FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Merisant Company
DOCKET NO.: 06-00283.001-I-3
PARCEL NO.: 03-02-23-100-014

The parties of record before the Property Tax Appeal Board are Merisant Company, the appellant, by attorney Clark R. Mills of the Mills Law Office, Springfield; the Kankakee County Board of Review by Kankakee County Assistant State's Attorney Teresa Kubalanza; and the Manteno School Dist. No. 5, intervenor, by attorneys Frederic S. Lane and Scott L. Ginsburg of Robbins Schwartz Nicholas Lifton & Taylor, Ltd., Chicago.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***a reduction*** in the assessment of the property as established by the **Kankakee** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$265,240
IMPR.:	$1,074,760
TOTAL:	$1,340,000

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 17.30 acre site improved with a one-story industrial building with approximately 112,000 square feet of building area. The majority of the building was built in 1989 with additions in 1995, 1996 and 1997. The subject improvement is a steel framed building over poured concrete footings with six to eight inch concrete floors. The exterior walls are insulated steel sandwich panels and painted concrete block and brick on the office section. The manufacturing area contains approximately 83,644 square feet of building area, the warehouse contains approximately 10,000 square feet of building area and there are approximately 17,493 square feet of office space. The subject has 16 to 20 feet of clear ceiling height and 12 dock doors with levelers. The property has a land to building ratio of 6.69:1 and is located in Manteno, Manteno Township, Kankakee County.

Initially, the Kankakee County Board of Review made a motion that the Property Tax Appeal Board take notice of a decision it issued the prior assessment year (2005) under Docket No. 05-00808.001-I-3 in which it determined the correct assessment of the subject property to be $1,666,500. That decision was issued by the Property Tax Appeal Board on March 20, 2009. Pursuant to section 1910.90(i) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.90(i)) the Board takes notice of the aforementioned decision.

The appellant appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by J. Edward Salisbury of Salisbury & Associates, Inc., Taylorville, Illinois, estimating the subject property had a market value of $2,400,000 as of January 1, 2004.

Salisbury was called as a witness on behalf of the appellant. Salisbury is an Illinois Certified General Real Estate Appraiser and has the Certified Assessment Evaluator (CAE) designation issued by the International Association of Assessing Officers (IAAO). Salisbury identified Appellant's Exhibit #1 as his appraisal of the subject property.

The appellant's appraiser testified the subject property is located in an industrial park in Manteno and is used to make sweeteners. The witness testified the subject has 15.5% of the building as office space which he considered on the higher side for an industrial building. He also testified the subject has interior walls that were put in place to compartmentalize the appellant's production process. Salisbury was of the opinion that in most manufacturing processes the building is kept as open as possible, therefore, these walls could potentially be a nuisance to another user.

Salisbury testified to corrections in his report as follows:

> Page 23, all references to the last addition being built in 1998 is incorrect in that it should be 1997.
>
> Page 33, land sale #3 the price is $35,207 per acre.
>
> Page 33, land sale #6 the parcel number is incorrect and the sale was actually part of land sale #7 with a price of $1,800,000.
>
> Page 35, land sale #3 the price was $440,990 and the price per acre was $35,207.
>
> Page 35, land sale #7 the price was $1,800,000.
>
> Page 42, replacement cost new price should read $5,429,807.
>
> Page 46, listing #4 the actual age is 22 years.

Page 63, the price represents 50% of the property, the price for the whole property is $17.12 per square foot of building area.

Page 69, the age of the property is 10 years old when it sold.

Page 75, comparable sale #4, the price should be $17.12 per square foot.

Page 75, comparable sale #5, the price should be $10.87 per square foot.

Page 75, comparable sale #7, the age should be 10 years.

Page 77, the last sentence in the section titled Market Conditions is incorrect.

In estimating the market value of the subject property, Salisbury developed the three approaches to value. The first approach to value developed by the appellant's appraiser was the cost approach. Salisbury first estimated the value of the land using nine land sales and four listings. The nine land sales were located in Bourbonnais, Manteno and Manteno Township and ranged in size from 6.74 to 117.61 acres. The sales occurred from January 1999 to October 2002 for prices ranging from $167,000 to $1,800,000 or from $15,305 to $43,956 per acre. The four listings were located in Kankakee, Momence and Manteno. These properties ranged in size from 4.62 to 160 acres. These properties had list prices ranging from $184,800 to $4,400,000 of from $25,000 to $40,000 per acre. Based on these sales and listings the appraiser estimated the subject property had a land value of $30,000 per acre or $520,000, rounded.

Salisbury next estimated the replacement cost new of the improvements using the Marshall Valuation Service. He classified the subject as a light manufacturing class C building with a base cost of $28.47 per square foot. He estimated the subject would have a replacement cost new of $44.10 per square foot of building area or $5,429,807. Depreciation was calculated using comparable sales #2, #6, #7, and #8 from the sales comparison approach. In calculating depreciation Salisbury deducted the land value from the respective sales prices to arrive at a residual building value. Salisbury then estimated the replacement cost new of the buildings and then deducted the residual building values to arrive at the accrued depreciation. Salisbury then divided the accrued depreciation by the replacement cost new to arrive at the percent of depreciation for the respective comparables. He then divided the percentage by the age of the building to arrive at annual rates of depreciation for the respective buildings. Salisbury calculated total depreciation for the comparable sales as ranging from 62.5% to 72.6% or from 2.25% to 8.23% per year. Salisbury estimated the subject suffered from an annual rate of depreciation of 5.5%. Applying the annual rate to the subject's weighted age of 12 years resulted in total depreciation of 66% of replacement cost new, which equates to $3,583,672. Deducting depreciation from the cost new of the improvements results in a depreciated improvement value of $1,846,135. Adding the land value of $520,000 to the depreciated improvement value resulted in an estimated value under the cost approach of $2,400,000.

The appraiser next estimated the value of the subject property using the income approach to value. The first step in this approach was to estimate the market rent using four rentals and five rental listings. The comparable rentals were located in Freeport and Danville. The comparables ranged in size from 64,000 to 211,200 square feet of building area and in age from 10 to 20 years old. These comparables were manufacturing and/or warehouse buildings with ceiling heights ranging from 18 to 32 feet. The comparables had sites that ranged from 11.20 to 15.92 acres and office space ranging from .05% to 24% of building area. These properties had leases ranging from $1.56 to $2.55 per square foot of building area. The five listings are located in Kankakee, Bradley, Loves Park, Machesney Park and Rockford. These properties were improved with industrial manufacturing and/or warehouse distribution buildings that ranged in size from 67,520 to 175,500 square feet of building area. The buildings ranged in age from 8 to 27 years old with ceiling heights ranging from 10 to 30.8 feet. The comparables had office space ranging from .74% to 50% of building area. These properties had asking rents ranging from $2.50 to $3.00 per square foot of building area. Based on this data Salisbury estimated the subject had a net market rent of $3.00 per square foot of building area resulting in a potential gross income of $337,878. From this amount Salisbury deducted 10% for vacancy and credit loss to arrive at an effective gross income of $304,090. From this Salisbury deducted 10% for expenses to arrive at a net operating income of $273,681.

Salisbury next estimated the overall capitalization rate using eleven comparables that had either sold, were leased or were offered for sale or lease. The rates are developed by dividing the net operating income of the comparable properties by their respective selling prices. Using this data the appraiser had overall capitalization rates ranging from 9.8% to 21.6%. Based on this analysis Salisbury estimated a capitalization rate of 11%. Capitalizing the net income resulted in an estimated value under the income approach of $2,500,000, rounded.

The final approach to value developed by Salisbury was the sales comparison approach. Under this approach the appraiser used eight sales located in Manteno, Kankakee, Bourbonnais, Machesney Park, Loves Park and Rockford. The comparables are improved with one-story or part one-story and part two-story industrial buildings that range in size from 91,355 to 273,336 square feet of building area. The comparables ranged in age from 8 to 32 years old, ceiling heights ranged from 10 feet to 42 feet, office areas ranged from none to 50% of building area and the land to building ratios ranged from 2.24:1 to 7.90:1. The sales occurred from November 1999 to April 2005 for prices ranging from

$1,200,000 to $3,600,000 or from $7.95 to $23.12 per square foot of building area. Comparable sale #1 was a company buyout. Comparable sale #4 was for a 50% interest in the property which would then reflect a price of $2,465,000 for the full interest in the property. This property had 50% of its building area devoted to office space and 50% of the area is warehouse space. The seller of comparable sale #5 was in bankruptcy at the time of sale. This property had been listed for 8 months prior to the transaction. Salisbury testified comparable sale #8 was acquired by Alpine Bank through foreclosure. Alpine Bank then offered the property on the market through Whitehead Realtors. The property was listed for 12 months prior to the sale. Comparable sales #4, #6, #7 and #8 were available for lease for rentals of $2.90, $3.00, $2.50 and $3.00 per square foot of building area, respectively. Salisbury testified each sale was confirmed with the buyer, seller or broker that was involved in the transaction with the exception that comparable sale #9 was confirmed with Peter Wolfley of the Rockford Township Assessor's Office as well as with the real estate transfer declaration which indicated the property had been on the market for five months prior to the sale. Based on these sales the appraiser estimated the subject had a market value of $21.00 per square foot of building area or $2,400,000, rounded.

Salisbury testified that he selected comparable sales located outside Kankakee because with industrial sales the market is either regional or national in scope. He testified that as long as other conditions of the sales are similar it is appropriate to use sales outside of the community or the county.

Salisbury also testified he had information on a sale located at 1340 Sycamore, Manteno.[1] The witness testified this building was built to suit for the tenant, Chiquita Banana, and they were obligated under a lease through 2014. He further testified this building was used mainly for refrigeration, with nine separate areas, where the zones had temperatures between 35 and 40 degrees. Due to the building being refrigerated and under a lease until 2014, Salisbury chose not to use this comparable. He considered the transfer of this property a leased fee.

Salisbury also testified that generally there was a slight increase in the market from 2004 to 2006. He testified that manufacturing properties were starting to go down in value while distribution warehouses were either stable or going up in value.

In reconciling the three approaches to value Salisbury gave some weight to the cost and income approaches to value and considerable weight to the sales comparison approach. Salisbury ultimately estimated the subject property had a market value of $2,400,000 as of January 1, 2004. Based on this evidence the appellant requested the subject's assessment be reduced to $800,000.

[1] This property was comparable sale #2 and rental comparable #2 contained in the Brorsen appraisal, Intervenor Exhibit A-1.

Under cross-examination Salisbury denied that his fee for performing an appraisal is contingent upon his valuing a property within a range of values that he gives his client. Salisbury agreed that prior to preparing an appraisal he provides his client a broad range of values for a property to be appraised. The witness explained that when contacted to do an appraisal he reviews the information provided by the potential client to determine if he can help. If the appraisal is for tax purposes he indicates to the client in writing that he believes the market value of the property falls within a particular range. He also tells his clients that if his value falls outside this range he will inform them and tell them he thinks the value is going to be either higher or lower than the range and give them the option of having him complete the appraisal report. If he does not complete the report, he does not get paid for any of the work.[2]

Salisbury testified that Property Tax Services, Inc. was his client that retained him to prepare the appraisal. He did not know if the fee for Property Tax Services, Inc. was contingent on a reduction in the assessment. Salisbury did not disclose within his report that Property Tax Services, Inc. was his client and agreed that the letter of transmittal was addressed to Merisant US, Incorporated.

Salisbury explained that his statement on page 16 of his appraisal about the lack of 911 services in Manteno was based on information received from the State of Illinois. Salisbury also agreed that his statement on page 17 of the appraisal regarding Community Facilities in Manteno was incorrect.

Under the cost approach Salisbury agreed that the construction of the manufacturing area differed from the construction of the office area. Salisbury also agreed that his most recent land sale was in October 2002. Salisbury further explained with respect to land Sale #6 on page 33 of the appraisal, there was a sale composed of 75 acres for a price of $1,188,000 but stated the property index number (PIN) was incorrect. The correct PIN is 02-23-400-001.

Salisbury was shown Intervenor's Exhibits H-1 and H-2, copies of the Illinois Real Estate Transfer Declarations, associated with land sale #7. Salisbury agreed that the second PIN listed in his report for this sale was incorrect. Salisbury also agreed within his report land sale #5 and land sale #6 have the same PIN listed for each sale, which is an error. Salisbury agreed that Intervenor's Exhibit H-3 was the Illinois Real Estate Transfer Declaration for land sale #5. Salisbury also agreed that his

[2] At the hearing the intervenor submitted Intervenor's Exhibit F, a portion of a transcript from a hearing before the Property Tax Appeal Board from another appeal, to impeach Salisbury's testimony regarding whether his fee is contingent on valuing a property within a particular range. The Board finds the testimony in both matters is consistent.

land listing #4 on the chart on page 35 of his report was actually land listing #5.

Salisbury agreed that in the replacement cost he classified the subject as having an exterior wall of metal even though the office portion is painted concrete block and brick. Salisbury also agreed that he used Marshall Valuation Service with the subject classified as a Class C and of average quality to determine replacement cost new. Salisbury identified Intervenor's Exhibit G as a page from the 2/2004 Marshall and Swift manual that listed the cost of Class C average of $34.11 per square foot, which differed from Salisbury's base cost estimate of $28.47 per square foot.

In extracting depreciation from the market, Salisbury used comparable sales #2, #6, #7 and #8 which were 31, 22, 10 and 8, years old, respectively. Salisbury agreed that he had to estimate the value of the land in each of these sales to extract depreciation. The land values attributed to the comparables ranged from $15,000 to $76,230 per acre.

With respect to the income approach, Salisbury agreed that the lease for rental comparable #1 had expired prior to the January 1, 2006 valuation date. The three remaining leases are located in Danville, Illinois. Salisbury considered Danville to be inferior to the subject's location as evidenced by the positive adjustments on page 47 of his report. Salisbury testified that the option was exercised for rental comparable #2 for the same rate, $2.00 per square foot triple net. This lease was still active as of January 1, 2006. Salisbury agreed that his rental comparable #2 was the same as his capitalization rate comparable #11. Rental comparable #2 also has 20,000 square feet of office space leased for $2.75 per square foot. Salisbury also testified that his rental listing #1 is the same as his comparable sale #4. Salisbury also agreed that his rental listing #4 is the same as his comparable sale #6. Salisbury also agreed that his rental listing #5 is the same as his comparable sale #8.

Salisbury agreed that his capitalization rate was developed using five comparables with actual leases and sales and the remaining were rental listings with asking prices. The witness acknowledged that capitalization rate comparable #4 was located in Washington, Missouri.

With respect to the sales comparison approach, Salisbury's sale #2 which occurred in September 2000, is 31 years old and has 273,336 square feet with a land to building ratio of 17.30:1. Sale #3 took place more than six years prior to the assessment date at issue. Sale #4 was for a 50 percent interest. Salisbury was aware that this comparable sold again in August 2006 for a price of $3,250,000, which equates to $22.57 per square foot of building area, land included. The witness testified that if he could have verified this was an arm's length sale he would have used it if doing an appraisal as of January 1, 2006. Salisbury agreed his sale #5 was in bankruptcy but had been on the market for 8 months. Salisbury was shown Intervenor's Exhibit B, which was a copy of the Illinois Real Estate Transfer Declaration for comparable sale #5 wherein the document indicated the transaction was a sale in lieu of foreclosure. Salisbury testified he was aware that the buyer of this property leased it just prior to the sale. He also agreed this comparable was used in estimating depreciation. The witness was unaware of any tax abatements associated with this comparable. With respect to sale #8, Salisbury was not aware that Alpine Bank acquired the property through foreclosure and received a Sheriff's Deed reciting a purchase price of $1,500,000 paid in August 2002. This property was also used as Salisbury's rental listing comparable #5 and rental capitalization rate comparable #8. Salisbury did not know for a fact that his comparable sale #9 was not advertised for sale. Intervenor's Exhibit E, PTAX-203, Illinois Real Estate Transfer Declaration, question #7 indicated the property was not advertised for sale or sold using a real estate agent. Salisbury also agreed he did not prepare an appraisal of the subject estimating a market value as of January 1, 2006.

Under further cross examination by the Property Tax Appeal Board hearing officer, Salisbury testified he determined the subject's highest and best use to be an industrial property. He testified the subject was not high tech even though it has air conditioning throughout the building and suspended ceilings in big parts which are unusual for industrial property. Salisbury also was of the opinion his comparable sale #1 was not an arm's length transaction because it was part of a company buyout and an allocation was made. He testified this property was not listed for sale. The witness testified he included the sale because the property was located in Manteno. Salisbury explained this comparable was a refrigerated warehouse used as a food distribution warehouse. With respect to Salisbury's comparable sale #5, his report indicated that there was $410,000 in personal property. The transfer declaration associated with this sale was marked as Intervenor's Exhibit B, which disclosed a total consideration of $1,200,000 and personal property of $410,000 resulting in a net consideration for the real property of $790,000, which equates to approximately $7.16 per square foot of building area, including land. Salisbury used the total purchase price of $1,200,000 in his report. Salisbury also testified his comparable sales #6, #7 and #8 were vacant at the time of sale. Salisbury gave most weight to the sales comparison approach to value.

Under redirect examination Salisbury testified that for property tax purposes, all appraisers he has talked to find a value range when they're giving bids for work. Salisbury testified he utilizes listings in his report to provide the upper limit of value for a particular type of property. In referring to Intervenor's Exhibit E, regarding Salisbury's sale #9, PTAX-203-A, question #3 indicates the property was for sale on the market for 5 months.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $1,666,500 was disclosed. The subject's assessment reflects a market value of $4,974,627 or $44.17 per square foot of building area, land included, using the 2006 three year median level of assessments for Kankakee County of 33.50%. The board of review deferred to the intervening taxing district to present evidence in support of the assessment.

The intervenor called as its witness real estate appraiser Andrew Brorsen. Brorsen has the Member of the Appraisal Institute (MAI) designation and is an Illinois Certified General Real Estate Appraiser. The witness is the owner of Brorsen Appraisal Service located in Kankakee.

Brorsen prepared a restricted use appraisal of the subject property with an effective date of January 1, 2006, which was marked as Intervenor's Exhibit A-1.[3] (Transcript pages 136-137, Intervenor's Exhibit A-1, p. 3). Brorsen identified Intervenor's Exhibit A-2 as a self-contained report of the subject property prepared in 2003. Brorsen testified that the 2006 appraisal can be read independently of the 2003 report. However, the witness also stated the 2006 appraisal could be misinterpreted if you do not have reference to the 2003 report. Brorsen then agreed that the letter of transmittal contained in the 2006 restricted use appraisal report stated the 2006 report should not be read independently of the 2003 appraisal.

Brorsen testified he appraised the subject property in 2003, 2004, 2005 and 2006. He personally inspected the exterior and interior of the subject property on June 8th 2005. Intervenor's Exhibit A-1 at page 6 further indicated Brorsen inspected the property on December 14, 2006 and observed the property on January 9, 2008.

The witness testified that between 2003 and 2006 the total inventory of industrial space in Kankakee County increased by approximately 300,000 square feet. He further testified that the absorption rate has fluctuated during this time period. He testified that vacancy rates declined from 4.2% in 2003 to 3.1% in 2004 and increased to 3.9% in 2006. (Intervenor's Exhibit A-1, p. 14). The witness disagreed with Salisbury's appraisal (Appellant's Exhibit #1, p. 29) that states demand for manufacturing space in Manteno has decreased.

[3] A Restricted Use Appraisal Report is for client use only. Advisory Opinion 11 (AO-11), *Uniform Standards of Professional Appraisal Practice, 2002 Edition*, The Appraisal Foundation, p. 146; *Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition*, The Appraisal Foundation, p. 137. See also Standard Rule 2-2(c), *Uniform Standards of Professional Appraisal Practice, 2002 Edition*, The Appraisal Foundation, p. 27; and *Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition*, The Appraisal Foundation, p. 28, explaining that a Restricted Use Appraisal is for client use only.

The witness testified the subject is located in an industrial park, the third addition of the Illinois Diversatech Campus (IDC). Brorsen was of the opinion the location in an industrial park enhances the market value due to possible tax incentives and amenities that are available.

Brorsen testified the appellant manufactures NutraSweet at the facility. The witness described the property and indicated it has approximately 15% to 16% of the space is office area. He was of the opinion this was a common ratio for manufacturing. The witness testified the subject is fully sprinklered and has 18 feet to 20 feet above grade for the manufacturing section. The witness testified the subject building is climate controlled.

In the 2003 appraisal Brorsen indicated the industrial section of the building improvement is rated as a high-tech manufacturing facility. (Intervenor's Exhibit A-2, p. 20). He picked up this term from the original construction information from the developer and because the subject was built for food processing. Due to food manufacturing Brorsen explained there are additional construction features so as to have sealed rooms to prevent contamination of the food as well as an independent ventilation system. He testified that the additional amenities would tend to attract other food product producers. He also agreed this would bring in higher rentals and increase the cost to build.

Brorsen estimated the subject had a weighted age of 14 years as of January 1, 2006. He described the subject as being in good condition. He appraised the fee simple property rights and was of the opinion the highest and best use as vacant was for an industrial use and as improved was for manufacturing.

Brorsen developed the three traditional approaches to value. In the 2006 report the appraiser used eight land sales that occurred from March 2002 to September 2005 and ranged in size from 3.94 to 27.42 acres. The comparables sold for prices ranging from $125,000 to $1,233,900 or from $17,171 to $45,000 per acre. Four of the sales occurred from August 2004 to September 2005 for prices ranging from $24,950 to $45,000 per acre. The witness estimated the subject land had a value of $46,000 per acre or $795,800.

In estimating the cost new of the improvements Brorsen testified he relied on the Marshall Valuation Service. The witness explained that in his 2003 appraisal he had data with respect to the original cost to construct a portion of the subject in 1989. The 2003 appraisal indicated the cost of 61,376 square feet of building area was $6,020,000 or $98.08 per square foot of building area. The 2003 report also indicated there was $865,000 allocated to the land resulting in a residual improvement cost of $5,155,000 or $83.99 per square foot of gross building area. (Intervenor's Exhibit A-2, p. 28).

Brorsen testified he used sections 14 and 15 of the Marshall Valuation Service. He classified the manufacturing/warehouse section of the subject as a Class S structure because of its steel framing and steel clad exterior and the office section as Class C because of the masonry exterior walls. He testified a Class C light manufacturing building would be a masonry frame structure, not metal. In estimating the cost new, the appraiser also added a component for entrepreneurial profit. Brorsen testified the replacement cost new of the improvements was estimated to be $6,525,745. He testified that upon inspection he did not observe any deferred maintenance. He also found no functional obsolescence and no economic obsolescence. He testified he used the age life method with the subject having an effective age of 14 years and a total life of 40 years to arrive at depreciation of 35% or $2,284,011. He also included in his appraisal depreciation using market extraction using five sales from the sales comparison approach. The appraiser calculated annual rates of depreciation ranging from 1.83% to 4.28%. The intervenor's appraiser gave this method no weight because of the wide range of indications that were developed from these properties. Deducting depreciation from the replacement cost new resulted in a depreciated building value of $4,241,700. To this the appraiser added $399,600 for the depreciated site improvements and $795,800 land value to arrive at an indicated value under the cost approach of $5,440,000.

The next approach to value developed by Brorsen was the income capitalization approach. The first step was to estimate the market rent of the subject using eight comparable rentals. The rental comparables were located in Peotone, Manteno and Kankakee and ranged in size from 19,380 to 99,358 square feet of building area. Two comparables were reported to have gross rentals of $3.80 and $4.00 per square foot of building area and six comparables had triple net rentals ranging from $3.00 to $5.52 per square foot of building area. The appraiser testified rentals #2 and #3 were located in ICD. These comparables had 98,560 and 57,600 square feet of building area and net rentals of $4.35 and $5.52 per square foot of building area, respectively. Rental comparable #2 was the same property as comparable sale #2 and rental comparable #3 was the same property as comparable sale #4 in Brorsen's 2006 appraisal. The witness also acknowledged that within his report the lessee and/or lessor was listed as "Confidential" for rental comparables #1, #2, and #8. Brorsen also agreed that he did not have the adjustment process within the report. The witness testified he gave most emphasis to rental comparable #2, a 98,560 square foot building that had a ten-year lease that commenced in 2004 for a rental of $4.35 per square foot of building area, and rental comparable #3, a 57,600 square foot building that had a 5-year lease at $5.52 per square foot that commenced in 1998 and expired in 2003. Based on this data the appraiser estimated the subject had a market rent of $5.50 per square foot of building area resulting in a potential gross income of $610,500. From this amount the appraiser deducted 10% for vacancy loss, the same as used by Salisbury, to arrive at an effective gross income (EGI) of $549,450. The appraiser then deducted 10% of EGI for expenses, which was the same percentage as used by Salisbury, allocated as follows; 4% of

EGI for management expenses, 1% of EGI for miscellaneous expenses and 5% of EGI for reserves for replacement, to arrive at a net income of $494,505.

The intervenor's appraiser next estimated the capitalization rate using the mortgage/equity technique with support from national survey data and market extraction. Under the mortgage/equity technique, the appraiser estimated a capitalization rate of 8.8%. Brorsen indicated national surveys for industrial property had rates ranging from 5.50% to 9.00% with an average of 7.50%. Brorsen testified and indicated in the report that comparable sale #2 (rental comparable #2) was leased at the time of sale for $4.35 per square foot of building areas resulting in an annual rental of $428,736. Dividing the annual rental of $428,736 by the purchase price of $4,950,000 results in a capitalization rate of 8.66%.[4] Based on this data the appraiser estimated an overall capitalization rate of 8.8%. Capitalizing the subject's estimated net income of $494,505 by 8.8% results in an estimated value under the income approach of $5,569,000.

The final method developed by Brorsen was the sales comparison approach wherein he used five industrial sales located in Kankakee and Manteno. The comparables ranged in size from 24,375 to 155,933 square feet of building area. The buildings were constructed from 1981 to 1988, with comparables #4 and #5 having additions in 1989 and 1990. These comparables had office spaces ranging from 2.5% to 19.0% and land to building ratios ranging from 2.23:1 to 18.12:1. These properties sold from September 2002 to August 2006 for prices ranging from $600,000 to $4,950,000 or for unit prices of $22.57, $50.22, $24.62, $36.46 and $23.09 per square foot of building area, land included, respectively.[5] Comparable sales #2 and #4 were described as being climate controlled which Brorsen testified meant the buildings are maintained at a consistent temperature throughout the year. Both of these sales were located in IDC. The witness testified comparable sale #2 was equipped to have food product stored within the building and the appraisal indicated that the comparable had 39,000 square feet of climate controlled area and 25,230 square feet of cooler space. After considering differences from the subject, the witness was of the opinion these comparables had adjusted sales prices ranging from $34 to $62 per square foot. Based on these sales, the appraiser estimated the subject had an estimated value under the sales

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[4] Comparable sale #4 (rental comparable #3, one of the two he gave most emphasis to in establishing market rent) consisted of a 57,600 square foot building that had an annual rent of $5.52 per square foot of building area or $318,528 that expired in 2003. The property sold in November 2003 for a price of $2,100,000, which would indicate a capitalization rate of 15.14%.

[5] Brorsen comparable sale #1 was also the same property as Salisbury's comparable sale #4 that previously sold in April 2005 for a price of $17.12 per square foot of building area, including land. Brorsen comparable sale #5 was the same property as Salisbury comparable sale #1. Both appraisers reported a total sales price of $3,600,000; however, Brorsen estimated a unit value of $23.09 per square foot of building area based on a building size of 155,933 square feet while Salisbury estimated a unit value of $23.12 per square foot of building area based on a building size of 155,669 square feet.

comparison approach of $50 per square foot of building area or $5,550,000.

In reconciling the three approaches to value, the appraiser gave most emphasis to the sales comparison approach and estimated the subject had a market value of $5,500,000 as of January 1, 2006.

Based on this evidence the intervening taxing district requested the subject's assessment be increased to reflect a market value of $5,500,000.

Under cross-examination the appraiser explained the subject property was appraised as though free and clear of mortgages, liens, encumbrances, long-term leases and servitudes because that is defining fee simple interest. Brorsen did not think the sale price of his comparable #2 at $50.22 per square foot of building area was an outlier compared to his other sales that had unit prices of $22.57, $24.62, $36.46 and $23.09 per square foot of building area, respectively. He agreed his comparable sale #2 was leased at the time of its August 2005 sale. The witness also agreed that the subject does not have any cooler space as does comparable sale #2.

Brorsen agreed that he placed most emphasis on comparable sale #2, which had a ten year lease in place at the time of sale. He assumed that is why the property sold because the investor was looking for something that was leased. (Transcript p. 207.) Brorsen testified the lessee was Nestle Corporation and Chiquita was one of their products. (Transcript pp. 226, 227).

In extracting depreciation, on page 21 of his 2006 appraisal, Brorsen had indicated comparable sale #2 had a total life expectancy of 55 years and an average annual rate of depreciation of 1.83%. He did not think this was an outlier but a better building. The intervenor's witness was shown a copy of his 2005 appraisal of the subject property, marked as Intervenor's Exhibit C, which had been submitted by the board of review. At page 18 of the report, Brorsen had determined the very same comparable sale had a total life expectancy of 35 years and an average annual rate of deprecation of 2.84%. In extracting depreciation in the 2006 appraisal Brorsen had indicated comparable sale #2 had a replacement cost new of $6,406,000. In extracting depreciation in the 2005 appraisal, Brorsen had indicated the same property had a replacement cost new of $9,757,000.

With respect to Brorsen's comparable sale #1, which was the same property as Salisbury's sale #4, the intervenor's appraiser disagreed with Salisbury's description the comparable had 50% office space. The witness explained this property was used as a coupon redemption facility. He was of the opinion a portion of the building was not office space but climate controlled.

The witness agreed that a portion of his rental comparable #3 was built to suit.

Brorsen stated the property rights appraised were a fee simple interest, meaning absolute ownership, unencumbered by other interest or estate. Brorsen testified that a mortgage or a long term lease situation would be examples of an encumbrance. The witness testified that if the property was being marketed as an investment property, the lease terms may be an advantage to market the property. If the property was being marketed as an owner-user property, a long term lease would probably impact the value of the property because the owner would have to wait until the lease expired before it could use the property. (Transcript p. 216).

The appraiser was also of the opinion the subject did not suffer from functional obsolescence even though the building was constructed in stages. The witness also testified that the processing site at the subject is high-tech, which related to the machinery and equipment. He thought another potential purchaser of the subject would be a food processing company. He testified, however, that removing the food processing partition would not take much because the subject is a freestanding steel structure. The witness indicated the subject could be readily converted to a general manufacturing facility.

With respect to the land sales the appraiser made a statement in his report about matched pairings indicating an upward trend in unit prices over the time frame associated with the land sales used in the appraisal. (Intervenor's Exhbit A-1, p. 8). Brorsen indicated the matched paired sales that he used were not in the appraisal because it was a restricted use report. The witness also indicated the matched paired analysis was not in the 2003 appraisal. However, in the 2003 appraisal of the subject the appraiser estimated the subject property had a land value of $46,000 per acre (Intervenor's Exhibit A-2, p. 27) which is the same estimated value per acre in the 2006 appraisal (Intervenor's Exhibit A-1, p. 18). The appraiser agreed that none of the land sales he used exceeded $46,000 per acre.

With respect to depreciation, the witness testified the expected total life for the subject of 40 years was based on market observation. He did not use market observation to derive the total life expectancy of the comparable sales used in estimating depreciation through market extraction.

The appraiser also agreed the highest rental he had was for rental comparable #3 at $5.52 per square foot, but the lease expired in 2003. This property sold in 2003 for a price of $2,100,000. At the time of sale the property was not under lease. Brorsen agreed that you could use the lease to calculate a capitalization rate, which was calculated to be approximately 15.1%. He indicated the lease at $5.52 per square foot and capitalization rate indicated a built-to-suit situation.

Brorsen also agreed the adjustments to the sales on page 29 of his 2006 appraisal were qualitative. The appraiser agreed the adjusted prices for the comparable sales ranged from $34 to $62 per square foot. The appraiser agreed, however, in reviewing his report one could not discern which property had an adjusted unit value of $34 per square foot or $62 per square foot.

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 issue before the Property Tax Appeal Board is the determination of the correct assessment of the subject property as of January 1, 2006. Both the appellant and intervenor contend the market value as reflected by the assessment is incorrect. 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 so to do. <u>Springfield Marine Bank v. Property Tax Appeal Board</u>, 44 Ill.2d 428 (1970). Proof of market value may consist of an appraisal of the subject property as of the assessment date at issue. (86 Ill.Admin.Code. §1910.65(c)(1)). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. <u>National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board</u>, 331 Ill.App.3d 1038 (3rd Dist. 2002).

The appellant asserts the subject property has a market value of $2,400,000 based on an appraisal prepared by Salisbury (Appellant's Exhibit #1) with an effective date of January 1, 2004. The intervening school district contends the subject property has a market value of $5,500,000 based on a summary appraisal prepared by Brorsen with an effective date of January 1, 2003 (Intervenor's Exhibit A-2) and a restricted use appraisal prepared by Brorsen with an effective date of January 1, 2006 (Intervenor's Exhibit A-1). The subject property had a total assessment of $1,666,500 which reflects a market value of $4,974,627 using the 2006 three year median level of assessments for Kankakee County of 33.50%.

Initially, the Board finds Brorsen's appraisal with an effective date of January 1, 2003 and Salisbury's appraisal with an effective date of January 1, 2004 reflect estimates of values that are 3 and 2 years prior to the assessment date at issue, respectively. Second, the Board finds that Brorsen's report with an effective date of January 1, 2006, is a restricted use report that, according to the relevant provisions of the Uniform Standards of Professional Appraisal Practice, is to only be used by the client.[6] Page 6 of Intervenor's Exhibit A-1 provides that

[6] See footnote #3.

the appraiser's clients are Manteno Community School District No. 5 and Manteno Township. Despite the fact the appraisals are somewhat dated and one appraisal is a restricted use report, the Property Tax Appeal Board considered the testimony of the witnesses and reviewed the relevant data in the respective reports in determining the correct assessment of the subject property.

Each appraiser utilized the three approaches to value in estimating the market value of the subject property. Beginning with the cost approach each appraiser initially estimated a land value. Salisbury estimated a land value of $30,000 per acre while Brorsen estimated a land value of $46,000 per acre. In reviewing Appellant's Exhibit #1 and Intervenor's Exibhit A-1 both Salisbury and Brorsen used two land sales in IDC that sold in March and October 2002 for unit prices of $17,171 and $24,777, respectively, per acre. Although located in the same industrial park as the subject, these sales are somewhat dated but do provide some indication of land value within the subject's industrial park as of the assessment date at issue. The remaining sales used by Salisbury are considered dated by the Property Tax Appeal Board occurring from January 1999 to January 2001. Brorsen has four land sales that occurred from August 2004 to September 2005 for prices of $45,000, $24,950, $36,393 and $30,000 per acre. The two sales that occurred most proximate in time to the assessment date had prices of $30,000 and $36,393 per acre. Salisbury also had five land listings in his report with unit prices ranging from $25,000 to $40,000 per acre. The Board finds only one sale in the record approached Brorsen's estimate of land value of $46,000 per acre. As a result, the Board finds Brorsen's estimated land value is excessive. In reviewing this data the Board finds Salisbury's estimate of land value of $30,000 per acre is best supported in the record resulting in a land value estimate of $520,000, rounded.

In reviewing the replacement cost new of the improvements the Board finds Brorsen's calculation better represents the subject building improvements. In estimating the value of the subject building Brorsen segregated the office area from the industrial warehouse area in estimating their respective costs. Additionally the Board finds his classification of the subject improvements better represented the structure than did Salisbury's classification. Brorsen classified the manufacturing/warehouse section of the subject as a Class S structure because of its steel framing and steel clad exterior and the office section as Class C because of the masonry exterior walls. Brorsen calculated the replacement cost new of the building improvements to be $6,525,745.

Salisbury estimated depreciation of 66% while Brorsen estimated depreciation of 35% was applicable to the subject. Both reports had market extracted depreciation, although Brorsen did not place any weight on his data. The Board finds, however, that market derived depreciation is to be given weight in that it considers all three elements of depreciation, physical, functional and economic. The Board finds that Salisbury's use of the comparable sale #6 located in Machesney Park as well as Brorsen's sales with the exception of his sale #2 had a relatively tight range of market extracted annual rates of depreciation from 3.04% to 4.38%. Based on this data and considering the testimony of the two witnesses, the Board finds an appropriate annual rate of depreciation for the subject is 3.35% resulting in total depreciation of 47%, rounded, using a weighted age of 14 years. Deducting depreciation results in a depreciated building value of $3,458,645. Adding Brorsen's estimated depreciated site improvements of $399,551 and the land value of $520,000 results in an estimated value under the cost approach of $4,380,000, rounded.

The next approach developed by the two appraisers was the income approach to value. Under this approach Salisbury estimated the subject had a market rent of $3.00 per square foot while Brorsen estimated the subject had a market rent of $5.50 per square foot. The Board finds only one comparable in the record approached the market rent estimate used by Brorsen, which was his rental comparable #3 with a rental of $5.52 per square foot of building area. Testimony disclosed that a portion of this property was built-to-suit and the rent was based on a lease entered in 1998 that expired in 2003 for a building approximately ½ the size of the subject property. Brorsen's 2006 report listed two rental comparables, #1 and #2, located in Peotone and Manteno, that were similar to the subject in size with lease terms that commenced in 2002 and 2004 for rentals of $3.80 and $4.35 per square foot of building area, respectively. The first lease was on a gross basis while the second lease was triple net. The property leased for $4.35 per square foot of building area had climate control and cooler space. Salisbury's report had two rental listings located in Kankakee and Bradley for rentals of $2.95 and $2.75 per square foot of building area, respectively. Based on this data the Board finds the subject had a market rent of $3.80 per square foot, triple net resulting in a gross potential income of $425,600. Both Salisbury and Brorsen deducted 10% for vacancy, which results in an EGI of $383,040. Both appraisers also deducted 10% of EGI for expenses which results in net income of $344,736. The Board finds Brorsen's estimate of the capitalization rate of 8.8% is best supported as of January 1, 2006. Capitalizing the net income of $344,736 by a capitalization rate of 8.8%, results in an estimated value under the income approach of $3,920,000, rounded.

The final approach to value developed by the two appraisers was the sales comparison approach. Salisbury estimated the subject had a unit value under the sales comparison approach of $21.00 per square foot of gross building area. Brorsen estimated the subject property had a unit value under the sales comparison approach of $50.00 per square foot of gross building area. The Board finds Salisbury and Brorsen used a common sale located at 3 Stuart Drive in Kankakee that sold in April 2005 for a unit price of $17.12 per square foot of building area and again in August 2006 for a price of $22.57 per square foot of building area.

This building was larger with 144,000 square feet of building area and older at 24 years old than the subject building. Salisbury and Brorsen also had a common sale located at 1260 Sycamore Road in Manteno that sold in September 2002 for a price of $3,600,000 or approximately $23.09 per square foot of building area when using Brorsen's reported size of 155,933 square feet. This building was larger but similar to the subject in age. Brorsen's report also had three additional sales located in Manteno that had unit prices of $24.62, $36.46 and $50.22 per square foot of building area. The property at the high end of the range was located at 1340 Sycamore Road in Manteno. Salisbury testified he was aware of the sale but he chose not to use the transaction because he understood this building was built-to-suit for Chiquita Banana and was under a lease through 2014. He further testified this building was used mainly for refrigeration, with nine separate areas where the zones had temperatures between 35 and 40 degrees. Salisbury considered the transfer of this property a leased fee. Salisbury's testimony about this sale was corroborated by the data outlined in Brorsen's report and Brorsen's testimony regarding this sale. Brorsen assumed the property located at 1340 Sycamore Road in Manteno sold because the investor was looking for something that was leased. (Transcript p. 207). Brorsen testified the lessee was Nestle Corporation and Chiquita was one of their products. (Transcript pp. 226, 227). Due to these factors the Board gives little weight to this sale because of the leased fee nature of the transaction and its construction with zoned cooler and refrigeration space.[7] After considering these sales, the Board finds the subject had an indicated value under the sales comparison approach of $36.00 per square foot of building area or $4,030,000 rounded.

After considering the evidence and testimony as outlined herein, the Property Tax Appeal Board finds the subject property had a market value of $4,000,000 as of January 1, 2006. Since market value has been determined the 2006 three year average median level of assessment for Kankakee County of 33.50% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)). The Board finds the correct assessment of the subject property as of January 1, 2006 is $1,340,000.

[7] In reviewing Brorsen's appraisal submitted in connection with the 2005 appeal, which was submitted by the board of review and marked as Intervenor's Exhibit C, there was no reference to the fact that the comparable located at 1340 Sycamore Road, Manteno, which was comparable sale #1 in the 2005 appraisal, was subject to a long term lease at the time of sale. In fact Brorsen indicated in the 2005 appraisal that this sale was a fee simple property when in fact it was leased at the time of sale. (Intervenor's Exhibit C, page 24). The fact that this comparable was subject to a long term lease brought to light in the 2006 appeal is the reason the Property Tax Appeal Board gives this transaction little weight in determining the subject's assessment as of January 1, 2006. The reason the Property Tax Appeal Board has arrived at a different assessment in the 2006 appeal than in the 2005 appeal is due in part to the fact that little weight was given this sale.

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: April 22, 2011

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.