FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: H & N Adams, LLC Ser. B
DOCKET NO.: 07-02126.001-C-1
PARCEL NO.: 05-31-281-003

The parties of record before the Property Tax Appeal Board are H & N Adams, LLC Ser. B, the appellant, by attorneys Michael Jon Shalbrack and Amanda J. Adams, of Holmstrom & Kennedy P.C. in Rockford, and the Ogle County Board of Review by Special Assistant State's Attorney James A. Rodriguez.

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

LAND:	$27,690
IMPR.:	$63,775
TOTAL:	$91,465

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 17,053 square foot parcel improved with a one-story, single-tenant, masonry-constructed office building with a full basement that is partially finished with a break area and storage area. The building was constructed in 2004. The building contains 2,520 square feet of above-grade building area. The site also has a 5,350 square foot asphalt driveway and parking lot with 19 striped spaces along with lighting and "average" landscaping. The subject property is located in Byron, Byron Township, Ogle County.

A consolidated hearing was held on Docket Nos. 07-02125.001-C-1 and 07-02126.001-C-1, but at the request of the appellant's counsel, separate decisions will be rendered on each matter.

A. Pleadings/Pre-Hearing Order(s)

As a preliminary matter, previous rulings in this matter will be summarized to clarify some matters that arose in testimony at the hearing regarding a 'revised' appraisal. By letter dated July 15, 2009, a Hearing Officer of the Property Tax Appeal Board ruled upon the Ogle County Board of Review's objection to certain portions of the appellant's rebuttal evidence along with the appellant's response thereto. In summary, on April 2, 2009 the appellant filed rebuttal evidence containing a six-page Memoranda in Support of the Property Owner's Appeal; a revised appraisal with additional comparable properties; a TIF ordinance (Exhibit 2); and additional sales comparables (Exhibit 3). In addition, appellant's legal counsel in the accompanying cover letter requested ". . . the opportunity to submit additional information to PTAB as it becomes available prior to the date of the hearing."

With citation to the Official Rules of the Property Tax Appeal Board, the Hearing Officer determined that: the 'revised' appraisal would not be considered in the appeal; likewise, the additional sales comparables (Ex. 3) would not be considered in this appeal; and appellant's request to submit additional evidence as it becomes available prior to hearing cannot be allowed as the filing period for submission of written evidence had closed. [See letter dated July 15, 2009]

On July 21, 2009, appellant's counsel submitted a reconsideration and/or clarification request as to Item #5 that "no additional evidence in this case will be allowed." As set forth in a letter dated July 24, 2009, the Hearing Officer modified Item #5 to read, in pertinent part, "Excluding testimony or other evidence allowed at hearing, no additional written evidence in this case will be allowed into the record absent leave granted by the Property Tax Appeal Board."

B. Merits

The appellant appeared before the Property Tax Appeal Board through counsel claiming overvaluation of the subject property as the basis of the appeal. In support of this argument, the appellant submitted an appraisal of the subject property with an effective date of January 1, 2007, a copy of a City of Byron Tax Increment Financing Ordinance adopted April 26, 2004, and a copy marked "draft" entitled "Tax Increment Financing Redevelopment Plan and Project" dated November 4, 2003.

The appellant's only witness was the appraiser, Daniel P. Currier who has been an appraiser for approximately 18 years and is employed by John P. Hill & Associates, Ltd. with offices in Freeport, Rockford and Madison, Wisconsin. Currier is a licensed appraiser in the states of Illinois and Indiana and has an appraisal license application pending in Wisconsin. Currier estimated he has performed from 120 to 200 office building appraisals.

Currier also testified that in performing appraisals, the standard procedure is that he inspects the subject property, takes measurements, and collects comparables and related data.

Then his supervisor, John P. Hill, MAI, is given Currier's report. At that time, Hill reviews the comparables, and looks at the value, capitalization rates, adjustments and other matters. Corrections are then made and the report is delivered to the client. (TR 16-17)[1]

He also testified that in the past reports on a new appraisal project would begin with another similar property, making adjustment(s) to that previous report. In this particular project, Currier used another office building in Byron as a base document and he has since discovered that some necessary changes to the document were not made. Therefore, he acknowledges that there are descriptions and other references in this report that should have been corrected. Currier further testified that those descriptive corrections did not affect his final opinion of the value of the subject property.

As set forth in the summary appraisal report prepared by Currier and signed by both Currier and Hill, all three traditional approaches in estimating both a Leased Fee[2] and Fee Simple market value for the subject property were utilized. The intended use of the report was to assist the client, Mr. Harry Adams of H&N Adams, LLC, with asset valuation. (Appraisal p. 2 & 3) "The Income Capitalization and Cost Approaches to Value were developed for the Fee Simple Value with the Sales Comparison and Income Capitalization Approaches developed for the Leased Fee Value." (Appraisal, p. 2) The subject was estimated to have a Fee Simple Value of $230,000 as of January 1, 2007 and a Leased Fee Value of $215,000. Since preparation of the report, Currier testified a review has been performed and with an adjusted effective age in both the sales and cost approaches, the value conclusion would change to $230,000 for both the leased fee and the fee simple values. (TR 148-49, 151)

As to the effective age/useful life change, Currier admitted that in the appraisal the building was reported as built in 1958 with subsequent renovations. The appraisal stated the building was completed in 1994 and an effective age of 10± years. However, Currier has since learned that the original building was demolished and the subject building, with an expanded foundation, was built on the old site in 2004. Currier also reported the building contains 2,592 square feet of above grade area.

While the basement of the subject building could be finished as office space, it could not be rented out to a separate tenant as there is no separate access or entrance. The building has its

[1] References to pages of the transcript are denoted "TR" followed by page number citation(s).

[2] The report defined a Leased Fee Estate as "an ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease. [citation omitted]" (Appraisal, p. 2)

own 5,350 square feet of asphalt for parking of about 19 spaces which is more than required by current zoning regulations.

In the report, Currier described the subject building as located on the western fringe of Byron. Currier also reported that five miles to the south is the Exelon Byron Nuclear Plant, "which is a major source of employment." (Appraisal, p. 5) He concluded that the subject was located in an established commercial area in Byron with good access to major roadways of Routes 2 and 72 so as to be able to continue to support single tenant office uses. (Appraisal, p. 6)

The highest and best use of the subject property was assumed to be continued use as a single-tenant office building. On page 8 of the report, Currier opined an exposure time for the subject property of 6 to 12 months. The report specifies that this is an "unsupported opinion" as there are no other properties having similar location, design, size, or competitive characteristics that have recently sold or are currently leased.

Under the cost approach used to estimate a Fee Simple value, to determine a value for the subject site Currier examined five land sales and two listings. The appraiser testified he seeks land sales as close in time within 2 to 3 years of the valuation date which is easy to do in larger metropolitan areas. When there are fewer sales in a smaller community, Currier testified he seeks older sales and/or sales in similar communities such as Dixon. In this report, three sales were located in Dixon, two sales were in Byron, and two listings were in Oregon. The comparables range in size from 17,424 to 81,893 square feet. The five sales occurred between August 1999 and May 2007 for prices ranging from $300,000 to $950,000 or from $7.49 to $11.77 per square foot of land area. The listings were for $119,900 and $395,000 or $6.88 and $9.07 per square foot of land area. Land Sale #4 was an assemblage of three properties for the Byron Post Office. These lots also contained two houses and a storage building, so the appraiser added $30,000 representing the demolition costs to arrive at the adjusted sale price of $405,000 or $11.77 per square foot. Sales #2 and #3 in Dixon were outlots of Wal-Mart. On page 21, Currier set forth percentage adjustments for the land sale comparables making adjustments for location, size, traffic count, and corner/visibility; for the listings, the appraiser also adjusted for date of sale. The appraiser determined adjusted sale prices ranging from $7.12 to $11.77 per square foot of land area. Currier also noted that Land Sale #5 was given greatest weight due to its location and date of sale. Based on this data, Currier opined the subject site, as if vacant, had a value of $9.00 per square foot, or $155,000, rounded.

Using the Marshall and Swift Cost Manuals, Section 15, Page 17, average quality construction, Currier calculated the subject's improvements had a cost new of $369,068 which included an entrepreneurial incentive of 10%. This value took into consideration 2,592 square feet above grade and 1,245 square feet of basement area. The appraiser further estimated $24,490 for asphalt paving and other site improvements which again included a 10% entrepreneurial profit.

As noted earlier, in the report the appraiser estimated the subject has a building life of 40 to 45 years and an effective age of 10 years which is clearly erroneous. However, in the report and with the 10 year age and straight line or age/life method, the appraiser estimated the subject improvement has suffered physical depreciation of 22% or $81,195 and the site improvements have suffered physical depreciation of 25% or $6,123. The appraiser concluded there was no functional obsolescence. However, the appraiser determined external obsolescence of 40% or $147,627 and likewise the site improvements suffer from 40% or $9,796 in external obsolescence. After subtracting the depreciation figures and adding back the land value of $155,000, in the appraisal Currier estimated a value for the subject by the cost approach of $305,000, rounded.

On reviewing the report and determining the building was actually constructed in 2004, Currier testified that he now would find the subject to have an effective age of 3 years. (TR 156-57) This change would result in a reduced physical depreciation from 22% to 10% and also would reduce the external obsolescence. However, he would apply a functional obsolescence factor due to the lack of an elevator and inability to have a second tenant in the lower level due to access issues. Having revised these figures, Currier testified his new conclusion under the cost approach would be $355,000 for the subject property.

Under the sales comparison approach, the appraiser examined sales of six comparable properties and arrived at a Leased Fee value conclusion for the subject. Two of the comparables were located in Dixon and the others were each located in Byron, Rockford, Sterling or Freeport. Currier testified that he tried to find comparable sales in Byron and failing that he chose the most comparable properties available. He further testified that Sale #4 from Rockford was not in the primary office area of the city, but rather a secondary location. The comparables utilized are situated on sites that range in size from 7,905 to 75,794 square feet of land area. They are improved with one, two-story and five, one-story frame, masonry, frame and masonry, or masonry and steel office buildings. Two of the comparables have full finished basements. The buildings range in size from 1,332 to 10,000 square feet of building area. Sale #2 is a single tenant building and the other five comparables are multi-tenant buildings. The structures were built between 1950 and 1997; one building that was built in 1962 was said to have been renovated in 1992. On page 38 of the appraisal, Currier reported these six comparables had effective ages ranging from 5 to 10 years old. Sales #1 and #2 have 35 and 20 parking spaces each. Currier described the property rights conveyed in five of the sales as "leased fee" where four were arm's-length transactions and one was distressed, having been sold at auction. The properties sold between June 2003 and September 2007 for prices ranging from $123,000 to $880,000 or from $52.43 to $222.33 per square foot of building area including land. Currier testified that Sale #3, located in Byron, was located in a TIF district and the $725,000 sale price was adjusted downward by $50,000 for personal property. He further noted that no other property sold for a similar price; in fact, this price was "comparable to a very nice office building in the Rockford metropolitan area."

In the grid analysis on page 38 of the report, Currier made various adjustments to the comparable sales for property rights conveyed, conditions of sale, location/linkages, land to building ratio, building size, lower level, condition/quality, effective age and sprinkler. Currier testified that, "If the property is leased fee of course that is typically more desirable in a market than a building that is completely vacant or just on a fee simple basis." (TR 47) The appraiser found comparable Sales #3, #5 and #6 were given greatest weight due to their size and Sales #1, #2, #3 and #4 due to their date of sale. (Appraisal, p. 39) After adjustments, the comparables had adjusted sales prices ranging from $67.52 to $215.66 per square foot of building area including land. Based on these adjusted comparable sales, Currier determined an estimated value for the subject of $80.00 per square foot of building area which, based on 2,592 square feet of building area, indicated a leased fee value under the sales comparison approach of $205,000, rounded.

Having now determined a different age for the subject property, Currier noted that changes to the adjustments in the sales comparables would be appropriate. (TR 162-63) Furthermore, the appraiser has since become aware of additional comparables that were presented in a revised appraisal that was previously stricken in this matter. With the changes for effective age and considering the additional sales, Currier testified that in the revised report he determined a value for the subject of $95.00 per square foot of building area including land for the leased fee value of $245,000, rounded.

Under the income approach, the appraiser determined a market rental rate to opine a Leased Fee value. He examined four lease rates and one lease offering of properties located in Dixon and Byron. The offering and Rental #2 were located in the same building in Dixon. The three rentals in Byron were all in the same building which is owned by the appellant in this appeal. The five comparables were described as containing 1,000, 2,000 or 3,500 square feet each. Rental Listing #1 and Rental #2 had modified gross leases of $14.00 and $13.00 per square foot, respectively. Rentals #3, #4 and #5 had net leases of $9.00 or $12.00 per square foot. The four rentals had leases ranging from 2 to 10 years, three of which commenced between May 2007 and January 2008. Each of the three Byron rentals had escalation clauses of 2% per year or, in the case of Rental #3, 3% per year commencing at the 4th year of the lease. Analyzing these rental comparables and the rental offering, Currier adjusted the properties for type of lease, date of lease, location, size, and condition in comparison to the subject and concluded an adjusted rental range of $11.55 to $14.70 per square foot on a net rental basis. (Appraisal, p. 48-49) Based on analysis of the foregoing data, the appraiser estimated a market rental rate of $14.00 per square foot of 2,592 square feet of above-grade area including the partially finished lower level for $30,480 per year. (Appraisal, p. 49)[3] Currier also reported the actual lease in place for the subject of $11.78 per square foot or $30,540 per year.

Next, the appraiser summarized the current lease for the subject property of 2,592 square feet of the building area. (Appraisal, p. 50) The lease with a 10 year term ends April 30, 2014 and calls for rental of $30,540 annually or $11.78/SF with no escalation provision. This was said to be a modified gross lease; interior is the tenant's responsibility and the exterior is the landlord's responsibility. On page 51, Currier displayed the projected gross income based on the actual lease in place and brought it up to market level upon expiration.

The appraiser next developed a ten-year discounted cash flow analysis on page 58 of the report. Currier utilized the current rent through the lease term and increased it to a market derived rate in year 8 and onward. (Appraisal, p. 58) He also developed an overall capitalization rate through the band of investment technique to develop a value for the Leased Fee Interest of the subject property at $220,000, rounded. (Appraisal, p. 52-60)

Currier also developed a one year Static Analysis to estimate the Fee Simple Market Value of the subject property (Appraisal, p. 59). After applying the market rental rate of $14.00 for 2,594 [*sic*] square feet of above-ground rent to the subject, the appraiser determined a potential gross income for the subject of $36,316, which was reduced by 15%, or $5,447, for vacancy and collection loss. Currier reported that vacancy in the Byron area is 0% to 25%, meaning 15% was a reasonable stabilized annualized vacancy rate for the subject, although the subject currently has no vacancy. The appraiser also reported that he had 2005 and 2006 income and expense data for the subject and made projections based upon it along with referring to comparable data in the marketplace. Thus, Currier applied an expense deduction of 13.12% which resulted in net operating income of $26,818. He then deducted for leasing commissions of $926 and tenant improvements of $750 for an adjusted net income of $25,142. The appraiser than applied an overall capitalization rate of 11.41%, which was described on pages 52-56 of the report by finding an 8.75% rate for the Fee Simple value analysis with an additional 2.66% for Real Estate taxes. This analysis resulted in an indicated Fee Simple value for the subject by the income approach of $220,000, rounded.

In his reconciliation and final value estimate as set forth on page 60, Currier determined a Fee Simple value for the subject

[3] Currier wrote "2,592 SF @ $14.00/SF = $30,480/year." However, mathematically the actual yearly rent at these figures would be $36,288.

property under both the cost and income approaches to value. Currier reconciled the differing findings and opined the subject had a fee simple value of $230,000 as of January 1, 2007. Currier also testified that upon further examination, he now concludes a value for the subject property of $230,000 for both the fee simple and lease fee values. (TR 168-69)

Currier also testified that the subject property is not located within a TIF district. (TR 169) He further noted that if the subject property were located within a TIF district, it would affect the value. However, the existence of the TIF district in Byron does not necessarily affect the subject property. (TR 169-70)

On cross-examination by the board of review's counsel, Currier acknowledged that upon review of his report he discovered various errors including the description of the location of the subject property, occupancy within the salient facts summary, and effective age which was carried forward in the cost approach. Also as to development of the cost approach, Currier agreed that he was not aware at the time he did his research for this report that there were land sales in Byron. Currier contends he does not know if those errors impact the final value conclusion. He also acknowledged that his corrected cost approach exceeded the estimated market value of the subject property as reflected by its 2007 assessment. Given an effective age of three years, Currier conceded the cost approach is more relevant than for an older building. Currier also further explained that typical one-story single-tenant office buildings do not have a full basement or one that is finished, therefore, he has since adjusted his analysis to include functional obsolescence.

On the sales comparison approach, Currier acknowledged that the subject's changed effective age would have to be taken into account in the analysis of the sales. This also makes the grid analysis on page 38 of the appraisal a little unreliable. Five of the six sales listed were leased fee sales, meaning the sales were encumbered by a lease although he further admits the purpose of the instant appeal hearing is to determine the fee simple, unencumbered market value of the subject property. The appraiser asserted that while a leased fee sale is not a true indicator of fee simple, unencumbered market value, an appraiser can adjust for it. For purposes of this appraisal, in the sales comparison approach Currier did not determine a fee simple value. A fee simple value would have been lower because Currier would have made 10% downward adjustments to leased fee sales to arrive at a fee simple value. While the page 38 grid asserted these were market leases, Currier acknowledges that there was no data in the report to confirm or deny these purported market rate leases. At the time that the data was developed, Currier was not aware of any other similar sales in Byron besides Sale #3, although he has since learned of additional sales from 2006 and 2007 in Byron which would have been helpful in developing a value for the subject. Moreover, inclusion of those sales may have adjusted his value conclusion.

The appraiser testified that Sale #1 in Dixon was determined to be a superior location or the property was located in a superior location as compared to the subject in Byron resulting in a 20% downward adjustment; factors considered for this subjective determination were overall economic(s), the size of the community and similar items. Currier did not consider the existence of the Byron Nuclear Power Plant in his determination regarding the desirability of Byron nor did he consider the school district in relation to this commercial property. While Sale #1 was a distressed sale and preferably would not be used, but in markets with a limited number of sales distressed sales may be used an adjusted accordingly. Although Currier testified that he did not determine how much parking Sale #1 had as compared to the subject, on page 25 he reported Sale #1 had 35+ parking places. (Appraisal p. 25; TR 87)

Sale #2 was admittedly surrounded by residential properties and had somewhat limited access, but according to Currier appropriately had a 20% downward adjustment since these issues were not as critical for an office building as for a commercial building such as a grocery or fast food restaurant. As to Sale #3 located in Byron, Currier did not deduct any value for the residence and/or lot that was sold as part of the transaction which admittedly should have been deducted. Sale #4 in Rockford was located in a less high volume commercial area; it is a less desirable commercial area, but still necessitated a 30% reduction for location. In comparison to Sale #4, the subject is located in a heavier commercial area of Byron, although office buildings do not require the heavy commercial traffic like a retail building would. Currier conceded, however, that he did not examine traffic counts for Sale #4, although desirability/traffic counts would be a factor or a consideration. Currier also testified that Sale #4 was deemed to have an effective age of 8 years; if he learned Sale #4 had an older actual age, it would not change his 2% downward adjustment based on the determined effective age of the property. The 20% downward location adjustment for Sale #5 in Sterling was based on population, economic development and economic factors of Sterling; as such, Sterling was deemed to be a more desirable location than Byron by the appraiser. Currier obtained the stated building size data for Sale #5 from an appraisal performed previously by his firm, however, he acknowledged that if the size were smaller, it would impact his per-square-foot value by increasing it. For Sale #6 which occurred in June 2003, the property is in a mixed residential/commercial area and not located in a major commercial area in Freeport. Furthermore, the appraiser found that, although it was a more desirable location than Byron, it needed a 20% downward location adjustment. Currier also characterized Freeport's economy as of January 2007 as fairly good and growing. Currier cited one company that was laying off workers and one that was "still going strong," but could cite no other examples of the economy in Freeport at that time. While the date of sale is older than desired, the appraiser testified that Sale #6 was deemed appropriate due to its lower level finished area, although he made no adjustment for the date of sale.

As to the rentals considered in the income approach and summarized on page 49, Currier made downward adjustments to Listing #1 and Rental #2 due to their location in Dixon as compared to the subject. He further noted a downward adjustment was made to Rental #2 because the lease commenced in July 2007 whereas the valuation date is January 2007. While Rentals #3, #4 and #5 were located in Byron and owned by the appellant, Currier testified that he sought out other comparables in Byron, but could find none in the sources that his firm uses. He also acknowledged that these three comparables were in a building that was constructed in 2007 so that the leases were not in place as of January 1, 2007. While no adjustment was made for this difference, Currier now acknowledges that a downward adjustment should have been made. Currier testified that these three Byron rentals are a good indication of the market; he further noted that if there had been a relationship, partnership or similar structure between the landlord and tenant, these properties would not have been used as rental comparables or they would have been adjusted accordingly.

As to the income approach summarized on page 59 utilizing the market rent for the subject building, Currier asserted the subject's rentable area is 2,594 square feet [*sic*] and the treatment of the basement area was addressed on page 49 in the rental adjustment grid. On page 49, each of the rental comparables was adjusted upward 15% for lack of lower level space. Currier contends based on his analysis that the market rental rate was adjusted for the lower level area. Currier further opined it was more appropriate to adjust the market rent rate rather than assign a value to the lower level area.

Currier's role in assisting Hill in determining the capitalization rate included only gathering the current tax rate data which resulted in a loaded capitalization rate. Although the band of investment technique was also used, it was usually Hill who contacted local banks to determine market mortgage rates for commercial property. The appraiser did not know if Hill checked the rates and he agreed that a change in the rates would change the final value in the analysis.

In response to questions by the Hearing Officer, Currier stated the intended use of an appraisal and the purpose of an appraisal are somewhat similar. In this report, having valued the subject for asset valuation would be the same according to Currier as valuing it for ad valorem tax assessment purposes. After further analyzing the appraisal data, Currier determined that functional obsolescence of 15% and external obsolescence of 30% were appropriate along with reducing the physical depreciation to 5% from 22% given the change in effective age. The appraiser contended that significant weight was placed on three sales, including Sale #3 despite the fact that the appraiser had concerns about its value given personal property and an additional lot with a dwelling that were included in the sale price. Currier did research with several brokers to determine the leasing commissions he calculated on page 59 within the income approach.

As to his land sale comparable, Sale #4 with an August 1999 sale date, he stated this property was considered only because of its location and, although an adjustment for date of sale probably should have been made, it was not made.

The appraiser also acknowledged that the date of sale for Sale #1 on page 38 of the report should have been September 2007, not November 2006, although the change in sale date would not necessitate an adjustment. Currier also reiterated that Sale #2 which was built in 1950 has an effective age of 10± years. Likewise, Sale #5 that was built in 1962 and renovated in 1992 was said to have an effective age of 5± years. Currier explained that in determining effective age "we try to discuss with the local listing agent or someone involved with the sale to find out what kind of condition the property was in." (TR 125)

While the five rentals/offerings were located in only two buildings, one of which was owned by the taxpayer/appellant, Currier contends the data reflects four different tenants and one offering with leases established at different times and given the limited information available in Byron, in the absence of distress or other conditions, there was still a willing renter and a willing landlord suitable for analysis in this manner.

Currier also stated Rentals #3, #4 and #5 had leases that commenced in 2008 with no time adjustments, although in retrospect he might have made such adjustments.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $116,181 was disclosed. The subject has an estimated market value of $349,311 or $138.62 per square foot of building area including land, as reflected by its assessment and Ogle County's 2007 three-year median level of assessments of 33.26%.

In support of the subject's assessment, the board of review submitted a six-page letter jointly signed by Gynel Orr, Byron Township Assessor, and James Harrison, Supervisor of Assessments. The letter has numerous attachments including a grid of seven commercial vacant land sales, an equity grid of 10 improved commercial comparables with photographs, and a grid of five commercial improved sales with photographs and a map depicting their locations in relation to the subject.

The Hearing Officer also ordered the board of review to produce the property record card for the subject as required to be submitted with the board's "Notes on Appeal." (86 Ill. Admin. Code, Sec. 1910.40(a)). The card, which was produced at hearing, depicts a total building size of 2,520 square feet of building area along with a schematic drawing.

At hearing the board of review called Gynel Orr, the Byron Township Assessor, for testimony. Orr has held that position since 1990 and has been a Certified Illinois Assessing Officer (CIAO) since 1995. She also maintains the continuing education requirement for that designation and further noted that she has received a stipend from the State of Illinois since 1995 for maintaining her township's assessment level close to 33 1/3% of fair cash value.

As to the local economy, Orr noted that the nearby nuclear power plant provides substantial benefits to local taxing districts including the schools, fire department and library. Former residential areas on Route 2 through Byron have become commercial properties and the assessed values in the township since 1993 have almost tripled. In 2007, Orr did a reassessment of commercial properties in the township based on sales from 2004, 2005 and 2006 which included reassessment of the subject property. The subject property is located one block south of the prime commercial area on Route 2. The subject has a little less exposure than a property directly on Route 2 which has a daily traffic count of 12,000 or 13,000 vehicles. (TR 201-03) However, Orr maintains that this property is still located in prime commercial space in Byron. (TR 203)

Orr testified that there are no negative factors surrounding the subject property. Given the surrounding area, Orr disagreed with the appellant's appraiser's determination of 40% depreciation for external obsolescence. (TR 280-81)

As outlined in the assessor's letter, sales of vacant commercial land within Byron were used to determine land reassessment values (Attachment 1-1). The seven vacant commercial parcels ranged in size from 2,400 to 31,735 square feet of land area. The properties sold between November 1996 and November 2007 for prices ranging from $37,000 to $300,000 or from $9.45 to $19.21 per square foot of land area.

Orr applied front foot values in the downtown block between Walnut Street and Union Street and along the north and south sides of Route 2 with the highest value of $2,000 per front foot at the intersection of Routes 2 and 72 as this is the prime commercial area of Byron. She further reported that front foot values decrease going east and west from this intersection along Route 2 (Attachment 1-2). Orr testified that the subject, which sits off a block from Route 2, got a 20% and 1% factor which meant the land value was less than $15.00 per square foot of land area as shown in the land sales data. (TR 281) The subject's land assessment of $27,690 reflects an estimated land market value of approximately $83,253 or $4.88 per square foot of land area.

For improved commercial sales, Orr presented Attachment 2-5 with five sales. She testified that Sale A which occurred in 1993 was presented simply as a reference to display steady values for the last 15 years. Sales B through E were each described as an office building. One had an unknown date of construction and the three others were built from 1950 (with renovations in 1987) to 1996. These frame, masonry or frame and masonry buildings ranged in size from 1,488 to 5,500 square feet of building area. They sold from 2004 to 2007 for prices ranging from $187,000 to $501,100 or from $54.36 to $165.05 per square foot of building area including land. Orr pointed out that Sale B consisting of a 2,105 square foot building was located next to the subject property and sold in 2004 for $88.84 per square foot of building area including land. Sale C located closer to downtown was a less desirable area than the subject's location. Sale D whose age was unknown was said to have been originally a house, but is now an older two-story office building in the downtown that has been added on to several times. Orr's Sale E is the same property as the appraiser's Sale #3. Orr testified Sale E is the most comparable sale to the subject because of very similar building structures and quality although the subject has a slightly better location. (TR 281-82) The assessor testified the property consisting of three parcels sold for $675,000, but after removal of the personal property and the second house, Orr contends its sale price was $501,000 or $165.05 per square foot of building area including land. (TR 211-13) Other than size and the age/style and location of Sale D, Orr asserted these sales did not differ much from the subject. (TR 213-14) Orr also testified that Sales D and E include rental space that the appellant's appraiser could have analyzed for market rental data in Byron. (TR 214, 284)

Orr also analyzed the appellant's appraisal and described what she found to be errors and/or discrepancies on pages 2 through 6 of her letter. The errors noted include building location, neighborhood description, and traffic count data. Discrepancies include life expectancy of the building and occupancy.

Based on the foregoing evidence, the board of review requested confirmation of the subject's assessment.

On cross-examination, Orr addressed her land valuation of the subject. Orr also testified to the historical location of 'downtown' Byron as compared to the commercial area on Route 2. She acknowledged that over the last five to six years she has increased assessments if she had data to support the change. Orr testified that every four years a quadrennial reassessment is performed. With 3,100 parcels in the township, Orr, as a one-person office, is unable to do all parcels in one year, so the township is divided into four sections and one section is reassessed each year, unless other information is presented that merits a change in assessment.

In 2007, the change in the subject's assessment was due to sales data showing all values on commercial properties were extremely low as compared to the market data. Orr worked with an appraiser in developing commercial land values based on front foot taking into consideration the good exposure on Route 2. This includes considerations like traffic count and visibility. Orr reiterated that three of the sales of vacant land on Route 2 were used to determine the front foot values that were used in reassessing the commercial land in Byron Township.

As to the comparable improved sales, Sale A from 1993 was a restaurant that was converted into a bank. Sale B is a chiropractic office and Sale C is a dental office. As to Sale B, Orr did not know whether the sale involved related parties or some other factor that would result in it receiving less weight in her sales analysis.

On questioning by the Hearing Officer, Orr reiterated that Land Sales #3 and #4 reflect only the purchase price and do not include the demolition costs the purchaser incurred in demolishing the existing structures on each property.

In written rebuttal, counsel presented a six-page memorandum and a City of Byron Ordinance adopting Tax Increment Financing (TIF) dated April 26, 2004. Counsel's memorandum reads much like a closing argument by comparing and contrasting the appellant's evidence with that of the board of review and suggesting which evidence is more appropriate and/or credible. To the extent the memorandum makes arguments related to evidence that was stricken from this record, it has not been considered.

In rebuttal at hearing, appellant recalled Currier. He testified that he is familiar with front foot measurements which were described by Orr for assessing property, but contends that front foot measurements are not typically used in commercial appraisals. Currier asserts the method is only used for lakefront properties or high land values like along Michigan Avenue in Chicago. The instant appeal is the first time Currier has seen someone using the front foot method in valuing property in northern Illinois. Currier contends the method is not effective as frontage and depth differences can really alter the results from one parcel to another despite any potential similarities in total land square footage. Currier opined the best valuation method for commercial properties was the square foot method. He further asserted that he has never observed front foot methodology in one area with a different methodology in a nearby area other than lakefront or extremely high valued land areas.

Currier also was unfamiliar with "prime commercial real estate" as a term of art recognized in the industry and he would not consider the area on Route 2 in Byron to be "anything spectacular or extraordinary" in terms of the types of properties. He opined the only factor that may lead to a higher value for property in Byron would be related to a TIF district where there may be an incentive to buy, build or develop a property. On Route 2 in Byron, as best as Currier could understand the TIF district has a

20 year life and the TIF began prior to January 1, 2007. Currier testified that board of review Sale E received a tax abatement of $9,000 or $10,000 one year and turned in "reimbursement" for about $19,000 worth of improvements or other items in 2009. He further opined that the property owner was entitled to seek reimbursements for up to $850,000. Having done a cash flow analysis for this property, Currier asserts the amount of reimbursement for the property over a 20-year period could range from $95,000 to $370,000.

Board of review Land Sale #2 is not in the TIF district and was sold in July 2007 for the lowest per-square foot amount of $9.45. However, Currier asserts that other properties presented by the board of review were located within the TIF district which would tend to skew the assessments. Moreover, Currier acknowledged that if he had known of the TIF district benefits that were applicable to his Sale #3 in his appraisal, he would have made some adjustment as he did in his revised appraisal removing the personal property and additional home and site to the rear of the property; the TIF benefit is hard to state for the future, "but we would at least make some type of investment [*sic*] based on at least the tax amount, things like that to adjust for the sales price of the property." (TR 302-03) Board of review Land Sales #3 and #5 were also located in the TIF district according to Currier, but there was no indication that the assessor accounted for that benefit in reporting the sales prices.

As to the medical office buildings and/or banks that the board of review presented, Currier opined that for purposes of an appraisal of a general office building an appraiser would prefer not to include medical offices or banks as comparables, or if those are the only possible comparables, the appraiser adjusts for medical office build-out and/or bank canopies, drive-thrus, vaults, and tubes, all of which have a higher cost of construction.

With regard to board of review Sale B, Currier testified the building was purchased by the tenant who had occupied the building for an extended period of time. The tenant approached the owner and inquired about purchasing the property which then lead to the sale in 2004. Currier opined that a tenant will pay a premium to purchase a building they already occupy as opposed to moving to a new location and likewise a seller may take a lesser price since they will not pay a realtor's commission.

Land Sale #2 presented by the board of review was a parcel purchased by Family Video. Currier opined that companies such as this one typically choose a location which they are willing to pay a premium for which include corners and stop lights/signs. The subject has none of those characteristics and is, in fact, on a side street off Route 2 behind several buildings.

On cross-examination, Currier noted that while prime real estate may not be a technical term, Currier agrees that some areas of a community are more favorable than other areas which may then also reflect varying values depending on numerous other factors such as traffic count, TIF districts, types of adjacent properties, other developments in the area, and overall condition of the property.

As to Sale #3 in the appraisal, Currier acknowledged that the participants to the transaction did not return telephone calls and so verification of the data was obtained from "other realtors and other people that were possibly involved in the transaction." (TR 319) From his appraisal, Sale #4 was a physical therapy facility which Currier contends was not a medical build-out like some of the data which was presented by the board of review.

As to Land Sale #2 (Family Video) presented by the board of review, Currier acknowledged the property was a former gas station property. He further admitted that its sales price would in part be dependent upon whether it had been cleared of all the environmental issues at the time of purchase. Currier testified "to the best of our knowledge, it was clean." (TR 321)

Currier contacted the seller in board of review Sale B which was purchased by the existing tenant. To his knowledge, there was no realtor involved in the transaction.

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

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). In support of the overvaluation claim, the appellant submitted an appraisal with testimony from the appraiser. In the appraisal, the appraiser estimated the subject had a Fee Simple value of $230,000 or $91.27 per square foot of building area including land as of January 1, 2007.

At hearing, even with the substantial change in age of the subject building, Currier maintained there was no change in his final opinion of Fee Simple value. Furthermore, while Currier developed all three traditional approaches to value, only the cost approach and the static analysis under the income approach to value were performed to arrive at a fee simple value for the subject property. Section 9-145 of the Property Tax Code provides in part that except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428 (1970). In this regard it is noted that the appellant's appraiser calculated both fee simple and leased fee values for the subject property. The Board finds that fee simple is equivalent to fair cash value and therefore, the Board could only consider the appraiser's fee simple determination(s) and cannot consider the leased fee determination(s) made by Currier in his appraisal report.

Next, in considering the totality of the appraisal report, the Board finds the incorrect age statement, the other descriptive errors and the overall poor quality of the report sufficiently diminish the credibility and reliability and so detract from the credibility and reliability of the report so that the Property Tax Appeal Board cannot rely upon the appraiser's fee simple opinion of value of $230,000.

For purposes of determining value, the age of the subject building is a crucial fact. The appraisal report erroneously reported the age of the subject building as built in 1994 (Appraisal, p. 6). Thus, throughout Currier's analysis he characterized the subject as a 10 year old structure. At hearing, Currier acknowledged the age of the building was erroneous in the report and instead, the building was actually built in 2004 making this actually a 3-year-old structure which is what the data from the board of review indicated as to the age of the building. The Property Tax Appeal Board finds the incorrectly stated age of the building is a fatal flaw in Currier's appraisal process.

There was also a slight disagreement between the parties as to the size of the subject building. Currier reported the building contains 2,592 square feet of above grade area. At other times in the report, Currier used the figure of 2,594 square feet. The Property Tax Appeal Board finds the best evidence of size was presented in the property record card which includes a schematic drawing of the subject one-story building. Currier did not include a schematic drawing to support his reported building size figure(s). In contrast, the subject property record card, which was ordered at hearing by the Hearing Officer, indicates the building contains 2,520 square feet. The appraiser did not dispute the details of that schematic drawing. Based on this record, the Board finds the best evidence of the building size was presented with a schematic drawing. Therefore, the Board finds the subject building contains 2,520 square feet of above-ground building area with a full partially finished basement and it was constructed in 2004.

Given that the subject building was only 3 years old, the Board finds that a cost approach analysis is particularly relevant to the value of the subject property. Currier testified that the newer age of the building would result in a revised cost approach value of $355,000. Within the context of the cost approach, the Board also finds that Currier determined a land value for the subject property of $155,000 or $9.00 per square foot of land area which was nearly twice the estimated market value of the subject parcel as determined by the township assessor. As reflected by the subject's land assessment, the subject parcel has an estimated market value of $83,253 or $4.88 per square foot of land area. Applying the assessor's estimated land value to Currier's depreciated replacement cost new of the building and site improvements ($355,000 less $155,000) would result in a value under the cost approach of approximately $283,250 or $112.40 per square foot of building area including land. This conclusion of value suggests that the subject property is overvalued based on its assessment.

Furthermore, 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. Chrysler Corporation v. Property Tax Appeal Board, 69 Ill. App. 3d 207 (2nd Dist. 1979) and Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill. App. 3d 9 (5th Dist. 1989). Thus, given the applicable caselaw, the Property Tax Appeal Board also finds it appropriate to analyze the raw sales data in the appellant's appraisal and compare and contrast that data with the raw sales presented by the board of review to determine whether the record establishes that the subject property is overvalued. As noted previously, the appraiser's leased fee value conclusion of the subject property utilizing the sales comparison approach is inapplicable to a determination of the fee simple or fair cash value of the subject property.

Currier's sales comparison approach utilized six comparable sales of office buildings as summarized on page 38 of the appraisal. Of these six sales, five were described as leased fee sales which detract from their suitability to determine fee simple value. The Board finds Sale #2 was the only fee simple transaction and therefore one of the most appropriate sales to consider of those presented by Currier. The building was built in 1950 and is substantially smaller at 1,332 square feet. Sale #2 sold in March 2006 for $92.34 per square foot of building area including land suggesting the newer subject building would have a higher per-square-foot market value. In addition, Sale #6 which was a leased fee sale from June 2003 was more similar to the subject in size at 3,004 square feet and also had a finished lower level. Sale #6 from Freeport was built in 1989 and sold for $104.86 per square foot of building area including land, again suggesting the newer subject would have a slightly higher per-square-foot market value than this comparable.

In support of its assessment, the board of review presented data on five sales of properties characterized as office buildings within the City of Byron detailed on Attachment 2-5. In providing data on these sales, the board of review did not include parcel size or any other details about the features of these properties such as basements. While each was classified by the assessor as "office," the only other data submitted included story height, exterior construction, year of construction, year of sale and sale price. Sale A which occurred in 1993 is too distant in time to be relevant to the subject's 2007 fair cash value. Sale E, which was also the appraiser's Sale #3, was a complex transaction involving multiple parcels, a home and personal property all of which detract from its suitability as a comparable for the subject property. Of the remaining three sales presented by the board of review, the Property Tax Appeal Board finds that Sale D at 5,500 square feet of building area is substantially larger than the subject building. Therefore, the Board finds the most suitable sales presented by the board of review were Sales B and C which sold in 2004 and 2007 for prices of $88.84 and $161.29 per square foot of building area including land. Each of these were older structures built in 1982 and 1950 with renovations/expansion for one in 1987. Since Sale C which sold for $161.29 per square foot of building area including land is a substantially smaller building at only 1,488 square feet, the Board finds the best sale comparable, which contains 2,105 square feet of building area, sold for $88.84 per square foot of building area including land. However, given the age of this structure, the subject would be expected to have a higher per-square-foot market value.

On this record and as fully described above, the Property Tax Appeal Board finds the most similar sale comparables sold for prices ranging from $88.84 to $104.86 per square foot of building area including land between June 2003 and March 2006. Moreover, each these sales involved older structures. The subject property based on its assessment has an estimated market value of $349,311 or $138.62 per square foot of building area including land which is substantially above the range of the most similar sales on this record presented by both parties.

In conclusion, after considering the cost approach as discussed above and the most relevant sales presented by both parties, the Property Tax Appeal Board finds the subject property had a market value of $275,000 as of January 1, 2007. The Board finds, based on the subject's size, age and single-tenant use, its market value would be somewhat higher on a per square foot basis than the most similar comparable sales which are somewhat dated and in some instances involved a leased fee sale. Since market value has been established, the Property Tax Appeal Board finds the 2007 three year median level of assessments for Ogle County of 33.26% shall apply. (86 Ill.Admin.Code 1910.50(c)(1)).

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: February 18, 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.