FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Old Orchard Estates, L.P.
DOCKET NO.: 08-01618.001-C-2
PARCEL NO.: 18-08-200-014

The parties of record before the Property Tax Appeal Board are Old Orchard Estates, L.P., the appellant, by attorney Ronald J. Stone of Stratton, Giganti, Stone, Moran & Radkey in Springfield; the Rock Island County Board of Review; and the Village of Carbon Cliff, E. Moline S.D. #37, and United Township S.D. #30, intervenors, by attorney Joseph A. Polaschek of the Schalk Law Office in Davenport.

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

LAND:	$48,461
IMPR.:	$986,629
TOTAL:	$1,035,090

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of a 12.28-acre site improved with a 144-unit apartment complex commonly known as Old Orchard Estates. The improvements consist of 6 two-story brick and frame garden apartment buildings[1] that contain a total of 24 one-bedroom units (683 square feet each), 96 two-bedroom units (884 square feet each) and 24 three-bedroom units (1,120 square feet each). Each building has two laundry rooms each containing 114 square feet of building area with coin-operated washers and dryers. The property also is improved with four garage buildings with a total of 72 spaces and 19,800 square feet of building area,[2] however, in one building two spaces are used by the appellant for maintenance equipment. The apartment complex was

[1] Each building contains 4 one-bedroom units, 16 two-bedroom units and 4 three-bedroom units for a total of 21,356 square feet of living area per building.
[2] Intervenors' appraisal reports the garage buildings have 16,525 square feet of building area.

built in 1996 or 1997[3] and operates 100% as a Section 42 (26 U.S.C. 42) Low Income Housing Tax Credit program (LIHTC) with a total gross living area of 128,136 square feet. The complex's office area consists of one two-bedroom unit. The property is located in Carbon Cliff, Hampton Township, Rock Island County.

The appraisers for the parties agreed on the number of apartment units, the size and style of each unit (1 bedroom, 2 bedroom or 3 bedroom) at the complex. Therefore, despite slight variances in total building sizes reported by each of the appraisers, the Board finds based on the agreed data that the complex contains 128,136 square feet of living area.[4]

The parties to this proceeding recognized that Section 10-235 of the Property Tax Code (hereinafter "Code") provides that it is the policy of the State of Illinois that low income housing projects that qualify for low-income housing tax credits under Section 42 of the Internal Revenue Code shall be valued based on their economic productivity to their owners to insure that high taxes do not result in rent levels that cause excess vacancies, loan defaults, and loss of rental housing facilities to those that are in most need. (35 ILCS 200/10-235)

Sections 10-245, 10-250 and 10-260 of the Property Tax Code establish the method of valuing Section 42 low-income housing projects in accordance with this policy. Section 10-245 of the Property Tax Code provides in part:

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

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

> Beginning with taxable year 2004, all low-income housing projects that qualify for the low-income

[3] Appellant's appraiser reported a 1997 year of construction contrary to the property record card and the intervenors' appraiser who reported 1996, but the intervenors' appraiser included a site plan from the assessor's file with a handwritten notation "All Structures Built 1997." (Intervenors' appraisal, p. 25)
[4] Appellant's appraiser reported a total size of 125,352 square feet of living area.

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

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

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

The appellant appeared before the Property Tax Appeal Board by counsel claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted a summary appraisal report which estimated the subject's market value to be $3,100,000 as of January 1, 2008.

The appraiser, J. Edward Salisbury, was present and testified regarding the appraisal methodology and value conclusions contained within his valuation report. Salisbury, a state licensed appraiser, holds professional designations of Certified Illinois Assessing Officer (CIAO) from the Illinois Property Assessment Institute, the Certified Assessment Evaluator (CAE) designation from the International Association of Assessing Officers, and he is a Candidate Member for the Member of the Appraisal Institute (MAI) designation. The witness was tendered and, without objection, was accepted as an expert.

Salisbury testified he has performed 20 to 25 appraisals of subsidized low income housing projects since about 1988 or 1989 in Illinois. His report references the Code. Salisbury noted that based on the terms of Section 10-260 of the Code and the lack of arm's length sales of Section 42 properties, he determined that only the income approach was relevant to estimating the value of the subject property. Furthermore, since pursuant to the Code the value of the tax credits cannot be considered, therefore Salisbury found that the cost approach to value would not yield a meaningful value estimate.[5]

From pages 32 to 39 of the report and in testimony, the appraiser gave a short summary of the appraisal methodology and the

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[5] Section 1-130 defining property for assessment purposes provides that it does not include low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42. (35 ILCS 200/1-130)

workings, advantages and disadvantages of Section 42 low-income housing projects. He explained that Section 42 housing projects provide investors or developers with income tax credits. The tax credits are based on the percentage of the project placed in the program and the cost to construct the improvements on the site and then those tax credits are allocated to the owner in equal increments over a 10 year period. As stated in the report developers and purchasers of Section 42 housing projects are not able to remove the restrictions for these projects for 30 years.

Moreover, under the program, developers or purchasers agree to limit tenancy to people who earn 60% or less than the area's median income or as determined annually by the administering agency. In Illinois, the LIHTC program is regulated and administered by the Illinois Housing Development Authority (IHDA). In addition, rents may not exceed a certain level as established by Housing and Urban Development (HUD) or the IHDA, which are typically below the market rents of that particular community.

Among his appraisal assumptions, Salisbury reported that he assumes the property will be competently and efficiently managed during its remaining economic life. Among the management requirements of the program, each tenant must be recertified every year including income information. (TR. 16-17)[6] Moreover, the appraiser opined that management must be diligent in performing credit checks and background checks on each tenant. (TR. 17-18) Salisbury testified that in every Section 42 project he has done "the rents being charged were below what HUD would allow simply because the tenants couldn't afford any more than that." (TR. 19) Properties in the program must also accept Section 8 vouchers; some of the tenants for the subject property receive assistance under Section 8 meaning the federal government pays a portion of the rent. He also opined that management must be "very good to great" for these projects in terms of bringing in tenants who are good tenants but avoiding the pitfall of tenants who cannot pay which drives up the expenses and the vacancy rate. Salisbury also reported that occupancy rates at projects such as the subject are lower than found in conventional apartments in the area.

Salisbury testified that a complex the size of the subject needs to have an on-site office. He further noted that since the subject uses one of the 2-bedroom units as an office, this use had to be accounted for in the income of the property since it would not be a unit available for rent, but there would still be expenses to heat and cool this space. In this regard, Salisbury opined the expense for this unit would be the same as for any other rental unit, but the unit would not generate income. (TR. 13) In a similar manner, Salisbury testified that the management of the complex uses two of the garage spaces for storage of lawn

[6] References to pages of the transcript will be noted as "TR." followed by page reference(s).

equipment and the like. The appraiser also noted that of the available 70 rentable garage spaces only 50% to 55% were rented.

Salisbury testified that the expenses for a Section 42 property tend to be higher than for a similarly aged and sized conventional apartment building due to all of the extra steps that are required in accounting functions,[7] tenant turnover, and higher repair costs due to the quality of tenant care of the project.

In estimating the market value of the subject property, Salisbury developed the income approach to value including considering the effects of the LIHTC agreement and provisions of the Code. Under the income approach to value, Salisbury began by analyzing the actual income and expense data for the subject property from 2005 through 2008 as shown on page 40 of his report. The appraiser reported the monthly rents for the subject were stable between January 2005 and January 2008. The subject was reported to have a net operating income, not including real estate taxes or reserves for replacement, for the years 2005, 2006, 2007 and 2008 of $384,338, $406,906, $335,112 and $397,634, respectively.

The first step in the income approach was to develop the subject's potential gross rental income. In the report, Salisbury stated the actual rents were lower than the maximum rents due to market demand and competition from other complexes which forced rate reductions. In the appraisal Salisbury reported the subject's actual and maximum rental rates as follows:

Type of Unit	Actual Rent	Actual Rent/sq. ft.	Maximum rent	Max. Rent/sq. ft.
1 bedroom	$433	$0.63	$676	$0.99
2 bedroom	$508	$0.57	$812	$0.92
3 bedroom	$578	$0.52	$938	$0.84

In estimating the subject's potential gross income, the appraiser also examined four other Section 42 projects located in East Moline, Carbon Cliff, Moline and Milan.[8] The comparables, built from 1978 to 1997, contained from 96 to 216 units. For these comparables, 1-bedroom rents ranged from $430 to $510 or from $0.63 to $0.82 per square foot of living area; 2-bedroom rents ranged from $500 to $585 or from $0.44 to $0.67 per square foot of living area; and 3-bedroom rents ranged from $660 to $675 or from $0.48 to $0.58 per square foot of living area. The chart also identifies amenities for the comparables such as garages and laundries like the subject, but also additional amenities such as a clubhouse, pool, laundry hook-ups and/or a playground not

[7] Accounting includes initial review of every prospective tenant including background check, credit check, and establishing proof of employment and salary, the latter of which must be renewed yearly.
[8] Rental comparable #3 had been a conventional apartment complex until after its sale in 2004 when it was converted to a Section 42 complex.

enjoyed by the subject property. Salisbury testified that he found these properties to be comparable to the subject "with differences" such as pools; he noted the current trend is to have more bathrooms and laundry hook-ups. (TR. 24)

Having determined that the subject's unit types are within a reasonable range compared to the comparables, in order to develop the subject's potential gross income, the appraiser used the 2007 asking rents of $433 per month for 1-bedroom units, $508 per month for 2-bedroom units, and $578 per month for 3-bedroom units resulting in a potential gross income of $870,288 for 143 units in the complex as this calculation excludes the 2-bedroom unit used as an office.

The next step was to estimate the vacancy associated with the property. The witness noted the subject had actual vacancy rates from 2005 to 2008 that ranged from 6.2% to 9.7%. Salisbury recognized that the subject's vacancy was above the typical market rate for Section 42 property despite the rent reductions and concessions afforded in 2006 and 2008. Furthermore, as required by statute Salisbury deducted 5% or $43,514 for vacancy resulting in an effective apartment income of $826,774. Salisbury acknowledged a typographical error in the report on page 55 referencing the deduction as being for "Vacancy and Credit Loss (5%)" when this was only vacancy.

Next, the appraiser considered other deductions from gross income. In Salisbury's experience, properties with vacancy of 5% or more will offer concessions to seek to fill the units. For the subject, the concession was one month's free rent for new tenants which were summarized on page 53. For 2005 to 2008, the total concessions ranged from $21,509 to $28,857 per year. Salisbury stabilized this figure at $26,000. The appraiser analyzed "loss to lease," a figure reflecting the loss to potential gross income for long-term tenants whose rental rates were not increased; for 2007 and 2008 this loss was $4,386 and $4,059, respectively. The appraiser stabilized this figure at $4,000. Salisbury examined the "bad debt write-off" reflecting tenants who did not pay rent but occupied the unit(s); the annual amount for the subject from 2005 to 2008 ranged from $17,646 to $52,403. The appraiser stabilized this deduction at $40,000. The last deduction was for "rent refund" for a new incentive at the subject in 2008 for current tenants who receive a 'finder's fee' of $50 for referring a new tenant. The 2008 cost was $1,539 which Salisbury stabilized at $1,500 for the appraisal report. These stabilized miscellaneous deductions totaled $71,500 resulting in a figure of $755,274.

Salisbury testified that the statutory provision in Section 10-245 of the Code [35 ILCS 200/10-245] provides only for a 5% vacancy rate; Salisbury opined that if the legislature wanted this provision to also cover the miscellaneous deductions outlined above in his appraisal, the legislature could have characterized the limitation as 5% for "vacancy and collection loss." (TR. 28)

Salisbury next calculated an addition for the subject's annual stabilized miscellaneous income of $80,000. The appraiser testified that complexes like the subject in recent times have sought to charge for various services. On page 54 of the report, Salisbury outlined the miscellaneous income for the subject from 2005 through 2008 which ranged from $54,148 to $82,593 per year for items such as application fees, key charges, late fees, laundry income, parking garage fees, pet fees and others. The resulting effective gross income after addition of miscellaneous income was calculated to be $835,274.

The next step was to calculate the stabilized expenses that are associated with the subject property. The actual expenses of the subject property for the years 2005 through 2008 were charted on page 56 of the report and discussed in greater detail on pages 56 to 58. Salisbury did not find any unjustified expenses nor did he observe any evidence of bad management. The yearly expenses ranged from $369,377 to $452,743 or from $2,565 to $3,144 per unit based on 144 units as "expenses relate to the unit used as an office as well as the rental units." The expenses excluded real estate taxes and reserves for replacement. Expense ratios for the subject property for 2005 through 2008 ranged from 47.58% to 57.47%.

The appraiser also examined the expense ratios of fifteen Section 42 low income housing projects which Salisbury had previously appraised. These properties are located in Moline, Lincoln, Freeport, Peoria, Galesburg, Bloomington, Urbana, Pekin, Machesney Park, Rochelle and Dixon, Illinois. They contain from 55 to 228 rental units and had expenses in a given year from 1996 to 2007 ranging from $137,174 to $636,507 or from $1,934 to $4,307 per rental unit or from 30% to 61% of their effective gross income with vacancy rates ranging from 2.2% to 18.4%. In testimony, Salisbury acknowledged that expense data for 1996, for instance, is not "the best comparable" for a valuation in 2008. (TR. 36) The witness also stated that historically expenses for properties like the subject typically go up from one year to the next, for instance, for increasing salary costs to retain good management. The appraiser also reported having considered statistical analyses available in the *Institute of Real Estate Management (IREM)* report on subsidized properties. Based on the foregoing, Salisbury opined the subject's stabilized expenses at $3,000 per unit resulting in total expenses of $432,000. The appraiser testified that he uses expenses per unit as his measurement for apartment complexes because it removes the difference in vacancy rates. (TR. 33) This unit of measurement is in contrast to the expenses allocated on a percentage basis as was presented by the intervenors' appraiser according to Salisbury.

On page 66 of the report, Salisbury reported the subject sets aside $240 per month per unit or $34,560 per year for reserves for replacements. This methodology of reporting reserves for replacement after expenses is not what was done by the appraiser presented by the intervenors. Salisbury contended that by doing so, the intervenors' appraiser presented an inappropriately higher expense ratio than actually exists, unless each of the comparables included a reserve as well. (TR. 32, 39-40) Salisbury noted the subject's actual reserves for replacement are in the middle of the range shown in the appraiser's office data banks and national data services.

In conclusion, Salisbury deducted $432,000 for stabilized expenses and $34,560 for reserves for replacement from the subject's effective gross income of $835,274 resulting in a net operating income for the subject property of $368,714 excluding real estate taxes.

The final step under this approach was to estimate the capitalization rate to be used to capitalize the net income into an estimate of value. The appraiser developed an overall capitalization rate from the market to be applied to the subject's net operating income using the direct capitalization method. The appraiser consulted RealtyRates.com, a financial service provider that performs and publishes surveys, and compared the data to his office data banks in order to develop the capitalization rate. In testimony, he noted that there are no national studies showing overall capitalization rates for Section 42 properties because there are none that have sold where that information could be abstracted. Rates available from the market will concern conventional apartments, not Section 42 properties. (TR. 40)

On page 68 of the appraisal report, Salisbury presented *RealtyRates.com's First Quarter 2008 Investor Survey for Apartments-Garden/Suburban Townhouse*. The chart depicted minimum and maximum rates developed from both a band of investment technique and the surveyed rates determining an average rate of 8.19% using a band of investment technique and determining an average rate of 7.66% based on the survey data. Salisbury also reviewed *RealtyRates.com's Market Survey for the First Quarter 2008* including Illinois in the West North Central region for Class A and Class B apartment buildings where he found the overall rate for the region to be 8.9% as shown on page 69 of the appraisal report. The appraiser's office data banks for properties throughout Illinois reflected overall rates ranging from 7% to 11% for conventional apartment buildings during 2007 and 2008; Salisbury noted that newer complexes in larger cities tended to fall in the lower half of the range whereas older properties and ones in smaller cities tended to fall in the upper half of the range. Recognizing that conventional apartments would not be constrained by the 30-year governmental contract and that rents and some expenses are also controlled by the contract with the government, Salisbury opined that Section 42 properties are typically less desirable and therefore investors require a higher rate of return due to the compliance issues. (See appraisal p. 69 & TR. 41)

Based on his analysis of the data, Salisbury determined an overall capitalization rate of 9% for the subject property. He next added a component for the effective tax rate of 2.9% to arrive at an overall capitalization rate of 11.9%. Capitalizing the net income of $368,714 by the estimated capitalization rate of 11.9% resulted in an estimated value under the income approach of $3,100,000, rounded, as of January 1, 2008.

Based on this evidence and testimony, the appellant requested the Property Tax Appeal Board reduce the subject property's assessment to reflect its appraised value.

Under cross-examination, the appraiser was questioned about additional typographical errors in his report and what type of clients he performs appraisals for. Salisbury stated about 90% of his appraisals are for taxpayers and about 10% are for counties, municipalities and/or taxing districts. The witness stated that the apartment unit used as an office is strictly an office; it is not a residence for a manager. Moreover, there is no other building at the property that would be available as an office. Salisbury opined that a complex the size of the subject must have an office presence on site. The witness further opined that management's decision to use a unit as an office was the highest and best use of that unit. (TR. 47)

The appraiser was asked what evidence he had that the comparable Section 42 complexes listed on page 50 of his report were offering concessions. Salisbury acknowledged that he had no actual knowledge or documentation in the report that concessions were being offered by those properties or by other properties in the Quad Cities area, but the witness believed based on the rather high vacancy rates of these complexes, where occupancy rates ranged from 81.6% to 91%, that it would be negligent by management not to offer concessions. (TR. 48-50)

The witness was asked about the expenses at the subject property itemized on page 56 of the report. Specifically, the witness was asked to explain the difference between the 2007 expense of $67,212 for "renovation" and the zero renovation expense in 2008. Salisbury stated it was partly an accounting procedure where some of the renovation or redecorating for 2008 was itemized as "redecorating/restoration" and part of the difference was an effort by ownership to reduce expenses. Also, in 2007 the subject had a higher vacancy rate and management tried to renovate the units to attract more tenants and reduce the vacancy rate thus, more money was expended in renovations. Salisbury did not recall exactly what renovations were done to the subject. (TR. 53-56) The appraiser testified that the subject's utility expenses went up dramatically from 2007 to 2008 merely because the cost of utilities increased. (TR. 56)

On redirect examination, Salisbury reiterated that an on-site apartment unit that is used as an office does not itself generate rental income, but the appraiser found it necessary for managers of the complex to have such an office.

As to the provisions of the Code for Section 42 properties, the appraiser stated he was unaware of any case precedent that prohibits consideration of miscellaneous deductions. (TR. 58-59)

The appraiser also stated that hold-over tenants continue to cause wear and tear on an apartment unit and the unit continues to incur expenses. The witness further opined that the miscellaneous deductions set forth in his report are the type of deductions any investor would examine regardless of the property. (TR. 59)

For re-cross examination, the witness noted that pages 59 through 64 of the appraisal report address marketplace expense data for Section 42 properties in various communities. Salisbury did not consider expense data for conventional apartment complexes because he did not believe it was relevant. (TR. 60-61) Salisbury further testified that of the four Section 42 complexes listed on page 50 of his report, he only had expense data for the Pheasant Ridge complex (#15 in his expense data on pages 63 and 64) as it was the only property of these four for which he did an appraisal. (TR. 61-62)

On redirect examination, the witness reiterated the market expense data set forth in his appraisal was obtained in various years as reported in the course of appraisal projects on those properties. In each of those projects, the data was necessary to perform an income approach to value. Salisbury noted that owners are reluctant to release financial documents to appraisers who are not employed by that property. The witness also expounded that expense data on conventional apartment properties was not relevant due to the differences in mandates from both federal and state governments. The appraiser also opined that the fifteen Section 42 properties would have expenses similar to the subject but for perhaps slight variables in cost of labor and/or cost of utilities. (TR. 63-64)

During additional cross-examination the witness asserted that displaying expenses for these 15 properties from 1996 to 2007 shows trends which is also confirmed by publications which assert that expenses have increased since 2000. The witness would not use expense data from 2000 for a 2008 appraisal, but the data confirms that the current expense would be considerably higher. (TR. 65-66)

On further re-direct examination, the appraiser affirmatively stated that the actual expenses of the subject did not reflect any signs of bad management or mismanagement of the subject. Moreover, the data on expenses for other Section 42 complexes did not suggest that the actual expense data of the subject could not be relied upon. However, the appraiser considered the market expense data noting comparables #12 through #15, with more recent data, reflected some of the highest expenses per unit which the witness used to support both the actual and stabilized expense figures for the subject. (TR. 67)

As a last point on cross-examination, the witness was unable to explain why comparable #12 had a higher per unit expense than the other properties.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject's final assessment of $1,389,702 was disclosed. The subject's assessment reflects an estimated market value of $4,162,031 or approximately $28,903 per unit using the 2008 three-year median level of assessments for Rock Island County of 33.39% as determined by the Illinois Department of Revnue. (86 Ill.Admin.Code §1910.50(c)(1)) In support of the subject's estimated market value as reflected by its assessment, the board of review submitted a two-page letter with an attached copy of a letter prepared by Ray Browning of Savage & Browning, Property Tax Representatives, along with an Income Value Worksheet - 2008 and a copy of the property record card for the subject property.

In its letter, the board of review reported that "Mr. Browning's evidence" of "restricted rent rates" on a monthly basis was $443 for 1-bedroom units, $518 for 2-bedroom units, and $588 for 3-bedroom units resulting in a total gross annual rental income of $893,664.[9] To this the board of review deducted 5% for vacancy or $44,683. The board of review then added $50,000 for stabilized other income and deducted stabilized expenses of 45.9% or $412,892 [sic].[10] To this the board of review applied a capitalization rate of 11.52% as set forth by Savage & Browning for an estimated market value of $4,219,522 from which $50,000 was deducted for personal property to arrive at $4,169,523 or approximately $28,955 per unit. Applying the statutory level of assessment of 33.33% to this market value, the board of review arrived at the subject's total assessment of $1,389,702.

In this letter, the board of review also reported an error in its loaded capitalization rate. "The tax rate for the property was 8.6538 which would have resulted in 2.8843 to be added to the cap rate of 8.6. The resulting loaded cap rate would be 11.48%." Therefore, based on this adjustment to the capitalization rate, the board of review requested an increase in the assessment of the subject property to reflect a market value of $4,234,225.

Furthermore, in the letter the board of review noted that the Salisbury appraisal applied a miscellaneous deduction of $71,500 "after his 5% deduction for Vacancy and Credit Loss." The board of review also questioned Salisbury's use of an expense ratio of $3,000 per unit "even though his Section 42 expense comparables on page 62 had a median of $2,456."

[9] The attached "Income Value Worksheet - 2008" sets forth monthly rental rates of $418 for 1-bedroom units, $493 for 2-bedroom units, and $563 for 3-bedroom units for a total gross annual rental income of $850,464.

[10] The arithmetic of 45.9% of $898,981 results in an actual stabilized expense of $412,632.

Based on the foregoing evidence and the evidence presented by the intervenors, the board of review requested an increase in the subject's assessment.

The intervening taxing district Village of Carbon Cliff[11] timely filed an appraisal report that estimated the subject's market value to be $4,361,000, which excludes $69,000 of personal property, as of January 1, 2008.[12] One of the appraisers on the report, David Mark Nelson, was present and testified regarding the appraisal methodology and value conclusions contained within the report.

Nelson is a licensed appraiser in the states of Illinois and Iowa specializing in commercial properties. He has been appraising real property for approximately 19 years. Prior to appraising real property he was a property manager in Washington, D.C., Chicago and the Quad Cities. Nelson testified he has done appraisals of Section 42 complexes for both taxpayers and taxing bodies for tax appeal purposes throughout Illinois and Iowa since 1992 or 1993.

The appraisal report is signed by Nelson as an employee of Roy R. Fisher, Inc. and also by both Richard J. Koestner and Robert J. McGivern both of whom are employees of Koestner, McGivern & Associates. Nelson testified that he consulted with the Koestner firm when it was hired for this appraisal assignment.[13] His involvement in the appraisal included inspection of the property with McGivern, perhaps twice, and review of the income and expense data provided by the owner. Nelson also stated that he believes he provided McGivern with most of the comparable sales data and then reviewed the report as McGivern wrote it. Furthermore, Nelson provided McGivern with a template of a prior tax appeal report which Nelson had prepared and supplied McGivern with Quad Cities market studies that Nelson maintains in his database. Next in the course of testimony, Nelson corrected himself and stated that he read the report and signed it when completed by McGivern rather than having "reviewed" the report. (TR. 72) The witness testified that he is of the same opinion regarding the subject property as the other two signers of the report.

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[11] Extensions of time to submit evidence for the intervenors East Moline S.D. #37 and United Township S.D. #30 expired on September 21, 2010 without further requests for an extension. However, neither intervenor was formally defaulted in this proceeding by the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a)).

[12] Compare pages 2, 61 and 63 with value conclusions of $4,430,000 including personal property with pages 5 and 7 with stated conclusions, including personal property, of $4,400,000, but which actually add up to $4,430,000.

[13] In the cover letter submitted with the appraisal report, it is stated that the Koestner firm "partnered with Roy R. Fisher, Inc., an associated professional appraisal firm, who has extensive experience with [*sic*] Illinois Property Tax Code." Furthermore, on page 12 of the report discussing competency rules, the Koestner firm acknowledged its lack of experience with the Illinois Property Tax Code and thus partnered with the Roy R. Fisher firm.

On page 11, the appraisal report states that access to interior units was denied in 2010 by the property manager, but on page 13 of the report it states, in pertinent part, that "five vacant units, in three of the six units were inspected." Also on page 5, the appraisers reported that McGivern and Nelson made personal inspections of the property in May 2008. Furthermore, the inspection of five units was reiterated on page 24 of the appraisal report.

The witness noted that he was unaware until this hearing began that there were slight variances in size descriptions between his report and that of Salisbury. In any event, as to the square footage issue, the witness stated that apartments like the subject rent on a per-unit basis using measurements of numbers of bedrooms and bathrooms meaning that any square footage discrepancy between the reports would not impact the final value conclusion.

In light of the provision of the Code concerning Section 42 housing projects, the appraisal report acknowledged that the income approach "is the only applicable method of valuation." (Appraisal, p. 13) The appraisal further states "[w]e will embrace the Sales Comparison Analysis to extract Expense, Income and Capitalization rates. The Cost Approach is limited to analysis of personal property only." (Appraisal, p. 13)

The witness discussed the phrase "Illinois Quad Cities Economic Target Marketplace" as used on page 15 of the report. Nelson stated that the Department of Commerce wraps all of the Quad Cities into a single metropolitan statistical area. The appraiser further testified that functionally there is little, if any, difference between the Illinois and Iowa Quad Cities markets including extending into nearby counties in both directions. In this regard, the witness noted that only one of the 15 comparables on expense data presented in the Salisbury appraisal fell within this same target market area. Nelson further opined that use of data from the target marketplace results in a little more of a homogenous nature of expenses from within the same statistical area such as labor costs as vendors work on either side of the Mississippi River. (TR. 74)

In addressing the on-site office of the subject property which is located in a 2-bedroom apartment unit, Nelson opined that the highest and best use of that unit would be as a rental apartment unit. He further opined that the management functions "could be relocated into some other space that would be considerably more economical in use." He further opined that management of the subject facility was not making a prudent decision in that regard. (TR. 78) For that reason, the intervenors' appraisal report utilizes 144 rental units rather than 143 rental units as analyzed by Salisbury in his appraisal report.

On pages 31 and 32, the intervenors' appraisers developed an indication of the subject's land value by examining nine land sales that occurred between August 2002 and December 2008. The parcels ranged in size from 3.25 to 19.694-acres and sold for prices ranging from $10,000 to $93,750 per acre. The appraisers analyzed the land sale comparables for differences from the subject to opine a value for the subject 12.28-acre site at $35,000 per acre or a land value estimate of $430,000. Nelson testified this land value was presented to establish that the improvements do add to the land value and are consistent with the highest and best use of that land value. (TR. 78)

Under the cost approach, the intervenors' appraisers estimated the value of personal property on page 35 of the report. Nelson testified that determination of personal property was consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) "requiring contributory value of personal property be acknowledged when it's present, which is the case for properties like this." (TR. 80) The appraisers opined that the subject appliances were roughly 60% depreciated given a life of 15 years and that the items were 9 years old. With the assistance of Marshall & Swift Valuation Services, the appraisers estimated the replacement cost of "appliances/blinds" to be $172,800 less 60% depreciation to arrive at a value conclusion of $69,000, rounded.

Under the income approach to value, the first step was to develop the subject's potential gross rental income. The appraisers examined a market survey of multi-family units six months "prior to the date of value" which Nelson completed. The survey on page 53 with a date of June 2009 reflects eleven apartment buildings located in East Moline, Rock Island, and Moline. The age of these comparables was not disclosed. The buildings contained from 35 to 460 units ranging from studios and/or efficiencies to 3-bedroom units. For these comparables, 1-bedroom monthly rents ranged from $45[14] to $635; 2-bedroom monthly rents ranged from $435 to $600; and 3-bedroom monthly rents were either $460 or $675. The chart also identifies amenities for the comparables such as garages like the subject, but also additional amenities such as a pool, carports, and/or heat, water, sewer, and/or garbage pickup furnished to tenants.

The township assessor also provided summaries of historic income and expense data from the subject for 2004, 2005 and 2007, although actual rent rolls for 2008 were not available to the appraisers. (Appraisal, p. 51) The three years of subject data was summarized on page 52 of the report reflecting income from all sources ranging from $877,000 to $930,930 with vacancy rates ranging from 5.06% to 17.28% of gross income and concessions ranging from 2.76% to 3.40% of gross income. The expenses, including real estate taxes, for these three years ranged from $438,037 to $532,493 which reflected expense ratios ranging from 49.95% to 57.20% of "all income." As depicted the years 2004, 2005 and 2007 had reported net operating incomes for the subject of $268,930, $291,502 and $323,799, respectively.

[14] This was most likely a typographical error, but it was not clarified at hearing.

At hearing with regard to the subject's estimated market rents, Nelson stated "we looked at the units, the rents that they were offering, and made a comparison to market units and other Section 42 units. Because the property has been functioning with those rents, the default position is that the current rents are accurate and reflect market value. And we use what we were informed were the current rents as of the date of value." (TR. 83) Page 55 of the report presents a survey dated July 2004 of Section 42 "communities"; the survey sets forth five properties including the subject Old Orchard. As depicted on this survey, in 2004 the subject property charged rents of $418 for 1-bedroom units, $493 for 2-bedroom units and $563 for 3-bedroom units.

As shown on page 51, for purposes of the income approach the appraisers utilized market rents for the subject of $430 per month for 1-bedroom units, $510 per month for 2-bedroom units, and $575 per month for 3-bedroom units resulting in a potential gross apartment rental income of $876,960 for all 144 units. In addition, the appraisers opined income from the 72 garage spaces of $35 per month or $30,240 for a full year "considering" the 2007 historic income for parking which was $18,905 as shown on page 52. During hearing, Nelson acknowledged the projection for garage income was "slightly higher" than the historical garage income. (TR. 84) The appraiser asserted garage rental tends to mimic the vacancy rate of the apartment units and therefore included this income in "direct capitalization" rather than in miscellaneous income. (TR. 85-86) Nelson further asserted this placement in the income approach did not have any material change in the final value conclusion. Lastly, the appraisers added a lump sum of "other income" of $47,600 resulting in a total potential gross income estimate of $954,800 for the subject.

As to the applicable vacancy rate, the report stated vacancy in larger communities in the Quad Cities area was ±8.5%, but given the terms of the Code a 5% vacancy as required by public act 093-0533 (35 ILCS 200/10-245) must be applied to the subject's potential gross income. With a deduction of $47,740 for vacancy, the intervenors' appraisers estimated an effective gross income from all sources of $907,060.

Nelson testified that in his experience and in what he has been taught in the Appraisal Institute apartment classes is that the vacancy line is actually "vacancy and credit loss" and includes all of those components in the vacancy definition. He further testified that for conventional apartment practice and performing an appraisal for Fannie Mae, HUD or a commercial mortgage-backed security, "that is how they look at that line. And that is, in most cases, how investors look at that line." Nelson contends that the manner in which Salisbury took an "other deduction" after the 5% vacancy is in his opinion a "means of circumventing the statute" by taking an additional deduction for vacancy that the statute does not allow. The witness further asserted that concessions, loss to lease, bad debt write-off, and rent refunds, which Salisbury applied in his report, in Appraisal Institute educational settings are "typically considered as part of the vacancy loss." (TR. 86-87)

Next the appraisers stabilized the subject's annual expenses at $388,370 or $2,697 per rental unit or 42.82% of the effective gross income, before real estate taxes, based in part on historical evidence, competing developments and appraisers' own experiences in managing property. (TR. 90-91) The subject's historical expenses for 2004, 2005 and 2007, excluding real estate taxes, were reported to have been $354,098, $363,891 and $379,237, respectively. The intervenors' appraisers stabilized a management fee of 5% or $45,353 recognizing that low-income tenants generally require more management than typical market rate units. Nelson stated that if the subject were a conventional property, a management fee of 4% would have been used; the subject's higher fee accounts for the additional paperwork and administrative tasks associated with a Section 42 property. (TR. 94) Administrative salaries were stabilized at $50,000 and "Administrative" was separately stabilized at $25,000. Advertising was stabilized at $10,000 based on the 2004, 2005 and 2007 actual expenses of the subject along with observations from competing projects. Maintenance/Operating was stabilized at $62,500 while Maintenance Salaries were stabilized at $50,000. The appraisers stabilized utilities at $50,000, somewhat less than the subject's actual utilities for the three years reported of $45,240, $56,341 and $54,567, respectively. The appraisers stabilized the subject's insurance premiums at $29,000, whereas the premiums paid for 2004, 2005 and 2007 were $29,031, $28,405, and $24,586. The appraisers stated that both utilities and insurance were derived from the subject's actual expenses "as well as observations from competing developments." (Appraisal, p. 56)

In the reserves for replacement allowance set forth on page 57 of the report, the appraisers calculated a set aside amount of $66,517 or $462 per unit. The items included were roof, floorcoverings, HVAC, appliances/blinds, and paving/sidewalks. Nelson testified that this amount was based on the likelihood of replacement during a typical holding period, such as 7 years or so. (TR. 91) The appraisal report did not define the length of the holding period. Nelson noted this reserves for replacement estimate is twice that estimated by Salisbury. The witness asserted that some of the maintenance and operating expenses of the subject needed downward adjustment as the reported expenses were capturing some of the replacement items such as carpet and appliances, although Nelson acknowledged he did not have a detailed breakdown of these expenses. (TR. 92)

The appraisers then reportedly reconciled the subject's reported expenses with the expenses of the eight other apartment complexes set forth in the sales comparison approach finding strong support in the same market using, in most instances, the same vendors and the same labor for the projection. (TR. 93) Under the sales comparison approach, the intervenors' appraisers reported eight sales of apartment buildings located in the Iowa cities of

Davenport and Norwalk and in the Illinois cities of Moline, Rockford and Carbon Cliff.[15] Nelson stated that "it's very important and valid in these properties to go out to the marketplace and look for the financial indicators that conventional apartments provide." (TR. 82) These eight sales occurred between March 2002 and April 2010 for prices ranging from $1,160,000 to $14,900,000 or from $23,611 to $77,604 per unit. These sale properties contain from 42 to 321 rental units and ranged in age from 7 to 37 years old. The properties had expenses, including property taxes, ranging from $160,913 to $1,051,083 or from $2,093 to $4,635 per rental unit which results in reported expense ratios ranging from 40.87% to 63.86% of their effective gross incomes. Nelson opined that the subject's expense ratio with real estate taxes would be between 55% and 60% which is supported by this comparable sales data. (TR. 93)

The appraisers next calculated a capitalization rate. The eight sales comparables discussed above had overall capitalization rates ranging from 6.0% to 9.40%. As stated on page 58 of the appraisal report, the appraisers recognized that the majority of these properties, several of which were older, had a tighter range of 8.8% to 9.37% which supports a rate of 8.8% to 9% for the subject based on market data. (TR. 95) The appraisers also developed a capitalization rate of 8.65% using the band of investment technique based upon mortgage rates at the time for apartment properties extracting an equity yield rate. Considering the market extraction method and the band of investment method, the appraisers determined an overall capitalization rate of 8.65% was well justified.

The appraisers next added a tax load of 2.88% to account for real estate taxes resulting in a final capitalization rate of 11.53%. Capitalizing the subject property's projected net operating income of $518,690 by 11.53% resulted in an estimated value of $4,498,612 or $31,240 per rental unit. The appraisers next deducted $69,000 to account for the contributory value of personal property resulting in a final value estimate under the income approach of $4,430,000, rounded as of January 1, 2008.

Upon cross-examination, Nelson testified that McGivern did the actual typing and writing of the appraisal report, Nelson then added comments, and after final submission, Nelson agreed with the conclusions and opinions contained in the report. Nelson

[15] The appraisers reported that sale #1 included heat and required substantial modernization; sale #2 was part of a package purchase and required substantial modernization; sale #3 in Rockford included heat and pool maintenance; sale #5 included heat and hot water in the rents; and sale #6 was 34% vacant at the time of sale as reflected in its effective income and expenses with the buyer planning $1.3 million in renovations. Also, based on the underlying individual data sheets, sale #7 consisting of three separate properties was purchased out of foreclosure along with two other properties in Clinton, Iowa. Furthermore, the individual data sheet reprinted on page 42 was not part of the summary presentation on pages 38 and 39 reflecting all eight sales; the property described on page 42 was not otherwise presented by the appraisers in this report and there was no individual descriptive data sheet for sale #2 in the report.

reiterated his belief that use of market area comparables was important, even though the properties were not Section 42 complexes as Nelson did not believe the distinction was notable. The nominal difference in the properties would be reflected in the management fee attributed to the property. While management fees can range from 3.5% to 10%, the 5% fee applied to the subject was appropriate given the economies of scale since the subject has over 100 units according to Nelson.

The witness acknowledged that it was an error in the discussion of highest and best in the report use not to mention that the subject is restricted to Section 42 property.

Nelson agreed that the subject complex of this size needed some permanent office presence; the witness offered no alternative arrangements for the placement of the office as he does not believe that is within the scope of his work.

Of the comparable sales presented in the appraisal, Nelson asserted that sale #1 was "just off" the Section 42 program, but the witness was unclear on how existing tenants are to be treated when a property departs the Section 42 program. (TR. 99)

For purposes of stabilizing expenses, the intervenors' appraisers considered line-by-line adjustments of the subject's historical expense data. (TR. 103) Nelson did not have nor did he extract taxes from the expenses of the eight sales comparables; the witness agreed that optimally the expense ratios of the comparables would be adjusted with the tax rate backed out. The witness testified that in most cases the eight sales comparables included some allocation of reserves within the reported expenses. As to the sale property described on page 42 of the report which was not otherwise included in the report, the date of sale was in April 2010 and the witness calculated that the per unit expenses were $5,318. (TR. 108)

With respect to Public Act 93-0533 (35 ILCS 200/10-235, 10-245 and 10-250), Nelson reiterated his assertion that miscellaneous deductions were not allowable because the Code provides for a vacancy rate of not more than 5%. (TR. 109) The witness was not aware of any legislative history that supports his interpretation of the vacancy and collection loss limitation for low income housing projects in the income approach; the witness asserted his position was based purely on his training and the apartment appraisal classes he has taken wherein the deduction for vacancy includes items of collection loss. Often this can also be termed vacancy and credit loss. (TR. 110) The witness contended that the Code provision was ambiguous in that the legislature used the phrase vacancy without fully understanding the meaning within professional appraisal practice. (TR. 111)

On redirect examination, Nelson stated that from a professional appraisal perspective he understood the phrase "vacancy rate" to mean the income the owner does not receive for whatever reason, be it a vacant unit, loss to lease, or bad debt collection-type of issues. In Nelson's analysis of property there are two vacancy definitions: (1) physical vacancy where the unit sits vacant and (2) economic vacancy meaning the loss from all of those sources. For a Section 42 property and the Code provision, Nelson assumes the vacancy rate means economic vacancy, which means the loss from all sources. (TR. 114-15)

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

The Board further finds the subject property is entitled to be assessed according to the dictates provided by Article 10, Division 11 of the Property Tax Code. (35 ILCS 200/10-235 through 10-260). Under Section 42 the subject property qualifies for tax credits. In turn there are rent restrictions requiring that residents whose income does not exceed the income limited for "low-income tenants" as defined in the agreement must occupy the units. There are also restrictions with respect to the use of the property as low-income housing for a number of years and there are numerous acts that are to be approved by HUD or IHDA. The restrictions in the agreement run with the project for a period of 30 years and bind any owner of the property.

The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The board of review and the intervenors contend that the subject property is actually undervalued and the assessment should be increased. The Board finds that the best evidence in the record supports a reduction in the subject's assessment.

The Board finds the appellant and intervenors offered appraisal reports valuing the subject as a Section 42 low income housing project in accordance with Sections 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-245 and 10-260). As described herein, the Rock Island County Board of Review presented only a letter outlining its estimated market value of the subject property.

The board of review's letter narrative was purportedly based on data submitted by a representative for the appellant. Due to the lack of testimony and/or presentation of any substantive evidence of value at hearing, the data submitted by the board of review seeking an increase in the subject's estimated market value based on the letter and attachments is given no weight by the Property Tax Appeal Board for purposes of this decision. The Board finds that in the absence of testimony at hearing to address questions as to the data utilized in order to arrive at the value conclusion set forth in the board's letter, the Property Tax Appeal Board cannot consider this presentation and gives no weight to the final value conclusion made by the board of review. Novicki v. Dept. of Finance, 373 Ill. 342 (1940); Grand Liquor

Co., Inc. v. Dept. of Revenue, 67 Ill. 2d 195 (1977); Jackson v. Board of Review of the Dept. of Labor, 105 Ill. 2d 501 (1985). The Property Tax Appeal Board further finds the board of review's submission of the letter with a value conclusion is tantamount to hearsay. Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill. App. 3d 887 (1st Dist. 1983). Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1st Dist. 1971). In the absence of a witness being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the evidence and the value conclusion of $4,234,225 as of January 2008 has been significantly diminished and cannot be deemed conclusive as to the value of the subject property.[16]

In addition, it appears that the board of review calculated the subject's potential gross income by using the "restricted rent rates at the subject property." There is no evidence in the board of review's presentation that these restricted rent rates were the actual and/or market derived or supported rates for the subject property. Given this erroneous starting point for the application of the income approach to value, the Board finds that board of review's remainder of the income analysis lacks credibility.

In comparing the two appraisal reports, the Board finds the appraisers used the income approach to value as provided by the Property Tax Code in valuing the subject property for *ad valorem* taxation purposes. In analyzing the data, the Board finds the appraisers had similar if not identical components within each of their respective income approaches. For example, both appraisal reports began the analysis with a potential apartment gross income; both appraisal reports used the statutorily required vacancy rate of no more than 5% of potential gross income; the reports both added amounts for miscellaneous income; the reports both stabilized expenses and accounted for reserves for replacement; and the reports both calculated overall capitalization rates that were loaded with the applicable tax rate.

The first point of slight divergence between the appraisal reports concerned the number of rental apartment units in the subject property for purposes of the calculation of potential gross income. Salisbury estimated the rent for the property by excluding one of the 2-bedroom units which was utilized as an office and thus did not generate income. Nelson and his appraisal team calculated the subject's potential gross income

[16] It also appears that the board of review failed to apply its personal property deduction of $50,000 to the new estimated value after applying the modified capitalization rate of 11.48%.

utilizing all 144 units of the subject property contending the use of a 2-bedroom apartment for an office was an unwise management decision. In regard to the determination of the subject's potential gross income, the Board finds that Section 10-245 of the Code mandates considering "the actual or probable net operating income attributable to the property." (35 ILCS 200/10-245) The Board finds that for the subject property, in light of the use of a 2-bedroom unit as an office, the number of apartment units for purposes of "actual" or "probable" net income can only be the 143 units which are available for rent.

In the calculation of the potential gross income, Salisbury and Nelson used slightly different monthly rental rates. It appears that Nelson rounded the 2007 rental rate figures whereas Salsibury used what was reported as the subject's actual 2007 rents. The Board finds Salisbury's data in this regard is more precise and therefore the better evidence of potential gross income. As such, the Board finds the subject's potential gross apartment rental income is $870,288.

Both appraisal reports included miscellaneous income of $80,000 and $77,840, respectively. Both appraisal reports set forth the primary sources of miscellaneous income for the subject as: special assessment/interest income; cleaning income/damages reimb.; key charge/misc. tenant charges; NSF/late fees; laundry income; parking/garage; and pet fees. After examining both appraisals' miscellaneous income data, the Board finds that Salisbury's conclusion of $80,000 is better supported on the record.

Next, the issue is where the miscellaneous income should be included in the income approach to value. Salisbury added the miscellaneous income calculation after deducting both vacancy and collection loss in accordance with the procedural guidance set forth, for instance, on page 213 in *Property Assessment Valuation, 2nd Edition,* by the International Association of Assessing Officers. In contrast, Nelson added all miscellaneous income along with the apartment rental income as part of the property's potential gross income prior to the vacancy deduction as outlined, for instance, in the textbook *The Appraisal of Real Estate, 12th Edition*, at page 511. While the placement of miscellaneous income by each appraiser is supported in textbooks, the Board finds that for purposes of this matter Salisbury had the better approach as there was no evidence that the forms of miscellaneous income such as key copy charges were subject to the same vacancy rate as the units. Moreover, Salisbury noted that the parking garage spaces suffered a greater vacancy rate than the rental units. Thus, the Board finds that the subject's miscellaneous income should be added after applying the vacancy rate and collection loss to the subject's rental income.

As recognized by the parties during the hearing, the primary difference in the two appraisal reports concerned whether Section 10-245 regarding "a vacancy rate of not more than 5%" meant an appraiser could or could not also consider "collection loss."

(35 ILCS 200/10-245) Salisbury on behalf of the appellant contended the statutory provision did not address 'collection loss' and thus it was an allowable deduction where applicable under standard appraisal theory in the income approach to value. Nelson on behalf of the intervenors contended as a matter of appraisal practice and procedure "vacancy and collection loss" is one line in an appraisal report and thus Salisbury was inappropriately increasing the deduction which the legislature set at no more than 5% of potential gross income.

The Property Tax Appeal Board finds the statutory language is clear and unambiguous as to the method of valuation of low-income housing projects at Section 10-245 of the Code. (35 ILCS 200/10-245) The provision directs use of the income approach to value "using a vacancy rate of not more than 5%, capitalized at normal market rates." Id. The Board finds the arguments of the intervenors that the statutory provision means both vacancy and collection loss are limited to 5% of potential gross income is not supported by the statutory language. Furthermore, the Board finds that the intervenors' argument in this regard is also not supported by textbooks relevant to assessment and valuation methods.

The textbooks indicate that a "vacancy rate" is a reflection of the proposition that it is highly unlikely that a property will be rented at 100% of capacity at all times so a deduction for vacancy rate or vacancy loss is part of the equation in an income approach to value analysis. See *Property Assessment Valuation, 2nd Edition,* at p. 211-12. In addition, deductions are also allowed for "collection losses" which are those losses that result from, for instance, a tenants' failure to pay rent and concessions. Id. at p. 212; *The Appraisal of Real Estate, 12th Edition*, p. 512. While the textbooks indicate that vacancy and collection losses will generally be set forth as a single percentage of the potential gross income of the property, vacancy and collection losses are each derived from separate analyses of a vacancy rate and collection loss data which may then be combined for one percentage figure in the income approach to value. Id.

The provision of Section 10-245 of the Code is clear that the vacancy rate utilized in the income approach to value for low-income housing units shall be no more than 5%. Furthermore the Board finds that the statutory provision is silent as to collection loss and therefore, in light of the statutory language and the applicable appraisal methodology for an income approach to value, the Board finds it was appropriate, assuming sufficient supporting evidence exists, for Salisbury to deduct collection losses separately from the 5% vacancy calculation.

Applying the statutory 5% vacancy rate to the subject's potential gross income of $870,288, as Salisbury did, results in a vacancy deduction of $43,514. Next, the Board finds valid support in the record for the 'other deductions' made by Salisbury for concessions, loss to lease, bad debt write-off and rent refunds.

Thus, the other deductions or "collection loss" reported by Salisbury of $71,500 shall be deducted as discussed above and the miscellaneous income of $80,000 previously addressed shall be added resulting in an effective gross income for the subject property of $835,274.

The next substantial divergence within the two appraisals is the method that each expert accounted for the subject's stabilized/projected expenses for 2008. Both appraisers had access to and partially used the subject's actual income and expenses for several years. Also, the appraisers analyzed suggested comparable properties in calculating the subject's stabilized/projected expenses for 2008. Comparing the two reports with actual expenses of the subject for 2005 and 2007 in particular the Board finds that the intervenors' appraisers excluded the "renovation" expense itemized by the owner/taxpayer. The intervenors' appraisers also calculated the subject's expenses including reserves for replacements to be $388,370 or 42.82% of the effective gross income of $907,060 or $2,697 per rental unit. In reviewing both appraisal reports, analyzing the subject's actual income and expenses as reported by the parties, and considering the expense comparables contained in both reports, the Property Tax Appeal Board finds as a consequence, in part, of excluding the renovations expense, the intervenors' appraisers understated the subject's expenses including reserves along with failing to deduct any collection losses. The Board also finds that Nelson's testimony and expense analysis was not particularly persuasive or credible as he used conventional apartment buildings for his analysis.

The Property Tax Appeal Board finds that the stabilized expense data and reserves for replacements estimated by the appellant's appraiser to be better supported within the appraisal and finds his testimony concerning the calculations to be more credible. Of particular note Salisbury considered expense data for other Section 42 property rather than expense data for dissimilar conventional apartment complexes (p. 64) which were analyzed by the intervenors' appraisers (p. 38 & 39). The appellant's appraiser calculated the subject's expenses to be $432,000 or 51.7% of the subject's effective gross income of $835,274 or $3,000 per rental unit based on 144 units, also less reserves for replacements of $34,560. Based on the evidence in this record and the foregoing analysis, the Board finds the Salisbury appraisal reflects the best evidence of the subject's stabilized expenses and reserves for replacements.

Applying the stabilized expense deduction of $432,000 and the reserves for replacements deduction of $34,560 as estimated by Salisbury to the subject's previously stated effective gross income of $835,274 results in a net operating income figure of $368,714.

Finally, the Board finds both appraisers calculated somewhat similar capitalization rates of 11.9% and 11.53%, respectively. With respect to the proper market capitalization rate, the Board finds both appraisers used the band of investment technique as well as the market extraction method in calculating the proper rate, with addition of the tax load factor to account for property taxes. The Board finds the evidence and testimony indicates the appraisers used similar tax load factors of 2.9% and 2.88%, respectively, for the 2008 assessment year. The Board has reconciled the small difference in the appraisers' capitalization rates to 11.72%.

Capitalizing the subject's stabilized net operating income of $368,714, as previously found by this Board, by a rate of 11.72%, equates to a fair cash value of $3,146,024. Then deducting $69,000 for personal property as detailed in the Nelson report, the Board finds the subject property has a fair market value of $3,100,000, rounded. In conclusion, after considering the appraisals submitted by the parties, the testimony of the witnesses and the procedures outlined in Article 10, Division 11 of the Code on valuation of low-income housing, the Property Tax Appeal Board finds that the appraisal and testimony provided by the appellant's witness is the best estimate of value in the record.

The subject's assessment reflects an estimated market value of $4,162,031. Therefore, based on the foregoing analysis, the Property Tax Appeal Board finds a reduction in the subject's assessment is warranted. Since market value has been established, the 2008 three-year median level of assessments for Rock Island County of 33.39% 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: March 23, 2012

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.