

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Calumet Transfer, LLC
DOCKET NO.: 03-28386.001-I-3 thru 03-28386.017-I-3
04-25663.001-I-3 thru 04-25663.017-I-3
PARCEL NO.: See Page 19 & 20

The parties of record before the Property Tax Appeal Board (hereinafter PTAB) are Calumet Transfer, LLC, the appellant, by Attorney David C. Dillon with the law firm of Dillon and Nash in Chicago; the Cook County Board of Review by Cook County Assistant State's Attorney Marie Smuda; and the Chicago Board of Education, the intervenor, by Attorneys Stephen H. Pugh and Cambi L. Cann with the law firm of Pugh, Jones, Johnson & Quandt in Chicago.

The subject property consists of an irregular shaped 89.92 acre site commonly known as the "blast furnace facility" improved with 15 to 20 industrial buildings of varying age, size, function and condition. The appellant, via counsel, argued that the fair market value of the subject is not accurately reflected in its assessed value.

The PTAB finds that these appeals are within the same assessment triennial, involve common issues of law and fact and a consolidation of the appeals would not prejudice the rights of the parties. Therefore, pursuant to Section 1910.78 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.78) the PTAB consolidated the above appeals.

In support of this market value argument, the appellant submitted a summary report of a limited appraisal of the subject with an

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the Cook County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: See Page 19 & 20
IMPR.: See Page 19 & 20
TOTAL: See Page 19 & 20

Subject only to the State multiplier as applicable.

PTAB/0750/1JBV

effective date of January 1, 2003 and an estimated market value of \$880,000 and an appraisal update with an effective date of January 1, 2004 confirming the estimated market value of \$880,000 as arrived at and incorporated by the January 1, 2003 appraisal.

The appellant's first witness was Alan Beemsterboer, the manager of Transload, LLC and vice-president of Lakeshore Coal Handling Corporation. In 2003 and 2004, Mr. Beemsterboer was manager of Calumet Transfer, LLC. Beemsterboer testified that the company was formed when it purchased a coke plant located just south of the subject property. Beemsterboer testified that his business primarily involves transloading or taking materials, such as coal, that come in by one means of transportation and loading it onto another means of transportation for shipment elsewhere.

Beemsterboer testified he became aware of the offer for sale of the subject property from billboards located on the property and then by three documents sent to Calumet Transfer giving notice of the auction sale for the subject. He stated he attended the auction and bid on the subject. Beemsterboer testified that Calumet Transfer was the only bidder with a bid of \$550,000 or \$600,000 and that this bid was accepted at this auction. He testified that he then appeared before the bankruptcy court in November where there was another auction for the subject property and Calumet Transfer had to rebid. He stated the final bid that was accepted by the bankruptcy court was \$880,000 plus the unpaid taxes.

Beemsterboer reviewed Appellant's Exhibits #1 and #2, the quit claim deed and closing statement, respectively, for the subject property and stated the total sale price of \$1,117,282.14 included outstanding taxes. Appellant's Exhibit #3, a copy of the bankruptcy order for the sale of the subject property was presented to Beemsterboer who acknowledged that the bankruptcy court judge accepted the sale of the subject property for the price listed in the purchase agreement at \$880,000. Subsequent to the hearing a certified copy of the court order was received by the PTAB and all parties.

Beemsterboer testified that he inspected the property sometime in July or August 2002, prior to the sale and found that he could hardly drive through the property. He stated the buildings appeared to be falling apart. He testified that Calumet Transfer purchased the land as if vacant because the previous owner had sold the buildings for scrap to a salvage company at the first auction.

In response to questions, Beemsterboer testified that Calumet Transfer paid all the taxes on the property and did not receive any reimbursement from the salvage company for the taxes on the improvements. He also stated that he did not receive any money from the salvage company from the demolition of the buildings.

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Beemsterboer testified that most of the buildings were demolished by the salvage company, which took several years to remove, and were still partially or totally in place during 2003 and 2004. He testified that two buildings were never removed and remained in place until the sale of the property in 2007.

On redirect, Beemsterboer was, again, questioned on the subject's purchase agreement and the contract between the salvage company and the previous owner, marked as Appellant's Exhibit #9, Acquisition Documentation. He testified that Calumet Transfer purchased the property with the exclusion of the items listed in "Exhibit C" of the Appellant's Exhibit #9.

On final cross, Beemsterboer testified that the property was sold in 2007 and included the two remaining buildings on the subject property in the sale.

The next witness called by the appellant was Howard B. Richter who authored the appraisal submitted into evidence. Mr. Richter testified that he is a principal in the appraisal firm of Howard B. Richter & Associates. He indicated he has worked as an appraiser since 1974. Richter stated he is a state-certified appraiser in Illinois and that he holds a MAI designation with the Appraisal Institute. He has served on several appraisal committees and has taught several appraisal classes at colleges or universities. Richter testified he has appraised approximately 50 properties per year over the last 10 to 12 years. Richter was offered as an expert in the field of property valuation and, without objection from the remaining parties, was accepted as such by PTAB.

The appellant's appraisal gave an estimate of market value as of the effective date of January 1, 2003 of \$880,000. This appraisal was marked as Appellant's Exhibit #6. The appraisal reflects that a personal inspection of the subject property was undertaken on March 11, 2004. Richter testified the property is located between the Calumet River and Burley Avenue on the far south side of Chicago. He stated there are a number of properties along the east bank of the Calumet River and there is no physical distinction between them.

Richter testified that he conducted an exterior inspection of the property and was appraising the property as vacant. He stated he determined that the property was sold as vacant by reviewing the deed and the purchase agreement and through discussions with the appellant's attorney. He also testified that the condition of the buildings in mid-demolition status made it clear that they were not contributing to the value of the land and may be a detriment to the value.

Richter stated he was guided through the inspection by an employee of Calumet Transfer and was presented with an aerial photograph of the subject property, which was marked as

Appellant's Exhibit #7. Richter outlined the route he traveled for inspection of the property on this exhibit in orange. He described the property as a large site, flat in terrain, about four or five feet above the river height with a number of derelict buildings or remnants of buildings throughout the site. Richter testified that two buildings were intact: a metal warehouse building and an office building. He stated he was inside the metal building, but not the office building as he did not have the proper safety equipment for such an inspection. He testified the other buildings appeared to be in various stages of disassembly.

Richter testified the main property is zoned M3-3 and the two smaller parcels are zoned M1-2. He stated that M3-3 is heavy industrial zoning which is one of the most permissible zoning classifications in Chicago and that the M1-2 is a more restrictive manufacturing classification.

As to future use of the property, Richter testified because of the zoning, character of the surrounding development and lack of street exposure, there would be no practical use other than manufacturing-type uses. He testified that he determined the highest-and-best use of the property to be moot as it was hard to say that there would be any use for the property, if manufacturing was eliminated.

Richter testified he considered the sale of the subject property in December 2003 as part of his analysis for estimating the market value for the subject. He opined that the auction sale met the conditions of proper exposure to potential buyers and that no one acted under duress or hastily as required to meet the definition of market value.

As to environmental conditions, Richter testified he did not consider any adverse environmental conditions when appraising the property. In analyzing the neighborhood, Richter testified he observed large tracks of undeveloped industrial land throughout the immediate vicinity of the subject and the broader market area and that this area is underserved by interstate highways.

Richter testified that the subject property has virtually no street access. He stated there is a single entrance at the far corner of the property which is covered by cross easements with other industrial properties. He further testified that there is very poor access within the property. Richter noted there was rail service at one time on the site, but could not determine if it operated currently.

The appellant's appraisal utilized the sales comparison approach to value in estimating the subject's market value. Under this approach, Richter considered three sales directly adjacent to the subject or within four blocks. Richter testified he did not utilize more sales because he opined the three sales had similar

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characteristics with the subject to be adequate and that the sale of the subject as an arm's length transaction was the best available data.

As to sale #1, Richter testified this property is entirely vacant land that has never been put into any service. He referred to the property as "the buffer property" and explained that it was left vacant by the owners to provide a buffer between the industrial development and the nearest homes. This property is immediately southeast of the subject's main parcels. Richter considered this property inferior to the subject because it did not have river frontage and that many of the streets, that did not physically exist, but were on the plat of survey, would have to be vacated from any maps. This property sold in June 2003 for \$150,000 or \$3,450 per acre.

Sale #2 is a 96.5 acre site located immediately south of the subject's main parcels. Richter opined that this property was basically a twin of the subject property. He testified this property is physically contiguous and undistinguished from the subject. Richter noted he made minimal adjustments to the sale price for inferior access and a larger size. He testified this property was also owned by the appellant and purchased at auction through the bankruptcy courts. He opined that the sale was well advertised and without duress to be an arm's length transaction. This property sold in December 2002 for \$850,000 or \$8,808 per acre.

Richter was directed to sale #3 and testified that this property is located immediately south of comparable #2. This property is 81.5 acres and improved with numerous buildings totaling 1,500,000 square feet of building area. Richter testified that some of the buildings, approximately 500,000 square feet, were still in use. The appraisal notes this property sold in January 2001 for \$6,000,000. However, the sales contract allocated \$3,000,000 to the building improvements and \$1,500,000 to other assets listed in the contract. Richter testified the land sold for \$1,500,000 or \$18,385 per acre.

Richter testified the appraisal included the sale of two additional properties in the discussion of comparable #3 to show allocation of price per acre on land versus buildings and to indicate the deterioration of prices paid for vacant land in the immediate market area.

Richter testified that, based on all the factors for the comparable properties, he estimated a value for the subject property as vacant on January 1, 2003 of \$880,000.

Appellant's Exhibit #8, the 2004 appraisal update for the subject property, was presented to Richter. He testified that he reviewed the sales of three additional properties in updating the value of the subject property for January 1, 2004.

Richter testified the first sale at 11201 S. Torrence Avenue was much smaller at 23 acres and purchased by a party that owned the adjacent site. He testified that based on the date of sale, he would not consider this sale comparable to the subject for a January 1, 2003 valuation. This property sold in July 2004 for \$26,975 per acre. Richter stated significant downward adjustments were made for the smaller size of the property and the incentive to pay a higher price than market for an adjacent owner.

As to 11237 Torrence Avenue, Richter testified this 44 acre site is located on the Calumet River and sold at auction in February 2004 for \$22,727 per acre. He stated he made downward adjustments for size and shape.

Richter testified the sale of both sides of 183RD Street, West of Vincennes Avenue is a 107 acre site with excellent frontage on two well-tracked streets, but does not have river frontage. Richter noted that there were buildings located on the property, but that they would not be used per a non-compete clause within the sales contract.

Richter estimated the value of the subject property on January 1, 2004 to be unchanged from the value arrived for the subject on January 1, 2003. Mr. Richter opined that in developing the January 1, 2004 value and appraisal update letter, he followed all requires of the Uniform Standards of Professional Appraisal Practice (USPAP).

Under cross-examination by the Chicago Board of Education, Richter acknowledged that the seller for the subject property in 2003 was under the jurisdiction of the bankruptcy court and that the subject property sold in 2003 to Calumet Transfer pursuant to approval from the bankruptcy court. Richter testified he considered the sale under the bankruptcy court and that he addressed this sale within the appraisal, but acknowledged he did not specifically state that the subject property was under the jurisdiction of the bankruptcy court anywhere in the appraisal.

Richter opined that the purchase price of \$880,000 included the unpaid real estate taxes on the subject property prior to the sale. He testified he did not break down the amount of unpaid real estate taxes because appraisers look to the total consideration made which includes all these costs. Richter testified it is his belief that the \$880,000 purchase price included the \$387,078 for unpaid back taxes.

Richter agreed that the subject property was under the jurisdiction of the bankruptcy court and that the sale was required to be approved by the court. Richter testified that an owner of a property that is under the jurisdiction of the bankruptcy court is ready, willing and able to sell the property without being compelled to do so because the bankruptcy court has

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the final authority to approve or reject the sale. Richter stated, in the instant case, it was not an important piece of information to include in the appraisal report.

Richter was not aware of the subject property being located in any Tax Financing District (TIF) or Enterprise Zone 3. In addition, he opined the subject was not within Lake Calumet Harbor. He also opined that the subject would not be affected by the proximity to the Port of Chicago and stated he was not familiar with the International Port District.

Richter testified he was not familiar with any phase 1 or phase 2 environmental studies on the subject property and that if he knew of any, this information would have been important for the appraisal report. He further stated he was told there was none by the owner of the property, Beemsterboer.

In regard to sales comparables #1 and #2, Richter acknowledged these properties were purchased by the appellant subject to a bankruptcy auction. He opined that these sales were arm's length in that the appellant was not under any duress or compulsion to sell the property, but was only under the compulsion of the bankruptcy court to present the court with a sale that the court could choose to accept or not.

Richter testified he did not consider any sales outside of the state of Illinois in developing an opinion of value for the subject property for many reasons. He testified that some reasons were the tax rates, union wage rates and union requirements, access to properties, and investment criteria of separate market areas.

During cross-examination by the board of review, Richter opined that both the 2003 appraisal and the 2004 update letter comply with requirements of USPAP. Richter testified that of the 16 buildings and specialized equipment on the property, much of it was not present at the site inspection and the report should have indicated that these improvements "once" existed and do not exist at the time of inspection. Richter insisted that the buyer was not compelled to sell the subject property by the bankruptcy court because the bankruptcy court was not the party in ownership and the bankruptcy court was not compelled to sell.

Richter testified that based on the purchase agreement and the letter from the seller's attorney dated November 24, 2003 the purchase price of \$880,000 did not replace the original purchase offer of \$214,500. In addition, he testified that he did look to see if the subject property was located within any TIF and it was not.

As to the highest and best use for the subject, the appraisal stated the only permitted use under the zoning classifications is industrial use. However, the appraisal states earlier that the

subject's zoning classifications are the most intense industrial classifications and permit a broad range of industrial and specified commercial uses. Richter agreed that the subject's zoning would include more than just industrial uses. Richter also testified that there was no apparent potential use for the property in the foreseeable future. He acknowledged that the highest and best use as indicated in the appraisal was as an interim speculative investment and that the highest and best use analysis is rendered moot.

As to sales #1 and #2, Richter again acknowledged that these sales were bankruptcy sales, but that the appraisal never indicates this. Richter opined that these comparables were very similar to the subject in location, access, and zoning. He did acknowledge that sale #1 had a significant adjustment for size.

As to sale #2, the appraisal stated this property contained 18 buildings in varying conditions and that the cost to clear the site for development would exceed the sum of any salvage value of potential reuse of the three older but viable industrial buildings. Richter acknowledged that he did not establish the salvage value of the property.

Richter testified in regards to sale #3 that there was numerous industrial buildings on the property and that the property sold for a total of \$6,000,000. Richter recalled reviewing the plat of survey, the deed or closing statement and the purchase contract for this sale. He testified that the purchase contract allocated \$3,000,000 to the buildings and \$1,500,000 to other assets and concluded the land sold for \$1,500,000. Although Richter opined the land value may have been overstated, he was unable to say how for certain. He acknowledged he did not review the transfer declaration form for this property. His appraisal stated sale #3 had superior zoning, but Richter acknowledged that a large portion of the subject property had the same zoning as sale #3.

When questioned about the sales of the three comparables, Richter acknowledged the appraisal stated the comparables were purchased as speculative ventures with no known or intended use and each has remained vacant for several years. Richter than testified that this statement is no longer correct, but further questioning did not allow him to elaborate. In addition, Richter acknowledged that the statement in the appraisal that the buildings for sale #3 were derelict was incorrect.

In regards to the definition of market value used by Richter in his appraisal, Richter responded to questions by both the board of review and the intervenor that he utilized the definition of market value from the U.S. Office of the Comptroller of Currency as indicated by USPAP. He answered several questions in regards to the Illinois definition of fair cash value.

On redirect, Richter testified that he considers the definition of market value as expressed by the Office of the Comptroller of Currency and the Illinois definition of fair cash value to be synonymous and not in conflict with each other. In addition, he testified he utilized the definition as proffered by the Office of the Comptroller of Currency definition for previous appraisals prepared at the request of the Cook County State's Attorney's Office.

In regards to the industrial buildings and specialized equipment on the subject property, Richter testified that had these structures not been in the process of demolition, they would have been individually inspected and described. He further opined that because they were being demolished, they did not contribute to the value of the property and, therefore, the land was appraised as vacant.

Richter testified that he understood the sale contract to indicate a purchase price of \$601,578.93 that included the outstanding real estate taxes. However, he stated he gave no weight to this amount because he was aware the actual purchase price of the subject was \$880,000. Richter stated he assumed the \$880,000 included the outstanding property taxes, but stated he was uncertain, at the time of hearing, what the total purchase price was because the closing statement included additional charges for taxes which brought the total buyer debt to \$1,117,282.14. Richter was unable to determine if the opinion of value would change based on the additional charges included in the closing statement.

Richter further testified that he would need to investigate the circumstances of sales #1 and #2 to determine if the sale prices of those properties were accurate or if additional charges were included in the closing statements that may have increased the final sale price.

Richter testified as to his definition of voluntary versus involuntary bankruptcy actions. He opined that all cases he has reviewed of voluntary bankruptcy sales did not include the element of duress.

In regards to the 2004 update letter, Richter opined that the format of this report complied with all USPAP requirements. He stated the update letter was an extension of the original appraisal and, therefore, compliant.

Richter testified that he confirmed with the City of Chicago that the subject was not in a TIF district. He further opined that a TIF does not come into effect until there is a specific development plan approved by various governmental agencies and until this plan is complete, there is little, if any, impact on the value of the property. He testified that the TIF would not affect the cost of development or the real estate taxes. Richter

stated a TIF only allocates where the tax revenue goes once collected.

The appellant then recalled the taxpayer, Beemsterboer who acknowledged that the final amount paid for the subject property was \$1,117,282.14. He testified that the appellant owned the property directly south of the subject property and the buffer property prior to the purchase of the subject property.

Beemsterboer testified that the appellant did not undertake any improvements to the subject property in 2003, 2004 or 2005, but that in 2006 the Department of Transportation, Surface Transportation Board allowed the property to be designated as a switching railroad. Beemsterboer then reviewed Appellant's Exhibit #12, a printout from the Department of Transportation publishing the notice of appellant's intent to operate a rail line, and testified that there were several railroads that were adjacent to the subject property. Beemsterboer stated no other action was taken in 2006 with regard to developing the subject property. Appellant's Exhibit #12 indicates a rail line consummated date of January 1, 2005 and the service date is January 21, 2005. Beemsterboer testified there are two and one-half miles of railroad track on the subject property.

Beemsterboer testified that in early 2006 he was contacted by a energy company, Detroit Edison (DTE), to develop the property as a terminal switching facility. Beemsterboer stated the appellant partnered with DTE to design, build and operate a terminal switching facility on the subject property. He explained the coal would come in by rail, the whole rail car would be dumped and then sorted into piles, the piles would be mixed and 95% of the mixture would go out on ships.

Appellant's Exhibit #13 was presented to Beemsterboer. He testified this document listed the costs of building the terminal switching facility on the subject property. Beemsterboer testified the appellant acted as general contractor and DTE provided all the funding to build the facility. He stated the costs to build total approximately \$32,000,000 and noted that this figure appeared on Appellant's Exhibit #13. Beemsterboer stated that the costs did not include a cost increase for a general contractor fee.

Beemsterboer then testified that there are three contracts between the appellant and DTE. The first being a engineering, procurement and construction (EPC) contract that allows for the turnkey facility to be built by the appellant at DTE's expense. The second agreement was a five year, O&M contract in which the appellant operates and maintains the facility under the direction of DTE. Beemsterboer stated the compensation for this contract is on a fee schedule. The third contact, according to Beemsterboer, is the bulk sales agreement where the appellant sells the entire property to DTE. He testified all the contracts

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were entered into in late 2007. Beemsterboer stated the subject property was sold to DTE in April 2007 for \$5,000,000. The appellant presented the PTAB with the three contracts which were marked as Appellant's Exhibits #14 and #15.

Beemsterboer was then questioned in regards to Appellant's Exhibits #16 A, B and C which were photographs of the subject property as of 2007. Beemsterboer testified that the construction of the buildings and equipment depicted in this group exhibit began in the Fall of 2006 and was completed by the sale of the property in April 2007.

In cross examination by the intervenor, Beemsterboer acknowledged the photographs were taken in early 2008 and do not depict the whole property. Beemsterboer testified that Exhibit #16A does not depict any buildings that existed on the property in 2004 with the exception of the concrete wall that is in the photograph. He clarified that the railroad tracks in #16A did not exist in 2003 and that the only tracks on the property at that time were half a track coming into a building.

As to the sale of the subject to DTE, Beemsterboer testified that they sold the land and everything that was on it. He stated that when the buildings were built in late 2006 and early 2007, they were owned by DTE. Beemsterboer opined that the appellant owned the land, but that DTE owned the newly constructed buildings on the property prior to the sale of the property in April 2007. Beemsterboer reviewed Intervenor's Exhibit #2, a copy of the transfer declaration form for the 2007 sale of the subject property. Beemsterboer testified that the appellant did not sell the whole subject property to DTE in 2007, but that a small portion of the subject was sold to PraxAir sometime between 2004 and 2007. In addition, Beemsterboer stated there were a few outlots that were not sold to DTE and continue to be owned by the appellant. Beemsterboer acknowledged the exhibit showed the property sold to DTE for \$4,580,000, but testified that the total sale price after a down payment was \$5,000,000. He stated that this amount included the land, two buildings that were on the property during 2003 and 2004, a machinery shed and a dilapidated office building, and \$750,000 in personal property. Beemsterboer further clarified that the appellant received \$4,250,000 for the land as part of the \$5,000,000 sale to DTE.

The board of review submitted "Board of Review-Notes on Appeal" that reflect the subject's total assessment of \$667,720. The parcels for this property have different classifications and yield a market value of \$1,872,517 or \$20,824 per acre of land using the Cook County Real Property Classification Ordinance for Class 5B property of 36% and Class 1 property of 22%. The board also submitted raw sale information on a total of seven comparables that range from \$8,044 to \$187,500 per acre of land. No adjustments were made for locations, size, or zoning. As a result of its analysis, the board requested confirmation of the

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subject's assessment. At the hearing, the board of review did not call any witnesses.

In support of the intervenor's position, the intervenor submitted two summary appraisals of the subject with effective dates of January 1, 2003 with an estimated market value of \$3,400,000 and January 1, 2004 with an estimated market value of \$3,500,000, marked as Intervenor's Exhibits #3 and #4 respectively. The appraiser is Bill Enright. In addition, the intervenor submitted copies of the transfer declaration forms for a sale of the subject property in February 2007 for \$4,580,000 of which \$3,830,000 was allocated to the real estate.

Enright was the intervenor's first witness in this appeal. Enright testified that he is president of Appraisal Associates and has been a state certified, real estate appraiser for approximately 20 years. He testified he holds the designation of MAI and is also licensed in Indiana. He stated he has performed between 2,000 and 4,000 appraisals where the majority of these appraisals were for industrial properties. Enright was admitted as an expert in the field of property valuation without objection of the remaining parties.

Enright noted several typographical errors within the appraisals, but testified they did not effect the valuation of the property. Enright testified he performed an exterior inspection from the outside of the subject on August 22, 2006 and noted that the property was located in a heavy industrial area improved with numerous older facilities. Enright stated he obtained information with respect to the subject property from the Richter appraisal. He testified he did not gather any information from the Richter appraisal concerning adverse environmental conditions.

Enright testified he reviewed the sale of the subject property in December 2003 for \$880,000 or \$.22 per square foot and learned that it was an auction sale with the seller in bankruptcy. He also stated that the area was well-known to have extensive environmental contamination. He testified that in the course of performing several appraisals in the area and from reading several articles about the area, that the parcels within the subject's area have undergone remediation for several years since the 1990s. Enright opined that this sale price was not indicative of the market because it was an auction sale with limited market time and a seller that was in bankruptcy.

Enright testified that the highest and best use of the subject property was for industrial use. He stated he did not include any of the buildings in determining a market value for the subject and the property was appraised as vacant.

Enright testified he utilized the sales comparison approach to estimate a market value. Under this approach, Enright examined five suggested sales comparables. The properties ranged in size

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from 2,526,480 to 8,973,360 square feet of land area and sold from February 2000 to February 2002 for prices ranging from \$2,625,000 to \$88,950,164 or from \$.44 to \$1.75 per square foot of land area.

Enright was then shown Intervenor's Exhibit #6, a colored aerial map of the area with colored bubbles showing the location of both Enright's and Richter's comparables. There was discussion as to the names of the sellers inserted in the bubbles and their correctness and it was revealed that there were discrepancies in the document. Enright testified his sales ranged in distance from less than half a mile to three miles from the subject.

Enright testified that none of the sales used in his appraisal sold subject to bankruptcy. He further stated he did not use any bankruptcy sales, similar to the subject, because there were sufficient sales within the market.

As to sale #2, Enright noted this property was located in Indiana approximately three miles from the subject. He opined this property was comparable to the subject due to its size, zoning and proximity to the subject. He testified upward adjustments were made for market conditions and river access and downward adjustments were made for size and ingress and egress. Enright opined it was appropriate to utilize sales from properties located outside the subject's state.

Enright testified there was a typographical error in the address of sale #3, but did not have an effect on the valuation of the subject. He opined the property was similar to the subject in size, location and zoning. He testified he made several adjustments to this property.

The appraisals also indicate additional market data which includes four additional sales. Enright testified he listed these additional sales to show the market and that there were other large parcel transfers. Enright discussed the details of those sales. Enright testified he did not utilize these sales to estimate a market value for the subject property.

After making adjustments, Enright testified he determined a value for the subject to be in the middle of the range of the comparables at \$.75 to \$1.00 per square foot. He testified he estimated the value for the subject property as of January 1, 2003 to be \$3,400,000 and for January 1, 2004 to be \$3,500,000. Enright testified the difference in value is due to time and market conditions.

Upon cross-examination, Enright explained that his appraisal indicates that five additional parcel identification numbers (PIN) were included in documents prepared by Information Services of Illinois as being transferred to the appellant during the sale. However, he testified he did not consider these PINs when

estimating the value for the subject property. He acknowledged that the most accurate information of the sale would appear on the deed to that sale.

Enright was questioned regarding his training on evaluating environmental issues and how to apply known environmental contamination to an appraisal. Enright testified he had no knowledge of known environmental contamination on the subject property. He also testified he did make an upward adjustment to one comparable for environmental contamination because that comparable was known to have contamination.

As to sale #1, Enright acknowledged that this property was located in the Chicago Manufacturing Campus and that there were considerable incentives given by the City of Chicago to facilitate this sale. However, Enright did not have the specific information concerning those incentives with him at the time of hearing. He did acknowledge that no adjustments were made for these incentives.

Enright acknowledged that sale #2 was of a property located in a new industrial area in Hammond, Indiana. He also agreed that the park is being operated under the auspices of the City of Hammond to stimulate development in the area. Enright acknowledged that Indiana has a different tax structure than Illinois, but made no adjustment for this difference.

For sale #3, Enright testified that this property, along with the subject property, is located within a TIF district and funding was available from the City of Chicago for a variety of purposes. Enright acknowledged that the CoStar Comp printout for the property indicates \$3,920,000 as a purchase price. Enright testified that the purchase price was \$8,950,164 and then as an incentive to the developer, the City would then give them money back or reimburse them for site acquisition and site preparation costs. After further questioning, Enright agreed that for the total purchase price of \$8,950,164 came from two sources: the buyer at \$4,700,000 and the City of Chicago.

In addition, Enright acknowledged that this property had Lake Michigan frontage, the amount he was not aware of, that included two large ship slips. Enright later testified he was not sure if the buyer obtained the slips in the purchase.

Enright testified he made a qualitative, not quantitative, adjustment to sale #4 for environmental contamination. He also noted that there were some improvements on the property, but he could not recall those improvements. He agreed that the improvement could be 1,000,000 square feet in building size. The appraisal indicated the improvements would be demolished.

As to sale #5, Enright acknowledged this property is also located in the Chicago Manufacturing Campus and received the benefit of

economic incentives. He stated he made no adjustments to this comparable for these incentives. Enright testified that sale #1 was a portion of this sale. He testified that a qualitative adjustment was made to these two sales for access which included the new street, curbs and gutters put in place by the City of Chicago.

The appellant re-called Richter as a rebuttal witness. Richter stated that the board of review's evidence included CoStar Comp sales and a memo listing these sale prices per acre. He opined that the evidence was not an appraisal, but simply adjusted sales of properties that were not comparable to the subject.

Richter than addressed the Enright appraisal submitted by the board of education. Richter testified that Enright's sale #1 includes inaccuracies in regards to the address and opined that this affects the credibility of that sale. In addition, he opined that the sale was irrelevant to the subject because this property is located within a fully developed industrial park with full infrastructure and incentives provided by the City of Chicago to the buyer. Richter also testified the sale was between related parties.

As to Enright's sale #2, Richter testified that this property was not comparable to the subject because it is located outside of Illinois. He opined that the economic factors are different from Illinois and, therefore, make the property not comparable.

Richter testified that sale #3 in the Enright appraisal has some limited degree of comparability for estimating the value of the subject property. However, he opined that the information provided by Enright was incomplete in the location of the property and that, in his belief, the sale price was \$4,700,000 and not \$8,950,000 as listed in the Enright appraisal. Richter also noted this property includes deep water slips on Lake Michigan which can accommodate large vessels.

Richter testified sales #4 and #5 could be adequate comparables if properly adjusted. He opined that both sales were not adequately described in the Enright appraisal. He stated sale #4 should have been adjusted for the improvements that continued to be used after the sale and that sale #5's purchase price was overstated when Enright included the incentives in this price.

Richter than addressed the additional market data that was included in the Enright appraisal.

Under cross-examination by the board of review, Richter was questioned in regards to compliance with USPAP when conducting appraisal reviews and who helped him prepare his review. He also testified that he would not use a sale of a property in Indiana as a comparable to establish the value for a property located in Illinois.

Under cross-examination by the intervenor, Richter testified he referenced sale #1 by a different address. He opined that the address listed in the Enright appraisal for this comparable was not accurate. Richter acknowledged that the names of the buyer and seller for this comparable do not, on their face, indicate that the parties are related. Richter testified he did not have any documentation to show that the parties were related.

Richter testified that the sale price for the subject property was \$880,000, but acknowledged his previous testimony that he was no longer sure of the sale price and that the price could have been \$1,117,282.14. However, Richter testified he still believed the purchase price of the subject property approved by the bankruptcy court to be \$880,000.

Richter was then questioned in regards to the additional market data included in the Enright appraisal.

On re-direct, Richter testified he first believed the purchase price to be \$601,000 and that this amount was rejected by the bankruptcy court and a new purchase price of \$880,000 was accepted. He then stated that he made no adjustments to the sales comparables in the Enright appraisal because he believed the sales to be inappropriate.

Richter reiterated that the price per square foot for Enright's sale #2 at \$.80 per square foot was consistent with his value of the subject at \$.22 per square foot because this is an example of how some sales, such as Enright's sale #1, had no comparability to the subject property and some sales, such as sale #2, had a very limited degree of comparability.

Richter then testified to the accuracy of Enright's appraisal in regards to the additional market data. In response to questions regarding TIF financing, Richter stated that the subject was located within a TIF district and that only one TIF financing was given to a property owned by Keebler.

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. *Ill.Admin.Code 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. *Ill.Admin.Code 1910.65(c)*.

Having considered the evidence presented, the PTAB concludes that the appellant has not satisfied this burden and that a reduction

is not warranted. Moreover, the PTAB finds the intervenor has not met this burden either and that an increase is not warranted.

In determining the fair market value of the subject property for tax years 2003 and 2004, the PTAB closely examined the parties' two appraisal reports and the appellant's rebuttal evidence. The PTAB accords little weight to the board of review's evidence because no witness was called to provide testimony and be cross-examined about the data and to explain the methodology used. Moreover, the PTAB found the evidence lacked analytical components, had limited property data, and had limited analysis.

In addition, PTAB accords little weight to the sale of the subject in December 2003 because of the inaccuracies testified to by both the taxpayer and the appraiser in regards to the inclusion of outstanding taxes within the sales price. Richter testified that, although he now knew the closing statement to include other costs, he still believed the sale price to be \$880,000. In addition, the circumstances surrounding the sale at a bankruptcy auction call into question the arm's length nature of the transaction and do not establish that the sale price was at market value. In addition, the PTAB accorded little weight to the sale of the subject in 2007. First, the PTAB finds a sale that occurred in 2007, three and four years after the assessment dates at issue, is not relevant or probative of the subject's market value as of January 1, 2003 and January 1, 2004. Furthermore, there was un-rebutted testimony that extensive work was performed on the property totaling over \$32,000,000 to prepare it for sale in 2007. The condition and physical characteristics of the subject in 2003 and 2004 bore no resemblance to that in 2007.

That having been said, the PTAB then looks to the remaining evidence that comprises the Richter appraisal and testimony submitted by the appellant; the Enright appraisal and testimony submitted by the intervenor(s); and Richter's testimony in regards to the reviews of the board of review and the intervenors evidence.

The PTAB finds that both appraisers utilized the sales comparison approach to value. Both appraisers also valued the property as vacant land. The PTAB finds that there were several structures on the property; two of these structures were never demolished and were sold in 2007. In addition, the evidence and testimony indicates that the appellant paid the taxes for the improvements located on the subject and Appellant's Exhibit #9 does not state the property was vacant at the time of sale. The PTAB finds that the appellant failed to provide sufficient evidence to establish that the improvements on the subject property were owned by entities other than the appellant. The PTAB finds that neither appraiser adequately considered the two remaining buildings as of the assessment dates at issue.

Turning to the value of the land, the appellant's sales #1 and #2 were accorded little weight because the credibility of these sales are in question. Richter testified that these properties were sold at auction as part of bankruptcy proceedings, however, the appraisal never indicated this. Although Richter found these sales to be arm's length, the inclusion of the circumstances of the sales would have bolstered his opinion of the arm's length nature. By not including this information, it clouds the appraiser's judgment and calls the arm's length nature of the sales into question. In addition, Richter testified that the final purchase prices as listed in the appraisal may be different because outstanding taxes may have been included in these sales, but not recorded within the purchase price.

As to appellant's sale #3, the PTAB finds that this property is similar to the subject in size and location. The sale price as listed in the appraisal allocates a value to the land based on the sales contract. The contract allocated values to improvements, land, and other assets. In the instant appeal, the subject property is not vacant land. The PTAB finds the value for this comparable property should have included both the value for the land and the value for the improvements, which calculates to a purchase price of \$4,500,000 or \$55,154 per acre.

As to the intervenor's appraisal, the PTAB gave little weight to its sales comparable #2 as it is located in Indiana. The PTAB found credible, with regards to this topic, Richter's testimony that, for industrial properties, the economic factors between the jurisdictions of different states limits the comparability for valuation purposes.

In addition, intervenor's sales #1, #3 and #5 received considerable incentives from the City of Chicago to purchase the property. Although the subject property was located within a TIF district, those incentives were never part of the purchase of the subject property during that same time period nor was there any testimony that the subject property was offered any incentives at any time. The direct involvement of the City of Chicago to influence those sales makes the sale prices questionable and, therefore, limits their comparability.

The appellant also included several additional sales within its 2004 appraisal update. There was no testimony to rebut the comparability of these properties. The board of review and the intervenor did not address these sales in any way, but focused on the format of the update and its compliance with USPAP. In the instant appeal, compliance with USPAP goes towards the credibility of the appraiser. The PTAB finds that in all substantive matters, the appraisal update complies with USPAP.

There was a great deal of testimony in regards to the additional sales submitted within the intervenor's appraisal. Enright testified that the comparability of these properties was not

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addressed and that they were not utilized as comparables. The PTAB finds that there was sufficient testimony from both parties for the PTAB to determine that these properties should not be considered in valuing the subject property and they are given little weight.

The remaining sales given significant weight by the PTAB have sales dates from July 2000 to July 2004 and sales prices ranging from \$625,000 to \$4,500,000 or from \$8,411 to \$55,154 per acre or \$.19 to \$1.26 per square foot of land. The subject property's current assessed value equates to a market value of \$1,872,517 or \$20,824 per acre or \$.48 per square foot of land. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments and differences for sale date, location, condition of the land, building conditions, and type of legal conveyance in the appellant's and the intervenor's suggested comparables, the PTAB finds that the subject's current 2003 and 2004 assessments are supported by these comparables sales contained in this record.

As a result of this analysis, the PTAB finds that the evidence and testimony has not demonstrated that the subject property was incorrectly valued and that a change in the subject's assessment is not warranted.

DOCKET #	PIN	LAND	IMPRVMT	TOTAL
03-28386.001-I-3	26-18-100-005	\$ 78,031	\$11,853	\$ 89,884
03-28386.002-I-3	26-18-200-007	\$ 15,681	\$ 1,740	\$ 17,421
03-28386.003-I-3	26-18-200-009	\$105,888	\$15,217	\$121,105
03-28386.004-I-3	26-18-200-011	\$ 9,832	\$11,383	\$ 21,215
03-28386.005-I-3	26-18-200-013	\$ 7,307	\$ 796	\$ 8,103
03-28386.006-I-3	26-18-200-019	\$ 4,946	\$ 163	\$ 5,109
03-28386.007-I-3	26-18-200-020	\$ 11,911	\$ 177	\$ 12,088
03-28386.008-I-3	26-18-200-021	\$129,491	\$59,394	\$188,885
03-28386.009-I-3	26-18-205-049	\$ 3,061	\$ 0	\$ 3,061
03-28386.010-I-3	26-18-210-021	\$ 429	\$ 0	\$ 429
03-28386.011-I-3	26-18-210-023	\$ 16,133	\$ 728	\$ 16,861
03-28386.012-I-3	26-18-215-059	\$ 6,545	\$ 0	\$ 6,545
03-28386.013-I-3	26-18-301-010	\$ 19,752	\$ 443	\$ 20,195
03-28386.014-I-3	26-18-301-011	\$ 64,106	\$ 529	\$ 64,635
03-28386.015-I-3	26-18-400-003	\$ 42,841	\$ 5,234	\$ 48,075
03-28386.016-I-3	26-18-402-005	\$ 30,833	\$ 359	\$ 31,192
03-28386.017-I-3	26-18-408-005	\$ 11,812	\$ 1,105	\$ 12,917

DOCKET #	PIN	LAND	IMPRVMT	TOTAL
04-25663.001-I-3	26-18-100-005	\$ 78,031	\$11,853	\$ 89,884
04-25663.002-I-3	26-18-200-007	\$ 15,681	\$ 1,740	\$ 17,421
04-25663.003-I-3	26-18-200-009	\$105,888	\$15,217	\$121,105
04-25663.004-I-3	26-18-200-011	\$ 9,832	\$11,383	\$ 21,215

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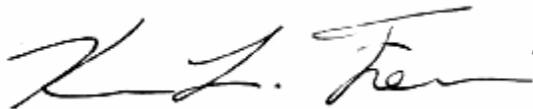
04-25663.005-I-3	26-18-200-013	\$ 7,307	\$ 796	\$ 8,103
04-25663.006-I-3	26-18-200-019	\$ 4,946	\$ 163	\$ 5,109
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04-25663.017-I-3	26-18-408-005	\$ 11,812	\$ 1,105	\$ 12,917

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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: October 31, 2008



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

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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.