated truck routes and apparently was not a negative location factor since a major regional distribution center was located across the street from the subject along with other nearby similar facilities. (Intervenor's Ex. A, p. 30-31)

In light of a 25 year life expectancy for asphalt site improvements and a 40 year life expectancy on all other site improvements, Brorsen opined the age/life method of depreciation for the site improvements in the 2003 report resulted in depreciation of 44% for asphalt parking areas and 28% for other site improvements; in the 2004 report depreciation was 48% for asphalt parking areas and 30% for all other site improvements.

Using the foregoing data under the cost approach, Brorsen estimated the depreciated value of all the improvements for 2003 to be $4,560,800, rounded, and for 2004 to be $4,594,851 to each of which he added the land value of $795,800 to arrive at indicated values of $5,360,000, rounded, in 2003 and $5,400,000, rounded, in 2004.

Regarding his income approach, the appraiser first examined the actual lease history of the subject property which was developed

as a "build-to-suit" and "lease with option-to-buy." Having worked on a prior appraisal project for the developer, Brorsen had information on the initial ten-year lease of the subject which began March 1, 1990. Monthly rental for the first 60 months was $75,275 or $903,300 annually; for the second 60-month period, monthly rent decreased to $72,750 or $873,000 annually. The developers indicated the decrease occurred because by that time a $300,000 demand note which the developers had taken out to cover the improvements would have been paid off. The lease further included three five-year renewal options with varying monthly rental rates ranging from $76,383 to $84,200 or from $916,600 to $1,010,400 annually. Furthermore, the tenant had the option to purchase during the term of the lease for the unamortized balance of the project cost which had been financed over 15 years at 10.8% plus the unamortized balance of the leasehold improvements (value of $265,000) over five years at 11% plus a developer's profit of $275,000. In 1997 the tenant exercised the purchase option reportedly for $4,756,080; additionally, there were at least three building permits issued for additions prior to 1997 which may have changed the square footage and thus the rental rate paid.

The appraiser next examined comparable leased properties in the subject market area consisting of eight properties in Manteno, Peotone, and Kankakee with data reflecting actual active lease rates as of January 1, 2003.[6] One property was involved in industrial service/warehousing, but the remainder had some amount of industrial light manufacturing more like the subject food processing facility; one comparable also had heavy industrial use involving indoor cranes. (TR. 209) The comparables ranged in size from 19,380 to 64,608 square feet of building area with lease terms ranging from 3 to 10 years. The buildings were constructed from 1956 to 2001. The rental rates ranged from $2.85 to $6.04 per square foot of building area. Brorsen had appraised all eight rental comparables and thus inspected and was able to verify the descriptive and rental data considered.

Rental comparables #1 and #2 were located within the subject industrial park and given most weight by the appraiser due to location, age and utility. The appraiser made an upward adjustment to rental comparable #3 for age, condition and utility. Rentals #5 and #6, which were newer facilities, were given upward adjustments for inferior finish and utility. Rentals #7 and #8, which were older facilities still leased by the original tenants, were given upward adjustments for age and condition. Although the building is adaptable to other uses, for the subject with a design meeting FDA requirements for food processing, Brorsen opined the subject commands an annual rental rate near the upper range of the comparables due to its present design and utility. Brorsen estimated a market rental of $5.50 per square foot for the subject property or $610,500 gross annual income for both 2003 and 2004.

[6] For the 2004 appraisal, only four of the eight comparables were considered; several of these leases had expired or expired during 2004 (TR. 208).

Assuming six to twelve months exposure for lease and a five-year lease term, Brorsen opined a 10% to 20% vacancy rate could be expected whereas with a ten-year lease term, he estimated a 5% to 10% vacancy rate. After subtracting his conclusion of vacancy losses of 10%, Brorsen arrived at effective gross income of $549,450. Ownership expenses include real estate taxes, property insurance and management. For professional management in the subject market, expenses range from 3% to 7%; Brorsen opined a management expense of 4% for the subject. Assuming only a minor allowance for miscellaneous expenses not covered in the lease, Brorsen estimated 1% for miscellaneous expenses. Brorsen also deducted 5% of estimated gross income for reserves for replacements. After the foregoing deductions, net operating income (NOI) was estimated at $494,504 or $4.45 per square foot of building area.

Capitalization rates were applied to the NOI figure to reach a value conclusion. The witness found there was insufficient data to reliably consider the extraction method as he had only one sale with sufficient data resulting in a 4.2% capitalization rate; Brorsen gave most emphasis to the mortgage-equity analysis using the band of investment technique. Analyzing market data as of the effective date of January 1, 2003, Brorsen found mortgage rates ranging from 6% to 8% with loan-to-value ratios from 60% to 80% with 10 to 30 year amortization periods. For this analysis, Brorsen selected a 7.5% mortgage interest rate with a 25-year amortization schedule and a 75% loan-to-value ratio. He also analyzed investment fund rates finding various rates ranging from 3.03% to 7.45%. Brorsen selected a 6% equity return rate, but since real estate is somewhat non-liquid he added another 6% to the equity return requirement. The witness also considered published investment sources finding capitalization rates for industrial properties ranging from 8.0% to 11.0% with a quarterly average of 8.93%. (TR. 213-14) In the 2004 appraisal, these published rates ranged from 8.5% to 11.5% with a quarterly average of 9.88%. The appraiser concluded this data supported the rate he developed under the mortgage-equity analysis.

As to the appellant's appraiser's view of the weakness of the mortgage-equity analysis, Brorsen disagreed that this approach assumes recapture of the investment made over the holding period or life of the loan because there is no determination of a timeframe; this analysis deals with an overall capitalization rate, not a yield rate. (TR. 211-12) Brorsen asserted that the mortgage-equity analysis is commonly relied upon in the industrial property market and by appraisers when valuing industrial properties. (TR. 212-13)

The witness selected a capitalization rate for the subject of 9.65% for both 2003 and 2004. Under the direct capitalization process with a net operating income of $494,505, Brorsen concluded a value as of January 1, 2003 of $5,124,000, rounded, under the income approach for the subject.

In his 2004 appraisal, the witness reported no new rental data was found, the same expense ratios should be applied, and the investment rates remained relatively unchanged. Brorsen did present a rate extraction summary in this latter report utilizing four sales based on net operating income and found overall capitalization rates ranging from 8.48% to 13.63%. If he had used gross income, the result would be a gross income multiplier (a ratio between the sale price and the gross income), which does not alone result in a capitalization rate. (TR. 216) Brorsen's final conclusion on the income approach remained the same for this appraisal report, although for the January 1, 2004 report it was rounded down to $5,100,000.

For the 2003 and 2004 reports in the sales comparison approach, the appraiser identified four properties suggested as similar to the subject, however, the four properties differ in each report. Brorsen previously appraised each property.

The 2003 report sets forth sales that occurred between April 2000 and September 2002 with buildings that ranged in size from 30,000 to 155,933 square feet; three properties were located in the subject business park in Manteno and one was in Kankakee. The comparables presented land-to-building ratios ranging from 2.23:1 to 8.71:1. Two properties were described as light manufacturing and two were described as refrigerated or partially refrigerated warehouses. In testimony, Brorsen indicated only one property was a climate controlled facility. (TR. 219) The sales prices of three properties and contract for deed price of the fourth property ranged from $900,000 to $3,600,000 or from $18.89 to $52.50 per square foot of building area.

In the 2004 report, the sales occurred between November 2003 and February 2004 with buildings that ranged in size from 40,000 to 100,000 square feet; one property was located in the industrial park in Manteno, two were in Kankakee, and one was in Peotone. The comparables presented land-to-building ratios ranging from 2.82:1 to 10.30:1. Three were described as light manufacturing and the fourth was described as mixed industrial. In testimony, Brorsen stated sale comparable #4 was a climate controlled facility. (TR. 221) The sales prices ranged from $1,075,000 to $2,100,000 or from $21.00 to $36.46 per square foot of building area.

After considering the four sales in each report, the appraiser made some adjustments to each property for differences from the subject. Differences considered included date of sale, whether personal property was included in the sale, condition of sale (as to the contract for deed property), land-to-building ratio, condition, age, office space, and utility of improvements. Brorsen testified that no size adjustment was made; if size were determined to be a factor, he would have made a utility adjustment. (TR. 226)

He further noted that several of the sales comparables were also leased at the time of sale, but he felt the sales still represent

market sales. (TR. 228-29) None of the sales considered were in lieu of foreclosure, after bank foreclosure, multiple transfers with an existing tenant, multiple transfers between two parties, or a sale to an adjacent land owner; had they existed, Brorsen would have disclosed such conditions in his report(s). (TR. 229-30) Brorsen stated a sale in lieu of foreclosure is not an arm's-length transaction. (TR. 230) Likewise, repeated transfer between two parties requires further investigation to understand the transactions. (TR. 230)

For the 2003 report, he noted the median and mean price indications from the data were $45 and $41 per square foot, respectively. Giving most emphasis to the adjusted sale price of most similarly sized sale comparable #1, the appraiser opined a unit value for the subject of $44.00 per square foot in the 2003 report or $4,900,000, rounded. For the 2004 report, the appraiser noted the least adjusted property located near the subject was sales comparable #4 with a sale price of nearly $49.00 per square foot. With support from sale comparable #2 adjusted to $43.00 per square foot, the witness selected the mid-range unit value of $46.00 per square foot for the subject in the 2004 report or $5,100,000, rounded.

In reconciling the three approaches to value utilized in his 2003 and 2004 reports, Brorsen for the 2003 report opined a market value of $5,000,000 for the subject and for the 2004 report opined a market value of $5,100,000 for the subject. Brorsen testified most emphasis in reconciliation was given to a blend of the income and sales comparison approaches in both appraisals. (TR. 235)

Brorsen next testified with regard to several properties he was familiar with which were used in the Lipowsky appraisal. Namely, sale comparable #1 had been vacant 1 ½ to 2 years prior to sale with some repair work needed such as roof leaks. Following sale, the buyer rehabbed the building and installed partitions making it a multi-tenant building. Sale comparable #2 in the Lipowsky report had also been vacant for a few years at time of sale.

In both pending appeals, intervenor's counsel had filed rebuttal evidence with a brief and underlying documentation addressing a number of sales comparables utilized by Lipowsky. Based on transfer documents, intervenor contends Lipowsky comparable sale #1 was a "flip" sale noting a June 1999 purchase for $900,000 followed five months later by the $1,600,000 purchase noted in the appraisal. Intervenor contends Lipowsky sale #2 was a distress sale because documentation indicates the transaction was pursuant to a deed in lieu of foreclosure. Based upon a newspaper article and various recorded documents, intervenor asserts that Lipowsky sale #4 involved multiple transfers with a former tenant which should not be deemed a market transaction. As to Lipowsky sale #6, intervenor asserts this to have been a transaction between "related parties" to an adjacent land owner which therefore should not be considered a market transaction. As to sale #6, intervenor relies upon its rebuttal exhibit O, a

1993 warranty deed between these same parties to assert a relationship. However, Intervenor's rebuttal exhibit N, the PTAX-203 form signed under penalties for perjury, reflects the buyer as being an adjacent land owner, but does not reflect a "sale between related individuals or corporate affiliates." Intervenor characterizes Lipowsky sale #7 as a distress sale as a result of a bank foreclosure wherein the bank subsequently sold the property for $1,500,000 as reflected in the Lipowsky appraisal.

Based on the foregoing evidence, the intervenor requested the 2003 and 2004 assessments of the subject property be reduced to reflect the estimated fair market values as determined by Brorsen in his respective appraisals.

Cross-examination of Brorsen by appellant's counsel followed. Brorsen testified his client for the instant appraisals was Attorney Scott Longstreet with the Manteno Community School District as the only intended user of the appraisals. He acknowledged that at page six of each of his reports, Brorsen wrote "*[t]his report may not be distributed to, or relied upon by other persons, or entities without our written permission*." During his inspection in June 2005 for performance of both appraisals, Brorsen was informed by the plant manager/controller that no changes beyond daily maintenance had occurred to the property. (TR. 242-44)

With regard to the further development of the industrial park, the subject building was one of the first several buildings constructed in the new addition. (TR. 247-48) As of the time of hearing, some 72 acres of the 320 acre addition had not been developed. (TR. 248-49) The transfer information Brorsen found regarding the subject was irrelevant to the value and was merely reported as history of the property. (TR. 250-51)

Brorsen acknowledged that in January 2003, a "fairly new" facility of approximately 25,600 square feet of building area and 10.14 acres of land was being offered for sale for $1,050,000 or about $41.00 per square foot of building area. (TR. 252-53; Intervenor's Ex. A, p. 21) Despite this fact, in his replacement cost new estimate, Brorsen concluded an estimate of about $50.00 per square foot for the subject improvement only and he also described the subject as "fairly new" like the facility for sale at $41.00 per square foot, including land. (TR. 261-62)

He further testified on cross-examination that the subject property as currently configured was not suitable for multi-tenant occupancy, but as an industrial facility it does have the capability of having food service production in it. (TR. 254-55) Brorsen acknowledged the original build-to-suit character and lease arrangement for the subject was a financing tool. (TR. 262)

Among Brorsen's chosen rental comparables, two were multi-tenant buildings and the largest rental comparable was only about one-

half to two-thirds the size of the subject. (TR. 263) Brorsen acknowledged that despite the size difference, he selected the upper end of the range of rental comparables as an appropriate estimated rental rate for the subject. (TR. 263)

As to Brorsen's 2003 appraisal report, adjustments ranging from 75% to 91% were made to the sales comparables. Brorsen further expounded on his upward adjustment to the sale price of comparable #1, a refrigerated cold storage facility, because the refrigeration equipment had been shut off and he did not know what the cost would be to rehabilitate that equipment. (TR. 285) In discussing the adjustments made to the sales comparables, Brorsen also testified that when the unit of comparison is size, the appraiser cannot make a size adjustment, but instead may make utility, age, condition, and/or function adjustments. (TR. 282)

On redirect examination, as to the sales comparison approach Brorsen described the utility adjustment as a direct comparison between the subject property and the individual comparables resulting in a qualitative adjustment. The primary adjustment considered the subject's modern design and climate controlled space in both the industrial and office space with a finish for food processing as compared to the sales comparables. (TR. 303-04) While the subject may compete in the regional market, Brorsen felt he could better support adjustments for local comparables. (TR. 304-05) Brorsen noted that both smaller size and larger size industrial properties seem to sell for comparable unit prices with similar marketing methods. (TR. 306)

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 issue before the Board is the determination of the subject's estimated fair market value as of January 1, 2003 and January 1, 2004 for *ad valorem* tax purposes. The Board further finds the evidence in the record supports a reduction in the subject's assessment for both assessment years 2003 and 2004.

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). Having considered the evidence and testimony presented, the Board finds evidence in the record overcomes this burden and that reductions in the 2003 and 2004 assessments of the subject property are warranted.

In determining the correct assessment of the subject property, the Property Tax Appeal Board examined the appraisals submitted by the appellant, the board of review, and the intervenor supporting their respective positions. All three appraisers, whose respective reports were considered, utilized the three traditional approaches to value in estimating fair market values for the subject property. After reviewing the various opinions

of value and considering the testimony of the three appraisers, the Property Tax Appeal Board finds that the best evidence of value in the record are the appraisals prepared on behalf of the intervenor Manteno Community Unit School Dist. No. 5 estimating the subject property had a market value of $5,000,000 as of January 1, 2003 and a market value of $5,100,000 as of January 1, 2004, respectively.

With slight variations, the three appraisers were in agreement with respect to the description of the subject property. The primary difference among the appraisers was whether the climate controlled and food processing capacities of the subject property were accounted for in determining value. There was little indication from appellant's appraiser Lipowsky that those attributes factored into his determination of the subject's value.

In reviewing the appraisers' cost approaches to value, appellant's appraiser began his land value determination using dated sales occurring between December 1998 and April 2000. The other appraisers utilized more recent sales. However, the board of review's appraiser chose all his land sale comparables from Will County and arrived at the highest estimated per acre land value.

All three appraisers utilized the Marshall Valuation Service to calculate the subject's replacement cost new and arrived at fairly similarly initial estimates for the improvement costs. Site value estimates varied quite significantly among the three reports, but ultimately the depreciation calculations considered by each appraiser were the most significant factors in the value conclusions derived under the respective cost approaches. Appellant's appraiser Lipowsky deducted 12.5% for functional obsolescence, 5% for economic obsolescence and 29% for physical depreciation for total depreciation from all causes of 46.5%.

In contrast, the board of review's appraiser utilized total depreciation calculations of 20% and 22% for his respective appraisals and the intervenor's appraiser more similarly utilized 28% and 30% total depreciation calculations for his respective reports. More importantly, appellant's appraiser stated in his report that he detracted from the subject's value for features of what he found to be excessive office space and excessive interior walls. The unrefuted testimony, however, indicates the percentage of office space in the subject was not terribly uncommon and the interior walls at issue were not support walls such that any removal of those walls would presumably not be terribly difficult or costly. The Board finds the appellant's appraiser failed to adequately explain the rationale for the significant amounts of depreciation taken under the cost approach.

In reviewing the income approach to value, the appellant's appraiser again chose numerous rental comparables located a significant distance from Manteno, Illinois, and thereby

detracting from their similarity to the subject property. Moreover, these selected rental comparables in appellant's appraisal displayed rental rates ranging from $1.84 to $3.50 per square foot of building area as compared to the rental rates ranging from $2.85 to $6.04 per square foot of building area found by the other two appraisers of properties located more near the subject in location. The expense calculations of all three appraisers were very similar except for a real estate tax and insurance deduction taken by the board of review's appraiser. The capitalization rates chosen by the appraisers were relatively similar, but because of the low per square foot rental conclusion made by appellant's appraiser, the final value conclusion on the income approach by Lipowsky was significantly lower than the other two appraisal reports and lacked credibility for the reasons set forth above.

In reviewing the sales comparison approach which each appraiser placed most weight upon, the appellant's appraiser again utilized sales located far from the subject property and the board of review's appraiser considered sales only from Will and Cook Counties, with none from Kankakee County. These distant properties provided appellant's appraiser with sales prices ranging from $9.70 to $26.72 per square foot of building area including land. Meanwhile, the board of review's appraiser arrived at higher sales prices ranging from $56.51 to $64.91 per square foot of building area including land from the properties located in Will and Cook Counties.

Intervenor's counsel argued the comparable sales contained in the appraisal offered by the appellant were located in varying communities far distant from the subject and therefore had little relevance to industrial real estate values in the Manteno, Illinois/Kankakee County area. The Board finds this claim has merit. Moreover, the Board also finds the sales chosen by Lipowsky were dated in time for a valuation date of January 1, 2003. His primary reliance in arriving at a value estimate for the subject was upon three sales which occurred in January 2000, September 2001 and November 2003. Furthermore, among these preferred sales chosen by Lipowsky was a sale due to bank foreclosure/sheriff's sale and a purchase by an adjacent land owner. Most troubling was that Lipowsky gave little explanation as to the investigation of these sales for purposes of determining if they truly qualified as arm's-length transactions.

In addition, the Board also finds the claim by intervenor with regard to distant location of the sales comparables is also applicable to the sales chosen by the board of review's appraiser. All of Kleszynski's sales were located in Will and Cook Counties and, as noted on cross-examination, located in communities with stronger economic conditions and, in some cases, close by to O'Hare international airport.

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 Corporation v. Property

Tax Appeal Board, 69 Ill. App. 3d 207 (2nd Dist. 1979) and Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill. App. 3d 9 (5th Dist. 1989).

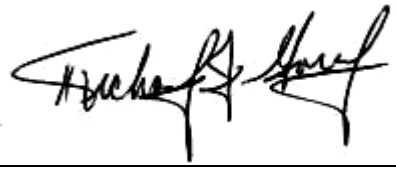
In this matter, the Property Tax Appeal Board finds the sales considered by the intervenor's appraiser which were located close to the subject property and produced sales prices ranging from $18.89 to $52.50 per square foot of building area including land for the 2003 report and from $21.00 to $36.46 per square foot of building area including land for the 2004 report were the most relevant sales to be considered in this record. From this data array, the intervenor's appraiser Brorsen adjusted the sales prices and concluded estimates of value for the subject of $44.00 per square foot for the 2003 report and of $46.00 per square foot for the 2004 report. These estimates contrast starkly with the conclusions drawn by appellant's appraiser of $21.50 per square foot of building area under the sales comparison approach and of the board of review's appraiser of $50.00 per square foot of building area under the sales comparison approach. In light of the foregoing discussion, the Board places more weight on the intervenor's sales comparison approach to value and find the value conclusion to be more reasonable than that of the other two appraisers. The Property Tax Appeal Board finds the subject had an indicated value through the sales comparison approach of $4.9 million in 2003 and of $5.1 million in 2004.

After analyzing the three appraisals and the three approaches to value set forth in each appraisal with specific consideration given to the comparable data selected by each appraiser, the Property Tax Appeal Board finds the intervenor's appraisal evidence to be the most credible and best supported of the three reports presented. Thus, the Board gives the ultimate conclusion of value in intervenor's appraisal the most weight.

In conclusion, the Board finds the evidence in this record demonstrates the subject property is overvalued by a preponderance of the evidence for assessment years 2003 and 2004, but not to the extent argued by the appellant's appraisal evidence. Therefore, the Board finds the subject property's assessments as established by the board of review for assessment years 2003 and 2004 were incorrect and reductions are warranted. The Property Tax Appeal Board finds based upon the appraisals submitted by intervenor that the subject had a fair market value of $5,000,000 as of January 1, 2003 and a fair market value of $5,100,000 as of January 1, 2004. Since fair market value has been established, the 2003 three-year median level of assessments for Kankakee County of 33.64% and the 2004 three-year median level of assessments for Kankakee County of 33.43% shall apply, respectively.

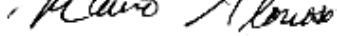
This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

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: February 20, 2009

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 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.