



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

APPELLANT: Colonial Hall Rehabilitation
DOCKET NO.: 09-01187.001-C-3 through 09-01187.003-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Colonial Hall Rehabilitation, the appellant, by attorney Alan D. Skidelsky of Skidelsky & Associates, P.C., in Chicago, and the Bureau County Board of Review by James E. O'Neal of Giffin, Winning, Cohen & Bodewes, P.C., in Springfield.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
09-01187.001-C-3	16-15-301-008	6,344	0	\$6,344
09-01187.002-C-3	16-15-301-009	6,344	0	\$6,344
09-01187.003-C-3	16-15-303-020	43,369	183,631	\$227,000

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a one-story masonry constructed 88-bed skilled nursing facility that was built in 1974. The improvement contains approximately 25,410 square feet of building area with a partial unfinished basement.¹ As of the date of valuation, the building did not have a sprinkler system, but must install one by 2012 for regulatory compliance purposes. The improvement is situated on a 95,810 square foot site and the subject includes two parcels across the street for parking which total 20,000 square feet of land area. The subject's three parcels consist of a total 2.66-acre site located in Princeton, Princeton Township, Bureau County.

¹ The appellant's appraiser reported a building size of 25,326 square feet above grade and 2,268 square feet below grade. (Appraisal, p. 55) The parties to this proceeding, however, filed a written "Stipulation" that the subject contains approximately 25,410 square feet of building area.

A consolidated hearing was held in Docket Nos. 08-02274.001-C-3 through 08-02274.003-C-3 and Docket Nos. 09-01187.001-C-3 through 09-01187.003-C-3 although separate decisions will be issued. (86 Ill.Admin.Code §1910.78)

The appellant appeared before the Property Tax Appeal Board through counsel contending overvaluation as the basis of this 2009 assessment appeal. In support of the argument, the appellant submitted an appraisal which estimated a fair market value of the subject property as of January 1, 2009 of \$720,000, and also presented the supporting testimony of the appraiser who prepared the report and a member of management/ownership of the subject nursing home property along with calling the Bureau County Supervisor of Assessments as an adverse witness.

The appellant's first witness was real estate appraiser John W. VanSanten, who has in excess of 20 years' experience as an appraiser. At the time of this report and testimony, VanSanten was employed by Stout, Risius, Ross, Inc. Prior to this latest employment, he was employed by Wellspring Partners whose sole focus is on health care related properties. VanSanten was also previously employed by Real Estate Analysis Corporation (REAC) for approximately five years.

VanSanten is licensed by the State of Illinois as a Certified General Appraiser and he is a member of and has taken the courses necessary to hold an MAI designation from the Appraisal Institute. The parties stipulated that the witness was an expert in the field of appraising real estate and in the field of appraising nursing homes. (TR. 14)²

As part of his preliminary discussions in the report, VanSanten wrote that as an operating nursing home, the subject is a special use property and strongest consideration should be given to the cost approach. (Appraisal, p. 67-68) VanSanten testified that for valuation, the subject property is a special purpose property having been specifically designed to provide nursing services to patients who need it and operationally it is an intensive business that provides skilled nursing care to patients that live there. Nursing homes are not easily convertible to any other use and the witness noted that once a facility is no longer viable, the highest and best use is typically to tear it down. (TR. 35-36)

In Bureau County, a former county nursing home (Prairie View) was sold in 2007 to Peterson Healthcare for \$1.4 million according to VanSanten. The facility known as Orchard View was thereafter shut down and sold in February 2012 for \$43,000. According to the witness, the facility was sold because it was no longer financially viable to operate as a nursing home. (TR. 36-37; Stipulation)

² References to pages of the transcript of the proceedings will be designated "TR." followed by page citation(s).

A nursing home consists of the total assets of the business, including the land, building and personal property (beds, kitchen equipment and dining room furniture) in addition to intangible assets including the Certificate of Need required in the State of Illinois to operate a nursing home (license),³ the assembled and trained workforce, the cost to assemble that workforce, the discharge agreements with local hospitals which feed the nursing home and help maintain occupancy, and the brand name associated with the facility and its community reputation. (TR. 15-18; see also Appraisal, p. 6-7, 67-76)

VanSanten further testified that he did not consider nursing home revenue to be solely attributable to the real estate because the primary purpose of the facility is to provide 24 hour skilled nursing care to patients such that the resulting cash flow generated is more than just the underlying land and building.⁴ He further contended this analysis was supported by the manner in which the State of Illinois reimburses nursing homes in the Medicaid rate where the capital cost component (i.e., the real estate component) is typically 10% of the overall rate. (TR. 18) In this regard, the witness asserted that the cost approach as compared to the income approach is the most reliable method to break out the value of real estate from the going concern. (TR. 20-22)

The appraiser inspected the subject property on May 6, 2011. (Appraisal, p. 5) He used the three traditional approaches to value in estimating the subject's market value for real estate only, excluding business value and personal property. VanSanten prepared a complete appraisal in summary-reporting format. The assignment herein was to perform a fee simple market value appraisal of the subject as of January 1, 2009.⁵

VanSanten reported on the most recent purchase of the subject property which also included the purchase of a property known as River Shore in Marseilles with 103 beds. (TR. 28; Stipulation) Each facility was purchased at a price of \$29,500 per bed. The appraiser reported:

Title to the subject is currently vested in the name of PHCH Realty, LLC, who acquired title to the subject from Colonial/Princeton Property LLC and Orchard Court 1031 in October 2007 for a purchase price of

³ The witness testified it is a lengthy process with the State of Illinois to obtain a Certificate of Need involving being qualified as an operator of nursing homes and being able to show knowledge in caring for residents. In addition, the State of Illinois calculates a "bed need" based on demographics and the nursing home supply in given areas; if there is no need based on the calculation, it is unlikely to issue a license. (TR. 19-20)

⁴ The cash flow generated by a nursing home is driven by the business of providing nursing care and thus the value arrived at under the income capitalization approach will inherently be a going concern value including more than just the real estate according to VanSanten. (TR. 34)

⁵ The appraisal report in this 2009 assessment appeal is a dual report with valuations for the subject property as of both January 1, 2009 and January 1, 2010.

\$2,596,000, as recorded in the Bureau County deed records. The transaction consisted of a portfolio of nursing homes as a 1031 exchange.

(Appraisal, p. 5) Moreover, the purchase price reflects the total assets of the business including furniture, fixtures and equipment, and all intangible property. "In addition, the buyer projected a significant turnaround in operations once new management was in place. The purchase price reflects the going concern value based on the buyers anticipated upside potential." (Id.)

The witness also testified that typically nursing homes would not have the same income streams or the same payor mixes such as private pay, Medicare and/or Medicaid with some Veteran's Administration and other private insurance coverage which generally have differing reimbursements rates for different types of patients. VanSanten asserted that because of these differing rates, facilities with a high percentage of private pay and/or Medicare patients are much more profitable than those with a high percentage of Medicaid patients which studies show lose money for the facility. He also contended that typically nursing homes will have one director of nursing and one administrator, but that a facility with more beds will typically achieve some economies of scale by spreading fixed costs over a larger number of beds. (TR. 29-32) Thus, in light of these types of differences, VanSanten found it highly unusual that both the subject and River Shore sold for the same price per bed and he therefore concluded that the recorded sale price reflected "more of an arbitrary allocation as opposed to a specific indication of market value." (TR. 32-33)

On page 56 of the appraisal report, VanSanten outlined the renovations made to the subject property between July 2005 and January 2011 totaling almost \$500,000 of which over \$400,000 was expended after the purchase in 2007 and after the assessment date at issue of January 1, 2009. (TR. 27-28) The renovations were noted for informational purposes, but were not considered where applicable due to the completion date(s) being after the date of valuation of January 1, 2009.

For this 2009 appraisal, VanSanten described the facility as being in "average to good condition." (Appraisal, p. 56) The appraiser further noted based on Illinois nursing home regulations the subject facility must install a sprinkler system by 2012. "A new sprinkler system was installed and completed at the subject in March 2010." (Id.) However, since this occurred after the valuation date, a deferred maintenance deduction was applied in the reconciliation of value to reflect the cost of installing the sprinkler system. (Id.)

Under the cost approach, the appraiser estimated the subject's value as \$870,000, rounded. To develop the land value, five vacant land sales in either Peru or Princeton were used. (Appraisal, p. 78) Two properties were planned for a motel or

hotel, one was planned for a hospital and two were being held for future development. The parcels ranged in size from 0.85 to 7.80-acres of land area and they sold from April 2007 to January 2009 for prices ranging from \$186,000 to \$1,166,645 or from \$1.32 to \$5.02 per square foot of land area. The appraiser made adjustments to the sale prices due to differences in location, size and/or zoning. Based on these adjusted sale prices, the appraiser concluded a market value of \$2.00 per square foot for the subject land or \$230,000, rounded.

Next, the appraiser determined a replacement cost new for the subject improvement utilizing the Segregated Cost Section in the MVS Cost Manual with a current cost multiplier of .94 and a local multiplier of 1.07. (Appraisal, p. 91) In calculating the replacement cost, VanSanten assumed a building size of 27,594 square feet which is 2,184 square feet larger than the subject's actual size as stipulated by the parties. The appraiser arrived at a total estimated replacement cost new including local multipliers, current multipliers and indirect costs of 10% of \$3,508,333 plus site improvements of \$402,677 for a total replacement cost new of \$3,911,010. (Appraisal, p. 94)

The appraiser then used the age/life method to calculate physical depreciation of the property. No functional or external obsolescence was noted. To calculate physical depreciation, VanSanten estimated the effective age of the property was consistent with its actual age of 35 years. As found from the MVS, the subject has an economic life of 40 years resulting in accrued depreciation of 87.5%. (Appraisal, p. 92; TR. 40) Thus, physical depreciation was calculated as \$3,069,792 resulting in a depreciated value of improvements of \$438,542. Similarly, the site improvements were depreciated by 50% resulting in a depreciated value of site improvements of \$201,339. Next, adding back the land value of \$230,000, the total estimate of value under the cost approach rounded is \$870,000. (Appraisal, p. 95)

The appraiser gave secondary consideration to the value conclusion using the income capitalization approach because the method estimates the value of the going concern which must be adjusted to remove any intangible value and any personal property that may be included. (TR. 43-44) Under the income capitalization approach, VanSanten examined historical income and expenses for the subject property for 2007, 2008 and 2009. He reported that the 2007 financial statement was annualized "to represent a full fiscal year. (Appraisal, p. 99) The report then summarizes the historical income and expense statements for 2007 (annualized), 2008 and 2009 depicting net operating income of \$300,920, \$490,456 and \$386,388, respectively.

The appraiser's projected revenues and expenses were based upon the projected, stabilized amount that the subject would generate in a typical year by eliminating non-recurring costs and adjusting for lease payments. VanSanten acknowledged that the subject is owned by one entity and leased to another. Since the fee simple estate is being valued, the appraiser added back the

annual lease payments, but no other adjustments were made. (Appraisal, p. 99)

Since the payor mix impacts the value of a nursing home, VanSanten analyzed this data for the property. (TR. 45) For the subject, he found the majority of the occupancy consisted of Medicaid and private pay patients. (Appraisal, p. 100) Moreover, the occupancy of the subject facility increased from 87.49% in 2007 to 90.66% in 2008 and again decreased to 86.88% in 2009. (Id.) As part of the appraisal, VanSanten also analyzed the occupancy rates for competitive facilities in the local marketplace which as shown on page 101 of the report was found to be a weighted average occupancy of 77.6% with one facility, Manor Court of Princeton, being very high at 98% and the Orchard View facility being the lowest at 56%. (Id.; TR. 46-47) Based on this data, the appraiser forecast an occupancy rate for the subject of 87.0%.

Next, the appraiser forecast the subject's routine nursing service revenue as \$4,415,215 by applying an average daily rate per patient day of \$158.00 to 88 beds with 87% occupancy for a year of 365 days. (Appraisal, p. 101; TR. 47) Additional revenue sources for various therapy services, drugs, radiology and other outside services were forecast at \$1,089,832 as shown on page 102 of the report. Next, VanSanten considered the historical contractual allowances of the subject reflecting the difference between the charges the nursing home "booked" and what was actually collected. (TR. 48) Based on the historical data, he projected contractual allowances of \$950,110. (Appraisal, p. 103) A final income category of other revenue of \$37,725 was estimated. (Appraisal, p. 103)

Based on the foregoing, VanSanten projected total revenue for the subject based on the historical operating statements at \$4,592,662. (Appraisal, p. 103)

Then, in a similar manner to the income forecast, the appraiser considered the historical expenses of the nursing home and estimated a stabilized forecast. Those expenses included general and administrative, dietary, laundry and linen, professional services, employee welfare, housekeeping and plant, and management fees. (TR. 49-50; Appraisal, p. 104-107)

A management fee is typical and VanSanten applied a 5% management fee. (TR. 44-45; Appraisal, p. 107) The actual expenses of the subject are set forth on page 107 of the report along with data on four comparables with their respective expenses. (Appraisal, p. 107)

Based on the foregoing analysis, the appraiser projected total operating expenses of \$4,284,366. (Appraisal, p. 107)

On page 108 of the report, the appraiser analyzed the return of and on personal property. To maintain the nursing home and thus maintain the room and board rates, periodically personal property

must be replaced; part of the earnings must be directly attributable to the personal property. However, the valuation task is to exclude personal property. Thus, VanSanten concluded based on personal property data from the cost approach (Appraisal, p. 92-93) that the depreciated value of the personal property with an 11% rate of return over four years and an "annual expense" of .32⁶ results in a deduction for return on and of personal property of \$62,402 annually which is deducted in the income approach to exclude the personal property. (TR. 50-51; Appraisal, p. 108)

The next step under the income approach analysis was arriving at an appropriate capitalization rate. VanSanten testified and the appraisal report addresses the three primary ways to estimate a capitalization rate using the extraction method from actual sales, investor surveys and the band of investment technique. (TR. 51-52; Appraisal, p. 109-112) Analyzing four sales of properties along with income figures resulted in overall capitalization rates ranging from 6.72% to 24.97%. The appraiser also used the band of investment technique arriving at a capitalization rate of 12.03%. As a further indicator, VanSanten considered published investment surveys of capitalization rates for nursing homes which ranged from 8.07% to 13.72%. As shown in the report and after considering each of the approaches, VanSanten selected an overall capitalization rate of 12.50%. (Appraisal, p. 112) The witness further testified this capitalization rate is a reflection of the fact that a nursing home property is a much riskier investment than for example an office or retail building. (TR. 52) Besides significant governmental regulations and inspections, nursing homes also experience reimbursement delays which in Illinois have been from six to nine months for Medicaid patients along with threats and/or actual reductions in reimbursement rates. (TR. 52-54)

Then, through a series of calculations as reflected on page 113 of his report, VanSanten determined an adjusted effective tax rate of 1.24%. Next, by capitalizing the subject's forecasted net income of \$245,894 by the overall capitalization rate of 13.74% resulted in a market value of the total assets of the business by the income approach of \$1,800,000. (Appraisal, p. 114) In the next step under the income approach the appraiser sought to quantify how much of this "total assets of the business" value was represented by the business enterprise as opposed to the land and building. As summarized on page 114 of his report and discussed in detail in pages 118 through 121, VanSanten concluded a business enterprise value of \$930,000 based on a comparison of the value estimate in the cost approach and the value estimated in the income approach. (TR. 62-64) Once the business enterprise value is deducted from the total assets of the business under the income capitalization approach, it results in an estimated value of the real estate only based on the income approach of \$930,000.

⁶ The notation on page 108 of the report defines the "expense constant" as the "payment to support the interest rate over the amortization period."

Under the sales comparison approach, VanSanten examined sales of other nursing homes which include tangible assets such as personal property, the land and building along with business enterprise value. VanSanten's report notes that adjustments for differences are necessary since no properties are identical. The sales comparison approach to value was given the least weight in the appraiser's final value conclusion for the subject. VanSanten considered four sales of nursing homes in Winfield, Carlinville, Galesburg and Polo, Illinois. These sales occurred from January to April 2008 for prices ranging from \$1,508,305 to \$4,746,897 or from \$19,588 to \$34,315 per patient bed.

On page 125 of the report, VanSanten outlined the adjustments to the comparables when comparable to the subject and opined an adjusted sale price per bed ranging from \$10,750 to \$39,970. Based on this data, the appraiser concluded a market value for the subject of \$25,000 per bed or \$2,200,000. As shown on page 126 of the report, the appraiser again deducted the value of the intangible assets of \$930,000 and the depreciated value of the personal property of \$193,600 which resulted in a value of \$1,080,000.

In reconciliation, VanSanten noted the three estimates fell within a fairly narrow range of either \$870,000 or \$1,080,000 based on the reported data. Most weight was given to the cost approach, thus VanSanten concluded that the retrospective market value of the subject property as of January 1, 2009 was \$870,000. (Appraisal, p. 133) Lastly, on page 134 of the report, the appraiser stated:

A sprinkler system was not installed at the subject until March of 2010. Therefore, a deferred maintenance deduction of \$150,000 will be [*sic*] to the subject to reflect the cost of installing the sprinkler system. This deduction is based on the actual cost incurred (\$148,259) according to ownership.

Regarding this deduction, VanSanten testified that "any buyer that would potentially buy this property would know they are going to have to spend this money in order to comply with the state mandate, and so, therefore, it is appropriate to deduct the cost of installing that sprinkler system." (TR. 41) After this final deduction for what the appraiser termed as deferred maintenance, the final value conclusion as of January 1, 2009 was \$720,000.

On cross-examination, the appraiser disagreed with the proposition that the cost approach is generally considered the most accurate valuation method when a property is new and instead indicated that it depends upon the context of the assignment. (TR. 66) While the appraiser applied depreciation using the age/life method, VanSanten testified that he was aware some renovation work had been done periodically throughout the life of the facility "to maintain the property," but that significant

renovations were done after the date of valuation in 2011. (TR. 67) He acknowledged that the age/life method is straight line depreciation method which estimates the weighted overall average age of all components of the building taking into account that some things may have been replaced and renovations have occurred. (TR. 91-93)

The witness further articulated the factors considered in determining an estimated effective age for a property which include condition, maintenance, upkeep and design relative to other similar facilities in the marketplace as in this context newer built facilities tend to have all private rooms as opposed to semi-private with shared bathroom facilities. (TR. 68-69) VanSanten acknowledged that some renovations were done in 1992, but the condition opinion was based upon his observations and inspection of the property as of the date of valuation. (TR. 70, 85) Upon further questioning regarding the estimated remaining economic life of 6 years for the subject property, the witness asserted that as of the date of value, "without significant renovations, it would reach the end of its economic life after six years." (TR. 87)

With regard to the lack of a sprinkler system at the facility, VanSanten acknowledged both that this was a known deficit and that the expenditure of \$150,000 to install the system "increased" the value of the subject in general. (TR. 70-71) He also acknowledged that after it has been installed, the sprinkler system will be depreciated. (TR. 93)

The witness acknowledged that one metric for analyzing nursing home sales is to examine the sale price per licensed bed. (TR. 72) VanSanten acknowledged that the subject's reported sale price reflected \$29,500 per bed. (TR. 72-73)

VanSanten acknowledged that the age of a facility, whether comparable properties or the subject, was one of many factors which "goes into" a purchase price. (TR. 75)

The witness testified that the management fee of 5% estimated in the income approach to value was "consistent with normal industry standards for nursing homes" but was a theoretical number assumed for purposes of the appraisal without knowledge of an actual management fee cost. (TR. 76-77) Similarly, consideration of working capital in the appraisal report related to a theoretical value rather than an actual figure. (TR. 77)

As part of the overall calculation of intangible value, VanSanten used 20% of salaries paid to the workforce based on his conversations with recruiters regarding typical charges for placement of personnel, such as skilled nurses and nursing assistants. (TR. 78-79)

VanSanten was asked about staffing requirements varying for similar facilities in terms of patient beds, but varying from one-story to two-story design to which will have varying costs,

but each circumstance will be dependent upon the specifics of the situation. (TR. 81-82)

The witness acknowledged that there were about \$466,000 in renovations applied to the subject property in 2010 and 2011. VanSanten acknowledged that the renovations increased the value of the subject property but could not state what the increase would be. (TR. 83-84) Similarly, the renovations at the subject property would have an impact on an effective age determination by extending the economic life of the property. (TR. 84, 88)

A Certificate of Need or license for a facility is related to the number of beds in that nursing home. (TR. 85-86) VanSanten was not aware that another nursing home in Princeton, Liberty Village, which was surveyed in the appraisal report, has almost annually increased their Certificate of Need bed number in recent years. (TR. 86)

VanSanten acknowledged that the regulation to have sprinkler systems in nursing homes has been known "for many years," including in 2007 at the time of the sale transaction. (TR. 86-87)

The witness further explained the basis for his land value determination of the subject as compared to vacant land sales with what were deemed superior locations, differences in zoning and parcel size since smaller parcels typically sell for a higher price per-square-foot than larger parcels. (TR. 89-91)

Since PHCH Realty as the owner of the subject property has a long-term lease, although it is to a related company, there is an income stream, VanSanten acknowledged that if this was a true arm's-length real estate lease the capitalization rate for such a transaction would be lower than 12%. (TR. 93-94)

VanSanten was asked to articulate the difference between "bad debt" expense in 'general and administrative' as compared to the "contractual allowances" deduction for amounts billed but not reimbursed. He stated in pertinent part, "my understanding of bad debt for a nursing home typically relates, is a separate issue from contractual adjustments." Bad debt and contractual allowances are two separate things which are very common for nursing homes. (TR. 99-101)

On redirect examination, VanSanten asserted that as of the 2007 date of purchase and the valuation dates of both January 1, 2008 and January 1, 2009 renovations to the subject property were necessary to extend its life. (TR. 101)

In applying the sales comparison approach to valuing a nursing home, VanSanten stated the single most important factor for an investor in purchasing the facility is the cash flow as reflected by the profit-per-bed which therefore must be factored into the valuation. (TR. 102-103)

The appraiser reiterated his opinion that it is industry standard for a nursing home to incur a management fee and therefore one must be imputed when calculating the value of the property. (TR. 103)

The witness was of the opinion that the lease between Colonial Hall, the operating entity, and PHCH Realty, LLC, the real estate entity, was not an arm's length lease because there was common ownership of the entities. For instance, the 2007 financial statements there is a lease expense line item of \$184,468 which VanSanten understood was paid by Colonial Hall to PHCH in order to cover the mortgage payments "as well as maybe some other expenses." (TR. 103-106)

The appellant's second witness was Brian Levinson, an owner-operator of long-term care facilities. (TR. 108) He is familiar with Colonial Hall Nursing and Rehabilitation as a member of PHCH Care Center, LLC, which own and operates the nursing home as well as PHCH Realty, which owns the real estate that the nursing home is located on. (TR. 108-109)

Levinson has been involved in the long-term care industry for about 22 years. He is a licensed nursing home administrator which he obtained from both state and federal authorities after completion of a series of courses along with an examination. Furthermore to maintain the license, there is a continuing education requirement. (TR. 109)

His employment history after college in 1991 commenced as an administrator-in-training at a 485-bed facility in Cicero at which time he studied and became licensed. After licensure, Levinson became an assistant administrator at the facility until 1993 or 1994 when he worked for a 207-bed facility in West Chicago. After three to four years in that position, he worked at a 200+-bed facility in Joliet initially in training position and then as administrator. His next position was for the same employer, First Health Care Associates, but as a regional operations manager where until 2001 he oversaw all aspects of operations for five or six nursing home facilities including staffing, nursing care, housekeeping, maintenance, marketing, admissions and all of the various administrators reported to Levinson including establishing goals, protocols and performance review along with consulting on operations. (TR. 109-111)

In 2001, Levinson formed a partnership with two other individuals to acquire nursing homes to operate "on our own." The first acquisition consisted of four nursing facilities in Illinois which has since grown. In the portfolio, the partnership has owned or operated roughly 30 facilities in the Midwest. (TR. 111-112)

Since establishing the partnership, Levinson has been involved in the process of obtaining a Certificate of Need or license from the State of Illinois from time to time. In approximately October 2007, the partnership purchased the subject facility,

although they began running the facility in May 2007 under an operating transfer agreement. In terms of process, the partnership had to apply for a transfer of the license held by the seller of the property in order to continue to operate it as a nursing home.⁷ (TR. 112-114)

Levinson further testified that in order to establish a new nursing home, the entity must own the vacant land and then obtain a Certificate of Need (CON) which is a very long and complicated process that can take a number of years with the Health Facilities Planning Board. New CONs are infrequently issued as the applying entity must prove through statistical and actuarial tables, future bed need and current census in the specific geographical area, what the shortage is and what market the proposed facility will fulfill. Once an entity has obtained a CON, at that time the facility can be built and then the entity applies to the Department of Public Health for a license which cannot be obtained without the CON. Alternatively, in circumstances of an existing nursing home which is being sold, the CON is in existence and the new owner applies for a license. He testified that obtaining a CON has cost him \$300,000 to \$400,000. (TR. 114-116)

The witness further noted that existing facilities are allowed to increase their licensed beds without an approval process in the amount of 10% of their licensed beds, or 10 beds per year, whichever is less. (TR. 117) He also stated that investors typically purchase existing nursing homes rather than seek to establish new facilities. (TR. 118)

Levinson testified that the revenue of Colonial Hall is only minimally attributable to the real estate and instead the revenue is attributable to the "fact that it is an operating, licensed nursing home, so it is the services that are provided and reimbursed for the nursing services" which generate the revenue. (TR. 119) He further opined that the facility is a single-use building in that the design is for shared bathrooms between the rooms, there is congregate dining and congregate activity areas. There is not another appropriate use Levinson can envision for the physical plant. (TR. 119-120)

Levinson testified that the payor mix reflects both who is residing in the facility and what the payor source is which determines the value of the revenue stream, noting that some payors pay higher than others thus generating more income. (TR. 120-121)

The witness discussed the purchase of the subject property of 88-beds at \$29,500 per bed in October 2007 as part of a portfolio which included River Shores Nursing Center in Marseilles with 103-beds. At the time of purchase, the subject property required

⁷ At the time, there was a C-1 exemption process with the Health Facilities Planning Board which involved a time lag between acquisition and transfer of the license. (TR. 113-114)

renovations which have cost approximately \$400,000. For instance, the roof was beyond its useful life in that it was leaking and had been reroofed twice already. Levinson asserted that the roof repair was essential as if leaking continued the facility would risk being shut down by regulators. (TR. 121-125)

Besides maintenance and repairs, the witness testified that renovations on a continuing basis are necessary in order to be competitive in the marketplace vis-à-vis the competition such as a new nearby skilled nursing care facility within the Liberty Village campus. Levinson noted that increases in the number of beds in local area facilities, particularly brand new facilities, impact the subject due to increased competition which impacts census which impacts profitability. (TR. 124-125)

Prior to the purchase of the subject facility, Levinson was aware of some federal regulatory changes including possible mandating sprinkler systems by April of 2013 with active lobbying efforts to prevent such a new requirement. (TR. 126-127)

The possibility of purchasing both the subject facility and River Shores as an "all or nothing" transaction arose when Eric Rothner [phonetic], a next door neighbor, a close friend for 30 years and an associate of Levinson, approached Levinson. Rothner had purchased a portfolio of eight buildings from Genesis Health Care, six of which were within Rothner's primary market area. The two outside of his primary market area were more rural and like other properties managed by Levinson's partnership. Both Rothner and Levinson drove to the facilities from the Chicago area for a brief tour of each. No brokers were involved in the transaction and there was no advertising or exposure on the market. As far as Levinson is aware, the sale was not presented to anyone else but him. (TR. 127-130)

Rothner presented the purchase price of \$29,500 per bed. In an effort to negotiate, Levinson responded, "well, everything is negotiable" to which Rothner said, "it is all or nothing, nothing is negotiable." (TR. 130) Levinson's partnership purchased both operating nursing homes as a package although both facilities do not have the same income streams, payor mixes, expenses, market conditions or economies of scale in that Colonial Hall has 88-beds and River Shores has 103-beds. While frontline staff tends to be a ratio to the number of beds, each facility has to have an administrator, a director of nursing and various department heads so that there is a better economies of scale in River Shores. Levinson testified that his financial due diligence took about two or three months wherein he examined the actual income and expense statements to determine whether "this investment made sense" in how the facilities were operated under Rothner's organization, what Levinson felt the potential would be for his partnership to improve on those in order to ascertain whether he and his partnership were willing to pay \$29,500 per bed. The focus was on the operations including the payor mixes, staffing levels, other expenses, benefit costs and marketing, but not on the actual real estate. Levinson testified that the nursing

homes were underperforming causing Rothner to want to sell, but that performance was due in part to Rothner's lack of experience in these more rural markets. Levinson felt his partnership would be able to increase the revenue and profitability of the facilities which would justify the asking price which included all the personal property on premises. (TR. 130-134)

In terms of financing the purchase, Levinson and his partners produced the actual income and expense statements of the facilities as well as their projections on how the partnership would have a revenue stream from increasing the efficiencies of the operations. (TR. 134-135)

The witness testified that the partnership would not have paid more than \$29,500 per bed for the subject facility, even if it had 5-acres of more land and/or had a 10,000 square foot assembly hall. Levinson also opined that if the subject were a two-story building, it would not necessarily have differing staffing needs. Staffing needs depend in part on the number of licensed bed, in part on the acuity of the residents, and in part on the physical layout so that there is no standard level of needed staffing. (TR. 136-137)

In examining the 2007 financial data contained within the 2008 appraisal report, Levinson testified that up to October 2007, the lease payments were made to the prior owner and from October 2007 to the end of the calendar year the lease payments were made to PHCH Realty, which is the partnership's realty entity. Levinson's partnership maintains both an operating nursing home entity and a real estate nursing home entity for liability protection purposes, such as for a personal injury lawsuit, this structure helps protect the corporate officers. The sole function of PHCH Realty, LLC is to accept the lease payment from the operating entity and then directly pay the principal and interest on the mortgage along with the property insurance such that it is a zero-sum entity. The ownership in PHCH Realty and Colonial Hall Rehab Nursing Center are identical. The witness further testified that each of his partnership's nursing home entities is established in a similar manner. (TR. 137-139)

The witness in his role of operating the subject nursing home addressed the distinction between a contractual allowance and a bad debt on the financial statements. Levinson asserted that a contractual allowance relates to certain payor sources, such as Medicare which adjusts the facility's actual billed charge for a certain service based on a contracted rate. In contrast, a bad debt refers to those instances where the facility bills a certain charge with a full expectation of being paid, but ultimately is unable to collect. (TR. 140)

On cross-examination, Levinson further expounded on the contractual allowance and bad debt lines of the financial statements. As an example, if Medicare adjusts the amount billed the difference in billed amount and received amount is reported as a contractual allowance. In contrast, bad debt may occur when

an incoming resident is deemed to be 'Public Aid pending' and after the services have been rendered and billed, the resident did not qualify for Public Aid, then the unpaid amount for that resident is recorded as a bad debt. (TR. 141-144)

The witness confirmed the ownership of PHCH, LLC in 2008 consisted of himself, Sidney Klein, Mark Shapiro, Gabriel Klein and Colleen Camen. (TR. 144-145)⁸ Levinson also testified that his partnership has a management company known as Platinum Health Care and each individual nursing home and each individual real estate entity has its own LLC. (TR. 145-146)

In the course of negotiating and purchasing the subject facility, Levinson did not deal with any other individual besides Rothner. (TR. 146, 148) The witness agreed that he was under no obligation to purchase the facilities and the transaction was strictly a business deal if it made sense; similarly Rothner was under no obligation to sell to Levinson's partnership. (TR. 146-147, 159) The witness agreed that the sale of the subject facility was a transaction expressed in terms of money which was not exposed on the open market. The witness also agreed that both the buyer and seller were informed of the uses to which the property could be put. Levinson also agreed that he and his partnership was a willing buyer with no advantage being taken by either the buyer or the seller. In addition, the witness recognized the present use as well as the potential use of the property. (TR. 149-150, 159-160)

While prior to the purchase, Levinson's opinion was that the subject property was somewhat underperforming, he testified that over a number of years he has been able to make the facility perform better. (TR. 150-151)

After purchasing the facility, the witness asserted that the lease payment reflected in the financials was determined by the principal and interest or the cost of owning the property. (TR. 151-152) Levinson could not state the amount of the monthly rental payment to the real estate company without specific records. (TR. 153-154)

The witness reiterated that renovations to the subject property were made with the expenditure of about \$400,000 in 2010 and 2011 with the purpose of extending the property's useful life. (TR. 154) Levinson acknowledged that he was aware at the time of purchase that the subject property did not have a sprinkler system. (TR. 154)

Citing to the 2008 appraisal report⁹ of the subject property prepared by VanSanten, the May through December 2007 financial

⁸ During cross-examination, it was revealed that Gabriel and Sidney Klein are the children of one of the partners and thus, they individually would not be experienced in the nursing home business. (TR. 160)

⁹ Submitted as evidence only in Docket No. 08-02274.001-C-3 through 08-02274.003-C-3.

statements on page 4 sets forth an operating expense of "facility lease" of \$184,468. The document also has a notation at the bottom "See Accountants' Compilation Report" where on page 7 there is "Note 3: Leases" stating:

The Company leased the facility from Colonial/Princeton Property, LLC, an unrelated entity from May 1, 2007 through October 21, 2007. The Company then entered into a twenty year lease commencing October 22, 2007 with PHCH Realty, LLC (a related entity). Minimum monthly rental payments based on 88 beds is \$23,019 a month, increasing at various points during the lease. Rent totaled \$184,468 for 2007.

Levinson does not know what the monthly lease payment is at this time, but asserted it is intended to cover the mortgage payments, both principal and interest. (TR. 156-158)

As to the seller of the subject property, Rothner, the witness had no financial relationship with Levinson. (TR. 158-159)

On redirect examination, Levinson further testified that the purchase price of \$29,500 per bed was deemed to be "somewhat within the range of what nursing home beds were being sold [for] at the time." (TR. 161)

Lastly, the appellant called Thomas H. Sweeney, Supervisor of Assessments in Bureau County as an adverse witness. Although he does have a college degree, Sweeney acknowledged that he is not an appraiser in the State of Illinois. However, when asked if he has any appraisal experience, he stated, "Twenty-four years in this office, and another five years in Christian County." (TR. 163)

Sweeney testified that there are six nursing homes located in Bureau County, two of which are exempt. In his position, Sweeney "deals with" the valuations of nursing homes in Bureau County. The township assessors do the initial evaluation and data collection on the properties and Sweeney's office processes the data and does the initial valuations along with handling of any appeals, of which there have been three on nursing homes. (TR. 163)

In the course of disclosing witnesses, appellant's counsel was provided with a copy of the transcript of continuing education courses which Sweeney has taken. As to his course work, Sweeney noted he has taken courses in the valuation of shopping centers which are income-producing properties. (TR. 164) When asked if he has taken any courses that deal specifically with the valuation of nursing homes, Sweeney stated, "Just in income-producing properties." (TR. 165) He further stated that there are no courses offered by the Illinois Property Assessment Institute (IPAI), the Department of Revenue or the International Association of Assessment Officials (IAAO) which deal specifically with nursing homes "had I felt it was necessary."

(TR. 165) Furthermore, he asserted that related to continuing education requirements, the Department of Revenue only has accredited courses offered by itself, the IPAI and the IAAO. (TR. 165-166) When asked if he could have sought out a course directly on the valuation of nursing homes, Sweeney stated:

If I would have undertaken it on my own volition just for the sheer seeking of knowledge at my own cost and my own investment, I suppose I could have. But they would not have been reimbursed by the County nor credited to any ongoing education with the Department of Revenue, so there wasn't a particular point in doing so. (TR. 166)

In order to assess the four nursing homes in Bureau County, Sweeney uses depreciated costs on most properties "until and unless we have more and more detailed information." In addition, the witness is familiar with the method of capitalizing income, "although, I have not seen a lot of the things that you guys have here." (TR. 167) More specifically, to assess nursing homes in the county, Sweeney uses a cost approach to begin with (as he does with all properties) along with more detailed information as it becomes available. (TR. 167-168) The witness finds that the cost approach is a uniform method of evaluating property across all types of property and it is best when the property is new and becomes less reliable as the property ages. (TR. 168)

Sweeney was asked why the estimated market value of the subject property increased from 2007 at \$1,346,547 to \$2,246,937 for 2008 and stated:

We get sales ratio reports back from the Department of Revenue. When sales fall outside of the acceptable range of those ratios, we review them. Procedurally, my office reviews all residential properties, commercial ones, industrial ones, whatever would happen to fall outside of the acceptable range of sales ratios as reported to use by the Department of Revenue. This particular property fell well outside of that acceptable range, which is 15% coefficient of dispersion from its median level. It is a percentage of a percentage. (TR. 169)

Therefore Sweeney increased the subject's assessment because "the sale price was significantly outside of the acceptable range where our assessment was, so we reviewed the assessment, as we do procedurally with all properties that have sales that occur - that exhibit that sort of deviance." (TR. 169) The witness was asked if he increased the subject's estimated fair market value due to its October 2007 purchase price and Sweeney stated, "That's what flagged our attention to the property, and that made us take another look at it as far as reevaluating it." (TR. 169) The witness also testified that the subject's 2008 estimated market value of \$2,246,937 was based primarily on the sale price with verification from the income approach. The sale price by a

willing buyer and a willing seller is indicative of market value according to Sweeney. He further asserted that he did not value the subject property at its sale price of \$2.596 million because "[t]he median level of assessment was less than that." The witness stated that the township assessor felt that 5% less than the sale price was "what she generally does with most other properties, and that's about where we are with that. We are a little less than the 32.75[%], which is the median level on this property. So, actually, we went to a little less than what we would have normally." (TR. 169-171)

Having acknowledged that the subject's assessment was primarily increased due to the sale of the property, the witness was asked if he recognized the fact that the sale included items of personal property to which he responded that the transfer declaration reported zero for personal property. (TR. 172)

Sweeney was asked if he would place less emphasis on a sale price if it lacked exposure to the market and he acknowledged he would give more weight to a sale price that was exposed to the market for six months, but then noted that his office still considers sale prices "even if they are auctions, sheriff's deeds, whatever they are, we consider sale prices." (TR. 172)

In the course of assessing the nursing home properties within Bureau County, Sweeney reviews their respective financial statements if they are submitted to his office. The witness acknowledged that the financial statements are not identical from one property to the next. When asked if that results in differing values, the witness noted that the properties "are in a fairly tight range of values." When asked if the range was tight due to uniformity, the witness stated, "Because the values are fairly uniform." (TR. 175)

The witness also testified that he made no further independent inquiry regarding the sale transaction as reported in the transfer declaration and/or whether there was a separate transaction relating to personal property related to the subject's sale either with buyers, sellers or others involved in real estate. (TR. 176-177)

Upon questioning by the board of review's representative, Sweeney testified that in response to the subject property's complaint before the Bureau County Board of Review, he gathered sales data for other nursing homes located outside of Bureau County. (TR. 181)

Based on the foregoing, the appellant through counsel requested a total assessment for the subject property which would reflect a market value of approximately \$840,000 at the statutory level of assessments.

The board of review submitted its "Board of Review Notes on Appeal" as required by the Property Tax Appeal Board wherein the

final total assessment of the subject property of \$758,715¹⁰ was disclosed. The subject's final assessment reflects an estimated market value of \$2,279,108 or \$25,899 per bed using the 2009 three-year median level of assessments for Bureau County of 33.29% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

In support of the assessment of the subject property and in response to the appellant's appraisal, the board of review submitted a six-page brief prepared by counsel along with attachments identified as Exhibits A through F.¹¹ As to the appellant's appraisal, the board of review contends that the income approach performed by VanSanten inappropriately failed to consider the monthly rental payment to the related entity of \$23,019. Based on this lease data, the board of review argues that the rental payment amounts to \$276,228 per year "with increases as [sic] various points during the 20 year life of the lease. Capitalization of that amount readily justifies the assessed valuation of the Assessor and the Bureau County Board of Review." (Brief, p. 5 & 6)

In its brief the board of review also asserts that the subject's reported October 2007 purchase price of \$2,596,000 is greater than its estimated market value based on its assessment and the Princeton Township three-year median level of assessments of 32.75%. (Brief, p. 1-2) The board of review further argued in part ". . . even accounting for the fact that the subject property will require a sprinkler system by 2012, the purchase reflected on the transfer tax declaration is a legitimate representation of the market value of the subject property." (Brief, p. 4) Exhibit A is a group of four documents which includes a memorandum from the board of review to its retained counsel outlining its reliance upon the subject's sale price and criticizing various aspects of the appellant's appraisal report (Exhibit A 2). Exhibit B is a group of three documents relating to the subject property including the Illinois Real Estate Transfer Declaration regarding the subject's sale transaction in October 2007 for \$2,596,000 which denoted the property was not advertised for sale (Exhibit B 1).

The board of review called Sweeney as its only witness. In addition to his previously noted experience and education, Sweeney has been designated as a Certified Illinois Assessing Official by the Department of Revenue. (TR. 182)

In further support of the subject's assessment, the board of review presented data on three comparable sales in a grid analysis and in its brief argued that the subject's sale price

¹⁰ The appellant included copies of the underlying Final Decisions of the board of review for the three parcels which reflect a total assessment of \$758,715, despite the board of review having reported a total assessment of \$757,715 on its "Board of Review - Notes on Appeal."

¹¹ Exhibit F is a Certificate of Mailing and will not be further addressed.

was lower than some of the comparables in part due to its lack of a sprinkler system. (Brief, p. 5)

Sweeney testified regarding a property known as Springwood (comparable #1 on the grid) which was once a nursing home. As testified to by Sweeney, a trophy manufacturing facility contaminated the land of the neighboring nursing home. As part of a settlement of the resulting litigation there was a court ordered sale where the manufacturer, as an adjacent property owner, was forced to purchase the contaminated property in July 2000 (Exhibit C 1-a) for \$1,600,000. Sweeney also asserted, "They [the purchaser] had to demolish the building." (TR. 182-186) As depicted in the grid analysis, the facility had 46 beds resulting in a sale price of \$34,783 per bed.

Comparable #2 in the grid is supported by documentation identified as Exhibit C 3-a which includes a real estate transfer declaration depicting a July 2005 sale of a skilled nursing facility. The property was not advertised, but sold for \$2,044,000 and had 42 beds in a facility that was built in 1968. The sale price reflects \$48,667 per bed.

Comparable #3 in the grid is supported by documentation identified as Exhibit C 2-a, a transfer declaration related to the nursing home known as River Shores located in Marseilles, Rutland Township, LaSalle County. The documentation reflects a January 2003 sale price of \$2,500,000 and noted the transaction as "one of eight properties being purchased as a group." The board of review reports the property has 49 bed resulting in a sale price of \$51,020 per bed.

The next item in the board of review's submission is a seven-page document identified as Exhibit E 1a to E 7. The first page is identified in handwriting at the top as "Real Property Appraisal Manual (2000)" and depicts a chart. No testimony or further evidence was elicited concerning the relevancy of this document. The next six pages are individual sheets which describe sales of six different properties as follows:

- January 2002 sale of a nursing home in East St. Louis for \$7,340,376 or \$48,936 per bed given 150 patient beds in a building of 33,256 square feet of building area. As set forth in the description, this was part of a three facility transaction "with an aggregate unit price of \$44,444 per bed."
- January 2002 sale of a 150 bed nursing home in Caseyville for \$7,888,057 or \$52,587 per bed. As stated in the description, this was "part of a three facility transaction with an aggregate average price of \$44,444 per bed."
- January 2002 sale of a 150 bed facility in Cahokia for \$4,770,957 or \$31,806 per bed. The description also notes

this "was part of a three facility transaction with an aggregate unit price of \$44,444 per bed."

- November 2007 sale of a 70,314 square foot facility with 259 beds located in Bloomingdale which sold for \$12,898,100 or \$49,800 per bed.
- 2007 sale of two facilities in Rochelle which sold for a combined \$4,400,000. The facilities combined have 31,000 square feet of building area and contain a total of 124 beds resulting in a sale price of \$35,484 per bed.
- January 2008 sale of an 82 bed facility in Freeport which contains 84,717 square feet of building area. The property sold for \$4,020,539 through a special warranty deed and reported personal property amount of \$605,539. Thus, the real estate sold for \$3,415,000 or \$41,646 per bed. The description also asserted the facility was constructed in 1971, was a mix of one-story and two-story with a notation that it "is not of modern design for nursing homes."

Sweeney also testified regarding the former Orchard View or Peterson 118-bed nursing home facility in Princeton that eventually closed. This property of approximately 20-acres of land area was originally owned by the county and operated as "Bureau County's poor farm" with structures that are probably 100 years old with the primary building being a standard two-story, "not particularly conducive or built for the purpose of being a nursing home to start with." Sweeney performed a valuation of the property for the county board opining a value of \$1.7 million which was the initial asking price. "The reason it eventually sold for less than that is because they lost count on their census, and that was part of the agreement they made at the sale. The original purchase price was what I told them it was worth." The witness testified that the present use of the property after its sale to a charitable organization for \$43,000 has been as a home for transients. (TR. 189-192)

Sweeney next opined that if he capitalized the income stream of \$23,046 per month at an 8% gross rents cap rate "we use on most normal income-producing properties, used for probably 10 years as a check point" he found \$3,456,900. In contrast, applying the 12% cap rate from VanSanten, Sweeney arrived at a calculation of \$2,304,600.

On cross-examination, Sweeney asserted that it was appropriate to rely upon an 8 year-old sale price, such as for Springwood, because it was a block away from the subject property and the subject's market is a slow-changing area. (TR. 194-195)

As to the court-ordered sale, Sweeney testified that the nursing home property could no longer be occupied due to the toxic waste in the ground and the manufacturing company was required to remove it. The witness agreed that a court-ordered sale would

indicate duress and "would also indicate to me less than market value generally." (TR. 195-196)

Sweeney also acknowledged that income streams have an impact on the value of property. As to the three sales listed in the grid analysis, the witness did not perform any analysis of the income and expenses of the facilities. He further reiterated that properties may have different values based on different income streams. "In this particular case [the grid analysis], it looks like they were higher values [than the subject]." Sweeney also asserted that if the three comparables in the grid analysis had much higher earnings per bed than the subject, such a fact would validate the higher price per bed as compared to the subject property. (TR. 196-199)

As to the sale of the former county facility, part of the sales agreement was maintenance of the census and when that did not occur the sales price was reduced from \$1.7 million to \$1.4 million. Subsequently the facility was closed. (TR. 199-201, 203-204)

As part of his duties, Sweeney looks at income streams when they are provided. In the circumstances of the subject, Sweeney contends that lease payments between related parties were a reliable indicator of market value "because it was essentially the same lease payments that were in existence prior to the sale." (TR. 201)

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

In written rebuttal, the appellant through counsel presented documentation related to the auction of the facility which was formerly owned and operated by Bureau County, a newspaper article regarding the sale for \$1.4 million to Petersen Health Care and a copy of the transfer declaration depicting the subsequent sale of this facility in November 2011 for \$43,000.

After hearing the testimony and considering the evidence submitted by the parties, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The issue before the Property Tax Appeal Board is the determination of the subject's market value for *ad valorem* tax purposes.

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 proven 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code §1910.65(c).

The subject property has an assessment reflecting an estimated fair market value of \$2,279,108 or \$25,899 per bed using the 2009 three-year median level of assessments for Bureau County of 33.29%. As will be set forth in detail below, examination of the record evidence leads the Property Tax Appeal Board to conclude the 2009 assessment should be decreased.

Illinois' system of taxing real property is founded on the Property Tax Code. (35 ILCS 200/1-1 et seq.) Section 1-130 of the Property Tax Code (hereinafter the Code) defines "real property" in pertinent part as:

The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. (35 ILCS 200/1-130).

As a general proposition, except in counties with more than 200,000 inhabitants that classify property for taxation purposes, each tract or lot of property is to be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145. Section 1-50 of the Code defines fair cash value as:

The 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 Illinois Supreme Court defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d. 428 (1970). "Fair cash value can only be established where there is an offer, *and* an acceptance, in a *bona fide* transaction." Ellsworth Grain Co. v. Illinois Property Tax Appeal Board, 172 Ill.App.3d 492, 559 (4th Dist. 1988) [emphasis in original].

As further stated in Residential Real Estate Co. v. Property Tax Appeal Board, 188 Ill. App. 3d 232 at 242 (5th Dist. 1989):

A contemporaneous sale between parties dealing at arm's length is not only relevant to the question of fair cash market value but would be practically conclusive on the issue of whether an assessment was at full value. [citation omitted.] However, the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller **and other circumstances**. Citing

Ellsworth Grain, *supra*, 72 Ill.App.3d 552. [Emphasis added.]

Black's Law Dictionary (9th ed. 2009) defines "arm's length" as "relating to dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship."

The appellant through counsel presented the testimony of Levinson that Levinson was approached by his long-time friend and neighbor Rothner about purchasing two facilities which were owned by Rothner's company. The parties stipulated that the sale of the subject property was an "arm's length transaction." (Stipulation, #5)

As set forth in the rules, it is the policy of the Property Tax Appeal Board that parties to an appeal should, to the fullest extent possible, stipulate to all matters that are not, or fairly should not be, in dispute. (86 Ill.Admin.Code §1910.55(a)). The rule further provides that, "If a stipulation is agreed to by all interested parties, it may be taken into consideration by the Property Tax Appeal Board, but must be supported by evidence in the record. The Board reserves the right to write a decision based on the facts, evidence and exhibits in the record." [Emphasis added.] (86 Ill.Admin.Code §1910.55(b)). See also Montgomery Ward & Co. v. Industrial Commission, 304 Ill. 576 (1922); Brink v. Industrial Commission, 368 Ill. 607 (1938); Fitzpatrick v. Illinois Human Rights Commission, 267 Ill.App.3d 386 (4th Dist., 1994).

The Board finds that it is correct to assert, based on the testimony in this proceeding, that the relationship between Levinson and Rothner was "arm's length" in that there was no 'relationship' in terms of a familial status or financial status and all indications are that they had roughly equal bargaining power. See also Bloomington Public Schools, Dist. No. 87 v. Illinois Property Tax Appeal Board, 379 Ill.App.3d 387 (4th Dist. 2008).

However, the concept that a sale price is reflective of 'market value' also includes a number of other factors, including but not limited to, exposure on the open market for a reasonable period of time. See also, Calumet Transfer, LLC v. Property Tax Appeal Board, 401 Ill.App.3d 652 (1st Dist. 2010). In the context of condemnation proceedings and the consideration of comparable sales data to ascertain market value, the Illinois Supreme Court has previously stated:

. . . sales, when made in the free and open market, where a fair opportunity for competition has existed, become material and often very important factors in determining the value of the particular property in question. But it seems very clear that, to have that tendency, they must have been made under circumstances where they are not compulsory, and where the vendor is

not compelled to sell at all events, but is at liberty to invite competition among those desiring to become purchasers.

Peoria Gaslight & Coke Co. v. Peoria Terminal Ry. Co., 146 Ill. 372 (1893). For purposes of the sale of the Colonial Hall Nursing & Rehabilitation Center in October 2007, there is no evidence that any other entity besides Levinson's partnership group had an opportunity to purchase the property through any type of exposure on the open market. Thus, there is no evidence whatsoever that the general marketplace for nursing home facilities had the same opportunity to purchase the subject property at any negotiated sale price.

Other recognized sources further demonstrate the fact a property must be advertised or exposed in the open market to be considered an arm's-length transaction that is reflective of fair market value. *Black's Law Dictionary* (6th ed. 1991) defines "market value" in part as:

. . . the price property would command in the **open** market. . . . the property being exposed for a reasonable period of time. [Emphasis added].

The Board finds there are also other credible sources that specify a property must be advertised for sale in the open market to be considered an arm's-length transaction. *The Appraisal of Real Estate*, 12th ed. (2001), by the Appraisal Institute, on page 22 provides in pertinent part:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Additionally, *Property Assessment Valuation*, 2nd ed. (1996), by the International Association of Assessing Officers, on pages 18, 35 and 100 similarly presumes in pertinent part that to be an indicator of market value a sale must include a reasonable time for exposure to the open market.

This language all suggests a property must be publicly offered for sale in the market to be considered indicative of fair market value. The board of review provided no evidence to dispute the testimony presented by Levinson that there was no known exposure of the subject nursing home facility on the open market prior to the sale transaction with his partnership group. The Property Tax Appeal Board finds on this record that there is no evidence that each of the necessary prerequisite elements of an arm's length sale transaction have been satisfied with regard to the

sale of the subject property. Thus it is factually incorrect to characterize the sale of the subject property as qualifying as a transaction reflective of 'market value' since there was no market exposure of the subject property prior to the sale transaction in October 2007. Therefore, the Property Tax Appeal Board finds that the sale of the subject property in October 2007 does not qualify as an 'arm's length' transaction which can be deemed to be conclusive as to the estimated fair market value of the subject property.

Besides relying upon the sale price of the subject, to support the subject's estimated market value the board of review provided limited data on ten suggested comparable sales that occurred between July 2000 and January 2008 for prices ranging from \$1,600,000 to \$12,898,100. After analyzing the data provided, the Property Tax Appeal Board finds that six of the suggested comparable sales were not proximate in time to the assessment date at issue of January 1, 2008. When suggested comparable sales are distant from the valuation date, there is no indication that such sales would be reflective of the subject's estimated market value as of the relevant date. Due to this lack of proximity in time, those six sales have been given reduced weight in the Board's analysis.

The four remaining sales presented by the board of review occurred between July 2005 and January 2008 for prices ranging from \$2,044,000 to \$12,898,100. The limited data in the record reveals that three of these comparables had from 82 to 259 beds which reflected sales prices for three facilities ranging from \$35,484 to \$49,800 per bed; the number of beds for the property in Amboy was not apparent in the record.

The preponderance of the evidence supports the proposition that the purchase price of an operating nursing home reflects the total assets of the business including furniture, fixtures and equipment, and all intangible property. The record includes testimony from VanSanten that for valuation, a nursing home like the subject is a special purpose property having been specifically designed to provide nursing services to patients who need it and operationally it is an intensive business that provides skilled nursing care to patients that live there. As he stated the primary purpose of a nursing home facility is to provide 24 hour skilled nursing care to patients such that the resulting cash flow generated is more than just the underlying land and building. VanSanten also opined that nursing homes are not easily convertible to any other use and asserted that once a facility is no longer viable, the highest and best use is typically to tear it down. As the appraiser further asserted, a nursing home consists of the total assets of the business, including the land, building and personal property (beds, kitchen equipment and dining room furniture) in addition to intangible assets such as the assembled and trained workforce, the discharge agreements with local hospitals which feed the nursing home and help maintain occupancy, and the brand name associated with the facility and its community reputation. In conclusion, VanSanten

testified that the single most important factor for an investor in purchasing a nursing home facility is the cash flow as reflected by the profit-per-bed which therefore must be factored into any valuation.

The appraiser's testimony was further supported by Levinson's testimony that the revenues of the subject facility are mostly attributable to the "fact that it is an operating, licensed nursing home, so it is the services that are provided and reimbursed for the nursing services" which generate the revenue. (TR. 119)

The Board finds that the totality of this evidence regarding the unique properties of a sale of an operating nursing home indicates that it is not suitable to assume that a comparable sales-price-per-bed analysis can equate to an estimated market value for another facility like the subject without any consideration for differences or adjustments. Given the totality of the record, the Property Tax Appeal Board finds the very limited data on four sale comparables presented by the board of review neither sufficiently support the subject's estimated market value nor do they overcome the appellant's appraisal evidence in this record.

In determining the fair market value of the subject property, the Board examined the appellant's appraisal and the four comparable sales suggested by the board of review as well as the arguments made by each of the parties to the proceeding. The appellant's appraisal utilized the three approaches to value in valuing the subject property, while the board of review's evidence included submission of a total of ten sale comparables, only four of which were found to be sufficiently recent in time to be considered, but there was very limited descriptive data provided for these most recent sale comparables.

The appellant's appraiser gave an estimate as of January 1, 2009 of \$720,000 or \$8,182 per bed for the subject property. The Board finds the appellant's appraiser, who also testified in this proceeding, considered the three traditional approaches to value to arrive at a final conclusion of value. As detailed in his report and testimony, VanSanten also attempted to segregate the "business value" associated with the subject property and then deduct that amount from the final conclusion of the "going concern value" to derive a final value of the subject property's real estate only.

In contrast, the raw comparable sales presented by the board of review fail to segregate these elements from the reported sale prices reported for these properties.

After reviewing the record, the Property Tax Appeal Board finds one of the primary disputes that the board of review had with VanSanten's appraisal was VanSanten's determination of effective age and as a result of that determination, the amount of depreciation to be applied in his cost approach. The board of

review contends that VanSanten failed to adequately account for the various renovations that have occurred at the subject facility since its construction in 1974. The board of review, however, did not present any substantive evidence that VanSanten's effective age determination was erroneous.

Appellant's appraiser estimated an effective age of 35 years. With an economic life of 40 years and utilizing an age/life method, VanSanten arrived at a depreciation calculation of 87.5% to the building's replacement cost new.

The Property Tax Appeal Board finds there was no evidence presented by the board of review to dispute the condition of the subject property as portrayed by VanSanten. Similarly, there was no substantive evidence presented by the board of review to challenge VanSanten's conclusion that the effective age of the property was equivalent to its actual age. While effective age is certainly a subjective determination, there must be some contradictory factual basis to challenge the conclusion made by VanSanten. Thus, in the absence of such contradictory evidence sufficient to challenge the appraiser's conclusion, the Board finds the appraiser's effective age determination is credible on this record in that VanSanten toured the facility and determined its effective age was equivalent to its actual age.

Similarly, the board of review sought to challenge the income approach analysis presented by VanSanten by asserting that it was erroneous to exclude the rental payment made by the operating entity to the real estate entity of the subject property, despite the fact that all parties acknowledge that these are related entities which hold both the real estate and the nursing home operation. As the primary challenge to the income approach, the board of review contended that an appropriate methodology to arrive at the value of the subject property was to capitalize the monthly rental payment of approximately \$23,000 at a rate of at least 8% which would support the subject's estimated market value based on its assessment. The Board finds, however, that this interpretation of an income approach to value as suggested by the board of review is not an appropriate analysis. The primary failure is the lack of any accounting for expenses. Absent this necessary element of an income approach to value, the Board finds that no further credence need be given to the board of review's suggested income approach analysis as solely limited to a rental payment with a capitalization rate that had no support in the record.

As a final matter, the sales comparison approach to value of a nursing home facility presents unique valuation problems as outlined in the appraisal report and accompanying testimony of VanSanten. Furthermore, this complexity was supported by the testimony of Levinson as an owner/operator of the subject facility. As described by Levinson, when the subject property sold, there was an ongoing business with staff, residents, and personal property which all transferred as part of the sale. In VanSanten's appraisal applying the sales comparison approach to

value, the appraiser found it necessary to adjust the comparable sales by considering their cash flow as described on page 123 and then also to deduct the depreciated value of personal property as determined for the subject as shown on page 126.

In contrast, the board of review presented limited descriptive data on ten suggested comparable sales with no adjustments. As discussed previously in this decision, only four of those sales were proximate in time to the assessment date at issue.

Given the record evidence as a whole, the Property Tax Appeal Board finds for the sale of an operating nursing home, the best valuation approach should address those elements which VanSanten characterized as intangible assets and which were confirmed as part of the transaction by Levinson. The Property Tax Appeal Board finds the lack of such adjustment for these intangible aspects of the sale transaction related to an operating nursing home is another basis upon which to discount the sales provided by the board of review as not being a valid or reliable indicator of fair market value of the subject property. Board of Education of Meridian Community Unit School Dist. No. 223 v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100,068, 2011 WL 6096308 (Ill.App. 2 Dist). In the absence of an effort to account for these intangible assets, the resulting sale comparables fail to reflect a value of only the real estate which is subject to assessment in Illinois. Therefore, the Property Tax Appeal Board further finds that the limited raw sales data submitted by the board of review does not prove to be a viable measurement of market value and thus fails to support the subject's assessment which is at issue in this proceeding.

In this appeal, the Property Tax Appeal Board finds the best evidence of value is the appraisal prepared by VanSanten and presented by the appellant estimating the subject property had a market value of \$720,000 as of January 1, 2009. The Board finds the appraisal submitted by the appellant considered the unique factors associated with the subject property in arriving at the opinion of market value. In developing his opinion of value, he considered the fact that the subject property had a business component due to the extensive care services provided that had to be separated from the value of the underlying real estate.

The appellant's appraiser developed the three traditional approaches to value in estimating the market value of the subject property. The report contains a detailed explanation of the appraisal process, a description of the underlying data supporting the analysis, and detail mathematical computations for each approach to value that leads to a logical conclusion of value.

In conclusion, the Property Tax Appeal Board find the appellant submitted the best evidence regarding the subject's estimated fair market value on this record. Therefore, the Board finds the subject property had a market value of \$720,000 as of January 1, 2009. Since market value has been established, the 2009 three-

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year median level of assessments for Bureau County of 33.29% shall apply.

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



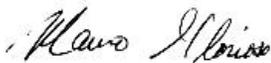
Chairman



Member



Member



Member



Member

DISSENTING: _____

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

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

Date: February 22, 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.