FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Nalco Chemical
DOCKET NO.: 05-01461.001-C-3 & 06-01383.001-C-3
PARCEL NO.: 07-03-304-021

The parties of record before the Property Tax Appeal Board are Nalco Chemical, the appellant, by attorneys Gregory J. Lafakis and Ellen Berkshire of Verros, Lafakis & Berkshire, P.C., Chicago, Illinois; the DuPage County Board of Review; and Indian Prairie Community Unit School Dist. No. 204, intervenor, by attorneys Stuart L. Whitt and Joshua S. Whitt of Whitt Law, LLC, Aurora, Illinois.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
05-01461.001-C-3	07-03-304-021	6,420,920	10,562,080	$16,983,000
06-01383.001-C-3	07-03-304-021	6,587,860	10,836,698	$17,424,558

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 63.99 acre site improved with a single-tenant office research facility with a gross building area of 707,333 square feet. The multi-building complex was constructed in stages from 1976 through 1995. The property is located in Naperville, Naperville Township, DuPage County.

The 2005 and 2006 appeals were consolidated.

The first witness called by the appellant was Michael Kelly. Kelly is president of Real Estate Analysis Corporation (REAC) which is in the business of appraising industrial, commercial and residential properties in Illinois and around the country. Kelly has been with REAC for 31 years and has been a real estate appraiser for 34 years. Kelly is a Certified General Real Estate Appraiser licensed in Illinois and is also licensed in Indiana and Michigan. The appraiser also has the Member of the Appraisal Institute (MAI) designation and the Member of the Society of Real Estate Appraisers (SRPA) designation. Kelly also worked in the Cook County Assessment Office for approximately 3 years. He has appraised in excess of 50 corporate headquarters including headquarter properties in the subject's area.

Kelly performed an interior and exterior inspection of the subject property in January 2006 and again on April 24, 2009. Kelly identified Appellant's Exhibit No. 1 as the appraisal he prepared of the subject property. The purpose of the appraisal was to estimate the market value of the subject property as of January 1, 2005.

He testified the subject property is the Nalco Chemical Headquarters, which he described as a large, single tenant corporate office headquarters with about 15% lab space. Property rights appraised were the unencumbered fee simple interest.

Kelly testified that a building as large as the subject would be considered part of the regional and national market. He testified this market peaked in about 2000-2001 and since that time vacancy rates have increased to about 22% to 23% percent in the East-West corridor where the subject is located. He also testified there has been a slight decrease in the average rental rate offered during the same time period. Kelly testified the subject's location is an office market that is suitable for a building of its type. The appraiser testified the vacancy rate in the East-West corridor in 2005 was approximately 24%.

Kelly's estimate of the site size of approximately 2,787,000 square feet was based on county records and a survey. In describing the buildings, the appraiser explained there is approximately 707,000 square feet of gross floor area located in seven different buildings. The Corporate Center is a five-story building with 417,500 square feet built in 1985. This building has a 450-seat cafeteria with a full kitchen, exercise room, computer center, media studio, training center, garage parking and five loading docks. The Research Center is a three story building constructed in 1976 with 178,000 square feet. This building has 65,447 square feet of laboratory and research area and 112,553 square feet of office space. Kelly's appraisal indicated the lab area has 5,428 square feet of mezzanine that was not included in the building area. The Resource Center is a 57,000 square foot one-story building constructed in 1976 that has a lower level. The Power Plant houses cogeneration equipment that provides electricity for the entire complex. The Power Plant contains HVAC equipment and serves as the location where utilities enter the site and are distributed to the complex. The Power Plant was originally built in 1976 with 20,886 square feet and received a 10,332 square foot addition in 1986. The Day Care facility is a one-story building that was constructed in 1995 and has 8,333 square feet. The subject also has a Utility Tunnel that distributes heating, cooling, electricity, water and sewer from the Power Plant to the remaining buildings.

In summary, on page 46 of Appellant's Exhibit No. 1, Kelly described the subject as having a weighted average age of 23 years. Kelly testified the building ages ranged from 20 to 29 years old and the weighted age was rounded to 23 years old. The buildings were of 4" to 5" reinforced concrete with steel framing. The campus is 100% protected by wet and dry sprinkler systems. There are 16 elevators throughout the facility. There is parking for 1,200 vehicles with 38 additional parking spaces on the lower level of building 3 of the Corporate Center. Site improvements included paved parking, driveways, sidewalks, a jogging path, a pond and landscaping.

Kelly testified he estimated the subject's net rentable area using an efficiency ratio of 85% based on taking out deductions for non-rentable areas such as utility tunnels, mechanical areas and basement area with both parking and mechanical areas. Kelly testified that typically multi-tenant buildings, especially those built in the last five years, have efficiency ratios of 90% and sometimes as high as 95%. He primarily considered the efficiency ratio in the income approach to value because the rentals he used are expressed in terms of net rentable area and the expense data used from the Building Owners and Managers Association (BOMA) is also expressed in net rentable area. Kelly used gross area in the cost and sales comparison approaches to value.

He also considered the improvements to be in average condition with no items of deferred maintenance identified. The zoning of the property was I, Industrial, which allows office, research, development and laboratory uses of the subject property.

Kelly was of the opinion the highest and best use of the subject, as improved, was for a single tenant use. In determining the highest and best use of the subject the appraiser juxtaposed the current use as a single tenant with that of a multi-tenant. (Appellant's Exhibit No. 1, pages 50 - 52.)

Kelly testified that he researched the sales history of the subject property, which was found at pages 6 through 11 of his appraisal. (Appellant's Exhibit No. 1, pages 6 - 11.) The appraisal indicated the subject property was transferred in a sale-leaseback transaction in December 2002 for a price of $145,000,000. Kelly testified this is typically described as a leased fee sale based on a sale-leaseback where the owner agrees to a contract rent for a long period of time, in this case, 25 years. The transaction included the subject building complex with 707,33e square feet of building area and 61.47 acres. The sale price equates to approximately $205.00 per square foot of building area, land included. The seller was Onedo Nalco Company and the buyer was Wachovia Bank of Delaware, as Owner Trustee. The appraisal recited a lease term of 25 years to run from December 20, 2002 through December 20, 2027. The lessor was stated to be The Owner Trustee, the lessee was Nalco Company and the guarantor was Suez, the corporate parent of Nalco Company. The rent schedule recited in the appraisal was as follows:

Calendar Year	Cash Rent	Cash Rent Per Sq. Ft.*
2003	$8,192,800.39	$11.58
2004-2009	$8,953,688.56	$12.66
2010	$17,132,153.31	$24.22
2011	$35,096,516.72	$49.62
2012-2022	$12,682,622.42	$17.93
2023	$10,568,852.02	$14.94
2024-2027	$0	$0.00

*Triple net basis

Kelly testified that the effective net rent for the subject under this transaction was $18.70 per square foot on a net rentable basis or $27.00 per square foot on a gross basis. Kelly concluded the transaction was a leveraged lease transaction in which the sale was based on the leaseback of the property on a long term basis with a guarantee by the superior credit of the seller's parent company. He further noted in his report that since the seller retains use of the property and many benefits of ownership on a long term basis, the sale price is more reflective of a value-in-use price rather than a value-in-exchange value. Kelly concluded the sale transaction does not reflect a market value transaction because the price does not represent the normal consideration unaffected by special or creative financing. (Appellant's Exhibit No. 1, page 11.) Kelly testified minimal weight was given the transaction because it reflects a leased fee value based on contract rent that is significantly above market rent as well as 100 percent occupancy and a below market capitalization rate of 5.5%.

Kelly further testified that the transfer declaration indicated the property was not exposed on the open market when it sold, which is typical for these types of deals because they are essentially financing transactions.

Kelly estimated the exposure time for the property would be two to three years, which was due to the large size of the subject property and its marketability to a limited number of users on a nationwide basis.

In estimating the market value of the subject property Kelly developed the cost approach, income approach and sales comparison approaches to value. The first approach developed by Kelly was the cost approach with the initial step of estimating the site value using six comparable land sales. The six land comparables were located in Aurora and Naperville. The comparables ranged in size from 523,635 to 4,523,558 square feet of land area. The properties sold from October 1999 to July 2003 for prices ranging from $3,640,000 to $15,561,500 or from $2.75 to $8.75 per square foot of land area. Based on these sales the appraiser estimated the subject site had a value of $6.00 per square foot of land area or $16,725,000, rounded.

The next step under the cost approach was to estimate the replacement cost new of the improvements using national cost manuals. The appraiser developed a replacement cost new for each of the identified buildings located on the subject campus. The appraiser estimated the unit costs ranged from $45.00 per square foot for the Utility Tunnel to $145.00 per square foot for the Research Center. The total building replacement cost new was estimated to be $81,692,460 or $115.49 per square foot of total building area. The appraiser then added $6,000,000 for the replacement cost of the site improvements resulting in a total replacement cost new of $87,690,000, rounded, or $123.97 per square foot of building area. Kelly testified this cost new estimate included the normal soft costs such as overhead, profit for general contractor, architect fees and the like. Excluded from the cost new estimate was entrepreneurial profit due to the fact that none of the sales in the report indicate that there is a premium being paid. He further testified that his market derived depreciation indicated significant depreciation from the cost new, which indicates there is no entrepreneurial profit being paid.

In estimating depreciation the appraiser estimated physical depreciation using the age-life method. He estimated the subject had a weighted physical age of 23 years and a physical life of 60 years resulting in physical deterioration of 38.3% or $33,585,270. Deducting physical deterioration from the replacement cost new resulted in a physically depreciated value of the improvements of $54,104,730.

The appraiser also estimated or abstracted depreciation from all causes using the sales contained in the sales comparison approach to value in his report with the exception of comparable sale #12 since a land value was not available for that comparable. According to Kelly's calculations, the comparable sales had accrued depreciation ranging from 59.6% to 96.8% and annual rates of depreciation ranging from 2.1% to 8.0%. Kelly segregated the sales by building type such as: Local Single-Tenant Office Sales, National Single-Tenant Office Sales, and Research, Development, & Lab Buildings. Kelly then estimated functional/economic obsolescence by deducting from the estimated total deprecation an amount attributed to physical depreciation from each comparable sale calculated using the age-life method. Functional and economic depreciation for the comparable sales ranged from 14.7% to 75.9%. Kelly indicated that if the two extremes were eliminated the sales indicate functional and economic depreciation ranging from 23.2% to 56.8%. He further stated in the report that two sales within 100,000 square feet of the subject had functional and economic depreciation ranging from 37.0% to 43.6%. Kelly further estimated functional and economic depreciation based on deficient income or when property does not produce sufficient income to generate an acceptable rate of return. He stated that under the income capitalization approach to value the necessary rate of return for the subject property is 11.2%. To calculate the functional and economic obsolescence Kelly added the estimated land value and the physically depreciated value of the building to arrive at a total physically depreciated value of $70,829,730. Kelly then used the market required rate of return to calculate a market required net income before taxes of $7,932,930. The subject's stabilized net income under the income approach was estimated to be $4,920,000, which he deducted from the market required net income to arrive at a deficient income of $3,012,930. Capitalizing the deficient net income by 11.2% resulted in a total functional and economic obsolescence estimate of $26,901,161, which equates to 30.7% of the replacement cost new. Based on these two methods, Kelly estimated the subject suffered from 35% functional and economic obsolescence. Adding physical depreciation resulted in total depreciation from all causes of 73.3%, which equates to an average annual rate of deprecation of 3.19% using the subject's weighted age. Total depreciation was estimated to be $64,276,770. Deducting total depreciation from the cost new and adding the estimated land value resulted in an estimated value under the cost approach of $40,140,000, rounded.

The next approach to value developed by Kelly was the income approach. Kelly testified he utilized gross rent per square foot of net rentable area to estimate the rental income attributable to the subject property. Kelly indicated in the appraisal that market rent for the subject property will be based on analyzing leases from comparable Class A & B office buildings. (Appellant's Exhibit No. 1, page 85.) In the appraisal Kelly explained that a "gross lease" is a lease where the landlord receives a stipulated rent from the tenant and is obligated to pay operating expenses and real estate taxes. Kelly explained in the appraisal that all the leases from the subject and from the comparable office buildings were analyzed on a gross basis. He stated that leases which are net leases will be grossed up with the appropriate real estate tax and operating expenses pass-through to indicate the total gross rent that a tenant is paying. He stated in the appraisal, however, since the purpose of the appraisal is to estimate the market value of the fee simple estate, the real estate taxes will not be expensed but rather an effective tax rate will be used to estimate the appropriate legal liability for real estate taxes. (Appellant's Exhibit No. 1, page 86.) Kelly explained in the appraisal that the leases for the subject property and the comparable leases have been adjusted for excess tenant improvement allowance if the tenant improvement allowance for the space exceeded $25.00 per square foot. (Appellant's Exhibit No. 1, page 92.) Kelly also stated in the narrative that larger office tenants (20,000 square feet or greater) are given rental rates significantly lower than the rates for smaller tenants (less than 20,000 square feet) in the building. He explained that anchor tenants generally receive considerable rental discounts. (Appellant's Exhibit No. 1, page 94.) Kelly further stated in the appraisal that the office market in the Chicago suburbs peaked in late 2000/early 2001. Since that time, rental rates have declined and vacancy rates have increased. He further stated in the appraisal that landlords with significant space have been forced to provide rent abatements, excess tenant improvement allowance, and/or reduced base rent. (Appellant's Exhibit No. 1, page 97.) Kelly's appraisal contained six examples of office leases that showed a downward trend in effective gross rent from 2001 to 2003 or 2004. (Appellant's Exhibit No. 1, pages 97-103.)

In estimating the market rent, Kelly utilized 10 office comparable rentals that were located in Itasca, Downers Grove, Schaumburg, Naperville and Lisle. The comparables ranged in size from 1,785 to 363,034 square feet of lease area. The ages of the buildings ranged from 3 to 19 years old. The leases commenced from April 2004 to March 2006. These comparables had gross rents ranging from $18.07 to $24.20 per square foot. Using an efficiency ratio of 85%, Kelly estimated the subject had a net rentable area of 601,223 square feet. As a further breakdowns, rentals #1 through #3 were of single tenant buildings that ranged in size from 240,725 to 363,492 square feet and in age from 3 to 15 years old. Their rental rates ranged from $18.07 to $22.13 per square foot. The remaining rental comparables are considerably smaller than the subject ranging in size from 1,785 to 19,452 square feet. Based on these rental comparables Kelly estimated the subject had a gross rental rate of $19.00 per square foot. He estimated the subject had a gross income of $11,423,427. Kelly estimated the subject's vacancy rate using the Studley Report and Space Data 4th Quarter 2004 and 1st Quarter 2005 and the CoStar Aggregate Vacancy Report 2nd Quarter 2004. Considering this data Kelly estimated the subject should have an allowance for vacancy and collection loss of 22.0% resulting in an effective gross income of $8,910,000, rounded. Kelly was of the opinion, based on these studies that there is an oversupply of office space in this market.

In estimating expenses Kelly made use of the 2005 edition of the Building Owners and Managers Association (BOMA) publication and his familiarity with the operating expenses of comparable office types of property. Kelly stated within the report that maximum emphasis was placed on the BOMA survey in the determination of the stabilized operating expenses applicable to the subject property. (Appellant's Exhibit No. 1, page 111.) The following expenses were deducted: cleaning at $.95 per square foot or $570,000; repairs and maintenance at $1.15 per square foot or $690,000; utilities at $.95 per square foot or $570,000; roads, grounds and security at $.70 per square foot or $420,000; administrative/management at $1.20 per square foot or $720,000; leasing expenses at $1.50 per square foot or $900,000; and insurance of $.20 per square foot or $120,000. Deducting these expenses resulted in a stabilized net income of $4,920,000.

In estimating the capitalization rate the appraiser used the comparable sales from the sales comparison approach to arrive at overall rates ranging from 9.7% to 16.4%. Using the band of investment technique the appraiser estimated a capitalization rate of 9.6%. The appraiser also used the Korpacz Investor Survey for the Chicago Office Market, which indicated overall capitalization rates ranging from 6.0% to 11.0% with an average of 8.4% at year-end 2004. The report indicated that the Korpacz rates need to be adjusted to add a reserve for replacements, which results in an adjusted overall rate ranging from 8.65% to 8.90%. Considering these three methods Kelly estimated the subject had an overall capitalization rate of 9.0% to which he added an effective tax rate of 2.2% to arrive at a total capitalization rate of 11.2%. Capitalizing the net income resulted in an estimated market value under the income approach of $43,930,000.

The final approach to value developed by Kelly was the sales comparison approach. In developing the sales comparison approach, Kelly utilized 14 comparable sales. Kelly identified comparables #1 through #6 as local single-tenant office buildings. These comparables were located in the Illinois communities of Lake Zurich, Naperville, Skokie, Westmont, Elmhurst and Lombard. These properties were improved with multi-story office buildings that ranged in size from 113,369 to 1,176,158 square feet of gross building area. The comparable buildings ranged in age or had weighted ages ranging from 12 to 36 years old. These sales occurred from October 2000 to March 2005 for prices ranging from $5,650,000 to $30,500,000 or from $25.93 to $53.68 per square foot of gross building area, land included. Kelly also identified comparables #7 through #14 as national single-tenant office building sites. These comparables were located in Plano, Texas; Minneapolis, Minnesota; Geneva, Illinois; Princeton, New Jersey; Warrensville Heights, Ohio; Rochester, Michigan; and Skokie, Illinois. Kelly indicated the comparables ranged in size from 54,957 to 1,081,361 and had office space ranging from 25% to 100% of gross building area. The comparables ranged in age or had weighted ages ranging from 12 to 35 years old. The sales occurred from July 1997 to March 2005 for prices ranging from $2,400,000 to $45,000,000. Kelly adjusted the price for sale #7 for personal property; Kelly adjusted the prices for sales #9, #10, #11 and #13 for excess land; and Kelly adjusted the price for comparable #14 for the added cost to raze four buildings. The adjusted prices ranged from $1,037,730 to $44,500,000 or from $18.88 to $59.65 per square foot of building area. Comparables #1, #3, #7, #8, #9, #11, #12, and #14 were multi-building complexes having from 2 to 21 buildings. Additionally, portions of comparable sales #1, #4 and #8 were leased by the seller following their respective sales. Kelly considered adjustments to the comparables for date of sale (time), location, building size, building age, number of stories, condition, quality of construction, land to building ratio, percent of office space and type of lab space, and single tenant versus multi-tenant design.

Kelly testified that the sales were essentially single tenant buildings. He testified that it was important to note that the single tenant design is an important consideration in determining what properties are comparable for this type of property. He testified that multi-tenant buildings are a totally different type of market and will sell at higher values per square foot and will typically have a lower capitalization rate because of the ability to diversify some of the risk by having a number of tenants rather than one. Kelly explained that he used plus and minus qualitative adjustments for the comparables due to insufficient data that would allow for the use of percentage adjustments. Kelly further testified that the sales were verified using information such as the transfer declaration, deed, sales contract and through one of the parties whether it be the broker for the seller or the buyer.

In the appraisal narrative Kelly also explained that three listings were also considered that were single tenant office buildings located in Naperville that were formerly occupied by Lucent Technologies, Inc. The buildings ranged in size from 223,000 to 344,000 and had asking prices ranging from $45.00 to $115.00 per square foot. Listing number #2 was the same as Kelly's sale #2. This property had an asking price of $67.00 per square foot but actually sold for $36.22 per square foot of gross building area. (Appellant's Exhibit No. 1, page 203.) He also testified that listing #1 sold after the date of value in September 2005 for approximately $43.00 per square foot. The property had an asking price of $45.00 per square foot. He further testified that comparable #2 resold in 2006 for a price of $140 or $150 per square foot after the developer had done a significant rehabilitation on the building for Office Max. After Office Max had signed the lease the property was sold as a sale-leaseback. He adjusted the price to a fee simple basis of $105 per square foot. Kelly testified the third listing sold in September 2005 for a price of approximately $53.00 per square foot. This property had been listed for a price of $115 per square foot.

After considering these sales, Kelly estimated the subject property had a market value of $55.00 per square foot of gross building area, land included, for a total indicated value under the sales comparison approach of $38,900,000.

In reconciling the three approaches to value, Kelly gave minimal consideration to the cost approach, moderate consideration to the income capitalization approach and substantial consideration to the sales comparison approach. In conclusion Kelly estimated the subject property had a market value of $41,000,000 as of January 1, 2005.

Kelly testified that he was not aware of any significant physical changes to the property from January 1, 2005 to January 1, 2006. He further testified that he was not aware of any significant changes in the market for similar types of property from January 1, 2005 to January 1, 2006. He also testified there would not be a significant difference between the market value estimate for the subject property as of January 1, 2005 and January 1, 2006.

Under cross-examination Kelly explained that the difference in reduction of the sale-leaseback for the subject as compared to the Office Max property was due to size of the subject building, the age of the subject building compared to the effective age of the Office Max property after rehabilitation, and the differences in contract rent versus the market rent of the two properties.

Kelly also agreed that land sale #6, with 523,635 square feet, is located across the I-88 tollway from the subject and sold for $8.75 per square foot of land area. Kelly testified that he received some of the documents associated with the subject's sale-leaseback including those related to the sales contract and a summary of the lease terms. Kelly reviewed Intervenor's Exhibit No. 1, beginning on page 70, which was a letter dated February 3, 2003, from Robert C. Herman, Senior Manager, Deloitte & Touche, discussing the sale-leaseback of the subject property. Kelly agreed that the analysis provided in his appraisal matched the Deloitte & Touche letter word for word. Kelly testified the Deloitte & Touche letter was his work product.

Kelly was questioned about the date and location of the land sales. He agreed that five of the sales occurred four to six years prior to the effective date of the appraisal. He also agreed that land sale #6 is very comparable in location. He further testified that in estimating the replacement cost new of the improvements he primarily used the Means Cost Service and used the Marshall Valuation Service for some indication of what the cost of the 70,000 square feet of lab space would be.

In calculating the depreciation from the market using the comparables sales, Kelly agreed that the sales prices were from real estate transfer declarations, deeds or talking to a broker. The land value is estimated based on the sales they have in the area. For sales out of Illinois he would have to talk to a broker to get an estimate of value. Kelly explained that with reference to comparable sale #14 located in Skokie, the building area of 746,000 was what was left after the buyer demolished 264,000 square feet immediately after the sale. He did not see any reason to dilute the unit price by using a million square feet. He agreed that the explanation of the sale in the report could have been clearer.

Kelly agreed that with respect to comparable #1, Kemper, the seller's affiliate, was vacating the property. Kelly agreed that sale #2 was vacant at the time of sale. Kelly agreed that sale #3 was vacant at the time of sale. This property was being converted to multi-tenant use. Kelly agreed that with respect to sale #4, the seller remained there one year while the property was being redeveloped. Sale #4 was being converted to a multi-tenant occupancy after the sale. Kelly agreed that Keebler Company was using sale #5 and they vacated the property. Kelly indicated that sale #6 was vacant at the time of sale and the buyer converted it to multi-tenant use. Kelly testified that he had physically inspected sale #7 located in Plano, Texas. With respect to sale #8 located in Minneapolis, Minnesota, the seller Honeywell was vacating the property but keeping a small amount of space for a short period. Kelly explained that comparable sale #9 located in Batavia, Illinois, was not in totally comparable to the subject; it was used to be comparable to the lab space at the subject property. Waste Management had vacated this property prior to the sale. Kelly agreed that comparable sale #10 was primarily lab space that had been vacated by Waste Management. Kelly had been in comparable sale #10 to conduct an appraisal. With respect to comparable sale #11, Mobil Technical Center located in Princeton, New Jersey, Kelly agreed this property was being vacated by Mobil and vacant at the time of sale. Kelly had not physically examined this sale. With respect to comparable sale #12, BP Amoco located in Warrensville Heights, Ohio, Kelly agreed this property was vacant at the time of sale. Kelly had not physically examined this sale. With respect to comparable #13, Baxter Healthcare located in Rochester, Michigan, Kelly agreed this property was vacant at the time of sale. Kelly agreed this sale was being used by a single tenant. Kelly stated that most of the sales were converted to multi-tenant users after the sales. Sale #14 had been vacated by Pfizer. The purchaser then demolished four buildings and then converted the property to multi-tenant use.

Kelly testified that vacancy rates have been 24% for four years. Kelly testified he inspected the subject property on January 11, 2006 and the appraisal is dated January 16, 2006. He testified he had appraised the subject property before, so there was an earlier inspection three years before from another MAI in his office.

Under redirect Kelly testified he has appraised the subject property two times. Kelly agreed that a sale of a property that is vacant, rather than occupied by lessees or tenants, is more akin to a fee simple interest. With respect to the language in the Herman letter, Kelly testified Herman left the employment of Real Estate Analysis Corporation (REAC) in 2000 to 2001. The language concerning sales-leaseback was from the Smith Barney people that put together the transaction, which is the first half of the analysis. Kelly testified that the second half, where they talk about how a sale-leaseback does not represent market value used by Herman is standard boilerplate that has been used in Kelly's office for 10 to 15 years.

Under re-cross examination, Kelly testified the analysis of the sale of the subject is the same in the 2005 report as in the 2003 report.

The board of review submitted its "Board of Review Notes on Appeal" for each of the years under appeal. For 2005 the subject property was reported to have a total assessment of $22,838,850 reflecting a market value of approximately $68,585,135 or $96.96 per square foot of gross building area, land included, using the 2005 three year median level of assessments for DuPage County of 33.30%. For 2006 the assessment of the subject was increased by the application of a township equalization factor of 1.026 resulting in a total assessment of $23,432,660 reflecting a market value of approximately $70,559,048 or $99.75 per square foot of gross building area, land included, using the 2006 three year median level of assessments for DuPage County of 33.21%. The board of review called no witnesses.

The intervening school district called as its witness Mark Pomykacz. Pomykacz is a real estate appraiser and a managing partner of Federal Appraisal and Consulting of Whitehouse Station, New Jersey. Pomykacz has the MAI designation and is a State Certified Real Estate General Appraiser in the states of: New Jersey, New York, Maryland, Connecticut, Michigan, Massachusetts, California and Illinois. He testified that he has analyzed about two-dozen sale-leaseback transactions. Pomykacz conducted an appraisal review of the report prepared by REAC of the subject property identified as Appellant's Exhibit No. 1. Intervenor's Exhibit No. 1 was marked as the appraisal review of the REAC report.

The purpose of the appraisal review was to determine the credibility and reliability of the REAC appraisal report and report his findings. Pomykacz concluded the appraisal was not reliable, the value conclusion was not credible and the appraisal value conclusions were substantially understated.

The witness agreed that page 13 of his report, stating the definition of market value, had five conditions that one must consider, those being:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto;
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Pomykacz testified the first deficiency in the REAC appraisal was the bare minimum land description. He was of the opinion this was a special purpose property, an unusual property and more data should have been provided.

The witness testified he has not made a personal inspection of the property but has driven past the property on several occasions. He was of the opinion that the improvement description in the REAC report was merely adequate if this was a traditional, garden variety office building. He testified this is a corporate campus/headquarters; an unusual property.

Pomykacz stated there was not enough information to determine whether the power plant assets are a separate area of value. He also testified there was very basic information about the interior description of the subject property. He also was of the opinion the 15% efficiency factor applied in the REAC report was very high for this type of property. The witness stated that in his experience inefficiency rates run from 10% to 15% with properties more than three decades old having the higher number. He testified that the efficiency loss factor is for the mechanicals in a building that you could not put an occupant in with a desk. The witness explained that with a corporate international headquarters he would not expect to see a lot of waste in the buildings and 15% seemed high.

The witness further indicated that REAC's section regarding the adequacies of the improvements was not helpful to the reader. He was of the opinion the REAC report did not provide enough detail to tell what kind of special qualities, if any, the improvements had.

The witness was of the opinion that Kelly reached the wrong conclusion as to the highest and best use of the subject property as improved as a single tenant user. The witness was of the opinion the most productive use is most likely a multi-tenanted operation. He also was of the opinion that Kelly was incorrect in stating in his appraisal that it is more viable for multi-tenant office property to convert to a single tenant use than for a single use property to be converted to a multi-tenant use. The witness explained that an incorrect highest and best use would result in an appraisal that would not be credible and valid. The witness was of the opinion that a single tenant use is one of the possible uses but it could also be a multi-tenanted building.

The witness was also of the opinion that the appraisal provided insufficient information for a user, reviewer or a reader to understand the functional adequacies or inadequacies or super-adequacies of the property. He was of the opinion that since large adjustments were made for economic and functional obsolescence, he requires better descriptions, substantially different, more expansive descriptions than the minimal description Kelly provided. He also would expect an appraiser to obtain a detailed listing of the maintenance on any property over a couple of million dollars in value.

Pomykacz was of the opinion the appraisal analysis of the land was very weak. The witness was of the opinion the land value conclusion was not appropriate. He was also of the opinion the analysis of the land sales on page 67 of the REAC appraisal was not what he would customarily expect to find. He opined appraisers customarily provide an analysis with adjustments as a percentage.

Pomykacz was of the opinion the replacement cost new calculations contained on page 70 of the REAC appraisal do not contain sufficient information for a reader to determine how the appraiser arrived at the values. As a check on the validity of the the REAC cost approach, Pomykacz provided basic information from Marshall & Swift in the addenda of his report and recomputed the cost estimates for the various portions of the subject property on page 55 of his report. The report indicated the office space would have a cost new, after applicable multipliers, of $182.95 per square foot; basement office space would have a cost new, after applicable multipliers, of $105.10 per square foot; office and research space would have a cost new, after applicable multipliers, of $180.25 per square foot; office space -mezzanine would have a cost new, after applicable multipliers, of $71.76 per square foot; office space - resource center would have a cost new, after applicable multipliers, of $182.95 per square foot; and the day care space would have a cost new, after applicable multipliers, of $133.34 per square foot

Pomykacz also testified he worked backwards using the costs in the REAC appraisal and determined that Kelly considered the subject a low-cost property. The witness did not think this was consistent with corporate campuses. The witness also indicated the REAC appraisal did not have any discussion with respect to soft costs such as architectural fees, engineering fees and the cost of money during construction that one would expect. He also indicated that entrepreneurial profit also needs to be accounted for. Ultimately, Pomykacz was of the opinion the cost approach in the REAC appraisal is substantially below the replacement cost value.

Pomykacz was also of the opinion the physical depreciation estimate in the REAC appraisal is overestimated. With respect to the Market-Based Depreciation Analysis contained on page 75 of the REAC appraisal, Pomykacz indicated you could not determine how Kelly derived the land values in each of the 14 sales. The witness further indicated that Kelly did not give any description of how he determined replacement cost new of the 14 properties. Pomykacz was of the opinion the market extraction or market based depreciation was not reliable absent concrete verification. The witness did not find the REAC appraisal to be reliable or credible in its calculation of functional and economic depreciation. Ultimately Pomykacz concluded the cost approach developed by Kelly was not reliable and not credible.

Concerning the sales comparison approach, Pomykacz was of the opinion that Kelly's use of five out-of-state sales was not appropriate. He testified that even though the property may have potential buyers from other regions in the country or internationally, they are going to be looking at the value of real estate in the subject's locale. He also indicated that appraisers can make adjustments for location in many situations, but making adjustments between such divergent locations as a practical matter is not a reasonable course for an appraiser to embark on.

The witness also testified the sales used by Kelly involved different assets than the subject property in the sense the subject is a mixed-type of property with office, daycare and lab space. He testified these are very difficult issues to adjust for when you have the best of data. Pomykacz testified in this case there was very little data provided about this in the appraisal making the ability to make the adjustments as a practical matter very difficult to impossible. The witness also opined if a property is 100% vacant, the owner is unusually motivated to sell. The witness concluded the sales comparison approach in the REAC appraisal is not reliable or credible.

With respect to the income approach the witness was of the opinion that Kelly's market rent for the subject is not reasonable; the rental is low. Pomykacz was of the opinion that Kelly did not adequately take into consideration multi-tenant rentals in valuing the subject property. The witness also was of the opinion Kelly incorrectly described anchor tenants, which are tenants that attract visitors to a building, where other tenants can benefit from the traffic, and is restricted to retail real estate. The witness testified that anchor tenants do not apply to office buildings. Pomykacz also was of the opinion an efficiency loss factor of 15% was high and 10% would be more appropriate. The witness was of the opinion that the vacancy and collection loss of 22% was not appropriate. He agreed that the vacancy as of the valuation date was in the low 20's, but was of the opinion an appraiser needs to project an average or stabilized estimate of income going out for the remainder of the life of the facility, the investment period plus the reversion. Using the REAC vacancy, Pomykacz was of the opinion that effective gross income is being substantially underestimated.

Pomykacz testified that largely the operating expenses projected in the REAC appraisal were acceptable except for one major divergent estimate; leasing expenses were estimated too high. Pomykacz indicated in his review appraisal and through testimony that the Building Owners and Managers Association (BOMA) projects leasing expenses at $.04 per square foot but the REAC appraisal estimates leasing expenses at $1.50 per square foot. As a result Pomykacz was of the opinion that the operating expenses were too high. He also was of the opinion that Kelly's operating expense ratio of 44.8% was substantially above the mark, which would have a negative impact on value. The witness indicated that Industrial Real Estate Managers (IREM) estimates expense ratios range from the mid 20's% to the low 30's%. Pomykacz was also of the opinion that Kelly's use of a 12% dividend rate for the equity portion of the band of investment technique was too high. The witness ultimately concluded the income approach used by REAC is not credible.

Pomykacz testified the sale involving the subject property was noted to be a sale-leaseback transaction and he also did a test to determine the reasonableness of the sale. Furthermore, Intervenor's Exhibit No. 1 contains the PTAX-203, Illinois Real Estate Transfer Declaration associated with the sale and the PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A associated with the subject's sale. The witness was of the opinion the transaction qualified as a market transaction deserving consideration in an appraisal. (Intervenor's Exhibit No. 1, page 22.) The witness also testified he performed an analysis of the lease, which was summarized on page 26 of Intervenor's Exhibit No. 1. The witness explained that an appraiser has to "levelize" the unlevel rent payments to compare them with other rents. He stated appraisers use compounding and discounting to create a cash equivalent or level rent cash equivalent. The witness used a discount rate of 9.5% and calculated the present value of the unlevel actual rents to be $109,460,028. Pomykacz testified he calculated a constant growth rate cash equivalent, which means rent is going to grow every year at 2% and the constant growth rent cash equivalent was $8,209,502, which is the same net present cash value. The witness testified one could pay the unlevel rent as described in the lease or pay the $8,200,000 per year escalating 2% a year and both cash flows would equal the same present value. Using 636,600 square feet as the net rentable area the witness calculated the triple net lease equivalent to be $12.90 per square foot. Using a 40% expense ratio the witness calculated a gross equivalent rental of $21.29 per square foot. The witness testified he did not know how Kelly arrived at the conclusion the unlevel rents resulted in a $27.00 per square foot gross rental. He also testified that the gross equivalent rental of $21.49 per square foot falls within the range established by the REAC comparables, indicating it is on the market. As a result Pomykacz was of the opinion that one should not disqualify the lease stating, "it is not disqualified as representing market value." (Transcript p. 232, lines 12-14.) He was of the opinion Kelly did not complete a thorough analysis of the transaction.

In conclusion Pomykacz was of the opinion the REAC appraisal is not reliable and not credible. It was his conclusion the value in the REAC appraisal was understated.

Under cross-examination Pomykacz stated he did not come to his own independent estimate of value, which is also set forth in (Intervenor's Exhibit No. 1, page 5.) Pomykacz testified he did not do an interior inspection of the subject but did do drive-by's which took minutes. Pomykacz explained that an unencumbered property means without leases restricting the property. He agreed that at a vacant property would be a type of fee simple property.

The witness explained that exposure time was the amount of time a property has to be placed on the market to secure a sale. He further indicated that exposure time is dependent on the intended market that one is selling to, which is determined by the highest and best use. He testified that if you limit the property to a single tenant occupant or owner-occupant as the buyer, it may take you three years to get the property sold. He further testified that if you are going to market the property to an investor or market the property to multiple tenants it would take a lot less time. He indicated the subject's highest and best use could be either for a single occupant office or multi-occupant office use. For the entire property Pomykacz stated the highest and best use would be a combination.

Pomykacz reiterated his opinion that the 85% efficiency rating was too low based on economies of scale for an integrated complex of buildings. In reviewing REAC comparable sales #1 and #4, Pomykacz calculated efficiency ratios of 81% and 82%, respectively.

Pomykacz agreed that he determined the subject's sale-leaseback that occurred in December 2002 was a reliable indicator of value. He testified that he did not interview any party to the transaction and interviewed no beneficiaries of the Wachovia Trust. He also indicated he does not know who the trust beneficiaries are or who the actual owner of the subject property is. Pomykacz testified that form PTAX-203-A for the sale of the subject was given to him and he put it in his report because it tells important details about the transaction that allowed him to complete the tables in his report on page 22. Question No. 8 on the form provides:

> 8. In your opinion, is the net consideration for real property entered on line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?

The answer to the question was "No". Pomykacz understood this answer to mean the price is not a reflection of market value. The question goes on to state, "If the answer is "No", please explain." The explanation provided on the form was, "Leverage Lease Sale-Leaseback Transaction Conveyance Not Limited to Fee Simple Interest in Transferred Real Estate."

Referencing the last page of the Deloitte & Touche letter authored by Robert C. Herman contained in Intervenor's Exhibit No. 1, Pomykacz agreed that Herman concluded the transaction was not reflective of the market value of the subject property. Referencing page 4, first paragraph, last sentence of the Deloitte & Touche letter authored by Robert C. Herman contained in Intervenor's Exhibit No. 1, Pomykacz agreed that Herman concluded the this sort of property would have a marketing time of 1 to 3 years. The witness also used a three year marketing/exposure time in a discounted cash flow analysis of the lease in place under the sale leaseback. (Intervenor's Exhibit No. 1, page 57.)

Referencing question 7 on Form PTAX-203 contained in Intervenor's Exhibit No. 1, Pomykacz agreed the answer was "No" to the question, "Was the property advertised for sale or sold using a real estate agent?" Referencing question 3 on Form PTAX-203-A contained in Intervenor's Exhibit No. 1, Pomykacz agreed the answer was "0" to the statement, "Write the total number of months the property was for sale on the market."

Pomykacz agreed that there was normal consideration paid for the subject property in the sale-leaseback transaction. He further agreed that under his cost approach he concluded a replacement cost new of $125,000,000 or $177.00 per square foot. Using Kelly's estimate of land value of $16,725,000 resulted in a replacement cost new plus land of approximately $142,000,000. He agreed that comparing this number with a sale-leaseback transaction price for a 23 year old building of $145,000,000 does not make sense. He indicated that one number is of a new property and you are comparing that to an old property. He further testified that real estate appreciates over time until near the end of its useful life.

With respect to the rent schedule in Section 16.4 of Intervenor's Exhibit No. 1, Pomykacz testified that it is not uncommon for commercial leases to have variable rents but this particular pattern was unusual.

Under redirect Pomykacz reviewed REAC sales #2, #3, #6 and #9. These sales had efficiency ratios of 89%, 95%, 92% and 100%. Pomykacz testified it was not his opinion that the $145,000,000 was reflective of the market value of the subject property.

Under cross-examination the witness was questioned about the size of REAC sales #2, #3, #6 and #9, which were approximately 386,000 square feet, 368,000 square feet, 210,000 square feet and 92,000 square feet, respectively. The witness further testified that there is an opportunity to multi-tenant the subject building. However, he agreed the subject has a 25 year lease and that if everything goes well they can't do that for 25 years.

The next witness called on behalf of the intervernor was Warren L. Dixon, Jr., Naperville Township Assessor. Dixon is a licensed appraiser and owner of Dixon Appraisal. Dixon identified Intervernor's Exhibit No. 2 as a document he filed for the 2005 appeal with the DuPage County Board of Review. The document was for two parcels, one of which is the subject matter of the instant appeal. The exhibit stated these two parcels had a total assessment of $24,549,950 reflecting a market value of $73,657,216 or $104.13 per square foot of building area. Page two of the exhibit disclosed the parcel under appeal had a total assessment of $22,838,850 reflecting a market value of $68,523,400 or $96.87 per square foot of building area, land included.

In support of the assessment Dixon submitted a two page grid listing of twelve comparable sales. The list included the name/address, a two line description of the property, parcel number, age, land area, building area, land to building ratio, date of sale, sale amount, sale price per square foot and a section for a brief comment. The comparables included two, one-story industrial buildings that contained 165,000 and 303,192 square feet of building area. The buildings were constructed in 1992 and 2004. These two properties sold in November 2003 and October 2005 for prices of $19,600,000 and $22,750,000 or $75.04 and $118.79 per square foot of building area. Five of the comparables were described as either office buildings or office/research buildings. Each of these comparables had one building that was from 2 to 5-stories in height and ranged in size from 116,428 to 356,000 square feet of building area. The assessor did not know the age of one of these comparables and the four remaining comparables were built from 1983 to 2003. The sales occurred from January 2002 to April 2005 for prices ranging from $16,500,000 to $55,000,000 or from $141.71 to $192.12 per square foot of building area, land included. Of these five comparables, comparable #4 was noted to be a sale/leaseback transaction with the seller leasing the property for $11.99 per square foot for 20 years. The five remaining comparables were multi-building office buildings with comparable #12 also having a research and development building. These comparables had from 2 to 5 buildings that ranged in height from 1 to 7-stories. These comparables ranged in size from 215,144 to 498,507 square feet of building area and were constructed from 1969 to 2001. The sales occurred from February 1998 to November 2003 for prices ranging from $24,050,000 to $50,156,000 or from $89.27 to $149.61 per square foot of building area. On the grid the assessor identified comparables #5, #6, #7, #8 and #9 as being located in Cook County.

Dixon testified that sale #2 was located within Naperville Township close to the subject property. The witness testified sale #3 was located within Naperville Township approximately 1 mile from the subject property. These two sales occurred in December 2003 and April 2005 for prices of $146.19 and $141.71 per square foot of building area, land included, respectively. Dixon testified the average price for all the comparables was $130.76 per square of building area, land included. He further testified the median sales price per square foot for the comparables was $137.33 per square foot of building area, land included. Dixon was of the opinion that the appellant's requested market value of $41,000,000 or $57.96 per square foot of building area, land included, was not supported by these raw sales.

Dixon also testified he utilized the rent listed on page 2 of the Deloitte & Touche letter for the years 2004 through 2009, which is contained in Intervenor's Exhibit No. 1, in the amount of $8,953,688 and a capitalization rate of 11.00% to arrive at an estimated value under an income approach of $81,400,000, rounded.

The assessor also testified that he has to create uniformity. In support of this aspect of his argument the assessor submitted a listing of 10 properties, including the subject, along with basic descriptive data and assessment information. These properties were improved with office buildings located along the I-88 corridor in Naperville Township. One of the comparable parcels only had a land assessment. Including the subject, these properties were improved with office buildings that were built from 1984 to 2001 and ranged in size from 141,328 to 797,399 square feet of building area. The assessor indicated in the document that the improved comparables had total assessments ranging from $6,658,650 to $29,222,200 reflecting market values ranging from $19,977,948 to $87,675,368 or from $110 to $142 per square foot of building area, rounded, land included. He testified the subject's market value as reflected by the assessment is $94.87 per square foot of building area, land included.

Dixon was of the opinion the assessment of the subject property was representative of a fair and equitable distribution of assessments in the township. Dixon further testified that in the early 80's they originally spent $33 million on the subject's construction and a major addition was added with $80 million in permits prior to 1993.

Under cross-examination Dixon agreed sale #1 was built in 2004 and sold in 2005 and was a new building when it sold. He did not know how much office space was in the property and did not know if it was a multi-tenant property. With respect to sale #2 the assessor stated as far as he knew there is no lab space in this building and it is a multi-tenant building. With respect to sale #3 his recollection was this building had no lab space and it was a multi-tenant building. Dixon agreed sale #4 was built in 2003 and sold in 2003 so it was a new building when it sold. He indicated this was an office building located in Cook County. He agreed his sales #5, #6, #7, #8, #9, #10 and #12 were all located in Cook County. He also testified he inspected sales #2, #3 and #11, all located in Naperville. The remaining sales he did not inspect. Dixon agreed sale #5 was a single tenant industrial building. Sale #6 was composed of multi-tenant office buildings. He thought there could have been some research area in this comparable. Dixon did not believe there was any office or research area in comparable sale #7. Sale #7 was a multi-tenant building with an addition in 2001. Dixon did not know the percent of office space in sale #8. Sale #9 was composed of multi-tenant office buildings. Dixon did not believe sale #10 had any research or lab space and he did not have the age or year built listed. Sale #11 had no lab space and was a multi-tenant building. Dixon did not know the percent of office space in sale #12. Dixon did not know the name of the buyer or seller for the comparables and stated that would be in his files.

Dixon stated these were unadjusted sales prices and he made quantitative adjustments to the sales but these were not supplied in the record. He agreed that the value under the income approach was much higher than the actual assessment on the property. Dixon explained this was only one approach to value and did not necessarily mean it was the total value conclusion on the property. He thought the income approach supported the conclusion he reached.

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

The appellant contends overvaluation as the basis of the appeal. Section 9-145 of the Property Tax Code provides in part that except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal of the subject property as of the assessment date at issue, a recent sale of the subject property or documentation of not fewer than three comparable sales. 86 Ill.Admin.Code 1910.65(c). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

For 2005 the subject property had a total assessment of $22,838,850 reflecting a market value of approximately $68,585,135 or $96.96 per square foot of gross building area, land included, when using the 2005 three year median level of assessments for DuPage County of 33.30%. For 2006 the subject property had a total assessment of $23,432,660 reflecting a market value of approximately $70,559,048 or $99.75 per square foot of gross building area, land included, when using the 2006 three year median level of assessments for DuPage County of 33.21%. The appellant submitted a narrative appraisal wherein the appraiser developed the three traditional approaches to value to arrive at an estimate of market value of $41,000,000 as of January 1, 2005. The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessments were disclosed but submitted no independent evidence and presented no witnesses in support of the assessment of the subject property for the assessment years in question. The intervening taxing district submitted a review appraisal and information from the Naperville Township Assessor including raw sales data on 12 sales, an income approach calculation using lease data from the sale-leaseback transaction, and an equity analysis.

The first issue the Board will address is whether or not the sale-leaseback transaction involving the subject property that occurred in December 2002 was indicative of the market value of the subject property. The Board finds the sale-leaseback was not reflective of the fair cash value of the subject real estate. First, the sale-leaseback had a price of $145,000,000, which equates to approximately $205.00 per square foot of gross building area, land included. The price reflected by the transaction is significantly above the comparable sales in the record demonstrating the transaction was not reflective of the fair cash value of the real estate. Second, Intervenor's Exhibit No. 1 contains Form PTAX-203, Illinois Real Estate Transfer Declaration and Form PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A associated with the subject's December 2002 sale. Question 7 on Form PTAX-203 reflects an answer of "No" to the question; "Was the property advertised for sale or sold using a real estate agent?" Item 3 on Form PTAX-203-A has an answer of "0" to the statement, "Write the total number of months the property was for sale on the market." Question No. 8 on the Form PTAX-203-A has an answer of "No" to the question, "In your opinion, is the net consideration for real property entered on line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?" Question 8 goes on to state, "If the answer is "No", please explain." The explanation provided on the form was, "Leverage Lease Sale-Leaseback Transaction Conveyance Not Limited to Fee Simple Interest in Transferred Real Estate." The Board further finds that Intervenor's Exhibit No. 1 contains a letter from Deloitte & Touche directed to the Naperville Township Assessor Warren Dixon explaining the nature of the transaction and concluding the sale did not reflect a market value transaction. The Board finds the evidence in this record demonstrates the sale-leaseback was a leveraged lease transaction in which the sale was based on the leaseback of the property for a long term basis guaranteed by the seller's parent company. The Board finds this sale is not indicative of fair cash value for ad valorem real estate assessment purposes.

The next issue the Board will address is the conclusion of highest and best use of the subject property as improved. Kelly determined the highest and best use of the subject property as improved is its current use as a single-tenant office complex. Kelly explained in his report that he considered conversion from a single-tenant office to a multi-tenant office as an alternative use. The REAC appraisal contains three pages of narrative discussing the analysis of highest and best use. (Appellant's Exhibit No. 1, pages 50-52.) Pomykacz was of the opinion that a single tenant use is one of the possible uses but it could also be a multi-tenanted building. The Board finds the subject property as of the assessment date at issue was designed and used as a single tenant office complex. The evidence in this record did not show the subject office complex was partitioned or could be readily partitioned into individual tenant suites. Nor was there any showing that the utilities as well as the heating, ventilation, and air conditioning (HVAC) system could be separately metered and controlled for multi-tenant use without substantial costs. The Supreme Court of Illinois has held that the fair cash value of property should be determined according to the use for which the property is designed and which produces its maximum income. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 18, 544 N.E.2d 762, 136 Ill.Dec.76 (1989). Here the property was built as a single-tenant office, research and laboratory complex. There is no evidence that a prospective purchaser could not also use the property as a single-tenant office, research and laboratory complex. Based on this record the Board finds that Kelly's conclusion of highest and best use as improved is credible given the physical characteristics of the improvements and the fact the subject is encumbered by a long term lease as a single-tenant property.

Only Kelly developed a cost approach to value. In estimating the land value Kelly used six land comparables that ranged in size from 523,635 to 4,523,558 square feet of land area. The properties sold from October 1999 to July 2003 for prices ranging from $3,640,000 to $15,561,500 or from $2.75 to $8.75 per square foot of land area. Based on these sales, Kelly estimated the subject site had an estimated value of $6.00 per square foot of land area or $16,725,000, rounded. The land sale that occurred most proximate in time to the assessment date at issue and was close to the subject in proximity was land sale #6 that sold for a unit price of $8.75 per square foot. This parcel is significantly smaller than the subject site. For 2005 the subject site had a land assessment of $6,420,920 reflecting a market value of approximately $19,282,000, rounded, or $6.92 per square foot of land area using the 2005 three year median level of assessments for DuPage County of 33.30%. For 2006 the subject site had a land assessment of $6,587,860 reflecting a market value of $19,837,000, rounded or $7.12 per square foot of land area using the 2006 three year median level of assessments for DuPage County of 33.21%. Considering Kelly's land sales with some focus on the parcel located most proximate to the subject property, the Board finds the land assessments of the subject property for the respective years under appeal are reflective of market value.

In estimating the replacement cost new Kelly stated that he utilized the Means Cost Manual and the Marshall Valuation Service. In reviewing the appraisal, Kelly did not reference any particular pages or sections of the respective manuals that he utilized. Furthermore, he did not demonstrate or state how he classified the respective buildings on the subject property. Additionally, the replacement cost calculations are contained on one page of the appraisal and have a total cost of $87,690,000, rounded. The Board finds this minimal data is not particularly credible or reliable in demonstrating a replacement cost new for the improvements. Additionally, Pomykacz cited pages and sections of the Marshall and Swift Cost Manual in Section 16.8 of his review appraisal and prepared a cost calculation check in Section 16.2, which tended to demonstrate that Kelly undervalued the replacement cost new of the improvements. Furthermore, testimony by Dixon was that in the early 80's the original cost of the construction was $33 million and a major addition was added with $80 million in permits prior to 1993. The sum of these total costs was $113 million, which is more than $25 million greater than Kelly's cost new estimate. This further undermines Kelly's estimate of the replacement cost new of the subject property. Based on this record, the Board finds the cost approach contained in the REAC appraisal understated the estimated value of the subject property.

Kelly next estimated the value of the subject under the income approach. The Board finds Kelly's estimate of net rental area, market rent, vacancy and credit loss, and capitalization rate of 11.2% were appropriate and supported by evidence in the record. Kelly applied a market rent of $19.00 per square foot to the net rentable area, which was calculated to be 601,233 square feet. The Board finds this estimate of market rent was supported by his rental comparables #1, #2 and #3 in the REAC appraisal. The Board further finds the expenses associated with the subject property contained in the REAC appraisal, but for the $900,000 attributed to the leasing, were appropriate. In the appraisal Kelly noted that BOMA indicated the 2004 industry average leasing expenses in Suburban Chicago was $.04 per square foot. This would result in a leasing expense of $24,000, rounded. Kelly explained in the appraisal leasing expenses within the Chicago market had evolved over the last few years and that the $1.50 per square foot leasing expense was based on conversations with several brokers. The Board finds there was not sufficient data in the appraisal to add some credibility to this estimate of leasing expenses. Therefore, the Board finds Kelly's conclusion with respect to this expense component excessive. As a result total expenses should be $3,114,000. This in turn results in a net income of $5,796,000. When one capitalizes the net income by 11.2% the result is an estimated market value under the income approach of $51,750,000.

Kelly also prepared a sales comparison approach to value where he utilized 14 comparable sales of single tenant office buildings. Of these 14 sales, the Board finds comparables #1, #2, #3, #4 and #14 were most relevant with respect to date of sale, location, age and size. These comparables ranged in size from 329,658 to 1,176,158 square feet of building area. The sales occurred from March 2001 to March 2005 for prices ranging from $14,000,000 to $43,000,000. Kelly gave an upward adjustment to comparable #14 for demolition costs associated with removing 4 buildings comprising approximately 264,000 square feet of building area after the sale resulting in an adjusted sales price of $44,500,000. The unit prices ranged from $25.93 to $59.65 per square foot of building area, land included. Kelly indicated in his report that all but comparable #14 were inferior to the subject and required upward adjustments. Kelly was of the opinion sale #14, with a unit price of $59.65 per square foot of building area, was overall similar to the subject.

The Board finds that Dixon provided limited information on twelve sales. The Board finds two of these sales, #1 and #5, were dissimilar industrial buildings. Sale #4 was a sales-leaseback transaction, which may have some bearing on whether this is reflective of fair cash value. Sales #11 and #12 occurred in 1999 and 1998, respectively. The Board finds these sales are dated and should not be given any weight. The Board further finds the office sales identified by Dixon were smaller multi-tenant buildings, different from the subject's highest and best use as a single-tenant office complex. The Board finds these smaller, multi-tenant office buildings would set the upper limit of value. The Board finds of some relevance Dixon's comparables #2 and #3. These were multi-tenant office buildings located in Naperville, in close proximity to the subject. The comparables were relatively similar to the subject in age, but significantly smaller than the subject with 167,260 and 116,428 square feet of building area. The sales occurred close to the assessment dates at issue in April 2005 and December 2003 for prices of $24,452,000 and $16,500,000 or $146.19 and $141.71 per square foot of building area, land included, respectively. The Board finds, based on the subject's size and single-tenant use, its market value would be significantly less on a per square foot basis than these two comparables, which are smaller and have multi-tenant use.

After giving most emphasis to the most relevant sales identified in the REAC appraisal and some consideration to Dixon's comparables #2 and #3, the Property Tax Appeal Board finds the subject property had a market value of $71.00 per square foot of building area, land included, resulting in a total indicated value of $50,220,000, rounded, under the sales comparison approach.

In conclusion, after considering the income approach and sales comparison approach as discussed herein, the Property Tax Appeal Board finds the subject property had a market value of $51,000,000 as of January 1, 2005. Since market value has been established, the Property Tax Appeal Board finds the 2005 three year median level of assessments for DuPage County of 33.30% shall apply. (86 Ill.Admin.Code 1910.50(c)(1)). The Board further finds the assessment as established for 2005 shall be carried forward to 2006 subject to the equalization factor applied in Naperville Township of 1.026 as reflected on the "Board of Review Notes on Appeal."

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

Chairman

Member	Member
Member	Member

DISSENTING:

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

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

Date: May 21, 2010

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.