PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Lakefront Healthcare Center, Inc.
DOCKET NO.: 03-22550.001-C-3 and 03-22550.002-C-3
PARCEL NO.: 11-29-108-011 and 11-29-108-012

The parties of record before the Property Tax Appeal Board (hereinafter PTAB) are Lakefront Healthcare Center, Inc., the appellant, by Attorneys Kevin P. Burke and Adam Powers with the law firm of Smith, Hemmesch, Burke & Brannigan in Chicago; the Cook County Board of Review by Assistant State's Attorneys Aaron Bilton and Bill Blyth with the Cook County State's Attorneys Office in Chicago; and the intervenor, Chicago Board of Education, by Attorney Ares G. Dalianis with the law firm of Franczek, Radelet & Rose in Chicago.

The subject property consists of a 32-year-old, three-story, masonry constructed, 99-bed nursing home containing 17,810 square feet of above grade building area on two parcels totaling 15,000 square feet of land. The appellant argued that the fair market value of the subject is not accurately reflected in its assessed value.

In support of this market value argument, the appellant submitted a complete, self-contained appraisal of the subject with an

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

DOCKET #	PIN	LAND	IMPROVEMENT	TOTAL
03-22550.001-C-3	11-29-108-011	$39,362	$327,338	$366,700
03-22550.002-C-3	11-29-108-012	$39,362	$327,338	$366,700

Subject only to the State multiplier as applicable.

effective date of January 1, 2002 and an estimated market value of $3,600,000.

At hearing, the appellant's witness was Malka Mermelstein, the owner of the subject property. She testified she is an Illinois Licensed nursing home administrator and has owned the subject property since 1985. She stated the facility is licensed by the State of Illinois Department of Public Health and holds a Medicare Certification from the Federal Government. Ms. Mermelstein testified the State performs a yearly licensure and certification review and, if there is a violation, a return review.

Ms. Mermelstein described the property as a four-story, including basement. She stated the residents live on the three top floors with 16 rooms per floor. Each room holds two residents for a total of 33 beds per floor, or a 99 bed facility. She further testified that on each floor there was a three-bed room. Ms. Mermelstein testified that the State requires 80 square feet per patient; however, the subject was grandfathered in with this requirement and allowed to have less space per patient. She stated that each room contained a small bathroom with a toilet and sink and each floor had two large bathrooms, one for ladies and one for men, which contained a tub, shower, sink and toilet. Ms. Mermelstein testified that the facility provided all furniture and that each patient has a bed, night table, chair, closet and two drawers underneath. In addition, all the furniture and equipment in the other rooms were also provided by the facility.

As to the common areas, Ms. Mermelstein testified that there was a small area on each floor with a television where some of the residents ate. In addition, each floor had a nursing station. The kitchen was located on the lower floor in the basement along with the dining room, equipment room, activity room, physical therapy room, and offices.

Ms. Mermelstein testified the property was well maintained and in good condition. She stated the property is located in East Rogers Park on a good street, Sheridan Road. She opined that the neighborhood near the property was not a good neighborhood. Ms. Mermelstein testified that there are approximately five or six nursing homes on Sheridan Road in East Rogers Park. She opined the other nursing homes were larger in size and, because they received more income, could maintain their facilities better, but that the nursing care for the subject was superior to those facilities. Ms. Mermelstein said that there was a great deal of competition with the other, fancier facilities and that she had trouble filling beds. She then described the demographics of the residents.

Ms. Mermelstein testified that the State set the capital rate and the support rate that a resident would pay per day, but that she set the rate for nursing care. She stated the facility had a good nursing rate. She further testified to the rates set by the State, the occupancy, and the revenue of the facility during 2002 and 2003.

On cross-examination by the board of review, Ms. Mermelstein reiterated that the payment received for patients was made up of three parts: nursing; capital; and support. She again stated that the nursing component was the only component that the subject property could affect by giving more or less services. She testified that the capital and support rates included costs for the environment; how much you pay for real estate taxes and maintenance of the building. She further testified that there was no special equipment that was attached to the building.

On cross-examination by the intervenor, Ms. Mermelstein could not recall ordering an appraisal on the subject property. She was presented with the appraisal and vaguely recognized it. Ms. Mermelstein then contradicted herself by thoroughly describing the number of comparables used in the sales comparison approach to value within the appraisal. She acknowledged the appraisal stated that the subject property was a good bed-count size and agreed with this statement. She then changed her mind and stated she was no authority on the subject.

The appellant's next witness was the appraiser, John Moody. Mr. Moody testified that he is employed by Midwest Appraisal Company. He testified he has been working there since 1983. Prior to that, he worked at the Cook County Assessor's Office and at several appraisal firms. He indicated that he is a state-certified appraiser in Illinois and holds the designation of a Certified Assessment Evaluator. Mr. Moody testified that he has appeared as an expert witness before in the court system and in Property Tax Appeal Board matters. Mr. Moody testified he has appraised approximately 18 properties per year in the last five years, of which 5 were nursing homes. He testified he was also a general partner in a company that owned a nursing home. Moody was admitted as an expert in the field of property valuation without objection of the remaining parties.

The appellant's appraisal gave an estimate of market value as of the effective date of January 1, 2003 of $1,950,000. Moody corrected an error in the certification page of the appraisal and testified that he did, in fact, inspect the property with an associate, Mary Wagner. Moody testified that Ms. Wagner conducted a complete interior inspection while he conducted an exterior inspection of the property and the neighborhood. The appraisal identifies and fully describes the subject property's improvements.

Moody testified that the subject property is a 15,000 square foot, irregularly-shaped parcel of land with 100 feet of frontage on Sheridan Road. He stated the improvement is a three-story and basement, 99-bed nursing home containing approximately 17,810 square feet of above grade building area. The aggregate total size of the building is 25,628 square feet and the facility contains 48 rooms. Moody testified the entrance to the subject property, on Sheridan Road, is below grade. He stated this below grade area houses the administrative office, therapy room, activity room, laundry room, living room, dining room, kitchen, mechanical room, and storage area. Moody testified the three above grade floor have typical layouts for a nursing home with 26 rooms per floor and 33 beds. The description of these floors by the appraiser was similar to the description given by the previous witness, Ms. Mermelstein. He stated the improvement has an actual age of 32 year, an effective age of 25 years and was in average to better-than-average condition.

Moody testified that there are nine nursing homes in the subject's neighborhood, including the subject. The bed count for these facilities ranged from 99 to 328 beds for a total of 1,663 beds. He testified that the occupancy rates for these nine homes ranged from 42% to 94% with the average at 77%. Moody opined that there was an over supply of nursing homes in the area.

The appraisal indicated that the highest and best use of the subject, as vacant, was for multi-family housing, including nursing home, and that as improved, it highest and best use would be its current use as a nursing home.

The appellant's appraiser developed the three traditional approaches to value in estimating the subject’s market value. The cost approach indicated a value of $1,930,000, rounded, while the income approach indicated a value of $1,900,000, rounded. The sales comparison approach indicated a value of $2,030,000, rounded. The appraiser concluded a market value of $1,950,000 for the subject property as of January 1, 2003.

The initial step under the cost approach was to estimate the value of the site at $525,000, or $35.00 per square foot. In doing so, Moody testified he considered four land sales that sold from December 2000 to August 2002 that ranged in size from 7,100 to 47,250 square feet and in sale prices from $24.65 to $60.00 per square foot. He testified that he did not include sales from the City of Evanston, located directly north of the subject, for several reasons: (1) there were a sufficient number of sales in East Rogers Park; and (2) Evanston has a higher value then East Rogers Park. Moody testified to the adjustments he made to the comparable land sales.

Using the Marshall-Beck Building Valuation Computerized System, Moody estimated the replacement cost new to be $2,712,468 or $105.84 per square foot of building area, including basement area. After miscellaneous improvements the total cost new was calculated at $2,811,968. Moody testified he did not include any entrepreneurial profit because the subject is a special use building, built for a specific use and opined including this profit would not reasonable. In establishing a rate of depreciation, Moody testified he utilized the age-life method to arrive at total depreciation from all causes of 50% to arrive at the depreciated value of the improvements at $1,405,984. Adding the land value resulted in a final value estimate of $1,930,000, rounded.

Under the income approach, Moody testified he utilized the operating statements for the subject property from 2000, 2001 and 2002 and then stabilized them after a review of other nursing homes in the Chicagoland area. The appraisal notes the average daily rates for each patient type and that these rates are within the range of rates charged at competing nursing homes in Rogers Park. The appraisal looks to the rates paid per patient type/per day and the services provided to these patients to develop an estimate of the income per day. The appraisal then addresses vacancy. The appraisal analyzes the subject's vacancy rate of 70% and reviewed the vacancy rates of the nursing homes in Rogers Park to stabilize the vacancy rate at 74%; above the subject's current vacancy rate but below the average for the area as a whole. After including ancillary income, Moody estimated the gross income at $2,875,000.

The appraisal noted that operating expenses for the subject property ranged from 58.7% to 67.9% of the gross income. Moody looked to a survey of 10 nursing homes in the Chicagoland Area showing a range of 49.1% to 81.6% of gross income with an average of 63.1%. After analysis of this data, operating expenses were estimated at 63% or $1,800,000. General and administrative expenses include the administrator's and administrative personnel's salaries and miscellaneous expenses not related to operations. The appraisal stabilizes the salaries at 5% of gross income. Moody analyzed the subject's general and administrative expenses and the survey of 10 nursing homes in the Chicagoland Area. The subject's expenses were in-line with the 10 nursing homes reviewed and the appraisal stabilized this expense at 15.5% or $450,000. Subtracting all the expenses, the gross operating income was estimated at $625,000. Moody opined that his estimation of operating income was reasonable, well-supported and not aggressive.

The appraisal notes that an allowance is necessary in order to fund major repairs and redecorating expenses in the future. This reserve was estimated at $.20 per square foot or $5,000.

Moody then estimated deductions for the presence of furniture, fixtures, and equipment which are considered personal property. Moody testified to the differences in the return on and return of personal property. He testified he estimated the cost of furnishings to be between $4,000 and $7,500 per room and chose $5,000 per room for the subject. He stated there are 99 beds which indicated a total cost of $495,000. Moody testified he then applied an 8% return on this investment for a total of $40,000 for the return on personal property. The appraisal notes that this rate of return was estimated based on a review of current interest rates and rates of return on investment vehicles. The return of personal property was estimated by using the cost of $495,000 and dividing that by the useful life of the furniture, which Moody opined was 12 years, to arrive at a total of $40,000, rounded.

Moody then discussed the business value intrinsic to a nursing home. He testified that a portion of the gross revenue is attributable to and created by something other than the brick and mortar and the beds and chairs; this is defined as business value. Moody testified that he estimated 7% of the gross revenue, or $200,000 per year, to be the business value for the subject. He arrived at this estimate, according to his testimony, based on several factors: (1), his own experience of having run a nursing home, (2), statements as to management and nursing homes in *The Encyclopedia of Real Estate Appraisal* (3rd Ed.), and (3), the *Uniform Standards of Professional Appraisal Practice* (USPAP). Moody stated that USPAP does not allow misleading valuations and that if he attributed all or none of the income to the business value, the appraisal would be misleading. *The Encyclopedia of Real Estate Appraisal* address nursing home business value by stating

> "[t]he owner-operator expects a business profit for running the nursing home, and a return on his investment in the facility ... in the income approach to value, this compensation or business profit must be segregated from the entire net income earned by the facility so that only a real estate net income remains ...."

In addition, Moody reviewed the gross revenue of $5,000 per bed per month. He testified he then reviewed the rental rates for apartments in the East Rogers Park neighborhood and determined the beds in the subject property more closely compared to studio or efficiency apartments which ranged in rent from $350 to $500 per month. He opined that the difference between the gross revenue of the subject per bed and the rent of an efficiency apartment would be from the services provided at the nursing home. Moody testified that without estimating business value, the income approach would be significantly higher than the cost approach and the cost approach typically indicates the upper range in value.

After all these deductions, Moody arrived at a net operating income of $340,000. Using the band of investment method, Moody estimated the capitalization rate at 10.67% and a loaded capitalization rate of 17.89%. Moody testified he applied this overall CAP rate to the net operating income to estimate the market value for the subject under this approach at $1,900,000, rounded.

The final method developed was the sales comparison approach. Moody testified he first generated a report form CoStar Comps, a data source, on health-care facilities and established a selling price range of $87.44 to $105.92 per square foot. He examined six sales. The properties are all located in Chicago or the Chicagoland Area. Moody's testimony corrected an error in comparable #5's size and price per square foot. The six properties range in bed count from 51 to 328 beds; in building size from 14,364 to 176,627 and sold from February 2000 to January 2003 for prices ranging from $20,000 to $33,333 per bed, or from $33.97 to $121.65 per square foot of building area, including land. The properties ranged in age from seven to 49 years and in land to building ratio from 0.40:2 to 7.92:1. Moody testified he made overall adjustments for the comparability of the sale properties. He estimated a value for the subject property of $27,000 per bed or $106.23 per square foot of building area, including land for a total value of $2,722,500. Moody testified the price per square foot was above the range indicated by his initial data survey.

Moody then made a deduction for business value. He testified he used the $200,000 arrived at for business value in the income approach and capitalized that value at 40%, a rate higher than would be applied for income. He opined that income was highly speculative; if business is good then income is high. The appraisal notes a high capitalization rate is needed due to the high risk involved in the business value. Moody testified that there is no specific market data to support the 40% capitalization rate. After capitalizing the income, the final deduction for business value was $500,000 or $5,050 per bed. Moody then addressed the personal property. Using the $495,000 value arrived at under the income approach, Moody estimated a 60% depreciation. The appraisal estimated a depreciated value of personal property at $198,000 or $2,000 per bed.

After these deductions, Moody came to a final estimate for the subject property under the sales comparison approach of $20,500 per bed, or $2,030,000, rounded.

In reconciling the various approaches, Moody testified he gave consideration to all the approaches to value. The sales comparison approach and income approach were given substantial consideration and the cost approach received moderate consideration. After reconciliation, the appraisal estimated the value for the subject property as of January 1, 2003 to be $1,950,000.

Under cross-examination, Moody was presented with Intervenor's Exhibits #2 through #5, which are database printouts for the sales of comparables #1, #2, #3 and #6 in Moody's sales comparison approach. Moody acknowledged these sales were part of bulk sales. For comparable sales #1, #2, and #6, Moody testified these sales were part of the same bulk sale. He agreed that the appraisal does not indicate that these sales were a bulk sale. Moody was questioned in regards to the bulk sale involving comparables #1, #2 and #6 and the additional properties in that sale. He testified he did not recall what properties were included in the bulk sales, but if they were in the Chicagoland Area, they should have appeared on the first data search. The intervenor established that two of these sales were in the Chicagoland Area and sold at a higher price per square foot then sales #1, #2, and #6.

As to the land sales, the appraisal notes that a larger parcel will typically sell for a lower unit value than a smaller parcel. Moody agreed with this statement and testified that his smallest land sale sold for the highest unit price. He acknowledged that a larger parcel can be more valuable on a per square foot basis if the parcel is located in densely developed area. He also testified that the Rogers Park area was fully developed. Moody stated that land sale #1 was located in West Rogers Park, sale #2 is located in Uptown, and sale #4 is located at the eastern edge of West Rogers Park.

Moody was then asked questions in regards to the difference between entrepreneurial profit and a general contractor's profit in the cost approach. In the income approach, Moody testified he utilized the subject's actual income and expenses and stabilized these figures. He opined that the appraisal includes market information to support the final stabilized amounts.

Moody testified the he estimated income attributed to the business value at $200,000. In response to questions, Moody clarified that the $200,000 was deducted from the income to arrive at a net operating income of $340,000 and this amount was then capitalized by 17.89%. In the sales comparison approach, Moody testified he capitalized the $200,000 in business value by 40%.

Under cross examination by the board of review, Moody testified that his highest and best use analysis for the subject as vacant included multi-family development which includes a nursing home. He also acknowledged that he would not build a nursing home on a vacant lot in Rogers Park, but that zoning for multi-family would allow for a nursing home. Moody testified he was not aware that the subject was a kosher home at the time of the appraisal and could not confirm if any of the comparables in the sales comparison approach were kosher homes. In later testimony Moody stated he did not know if the fact the subject was a kosher facility would have any effect on the market value.

On redirect, Moody testified that land sales #1 and #4 are located within the subject's area, the northeast section of Chicago. He opined that the value of land in the Uptown neighborhood is higher than that of Rogers Park. Moody reaffirmed that he researched the market to stabilize the income and expenses in the income approach to value.

As to comparable #3 in the sales comparison approach, Moody testified he spoke with parties to the sale and opined that the sale prices for each property in this bulk sale were based on appraisals. He also testified that the sale prices per square footage were below the estimated market value per square foot for the subject. Moody testified that a bulk sale would not automatically discount the sale as a comparable.

As to the business value for the subject, Moody testified that he used a higher capitalization rate than that applied to the remainder of the income because, in his opinion, the income stream is very risky and subject to many outside variables. Moody stated the lower the cap rate the higher the value. He testified he utilized a capitalization rate of 40% for the business value.

The board of review submitted "Board of Review-Notes on Appeal" that reflect the subject's total assessment of $1,072,168 yielding a market value of $2,821,495 or $28,500 per bed using the Cook County Real Property Classification Ordinance for Class 5A property of 38%. In support of this market value, the notes included CoStar Comps printouts for four suggested comparables. The suggested comparables have an unadjusted sales range from $28,369 to $62,222 per bed. No adjustments were made to these properties and the printouts indicate the "information obtained from sources deemed reliable but not guaranteed". As a result of its analysis, the board requested confirmation of the subject's assessments. At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions.

In support of the intervenor's position, the intervenor submitted a complete, summary appraisal of the subject with an effective date of January 1, 2003 and an estimated market value of $3,000,000. The appraiser is James A. Gibbons. Mr. Gibbons was the intervenor's first witness in this appeal. Mr. Gibbons testified that he has been a state certified, real estate appraiser for approximately 25 years and also holds the designation of MAI. Gibbons is licensed in six states, including Illinois. He stated he completed coursework in regards to valuing nursing homes one and one-half years prior to his appraisal of the subject. Gibbons has performed approximately 4,000 appraisals. Gibbons was admitted as an expert in the field of property valuation without objection of the remaining parties.

Gibbons testified he performed an external inspection of the subject in March 2006 and prior to this hearing. He stated the subject property is located on the northeast side of the City of Chicago in an older, mostly improved, and densely populated area. Gibbons opined that the subject property's highest and best use would be continuation of its present use. In addition, Gibbons developed the three traditional approaches to value in estimating the subject's market value.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the land. Gibbons testified he reviewed four land sales. The properties sold from June 2000 to May 2002 for prices ranging from $40.27 to $90.00 per square foot. Gibbons testified he tried to keep the properties located as closely to the subject as possible with sale #1 being one block north and sales #2 and #3 less than one mile away. After adjustments, Gibbons estimated the subject land at $65.00 per square foot or $975,000.

Using the Marshall Valuation Service, Gibbons estimated the replacement cost new to be $2,722,458. Gibbons testified he applied an entrepreneurial profit of 15% because this would reflect the incentive or the reward for an entrepreneurial developer to undertake the project. He testified he estimated the 15% based on the marketplace range of 10% to 20%. Depreciation of 50% was estimated by using the age-life method. This resulted in a depreciated cost of the building improvements of $1,638,539. Adding the land value resulted in a final value estimate of market value for the subject of $ $2,615,000, rounded.

Under the income approach, Gibbons testified he utilized two methods. In the first method, Gibbons analyzed actual leases of four comparable nursing homes on a net basis. Gibbons testified he had information on these four leases located within his files. These properties are located in the south, far south and southwest suburbs of Chicago. The properties ranged in rent from $3,500 to $5,045 per bed on an absolute net basis. Gibbons testified, after adjustments, he estimated the rent for the subject property at $4,500 per bed. He then testified he applied a vacancy and collection factor of 10% based on vacancy rates for long termed leased commercial properties. Gibbons estimated management and leasing fees, based on the market, at 6% and reserves for replacement at $.50 per square foot for a total net operating income of $364,079. In determining the appropriate capitalization rate, Gibbons reviewed a survey by Korpacz & Associates and utilized the band of investments method. He arrived at a rate of 10.25%. The net operating income was then capitalized by this rate to reflect a market value estimate under this method of the income approach of $3,550,000, rounded.

In the second method under the income approach, Gibbons analyzed the historic data for the subject to develop an income based on its revenue stream as a nursing home. Gibbons testified he reviewed the Midwest Appraisal as well as actual operation information located on the Illinois Department of Public Health's website. In the appraisal, Gibbons stabilized occupancy at 72% which comprised Medicaid, Medicare, private and veteran patients. The appraisal stabilized the demographics of the patients as well as the amount of income generated by each demographic to arrive at a total patient revenue of $2,850,360. Other income was stabilized at $7,500 for a gross stabilized income of $2,857,860.

Gibbons testified he then estimated expenses two ways. The first looked to actual historical expenses for the subject as contained in the Midwest Appraisal and the second looked to expenses of other nursing homes that he has previously appraised. Gibbons stabilized expenses at 80% or $2,286,288 and then made a deduction for reserves of $.50 per square foot for an effective net income of $588,758.

Gibbons testified that he looked at the return on the personal property under the second method, which was a review of other nursing homes. This analysis was not conducted under the historic expense review method, Gibbons testified, because that method viewed the income on an absolute net basis for the real estate only. He testified that the personality at the subject contributes to the operation of the facility and assists in generating the income for the subject. Gibbons stated he had to separate out the personality of the nursing home from the real estate. In doing so, he stated he had to extract a return on the investment amount, or the depreciated value of the property, and then set up a reserve amount which would be necessary to replace the property. Gibbons estimated personality at $5,000 per bed. After calculations for depreciation and rate of return, the return on investment was estimated at $24,750 and the return of investment at $42,194. Once these amounts are deducted, the estimated net operating income is $491,814. Gibbons testified he did not deduct for business value because he opined this value was included within the expenses for officer's salaries and within the management expenses as if this were a passive investment. The net operating income was then capitalized by a loaded rate of 16.25% to reflect a market value estimate under this method of the income approach of $3,025,000, rounded. The values arrived at under the methods were then reconciled for a final value under the cost approach of $3,100,000.

The final method developed was the sales comparison approach. Under this approach, Gibbons utilized four suggested sales comparables. The properties ranged in size from 91 to 328 beds. They sold from August 2000 to November 2002 for prices ranging from 2,900,000 to $8,824,000 or from $26,902 to $42,568 per bed. Gibbons testified that sale #2 was an exercise of an option and included $1,312,000 in personal property. He stated the appraisal notes subsequent sales of comparables #2 and #4 in 2005 and 2006, respectively, for increased values. After making adjustments, Gibbons determined a value for the subject of $30,000 per bed or $2,970,000.

In reconciling the various approaches, Gibbons testified he gave significant weight to the income and sales comparison approaches to value and less weight to the cost approach. Gibbon's testimony indicated a final market value estimate of $3,000,000 as of January 1, 2003.

Under cross-examination, Gibbons testified that he utilized sales and data prior to or as of January 1, 2003 and he did not consider any data, other than the assessment figures and in establishing a load factor for the capitalization rate, subsequent to January 1, 2003. Gibbons acknowledged that as of January 1, 2003, the tax rates available would be for 2001 or, perhaps, 2002, but that he used the 2003 tax rate. He testified that if he would have used the 2002 tax rate, the tax load factor would have been different and the value under the second method of the income approach by using the 2002 rate would have been $2,879,953, or $2,880,000, rounded.

In regards to the land sales, Gibbons testified that he made downward adjustments to the two properties located in Evanston based on those two specific sales. He acknowledged that the subject's zoning would be more restrictive than that of sale #2. He also testified he did not make any significant adjustments to the land sales for size differences and agreed that sales #1 and #3 were smaller than the subject; with one being 40% smaller. For sale #1, Gibbons testified this sale was an assemblage purchase. It was noted that the other properties in the assemblage sold for an amount significantly less than the sale used by Gibbons.

Gibbons stated he utilized Marshall Valuation Service to estimate the replacement cost for the subject. He testified that this service includes overhead or contractor's profit within the cost breakouts. Gibbons then opined that an expectation of a profit for building an improvement and then selling it is the incentive to build and that is why he included an entrepreneurial profit in the cost approach. He acknowledged that, of the improved sales, he did not know if any of the properties were built by a developer and sold for a profit.

Gibbons testified he gave more weight to method 2 within the income approach, but that both methods were considered. He acknowledged that the leased comparables analyzed for method 1 were not located within Chicago and that three of the leases were entered into prior to 1990. As to the value for personal property, Gibbons testified that he estimated this value at $5,350 per bed. He further testified that he arrived at the percentages for the return on and return of the investment based on 2003 rates and not what was in effect when the leases went into effect.

However, for method 2, Gibbons testified he valued the personal property at $5,000 per bed. He attempted to explain the difference in values between the two methods for both the personal property amounts and the different factors for the return on and return of the investment.

On further questioning in regards to method 2 in the income approach, Gibbons testified that the actual income of the subject was 70% but he stabilized this rate at 73%. Gibbons was then questioned as to why he estimated the occupancy higher than the actual occupancy for the subject when the comparables showed lower occupancy rates. Gibbons opined that the lower occupancy rates for the comparables were what was reported for that particular year and do not correlate to what the subject's occupancy rate should be. Gibbons also acknowledged the expense ratios for the comparable properties all predated 2000 and the expenses were increasing on an annual basis, with the exception of one comparable.

In regards to the capitalization rate, Gibbons testified that the Korpacz survey did not include transactions involving nursing homes. Gibbons was asked about specific studies, and stated he is not aware of any studies or surveys that report capitalization rates for nursing home type properties.

As to business value, Gibbons opined that if an appropriate amount is in the expenses for management, the investment is a passive one and it's not appropriate to make a separate deduction for business value.

Gibbons was questioned about statements in the appraisal indicating that the cost approach generally sets the high end of the value, but that the cost approach in this instance set the low end of the range. Gibbons disagreed this indicated that the other approaches included non-real estate items. He testified that depreciation was estimated at 50% and that this makes the cost approach less reliable.

As to the sales comparison approach, Gibbons testified sale #4 had a subsequent sale but that he did not know if the property was still used as a nursing home or has been torn down. He reiterated that sale #2 was sold pursuant to an option from the tenant. Gibbons testified that sale #3 had an occupancy rate of 100% at the time of sale, but that he did not make any specific adjustments for this. He testified that this sale, along with sale #4, did not have personal property included in the sale and no adjustments were made for this.

The appellant called Mr. Joseph Ryan as a rebuttal witness. Ryan testified he currently is president of a real estate appraisal firm and has been working in assessment or appraisal field since 1980. The parties stipulated as to Ryan's experience and expertise and he was admitted as an expert in the field of property valuation.

Ryan opined that there are unique problems or situations with appraising a nursing home. He stated that the income from a nursing home is derived from more than the real estate; services are also provided. Ryan opined that nursing homes are not built on a speculative basis, meaning they are not built by an investor who then finds a tenant or buyer to take over the property. He stated the real estate and business are integrated and that the income generated from the non-real estate sources has to be separated out to arrive at the income generated from the real estate.

Ryan testified he reviewed: the Gibbons appraisal; nursing home appraisals of properties in the area; previous PTAB decisions; and materials related to business aspects of nursing homes to arrive at an opinion that the Gibbons appraisal includes the business value and overstates the value of the real estate. He arrived at this opinion from reviewing several industry sources and the fact that they attribute 15% to 25% of the net operating income to the business value. He testified some sources have this figure as high as 60% or 70%. Ryan stated he did not see any adjustments for business value in the Gibbons appraisal.

Ryan testified he reviewed the net operating income estimated by Gibbons and compared this value to apartment buildings in the area. He stated that the net operating income of apartment buildings in the area is significantly less than that of the net operating income arrived at by Gibbons. Ryan opined that this disparity showed that Gibbons capitalized income from both the real estate and the business.

Ryan also looked at the final conclusion of value arrived by Gibbons and stated the $174.05 per square foot was higher than five sales of apartment buildings in the area that sold from $50.00 and $100.00 per square foot. He opined that if proper deductions for the business value were made by Gibbons, the conclusion of value would more closely mirror apartment's net operating income and sale prices on a per square foot basis. Ryan's final opinion was that the appraisal overstated the value of the real estate.

Under cross examination, Ryan testified he did not perform an inspection of the subject property, but then stated he made only an exterior inspection. He was informed that the subject property has a finished lower level and that the square footage for this area was utilized by both the appellant's and the intervenor's appraisers to arrive at an estimate of value. Ryan testified that in apartments, the basement would not be included to arrive at a value and opined that he did not utilize the lower level square footage of the subject to have more comparability to apartment buildings.

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

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. *Property Tax Appeal Board Rule* 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Property Tax Appeal Board Rule* 1910.65(c).

Having considered the evidence presented, the PTAB concludes that the appellant has satisfied this burden and that a reduction is warranted.

In determining the fair market value of the subject property, the PTAB closely examined the parties' two appraisal reports. The PTAB accords little weight to the board of review's evidence for the report lacked the preparer's testimony to explain the methodology used therein. Moreover, the PTAB found: missing analytical components, limited property data, and limited analysis.

That having been said, the PTAB then looks to the remaining evidence that comprises; Ms. Merkelstein's testimony; the Moody appraisal and testimony submitted by the appellant; the Gibbons appraisal and testimony submitted by the intervenor(s); and the testimony of the appellant's review appraiser, Ryan. Each appraiser, who also testified in this proceeding, considered the three traditional approaches to value to arrive at a final conclusion of value.

The PTAB gives less weight to the intervenor's appraisal due to several flaws in each approach. In the cost approach, Gibbons included entrepreneurial profit of 15% to the replacement cost of the improvement. The PTAB finds persuasive the testimony of Moody and Ryan that a nursing home is not a property that would be built on a speculative basis. Moreover, Gibbons testified, of the improved sales analyzed in the sales comparison approach, he was unaware of any that were built by a developer and sold for a profit. But, knowing this, Gibbons still included an entrepreneurial profit that increased the estimate of value under the cost approach.

In Gibbon's first method under the income approach to value, the leased comparables were not located within Chicago and three of the four leases were entered into prior to 1990. In addition, he did not extract business value from this because he estimated the value on an absolute net basis and, in his opinion, this value would not include the business. In the second method, Gibbons testified that business value was included in the expenses reported for the officers' salaries and within the management expenses. However, Ms. Mermelstein, as the owner, is involved in the day to day running of the nursing home. The PTAB finds that the management of the nursing home is exclusive of the ownership of the nursing home and the income from management should be separate from the profit expected as the owner. *The Encyclopedia* *of Real Estate Appraisal* addresses nursing home business value by stating

> "[t]he owner-operator expects a business profit for running the nursing home, and a return on his investment in the facility ... in the income approach to value, this compensation or business profit must be segregated from the entire net income earned by the facility so that only a real estate net income remains ...."

Gibbons may have accounted for the fact the subject property was managed by an owner-operator, however, he did not account for the owner's expectations of the return on the investment of owning the nursing home.

In the sales comparison approach to value, Gibbons deducted personal property from sales that made note of such property; however, he did not account for any business value involved in the sale the comparables and made no adjustments based on this value. Gibbons recognized the higher occupancy of some of the sales, but made no significant adjustments for this.

Therefore, the PTAB finds the best evidence of market value for the subject property to be the appraisal submitted by Moody. As stated previously, Moody considered the three approaches to value to arrive at a conclusion of market value for the subject.

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. <u>Chrysler Corp. v. Illinois Property Tax Appeal Board</u>, 69 Ill.App.3d 207 (2nd Dist. 1979). In <u>Willow Hill Grain, Inc. v. Property Tax Appeal Board</u>, the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach. 187 Ill.App.3d 9 (5th Dist. 1989). In the instant appeal, the PTAB gives less weight to this approach.

In the sales comparison approach, Moody presented six comparable sales. However, four of these sales were part of bulk sales. Bulk sales include multiple properties purchased at the same time for one price. After the sale, the parties to the transaction can assign individual values to each property sold. The PTAB finds that little weight should be given to these sales, as Moody failed to establish that the individual sales used as comparables within the bulk sales were at their actual market values. In addition, once Moody arrived at a market value for both the business and the real estate under this approach, he extracted the business value by capitalizing the business value within the income approach by 40%. Moody testified that he chose this rate based on the high risk involved in managing a nursing home and that there was not market evidence to support the rate. The PTAB finds the application of this rate is speculative. Therefore, based on these reasons, the PTAB, while giving minimal weight to the sales comparison approach, will give primary consideration to the cost and income approaches to value as estimated by Moody.

In the cost approach, Moody properly excludes entrepreneurial profit in developing a replacement cost new for the subject improvement. In the income approach to value, Moody looks to the subject's income and stabilizes this income based on an analysis of other nursing homes within the market. He made deductions for the return on and the return of the personal property. Finally, Moody extracted the business value from the gross revenue. Moody did this based on several factors and then tested his conclusion by reviewing rental rates for studio and efficiency apartments in the area. The PTAB finds Moody's reasoning that a room within a nursing home is similar to an efficiency apartment persuasive.

Based upon this evidence, the PTAB finds the fair market value of the subject property as of January 1, 2003 was $1,930,000. Since the market value of the subject has been established, the Cook County Real Property Classification Ordinance level of assessments for Cook County Class 5A property of 38% will apply. In applying this level of assessment to the subject, the total assessed value is $733,400 while the subject's current total assessed value is above this amount. Therefore, the PTAB finds that a reduction is warranted.

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: May 27, 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.