FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Valspar Corporation
DOCKET NOS.: 06-01789.002-I-3 through 06-01789.005-I-3
PARCEL NOS.: See Below

The parties of record before the Property Tax Appeal Board are Valspar Corporation, the appellant, by attorneys Gregory J. Lafakis and Peter Verros of Verros, Lafakis & Berkshire, P.C. in Chicago; the Kankakee County Board of Review by Assistant State's Attorney Teresa M. Kubalanza; and the City of Kankakee and Kankakee SD No. 111, intervenors, by attorneys Frederic S. Lane and Scott L. Ginsberg of Robbins Schwartz Nicholas Lifton & Taylor, Ltd. in 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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
06-01789.002-I-3	16-09-33-103-001	1,746	0	$1,746
06-01789.003-I-3	16-09-32-206-009	8,146	355,902	$364,048
06-01789.004-I-3	16-09-32-213-010	1,141	0	$1,141
06-01789.005-I-3	16-09-32-214-013	2,103	1,314	$3,417

Subject only to the State multiplier as applicable.

ANALYSIS

Pursuant to Property Tax Appeal Board rule 1910.78 (86 Ill.Adm. Code §1910.78), and without objection herein, Docket Nos. 06-01789.002-I-3 through 06-01789.005-I-3 were consolidated with Docket Nos. 07-02549.001-I-3 through 07-02549.004-I-3 for purposes of taking oral testimony.[1] The majority of the evidence and testimony herein was in regards to the 2006 appeal, however, based on the testimony herein, it also applied to the subject for the 2007 assessment year. A separate decision will be issued for each appeal.

[1] Prior to the hearing, the appeal regarding pin number 16-09-33-101-001 in Docket No. 06-01789.001-I-3 was withdrawn by the appellant by letter received November 16, 2007.

The subject property consists of 4 parcels of land containing approximately 8.241-acres of land area improved with a part one-story, part two-story and part three-story industrial building. Original construction of the subject began in 1890 with a 20,250 square foot building. Various additions were constructed throughout the 1960's and an additional 8,775 square foot building was added in 2003. The subject contains a total of 184,255 square feet of building area.[2] Original construction from 1890 to 1930 consisted of post and beam materials. Later additions consisted of concrete construction. Recent additions are steel frame and siding. Clear ceiling heights range from 10 to 22 feet with interior walls divided into sections by concrete blocks and exposed walls with metal deck ceilings. The subject has concrete floors and is divided into a reception area, open office area and private offices, which are carpeted or contain vinyl tile with gypsum board walls. These areas have suspended acoustical tiles with recessed fluorescent lighting. The air-conditioned office areas contain a total of 14,432 square feet of building area or 9.2% of the total building area. In addition, the plant has a wet sprinkler system, contains several freight elevators, asphalt drives, asphalt parking and loading docks. The subject, commonly known as Valspar Corporation, is located in Kankakee Township, Kankakee, Illinois.

The appellant, through counsel, appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted a summary appraisal report prepared by J. Edward Salisbury of Salisbury and Associates, Incorporated. Salisbury estimated the subject property had a market value of $630,000 as of January 1, 2006. Salisbury was called as a witness on behalf of the appellant.

Salisbury is the principle of Salisbury and Associates, Inc., since starting the firm in 1991. From 1975 through 1977 he worked with the appraisal division of the Illinois Department of Local Government Affairs and from 1977 through 1991, he was a hearing officer with the Property Tax Appeal Board and served as Executive Hearing Officer during his last five years with the Board. He has been appraising real estate for approximately 35 years and has the Certified Illinois Assessing Officer ("CIAO") designation through the Illinois Property Assessment Institute and the Certified Assessment Evaluator "CAE" designation through the International Association of Assessing Officers. He is licensed as a certified general real estate appraiser with the State of Illinois. He has appraised hundreds of industrial properties since starting his own firm and primarily evaluated industrial properties when he worked with the Property Tax Appeal Board.[3]

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[2] Appraiser, Salisbury, estimated the subject's size to be 156,787 square feet of building area. Appraiser, Brorsen, estimated the subject's size to be 184,255 square feet of building area.

[3] Salisbury was tendered and accepted as an expert in the valuation of industrial properties without objection.

Salisbury identified Appellant's Exhibit No. 1 as his appraisal of the subject property. The purpose of the appraisal was to estimate the subject's market value as of January 1, 2006.

In describing the subject, Salisbury testified that the subject site is comprised of four separate parcels that are relatively flat. The largest parcel contains a little over 4-acres with the other three being approximately one-acre each. The buildings occupy the majority of the site with the subject being land locked due to other land uses surrounding it. Salisbury testified that there is no vacant land available, which prohibits expansion, even if the owners wanted to. The subject is zoned I-2, heavy industrial. Salisbury explained that Valspar, which manufactures paint products and additives, currently occupies the property. Salisbury appraised the subject as fee simple interest, unencumbered. He described the subject's environs as being located in the northern part of Kankakee, an older developed area with residential properties around it. The subject was described as having a railroad track on one side and a cemetery just north of it, with other industrial properties and commercial properties in close proximity. Salisbury testified that the market for industrial properties started going down in the mid 1990's because industries were moving from the Midwest to the southern states, mainly for cheaper labor. In addition, Salisbury testified that many industries were leaving the country and relocating to Mexico and Asia. In his opinion, manufacturing industrial plants have been on a decline since the mid 1990's.

In describing the subject's marketing area, Salisbury testified that the subject would have to be marketed nationally because it has over 100,000 square feet of building area. He described the subject as being a very old industrial facility that is also unique in that it is a multi-story complex with an unusual design. Because of these features, Salisbury opined that the marketing time would increase and be from 18 months to 2 years. Salisbury testified that two main things drive the value of the subject property, one is age. Salisbury stated that most complexes with a weighted age of approximately 65 years have been torn down. Second is the multi-story aspect of the subject. Salisbury testified that in his 15 years of experience with the Property Tax Appeal Board, he has never seen a sale involving a multi-story industrial building sell for more than $5 a square foot, due to virtually no demand.

Salisbury explained that the subject contains approximately 156,000 square feet of building area, with 85% being two or three-stories, and the vast majority of that being three-story. The multi-story buildings are all connected and were built in stages between 1890 and 2003. Salisbury described the subject as multi-storied buildings that were built at different elevations, which in some cases required ramps to get from the floor of one building to same floor on another building, because they were not even in height. During his inspection, Salisbury found some of the buildings narrow by industry standards with small bay spacing

and low clear ceiling heights. Salisbury described buildings 1, 2 and 3 as being part of the original structure made of wood construction with wooden floors. Salisbury testified that the wooden floors have limited load capacities which create problems because of the weight loads, and therefore, no manufacturing occurs in those buildings. Instead, these buildings were used for offices or general storage. Site improvements included sidewalks; concrete drives to the loading docks, an asphalt parking lot, exterior lighting and cyclone fencing and a rail spur in the back of the property. Salisbury testified that he utilized a spreadsheet provided by the owners to determine each building's age. From the same spreadsheet, which also indicated the size, he added the size of each building together and utilized a percentage of each building compared to the total size of the improvements to calculate a weighted age for each building. The calculation of weighted age (65 years, rounded) is found on page 28 of his appraisal report. Salisbury verified a portion of the spreadsheet measurements with measurements he had taken during his inspection, and they were correct. Salisbury testified that the subject's highest and best use as vacant was continued use as industrial property and the highest and best use as improved was also industrial use.

Salisbury stated that he considered the three traditional approaches to value in estimating the subject's value; however, given the uniqueness of the subject property, its age and configuration, he concluded the sales comparison approach was the only approach that would have any merit. Therefore, he did not utilize the cost or income approaches to value.

Even though Salisbury did not utilize the cost approach to value, Salisbury found functional obsolescence existed because of product flow problems. For instance, he found problems in the interconnected design of the buildings, the narrowness of the buildings and bay space, wooden floors and low ceiling heights, prevent racking in most areas except the warehouse built in 2003. In addition, he found economic obsolescence because the subject was generally surrounded by residential property as opposed to being in an industrial park.

Under the sales comparison approach, Salisbury utilized six sales and four listings (Appellant's Exhibit 1, page 58).[4] Salisbury testified that his search for multi-story sale comparables included areas outside of Illinois. Some of his sales include only a portion of multi-story buildings; generally his sales and listings are one-story because there are a limited number of multi-story industrial building sales. He next looked for older properties in equal, better or similar locations. Salisbury testified that listings set the upper limit of value. The six

[4] A corrected grid was allowed into the record as Appellant's Exhibit 2. Salisbury testified that when preparing the report some comparables were deleted from the spreadsheet causing a misalignment of the data for each property. The data was not changed, only realigned correctly to each reported sale or listing.

sales he utilized were located in Decatur, Hillsboro, Clinton and Rockford, Illinois. The four listings were located in Rockford or Princeton, Illinois. The comparables ranged in size from 64,761 to 2,197,775 square feet of building area; ranged in age from 39 to 101 years old, contained from 2.31 to 153 acres of land area, had land-to-building ratios from 1.10:1 to 8.98:1, various clear ceiling heights ranging from 10 to 40 feet with office space ranging from 0.72% to 20.65% of total building area. Six of the comparables sold from November 2000 to December 2005 for prices ranging from $480,000 to $1,750,000 or from $0.23 to $4.36 per square foot of building area, including land. The four listings each had a listing date in November 2006 and prices that ranged from $320,000 to $2,600,000 or from $2.33 to $6.84 per square foot of building area, including land. Qualitative adjustments were made to the comparables for date of sale or listing, location, size, land-to-building ratio, age and/or condition. Comparables #1, #2 and #6 and each of the listings required a negative overall adjustment, while comparable #3 required a positive adjustment. Salisbury found no adjustment was required for comparables #4 and #5. Salisbury testified that he attempted to verify each sale by speaking with the seller, buyer and/or broker of the property. Salisbury stated that he found enough sales of similar competing properties to apply the comparable sales approach with a high degree of confidence in his estimation of the subject's market value. Based on the comparable sales and listings, Salisbury estimated a market value for the subject of $4 per square foot of building area, including land, or $630,000, rounded, using 156,787 square feet as the subject's size. Based on this evidence, the appellant requested a reduction in the subject's assessment commensurate with the estimate of value contained in the appraisal report.

During cross examination, Salisbury was questioned on various errors found in his appraisal report. The errors included leaving blank the date of purchase of the subject by Valspar;[5] including an incorrect definition of market value for federally insured financial institutions, misstating the intended use of the appraisal, and various changes made to the sales grid analysis. Salisbury acknowledged that he analyzed the cost and income approaches to value, but did not use them in his appraisal report. Salisbury further acknowledged that his sale comparable #1 was not an arms-length transaction, because the buyer and seller used an appraisal to value the property instead of listing it for sale on the open market. Salisbury was next questioned on various adjustments he made to the comparables. Salisbury explained that he did not include the income approach to value in his appraisal because with older buildings there are more problems with environmental issues, such as asbestos, which prohibit who the building could be rented to and for how much. Salisbury testified that he looked for rentals of multi-story space and did not find any. Salisbury admitted that only two of his sale comparables had only a portion of two-story buildings

[5] Brorsen testified Valspar acquired the subject property from Mobil Corporation sometime in the 1980's.

and sale #2 had two-story and four-story buildings, but the majority was one-story. In regards to the listings, #2 and #3, which were multi-story buildings, he made a condition adjustment for the number of stories or lack thereof in his analysis. During questioning regarding his adjustments for location, Salisbury testified that he looks at four levels. He first looks at whether a property is located in a metropolitan area like Chicago, St. Louis or Kansas City. He stated that second tier communities are larger communities that are located on an interstate and have a decent employment base like Peoria, Decatur, Springfield, Champaign-Urbana and Bloomington-Normal. He next looks at smaller communities located on an interstate because of access to transportation modes they need. Finally, he looks at the locations of industrial properties in small communities not located on interstate. These properties would be least desirable. He considers each of the sale comparables he used as being similar in location to the subject. Salisbury testified that Clinton and Hillsboro would be inferior to the subject regarding location; Princeton would be good as far as communities in the area, but maybe a little less desirable, with Decatur and Rockford being equal to or better than the Kankakee area. Salisbury considered sale #2, which sold for $0.23 per square foot of building area, including land, to be an outlier because of its significantly larger size. Salisbury explained that the larger the size, the less desirable it becomes in the marketplace. Second, was its age, particularly with its multi-building complex. Salisbury explained that a potential buyer would have concerns regarding environmental issues because of possible cleanup costs associated with hazardous materials. Salisbury testified that he would never give a draft of his appraisal report to a client for review and that it would be improper and a violation of the Uniform Standards of Professional Appraisal Practice.

During re-direct, Salisbury testified that in today's market, modern paint plants are typically one-story with a mezzanine level to fill the hoppers. A gravity feed is still used with the equipment set up higher, similar to his sale #4. Other than the Hillsboro property, Salisbury felt his other sales had equal access to the interstate highway system, which he felt was important for industrial manufacturing.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $1,090,572 was disclosed. The subject's assessment reflects a market value of approximately $3,255,439 or $17.67 per square foot of building area, including land, using the 2006 three-year average median level of assessments for Kankakee County of 33.50% as determined by the Illinois Department of Revenue. The Notice of Final Decision of the Kankakee County Board of Review for 2006 and 2007 depict assessment values for the subject parcels under appeal as follows:

PARCEL NUMBER	LAND	IMPRVMT	TOTAL
16-09-33-103-001	5,141	0	$5,141
16-09-32-206-009	23,986	1,048,018	$1,072,004
16-09-32-213-010	3,361	0	$3,361
16-09-32-214-013	6,194	3,872	$10,066

In support of the subject's assessment, the board of review submitted property record cards and various evidence used at the local board of review hearing as its evidence. David West, the Kankakee Township Assessor, was called as a witness. West has been the Kankakee Township Assessor since 1993. He has the CIAO designation. West testified that Valspar purchased the subject in 1984 from Mobil Chemical for $3,648,776. West further testified that Valspar entered into a redevelopment agreement with the City of Kankakee and the Kankakee School District for a Tax Increment Financing district designation. West stated Valspar wanted to relocate a loading dock, build a new loading dock, a new truck scale in 1992 and a new metal building. The agreement was that any increase in valuation paid would be rebated to the owner. The building permit was used as a basis to value the new building with 2% or 3% increases every year. The redevelopment agreement was marked as intervenors' Exhibit 3. West testified that the improvements were made from 1992 until 2005. West testified that the loading dock and a small addition to the existing building were built in September 1999 with a building permit of $420,000. Based on this evidence, the board of review requested the subject's assessment be reduced to reflect the market value found in Andrew Brorsen's appraisal of $2,764,000.[6]

During cross-examination, West acknowledged that the starting value for the subject was taken from what his predecessor had the subject valued at and then he added to it based on an agreement between Valspar, the City of Kankakee and the school district to use the values shown on the building permits. Subsequent to that, he increased the value from 2% to 3% per year. West agreed the proper method for assessing property is not to use the estimated costs as shown on the building permits. Based on this evidence, the board of review deferred to the intervenors for further presentation of evidence and oral testimony.

A redevelopment agreement (Intervenors' Exhibit 3), was discussed prior to intervenors presenting direct testimony. Intervenors' counsel argued that the redevelopment agreement, between the City of Kankakee and Valspar required the City of Kankakee to adopt a bond ordinance providing for the issuance of bonds requiring a levy of taxes that would be abated by the pledge of up to 100% of the incremental real estate taxes generated in the redevelopment project. Counsel argued that the agreement presumes assessment increases to take place which would justify taxes that would enable amortization of the bonds. Intervenors argued that the parties to the agreement recognized an agreed upon cost going

[6] The "corrected appraisal."

into the project. Appellant pointed out the redevelopment agreement pertains to a project area, the Tax Increment Financing district, not just Valspar. Intervenors argued that pursuant to the agreement between Valspar, the City of Kankakee and Kankakee School District, Valspar was required to contribute $300,000 and the City of Kankakee was required to contribute $600,000 to the project.[7]

The intervenors, City of Kankakee and Kankakee School District No. 111, called Andrew Brorsen as their first witness. Brorsen has been a State of Illinois licensed real estate appraiser since 1991.[8] Brorsen has received the Member Appraisal Institute, Senior Residential Appraiser, Residential Member and Senior Real Property Appraiser designations from the Appraisal Institute along with the Accredited Rural Appraiser designation from the American Society of Farm Managers and Rural Appraisers. In 1994 he was president of the Chicago Chapter of the Appraisal Institute and in 2007 he was president of the Illinois Society of Farm Managers and Rural Appraisers. In addition, he has served six years on the Illinois Appraisal Board and taught numerous classes. He is currently the co-owner of Brorsen Appraisal Service, P.C. in Kankakee. He has prepared over 3,500 appraisals over a 37 year span covering residential, commercial, industrial, agricultural and special purpose properties. Further, he has appraised over 100 light manufacturing and warehouse facilities.

Brorsen did an interior and exterior inspection of the subject on April 28, 2008. Brorsen testified that the inventory of industrial property in Kankakee County has increased since 1998 with the vacancy rate remaining relatively low. In January 2006 the vacancy rate was calculated at just under 4%.

Brorsen calculated a different square footage for the subject than Salisbury used. Brorsen physically measured the perimeter of the buildings on two occasions along with using information he obtained through assessment data. In some cases his measurements matched and in some cases it did not. Brorsen stated the subject contains 19 buildings with three stories in the original sections and a couple of two stories and one story in the remaining sections. Brorsen further testified that the basement area is only under the original sections. In addition, the subject contains 14,400 square feet of office space or 7.8% of gross building area. Brorsen explained that a section was added to the subject in 2001 because the original dock caused semi trucks to extend over two lanes of traffic when products were being shipped or delivered which caused a dangerous situation. Therefore, a new dock was added setting it further back. Brorsen testified that Valspar paid $1.2 million to construct the new addition based on two building permits and newspaper articles. Brorsen

[7] The redevelopment agreement, intervenors' Exhibit 3, was allowed into the record to be given its appropriate weight.
[8] Brorsen was accepted as an qualified expert in real estate valuation without objection and an updated curriculum vitae was entered into the record (Intervenors' Exhibit 4).

opined that the new truck docks and warehouse could be severed from the property and sold separately. Brorsen found the subject contained a vertical manufacturing system with raw products elevated to the upper floors where they are mixed and dropped by gravity to a mixing process and then processed into the final product. He has found other properties in Kankakee that use the same process, such as, Armstrong World Industries and Bunge Edible Oils. Brorsen has also appraised the Armstrong facility. Brorsen appraised the subject property in fee simple interest. It was his opinion that the highest and best use of the subject as if vacant was for industrial use of the land. As improved, he felt the highest and best use was its present use as a manufacturing facility. In his opinion, the fee simple fair market value of the subject as of January 1, 2006 is $2,764,000 with no change in value for January 1, 2007.

Brorsen testified that he only used the sales comparison approach when he performed his valuation estimate. He did not use the income approach because the subject is a mixture of physical uses, both manufacturing and warehouse, and various ages and so he felt the value indicated by the income approach would be very weak because of the necessary assumptions one would have to make to derive rental rates for the various components of the subject property. Brorsen further testified that he would have had to assume how much the older manufacturing space would bring for rent and since the subject was an owner/user type of property any rental space data he had may have not been a comparable three-story building. Brorsen testified that assuming various rental rates would not necessarily mean that the total property would rent to a single user, which created a problem. Brorsen further testified that he did not perform a cost approach analysis because that method is generally applicable to newer improvements. He stated that as a property ages, the depreciation estimates increase and their reliability of the value indication would be weakened. Brorsen calculated the weighted actual ages of the subject buildings to be 65 years old with some sections being over 100 years old. Brorsen did, however, perform a land valuation.

Brorsen examined 8 industrial zoned land sales located in the City of Kankakee. Brorsen opined that the subject's land value was $282,000 or $35,000 an acre as of January 1, 2006, and which remained the same for January 1, 2007.

Under the sales comparison approach, Brorsen utilized four sales, all of which he previously appraised, and were located in the Kankakee market. The sale comparables consisted of light manufacturing/warehouse properties ranging in size from 52,255 to 144,000 square feet of gross building area; office space ranging from 2.5% to 11.0% of total building area; gross land area ranging from 4.98 to 14.11 acres and land to building ratios ranging from 2.37:1 to 10.30:1. Brorsen's appraisal report depicts the subject improvements had a weighted age of approximately 62 years as of the effective date of the appraisal. The weighted ages of the comparables was from 25 to 58 years at

the time of sale. The individual ages was not disclosed in the report. The comparables sold from December 2003 to August 2006 for prices ranging from $825,000 to $3,250,000 or from $9.02 to $23.92 per square foot of gross building area, including land. Comparable #1 received a negative adjustment for size, superior land contribution, age and condition. Comparable #2, located within 1 mile of the subject along the same railroad track, received a negative land contribution adjustment because of its elongated shape. This comparable received a positive adjustment for time of sale which occurred 19 months prior to the effective date of his appraisal of the subject. Brorsen opined that industrial values increased from 2004 to 2006. Comparable #2 was adjusted downward for age and upward for office space. Comparable #3 was located in Peotone, within 2 to 3 miles of Kankakee County. Comparable #4 was adjusted for date of sale, land characteristics and age. Overall, comparable #1 received a negative adjustment; comparable #2 received a positive adjustment, with comparables #3 and #4 receiving a negative adjustment. Brorsen applied a $15 per square foot value to the subject using 184,255 square feet of building area. Brorsen testified that the subject's fair market value as of January 1, 2006 was $2,764,000 and remained the same for 2007.

Brorsen next testified regarding a draft appraisal that was submitted by counsel into the record (Intervenors' Exhibit 1-A). In the draft appraisal, Brorsen included two sales that were ultimately left out of the final appraisal. Brorsen testified that he originally began with six sales and submitted that to counsel. Brorsen testified that he was unaware that the draft appraisal was submitted. After consultations with counsel, and further examination of the appraisal, he felt the two sales were too dated to be a reliable indicator of value, so they were removed. Brorsen further testified that it was his decision to remove the two sales from the final version of his appraisal. In his opinion, Brorsen felt there were sufficient local sales to avoid extension of the market. His comparables ranged from less than a quarter mile from the subject to 19 miles away in Peotone.

On cross examination, Brorsen agreed that the original appraisal submitted into evidence depicting an estimate of value for the subject of $2,027,000 as of January 1, 2006 (Intervenors Exhibit 1-A) does not state on the document that it is a draft appraisal. Brorsen testified that the 35% increase in value from the original "draft" appraisal and the final appraisal which depicted an estimate of value for the subject of $2,764,000 as of January 1, 2006 was not caused by his initial review process. Brorsen testified that the only difference between the two appraisal reports are the two comparable sales that were removed from the final version. Brorsen admitted that he signed the certification page on the draft appraisal. Brorsen testified that the draft appraisal was submitted to counsel for review. Brorsen admitted that the two comparables were removed from the original appraisal after consultation with counsel, but, that was not the reason they were removed. Brorsen further admitted that his wife, who reviews the appraisals before they go out, is not listed on the

appraisal certification page as to providing any assistance in preparation of the appraisal, even though she has been an appraiser for over 30 years. Brorsen agreed that he did not mention in his appraisal report about the different levels of the buildings which required ramps to connect to each other, or that the second and third story floors have reduced load capacities as compared to the first floor. Brorsen was further questioned on the various adjustments or lack thereof regarding his sales comparables. Brorsen agreed that none of his comparable sales included multi-story industrial buildings; all had a land to building ratio higher than the subject; all had a weighted age less than the subject; and none had 19 buildings, like the subject, or even close to that many.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds that a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. The law in Illinois requires real property to be valued at fair cash value, estimated at the price it would bring at a voluntary sale. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480, 894 N.E.2d 400, 323 Ill.Dec. 633 (1st Dist. 2008). Correspondingly, 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). Fair cash value is synonymous with fair market value. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480 (1st Dist. 2008). 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 do so. 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). The Board finds the evidence in the record supports a reduction in the subject's assessment.

As an initial matter, the Board finds the 2006 record discloses that pursuant to Property Tax Appeal Board rule 1910.60(f) (86 Ill.Adm.Code §1910.60(f)) the intervenors were granted a "Final" extension of 90-days to submit evidence on May 21, 2008.[9] On July 21, 2008 intervenors timely filed an appraisal (hereinafter "Draft Appraisal," Intervenors' Exhibit "1-A") for the subject property estimating a value for the subject of $2,027,000 as of

[9] Intervenors were granted a total of 240-days extension of time in which to file evidence.

January 1, 2006. A cover letter attached to the "draft appraisal" indicated a value for the subject of $2,764,000.

On September 9, 2008 the Property Tax Appeal Board, by letter to all counsel of record and the board of review indicated that the filing period for submission of evidence was closed. Thereafter, on March 26, 2009 intervenors, unilaterally and without leave, filed a "corrected appraisal" (Intervenors' Exhibit "1") of the subject property estimating a value for the subject of $2,764,000 as of January 1, 2006.

This filing sequence was addressed by the parties at hearing. Counsel for the intervenors explained that a "draft appraisal" was inadvertently included in the original submission of evidence, which error was not discovered until approximately 7-months later. Appellant's counsel contended that the "draft appraisal" did not indicate in any manner that it was only a draft and that the "corrected appraisal" was not timely filed. Counsel further objected to the Board's consideration of the "corrected appraisal" in its analysis regarding the 2006 assessment year. The Administrative Law Judge reserved ruling on the admission of intervenors' Exhibit 1, the "corrected appraisal."

The appraiser, Andrew Brorsen, MAI, SRA of Brorsen Appraisal, P.C., testified that the "draft appraisal" included two sales not included in the "corrected appraisal." Upon removing the two sales, the mean indicated a value closer to $15 a square foot rather than $11 per square foot. This change required a change in the weighted unit price which resulted in an increase in the subject's estimate of value from $2,027,000 to $2,764,000 as of January 1, 2006.

Property Tax Appeal Board rule 1910.60(f) states in relevant part:

> Extensions for Filing Additional Evidence: If the intervening party is unable to submit the additional written or documentary evidence with the Request to Intervene, it must submit a letter requesting an extension of time to file additional written or documentary evidence with the Request to Intervene. Upon receipt of such a request, the Board shall grant a 30 day extension of time for the filing of written or documentary evidence. This shall not include an extension of time to file a Request to Intervene or resolution. The Board shall grant additional or longer extensions for the filing of written or documentary evidence for good cause shown. Good cause may include but is not limited to the inability to submit evidence for a cause beyond the control of the intervening party, such as the pendency of court action affecting the assessment of the property or the death or serious illness of a valuation witness. <u>Without a written</u>

> <u>request for an extension, no evidence will be accepted after the Request to Intervene is filed.</u>

(86 Ill.Adm.Code §1910.60(f)) (Emphasis added)

The Board finds intervenors evidence was due 90-days from May 21, 2008 (August 20, 2008). Intervenors timely filed their "draft appraisal" on July 21, 2008. Submission of evidence was closed on September 9, 2008. Intervenors unilaterally and without leave to do so filed a "corrected appraisal" on March 26, 2009, 198-days after the evidence herein was closed by letter from the Property Tax Appeal Board. The Board further finds the "corrected appraisal" was sent by the intervenors to the Kankakee County Board of Review and the Kankakee County Supervisor of Assessments. There is no record evidence whether the appellant was served on March 26, 2009 with a copy of the "corrected appraisal."

The Board finds that substantial changes were made in the "corrected appraisal" which was untimely filed in this matter, although the cover letter included with the "draft appraisal" represented a final value estimate of $2,764,000 as of January 1, 2006, even though the attached "draft appraisal" depicted an estimated value of $2,027,000. The Board finds consideration of the "corrected appraisal" in this decision is prejudicial to the appellant, not timely filed and in violation of the Property Tax Appeal Board rules. Therefore, the estimate of value contained in intervenors' Exhibit 1, the "corrected appraisal" will not be considered in this decision.

However, assuming arguendo it could be considered, the Board finds the "corrected appraisal" is not credible because it was provided to counsel of record for the intervenors and subsequently changed after consultation with counsel. Brorsen testified that the changes were made upon closer examination; however, the Board finds this explanation suspect at best. The Board finds a certified estimate of value for the subject was presented by Brorsen for January 1, 2006 on two different appraisals on two different dates. The Board further finds intervenors' Exhibit 1-A ("draft appraisal") was not stamped or otherwise clearly indicated on the report itself that it was a "draft." The Board finds the estimation of value contained in the "corrected" appraisal was subsequently increased by $737,000 only after consultation with counsel. Brorsen testified that the unit price changed from $11 a square foot to $15 dollars a square foot after removal of two dated sales comparables. The Board finds this explanation and analysis is unsupported in this record. Further, the transmittal letter attached to the "draft" appraisal, dated July 11, 2008, states "[i]n accordance with our agreement, we are transmitting to you a real estate appraisal of the above referenced property, hereafter called the subject property. . . . It is assumed the report will be submitted by the client to PTAB in reference to the above docket number." In summary, the Board finds the "corrected" appraisal was not timely

submitted into this record pursuant to Property Tax Appeal Board rules, made substantial changes in the estimation of value, is prejudicial to the appellant, and unfairly puts the appellant at a substantial disadvantage in this proceeding. The "corrected" appraisal and "draft" appraisal will, however, be given their appropriate weight regarding the credibility of Brorsen's analysis and testimony.

In support of its contention of the correct assessment, the appellant submitted an appraisal estimating the subject property had a market value of $630,000 as of January 1, 2006. The appraisal was prepared by J. Edward Salisbury of Salisbury & Associates, Inc. The board of review submitted its "Notes on Appeal" disclosing an assessment of $1,090,512[10] which reflects a market value of $3,255,260. Intervenors submitted an appraisal estimating the subject property had a market value of $2,027,000 as of January 1, 2006. The appraisal was prepared by Andrew Brorsen of Brorsen Appraisal Service, P.C. The Board finds the subject's assessment reflects an estimated value higher than both estimates of value prepared by each appraiser herein and a reduction is warranted.

Intervenors submitted a copy of a redevelopment agreement (Intervenors' Exhibit 3) at the hearing. The redevelopment agreement between Valspar and the City of Kankakee required a bond ordinance in accordance with the Tax Increment Financing statutes. It required the City of Kankakee to issue bonds requiring a tax levy that was to be abated by the pledge of up to 100% of the incremental real estate tax generated in the redevelopment project area. Counsel for intervenors argued that Salisbury should have considered the redevelopment agreement prior to reaching his conclusion of value. It was further argued that Brorsen considered the redevelopment agreement when he estimated the subject's fair market value. The Board accepted the redevelopment agreement into the record; however, the Board gave this agreement little weight in its decision. The Board finds the redevelopment agreement does not, in and of itself, determine the subject's fair market value and/or determine the subject's assessment. The Board finds Section 9-145 of the Property Tax Code (35 ILCS 200/9-145) states in relevant part:

> Statutory level of assessment. Except in counties with more than 200,000 inhabitants which classify property for purposes of taxation, property shall be valued as follows:
>
> (a) Each tract of lot of property shall be valued at 33 1/3% of its fair cash value.
> (b) Each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value.
> (c) Each building or structure which is located on a right of way of any canal, railroad or other

[10] This amount represents the total assessment for four parcels. Parcel number 16-09-33-101-001 was withdrawn.

> company leased or granted to another company or person for a term of years, shall be valued at 33 1/3% of its fair cash value. . . .

(35 ILCS 200/9-145)

The Board finds pursuant to Section 35 ILCS 200/9-145 of the Property Tax Code, the subject shall be assessed at 33 1/3% of its fair cash value and not based on an agreement between the parties such as the redevelopment agreement. Further, the Board finds both appraisers appraised the subject property in fee simple absolute, which indicates that the redevelopment agreement should not be considered in valuing property. Therefore, the redevelopment agreement was given little weight in the Board's final analysis.

The Board finds that both appraisers indicated the property rights being appraised were the fee simple interest. The Board finds that both appraisers agreed that the highest and best use of the subject property as improved was for its current or existing industrial/manufacturing use.

Both appraisers described the subject as a being improved with 19 buildings varying from one-story to three-story. The buildings ranged in age from 5 to 116 years old. Both appraisers agreed the subject was basically unique in that it is a vertical feed manufacturing plant with varying floor levels and connecting ramps. Both appraisers utilized only the sales comparison approach to value, mainly because of the subject's multi-story design and age of the various buildings. Salisbury calculated the subject's size to be 156,787 square feet of building area. Brorsen calculated the subject size to be 184,255 square feet of building area.[11] The Board finds the best evidence in this record of the subject's size in contained in the appraisal report presented by Brorsen. Salisbury's estimate of the subject's size was taken from records submitted by the appellant, a random sampling of verification measurements and estimated using GIS photos. Salisbury noted in his cover letter, the spreadsheet records included basement area; however, Salisbury subtracted the basement area from his calculations. Brorsen testified that he physically measured the perimeter of the buildings on two occasions. Brorsen further testified that he also obtained information and assessment data and compared the information which indicated size and matched what he could to his physical measurements. In some cases they matched and in some cases they did not. Brorsen testified that the older buildings were exactly right on what the property record cards indicated while the size of the newer buildings was not disclosed, so he had to physically measure the new dock and the new warehouse. Brorsen also calculated that the subject contained 70,700 square feet of basement area that he did not include in his calculation of price per square foot estimate. Brorsen testified that the basement

[11] Appellant was ordered to provide the spreadsheet delivered to its appraiser, J. Edward Salisbury in determination of the subject's size.

area was really only under the original, older sections, and was used for minor storage or for location of heating equipment. Further, the Board examined the property record cards for a determination of the subject's size, however, the Board finds the property record cards failed to include adequate information. Therefore, for purposes of this decision, the subject is considered to contain 184,255 square feet of above ground building area.

Both appraisers developed the sales comparison approach to value and gave primary weight to this method in estimating the market value of the subject property. The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Cook County Board of Review v. Property Tax Appeal Board, 384 Ill.App.3d, 472, 480 (1st. Dist. 2008) the court stated that, "in the absence of market value set by a contemporaneous arm's-length sale, "[t]he sales comparison approach . . . is the preferred method and should be used when market data [are] available." In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach.

In determining the correct assessment for the subject property, the Property Tax Appeal Board examined the sales presented by the respective appraisers. Salisbury utilized six comparable sales and four comparable listings. The sales and listings occurred from August 2001 to November 2006 for prices ranging from $320,000 to $2,600,000 or from $0.23 to $6.84 per square foot of building area. Brorsen utilized six sales located in Kankakee or Peotone that sold from November 1999 to August 2006 for prices ranging from $825,000 to $3,250,000 or from $9.02 to $23.92 per square foot of building area. The board of review did not present evidence regarding the subject's value, but rather, deferred to the intervenors' evidence. The Board gives little weight to Salisbury's sales #1, #2, #3 and #4 based on their dissimilar location, date of sale, size and/or land area, when compared to the subject. In addition the Board gave less weight to Brorsen's improved sales because they did not include multi-story industrial buildings; all had a land to building ratio higher than the subject; all had a weighted age less than the subject; and none had 19 buildings, similar to the subject. The Board finds the best market value indicators in this record of the subject is Salisbury's comparable sales #5 and #6 and comparable sale listings #1 through #4. The sales occurred in April 2002 and May 2004 for $2.79 and $4.36 per square foot of building area, respectively, including land. The listings ranged from $2.33 to $6.84 per square foot of building area, including land. The subject's assessment reflects a market value of $3,255,439 or $20.76 per square foot of building area, including land, which is above the range of values reflected by the best comparables in this record on a square foot basis. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's assessment

is not supported by the testimony and/or evidence contained in this record.

Both appraisers and the board of review agreed the subject's assessment should be reduced. Further, both appraisers agreed that the subject's market value in 2006 was the same for 2007. After consideration of the similarities and differences in the sale data contained herein when compared to the subject, the Board finds the subject's assessment is excessive. Based on the evidence herein and on the testimony and credibility of the witnesses, the Board finds a reduction in the subject's assessment is warranted.

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

Chairman

Member

Member

Member

Member

DISSENTING:

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

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

Date: April 19, 2013

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.