FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Scott AFB Properties, LLC
DOCKET NO.: 08-05935.001-C-3 through 08-05935.003-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Scott AFB Properties, LLC, the appellant, by attorney Garrett C. Reuter of Greensfelder, Hemker & Gale, P.C., Belleville; the St. Clair County Board of Review by attorneys Gregory J. Lafakis and Ellen G. Bershire of Verros, Lafakis & Berkshire, P.C., Chicago; and Southwestern Illinois College, intervenor, by attorney Sean Cronin of Becker, Paulson, Hoerner & Thompson P.C., Belleville.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***no change*** in the assessment of the property as established by the **St. Clair** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
08-05935.001-C-3	09-14.0-400-004	241,613	884,652	$1,126,265
08-05935.002-C-3	09-14.0-300-001	836,900	4,267,457	$5,104,357
08-05935.003-C-3	09-14.0-300-005	166,738	983,145	$1,149,883

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of three parcels containing a total land area of 144.88 acres or 6,311,000 square feet. The site is improved with a 386 unit apartment complex with an apartment mix of 106 3-bedroom units and 280 4-bedroom units. The subject property is composed of 251 two-story buildings with a net rentable area of 829,764 square feet. As of January 1, 2008, there were 36 units completed. The units were completed by December 31, 2008. The property is commonly known as Lincoln's Landing and is owned by Scott Air Force Base Properties, LLC. The property is used as a housing complex for military personnel. The property is located at State Route 161, Shiloh Valley Township, St. Clair County.

The appellant appeared before the Property Tax Appeal Board contending overvaluation with respect to the assessment for the 2008 tax year as the basis of the appeal.

Robin Vaughn

The first witness called on behalf of the appellant was Robin Vaughn. Vaughn is the Executive Vice President of Hunt Elp, which is the managing member of Scott Air Force Base Property developments. The witness explained that the military housing privatization initiative was authorized by Congress through two acts in 1995 and 1996. The acts gave the Department of Defense certain authority for the uniform services to go out and provide family housing using private sector tools. The witness testified this authority allowed the Department of Defense to hire companies like the one he works for to go to the capital markets and bring private capital to build family housing. Vaughn testified that practically every family home that used to be owned by the Department of Defense is now in the hands of a private developer through this program.

Vaughn testified that during his career he has been involved with market rate properties, tax credit and other types of multifamily residential type projects. The witness explained that the Department of Defense has stringent ground rules to operate these properties. On a fee property there is a Restrictive Use Agreement and attached to that is an Operating Agreement which has a number of operating plans that are very specific and very prescriptive. The witness was questioned about the Use Agreement associated with the subject property that was attached as Addendum F to the appellant's appraisal, which was marked as Appellant's Exhibit #1. The document in Addendum F is titled "Declaration of Restrictive Covenants and Use Agreement for Military Housing Project" ("Use Agreement"). The Use Agreement was between The United States of America Acting By and Through the Secretary of the Air Force (the "Government" or the "Secretary") and Scott Air Force Base Properties, LLC, ("Project Owner").

Vaughn agreed that the "Lockbox Agreement" of the Use Agreement is basically meant to control the flow of funds. He explained the vast majority of rents received is taken directly out of the service member's payroll check and transferred from the Federal Government to the Lockbox Agent. The Lockbox Agent holds the rent in an account called the Lockbox Revenue Account. At a prescribed time every month, according to the agreement, the Lockbox Agent runs what it calls the flow of funds and sends a check to the property management company to pay the budgeted operating expenses for the month. The budgeted operating expenses may not be the same as the actual operating expenses. The witness indicated the budgeted expenses fund the Imposition Reserve for taxes or insurance, the capital repair and replacement account; the debt service to the lender, the debt service to the government (which has a second lien position), the property management fee, an asset management fee, and distribute the cash flow between the project owner and the reinvestment account. Vaughn testified that the reinvestment account would

receive 70% of the net cash flow and the project owner would receive 30% of the cash flow.

In comparing this project with other residential housing projects Vaughn explained the notion of the reinvestment account does not exist. He testified this account gets the lion's share of the cash flow that is distributed off the project. This account is owned by the government and the funds can only be dispersed from this account by a disbursement request from the government and the determination of the Lockbox Agreement, the Use Agreement or the ground lease. Vaughn asserted this does not exist in the private sector.

Vaughn agreed that the term of this agreement is 50 years. He stated that although Scott Air Force Base Properties owns the land, the project sits on top of the land and restricts the use of the property for the next 50 years.

Vaughn next explained that attached to the Operating Agreement are various business plans, which are set forth in Article 5 of the Use Agreement found at Addendum F of the appellant's appraisal (Appellant's Exhibit #1). Section 5.1 of the Operating Agreement provides in part that, "The Operating Agreement is hereby and incorporated into and made part of this Use Agreement. The Operating Agreement sets forth certain detailed procedures and requirements to be followed by the Project Owner in designing, constructing, renovating, operating and maintaining the Owned Project." Vaughn testified that the Operating Agreement and associated plans are part of the 50 year term of the Use Agreement. Section 5.2 of the Operating Agreement identified the plans by which the project owner, Scott Air Force Base Properties, LLC, was to operate the Owned Project, meaning the Lincoln's Landing parcel. Vaughn summarized each of the plans identified in 5.2 of the Operating Agreement as follow:

> Construction Management Plan: Describes how the construction company who built the new housing on Lincoln's Landing was to build the houses.
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> Rental Rate Management Plan: Tells, by each unit type, how rents are going to be established, which for active duty service members is the housing allowance based on the service members rank. Vaughn explained that rent can be below the allowance but not above the allowance.
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> Unit Occupancy Plan: Provides what pay grades are going to live in what units. There are segregated neighborhoods for officers and the enlisted and within the enlisted there is further segregation by pay grades.
>
> Property Operations and Management Plan: Provides very specifically how to manage and operate the property.
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> Facilities Maintenance Plan: Provides how to maintain the facility such as how often to have pest control, how often

to cut the grass, what height to cut the grass, how often to rake the leaves and the like.

Capital Repair and Replacement Plan: This discusses how to use the money in the Replacement Reserve Account. This plan discusses the frequency to replace items such as carpeting, dishwashers, hot water heaters and the process for being reimbursed for those types of expenditure.

The Reinvestment Plan: This discusses how in some future year moneys in the reinvestment account may be expended for the improvement of the project in terms of replacement construction or new housing, demolition of existing housing and renovation.

Utility Service Plan: This plan covers how to connect to different utility providers such as gas, water and electric.

Final Plan: This is the specs or construction drawings that were used to build.

Scott AFB Housing Leases for Military/Non-Military Tenants: The lease form that is used to rent to the residence, whether military or non-military.

Community Development Plan: This plan establishes how the whole community is going to be laid out, how the neighborhoods are going to be interconnected.

Fee Management Plan: This plan discusses the timing and amount of the various fees that are going to be paid for service providers such as the property managers, developer and construction company.

Unit Design Plan: Is the design plan for each of the particular units.

Transition Plan: Discusses from the point of January 1, 2006, the day you take over the project, until you complete construction of the project, how you are going to move families around throughout the project to get them in the right housing.

Severability Plan: Discusses, in the event that there is no longer a need for all of the units, how you were sever certain units. Vaughn explained this plan is applicable to the units that are located on the Scott Air Force Base leased property.

Quality Control Plan: Discusses how you maintain quality and what kind of checks and balances you have not only in the construction process but in the property management phase.

Vaughn summarized that they have to operate the property in accordance with the Operating Agreement. Vaughn testified that

operating expenses at the subject property are close to 60% of the net income after vacancy. The witness stated that every aspect of the day-to-day operations of the project is pretty much laid out in these operating plans.

The witness explained that each September a budget is put together for the project with the asset management group, which is based on experience from the prior year and what they know is going to happen in the future. The budget is forwarded to the Lockbox Agent and the Air Force. The Air Force has a contracting agency that reviews the budget and they come back with questions and suggested changes until the budget is approved in November. Vaughn explained the significance of the budget is that you get to operate the property on the money in the budget, you don't get any more. If you have an extraordinary expense during the course of a month and you spend more than budgeted, you have to go back to the Government and get approval for another distribution called an extraordinary expense distribution. He explained that at Scott Air Force Base his parent company advanced the project money to do a number of capital repairs and replacements of over $4,000,000. The company went back to the Government with a request to be refunded money out of the Replacement Reserve Account over two years ago and still do not have approval to be refunded the money because it was not budgeted.

Vaughn further testified that there are two main reserve accounts, the Replacement Reserve and the Reinvestment Reserve. He testified that any funds remaining in those accounts at the termination of the Use Agreement revert to the Government. He agreed that this was an expense that is out the window each year.

Vaughn explained his company or parent company makes money from the fees on construction contracts, money from providing development services and money off the property management agreement.

The witness testified the property could not be sold to a third party without Government consent. Vaughn agreed that any proposed buyer would have to consent to the restrictive use documents. He further explained that if a willing buyer is found, there is an agreement to share proceeds that provides any net proceeds from the sale or a refinance, the Government gets 60%, which would not exist in the private sector.

Vaughn further explained that a portion of the project is located on leased land and a portion of the project is on fee simple land, which is the subject matter of the appeal. He stated there is a single agreement that covers both aspects of the project.[1]

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[1] The Use Agreement has a set of definitions as follows:

"Project" means collectively the Owned Project together with the Leasehold Project.

"Owned Project" means the Owned Project Site and Improvements constituting a privately owned rental housing development consisting of up to four hundred

The witness explained there is a separate ground lease which covers the leased parcel, but the Use Agreement and Operating Agreement covers both parcels. Vaughn was directed to Article 6, sections 6.1.2.3 and/or 6.1.3 of the Use Agreement, which provided that there would be an event of default under the Use Agreement by the Project Owner if there was an event of default by the Lessee. He was of the opinion that you could not find a buyer for Lincoln's Landing due to the fact the potential buyer could be defaulted as the result of some action under the lease.

Vaughn also referenced Article 13, Insurance, of the Use Agreement and testified it set forth exactly what types of insurance you need to have and the minimum deductibles. He stated that this requires his All-Risk insurance to have a deductible no greater than $100,000 whereas their normal portfolio would have a half-million dollar deductible. The witness also indicated that the Government also has a list of approved lenders to use to mortgage the property.

Vaughn could not recall the number of units at the subject property that were completed as of January 1, 2008. He testified that units were completed during 2008. As units were completed they would get an occupancy permit and some time afterward a family would move into the unit that met the pay grade and family size for the unit. He testified that the primary target tenant at Scott Air Force Base Properties is active military members with dependents that are assigned to Scott Air Force Base. The manner in which units are leased are set forth in the Unit Occupancy Plan and the Rental Rate Management Plan. He further explained that he can't go to the open market to secure greater rent until the unit has been offered to a list of people such as active duty military with dependents, active duty military without dependents, retired active military, department of defense (DOD) civilians, etc.

Under cross-examination Vaughn agreed that Scott Air Force Base Properties, LLC owns Lincoln's Landing and the Government has no ownership interest in the property. He agreed this property is not leased but it is tied to another tract that is leased from the Government. He testified there are a total of 1,596 homes at Scott Air Force Base and approximately 384 homes at Lincoln's Landing that are 90 and 95% occupied. Vaughn testified there were no other housing units connected to Scott Air Force Base and his company runs the entire housing for Scott Air Force Base. He

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sixty-five (465) newly constructed housing units to be located on the Owned Project Site and to be designed, constructed, owned, operated, maintained, demolished, replaced and rehabilitated in accordance with the Project Documents.

"Leasehold Project" means the rental housing development consisting of improvements located or to be located on the Leased Premises, as described in and required to be designed, constructed, owned, operated, maintained, demolished, replaced and rehabilitated in accordance with the Lease and other Project Documents.

also has heard that Scott Air Force Base is the largest employer in St. Clair County.

Vaughn further indicated that rents for the housing units are based on the Basic Allowance for Housing (BAH). The BAH is based on rank and whether or not there are dependents. He further agreed that there are two similar projects in Illinois, the other being Navy Midwest, Great Lakes region.

Vaughn recalled that Lincoln's Landing had 384 units and all were completed during 2008. Before occupancy there has to be an occupancy permit issued by St. Clair County and the Air Force would have to certify the units are available for occupancy.

Vaughn was of the opinion the interconnected agreements that control the operation and use of the subject property result in higher expenses. He did not think the agreements had an effect on vacancy and collection can be difficult because there is no security deposit. The witness further explained the Government does not guarantee payment of rent. He would not agree the Government restrictions created any benefits. Vaughn asserted there are no rent guarantees and they only get the BAH if the service member chooses to live there. The witness also stated the Government does not support the lending and funding of the project but does have a loan against the project. He agreed there is a management fee but you would pay a management fee for any property. Vaughn agreed his company made money on the construction contract.

Vaughn reviewed Appellant's Exhibit #1, Addendum C - Rent Rolls, and testified the rent rolls dated December 31, 2007 and December 31, 2008 looked like the report he generated for the appraisers, Cushman & Wakefield, but he could not absolutely certify it. He also testified that the real estate taxes are paid out of the Imposition Reserve Account.

Vaughn offered his opinion that, as a stand-alone, Lincoln's Landing is worthless. He testified there was a fixed price construction contract with his company to build the project, both Lincoln's Landing and the leased area. Even though he was involved with the contract, he could not recall the total fixed price. Vaughn could not recall the actual cost to build the project but asserted the actual cost was not in excess of the contract.

Vaughn testified there is a property management fee paid to the property management company and he provides that service. The management fee comes out of the rents that are associated with the Lockbox Agreement. The witness agreed that the lion's share of the rent goes into a Reinvestment Account and Replacement Account, which is used for the periodic replacement of major building components like carpeting, appliances, countertops, flooring, painting and the like.

Under redirect Vaughn explained that Hunts Building Company, Ltd. was the general contractor that was associated with the construction profits.

P. Barton DeLacy

P. Barton Delacy, senior managing director of Cushman & Wakefield of Illinois, was called as the appellant's next witness. Among other qualifications, Delacy is licensed as a Certified General Real Estate Appraiser with the State of Illinois. He was accepted as an expert without objection and allowed to give opinion testimony. DeLacy prepared an appraisal of the subject property, marked as Appellant's Exhibit #1, in which he estimated the property had a fair cash value of $5,800,000 as of January 1, 2008.

In estimating the market value of the property DeLacy developed only the income approach to value using a discounted cash flow analysis. In the introduction of the report DeLacy stated that the fair cash value of the fee simple estate was developed subject to certain assumptions, limiting conditions and extraordinary assumptions. The "as-is" value of the property was estimated to be $5,800,000 as of January 1, 2008. In the executive summary of the report and in the introduction of the appraisal, the appraiser indicated that the subject site was purchased in January 2006 for a price of $3,341,670. DeLacy stated in the report that the appraisal was based on the unique provisions of the Declaration of Restrictive Covenants and Use Agreement between the property owner and the United States of America acting by and through the Secretary of the Air Force.

The report explained that the Lincoln's Landing development is located adjacent to the south of Scott Air Force Base. Delacy further stated in the appraisal that Scott Air Force Base is ranked as the fourth largest employer in the St. Louis Metropolitan Area and is the largest employer in St. Clair County.

The appraiser described the property within the report as being improved with a 386-unit apartment complex with a unit mix that includes 106 three-bedroom units and 280 4-bedroom units. The reported further described the property as being improved with 251 two-story buildings built in 2008 with a total rentable area of 829,764 square feet. (Appellant's Exhibit #1, page 23.) Project amenities are described as including a clubhouse with fitness center, meeting room, recreation room, business center and pool.

The appraiser further indicated within the report that the project was not complete as of the date of value with only 36 units complete as of the December 31, 2007 rent roll. The remaining units were described as delivered and available for occupancy over the next several months. The appraiser indicated in the appraisal that to develop an estimate of the remaining

costs to complete the facility two documents were reviewed. The first document showed $50,055,024 in actual costs incurred between December 31, 2007 and July 31, 2008. Delacy indicated the latter date reflects the date the subject property was materially complete. He further explained in the report that the figure is applicable to the entire housing project as Scott Air Force Base, which included the leased area and Lincoln's Landing. He further stated that management could not provide data specific to Lincoln's Landing, however, did state that most of the costs shown were incurred at the subject property. The second document showed the completion and deliveries over the same time period. Several completions were noted in the leased housing areas on the base. He stated approximately 64% of the total number of completions, inclusive of residential units and outbuildings, were within Lincoln's Landing. He used this ratio and applied it to the total cost figure to arrive at a rounded estimate of $32,000,000 in projected completion costs for purposes of the appraisal. (Appellant's Exhibit #1, page 25.)

The appraiser further noted that on physical inspection he did not notice any apparent physical deterioration and no apparent functional obsolescence present at the subject property. (Appellant's Exhibit #1, page 25.)

In the highest and best use section of the report the appraiser stated that the highest and best use of the site as vacant is to hold for future development. The highest and best use of the subject property as improved is residential housing as currently improved, targeted for military personnel and their families. (Appellant's Exhibit #1, page 28.)

Delacy stated within the report that only the income capitalization approach was used because this approach would be considered necessary and applicable for market participants. The cost approach was not used because typical purchasers do not generally rely on this approach when purchasing a property such as the subject. He also stated within the report that the appraisers were not aware of sales of properties sufficiently similar to the subject development for adequate comparison. The report also states that "sale information is generally insufficient to provide a reliable foundation for a value estimate." (Appellant's Exhibit #1, page 29.)

The appraiser utilized the discounted cash flow method in estimating the value of the property. As stated in the report, "[i]n the discounted cash flow method, anticipated cash flows and a reversionary value are discounted to an opinion of net present value at a chosen yield rate (internal rate of return.)" (Appellant's Exhibit #1, page 30.)

The appraiser discussed within the report the Base Allowance for Housing (BAH) which ranged from $1,011 to $1,733 per month. The appraiser also examined market rental rates in the St. Louis MSA. He stated in the report that the overall vacancy rates in the 3rd quarter of 2008 was 6.7% with an average asking rent of $730 per

month and an average effective rent of $690 per month. The appraiser also researched six apartment communities believed to compete with the subject property located in O'Fallon, Shiloh and Fairview Heights. These properties had average rent for two-bedroom apartments ranging from $775 to $1,067 per month and for three-bedroom apartments of $1,150 and $1,280 per month. The report also had a survey of 38 older 3-bedroom and 4-bedroom units available for rent in January and February 2009. The three-bedroom units had an average rent of $1,066 per month and the four-bedroom units had average rents of $1,278 per month. The appraiser concluded in the report that the BAH rates were equal to or slightly less than their equivalent off the base.

The appraiser explained in the report that the subject's projected revenue was based on an analysis of the rent rolls. Operating expenses were based on the audited 2008 operating statement combined with the management budget for 2009. The report stated that the opinion of the property's annual income and operating expenses were developed after reviewing both its historical performance and the operating performance of similar buildings. (Appellant's Exhibit #1, page 34.) The operating comparables were located in New Mexico, California and Kansas. These properties were reported to have effective annual gross incomes per unit ranging from $10,122 to $14,288 and expenses ranging from $5,410 to $6,329 or from 44.3% to 55.16% of effective gross income. In determining the internal rate of return the appraiser reviewed the Korpacz Real Estate Investor Survey for national apartments for a period of four years. The survey showed that for the first quarter of 2008 the average overall rate was 5.79%, the average terminal overall rate was 6.56% and the average internal rate of return was 8.15%.

The appraiser developed a 49 year discounted cash flow analysis. DeLacy estimated the subject's average BAH per month to be $1,457.73 in the first year of the discounted cash flow analysis resulting in a rental income of $6,752,223 to which he added other income of $14,152 to arrive at a total potential gross income of $6,766,375. Vacancy and collection loss for the first year was 45.59% of potential gross income and for 5% of potential gross income for the years thereafter. Operating expenses were estimated to be 45.22% of effective gross income each year. Other assumptions used in the discounted cash flow analysis was a reserve per unit of $310 per year; a 3% growth rate each year for market rent, consumer price index, expenses and real estate taxes; and a 12% internal rate of return for the cash flow, reversion and a terminal capitalization rates. The appraiser also estimated a reversionary sales cost of 2%. Additionally, during the first year the appraiser deducted $32,000,000 for the cost to complete the project resulting in a negative cash flow of $30,109,852 or a negative present value $26,883,796. The appraiser estimated the reversion value of the property as of January 1, 2056 to be $14,649,567 and after deducting the cost of sale the net proceeds were $13,624,098 and resulted in a present value of $59,135. (The discounted cash flow analysis is contained in Appellant's Exhibit #1, Addendum E.) Using the

discounted cash flow analysis the appraiser estimated the subject property had an "as-is" value on January 1, 2008 of $5,800,000 or $15,026 per unit if using 386 units.

DeLacy was of the opinion the discounted cash flow method was appropriate to use when there is a defined holding period and defined occurrences during the period when they can be sure the flow of income will change. He further testified that lenders will almost always require discounted cash flows for any complex commercial property such as the subject housing complex. The witness testified that for this kind of property with these kinds of restrictions they do not typically sell on the open market and it would be unlikely to find a buyer. DeLacy also testified it is not unusual for appraisers to use just one approach when the asset doesn't typically trade.

DeLacy testified the rental scheduled was developed using information provided by the client. He also explained that the 2008 rental of $6,752,223 in the analysis was based on the entire project being fully leased on that date. He further testified that in the analysis they trended the gross income based on the allowed inflation rate and also based on the mix housing units that could change. With respect to expenses, DeLacy testified they ordinarily like to look at the actual operating history of the property to determine if it is reasonable. However, in this case, due to the property being new construction, they had to rely on expected expenses projected by management, which included the other leased units on the other part of the base that were not subject to the appraisal. The witness further explained that on the date of the appraisal there were only approximately 10% of the units occupied and the rest had to be completed. To develop the net present value over the 50-year projection period he had to include the cost to complete the project, which they estimated to be $32,000,000.

To account for partial assessments, the appraiser testified that they looked at average occupancy so they modeled when the units were going to be completed, occupied and paying rent through the end of the year. Vacancy was estimated to be approximately 46% for year one. DeLacy was of the opinion that the value he arrived at prorated the value of the project through the end of the year. The witness testified he was familiar with the default provision in the agreements and thought that would limit the marketability of the property. The appraiser explained that the issues in the Use Agreement are difficult to quantify but they create uncertainty and risk which affects the marketability of the property and ultimately its value.

Under cross-examination DeLacy agreed that the subject's site was purchased on January 3, 2006, for a price of approximately $3.3 million, which he did not seem unreasonable. The witness further agreed that as of January 1, 2008 less than 10% of the units were completed but by December 31, 2008 the project was substantially completed.

He testified he appraised the property in fee simple, meaning unencumbered. The appraiser further testified that $50,000,000 was a reasonable number for the anticipated cost of the project. He further testified that they found no physical deterioration and no functional obsolescence. With respect to the Korpacz Real Estate Investor Survey the witness testified he was sure there were no military housing units included and the rates would reflect expectations of investors with conventional apartments. He also agreed that as part of the discounted cash flow model in order to estimate what the property is worth today you have to estimate what the property is worth 50 years from now. The appraiser testified the average monthly rental was derived from a blended calculation of the BAH, which was supported by comparable rentals in the area. DeLacy also agreed that the rental rates at the subject are at or above market compared to others in the private sector. The witness testified the assumptions used in the discounted cash flow analysis are set forth on page 38 of the appraisal. He also agreed that he used an internal rate of return of 12% even though the Korpacz Real Estate Investor Survey was approximately 8.1%, which was the benchmark for conventional apartment buildings. DeLacy also testified the "as-is" value reflects what the prospective buyer would be looking at as of January 1, 2008 with 36 units occupied and the balance of the complex under construction but needing completion. The witness also testified that the rent roles in Addendum C of the report were provided by the client.

DeLacy testified that the comparable sales approach was not done. He stated that sales were looked at but they really did not find anything comparable that had the same type of restrictions. He also indicated the configuration was pretty unique for the area.

The appraiser testified he estimated the marketing time for the property to be twelve months, which means if they decided to take it to the market they would find a buyer in twelve months. He also agreed that Addendum D of the appraisal indicated the construction costs to date as of December 31, 2007 were $103,000,000 and what was billed to the owner was $142,000,000, rounded. The addendum also indicated the construction costs to date as of July 31, 2008 were $153,000,000 and what was billed to the owner was $192,000,000, rounded. DeLacy was not certain whether these costs applied to the entire project or Lincoln's Landing but agreed his report attributed 64% to Lincoln's Landing. With respect to what percent of the property was completed as of January 1, 2008, the witness testified you have the number of units but he did not know what stage the other unoccupied and under construction units were completed.

Under redirect examination the appraiser did not expect to find any other sales that could be compared to a project such as this burdened with covenants and restrictions of this type.

Board of Review

In support of the assessment the board of review submitted its "Board of Review Notes on Appeal," an appraisal of the subject property prepared by Joseph M. Ryan of LaSalle Appraisal Group, Inc., and a spreadsheet containing a list of the various units with, among other items, their associated rents and inspection dates.[2] The subject property has the final assessment:

Parcel No.	Land	Impr.	Total
09-14.0-400-004	241,613	884,652	$1,126,265
09-14.0-300-001	836,900	4,267,457	$5,104,357
09-14.0-300-005	166,738	983,145	$1,149,883
Total	**1,245,251**	**6,135,254**	**$7,380,505**

The subject's total assessment reflects a market value of $22,097,320 using the 2008 three year average median level of assessments for St. Clair County of 33.40%.

Joseph Ryan

The first witness called on behalf of the board of review (BOR) was Joseph Ryan, President of LaSalle Appraisal Group. Ryan is a licensed real estate appraiser in the State of Illinois and has the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute. He was accepted as an expert without objection and allowed to give opinion testimony.

Ryan prepared an appraisal of the subject property which contained a market value estimate of $35,700,000 as of January 1, 2009. The appraisal was marked as BOR Exhibit #2 and identified by Ryan as the report he prepared. Ryan considered the current use of the subject property to be multi-family housing. Ryan inspected the subject property on September 1, 2010 and again approximately three months prior to the hearing. The inspection included an exterior inspection and an interior inspection of some model units. Ryan testified he prepared a summary appraisal. The appraisal contained an extraordinary assumption that the units were completed by December 31, 2008 and had reached a stabilized occupancy of 93%. He appraised the property as of January 1, 2008 as completed. It was his understanding that the value of the full assessment will be prorated to the number of units completed.

Ryan testified that errors in the appraisal needed to be corrected. He testified appraisal submitted did not have page 58. He also testified he had math errors on page 52 and 53. Ryan testified that changes to the report were made on the letter of transmittal as well as pages 5, 38, 48, 52, 53, 58, 59 and 60. He also testified the valuation decreased to $34,000,000 from $35,700,000. The letter of transmittal was changed to reflect

[2] The intervenor adopted the evidence submitted by the St. Clair County Board of Review.

the value to $34,000,000. On page 5 the value under the income approach and the overall value were changed to $34,000,000. On page 48 the gross income was corrected to $6,762,720, the vacancy and collection loss was changed to $473,390 and the effective gross income was changed to $6,289,330. The cause of the error was the use of 368 units as opposed to 386 units in calculating the potential gross income. He also testified that the stabilized operating expense on page 52 and 53 was changed to 49.8%. On page 58 the effective gross income was changed to $6,289,330 and the value conclusion to $34,000,000. On page 59 the income approach to value conclusion was changed to $34,000,000 and on page 60 the final value conclusion was changed to $34,000,000. The changes to the report were submitted as County Exhibit #4.

Ryan testified the purpose of the report was to estimate the market value of the fee simple interest. The appraiser testified the effective date of his value estimate was January 1, 2008 and January 1, 2009. The fee simple property rights were appraised meaning the property was unencumbered by a lease, easements or any other encumbrances.

Ryan testified the subject's site contained 145 acres, which he obtained from public records. The appraiser described the improvements as being composed of 386 housing units with 251 buildings with a gross building area of approximately 830,000 square feet. He testified there were 106 three-bedroom with 2½-bathroom units and 280 four-bedroom with 2½-bathroom units. The three-bedroom units range in size from 1,861 to 2,200 square feet and the four-bedroom units range in size from 1,874 to 2,531 square feet. The zoning for the property is O3, Airport Overlay District. Ryan was of the opinion highest and best use of the site as vacant was for residential use. His opinion of the highest and best use of the property as improved was for continued residential use.

In performing a search of the sales history of the subject property Ryan testified that he discovered the site was purchased on January 3, 2006 for a price of $3,341,670. He further found the construction cost of the improvements exceeded $50,000,000.

In estimating the value of the subject property the appraiser developed the income approach to value and the sales comparison approach to value. The appraiser did not develop the cost approach because he did not think the approach would be credible and could be misleading. He also asserted that market participants look at sales and income to make their investment decisions.

In the sales comparison approach the appraiser used six comparable sales of multi-family housing complexes located in the Illinois cities of Waukegan, Naperville and Gurnee and one comparable located in Valley Park, Missouri. The comparables were improved with complexes that ranged in size from 174,447 to 478,500 square feet of building area and had from 174 to 417

units. Five of the comparables were reported to have from 12 to 30 buildings. The comparables were constructed from 1995 to 2002. These properties had sites ranging in size from 18.97 to 40.00 acres with land to building ratios ranging from 2.05:1 to 7.89:1.[3] The sales occurred from July 2006 to April 2008 for prices ranging from $14,230,000 to $66,250,000 or from approximately $81,782 to $163,636 per unit. The appraiser also indicated that five of the comparables had overall capitalization rates ranging from 5.05% to 7.15%. The appraiser acknowledged none of the sales were subject to a military housing agreement but stated he was estimating the fee simple market value. Ryan included one sale of a property that was composed of military housing in the addendum of his report. He testified this sale was of housing units at Grissom Air Force Base in Indiana, but the base was closed so he did not give much weight to the sale. Ryan made qualitative adjustments to the sales for financing, condition of sale, market conditions, location, age and condition and land area. The appraiser verified the condition of each sale with a party to the transaction. Based on these sales the appraiser expected the subject property would have a value between $90,000 and $100,000 per unit resulting in a total value from $34,740,000 to $38,600,000.

The next approach to value developed by Ryan was the income approach. In estimating the market rent the appraiser reviewed the base allowance for housing (BAH) and tested that against comparable rentals. The BAH for 2009 was sorted by rank and ranged from $1,100 to $1,733 per month. The five multi-family rental comparables were located in O'Fallon and Fairview Heights, Illinois. These properties were improved with apartment complexes that ranged in size from 96 to 312 units and were built from 1985 to 2005. These properties had occupancy rates ranging from 80% to 96%. The two-bedroom units had rents ranging from $710 to $1,200 per month or from $.65 to $1.03 per square foot of living area and the three-bedroom apartments had rents of $1,150 and $1,300 per month or $.90 and $.98 per square foot of living area. Ryan further indicated in the report that a survey of 11 three-bedroom homes in the area had an average rent of $1,162 per month or $.61 per square foot and 5 four-bedroom homes had an average rent of $1,574 per month or $.51 per square foot. Ryan determined the subject property had an average BAH of $1,460 per month or $.68 per square foot, which was at or near economic (market) rent levels for the area. Using $1,460 as the market rent Ryan calculated the subject's gross potential income to be $6,762,720.

Ryan testified that at the end of 2008 the subject had a reached 93% occupancy and decided that a 7% vacancy and collection loss totaling $473,390 was appropriate and deducted that amount from the potential net income to arrive at an effective net income of $6,289,330. The operating expenses were estimated by reviewing the operating and expense summaries for the on-base Scott Air Force Base he had and by reviewing the Institute of Real Estate

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[3] Using the subject's net rentable area, the land to building ratio is 7.61:1.

Management (IREM) Income and Expense for Conventional Apartments-2009 for St. Louis. Ryan stabilized the operating expenses at $3,131,090 or 49.8% of effective gross income to arrive at a net operating income of $3,158,060.[4] Ryan testified that in his experience in appraising apartment complexes and multi-family complexes expenses range from 35% to 40%. He thought that because the subject units were more spread out the expenses were going to be higher due to such things as more roofs with 251 different buildings, cost for police and fire protection, the owner is responsible for garage removal and a staffed office for repairs to properly maintain the property. Ryan testified that he also considered the fact that the subject property was under a military housing initiative from the Government.

In estimating the capitalization rate Ryan testified he used market transaction from the sales in his report that ranged from 5.05% to 7.15%. Using the band of investment method Ryan arrived at a capitalization rate of 8.05%. Using this analysis the appraiser estimated an overall capitalization rate of 7.5% to which he added an effective tax rate of 1.8% to arrive at a loaded capitalization rate of 9.3%. Capitalizing the net income resulted in an estimated value of $34,000,000, rounded, under the income approach to value.[5]

In reconciling the two opinions of value, Ryan testified that multi-family property is typically an income driven investment decision and the value under the income approach was close enough to the sales comparison approach to confirm the validity of the conclusion under the income approach. Ryan estimated the subject property had a market value of $34,000,000 as of January 1, 2009.

With respect to the 2008 assessment year, it was Ryan's understanding that once a project or building is underway, assessors put the property in at full value and then based on occupancy. The appraiser also agreed that he considered all of the burdens and advantages of the government program affecting the property in making his valuation.

Under cross-examination Ryan agreed the appraised value for January 1, 2008 was the same as for January 1, 2009; he stated this was the stabilized value. Ryan testified that it is very common for assessors, once a project is completed, to put a full value on it and then allow for a reduction in the assessment based on occupancy or completion. Ryan was of the opinion the discounted cash flow model was not applicable.

Ryan further agreed with his statement in the appraisal that "[t]he privatization of government housing is a fairly recent development trend in the market. Hence there have been no sales

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[4] Page 53 of County Exhibit #4 incorrectly reported operating expenses at 48.6% of EGI.
[5] BOR Exhibit #2 was missing pages 54 and 55 which included more discussion of Ryan's methodology in calculating the capitalization rate.

of these building types to directly compare to the subject property."

In terms of considering the restrictive covenants, Ryan testified he considered the contract rents and contrasted the with the market rent. He also considered the operating expenses were going to be higher at the subject property as opposed to a market facility. He also allowed for higher expenses due to the design configuration. Once he arrived at the net income it made no difference to him how the parties divided the income, he simply capitalized the net income into value.

Ryan further testified he had not read the Use Agreement prior to the time he issued his appraisal report. He also agreed he was not aware of any sales that have any of the agreements and restrictions the subject property has.

In considering the burden and benefits associated with the Government program Ryan indicated he considered the BAH, the maintenance plan which was one of the reasons his expenses were higher, his higher allowance for replacements and he was aware that some of the units could be leased by non-military personnel.

Under redirect examination Ryan explained that his "Extraordinary Assumption" on page 5 of his appraisal means that an assessor will put a project on at full as of a leading date. When the property is then at full or stabilized occupancy at the end of the year the assessor will then prorate either by a rate weighted average or some method common in the county to produce an assessment that weighs the occupancy for the year.

Ryan also testified that he had appraised the leasehold interest portion of the Scott Air Force Base, LLC project. He was provided a copy of the lease which specified the restrictions that are conditions of the project. He further agreed he appraised the unencumbered fee simple meaning without any lease or restrictions in place. He determined the rents allowed under the BAH was at or near market rent levels. He also stated his capitalization rate was based on sales, investment surveys and the band of investment. He testified considering the condition of the military housing by placing his estimate at the lower end of the range of the comparable sales. Expenses were above what you typically find in the market and his replacement reserves were high because he had some understanding that they had a stricter maintenance schedule than what you might find in the typical market project. Ryan testified that he considered not only the restrictions but the benefits that flow from the military project in the context that he was aware the investment was in excess of $50,000,000 and he arrived at the fee market value of $34,000,000.

Marilyn J. Richey

The next witness called on behalf of the board of review was Marilyn J. Richey. Richey is currently retired but previously

she had been a consultant with the St. Clair County Assessor's Office and prior to that had been the Chief Deputy with the St. Clair County Assessor's Office. She had been employed for 32 years in the assessment field and had the Certified Illinois Assessing Officer (CIAO) designation. She testified that she was instrumental in trying to put to properties located at Lincoln's Landing on the tax rolls.

The witness testified she became aware of an assessment formula used to assess another type of military installation in Illinois. Richey identified BOR Exhibit #1 as a spreadsheet on the rent and proration that are involved in the rents through the income approach. Richey testified she "mostly" prepared the spreadsheet but had assistance from others. The witness indicated that she had done other prorated assessments in the county using similar procedures. Richey was asked to identify what the various columns of the spreadsheet mean. She indicated the following:

Column A – Unit – identifies the unit number for the housing at Lincoln's landing.

Column B – Monthly Rent – Monthly rent for the unit obtained from an employee of the developer.

Column C – Annual Rent – annual rent of each unit calculated by multiplying the monthly rent by 12.

Column D – Daily Rent – Daily rent of each unit, which appears to be calculated by dividing the annual rent by 366 to reflect the number of days as 2008 was a leap year.

Column E – Final Inspection Date – the date the unit received the final inspection from the zoning department.

Column F - # of Days on Final Inspection Date – Was the number of days that the unit would be assessed after the proration was made.

Column G – PGI per Unit Based on Final Inspection Date – Which is the potential gross income per unit calculated by multiplying the daily rate by the number of days available for occupancy after the final inspection date to the end of the year.

Column H – Vacant Unit – Units built but identified as having no one living in them.

Richey was next questioned about the last page of the spreadsheet referencing lines 392 through 398 and responded as follows:

Line 392 – PGI – Potential Gross Income – $4,894,440.15 which was the total of all the rents.

Line 393 – V&C – Vacancy and Collection Loss - $244,722.01, which calculates to be 5% of the potential gross income.

Line 394 – EGI – Effective Gross Income - $4,649,718.15 - which was calculated by subtracting V&C from PGI.

Line 395 – EXP – Expenses - $2,324,859.07 – which reflects 50% of EGI.

Line 396 – NOI – Net Operating Income - $2,324,859.07 - which is calculated by subtracting EXP from EGI.

Line 397 – Cap Rate – 0.105 – This was the capitalization rate used to capitalize the net income. She stated that she used the mandatory 7½% other counties were instructed to use and added an effective tax rate.

Line 398 - Value - $22,141,514.99 – Is the full value calculated by dividing the NOI by the cap rate.

Richey testified using one-third of this full value would result in an assessment of $7,380,504.

Richey testified that in calculating the expenses and the capitalization rate she referenced Division 14 of the Property Tax Code (35 ILCS 200/Art. 10 Div. 14) Valuation of Certain Leases of Exempt Property. She understood that this division was applicable to the Great Lakes Naval Base. Richey indicated she used section 10-375 of the Property Tax Code (35 ILCS 200/10-375) as the basis for valuing the subject property. In summary this section provides that in valuing a PPV lease (a leasehold interest in property that is exempt from taxation and used as rental housing units and associated improvements at naval training and related naval support facilities in the State of Illinois (see 35 ILCS 200/10-370))[6] the fair cash value must be determined using an income capitalization approach by taking the net operating income divided by a rate of 7.75% plus the actual or most recently ascertainable tax load factor for the subject years. 35 ILCS 200/10-375.

Under cross-examination, Richey explained in the beginning a cost approach was used to assess the property but after conversations with Greg Lafakis, counsel retained by the County Board, he recommended the income approach because all the properties were rentals. She referenced the statute because they were developing an income approach. She was questioned on the use of the statute due to the fact it references the valuation of certain leases of exempt property and more specifically references naval training and related naval support facilities. She responded by asserting that on advice of counsel she was to use the income approach.

[6] The definition of a "PPV Lease" was amended by P.A. 97-942, effective August 10, 2012, which, in part, substituted "military training facilities, military bases, and related military support" for "naval training and related naval support" in section 10-370(a) of the Property Tax Code.

Richey testified that the potential gross income does not include the rent for the vacant units. She further testified that a lady in the office, Anne Hudson, assisted in the preparation of the document (BOR Exhibit #1). She did not know where the source of the 5% vacancy deduction. She further indicated the 50% deduction for expenses was based on the language in section 10-370(b) of the Property Tax Code (35 ILCS 200/10-370) which defines "Net Operating Income" in part as including all revenues received minus the lesser of (i) 42% of all revenues or (ii) actual expenses before interest, taxes, depreciation, and amortization. She thought the idea to use 50% came from Anne Hudson. Richey further testified that nothing from the Operating Agreement was used in arriving at the subject's assessment.

Conclusion

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of the appeal.

The appellant contends overvaluation with respect to the assessment for the 2008 tax year as the basis of the appeal. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). 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). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)).

An issue in this appeal is the fact the subject property was not complete as of the January 1, 2008. Both appraisers recognized the fact that 36 of the 386 units were completed as of January 1, 2008 and agreed the project was completed by the end of the year. Section 16-160 of the Property Tax Code provides in part that:

> On or before June 1 in each year other than the general assessment year. . . the assessor shall list and assess all property which becomes taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which had not

> been previously added to or included in the valuation of the property on which such improvements have been made, specifying the property on which each of the improvements has been made, the kind of improvement and the value which, in his or her opinion, has been added to the property by the improvements. The assessment shall also include or exclude, on a proportionate basis in accordance with the provisions of Section 9-180, all new or added buildings, structures or other improvements, the value of which was not included in the valuation of the property for that year. . .
>
> Beginning January 1, 1996, the authority within a unit of local government that is responsible for issuing building or occupancy permits shall notify the chief county assessment officer, by December 31 of the assessment year, when a full or partial occupancy permit has been issued for a parcel of real property. The chief county assessment officer shall include in the assessment of the property for the current year the proportionate value of new or added improvements on that property from the date the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use until December 31 of that year. If the chief county assessment officer has already certified the books for the year, the board of review or interim board of review shall assess the new or added improvements on a proportionate basis for the year in which the occupancy permit was issued or the new or added improvement was inhabitable and fit for occupancy or for intended customary use. . . .

35 ILCS 200/9-160. Section 9-180 of the Property Tax Code provides in part that:

> The owner of property on January 1 also shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year. . .
>
> Computations under this Section shall be on the basis of a year of 365 days.

35 ILCS 200/9-180. In Long Grove Manor v. Property Tax Appeal Board, 301 Ill.App.3d 654 (2nd Dist. 1998) and Brazas v. Property Tax Appeal Board, 339 Ill.App.3d 978 (2nd Dist. 2003) the court interpreted the relationship between the section 16-160 of the Property Tax Code and the 1994 version of section 16-180 of the

Property Tax Code.[7] The court in Brazas explained that section 9-160 of the Property Tax Code allows the assessor to value any partially completed improvement to the extent it adds value to the property. The court went on to state, "section 9-180 of the Property Tax Code addresses when the assessor is allowed to fully assess the improvement, *i.e.*, when it is "substantially completed or initially occupied or initially used."" Brazas, 339 Ill.App. 3d at 983. The current version of section 9-180 of the Property Tax Code allows an assessor to fully assess the improvement "when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year." 35 ILCS 200/9-180. In determining the correct assessment of the subject property, the Property Tax Appeal Board must consider the increase in value to the property from the date the occupancy permits were issued for the various units throughout 2008 or from the dates the new or added units were inhabitable and fit for occupancy or for intended customary use to December 31, 2008.

In support of the overvaluation argument the appellant submitted an appraisal prepared P. Barton DeLacy estimating the property had a market value of $5,800,000 as of January 1, 2008. DeLacy developed only one approach to value, that being the income approach using a discounted cash flow technique. The Board gives the conclusion of value in this report little weight. The Board finds the use of the discounted cash flow analysis is speculative and replete with assumptions that call into question the value conclusion as of a specific date. The validity of the discounted cash flow analysis is further questioned under the facts of this appeal where the complex was not complete as of the assessment date at issue, which requires determination of a prorated assessment for those units that were completed at various times throughout the tax year in question. The assumptions in this appraisal include the cost to complete the project of $32,000,000, an annual 3% growth rate in rent over the 48 year holding period, an annual 3% growth rate in the consumer price index or inflation rate over the 48 year holding period and an annual 3% growth rate in expenses over the 48 year holding period. Miscalculations in any of these variables may be cumulative resulting in significant error in the valuation conclusion. The Board also finds the estimate of the reversionary interest 49 years in the distant future is very speculative and a problem unto itself. The Board further finds the appraiser's conclusion of the 12.00% rate of return was not well supported. The appraiser's own report indicated that the overall capitalization rate, the terminal capitalization rate and the internal rates of return were 5.79%, 6.56% and 8.15%, respectively, for the first quarter of 2008. Furthermore, the only market derived capitalization rates of multi-family

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[7] P.A. 91-486, effective January 1, 2000, amended the first paragraph, first sentence of section 9-180 by substituting "the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use" for "the improvement was substantially completed or initially occupied or initially used."

complexes were presented in the Ryan appraisal and they ranged from 5.05% to 7.15%, well below the rate used by DeLacy even considering the fact that an effective tax rate needs to be considered. The Board finds these factors undermine the credibility of the value conclusion.

The Board also questions the use of the 48 year holding period. The discounted cash flow model should project into the future only for that period of time that is reasonable and realistic. As an investment period is extended so far into the future the assumptions necessary in the discounted cash flow analysis become more uncertain and the chances for error increase. The length of the investment period should reflect the realities of the marketplace. The appellant seems to justify the length of this holding period due to the restrictions on the property caused by the Use Agreement, which arguably impacts the ability to sell the property. However, DeLacy testified the marketing time for the property to be twelve months, which means if it was decided to take the property to the market a buyer would be found in twelve months. The appraiser's testimony regarding the marketing time undermines the length of the holding period and the assertion the property would be difficult to sell.

Another issue the Board finds with the appellant's appraisal is in the manner in which the appraiser considered the proration of the units as they became available for occupancy. The appraiser had a 46% vacancy in year 1 of the cash flow analysis and he also deducted an estimated $32,000,000 for the cost to complete the project. Initially the Board finds this cost to complete was just an estimate using the costs incurred for the entire project from December 31, 2007 to July 31, 2008 and attributing 64% of those costs to Lincoln's Landing. The Board questions the accuracy of this cost estimate. Second, this method does not seem to comport with the Property Tax Code, which requires one to add a prorated value from the date when an occupancy permit was issued to the end of the year.

As a final point, the Board finds that the failure of the appraiser to include a sales comparison approach further detracts from the weight that can be given the conclusion of value. The Board understands that there have not been sales of this type of multi-family complex for military housing with similar restrictive use agreements. Nevertheless, there have been sales of multi-family complexes, as evidenced by the Ryan appraisal, which can be used and adjusted for differences so as to act as a check on the validity of the income approach to value.

For these reasons the Board gives little weight to the conclusion of value contained in the appraisal presented by the appellant in challenging the assessment of the subject property for the 2008 tax year.

The board of review presented an appraisal prepared by Joseph Ryan estimating the subject property had a market value of $34,000,000 as of both January 1, 2008 and January 1, 2009. The

Board finds Ryan's opinion of value for January 1, 2008, does not prorate the assessments or values as required by section 16-160 and section 16-180 of the Property Tax Code. His value estimate as of January 1, 2008, is the stabilized value at 93% occupancy. Although this estimate of value may be a reliable indicator of market value as of January 1, 2009, it does not reflect the market value of the subject property as of January 1, 2008 considering its degree of completion and the fact the value of the various units completed during the 2008 tax year have to be determined from the date when the occupancy permit was issued to the end of the year.

The Board finds the spreadsheet presented by the board of review, marked as BOR Exhibit #1, was the best evidence in this record to value the subject property in accordance with section 16-160 and section 16-180 of the Property Tax Code. The Board recognizes that Richey's testimony with respect to considering the applicability of section 10-375 of the Property Tax Code is incorrect. That particular section of the Property Tax Code was to be used to value the leasehold interest in property that is exempt from taxation and used as rental housing units and associated improvements at naval training and related naval support facilities in the State of Illinois. That is not the case with the property in question. Nevertheless, in reviewing the spreadsheet and comparing that with the appraisals presented by the parties, the Board finds this evidence is supportive of the subject's assessment.

A review of BOR Exhibit #1 identifies each unit at the project and the associated rent, which appears to be reflective of the BAH used to establish the market rent by both DeLacy and Ryan. Both of these appraisers were of the opinion that the BAH was at or near market rent. The Board finds this recitation of monthly and annual rent in BOR Exhibit #1 is reflective of the market rent for the various units at the complex and the subject property as a whole. Second, BOR Exhibit #1 identified the inspection date when each of the units was deemed ready for occupancy. Neither appraiser had such information in their respective reports. The Board finds these putative occupancy dates were not refuted and can be used as a basis to calculate the prorated assessments for 2008. The potential gross income of the Lincoln's Landing was then calculated using the average daily rate to December 31, 2008 for each occupied unit.[8] Based on this record the Board finds the calculation of the subject's potential gross income, considering the occupancy dates of the completed units, is reflective of the subject property for 2008.

In BOR Exhibit #1, a vacancy and collection loss deduction of 5% was used to calculate the effective gross income. The use of a

[8] The Board recognizes that the average daily rate should have been based on a 365 day year rather than the 366 days as used in the exhibit as computations under section 9-180 of the Code are to be on the basis of a year of 365 days. Nevertheless, the Board finds these calculations better account for the proration of the completed units during the assessment year in question than either appraisal in the record.

5% vacancy and collection loss is supported by the DeLacy appraisal, wherein he utilized a stabilized vacancy rate of 5% in the discounted cash flow analysis, and Ryan's use of a 7% vacancy and collection loss.

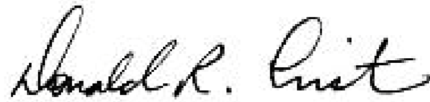
BOR Exhibit #1 also had an expense ratio of 50% of the effective gross income. The Board finds that the expense ratio is also supported by the DeLacy appraisal wherein he utilized an expense ratio of slightly more than 45% of effective gross income and Ryan had an expense ratio 49.8% of effective gross income.

Finally, BOR Exhibit #1 had a capitalization rate of 10.5% that was used to capitalize the estimated net operating income. This rate also seems to be supported by that developed by the appraisers, particularly Ryan, who arrived at capitalization rates of 12.00% and 9.3%, respectively.

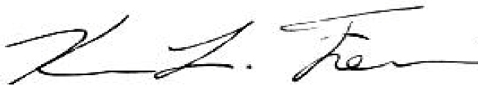
Using these calculations, BOR Exhibit #1 had a final estimate of value of $22,141,515, rounded to the nearest dollar. The subject's total assessment reflects a market value of $22,097,320 using the 2008 three year average median level of assessments for St. Clair County of 33.40%, which is slightly below this calculation.

Based on this record and considering all the evidence and testimony presented by the parties, the Property Tax Appeal Board finds the subject's assessment is reflective of the property's market value and a change in the assessment is not justified.

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



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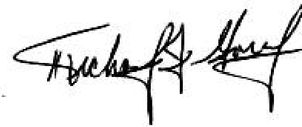

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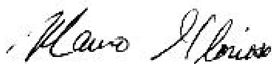

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Member

DISSENTING: ____________________ ____________________

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

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

Date: April 19, 2013

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.