



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Momence Community Unit School District No. 1
DOCKET NO.: 08-05004.001-C-3
PARCEL NO.: 05-11-19-306-007

The parties of record before the Property Tax Appeal Board are Momence Community Unit School District No. 1, the appellant, by attorney Scott L. Ginsburg, of Robbins Schwartz Nicholas Lifton Taylor, Ltd, in Chicago; the Kankakee County Board of Review by Assistant State's Attorney Teresa Kubalanza; and Momence Meadows Realty LLC, intervenor, by attorney Allen A. Lefkovitz of Allen A. Lefkovitz & Assoc. P.C. in Chicago.

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

LAND: \$18,171
IMPR.: \$1,579,749
TOTAL: \$1,597,920

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a one-story, brick and masonry constructed skilled care nursing home facility containing 140 beds. The building contains a gross-building area of approximately 37,139 square feet. The building was constructed in stages from 1974 to 1994. The improvement is located on a parcel containing 4.10 acres or 178,389 square feet of land area. The subject features a concrete patio and walkways, exterior lighting, signage, and an asphalt parking area for approximately 60 vehicles. The property is located in

the City of Momence, Momence Township, Kankakee County, Illinois.

The appellant, a taxing body, appeared before the Property Tax Appeal Board, through counsel, contending undervaluation as the basis of the appeal. In support of its claim, the appellant submitted an appraisal prepared by Eric W. Dost of Dost Valuation Group, Ltd. which estimated a market value of \$4,800,000 as of January 1, 2008. Appraiser, Eric W. Dost, was present at the hearing and provided oral testimony detailing the appraisal methodology and final value conclusion.

The appellant called as its first witness Eric W. Dost, a commercial real estate appraiser. Dost has been a commercial real estate appraiser for 27 years and is a certified general real estate appraiser licensed in the State of Illinois. Dost obtained the MAI designation from the Appraisal Institute in 1993. He is currently the president of Dost Valuation Group. Prior to his current employment, Dost worked for CBIZ Valuation Group, a national appraisal company, where he was a regional manager and national practice leader for the real estate appraisal group. Dost testified that at the time of his employment, CBIZ had one of the largest senior housing appraisal practices in the country, wherein he valued numerous senior housing facilities, including nursing homes, assisted living facilities and independent living facilities, nationally. During his career, he prepared approximately 3,000 appraisals, consisting of all types of commercial real estate, including office, retail, industrial, apartments and senior housing facilities. Dost further testified he has appraised close to 500 nursing homes and has taken continuing education courses regarding the valuation of nursing homes. Without objection, Dost was accepted as an expert.

Dost testified that he prepared a summary appraisal report, marked (Appellant's Exhibit A), in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). Dost inspected the subject property twice, once on April 14, 2010 he inspected the exterior and again on April 21, 2010, wherein he inspected the interior and exterior. Dost testified he also obtained information regarding the subject from the State of Illinois, local zoning information and assessment information from the county. Dost stated that he requested information from the property owner such as the site plan or survey, a list of building areas, rent, capital expenditures and other items, however this information was not provided. Dost testified that the going concern of the subject property was purchased in July

2006 for \$7,250,000. Dost examined the sales information by looking at the 2006 cost report and the annualized net operating income, including taxes, which was about \$860,000, indicating a capitalization rate of approximately 11.9% for the transaction. Dost testified that the 11.9% figure was near the average reported in senior housing investor surveys during that timeframe and appears as though it was a market oriented transaction.

Dost next described the senior housing market as of January 1, 2008. Dost testified that in general, the life expectancy for men and women was continuing to increase and the probability of an older person requiring some form of health care increases as the population ages. He testified that in general the population was aging, the average median ages were increasing; and people were just getting older. Dost further testified that as the population increases, the older population increases, there is increased demand for senior housing facilities, and in general, all things being equal, more demand causes values to increase. Dost then testified that his data indicated that within Kankakee County, there were 109 excess beds. Dost stated that within Kankakee County, most of the nursing homes were located in Kankakee and Bourbonnais, Illinois. Only one nursing home was located in Momence, which is the only nursing home within a 10-mile radius, meaning less competition. Kankakee is located in northeastern Illinois, about 55 miles south of Chicago and about 75 miles north of Champaign. Overall, population was about 112,000 as of 2009 and is projected to increase to about 116,000 by 2014.

In describing the subject, Dost testified the subject was a one-story nursing home with 140 licensed beds containing 37,139 square feet of building area. The subject was built in stages from 1974 to 1994, and recently had about \$600,000 in capital improvements from 1998 to 2007, including a new roof in 2004. Based on his inspection, Dost opined the subject was in average to good condition. Based on the capital improvements and his inspection, Dost estimated the subject's effective age to be about 20 years old. Dost found the highest and best use for the subject as vacant was for a use that was legally allowed by zoning such as single family residential. As improved, Dost found the highest and best use to be its current use as a skilled nursing facility. Dost testified that the property rights appraised were the subject's fee simple interest utilizing the three traditional approaches to value.

Throughout his appraisal report, Dost referred to the text, Analysis and Valuation of Health Care Enterprises. Dost testified that this text was published by the Appraisal Institute and outlines guidelines for the analysis and valuation of healthcare enterprises, including hospitals, nursing homes and assisted living facilities. In order to separate the business component and the intangible business value and equipment value from the real estate when appraising a fee simple interest in nursing homes, Dost testified the textbook indicated that there are four or five methods to analyze intangibles. He used two of those methods. Dost further testified that according to the textbook, only a moderate percentage of nursing homes are truly successful and produce excess profits and resulting business value. The textbook further depicts that a majority of facilities that are heavily oriented to Medicaid residents generally have low profit margins and cannot be considered to have a major business value component. Dost further stated that facilities with significant intangible value are those that successfully serve the private pay market.

In developing the cost approach, Dost examined four comparable vacant land sales located in Aroma Township, Manteno and Grant Park, Illinois. The comparables ranged in size from 122,475 to 245,000 square feet of land area. The comparables sold from September 2003 to May 2007 for prices ranging from \$84,500 to \$350,000 or from \$0.34 to \$2.40 per square foot of land area. Adjustments were made to the land sales for market conditions, size, zoning, utilities and location; resulting in adjusted sales prices ranging from \$0.39 to \$2.54 per square foot of land area. Based on these adjusted sale prices, the appraiser concluded a market value of \$1.00 per square foot of land area for the subject land or \$180,000, rounded.

The appraiser estimated the replacement cost new of the subject improvements using Section 15 of the Marshall Valuation Service Cost Manual. Dost estimated physical depreciation using the age/life method to be 40%, with an aggregate life expectancy of 20 years; resulting in incurable physical deterioration of 50%. Dost found no deferred maintenance, functional obsolescence or external obsolescence. Using several sources, including the Marshall Valuation Services and a review of construction budgets for proposed facilities, Dost found the depreciated value of nursing facility furniture, fixtures and equipment (FF&E) to be \$2,500 per bed (140 nursing beds) or \$350,000. The appraisal report depicts that in order to determine the market value of the real estate (land and buildings) only, the value of the

personal property (FF&E) was excluded from the estimate of value by the cost approach. (Appellant's Exhibit A, page 27). Page 28 of the appraisal report depicts a base square foot cost of \$118.08 was utilized and \$2.00 was added for sprinklers. After applying a composite multiplier of 1.21, a final cost per square foot indicated a value of \$145.19 per square foot for an adjusted base cost of \$5,392,211. Soft cost of \$539,221 and entrepreneurial profit of \$889,715 were added, which indicated a replacement cost new of \$6,821,147. Depreciation of \$2,728,459 was subtracted to arrive at a depreciated replacement cost new of \$4,092,688. The depreciated cost of site improvements of \$216,000 and the estimated land value of \$180,000 was added to the depreciated replacement cost (\$4,092,688) indicating a value by the cost approach of \$4,488,699 or \$4,490,000, rounded.

Dost next considered the sales comparison approach to value. Dost examined four comparable skilled nursing facility sales (Appellant's Exhibit A, page 34). The sales were located in Carlinville, Freeport, Chicago and Bloomingdale, Illinois. The comparables were built from 1971 to 1986, had occupancy rates ranging from 66% to 78%, contained from 83 to 259 beds, had expense ratios ranging from 81.9% to 100.8%, capitalization rates ranging from -1.4% to 12.1% and net operating income per bed ranging from \$765 to \$4,052. The comparables ranged in size from 24,828 to 78,370 square feet of building area and sold from July 2006 to February 2008 for prices ranging from \$2,400,000 to \$14,000,000 or from \$28,916 to \$54,054 per bed. The comparables were adjusted for age/condition, location, building area per bed, and economic characteristics. After making the adjustments, Dost estimated the subject's value of \$50,000 per bed or \$7,000,000.

Dost testified he also used an effective gross income multiplier which he applied in the sales comparison approach. Dost further testified the effective gross income multiplier is calculated by dividing a sale price of a property by its effective gross income. He did this to test the reasonableness of the value conclusion. As seen later in the income approach to value, he estimated the stabilized effective gross income for the subject to be \$5,892,213. After dividing the concluded value of \$7,000,000 from the sales comparison approach by the stabilized effective gross income, it resulted in an effective gross income multiplier of 1.19. The effective gross income multipliers of the comparables ranged from 0.74 to 1.84 with an average of 1.26. Dost found the implied effective gross income multiplier of 1.19 for the subject was within the middle of the range established by the comparables and appeared reasonable. He then

deducted the estimated business value and depreciated value of the furniture, fixtures and equipment to arrive at an estimated value under the sales comparison approach for the subject of \$5,650,000.

Under the income capitalization approach, Dost examined the historical income and expenses for the subject property for years 2004 through 2007 (see Exhibit A, p. 41). He also analyzed the payor mix for the subject property. His payor mix analysis is found on page 40 of the appraisal report. The payor mix ranges from 2004 to 2007. The appraisal depicts patient days by payor; private payors ranged from 4.4% to 8.0%; Medicare payors ranged from 11.7% to 15.4%, Medicaid payors ranged from 77.5% to 80.8% with other payors ranged from 0% to 3.1%. Occupancy rates ranged from 77.3% to 80.8%. Total patient days ranged from 39,520 to 41,310. Dost also examined the expense comparables of four skilled nursing facilities located in Kankakee, Bourbonnais and Bradley, Illinois (Appellant Exhibit A, page 42). Dost then examined five other properties located in Kankakee County from information he received from the Illinois Long-Term Care profiles. The comparables were located in Bourbonnais, Bradley, and Kankakee, Illinois. They contained from 106 to 120 beds, had overall 2007 occupancy rates ranging from 88.7% to 91.8%, had private room daily pay rates in 2007 ranging from \$123 to \$163 with semi-private daily pay rates ranging from \$120 to \$160. Each comparable provided three meals per day, had activities, housekeeping, laundry and transportation. The fees for health services were included in the rates. The subject is depicted as having 140 beds, a 2007 occupancy rate of 77.3%, a private daily room rate of \$140 and a semi-private daily room rate of \$122, three meals a day with activities, housekeeping, laundry and transportation. The health services fees are also included in the rates. Three of the comparables were considered superior to the subject; one was considered inferior and one similar to the subject. Based on the map, included within the appraisal report (Appellant's Exhibit A, page 45), the rental comparables appear to be located within 16 miles of the subject.

Dost found the occupancy rates of competitive facilities ranged from 88.7% to 91.8% with a weighted average of 90.2%. The appraisal depicts on page 46 that according to the Illinois Department of Public Health, the 2007 average occupancy rate for nursing homes in Kankakee County was 86.3% of operating beds and 83.8% of licensed beds. Using the subject's data from 2004 through 2007, Dost calculated a stabilized occupancy rate of 77.0%.

The subject's total stabilized revenue was estimated to be \$5,892,213 or \$149.75 per patient day. The appraisal report depicts the expense comparables had total revenue ranging from \$99.67 to \$219.78 per patient day, with an average of \$173.25 (Appellant's Exhibit A, page 46). Dost testified he relied on the subject's history for this category.

The subject's operating expenses were estimated by analyzing the subject's actual operating history as reported in its Medicaid Cost reports. In addition, consideration was given to the expense comparables. The expense items were estimated on a per patient day basis to account for variation in occupancy.

In regards to nursing and residential care, Dost found the expense comparables ranged from \$32.13 to \$105.34 per patient day with an average of \$80.26. The subject was estimated to have a stabilized resident care expense of \$62.50 (Appellant's Exhibit A, page 47). The appraisal report depicts that three of the four comparables have a significantly higher percentage of Medicare residents than the subject, which typically results in higher nursing expenses due to the higher amounts of therapy and care provided. Conversely, the remaining expense comparables had a significantly lower percentage of Medicare residents, which would indicate lower nursing expenses.

During his analysis of employee welfare expenses, Dost found the expense comparables ranged from \$8.55 to \$24.12 per patient day with an average of \$16.93 per patient day. Dost estimated the subject's stabilized employee welfare as \$13.00 per day.

Dietary expenses of the comparables ranged from \$10.88 to \$18.83 per patient day with an average of \$13.82. The subject's stabilized dietary expense was estimated to be \$10.50 per patient day.

General and administrative expenses for the comparables ranged from \$11.11 to \$19.11 per patient day with an average of \$14.77. The subject's stabilized general and administrative expenses were estimated to be \$11.00 per patient day.

Housekeeping and laundry expenses for the comparables ranged from \$5.22 to \$6.05 per patient day with an average of \$5.63. The data indicated stabilized housekeeping and laundry expenses for the subject of \$6.50.

Dost next analyzed the repair and maintenance expenses of the expense comparables which indicated a range from \$2.33 to \$4.91 per patient day with an average of \$3.69. The data from 2004 through 2007 indicated the subject's stabilized repair and maintenance expense as \$2.50 per patient day.

The expense comparables indicated activities and social services expenses ranging from \$3.52 to \$4.97 per patient day with an average of \$3.93. The subject's stabilized activity and social services expense was estimated to be \$4.25 per patient day.

The utility expense for the comparables ranged from \$3.46 to \$4.38 per patient day with an average utility expense of \$3.99. The subject was estimated to have a stabilized utility expense of \$4.50 per patient day.

For his analysis of insurance expense, Dost found the expense comparables had insurance expenses ranging from \$1.28 to \$4.00 per patient day with an average of \$2.62. Based on the subject's historic data, Dost estimated a stabilized insurance expense for the subject of \$3.70 per patient day.

The appraisal report depicts management fees charged by professional management companies in the Kankakee area ranged from 3% to 6% of a property's effective gross income. The management fees include fees for accounting, bookkeeping, property and personnel supervision and computer services. Dost estimated a stabilized management fee for the subject of 5.0% (Appellant's Exhibit A, page 50).

Reserves for replacement are used for replacing items like the HVAC equipment, installing new carpeting and resurfacing the parking lot. Dost estimated and applied an annual replacement reserve of \$500 per nursing bed, or \$70,000.

The subject was estimated to have a stabilized total expense of \$125.94 per patient day, excluding replacement reserves. Dost found the expense comparables had total expenses ranging from \$88.01 to \$192.82 per patient day with an average of \$154.50 per patient day. The comparables' total expenses ranged from 85.2% to 91.5% of total revenue with an average of 87.2%. The appraisal report depicts the subject's estimated total stabilized expense of \$125.94 per patient day is consistent with the expense relative to the payor mixes of the comparables and was considered reasonable.

The subject was estimated to have a net operating income of \$866,950 or \$22.03 per patient day, including reserves, which equated to \$23.81 per patient day without reserves. Dost found this figure to be consistent with the subject's historical net operating income and within the range established by the expense comparables (Appellant's Exhibit A, pages 51-52).

Dost next developed an overall capitalization rate utilizing a direct capitalization technique. Dost testified that a direct capitalization converts a single year's income expectancy into a value indication in one step by dividing the single year income expectancy by an appropriate rate. Dost applied three different methods to estimate an overall capitalization rate. Dost utilized two different investor surveys. One of the surveys he used was the December 31, 2007 survey conducted by the National Investment Center. This survey depicted a minimum capitalization rate for skilled nursing facilities of 8.0% to a maximum of 14.0% with a mean of 12.0%. Dost also used an additional senior housing investor survey which indicated a low of 9.0% for nursing homes with a high of 14.0% and a median rate of 11.6%. Based on the subject's age, location and payor mix, Dost opined a capitalization rate slightly above this rate was appropriate.

Dost also developed a band of investment rate analysis. Dost testified the it is basically a weighted average cost of capital with the two components being debt and equity. For the equity portion, Dost relied on the Spring 2007 Senior Housing Investment Survey which indicated an average equity dividend rate of 15.2%. He also used First Quarter 2008 Korpacz Real Estate Investor Survey which indicated the average long-term mortgage rate of 6.13%.

The appraisal depicts the comparable sales were also analyzed which indicated a range of capitalization rates from -1.4% to 12.1% with an average of 7.6%. Dost placed most weight on sales #1 and #2 because they were current sales and were located in small markets and more rural markets, similar to the subject. The capitalization rates of these two sales were depicted to be 12.1% and 11.2%, respectively, with an average of 11.7%.

Dost also considered the calculated capitalization rate for the subject's going concern, which he found to be 11.9% based on the 2006 Cost Report and the annualized net operating income, including property taxes.

Based on the average overall capitalization rate using the band of investments of 9.44%, the 2007 Survey average of 11.6% and comparable sales #1 and #2 average capitalization rate of 11.7%, Dost estimated an overall capitalization rate for the subject of 12.0% was reasonable. After adding a tax load factor of 2.1202%, a capitalization rate of 14.1202% was applied to the subject's net operating income of \$866,950, which indicated a value of going concern of \$6,139,784 or \$6,100,000, rounded (Appellant's Exhibit A, page 56).

Dost testified he relied upon the textbook, Analysis and Valuation of Health Care Enterprises to deduct the subject's business value. Dost utilized the method of deducting out the proprietary earnings which provide a return to the business of running a skilled facility. Using HUD's appraisal guidelines for healthcare properties under the 232 Multi-Family Program, the guidelines indicated the percentage of total net income before debt service attributable to proprietary earnings ranged from 15% to 25% for skilled nursing beds, 10% to 20% for intermediate care beds, 5% to 10% for board and care beds, and 10% to 15% for living units in an assisted living facility. Based on the level of services at the subject facility, proprietary earnings of 20% or \$173,390 was considered reasonable.

The excess earnings attributed to the subject business were then capitalized at 20% which indicated an estimated business value for the subject of \$866,950 or \$870,000 rounded. Dost then compared this amount with the cost approach value of \$4,490,000. The indicated value of going concern estimated in the income approach (\$6,140,000), less the cost approach real estate value (\$4,490,000) and less the depreciated value of FF&E (\$350,000) indicated a business value for the subject of \$1,300,000.

Dost testified he found the two methods had generally similar results with an indicated business value of \$1,300,000 based on a cost approach comparison and \$870,000 using the capitalization of proprietary or business income. Overall, Dost concluded a business value for the subject of \$1,000,000 was appropriate (Appellant's Exhibit A, page 58).

Dost opined in his income capitalization approach analysis that subtracting the value of the subject's business (\$1,000,000) and FF&E (\$350,000) from the subject's going concern (\$6,140,000) indicated a real estate value in fee simple interest for the subject of \$4,790,000 as of January 1, 2008 (Appellant's Exhibit A, page 58).

In reconciling the three traditional approaches to value, Dost testified that he placed the most emphasis on the income approach to value because a typical buyer would be an investor and would emphasize the income approach. Dost estimated the subject's fair market value to be \$4,800,000 as of January 1, 2008.

During cross examination Dost testified that he did not utilize comparable sales #3 and #4 for purposes of determining his overall capitalization rate even though he used them for representative samples in his sales comparison. Dost explained that he felt comparable sales #3 and #4 were underperforming at the time of sale with one having a negative capitalization rate and the other having a below market occupancy and a capitalization rate of approximately 7% was not representative of the stabilized capitalization rate.

Dost testified that he was the only one who prepared and worked on the appraisal report. Since 2011, Dost testified that he has appraised four or five nursing homes. Upon questioning Dost next testified concerning the various methods and definitions used throughout the appraisal preparation. Dost agreed that the subject property sold in July of 2006 for \$7,250,000. Dost testified that he reviewed the transfer declaration sheet as well as the financial statements from the cost reports. He admitted that he did not contact the buyer or seller regarding the sale. When asked why he did not contact the buyer or seller, Dost testified that based on his analysis of the sale, it appeared to be a market transaction for the going concern and it generally supported his conclusions based on an analysis of the income approach and the sales comparison approach. Dost further explained that in his sales comparison approach analysis for the going concern value, he estimated the subject's going concern value to be \$7,000,000. Dost testified he found his estimation was generally consistent with the recent sale price. In addition, Dost felt that based on his analysis of the subject property's financial performance, the sale appeared to be a market oriented transaction based on his income approach analysis. Dost further testified that he verified his comparable sales with Cushman & Wakefield, a national real estate company, who verified the sales transactions with a broker at Marcus & Millichap. Dost admitted that the sale price of each sale comparable represented the going concern value for each property. Dost testified that the allocation of the total sale price between personal property, business concern and/or real estate are usually an after the fact deal penciled in by

the parties. Dost further explained the two methods he used to separate out the business value component of the subject property.

Dost testified he first quantified the subject's proprietary earning which was the subject's net operating income for 2007 of \$866,950. This amount is capitalized using the HUD 232 Multi-Family Program which indicated that for a nursing facility, 15% to 25% of the net operating income is attributable to the business, he selected 20% of the subject's estimated 2007 net operating income or \$173,390 which is then divided by a capitalization rate of 20%, which indicated a business value of \$866,950. Dost explained that he used the higher capitalization rate of 20% because the excess earnings associated with the business alone is the riskiest portion of the cash flow. In his next method, Dost testified that using his cost approach analysis, he valued the hard assets, the land and the building to be \$4,490,000 which was subtracted from the value of the going concern by the income approach and also the depreciated cost of the personal property of \$350,000, which indicated a residual business value of \$1,300,000. Using these two methods indicated business values of \$870,000 and \$1,300,000, respectively, so he concluded a business value in the middle of these two estimates. Dost testified that both of the methods he used were described in the healthcare appraisal textbooks.

The board of review, through counsel, submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$648,108 was disclosed. The subject's assessment reflects a market value of approximately \$1,946,855 using the 2008 three year average median level of assessments for Kankakee County of 33.29% as determined by the Illinois Department of Revenue. In support of its assessment, the board of review offered a copy of the subject's property record card, equity evidence submitted by the taxpayer at the board of review hearing and a 2007 Health Care report. The board of review's counsel then deferred to the intervenor/taxpayer (hereinafter "Momence") for its case in chief.¹

Prior to the hearing, by letter dated March 22, 2012, the Property Tax Appeal Board denied Momence's letter/motion to file

¹ At this point in the proceedings, upon counsel's request, intervenor's/taxpayer's Exhibits E through N and appellant's Exhibit B were recognized and confirmed as being in the record. In addition, upon request from intervenor/taxpayer, the Board takes notice of Pittsburgh Coal Company v. County Commission of Webster County, DuPage County Board of Review v. The Property Tax Appeal Board, Countryside Healthcare LP, Docket No. 04-00988, 03-22550 et al., 07-21988 and 08-02274.

its appraisal untimely and granted appellant's motion to strike Momence's appraisal.

Counsel for Momence called Moishe Gubin, an accountant, as its witness. Gubin owns and operates nursing homes and runs a bank along with other things. He has been involved with nursing homes since 1997. He has been a certified public accountant for a few years. As of July 1, 2006 he owned two nursing homes and as of July 30, 2006 he owned four nursing homes. As of today, the date of his testimony, he owns 40 nursing homes and operates 29. He is the owner of the subject property, which he purchased July 3, 2006.

Gubin admitted he signed the Illinois Real Estate Transfer Declaration Sheet (PTAX 203 form) (Appellant's Exhibit B) regarding the subject's purchase in 2006. Gubin testified that he did not change the figures on the PTAX 203 form.² Gubin could not recall who filled out the PTAX 203 form; however, Gubin testified that the outstanding mortgage amount of \$1,821,733, that is handwritten on the document was incorrect. Gubin testified that the mortgage was never less than \$6,500,000 on the subject property. Gubin further testified that at the time of purchase, he assumed a non-recourse mortgage of approximately \$6,500,000. HUD was the insurer with the actual lender being GMAC. Gubin testified that the subject was losing money and the seller just wanted to get out. Gubin testified that he had no risk in purchasing the property because the seller was giving the subject to him for a non-recourse loan, which meant that Gubin had no burden of loss.

After the deal for the subject was made, there was a local facility in Kankakee that closed down and all of the residents were transferred to Momence Meadows. Gubin testified that at this point in time, the seller approached him about the extra patients, which meant more revenue, about paying the debt plus something extra. Gubin stated the seller threatened to break off the deal and sell the subject to someone else, however, Gubin wanted to operate the subject because he owned a nearby facility called Crestmark of Roselawn in Roselawn, Indiana, 25 miles away from the subject. Gubin testified that the seller was located in Beverly Hills, California and he knew the seller was not running the facility well. Based on this, Gubin

² Appellant's Exhibit B, the PTAX 203 form, dated July 14, 2006, also known as the Illinois Real Estate Transfer Declaration Sheet, has various figures stricken with new amounts handwritten in the margins regarding the amount of personal property allocated to the sale, net consideration paid, outstanding mortgage amount and various other figures.

testified that they agreed on a higher purchase price, assuming that the residents that were admitted were going to pan out as far as collectability and the seller also agreed to "hold back paper." Gubin testified that he had no out of pocket cash on the deal and no risk because there was no guarantee on the seller note. Gubin further testified that they subsequently found out that the transferred residents from the closed facility were "hobos" and "homeless folk" that they could not collect from who did not have good Medicaid numbers and did not belong in the facility.

Gubin next testified that he and the seller had a "true-up" date of approximately three months regarding the transferred residents. Gubin stated that since the transferred residents did not pan out, he filed a claim against the seller and beat him for about \$500,000 off of the purchase price, which ended up making the purchase price of the subject approximately \$6,800,000.

Gubin testified that at the time of purchase of the subject in July 2006, he found the subject was in average to below average condition. Gubin further testified that the subject was in average condition as of January 1, 2008. From July 1, 2006, the date of purchase, to January 1, 2008, Gubin testified that he spent approximately \$50,000 on the subject which would have come under maintenance expenses.

On cross-examination, Gubin could not recall if the numerous changes found on the transfer declaration sheet regarding the subject's purchase in July 2006, were made before or after he signed the document. Gubin testified that he believed the changes on the transfer declaration sheet were correct. Gubin testified that the allocation between the buyer and seller as to personal property and real property was not important to him. He paid \$7,250,000 less what he got back from suing the seller regarding the transferred residents. Gubin testified that his certification on the transfer declaration sheet showing a net consideration for real property of \$2,100,000 was correct and represented a fair market value.³ Even though Gubin marked question 7 on the sheet as "no," that the seller's financing did not affect the sale price of the subject, Gubin testified that it did because the seller was willing to "take back paper" and it was a non-recourse debt. Gubin testified that at that point

³ Appellant's Exhibit "A," the PTAX 203 Illinois Real Estate Transfer Declaration sheet depicts full consideration \$7,250,000, personal property of ~~\$2,559,000~~, with \$5,150,000 handwritten in, and net consideration of ~~\$4,691,000~~, with \$2,100,000 handwritten in.

in his career, he did not have that many assets for him to risk on that big of a purchase that was losing money. Gubin testified that the July 2006 purchase was listed with a broker, Marcus & Millichap, from 3 to 6 months prior to the purchase. Gubin testified that on a non-recourse loan, if he fails to make payment on the debt, he only had to turn over the keys and the Federal Government is the liable party and would pay the remaining debt to the bank as guarantor.

At this point in the proceedings, counsel for Momence rested its case and stated that they did not have any witnesses to corroborate the data in the evidence submitted. Counsel further argued that in terms of uniformity, a part of the appellant's appraisal depicts the competitive set. Counsel argued that the appellant's appraisal depicts properties superior to the subject and those inferior to the subject. Counsel stated the contract for sale depicts how much his client paid for the property and what the allocation was for real estate.

In rebuttal to Momence's equity argument, appellant's counsel recalled Eric Dost as its witness. Dost testified that upon his examination of Momence's Exhibit "F", a nursing home comparison chart depicting 5 comparable properties along with the five comparable properties contained within the Dost appraisal, he did not believe nursing homes in Kankakee County were uniformly assessed based on the data contained within Momence Exhibit "F." Dost testified that he just quickly examined Exhibit "F" and did not find the information was consistent. Dost further testified that he did not verify the information contained in Momence Exhibit F." Dost based this opinion on comparables #2, #3, #4 and #5 which depicted net operating income (NOI) per bed higher than the listed market values per bed. Dost testified that he could not see how the market value per bed could be less than the NOI per bed. Dost testified that for example, comparable #5 had a NOI of \$15,543 per bed with a market value of \$32,728, while comparable #4 had a NOI per bed of \$16,918 with a market value per bed of \$11,998. Based on the data contained in Exhibit "F" Dost testified that there did not seem to be much uniformity.

Dost next examined the capitalization rates of comparables #1 through #5, all located in Kankakee County. The capitalization rates ranged from 34% to 141% based on the NOI depicted. Dost testified that based on this data, he did not believe the nursing home comparables were assessed based on their fair market value. Dost testified that he also found this true based on the gross revenue multipliers which indicated a range from

.21 to .62. Dost specifically pointed to comparable #4 which had actual NOI per bed greater than the assessed market value per bed and also had an extremely high capitalization rate of 141% and a really low gross revenue multiplier. Dost testified that the assessments were definitely not market oriented based on the data contained in Exhibit "F."⁴

On cross-examination, Dost was questioned on the various similarities of the comparables to the subject. Momence's counsel stated that the purpose of Exhibit "F" was to show that with the exception of Miller Health Care, comparable #5, the assessor assesses nursing homes in a relatively narrow market value range from \$11,996 a bed for Manor Care (comparable #4) to a high of \$19,913 per bed for Bradley Royale (comparable #2), which is comparable to the subject. Counsel further argued if the Property Tax Appeal Board increased the subject's current assessment reflecting a market value of \$13,800 per bed to Dost's opinion of value of \$34,286 per bed, it would then make the subject the highest valued nursing home in Kankakee County. In support of this claim, Momence's counsel stated the photographs supported his argument regarding market appeal or curb appeal and Gubin's testimony regarding the subject's average to poor condition. Counsel argued that the Illinois Constitution states that property shall be assessed uniformly within the taxing district, and that is what the board of review did.

Upon questioning, Momence's counsel stated that Exhibit "F" depicted all taxable nursing homes in Kankakee County. Counsel stated that Dost's comparables were included in Exhibit "F" to show that there is a substantial difference between the value of the total business assets as shown by the sale prices and what the assessor's valuation of the real estate is. Counsel stated that nursing homes sell for the value of the total business assets and assessors are only charged with valuing real estate not including the business value. Counsel argued that uniformity is the linchpin of the assessment of real estate in the State of Illinois and that if all properties are under-assessed the same, then it is fair because they are paying their proportionate share and the Constitution is being fulfilled. Counsel further argued that the subject's purchase price of \$2,100,000 for real estate as shown on the transfer declaration sheet, even though it was crossed out, and by the taxes paid for the real estate transfer and by the State of Illinois Department of Public Aid at \$2,100,000, the subject was assessed at a basis

⁴ Without laying a foundation, Momence's counsel stated that Momence exhibit "F" came from the assessor's office.

of approximately \$1,900,000 appears consistent with all other property in Kankakee County.

Appellant's counsel then argued that Momence Exhibit "F" did not include all nursing homes in Kankakee County as previously alleged.⁵ Appellant's counsel further argued that the board of review submitted evidence before the Property Tax Appeal Board that was previously submitted by the owner at the board of review hearing. However, the evidence submitted at the board of review hearing was replete with errors such as the subject's size and date of construction.

In opposition to the uniformity argument presented by Momence's counsel, appellant's counsel argued that in Kankakee County Board of Review v. the Property Tax Appeal Board, 131 Ill.2d 1 the Supreme Court of Illinois found the cornerstone of uniform assessment is the fair cash value of the property in question, and that a property's income earning capacity is an important factor in determining its fair cash value. Counsel further argued that in the Kankakee County Board of Review case, the Supreme Court denied relief even though the subject in that case, a subsidized housing facility, was assessed at \$63,000 per unit with the other two comparables assessed at \$14,000 and \$21,000 per unit, respectively. Counsel argued that the taxpayer in that case failed to prove the fair cash value, and therefore, could not succeed under the uniformity argument. Counsel stated that the Supreme Court found there was no evidence in the record to suggest the two comparable subsidized projects were comparable to the subject. Appellant's counsel also relied upon Peacock v. Property Tax Appeal Board, 339 Ill.App.3d 1060 as supporting his argument. Counsel continued his argument citing People ex rel. Hawthorne v. Bartlow, 111 Ill.App.3d 513 and DuPage County Board of Review v. Property Tax Appeal Board, 284 Ill.App.3d 649, arguing the courts found that properties within the same district must be assessed on a similar basis, which the courts found the district to be the township. Counsel argued that Momence is the only nursing home in Momence Township with all other nursing homes being located in Kankakee and Bourbonnais. Counsel pointed out that the properties that are supposed to be similar to the subject have a wide disparity of what skilled beds are and what are unskilled beds, which may impact their value.

⁵ Appellant's counsel was ordered to provide a list of all nursing homes in Kankakee County within 14 days with counsel for Momence having 7 days to reply why, if any, reason they were not included in Exhibit "F."

Appellant's counsel then argued that Momence's own witness testified that Medicare is where the money is for these types of properties. Counsel argued that the subject is Medicare Certified, whereas, Momence's comparables #1 and #3 were not. Counsel then pointed out the various differences between the subject and the comparables as presented by Momence.

After hearing the testimony and considering the evidence the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports an increase in the subject's assessment.

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. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant has met this burden of proof and an increase in the subject's assessment is warranted.

Momence's counsel relied almost exclusively on Exhibit "F" to support his inequity argument. The Board initially finds Momence's counsel failed to support its documentary evidence and argument with credible testimony. The Board gave little weight to Momence's Exhibit "F" because as pointed out by Dost, the information did not appear to be consistent based on the reported per bed net operating incomes and market values per bed, and the inconsistent divergence in capitalization rates and gross revenue multipliers. The Board finds Momence's counsel failed to lay a proper foundation for this exhibit or the data contained therein as being true and correct, and failed to corroborate or otherwise support the data contained within Exhibit "F", and therefore, the Board gave this exhibit little weight in its analysis.

The Board further finds Gubin's testimony regarding a typical transaction involving nursing home purchases and motivation to be credible, however, the Board finds his testimony regarding the subject's purchase transaction in 2006 to be less credible. The witness could not recall the numerous changes found on the PTAX 203 document, and even though he certified on the PTAX 203 form under oath that financing did not affect the purchase

price, he testified that it did, because the seller "held back paper."⁶

The Board further finds Momence failed to refute or otherwise show that the methodologies and final value conclusion as found by Dost was incorrect. Instead, counsel argued that uniformity is the cornerstone of assessments in Illinois and that an increase in the subject's assessment would make the subject not be uniform with other similar property which was also undervalued when compared to the subject. The Board finds the problem with this argument is that Momence's counsel failed to show or otherwise provide credible documentary evidence to show the market values of the comparable properties. Counsel based his uniformity argument on fair cash values as determined by the sale prices. However, both parties agreed that the sale price of any nursing home also included a business component which is heavily influenced by the make-up of its inhabitants and/or the number of skilled nursing beds. The Board finds that while the Kankakee County Board of Review case can be distinguished in that it involved subsidized housing, however, it is on point in this case. A property's fair cash value is determined based in part on the subsidies received. In this case, the subject's fair cash value is influenced by the number of Medicare patients served.

The Supreme Court in Kankakee County Board of Review v. the Property Tax Appeal Board, 131, Ill.2d 1 (1989), stated

[t]he principle of uniformity of taxation requires equality in the burden of taxation. People ex rel. Hawthorne v. Bartlow (1983), 111 Ill.App.3d 513, 520, 67 Ill.Dec. 243, 444 N.E.2d 282. This court has held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation. Apex Motor Fuel Co. v. Barrett (1960), 20 Ill.2d 395, 401, 169 N.E.2d 769. The uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. Apex Motor Fuel Co. v. Barrett (1960), 20 Ill.2d 395, 401, 169 N.E.2d 769; People ex rel. Hawthorne v. Bartlow (1983), 111 Ill.App.3d 513, 520, 67 Ill.Dec. 243, 444 N.E.2d 282. . . . The principle of uniformity

⁶ Based on the testimony of Gubin, the Board understood this term to mean that a promissory note was either not recorded and/or guaranteed.

of taxation requires that similar properties within the same district be assessed on a similar basis. Apex Motor Fuel Co. v. Barrett (1960), 20 Ill.2d 395, 401, 169 N.E.2d 769. The cornerstone of uniform assessment is the fair cash value of the property in question. As stated, a property's income-earning capacity is an important factor in determining its fair cash value. Springfield Marine, 44 Ill.2d at 431, 256 N.E.2d 334. Thus, uniformity is achieved only when all property with the same income-earning capacity and fair cash value is assessed at a consistent level. In most instances, the income-earning capacity and fair cash value of unsubsidized property may be accurately determined with reference to rents charged for comparable property in the open market. Market rents, however, do not necessarily reflect the income-earning capacity of subsidized property. The subsidy agreement must be considered to determine the true income-earning capacity, and thus the true value, of subsidized property. Riverwoods [taxpayer] did not present any evidence to show that consideration of the subsidy agreement will cause its property to be assessed at anything other than one-third of its fair cash value. Failure to consider the subsidy agreement would permit subsidized property to be taxed at less than its fair cash value, in violation of the principle of uniformity. Riverwoods [taxpayer] also argues that the Review Board violated the rule of uniformity because it over assessed its property in relation to other comparable subsidized properties. As support of this argument, Riverwoods [taxpayer] claims that the Review Board valued its property at \$63,812 per unit, whereas two other subsidized apartment complexes in the Kankakee area were valued at \$14,108 and \$21,230 per unit respectively. The taxpayer who objects to an assessment on the basis of lack of uniformity bears the burden of proving the disparity of assessment valuations by clear and convincing evidence. People ex rel. Costello v. Lerner (1977), 53 Ill.App.3d 245, 251, 11 Ill.Dec. 368, 368 N.E.2d 976. Riverwoods [taxpayer] failed to sustain their burden of proof in this case. There is no evidence in the record to suggest that the two subsidized projects are comparable to Riverwoods' property. Nor is there evidence showing that Riverwoods [taxpayer] will be required to bear a disproportionately greater tax burden than owners of other comparable subsidized properties if the subsidy agreement is

considered in calculating the fair market value of their property. Riverwoods cannot establish a lack of uniformity in taxation or a violation of constitutional rights by simply asserting that the Review Board determined that their property had a greater actual value than other subsidized properties. See People ex rel. Hawthorne v. Bartlow (1983), 111 Ill.App.3d 513, 67 Ill.Dec. 243, 444 N.E.2d 282.

Id. at 20. (emphasis added)

The Board finds Momence failed to sustain its burden of proof by clear and convincing evidence that other nursing homes located in the same taxing district would be required to bear a disproportionately lesser tax burden than the subject in relation to its fair market value. The Board finds Momence failed to establish the fair cash value of the comparable properties, failed to establish similar characteristics as the subject and failed to show the comparable properties were located in the same taxing district as the subject. On the other hand, the record depicts the sale prices of comparable properties which includes a business value component and have features dissimilar to the subject. Furthermore, none of the comparable properties are located within the same taxing district as the subject.

The Board finds the best evidence and only evidence of the subject's fee simple market value was presented by Eric Dost, the appellant's appraiser. This evidence was not refuted by Momence through testimony or other evidentiary data. Dost estimated the subject's market value to be \$4,800,000 as of January 1, 2008.

The record depicts Dost, an Illinois Certified Appraiser with an MAI designation from the Appraisal Institute, used the three traditional approaches to value in determining the subject's market value. The Board finds Dost supported his methodologies and final value conclusion with credible testimony and data.

Dost testified he relied upon the textbook, Analysis and Valuation of Health Care Enterprises, to deduct the subject's business value. In reconciling the three traditional approaches to value, Dost testified that he placed the most emphasis on the income approach to value because a typical buyer would be an investor and would emphasize that income approach. Dost estimated the subject's fair market value to be \$4,800,000 as of January 1, 2008. Based on Gubin's testimony as an owner of

several nursing homes, the Board finds the primary weight Dost gave to the income approach to value and reasoning therefore is appropriate.

The Board finds the comparable sales submitted by both parties had sale prices ranging from \$19,167 to \$55,600 per bed. The subject's assessment reflects a market value of approximately \$13,906 per bed, which is below the range established by the comparable sales, however, the Board finds the comparable sales would require further adjustment and analysis to account for business value and other intangible personal assets included in the sale. The market value sales include a business value component while the subject's fee simple market value as reflected by its assessment does not.

In addition, the Board finds the subject's purchase in July 2006, for approximately \$7,250,000, just 18 months prior to the assessment date at issue, further lends support for an increase in the subject's assessment. The Board recognizes this purchase price includes a business value component, however, the only business value component examined, analyzed and testified too, was presented by Dost. Dost testified that he used two different methods as found in the textbook, Analysis and Valuation of Health Care Enterprises, to estimate the subject's business value component, which ranged from \$870,000 to \$1,300,000. Subtracting these business value amounts from the purchase price would indicate a fee simple market value for the subject of \$6,380,000 and \$5,950,000, respectively.

The Board finds the best evidence and only evidence in this record to account for business value and all other intangibles was presented by Dost. In determining the fair market value of the subject property, the Board finds the best evidence to be the appellant's appraisal. The appellant's appraiser utilized the three traditional approaches to value in determining the subject's market value. The Board finds this appraisal to be persuasive. Dost has the MAI designation and testified that his appraisal was prepared in conformance with USPAP. Dost has experience in appraising, personally inspected the subject property, reviewed the property's history, and used similar properties in the income and sales comparison approaches while providing adjustments that were necessary. The Board gives little weight to the board of review's and the intervenor's comparables as the information provided was unadjusted raw sales data. Therefore, based on this record the Property Tax Appeal Board finds an increase in the subject's assessment commensurate with the appellant's request is appropriate.

During the hearing the parties were ordered to submit data regarding all nursing homes located in Kankakee to support or refute intervenor's argument regarding assessment inequity should an increase in the subject's assessment occur. Notwithstanding the above analysis, the Board examined this data.

Appellant's counsel submitted data in regards to 20 nursing home facilities located in Kankakee County. Intervenor's Exhibit "F" depicted a total of 9 nursing homes, which counsel for the intervenor stated at the hearing included all taxable nursing care facilities in Kankakee. Based on this discrepancy, the Board denies intervenor's motion to strike the brief submitted with the data, and will consider the brief and data submitted by both parties.⁷

Appellant's counsel argued in its brief that the relevant factor under Illinois law and the Property Tax Code is not the number of beds, but rather the specific nursing home's fair cash value, citing Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). Counsel further argued the only fair cash value proven in the instant case or even suggested at the hearing was the fair cash value of the subject property as concluded in the Dost appraisal. It was argued that Momence made no showing, and did not argue that the fair cash value of the other Kankakee County nursing homes was similar to the subject property's fair cash value. Counsel argued that many factors come into play when determining fair cash value, including sale prices, gross income multipliers, net operating incomes, revenue sources and capitalization rates. It was argued that these factors show a great disparity between the subject's fair cash value and the fair cash value of other Kankakee County nursing facilities.

At the hearing Gubin testified that earning a profit for operating a nursing home is a relevant factor and is often realized based on the number of Medicare patients. The comparables submitted by the appellant were located in Bourbonnais, Bradley, Kankakee and Momence Township; contained from 4 to 808 beds and ranged in size from 3,900 to 47,164 square feet of building area. Seventeen of the comparables had Medicaid patient days ranging from 1,099 to 69,821 and four had Medicare patient days ranging from 6,935 to 9,354. Nineteen of the comparables were depicted as having total patient days ranging from 1,099 to 100,510. Six of the comparables had

⁷ The board of review did not submit additional argument and/or evidence.

assessments ranging from \$44,018 to \$1,830,645 or from \$3,999 to \$14,082 per bed.⁸ Momence is depicted as having 140 beds, containing 37,139 square feet of building area, has 33,093 Medicaid patient days, 3,729 Medicare patient days, 39,855 total patient days, and has an assessment of \$648,108 or \$4,629 per bed. The data spreadsheet also depicts that if Dost's appraisal value is utilized, the subject would have an assessment of \$1,599,840 or \$11,427 per bed, which is within the range established by the comparables.

In response to appellant's submission of post hearing data, intervenor's counsel argued that they included the five taxable nursing homes located in Kankakee County, omitting all exempt properties. Counsel submitted The Inventory of Health Care Facilities and Services and Need Determinations, prepared by the Illinois Health Facilities Planning Board and the Illinois Department of Public Aid, dated March 12, 2008. According to the inventory list, 11 properties are general long-term nursing care facilities and sheltered care facilities in Kankakee County. Eight of the eleven are taxable with the three remaining being exempt from taxation. Counsel argued that the Presence Heritage Village, which was shown by appellant as being a taxable nursing facility not included in intervenor's original submission, was omitted because it is primarily a sheltered care facility and not a general care facility.

The Board finds based on the data submitted by both parties, the intervenor has not shown by clear and convincing evidence that the subject's assessment, even if increased as reflected by Dost's appraisal value, would be inequitable when compared to all other taxable nursing care facilities in Kankakee County.

The record depicts the subject's assessment reflects a market value of approximately \$1,946,855. Based on the above analysis, the Board finds the best evidence of the subject fair market value in fee simple is found in the Dost appraisal, which depicted the subject's estimated market value of \$4,800,000 as of January 1, 2008. Since market value has been determined, the 2008 three year average median level of assessments for Kankakee County of 33.29% shall apply.

Even assuming arguendo, intervenor counsel's argument regarding assessment inequity, the Board finds the intervenor has not shown by clear and convincing evidence that the assessment,

⁸ The spreadsheet depicts 13 of the comparables were exempt from property taxes.

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after an increase herein, would be inequitable compared to other similar property located in Kankakee County.

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.

Donald R. Cuit

Chairman

K. L. Fern

Member

Tracy A. Huff

Member

Mario Morris

Member

J. R.

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: October 24, 2014

Allen Castrovillari

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.