PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Moline Apartments, L.P.
DOCKET NO.: 05-00360.001-C-3
PARCEL NO.: 07/256

The parties of record before the Property Tax Appeal Board are Moline Apartments, L.P., the appellant; by attorney Thomas W. Kelty of Kelty Law Offices, P.C., Springfield, Illinois; and the Rock Island County Board of Review.

The subject property consists of a six building apartment complex that was built in 1998/1999 situated on 571,072 square feet or 13.12 acres of land area commonly known as Crown Forest Apartments. The part two-story and part three-story apartment buildings are of vinyl and brick exterior construction that were built over concrete slab foundations. Each building contains 20 apartment units totaling of 108,680 square feet of gross building area. The apartment mix includes 20 one-bedroom apartments; 60 two-bedroom apartments; and 40 three-bedroom apartments, with an average unit size of 906 square feet. Six units are handicapped equipped. Other amenities of the complex include an outdoor swimming pool, a 1,950 square foot clubhouse building, a maintenance/laundry facility, 187 paved parking spaces, and ten, four stall garages.

The apartment complex was constructed and operated as a Section 42 low income housing tax credit project (LIHTC) under the United States Department of Housing and Urban Development (hereinafter HUD). One hundred apartment units are limited to households which qualify as low income at rental rates that may not exceed specified maximum amounts. Twenty apartment units can be offered at prevailing market rents.

The appellant appeared before the Property Tax Appeal Board by counsel claiming overvaluation as the basis of the appeal. The subject matter of this appeal was part of a consolidated hearing along with Docket Number 05-00359.001-C-3. Both appraisers testified the testimony given under Docket Number 05-00359.001-C-

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

LAND:	$ 225,584
IMPR.:	$ 1,069,342
TOTAL:	$ 1,294,926

Subject only to the State multiplier as applicable.

3 would be essentially the same or similar with respect to methodology and selection of comparables in this instant appeal, with the exception of the subject's descriptive information and final valuation conclusions. The appellant's counsel moved that the testimony given under Docket Number 05-00359.001-C-3 be adopted for Docket Number 05-00360.001-C-3 without objection.

In support of the overvaluation argument, the appellant submitted an appraisal report which estimated the subject's market value to be $3,450,000 as of January 1, 2005. The appraiser, Howard B. Richter, was present and testified regarding the appraisal methodology and value conclusion contained within the valuation report. In addition, the testimony of Thomas Dobbin, vice president of McCormick Baron Asset Management was presented.

The appellant first called Thomas Dobbin as a witness. Dobbin testified his duties include asset and property management, including overseeing operations of Moline Apartments in East Moline, Illinois. He testified he engaged Howard B. Richter to prepare an appraisal of the subject property. Dobbin testified he provided Richter with three years of audited financial statements and the subject's rent roll as of January 2005.

Under cross-examination, Dobbin testified the subject's financial records were submitted during the local board of review appeal process, but this information was not provided to the local assessor. Dobbin testified if requested he would have supplied said documentation. The board of review's representative alleged that this information was requested by the local assessor. Under redirect examination, Dobbin testified he does not customarily send financial records to assessors throughout the State of Illinois. In addition, Dobbin could not recall a request for the subject's financial records prior to the assessment of the subject property.

The next witness called by the appellant was real estate appraiser Howard B. Richter, a state licensed appraiser who holds several professional designations in the field of real estate valuation. The board of review had no questions regarding Richter's qualification to provide expert testimony in this appeal. Richter testified he has performed many appraisals of subsidized low income housing projects at the request of the Illinois Housing Development Authority, including at least six properties in Rock Island County.

The appraiser first gave a short summary of the appraisal methodology and Section 42 low-income housing. Richter testified the subject property is a low income housing tax credit property (LIHTC). Under this program, developers or purchasers agree to limit tenancy to people who have incomes less than a percentage of the area wide median income and charge rents that do not exceed a certain level, which are typically below the market rents of that particular community. Richter testified developers and purchasers of Section 42 housing projects are not able to remove the restrictions for these projects for a set period of time from 15 to 30 years. Richter testified that Illinois passed legislation mandating the method by which Section 42 low income housing projects are to be valued for ad valorem taxation purposes. He testified state law requires a Section 42 project to be valued by the income approach, using only low income rental rates. Richter testified these types of projects are subject to a detailed review of their annual operations by the sponsoring agencies, in Illinois, the Chicago Housing Authority and the Illinois Housing Development Authority, and on the federal level, by either HUD, Fannie Mae or Freddie Mac.

Richter testified because of the LIHTC agreement, economic rents must be determined by comparison with other similarly restricted properties because the owner is not free to charge market rents. Thus, Richter testified the subject's economic rental rates are based in part on the current operations of the property, but also by comparison with other low income properties. Richter also indicated Illinois law requires the use of a 5% vacancy rate rather than a market derived vacancy rate. Operating expenses, under proper management, are also deducted in arriving at a net operating income. The subject's expenses were compared to expense ratios in the marketplace and were found to be typical. Thus, the appraiser opined the subject property was being managed appropriately. A capitalization rate was calculated, including an effective tax rate factor, depending on the risk of the investment. Richter testified calculation of the proper capitalization rate is the most complex part of the income approach.

Under the income approach to value, Richer first valued the subject's 20, two-bedroom units that were not part of the Section 42 program. In reviewing the subject's 2005 rent roll, the appraiser reported the two-bedroom units charged rents from $610 to $640 per month with an average and stabilized rent of $620 per unit or $.71 per square foot.

As a check of economic rents, Richter performed a lengthy comparative analysis of four apartment complexes located in the "Quad Cities" communities of East Moline and Moline, Illinois. After reviewing the four suggested rental comparables and considering adjustments for differences when compared to the subject, the appraiser concluded the subject's rents reflected market rents for the 20-units not under the restrictions of a Section 42 low income housing project. Therefore, Richter calculated these 20 units have a potential gross annual income of $148,800.

Richter next analyzed the 100 rental units that were subject to the Section 42 low income housing program. In reviewing the subject's 2005 rent roll, the appraiser indicated one bedroom units charged rents from $455 to $510 per unit with average and stabilized rents of $490 per month or $.79 per square foot; two bedroom units charged rents from $555 to $585 per month, with an average rent of $564 per unit and stabilized rent of $565 per unit or $.64 per square foot; and three bedroom units charged rents from $630 to $660 per month with an average rental rate of $637 per unit and a stabilized rental rate of $640 per unit or $.57 per square foot. Richter next performed a lengthy comparative analysis of six Section 42 low income housing apartment complexes in the "Quad Cities" communities of Milan, Silvis, Moline, Rock Island and Carbon Cliff. After reviewing the suggested rental comparables and considering adjustments for differences when compared to the subject, the appraiser concluded the subject's stabilized rents for the 100-units reflect the rents for properties under the constraints of a Section 42 low income housing project. Therefore, Richter calculated that the 100 units under Section 42 low income housing have a potential gross annual income of $696,000.

Based on the aforementioned rental rates, the appraiser calculated the subject property had potential gross annual income of $844,800. As required by statute, Richter deducted 5% or $42,240 for vacancy loss, resulting in an effective apartment income of $802,560. Ancillary income was stabilized increasing the subject's effective gross income to $850,560.

Richter next calculated the subject's annual stabilized expenses to be $437,974 or $3,650 per rental unit or 51.5% of the effective gross income. The subject's actual expenses as reported for 2004 were $360,732 or $3,006 per unit or 46.2% of the effective gross income. Richter next compared the subject's actual and stabilized expenses to two Section 42 low income housing projects and one section 8 subsidized housing complex. The expense comparables were located in Milan, East Moline, and East St. Louis, Illinois. They contain from 76 to 174 rental units and had expenses in either 1999 or 2004 ranging from $305,672 to $685,386 or from $3,542 to $4,022 per rental unit or from 44.7% to 58% of their effective gross income. Based on three years of reported expenses and considering adjustments to the comparable properties' expenses, Richter opined the subject's stabilized expenses of $437,974 or approximately 51.5% of its effective gross income to be consistent. Thus, he deducted $437,974 from the subject's effective gross income of $850,560 resulting in a net operating income of $412,586, excluding real estate taxes.

Richter next calculated a capitalization rate using two methods to be applied to the subject's net operating income. Using the market extraction method, the appraiser analyzed 16 suggested sales of apartment buildings located throughout the State of Illinois. However, Richter primarily relied on five sales located in Moline or Rock Island. These properties were built from 1966 to 1981; contain from 12 to 216 apartment units; and sold from September 2003 to May 2005 for prices ranging from $485,000 to $5,100,000 or from $23,611 to $57,000 per rental unit. Based on these comparables' reported effective gross incomes, occupancy rates, operating expenses, and net operating incomes, Richter extracted overall capitalization rates ranging from 5.26% to 9.97%. After considering adjustments, Richter developed a capitalization rate range from 8.5% to 9.0%.
Richter next developed a capitalization of rate of 8.6% using the band of investments technique. Based on both methods, Richter considered an overall capitalization rate of 8.6% to be both market supported and derived from the band of investments. The appraiser next added a tax load factor of 3.22% to account for real estate taxes resulting in a final capitalization rate of 11.8%. Capitalizing the subject property's net operating income of $412,586 by 11.8% resulted in estimated market value of $3,496,492. Richter next deducted $45,000 to account for the contributory value of personal property for a final value estimate under the income approach of $3,450,000.

The Richter appraisal report was based on the subject property having 18.245 acres of land. Based on this evidence and testimony, the appellant requested the Property Tax Appeal Board to reduce the subject property's assessment to reflect its appraised value as required by Public Act 93-533. (35 ILCS 200/10-235, 10-245, 10-250).

Under cross-examination, the appraiser was questioned regarding some line item expenses. (Pg. 59 of appraisal). The appraiser stabilized the management fee of $51,034 or $425 per unit, although the management fees from 2002 to 2004 ranged from $38,582 to $39,759 or from $322 to $331 per rental unit. Richter explained he utilized 6% of the subject's effective gross income or $51,034 for the management fee because it is typical and virtually universal for managing buildings like the subject and similar properties throughout the county. He also noted the Illinois Housing Development Authority and the HUD permit up to an 8% management fee for LIHTC properties. He further explained that the higher management fee is justified given the statutory requirement of using only a 5% vacancy rate. He testified the subject experienced vacancy over the allowable 5% rate between

2002 and 2004 and since the management fee is based on a percentage of money collected, the amount of money collected is less with the higher vacancy rate. In other words, using a set vacancy rate of 5% would generate higher effective gross income; partially offsetting that factor would be the higher management fee. He also testified that since McCormick Baron operates two properties in the area, they have some savings in the expenses that a typical owner does not have.

When questioned regarding the statutory requirement of using actual expenses when valuing a Section 42 low income housing property, the appraiser testified the law requires stabilizing actual expenses for valuation purposes. With respect to the insurance expense, Richter acknowledged he could not explain why the insurance premium decreased in 2004 to $23,675 or $197 per rental unit from the 2002 and 2003 premiums of $52,159 and $56,541 or $435 and $471 per rental unit, respectively. He testified the stabilized insurance premium used of $54,000 or $450 per rental unit is between the 2002 and 2003 amounts and is consistent with the Section 42 expense comparables. He acknowledged page 60 of the report indicates the management company was able to negotiate lower insurance premiums for the two properties they own in Rock Island County together with over 20 other properties McCormick Baron owns or manages. He further explained an appraiser is anticipating the expenses to the next owner, which may not be someone with the leverage of owning multiple properties.

With respect to advertising fees, the appraiser stabilized the advertising expense at $7,200 or $60 per rental unit, although the advertising expense fees from 2002 to 2004 ranged from $3,089 to $3,623. Richter again tied this increased expense to the mandatory 5% vacancy rate. He explained the owner is attempting to achieve 95% occupancy. Thus, Richter thought increasing the advertising expense was appropriate.

The appraiser was next questioned about the expenses comparables, all three of which are managed by McCormick Baron. Richter acknowledged the income and expenses are estimates based on the percentage of their effective gross incomes. The expense ratios of the effective gross income for the two expense comparables located in Rock Island County were 44.7% for one property in 1999 and 58% for the other property in 2004. The subject's actual expense to effective gross income ratio was 46.2% in 2004 in which Richter stabilized to 51.5% for valuation purposes. Richter did not consider the East St. Louis expense property to be comparable in location. However, Richter opined expenses are not an attribute of location, but are a function of the building operations. In contrast, he next testified East St. Louis is a lower-tiered economic community, noting insurance costs would be higher, but labor costs are lower in comparison to Rock Island County.

Richter testified of the two primary methods of developing a capitalization rate, a market derived capitalization rate is preferred. He explained an appraiser analyzes sales of similar comparable properties and their verifiable net incomes to calculate a market derived capitalization rate. Richter testified that under the market extraction method, he primarily relied on the sales that occurred in Moline or Rock Island. In further support of the market capitalization rate, Richter analyzed suggested comparable sales in the Iowa section of the Quad Cities, which he considered much less pertinent because they are located in a different state. He did not give these sales much weight for purposes of developing a capitalization rate due to their out of state location. He also looked at sales in other Illinois communities in calculating a capitalization rate. He testified his analysis shows the Iowa and other Illinois communities' sales show a consistent capitalization rate range that is somewhat higher than the rates in Rock Island County. Richter next provided testimony in connection with the band of investments technique of capitalization. Richter acknowledged he used the 2004 tax rate to calculate the effective tax load factor in the capitalization rate

The board of review presented its "Board of Review Notes on Appeal" wherein the subjects' final assessment of $1,570,771 was disclosed. The subject's assessment reflects an estimated market value of $4,715,614 using Rock Island County's 2005 three-year median level of assessments of 33.31%. In support of the subject's assessment, the board of review submitted an appraisal report that estimated the subject's market value to be $4,500,000 excluding $65,000 of personal property as of January 1, 2005. The appraiser, David Mark Nelson, was present and testified regarding the appraisal methodology and value conclusions contained within his valuation report.

Nelson is a licensed appraiser in the State of Illinois and Iowa. He has been appraising real property for approximately 15 years. Prior to appraising real property he was a property manager in suburban Washington, D.C. Nelson testified he appraised the subject property for its original construction loan. He has appraised over 25 low income housing projects within the region. Nelson testified he has completed all the necessary requirements for the Member of the Appraisal Institute designation.

Under questioning from opposing counsel regarding qualifications, Nelson testified he is not a graduate of a college or university, but had taken several courses and received 30 to 40 credit hours from American University and Augusta College. Nelson acknowledged his professional property management affiliations have lapsed.

Page 2-A of the appraisal report indicates the owner of the subject property purchased the 18+ acres of land in 1996 for $335,165. However, the owner sold 5.137 acres that has frontage on 34th Avenue to the City of East Moline in 1998. No sale price for the 1998 transaction was listed. Thus, Nelson appraised the subject property as having 13.12 acres of land. Nelson's report also indicates the subject property is improved with 15 garages, each with four stalls. However, an aerial photograph of the subject contained in Nelson's report clearly shows 10 garages as identified in the Richter report.

Under the income approach to value, Nelson calculated the subject's potential gross annual income to be $844,800 using the subject's asking rents. He testified the actual asking rents are supported by a survey of comparable apartment units. He testified low income tax credit housing in the subject's market have rental rates that are competitive to traditional market rents. Nelson testified low income housing like the subject has difficulty procuring new tenants due to limited income qualification requirements. Some of these prospective tenants can get lower rental rates at older properties that are proximate to the subject. Nelson opined although the subject is a newer property, it is at a competitive disadvantage due to tenant income restrictions. Nelson next deducted 5% or $42,240 for vacancy as required by Public Act 093-0533 (35 ILCS 200/10-245), resulting in an effective apartment income of $802,560. The potential gross annual income and effective gross income amounts were identical to figures contained in the appellant's appraisal report. Nelson stabilized the subject's other income at $45,000 as reported by the owners from 2002 to 2004, increasing the subject's effective gross income to $847,560.

Nelson next stabilized the subject's annual expenses at $314,878 or $2,624 per rental unit or 37.15% of the effective gross income, based in part on the its reported expenses from 2002 to 2004, expense comparables, and market research. He placed more weight on the expenses from 2002 and 2003 due to their stability in those years with some modest increases. Nelson stated the 2004 expense figures appear to be an anomaly. Nelson next deducted $24,000 for reserves for replacement resulting in a final expense amount of $338,878 or 39.98% of the effective gross income. As a result Nelson concluded the subject property had a stabilized net operating income of $508,682.

Nelson stabilized a management fee of 5% or $40,128 based on its size, which is slightly higher than its historical management fee. He testified a 5% fee is more consistent with his professional experience. Nelson stabilized contract services at $20,500, which was consistent with the 2002 through 2004 amounts reported by the appellant. The appraiser also stabilized the subject's insurance premiums at $24,000 or $200 per rental unit, considerably less than the premiums paid in 2002 and 2003 of $52,159 and $56,541. Nelson testified he consulted insurance brokers and larger property owners and found insurance premiums rarely, if ever, exceed $200 per rental unit in the Quad Cities market. Nelson noted insurance premiums vary depending on the type of insurance and deduction levels. The appraiser next explained the maintenance expenses reported by the owner ranged from $80,611 to $108,486 or in excess of $700 per rental unit, which is considerably higher than properties in the subject's market area. Nelson determined maintenance expenses average between $500 and $750 per rental unit, with higher expenses for older properties. Given the subject's newer age, Nelson stabilized the subject's maintenance expenses at $75,000 or $625 per rental unit. In the reserves for replacement allowance, the appraiser calculated a set aside amount of $24,000 or $200 per unit. However, this amount was based on the likelihood of replacement during the holding period. The length of the holding period was not defined.

Nelson reconciled the subject's reported expenses with six other apartment complexes deemed to be located in the subject's market. They were all located in Davenport, Iowa. Nelson performed the expense comparison on a line-by-line basis. Expenses ranged from $150,027 to $801,020 or from $2,093 to $2,885 per rental unit or from 39.01% to 58.80% of their effective gross incomes.

After this analysis, Nelson concluded the subject's actual and stabilized expenses as calculated by Richter were considerably higher than the expense comparables. Thus, Nelson suggested that there was some inefficiency in the management or some process of overstating the expenses that was being applied to the subject's financial statements. Nelson explained the expense amounts for his comparables and four of the five expense comparables in Richter's report were under $3,000 per rental unit. As a result, Nelson concluded the subject property's expenses as stabilized by Richter at $437,974 or almost $3,650 per rental unit were inconsistent with the market, especially given its newer age.

Nelson next calculated a capitalization rate using the same two methods as developed by Richter. Nelson explained that due to a lack of investor interest in the Quad Cities market, capitalization rates tend to be higher than other parts of Illinois. Using the market extraction method, the appraiser analyzed suggested sales of apartment complexes located in Davenport, Iowa, which is located across the Mississippi River from Rock Island County. Nelson testified he had complete income and expense data for these properties. These properties were from 3 to 37 years old; contain from 52 to 288 apartment units; and sold from April 2004 to September 2005 for prices ranging from $1,500,000 to $9,359,500 or from $26,375 to $42,143 per rental unit. Based on these comparables' effective gross incomes, occupancy rates, operating expenses, and net operating incomes, Nelson extracted overall capitalization rates ranging from 7.01% to 9.22%. After considering adjustments, Nelson determined a capitalization rate of 8.25% was appropriate.

Nelson also developed a capitalization rate of 8.25% using the band of investments technique, identical to the rate under the market extraction method. The appraiser next added a tax load of 3.07% to account for real estate taxes resulting in a final capitalization rate of 11.32%. Capitalizing the subject property's projected net operating income of $508,682 by 11.32% resulted in estimated value of $4,493,657 or $37,447 per rental unit. Nelson next deducted $65,000 to account for the contributory value of personal property resulting in a value estimate under the income approach of $4,428,657. Nelson calculated the subject's property taxes based on a market value of $4,428,657 would be $136,038.

As a check of the aforementioned value estimate, Nelson reconstructed the income approach using the estimated taxes of $136,038 as an expense from his initial value estimate of $4,428,657. This method resulted in the subject's projected net operating income including property taxes of $372,644, capitalized at 8.25%, resulted in value estimate of $4,516,901 or $37,641 per rental unit. Based on the two value estimates under the income approach, Nelson concluded a final value estimate for the subject property of $4,500,000 or $37,500 per rental unit as of January 1, 2005.

Under cross-examination, Nelson testified he was engaged to prepare the appraisal report on July 19, 2006; inspected the subject property on August 26, 2006; and transmitted the report by letter dated September 7, 2006. He indicated the county supplied the subject's property record card and the appraisal report prepared by Richter. With respect to Public Act 93-0533 (35 ILCS 200/10-235, 10-245 and 10-250), Nelson identified the specific assumptions related to the Act of a 5% vacancy rate and the use of restricted rents. Nelson testified his appraisal report is in conformity with Public Act 93-0533, based on his understanding of the law.

Nelson testified one source of the data within the appraisal was taken from Richter's appraisal report, but the stabilized projection amounts were based on his calculations using the actual data and market comparables. He did not know if the data used from the Richter report was independently audited. He not prepare a formal review of the Richter appraisal, but he did read parts of the report. The appraiser next discussed Quad City area retail sales on the Illinois and Iowa sides of the Mississippi River. He testified the Quad Cities is a single economic region in the eyes of the federal government with virtually little difference between the two sides of the community in terms of economics. He testified the relevance of Iowa being the largest population is highly important to the Illinois side of the river.

With respect to expenses under the income approach, Nelson testified he eliminated the line item for bad debt because the law required the use of a vacancy and collection loss rate of 5%. Nelson testified he stabilized the computer expenses at $2,500 based on the amount reported in 2003 of $2,360, which reportedly increased to $7,646 in 2004. Likewise, Nelson stabilized the repairs and maintenance amount at $30,000 because it is more in-line with the reported amount in 2003 of $31,900. The appellant reported repairs and maintenance fees of $50,757 in 2002 and $52,628 in 2004.

Nelson agreed he reduced the insurance liability amount to $24,000 or $200 per rental unit from the actual reported amounts ranging from $23,675 to $56,541 between 2002 and 2004. Nelson explained he surveyed owners of similar sized properties as well as insurance agencies and found insurance rates in almost all cases were under $200 per rental unit. He agreed the actual insurance costs in 2002 and 2003 were over $400 per unit; but slightly less than $200 per unit in 2004. He questioned the management decision in purchasing insurance with such high premiums in 2002 and 2003. With regard to overall expenses, the appraiser testified he was surprised at the $437,974 or $3,650 per unit expense amount as calculated by Richter. Nelson testified he is intimately involved in the apartment market throughout the Quad Cities and he routinely reviews income and expense statements. Nelson testified he has not seen apartments having expenses at that high level, which is completely out of line with the market.

The appraiser was next questioned about the expense/sales comparables, which are located in Davenport, Iowa. Nelson testified there were no sales of similar apartment complexes on the Illinois side of the Quad Cities within a relevant time frame. The appraiser testified he did not adjust the comparables' expenses because the markets are very uniform, noting small differences in tax rates. Nelson testified the income and expense information was sourced through a survey in November 2005 of property management firms or contacts with property owners. If a firm or owner could not be contacted for a particular property, Nelson testified he used information from a prior survey that was prepared in July 2004. He agreed the 2004 survey was not contained within the appraisal report. Nelson agreed four properties contained in the survey (page 4-F of appraisal) were in bankruptcy, but were operational. The appraiser testified he has been in close contact with the parties involved in the bankruptcies. Nelson agreed the bankruptcy status of a property could affect a potential buyer's opinion of value. Nelson testified certain buyers have a positive interest in distressed properties and feel they are very unique investment opportunities. In contrast, a potential buyer who does not want that kind of trouble, the bankruptcy issue would be a negative influence. Nelson acknowledged bankruptcy of a given property tends to decrease its market value modestly. He also noted three of the four properties discussed subsequently sold. Nelson testified the bankruptcy status of these properties is a direct result of the quality of management. He noted the three properties that sold were involved in a "bidding war of sorts," but did sell for less than properties not subject to bankruptcy, mostly due to deferred maintenance. The one property in bankruptcy that has not sold was due to prepayment penalty mortgage restrictions.

The appellant recalled Howard Richter as a rebuttal witness. He testified there would be a significant reduction in the price a potential buyer would pay for bankrupt properties, as opposed to properties not under financial distress. In the written rebuttal submission prepared by Richter, he recognized the subject's site contains approximately 13 acres of land rather that the 18+ acres described in his appraisal report. Since both appraisers relied on the income approach to value and the land that was sold is un-buildable due to its low lying terrain, he concluded the difference has no impact on the value estimate. Richter also claimed none of the comparables used by Nelson were low income housing projects like the subject.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the subject property is entitled to be assessed according to the dictates provided by Article 10, Division 11 of the Property Tax Code. (35 ILCS 200/10-235 through 10-260). The Board further finds both parties offered appraisal reports valuing the subject as a Section 42 low income housing project in accordance with Section 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-245 and 10-260). Finally, the Board finds both appraisal reports support a reduction in the subject's assessed valuation.

The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Property Tax Appeal Board is required to determine the correct assessment of the subject property on the basis of the evidence received at hearing. Illini Country Club v. Property Tax Appeal Board, 263 Ill.App.3d. 410, 416, (4th Dist. 1994).

Section 10-235 of the Property Tax Code provides that it is the policy of the State of Illinois that low income housing projects that qualify for low-income housing tax credits under Section 42 of the Internal Revenue Code shall be valued based on their economic productivity to their owners to ensure that high taxes do not result in rent levels that cause excess vacancies, loan defaults, and loss of rental housing facilities to those that are in most need. (35 ILCS 200/10-235). Sections 10-245 and 10-260 of the Property Tax Code establish the method of valuing Section 42 low-income housing projects in accordance with this policy. Section 10-245 of the Property Tax Code provides in part:

> . . . to determine 33 and one-third percent of the fair cash value of any low-income housing project that qualifies for low-income housing tax credit under Section 42 of the Internal Revenue Code, in assessing the project, local assessment officers must consider the actual or probable net operating income attributable to the project, using a vacancy rate of not more than 5%, capitalized at normal market rates. The interest rate to be used in developing the normal market value capitalization rate shall be one that reflects the prevailing cost of cash for other types of commercial real estate in the geographic market in which the Section 515 project is located. (35 ILCS 200/10-245).

Section 10-250(b) of the Property Tax Code provides the method that Section 42 property is to be assessed stating:

> Beginning with taxable year 2004, all low-income housing projects that qualify for the low-income housing tax credit under Section 42 of the Internal Revenue Code shall be assessed in accordance with Section 10-245 if the owner or owners of the low-income housing project certify to the appropriate local assessment officer that the owner or owners qualify for the low-income housing tax credit under Section 42 of the Internal Revenue Code for the property. (35 ILCS 200/10-250(b)).

Section 10-260 of the Property Tax Code clarifies that the income approach is to be given greatest weight in valuing Section 42 housing, providing:

> In determining the fair cash value of property receiving benefits from Low-Income Housing Tax Credit authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42, emphasis shall be given to the income approach, except in those circumstances where another method is clearly more appropriate. (35 ILCS 200/10-260).

The Board finds both appraisers used the income approach to value as provided by the Property Tax Code in valuing the subject property for ad valorem taxation purposes. The Board finds both appraisers were in agreement in most part as to the description of the subject property, with the exception of the subject's land size and number of garages. In addition, the Board finds both appraisers had similar if not identical components within each of their respective income approaches. For example, both appraisers used a potential apartment gross income of $844,800; both appraisers used the statutory required vacancy rate of 5% or $42,240; they had a slight variance in other stabilized income of $45,000 and $48,000, respectively; resulting in very similar effective gross incomes of $847,560 and $850,560, respectively.

The Board finds the main divergence within the two appraisals is the method that each expert accounted for the subject's stabilized/projected expenses for 2005. Both appraisers had access to and partially used the subject's actual income and expenses, independently audited as reported by the appellant. Also, both appraisers analyzed suggested comparable properties in calculating the subject's stabilized/projected expenses for 2005. The appellant's appraiser calculated the subject's expenses to be $437,974 or 51.5% of the effective gross income or $3,650 per rental unit, resulting in a net operating income of $412,586. The board of review's appraiser calculated the subject's expenses to be $338,878 or 44.45% of the effective gross income or $2,824 per rental unit, resulting in a net operating income of $508,682. Finally, the Board finds both appraisers calculated somewhat similar capitalization rates of 11.8% and 11.32%.

In reviewing both appraisal reports, analyzing the subject's actual income and expenses as reported by the appellant, and considering the expense comparables contained in both reports, the Property Tax Appeal Board finds the appellant's appraiser overstated the subject's expenses of $437,974, resulting in an incorrect net operating income of $412,586. In this same context, the Property Tax Appeal Board finds the board of review's appraiser understated the subject's expenses at $338,878 resulting in an incorrect net operating income of $508,682. The subject's three-year operating history, as reported by the appellant and analyzed by both appraisers, shows overall expenses that are much less than calculated by Richter. In this same sense, the subject's three-year operating history depicts overall expenses that are much higher than calculated by Nelson.

The Board finds both appraisal reports contained a total of nine suggested expense comparables with varying degrees of similarity and dissimilarity when compared to the subject in terms of location, age, design, size and features. The Board placed less weight on two of the expense comparables contained in the appellant's appraisal report. One comparable is a somewhat larger apartment complex than the subject and is located in the distant city of East St. Louis, Illinois. The appellant's appraiser used 1999 expense data for the other comparable, which the Board finds dated for this 2005 appeal. The Board also gave less weight to one expense comparable used in the board of review's appraisal report due to its considerably larger size when compared to the subject.

The Property Tax Appeal Board finds the remaining six expense comparables to be more representative of the subject, recognizing four comparables are older, requiring more maintenance when compared to the subject. These comparables had total expenses ranging from $150,027 to $360,720 or from $2,093 to $3,006 per rental unit or from 39.01% to 58.80% of their effective gross incomes. After considering proper adjustments to the more similar expense comparables for differences when compared to the subject, the Property Tax Appeal finds a more proper expense ratio of the subject's effective gross income is 47.3%. The Board also reconciled the small difference in both appraisers effective gross income of $847,560 and $850,560 to $849,000. Thus, the Board finds in this appeal the proper expense amount attributed to the subject property is $401,577 or $3,346 per rental unit. These calculations result in a stabilized net operating income for the subject of $447,423.

With respect to the proper market capitalization rate, the Board finds both appraisers used the band of investments technique as well as the market extraction method in calculating the proper rate, with addition of the tax load factor to account for property taxes. The Board gave less weight to the capitalization rate calculated by the appellant's appraiser. The Board finds the evidence and testimony indicates the appraiser used an incorrect tax load factor for the 2005 assessment year. Likewise, the Board gave more weight to the capitalization rate developed by the board of review's appraiser. He used the correct property tax load factor for the 2005 assessment year.

Thus, the Board finds the capitalization rate of 11.32% to be more appropriate.

Capitalizing the subject's stabilized net operating income of $447,423, as previously found by this Board, by a rate of 11.32%, equates to a fair cash value of $3,952,500. Deducting $65,000 for personal property as detailed in the Nelson report, the Board finds the subject property has a fair market value of $3,887,500. The subject's assessment reflects an estimated market value of $4,715,614. Therefore, the Property Tax Appeal Board finds a reduction in the subject's assessment is warranted. Since fair market value has been established, Rock Island County's 2005 three-year median level of assessments of 33.31% shall apply.

Docket No. 05-00360.001-C-3

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: June 27, 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 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.