



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

APPELLANT: Miller Container Corp  
DOCKET NO.: 09-01368.001-I-3 through 09-01368.002-I-3  
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Miller Container Corp, the appellant, by attorney Jackson E. Donley in Springfield, and the Rock Island County Board of Review.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
09-01368.001-I-3	16-28-200-001	106,152	1,129,695	\$1,235,847
09-01368.002-I-3	16-28-100-001	90,635	1,401,658	\$1,492,293

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property consists of two parcels containing a total of approximately 23.08 acres. The parcels are improved with two connected industrial buildings of part one-story and part two-story design containing approximately 465,678 total square feet of building area<sup>1</sup> built in 1959 with various additions beginning in 1960 and occurring until 2004. The building is predominately steel framed and metal clad with shop/warehouse clear ceiling heights ranging from 15'6" to 23'4" for a weighted average of 20'6", wet sprinklered, and features four interior rail loading spots and 27 exterior truck loading docks. There are various air-conditioned office areas within the building totaling 13,550 square feet or 3% of office build-out. Site improvements of the

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<sup>1</sup> The board of review failed to submit a copy of the subject's property record card as required by the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.40(a)). Salisbury's report depicted the subject as containing 465,678 square feet of building area of which 16,545 square feet was said to be office area. Comparing Salisbury's report on page 27 to Richter's report on page 16 where the improvements were itemized, it appears that Richter did not include a "garage building" said to have been constructed in 2003 of 8,400 square feet of building area.

property include asphalt drives, parking areas, concrete loading docks along with exterior lighting and landscaping. The property is located in Rock Island, Blackhawk Township, Rock Island County.<sup>2</sup>

The appellant appeared through counsel before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of this argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraiser J. Edward Salisbury of Salisbury & Associates, Inc. Using the three traditional approaches to value, the appraiser estimated the subject property had a market value of \$6,100,000 as of January 1, 2006. In reconciling the three approaches to value, Salisbury gave most weight to the sales comparison approach.

The subject property consisting of two parcels has a total assessment of \$2,918,931. The subject's total assessment reflects an estimated market value of \$8,773,463 using the 2009 three-year median level of assessments in Rock Island County of 33.27% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)). In support of the subject's assessment, the board of review presented an appraisal prepared by a Certified General Real Estate Appraiser Howard B. Richter of Howard B. Richter & Associates, Inc. Using the sales comparison approach to value, Richter estimated the subject property had a market value of \$8,200,000 as of January 1, 2009.

#### **PRELIMINARY MATTER**

At hearing, the appellant's appraiser Salisbury was not present to provide testimony and/or to be cross-examined regarding his report, the methodology used and/or the adjustments made to arrive at a value conclusion. For the appellant's case-in-chief, counsel for the appellant rested on the written record.

In response thereto, the board of review requested that the appellant's appeal be dismissed "based on the lack of evidence on the part of the appellant" noting the appellant's evidence consisted of an appraisal with a value conclusion as of January 1, 2006 whereas the board of review had an appraisal, with the appraiser present and ready to testify, with a value conclusion as of January 1, 2009, the assessment date at issue in this proceeding.

In reply, the appellant's counsel argued that the Salisbury appraisal was subjected to cross-examination in a prior year or

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<sup>2</sup> The Property Tax Appeal Board takes notice that this property was the subject matter of an appeal in Docket No. 06-00660.001-I-2 through 06-00660.002-I-2 wherein the appraiser Salisbury appeared to provide testimony regarding his appraisal report and was subject to cross-examination. (86 Ill.Admin.Code §1910.90(i)). Furthermore, this property has been the subject matter of appeals in 2007 and 2008 where the parties arrived at stipulated total assessments of \$2,048,380 and \$2,057,158, respectively, in Docket Nos. 07-00950 and 08-01356.

years that this property has been appealed before the Property Tax Appeal Board. The appellant's counsel further responded, in part, that the lack of testimony as to the appraisal may impact the weight to be given to the report, but that it did not merit dismissal of the appellant's appeal.

The Property Tax Appeal Board hereby denies the dismissal motion made by the board of review. Considering the Official Rules of the Property Tax Appeal Board, there is no provision for dismissal of an appeal when an appraiser is not present at a hearing. (See 86 Ill.Admin.Code §1910.67(1) & §1910.69).

The board of review's dismissal request also was made with regard to this 2009 assessment appeal contending in essence that the appellant presented no value evidence for the subject property as of January 1, 2009. The Property Tax Appeal Board also denies the board of review's dismissal motion on this basis because 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. *Official Rules of the Property Tax Appeal Board*, 86 Ill.Admin.Code §1910.65(c). The Salisbury appraisal with a valuation date of January 1, 2006 was filed to challenge the assessment date of January 1, 2009 in this matter. In Cook County Board of Review v. Property Tax Appeal Board, 334 Ill.App.3d 56, 777 N.E.2d 622 (1<sup>st</sup> Dist. 2002), the court stated "[t]here is no requirement that a taxpayer must submit a particular type of proof in support of an appeal. The rule instead sets out the types of proof that *may* be submitted. . . . Whether a two-year old appraisal is 'substantive, documentary evidence' of a property's value goes to the weight of the evidence, not its admissibility. [citing Department of Transportation v. Zabel, 47 Ill.App.3d 1049, 1052, 362 N.E.2d 687 (1977) (whether a six-month-old appraisal is sufficient to establish value is for the trier of fact to consider in weighing the evidence)]."

In conclusion, as to the absence of Salisbury at hearing, the Property Tax Appeal Board finds that Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill.App.3d 474 (2<sup>nd</sup> Dist. 1979); Russell v. License Appeal Comm., 133 Ill.App.2d 594 (1<sup>st</sup> Dist. 1971). Thus, in the absence of an appraiser being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the evidence and the value conclusion of \$6,100,000 as of January 1, 2006 has been significantly diminished and cannot be deemed conclusive as to the value of the subject property. See also Novicki v. Dept. of Finance, 373 Ill. 342 (1940); Grand Liquor Co., Inc. v. Dept. of Revenue, 67 Ill. 2d 195 (1977); Jackson v. Board of Review of the Dept. of Labor, 105 Ill. 2d 501 (1985). In summary, the Board finds the appellant's appraisal report is tantamount to hearsay. Oak Lawn

Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887 (1<sup>st</sup> Dist. 1983).

**APPELLANT'S CASE-IN-CHIEF**

In reconciling the three approaches to value, Salisbury gave most weight to the sales comparison approach to arrive at an estimate of value of \$6,100,000 as of January 1, 2006. In the sales comparison approach to value Salisbury considered eight comparable sales and one listing which were located in Davenport, Iowa and the Illinois communities of Macomb, Centralia, Effingham, Loves Park, Danville, Galesburg, Salem and Kankakee. The comparables ranged in size from 175,251 to 850,000 square feet of building area and ranged in age from 15 to 37 years old. The comparables featured land-to-building ratios ranging from 2.60:1 to 7.05:1, clear ceiling heights ranging from 17' to 40', and office build-outs ranging from .80% to 14.27% of building area. The properties sold from September 2000 to September 2006 for prices ranging from \$564,000 to \$6,300,000 or from \$1.97 to \$12.51 per square foot of building area including land. The listing, which has a verification date of September 2006 in the appraisal, was offered for \$6,300,000 or \$9.19 per square foot of building area including land.

After making adjustments to the comparables for date of sale, location, land-to-building ratio, conditions of sale, date of sale, size, condition of property, and age, the appraiser was of the opinion the subject had an indicated value under the sales comparison approach of \$13.00 per square foot of building area or \$6,100,000, rounded, as of January 1, 2006.

For the cost approach to value, the appraiser estimated a market value of the subject of \$5,900,000, rounded.

Also as outlined in the appraisal report, Salisbury estimated a value for the subject under the income approach of \$6,000,000, rounded.

Based on the foregoing evidence, the appellant requested a reduction in the subject's 2009 assessment reflective of the opinion of value in the Salisbury report.

**BOARD OF REVIEW'S CASE-IN-CHIEF**

As noted previously, the subject's final 2009 assessment of \$2,918,931 reflects an estimated fair market value of \$8,773,463. However, the board of review submitted an appraisal with an estimated market value of \$8,200,000 as of January 1, 2009. In a cover letter filed in this matter with the board of review's evidence, the board of review conceded that the Richter appraisal justifies a reduction in the assessment of the subject property. As such and based upon the appraisal's opinion of fair market value, the board of review proposed to stipulate to a total 2009 assessment of \$2,733,060 which would reflect an estimated fair market value of \$8,214,788 using the three-year median level of

assessments of 33.27%. Appellant rejected this proposed stipulation.<sup>3</sup>

At the hearing, the board of review called Howard B. Richter, the appraiser, as its witness. In his sales comparison approach to value, Richter analyzed six comparable sales which were located in East Moline, Rock Island, Peoria, Wilmington, Granite City and Loves Park. Richter testified the comparables were selected from similar sized, qualities of communities statewide which he characterized as "second-tier communities" and avoiding metropolitan Chicago which would reflect different economic characteristics. The comparables ranged in size from 105,000 to 545,000 square feet of building area and ranged in age from 14 to 56 years old. The comparables featured land-to-building ratios ranging from 1.64:1 to 5.82:1. Five of the properties have clear ceiling heights ranging from 14' to 32'; no ceiling height data was reported for Sale #3. The comparables have office build-outs ranging from 1.9% to 27.2% of building area and five comparables have from 11 to 111 truck loading docks with Sale #6 having "50' x 24' bays." The properties sold from March 2007 to September 2008 for prices ranging from \$2,700,000 to \$20,000,000 or from \$20.46 to \$46.51 per square foot of building area including land. After considering adjustments to the comparables for location, land-to-building ratio, size and condition, the appraiser was of the opinion that the subject had an indicated value under the sales comparison approach of \$18.00 per square foot of building area including land or \$8,200,000, rounded.

The appraiser testified that the income capitalization approach to value was not used as properties the size of the subject along with related relocation costs means the subject would lease only under distressed conditions. He also asserted that rentals are not consistent with the prices being paid by owner-users and the subject is not an investment grade property due to its age and condition. Therefore, Richter surmised that the subject would typically be purchased by an owner-user. (TR. 14)<sup>4</sup>

Richter also testified that the cost approach was not used since the subject has "heavily depreciated" and depreciation is very difficult to calculate with any degree of precision. However, Richter did include in a highest and best use analysis "comparison with vacant land sales to show that the building does contribute to the value of the land if vacant." (TR. 15)

Based on its appraisal evidence, the board of review requested a finding of \$8,200,000 as the fair market value of the subject as of the assessment date.

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<sup>3</sup> In addition, shortly before the date scheduled for hearing, counsel for the appellant proposed a stipulation for a total assessment of \$2,031,299 which would reflect an estimated market value of \$6,105,497 based on the three-year median level of assessments in Rock Island County. The board of review rejected this proposed assessment reduction and the matter proceeded to hearing as discussed herein.

<sup>4</sup> References to the transcript of the proceedings are denoted "TR." followed by page citation(s).

On cross-examination, Richter stated that he verified each of the six sale comparables which he used in the appraisal report. The appraiser testified that each of the sales were originally reported by CoStar Comps, a service he uses and that he verified the data from that starting point. Sale #1 was verified by viewing the building's exterior, review of county records on the sale and spoke with a knowledgeable, local appraiser, Mark Nelson, as to his familiarity with the property. He stated he did the same thing with Sale #2 in Rock Island. For Sale #3, Richter spoke with one of the two brokers involved in the sale named Gregory Stone and also spoke with an area appraiser Hugh Turley who was also familiar with the property. For Sales #4 and #5, Richter had observed both of these properties for prior appraisal assignments, but he still performed the same research, consulted with local appraisers, including he believes, Ed Brorsen in Kankakee. As to Sale #6, Richter reviewed county records, published records, and spoke with an appraiser in the Loves Park area.

Richter acknowledged that only in the case of Sale #3 was the broker he spoke with a party to the sale transaction; in the other five sales, he was unable to contact the buyer or seller, but he contends that CoStar Comps "did" in preparing their data prior to publication. (TR. 19) Richter acknowledged that some of his data was drawn directly from CoStar.<sup>5</sup>

The witness was asked to discuss which, if any, of the six sales he analyzed were leased at the time of sale. In summary the witness acknowledged that only two of the properties were not leased, while the remaining four sales were either leased or may have been leased.<sup>6</sup> Richter testified that no adjustments were made for the four sales that were or may have been leased "because none of the leases were of recent duration, had

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<sup>5</sup> Counsel argued that data prepared by CoStar Comps was tantamount to hearsay since the preparer of the material was not available for questioning. Experts, however, can give opinions based on reliable facts not in evidence. Wilson v. Clark, 84 Ill.2d 186 (1981). Rather, the burden is placed upon the adverse party during cross-examination to elicit the facts underlying the expert opinion. Moller v. Lipov, 368 Ill.App.3d 333 (1<sup>st</sup> Dist. 2006). The Board also recognizes that appellant's counsel waived this objection later during the hearing. (TR. 39-40)

<sup>6</sup> Specifically, Richter testified that Sale #1 was leased "at one point" but he was not sure if the lease was in effect at the time of sale as the property was vacant when sold. The witness stated it was unknown if the lease had been bought out or terminated at the time of sale; the 1997 ten-year-lease was within a few months of expiring when the property sold. As to Sales #2 and #3, Richter testified these were not leased. Sale #4 may have been leased, but Richter "can't verify that personally." Sale #5 was in a month-to-month period following the expiration of its lease which "was due to be terminated in 15 months." The witness further asserted that near the end of the lease term either party could void the lease upon 30-days notice effectively making it a month-to-month rental which "would not have affected market value to a seller." (TR. 21) For Sale #6, Richter testified "it's not clear." A 1992 lease was in place and set to expire in 2012; the witness acknowledged that the property was occupied, but he could not ascertain if it was the same lessee or a successor lessee or a "succeeded lease." (TR. 21)

substantial remaining term to my knowledge and at the time were all reported and accepted by their local assessors as being reflective of market value, not subject to lease." (TR. 22)

On redirect examination, Richter stated that given all of the available information, if he were doing the appraisal of the subject again, he would still use the same six comparable sales. He also testified that he uses CoStar Comps as an initial step in research in his appraisal projects.

Upon additional cross-examination, Richter testified that in each sale, with the exception of Sale #3,<sup>7</sup> the sworn-to real estate transfer declaration was relied upon wherein the parties to the transaction reported that the sale price was reflective of market value and was not influenced by a lease. Moreover, this conclusion was "accepted on that basis by the local assessor." (TR. 26)

#### **APPELLANT'S REBUTTAL EVIDENCE**

For rebuttal, the appellant called Michael E. Lipowsky an Illinois Certified General Real Estate Appraiser with Lipowsky & Associates as a witness. The assignment given to Lipowsky was to "look at specific comparable transactions, not [to] do a review appraisal or any kind of review of Mr. Richter's appraisal." (TR. 29) The sales the witness was asked to look at "just so happens to be in [Richter's] appraisal report, and to conclude whether or not they would be applicable to a fee simple estate or what problems they would have in comparing them for a property of a fee simple estate." (TR. 29-30) In this regard, Lipowsky prepared a three-page letter dated July 19, 2011 with numerous attachments which the appellant filed as rebuttal in this proceeding.

As to Richter's Sale #2, this is the only one of the six sales "that would meet the qualifications of arm's length, fee simple transaction" as stated in the first paragraph of Lipowsky's letter.

As to the data he gathered and verified on the six sales, Lipowsky characterized this as "definitely conflicting information" which he contended absolutely would impact the value conclusion of the subject property for comparison purposes. He testified that the data goes to the "internal validity of the appraisal report" which the witness stated means with the data available, is he measuring what he thinks he is measuring? The witness asserted that in sales of leased-fee estates (triple net leases), the buyer and the seller are analyzing the lease terms and the monthly rental, not the physical characteristics and qualities of the real estate. Lipowsky further opined that five of the six sales analyzed by Richter were leased-fee sales and "they would have never sold for the price they did if they was

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<sup>7</sup> Richter spoke to one of the principals in this sale transaction concerning this owner-occupied property.

[sic] fee simple estates." (TR. 33) In this regard, Lipowsky opined that an adjustment for the real property interest would be required to these leased-fee sales. (See Attachment 16, pages on "transactional adjustments - real property rights conveyed" from The Appraisal of Real Estate, 13<sup>th</sup> Edition published by the Appraisal Institute, p. 322-23)

As shown in Lipowsky's data, Richter's Sale #1 was not advertised for sale. (See Attachment 1, a copy of a PTAX-203 Illinois Real Estate Transfer Declaration) Moreover, Lipowsky asserted that the property was under a long-term triple net lease until 2014 and thus a leased-fee interest was sold in the property, not fee simple title. (See Attachments 2 & 3, Assignment of Possession, Rents and Profits and a copy of an expired listing)

For Richter's Sale #3, according to Lipowsky the "building was never on the market." (TR. 31) In support of this contention, he included Attachment 4, a copy of a PTAX-203, Illinois Real Estate Transfer Declaration indicating that the property was not advertised for sale or sold using a real estate agent. The building was subject to a total business buyout according to Lipowsky. In support of this contention, he included Attachment 5, a copy of a newspaper article entitled, "German company buys L.R. Nelson."

As to Richter's Sale #4, according to Lipowsky the property was not advertised for sale and the "buyer is exercising an option to purchase." (See Attachment 6, PTAX-203 Illinois Real Estate Transfer Declaration) According to Lipowsky's investigation, the buyer was Dow Chemical Company which had been the lessee for the property for a number of years and was leasing the property at the time of purchase. (See Attachment 7, Memorandum of Lease Agreement dated February 4, 2003 with purchase option) In addition, Lipowsky opined that this property, located in a collar county to the Chicago metropolitan area, is "heavily influenced by the Chicago real estate market." In support of this contention, Lipowsky included Attachment 8 documenting an October 2007 sale of 85.36-acres of vacant land located in close proximity to Sale #4 for a price of \$77,905 per acre.

For Sale #5 presented in Richter's appraisal, Lipowsky contended that the property is not a trucking terminal, but is "a distribution warehouse." (See Attachment 10, describing the logistics services provided by Ozburn Hessey Logistic Services) Moreover, this property was 100% leased at the time of sale as shown in Attachment 11, PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A and therefore, a leased-fee interest was sold in the property, not fee simple title according to Lipowsky. (See also Attachment 12, Assignment of Rents)

As to Richter's Sale #6, Lipowsky found the property was 100% leased at the time of sale (Attachment 13, PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A) and therefore, Lipowsky contends that a leased-fee interest was sold in the property, not fee simple title. As set forth in his

memorandum, Lipowsky also asserted this transaction "was the results [sic] of a sale-leaseback arrangement from Barber-Coleman Company." (See Attachment 14, Memorandum of Recording of Lease and Attachment 15, Memorandum of Guaranty)

On cross-examination, Lipowsky testified that he was retained to do the assignment by Property Tax Services of Illinois. Since Property Tax Service of Illinois is not the appellant, taxpayer and/or owner of the subject property, the board of review asserted that "everything that Mr. Lipowsky has stated is hearsay." The Hearing Officer advised the board of review representative, a non-attorney, that he was in error in this legal assertion.

Upon further cross-examination, Lipowsky testified that an appraiser should know what the lease terms are of these sale properties to derive and/or consider an appropriate adjustment to the sale price. (TR. 36) He did not know the exact lease terms for either Richter's Sale #1 or Sale #4. However, for Sale #5 the lease terms were presented as part of the rebuttal in Attachment 12 and the assignments of rents also shows the lease agreement of \$5,553,555.60 according to the witness. (TR. 37) As to Richter's Sale #6, the only lease information Lipowsky had was that it was a sale leaseback arrangement for 20 years.

Based on a question from the Hearing Officer, Lipowsky opined that even if the leases were at market rent, these sales used by Richter would reflect fair market value "of a leased-fee estate." He further contended that a triple net investor would pay a premium for a property with a lease in place. In addition, it was his opinion that decisions of the Property Tax Appeal Board have frowned upon the use of leased fee estates as comparisons to owner-occupied properties. Therefore, Lipowsky felt that many of the sales used by Richter were not comparable to the subject. (TR. 38)

#### **BOARD OF REVIEW'S SURREBUTTAL EVIDENCE**

The board of review recalled Richter as a witness to address the assertions made by Lipowsky. Richter stated that he used the CoStar Comparables source to identify which properties to research. The initial search led to 12 or 15 sales which, "for one reason or another," were narrowed down to the six most comparable and most appropriate in terms of the conditions of sale. (TR. 40)

The witness asserted he obtained the "reporting transfer declarations" on each of the properties, spoke with local assessors, and spoke with a local, knowledgeable party, either a broker involved in the sale or an appraiser familiar with the property. Based on these actions, Richter stated he was satisfied that all reasonable steps were taken to verify the data provided from multiple sources. He further asserted "as a qualified expert witness, I am allowed to rely on data obtained in this manner."

Next, the witness addressed in turn Lipowsky's remarks on the six comparable sales which Richter presented in his appraisal report. Richter stated, "He [Lipowsky] has presented matters of fact, which I do not believe are matters of fact. He has testified to matters of his judgment in which I question the judgment involved." (TR. 41)

As to Lipowsky's reliance for Sales #1 and #3 on real estate transfer declarations that the property was not advertised for sale, Richter contends that for a party who offers very large industrial buildings for sale, there is no advertisement in the newspaper and there is no sign in the front of the property "to antagonize or arouse the suspicions and concerns of your employees." (TR. 42-43, 47) Richter stated, "All of these properties were made known that they were available for sale except one that we will speak of later. It was made known to the small circle of brokers who work nationwide on buildings of this size and quality. That is how these properties are marketed." (TR. 43)

Richter further asserted that he spoke with brokers regarding several of these sales who assured him that they have flyers in their files. "That is how these kinds of properties are marketed and sold." (TR. 43) Thus, these methods of selling a property according to Richter do "not constitute advertising as most people describe it on Page 1, Line 7 of the transfer declaration." (TR. 43) The witness contended just because the PTAX-203 was marked "not advertised" did not mean that the property was not widely known among likely purchasers.

"This is one of the reasons why in each case of the sales we used, the local assessors indicated that they considered it a valid sale having the property exposed to the market" the witness stated. (TR. 44)

Next, Richter asserted that Attachment 3 "is very clearly an altered document or a complete fiction." (TR. 44) This purported expired listing fails to identify the broker or the listing price of the property, both of which are standard parts of a listing. In addition, the document has no date. However, if Lipowsky contends that this is an offering sheet, then Richter contends that Sale #1 was in fact advertised as shown in Attachment 3.

Further as to Sale #1, the property may have been leased through 2014, but Attachment 3 also asserted the occupancy was 0% (i.e., vacant). The witness further stated, "This document has either been significantly altered or created out of whole cloth by someone. I'm not suggesting Mr. Lipowsky. I'm saying whatever was his source for this document, we have no knowledge of the source, and there is insufficient material here to give it any weight." (TR. 46)

As to Sale #2, Richter reiterated that he found this to be the most relevant sale in valuing the subject property due to its proximity to the subject. He further noted the property was not leased when it sold and it was sold by an owner-user to an owner-user. The witness further noted that Lipowsky had no criticisms of this sale property.

The Lipowsky "investigation" of Sale #3 relies upon a newspaper article for the proposition that the sale involved an entire business buyout which Richter opined was insufficient documentation of a real estate transaction. The witness asserted there was no contention by Lipowsky that he consulted with any party to the transaction to determine if his assertion was accurate. (TR. 47) The witness further testified that he spoke with a broker who negotiated the sale of the real estate which was entered into after the parties had agreed to a sale of other assets and the ongoing business. (TR. 47-48) Moreover, Richter asserted that the building was not owned by the corporation, but was owned individually by the party who owned the corporation; he testified that the sale of the building was a separately negotiated agreement and was recognized as a valid sale by the assessor. (TR. 48-49)

For Richter's Sale #4, the witness acknowledged that the sale was the result of an option to purchase. Richter testified that, "If, in fact, the terms of the option were consistent with the price paid, I agree the sale should not have been used. We don't know. If, in fact, the terms are different, the sale is valid." (TR. 49) Since the sale would have terminated the lease, Richter contended Sale #4 was not the sale of a leased interest. The witness further stated that Sale #4 is the only sale he now would question having included in the appraisal without having the terms of the option; he stated that "Since we don't have those terms, I stand silent on this sale. I don't know if it's valid or not." (TR. 50)

The company operating in Sale #5 is a "logistics provider" which Richter testified "is a trucking company" and thus he contends the property is properly characterized as a trucking terminal or a trucking distribution facility. (TR. 50-51) As to use of this property in valuing the subject, Richter noted Sale #5 required a downward adjustment because it had a highly functional design for use as a truck terminal. He contends that if Lipowsky's criticism is valid, less of a downward adjustment would be made resulting in a higher indicated value for the subject. (TR. 51-52) As to the existing lease on this sale, Richter contends the lease was set to expire in about 15 months "[s]o whether the rent was high or low would not have greatly influenced the sale price, but more importantly this lease could be cancelled by either party on 30 days' notice." (TR. 52) Since the buyer could terminate the lease, if one still existed, on 30 days' notice, Richter contends the sale did not represent a leased-fee interest, but rather was reflective of a fee simple interest.

Richter also opined based on his experience that no lease dating from the 1990's would approach the economic rent of a property as of 2007/2008. "Typical rental escalations in leases are two percent, three percent annually, perhaps five or seven percent in five-year increments or ten years [*sic*] in five-year increments." (TR. 55) Based on the foregoing, Richter opined the assumption must be that a 17-year-old lease would have had a very low rental compared to the economic rent and would have depressed the price paid, not increased the price paid. (TR. 55-56) In summary, without knowing the lease terms, Richter contends there is no reason to assume the rent would have been above market rent.

As to Sale #6, Richter contends that Lipowsky's discussion of a sale leaseback of this property was the 1992 sale of the property, not the 2008 [*sic*] sale.<sup>8</sup> (TR. 54-55)

In conclusion, Richter contends that the Lipowsky criticisms of the six sales which Richter examined at best results in Sales #2, #3 and #5 being uncontested with sales prices of \$20.46, \$46.51 and \$33.64 per square foot of building area including land. As the appraisal concluded a value for the subject of \$18.00 per square foot of building area including land which is below the three sales "that we know were sold in fee simple," Richter testified that he would be comfortable valuing the subject property just on these three sales and would not alter his final opinion of value. (TR. 57-58)

Upon cross-examination, Richter acknowledged that he was unaware of the terms of the leases or potential leases involved in Sales #1, #4, #5 and #6. (TR. 59) He further opined that it was quite acceptable to be unaware of the lease terms of those properties.

#### **APPELLANT'S SURREBUTTAL EVIDENCE**

The appellant recalled Lipowsky as a witness. As to Sale #1, if the property was "listed in brokers' file, well-known in the marketplace of industrial brokers" then the property was advertised. (TR. 61-62) As to the allegation that Attachment 3 was an altered document, Lipowsky testified he obtained the document from a nationally known comp service known as LoopNet; expired listings do not provide broker information on the website data. (TR. 62-63)

Lipowsky also opined that an appraiser should know the terms of a lease "because it has a great impact on the value of the property." He opined that not knowing the lease terms borders on negligence by Richter. (TR. 64)

As to Richter's Sale #3, Lipowsky reiterated that his Attachment 4 reflects the seller as LR Nelson Corporation, not an individual owner as claimed by Richter in surrebuttal. (TR. 64-65)

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<sup>8</sup> Sale #6 sold in March 2007 according to Richter's appraisal.

For Richter's Sale #5, Lipowsky testified that he verified the sale data and "to this day the same tenant is still in that building." (TR. 65) As such, Lipowsky opined that there was a leased-fee transaction.

For Sale #6 considered by Richter, Lipowsky stated:

The information that it was the results of a sale leaseback, the sale leaseback included the rent that was indeed many years prior to the sale. Once again, the terms are not known by the appraiser. Makes this a highly suspect sale. Whether he don't know whether an upward or downward adjustment should be necessary. That in itself is subject to very scrutinization (phonetic) by anybody relying on this information.

(TR. 66) In conclusion, Lipowsky contended this detracts from Richter's credibility as a professional or expert witness.

Upon cross-examination, the witness acknowledged that Attachment 3 (the LoopNet expired listing) indicated "occupancy: 0%" as to the property identified as Sale #1. (TR. 68)

#### **THE MERITS**

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

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. 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 Illinois Supreme Court 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 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 (3<sup>rd</sup> 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)). As also previously acknowledged by the board of review, the Property Tax Appeal Board finds the evidence in the record establishes that a change in the subject's assessment is

justified as the evidence provided by both parties demonstrates the subject's assessment is excessive.<sup>9</sup>

For 2009 the subject property had a total assessment of \$2,918,931 reflecting a market value of approximately \$8,773,463 or \$19.19 per square foot of gross building area, land included, when using the 2009 three year median level of assessments for Rock Island County of 33.27%.

In support of the overvaluation argument, the appellant submitted an appraisal of the subject property prepared by J. Edward Salisbury of Salisbury & Associates, Inc. estimating the subject property had a market value of \$6,100,000 or approximately \$13.00 per square foot of building area, including land, as of January 1, 2006. The Property Tax Appeal Board finds the conclusion of value contained in the Salisbury appraisal report cannot be deemed credible and/or a reliable indicator of value in the absence of the appraiser's testimony at hearing. (See preliminary matter discussion above) Moreover, the Board finds the sales considered by Salisbury were not proximate in time to the assessment date of January 1, 2009. Therefore, the Board finds there is no data from the Salisbury appraisal which supports a reduction in the assessment of the subject property on grounds of overvaluation.

In response to the appeal, the Rock Island County Board of Review submitted an appraisal prepared by Howard B. Richter of Howard B. Richter & Associates, Inc., estimating the subject property had a market value of \$8,200,000, rounded, or \$18.00 per square foot of building area, including land, as of January 1, 2009.

The appellant as rebuttal evidence submitted a three-page letter prepared by Michael E. Lipowsky of Lipowsky & Associates with numerous attachments "analyzing the six specific Illinois industrial sales" in the Richter appraisal report. Lipowsky concluded that only Sale #2 presented by Richter was a valid arm's length fee simple transaction. Richter also testified that Sales #2 was the best comparable in his presentation and was relied upon most heavily in arriving at a value conclusion for the subject.

The board of review's witness Richter testified and the appraisal itself stated the sales comparison approach was the most applicable method in arriving at the estimate of value for the subject of approximately \$8,200,000 or \$18.00 per square foot of building area, including land, due in part to the age and size of the facility which would make the cost and income approaches to value inappropriate. The Property Tax Appeal Board agrees that the sales comparison approach is the most applicable method under the facts of this appeal; however, the Board finds the board of review's appraiser Richter did not adequately analyze the sales

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<sup>9</sup> The Property Tax Appeal Board further recognizes that the Rock Island County Board of Review proposed to stipulate to a lower total assessment reflecting a market value of approximately \$8,200,000 which the appellant rejected.

within the report and the majority of the sales were not good indicators of fair cash value, which undermines the ultimate conclusion of value proffered by Richter.

The appellant's rebuttal evidence disclosed that Richter's Sales #1, #3 and #4 were not advertised for sale as reported on the applicable PTAX-203 Illinois Real Estate Transfer Declarations executed by the parties to the various transactions under penalties of perjury.<sup>10</sup> In response in part to these assertions, Richter pointed out that Lipowsky's Attachment 3, which the witness believed to be an altered document "or a complete fiction" which should be given no weight, establishes that the property identified as Sale #1 was advertised since an expired listing existed on this property. In reply, Lipowsky also stated that if Sale #1 was listed in a brokers' file and was well-known as being for sale in the marketplace, then the property was advertised for sale. Based on the evidence presented and in reliance upon the PTAX-203 Illinois Real Estate Transfer Declarations, the Property Tax Appeal Board finds these three sales used by Richter in the appraisal may not have been truly indicative of market value and should be discounted.

Furthermore, the appellant's rebuttal evidence disclosed that Sales #1, #5 and #6 analyzed by Richter were leased at the time of sale resulting in the sale of a leased-fee interest, not a fee simple interest in these properties according to Lipowsky. In reply, Richter noted that the purported listing document presented by Lipowsky as Attachment 3 for Sale #1 noted that "occupancy" was 0%. Upon further examination of the exhibit as to Sale #1, the Property Tax Appeal Board also finds that Attachment 3 under "highlights" stated "fully-leased through 2014!" As to Sale #5, in reply Richter disputed the characterization that the property was leased when sold "since the lease was set to expire in about 15 months" which Richter opined would not have greatly influenced the sale price. Moreover, Richter contended the lease could be cancelled by either party on 30 days' notice so the witness asserted Sale #5 was not a sale of a leased-fee interest and furthermore a 17-year-old lease would probably not be reflective of market rent as of the time of sale. The Board finds that no documentation was presented to dispute the information contained in the two PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A's (Attachments 11 & 13) reporting that the property in Sales #5 and #6 were 100% leased at the time of sale.<sup>11</sup> As noted in the textbook, The Appraisal of Real Estate, 12<sup>th</sup> Edition, by the Appraisal Institute:

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<sup>10</sup> "Any person who willfully falsifies or omits any information required in this declaration shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for subsequent offenses." (See page 2, Step 4 of PTAX-203)

<sup>11</sup> As to Lipowsky's assertion that Sale #6 presented by Richter concerned a sale-leaseback arrangement, Richter replied that Lipowsky's information concerned a 1992 sale of this property, not the "2008" [*sic*] sale presented in Richter's report.

Income-producing real estate is often subject to an existing lease or leases that encumber the title. By definition, a property that is subject to one or more leases is no longer a fee simple estate. Thus, if the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple estate for another property, the sale can only be used if reasonable and supportable market adjustments for the difference in rights can be made.

(Id. at p. 431) Therefore, the Board finds that these three sales reported in Richter's appraisal may also not be truly indicative of market value and should be discounted.

Sale #4 presented by Richter was disclosed to have been a sales transaction which was the result of an option to purchase according to Lipowsky. When testifying in reply, Richter acknowledged that he now does not know whether this was a valid sale or not since the terms were unknown. Therefore, even Richter acknowledged that Sale #4 may not be truly indicative of market value and should be discounted.

Based on this analysis, the Board finds that five of the six sales relied upon in Richter's sales comparison approach are not reliable or credible estimates of market value and should be given little weight because they were not advertised and/or because they reflect leased-fee interests when sold. However, the parties agree that Sale #2 presented in Richter's appraisal was a valid arm's length transaction that was close in proximity to the subject. This property, consisting of 229,754 square feet of building area or roughly 50% of the subject's building area, sold in February 2008 for \$4,700,000 or \$20.46 per square foot of building area including land. Accepted real estate valuation theory provides that all factors being equal, as the size of the property increases, the per unit value decreases. In contrast, as the size of a property decreases, the per unit value increases. Furthermore, the board of review in its evidence acknowledged that the subject property was overvalued based on its assessment at \$8,773,463 or \$19.19 per square foot of gross building area, land included.

While the board of review's appraisal has been severely weakened and lacks necessary details in adjusting sales comparables for their leased fee interest and/or lack of being advertised on the market as outlined above, in the end the Property Tax Appeal Board finds that, despite these significant appraisal flaws, the appraisal submitted by the board of review estimating the subject's market value at \$8,200,000 or \$18.00 per square foot of building area including land is still the best evidence of the subject's market value in the record and is supported by Sale #2 in the record.

In conclusion the Property Tax Appeal Board finds the subject property had a market value of \$8,200,000 or \$18.00 per square foot of building area, including land, as of January 1, 2009.

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Since market value has been established, the Property Tax Appeal Board finds the 2009 three year median level of assessments for Rock Island County of 33.27% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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

*Donald R. Cuit*

Chairman

*K. L. Fern*

Member

*Frank A. Huff*

Member

*Mario Morris*

Member

*J. R.*

Member

DISSENTING: \_\_\_\_\_

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

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

Date: July 20, 2012

*Allen Castrovillari*

Clerk of the Property Tax Appeal Board

**IMPORTANT NOTICE**

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

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

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

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

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