FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Dean Street Offices LLC
DOCKET NO.: 09-02789.001-C-3 through 09-02789.002-C-3 and
10-01699.001-C-3 through 10-01699.002-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Dean Street Offices LLC, the appellant, by attorney Michael Elliott of Elliott & Associates, P.C. in Des Plaines; and the Kane County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***no change*** in the 2009 assessment of the property and ***a reduction*** in the 2010 assessment of the property as established by the **Kane** County Board of Review is warranted. The correct assessed valuation of the property is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
09-02789.001-C-3	09-29-400-068	670,107	1,011,482	$1,681,589
09-02789.002-C-3	09-29-400-069	665,696	690,490	$1,356,186

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
10-02789.001-C-3	09-29-400-068	617,302	770,009	$1,387,311
10-02789.002-C-3	09-29-400-069	613,379	505,475	$1,118,854

Subject only to the State multiplier as applicable.

ANALYSIS

For purposes of this appeal and pursuant to Property Tax Appeal Board rule 1910.78 (86 Ill.Admin Code §1910.78), Docket Nos. 09-

02789.001-C-3 and 09-02789.002-C-3 were consolidated with Docket Nos. 10-01699.001-C-3 and 10-01699.002-C-3.[1]

The subject property is a 362,332 square foot site improved with two multi-tenant office buildings. The first office building (hereinafter "building A") containing 12 individual units was constructed in 2001 and contains 43,879 square feet of building area. The second office building (hereinafter "building B") containing 6 individual units was constructed in 2004 and contains 27,449 square feet of building area. The subject also features a retention pond which results in a net usable land area of 313,382 square feet and a net land-to-building ratio of 4.39:1. Exterior construction consists of steel framing and concrete block with face brick and decorative face block. The one-story buildings are fully sprinklered with all tenant spaces opening outward to the parking area. Interiors contain common hallways and restrooms, with building B having a kitchenette. The improvements also have parking for approximately 329 vehicles, including 12 handicap spaces. The subject is located in St. Charles, St. Charles Township, Kane County, Illinois.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming the fair market value of the subject was not accurately reflected in its assessed value. In support of this argument an appraisal for each assessment year was submitted with an estimated fair market value of $7,600,000 as of January 1, 2009 for the 2009 appeal and $6,700,000 as of January 1, 2010 for the 2010 appeal. The 2009 appeal was presented using a complete summary appraisal based on the three traditional approaches to value and the 2010 appeal was presented utilizing an updated appraisal using the sales comparison and income approaches to value.

Bryan Barus, employed by Suburban Real Estate Services, Inc., was called as a witness. Barus testified that Suburban Real Estate Services, Inc. is a full service commercial brokerage, property management and investment real estate company. Barus is a licensed real estate broker. Barus stated his office provided all physical property management functions, financial functions along with running and operating the subject buildings; basically everything except brokerage services. Barus collected the rents and paid the bills. Barus' office acted as the interface between the leasing broker and ownership. The leases were negotiated through him and signed by him. Barus testified that he generated monthly financial statements.

[1] The appellant requested the consolidation with the board of review having no objection.

Kenneth Boone, d/b/a Dean Street LLC., who acquired the property in 2007, is the current owner. Barus testified that at the time Dean Street LLC. bought the property, he was representing the seller and then began representing Dean Street LLC. after the purchase.

Barus testified that he prepared a financial summary (appellant's Exhibit #1). The financial summary references a snapshot in time from the purchase of the building by Dean Street LLC. and a summary of the income and expenses for 2007, 2008, 2009 and 2010. The financial statement depicts a base rent of $1,001,473 with pass-through collections of $177,968, resulting in total revenue of $1,179,441 in 2007. Net operating income was reported to be $823,505 with occupancy being approximately 94%. Barus testified the subject was purchased for $11,975,000 in 2007. The financial statement depicts the 2008 net operating income fell to $650,285 and continued to fall in 2009 and 2010 to $398,560 and $412,560, respectively. Barus testified that the major factors contributing to the substantial decrease in net operating income were the economy; some leases that were written when the building was originally built were maturing and rolling over. Also contributing to the decrease was lower achieved rates for new leases along with an increase in real estate taxes and operating expenses. Barus stated that at the time of purchase in 2007, pass-throughs were $2.72 per square foot and increased in 2009 and 2010 to $9.85 and $7.60 per square foot, respectively. The financial statement depicts 65,379 square feet of the subject was occupied in 2007 and fell to 58,422 and 58,156 square feet in 2009 and 2010, respectively.

Barus testified that they lost some tenants to neighboring projects and to a failure of the general business climate. Appellant's counsel next introduced a letter written by Dave Medlin, a St. Charles, Deputy Assessor, and MAI. The letter was marked as appellant's Exhibit #2. The letter depicts four leases were entered into in 2008 which ranged from $14.50 to $16.00 per square foot. Barus testified that the leases also contained concessions given by the landlord that ranged from a month of rental abatement per year, per lease, to relocation costs. In addition, there were brokerage transactional costs and construction costs. Barus testified that the rental abatement was computed based on the gross rent and resulted in a discount of approximately $1.84 per square foot per year. Barus further testified that instead of just reducing the rent without concessions, the higher rent depicted up front supports a refinancing event or a possible sale. Barus explained that this was customary in the industry.

Appellant’s Exhibit #3, an appraisal of the subject property with a valuation date of January 1, 2009 was submitted into evidence. Barus testified that leasable units ranged from 1,100 to 1,300 square feet. He also stated that the per-square-foot rent paid per unit varied depending on size, length of term, credit of the tenant, and transaction costs. Barus testified that the owner was generally unsuccessful in renting out the subject in 2008, 2009 and 2010. Barus further stated that a competitor, Corporate Reserve, similar in size to the subject, is in close proximity to the subject. It is a brand new multi-tenant building with “Class A” finishes and development. Barus testified that from 2008 to 2010 the Corporate Reserve was achieving contract lease rates of $15 to $16 per square foot.

During cross-examination, Barus acknowledged that a 3,350 square foot unit at the subject rented for $15 a square foot which was the same rate for a smaller 1,283 square foot unit. Barus testified that the owner’s costs were increasing for operation of the building which caused the tenant pass-throughs to increase. Barus further stated that the pass-throughs were not included in the net operating income because they are passed on to the tenant. Barus testified that the competing neighboring office building offered a superior class or quality of building along with a phase-in of real estate taxes and operating expenses because a lot of their building product was still under warranty, whereas the subject is older and those costs such as seal coating the driveway and landscaping upgrades increased the subject’s operational expenses.

On re-direct, Barus testified that he felt the owner overpaid for the subject based on the marketing propaganda and his unfamiliarity of the local market.

The next witness called by appellant’s counsel was Edward V. Kling. Kling is a licensed appraiser and testified regarding his appraisal methodology and final value conclusions using the three traditional approaches to value. Kling has the Member, American Institute Real Estate Appraisers (MAI) designation from the Appraisal Institute. He attained his MAI designation in 2001 and has been appraising property for 25 years, with an emphasis on commercial office property during the last 5 or 6 years. Kling testified that he has done quite a bit of work in the general area of the subject and owns a 30 year old building located a block away from the subject. He has owned the building since 2008 and converted it from a single tenant building to a multi-tenant office building. An appraisal report with a valuation date of January 1, 2009 was marked as appellant's Exhibit #3 and the appraisal report with a valuation date of January 1, 2010 was marked as appellant's Exhibit #4.

Kling described the subject as a multi-tenant, Class A-minus, B-plus single story office facility. Kling testified that the office demand was pretty good in early 2000 and started to slip in 2007/2008 during the time when Lehman collapsed. In August 2007/2008 he noticed that credit became tight, tenants were vaporizing and the values were trending down as people were trying to renegotiate lease rates. Kling further testified that tenant demand for lease space got worse and transaction activity slowed to a crawl. Because of these factors, Kling stated that lease rates and sales prices went down.

Both the 2009 appraisal report and the 2010 appraisal report depict the subject's highest and best use as vacant would be to hold for future development in light of the current oversupply of office product in the St. Charles market, the extended absorption periods and the low market activity. As improved, the reports depict the subject's highest and best use is as currently improved. The reports further depict that because the highest and best use as vacant and as improved is remarkably different, this indicates functional obsolescence in the subject property as noted by the subject's large interior common areas of unleaseable space and lack of separate metering for water services. The reports indicate both of these factors could hinder any attempt of condominium conversion in the future. (Appellant's Exhibit #3 and #4, page 23-24).[2]

Under the cost approach to value in both appraisal reports, Kling estimated the subject's site value of $2,021,314 or $6.45 per square foot of land area. Kling examined three land sales and one listing. The comparables were located in St. Charles, Illinois and ranged in size from 77,972 to 2,195,424 square feet of land area. Three of the properties sold from October 2006 to May 2008 for prices ranging from $720,000 to $11,895,212 or from $5.42 to $9.23 per square foot of land area. The land listing had a list price of $1,999,990 or $5.52 per square foot of land area. Comparable land sale #1 was given a positive adjustment for shape and a negative adjustment for date of sale and size. Comparable land sale #2 was given a negative adjustment for date of sale and size and comparable #3 was given a negative adjustment for date of sale and a positive adjustment for size. The land listed for sale required a positive adjustment for

[2] The 2010 appraisal report (Appellant's Exhibit #4) references a highest and best use date of January 1, 2009.

zoning and shape and a negative adjustment for date of sale since it was a listing. After making adjustments, the comparables had adjusted sales/listing prices ranging from $6.23 to $6.60 per square foot of land area. Based on his analysis, Kling estimated the subject's land had a unit value of $6.45 per square foot of land, or $2,021,314 or $2,000,000, rounded as of January 1, 2009 in both the 2009 and 2010 appraisal reports. (Appellant's Exhibits #3 and #4, page 36).

Kling used the Marshall & Swift Valuation Service (Section 15, page 17, Average Class C Building) for the subject to estimate a replacement cost new for the improvements of $7,227,972 or $101.33 per square foot of building area. Physical depreciation was estimated using the physical age/life method at 6%. Functional obsolescence of 18% was estimated because of the large interior common area, office units not separately metered for water services and lack of private restrooms in all units. Using Korpacz's Investor Surveys for the fourth quarter of 2008 and first quarter of 2009, Kling estimated external obsolescence at 5% for the current economic downturn. Total accrued depreciation using the breakdown method was estimated to be 27% or $1,951,552 (Appellant's Exhibits #3 and #4, page 42). He next subtracted the depreciation estimate from the estimated cost new to arrive at a depreciated value of the improvements of $5,276,420. An estimated contributory value of the site improvements of $300,000 was added to the depreciated value of the improvements along with the estimated land value to arrive at an estimated value under the cost approach of $7,576,420 or $7,575,000, rounded or $106 per square foot of building area, including land.

Kling also developed the income approach to value. Kling examined four rental comparables consisting of office space located in St. Charles and Geneva, Illinois and three listings. The rental comparables ranged in size from 750 to 4,337 square feet of leasable area. The rental comparables were leased for prices ranging from $12.60 to $16 per square foot. Pass-through expenses were reported to range from $4.35 to $5.38 per square foot. The rental comparables were adjusted for age, quality of build-out, location size and exposure. The three active listings ranged in size from 414 to 3,200 square feet of lease space available for asking rents of either $14 or $15 per square foot. The listings were adjusted negatively for being offerings. Based on this data, Kling estimated a market level rent of $10 per square foot for the subject's larger spaces and up to $15 per square foot for the smallest units. Based on these market rents, Kling estimated potential gross income for the subject in the report of $865,001. The appraisal report depicts expense recoveries of $5.10 per square foot of lease area for taxes, insurance and operating expenses, which are recovered on a pro-rata basis. Expense recoveries were depicted as $363,314. Korpacz, first quarter 2009 Investor’s Report indicated average office vacancy of 21.1% with Colliers B&K reporting Chicago suburban office vacancy at 20.8%. The subject’s building A had a 24% vacancy rate as of January 1, 2009 with building B having a 4% vacancy rate. The subject had a total vacancy rate of 16%. Adding the potential gross income ($865,001) with the expense recoveries ($363,314) and subtracting vacancy and collection losses ($196,530) indicated an effective gross income of $1,031,775. Expenses of $431,733 for management, real estate taxes, operating expense, insurance, reserves for replacement and legal/accounting fees were subtracted from the effective gross income to arrive at an estimated net income of $600,052 in each appraisal report. Analyzing a band of investments, mortgage-equity analysis and published sources, indicated an overall capitalization rate of 8.25% and was considered reasonable for the subject. Kling applied this overall capitalization rate to the subject's estimated net income of $600,052 which indicated a value for the subject under the income approach of $7,273,358 or $7,275,000, rounded. Kling also developed a loaded capitalization rate by adding an effective tax rate of 2.14% to the overall rate of 8.25% for a total capitalization rate of 10.39% which indicated a value for the subject of $7,808,932 or $7,810,000, rounded, using a loaded overall capitalization rate.

Kling next developed the sales comparison approach. Kling examined four comparable sales and one listing of multi-tenant office buildings. The comparables were located in Lisle, Naperville and Aurora, Illinois. The comparables ranged from 1 to 28 years old, with one of the sale comparables being renovated in 1970. The design and exterior construction of each comparable was not disclosed. The comparables were situated on parcels ranging in size from 87,120 to 288,803 square feet of land area, had land-to-building ratios ranging from 2.55:1 to 4.14:1. The comparables ranged in size from 21,022 to 79,211 square feet of building area with four of the comparables selling from January 2007 to August 2008 for prices ranging from $3,500,000 to $10,700,000 or from $79.22 to $135.08 per square foot of building area, including land. The listing had an asking price of $2,081,178 or $99.00 per square foot. Kling adjusted the comparables for differences when compared to the subject for date of sale, size, exterior construction, occupancy, location, land-to-building ratio and condition.

Based on these adjustments, Kling estimated a value for the subject property as of January 1, 2009 under the sales comparison approach of $7,407,290 or $7,400,000, rounded or $100 per square foot of building area, including land for building "A" and $110 per square foot of building area, including land for building "B."

Kling also prepared an update appraisal for the 2010 tax year using only the sales comparison approach and income approach. Again, the highest and best use of the subject property as vacant was determined to be to hold the subject for future commercial office development. The highest and best use as improved was its continued existing use. In the restricted report, limited details of four sales and two listings were submitted.

The updated sales comparison approach listed four multi-tenant sales located in St. Charles, Aurora and Carpentersville, Illinois. The two listings were located in Elgin and Aurora. All of the comparables had improvements ranging from 6,800 to 56,379 square feet of building area. Four of the comparables sold from February 2008 to December 2009 for prices ranging from $1,840,000 to $4,000,000 or from $68.85 to $127.07 per square foot of building area, including land. The listings had asking prices of $690,000 and $1,200,000 or $83.64 and $101.47 per square foot. Four comparables were adjusted upward, one was adjusted downward and comparable number 2 had a net adjustment that was considered equal to the subject. Details of the various adjustments or what was considered was not provided. Based on the adjustments, Kling estimated a value for the subject property as of January 1, 2010 under the updated sales comparison approach of $6,694,010 or $6,700,000, rounded or $90 per square foot of building area, including land for building "A" and $100 per square foot of building area, including land for building "B."

Kling also updated the income approach to value for the 2010 tax year restricted appraisal report. Kling estimated rent for the subject spaces at $10 to $14 per square foot on a net basis as of January 1, 2010. Detailed information regarding analysis of market rents was not provided. Based on his estimation of market rents, Kling estimated the subject's potential gross income for 2010 to be $806,747. Expense recoveries based on $4.98 per square foot indicated expense recoveries of $355,213. Vacancy was estimated to be 15% which resulted in a total potential gross income of $1,161,960 less vacancy of 15% or $174,294 resulting in an estimated effective gross income of

$987,666. Expenses for management, real estate taxes, operating expenses, insurance, reserves and legal/accounting indicated total expenses of $419,906 which indicated an estimated net income of $567,760. An unexplained capitalization rate of 8.5% was applied to the estimated net income to indicate a value by the updated income approach of $6,679,529 or $6,680,000, rounded.

After giving equal consideration to both the updated sales comparison approach to value and the updated income approach to value, Kling estimated the subject's market value as of January 1, 2010 of $6,700.000.

Under cross examination, Kling testified that as an appraiser with an MAI designation he complies with USPAP. Kling also testified that under USPAP, as an appraiser, he is required to discuss prior sales history. Kling further admitted that in addition to actually reporting the prior sales history that occurred, he is required to analyze the prior sales history that occurred within three years of his valuation date. Kling next admitted that he did not do that in this case, he only reported a single sale. Kling testified that it did not have any bearing as of the valuation date. When questioned regarding land sale #1, Kling testified that he did not know off hand if it was a sale between related parties. Kling was next questioned regarding what Barus described as a good rental comparable known as "The Reserve." Kling testified that he did not think "The Reserve" was a good rental comparable because it sits in what he described as the middle of nowhere. Kling testified that "The Reserve" was probably the best in the immediate area but it was probably not as good as the subject based on location. Kling further testified that his income analysis did not reflect any rent abatements in his forecast; he just looked at it as straight-up rents as of the valuation date. Kling testified that he did not project the cash flow less monthly lease-off for tenant allowances or brokered commissions. Based on his report, Kling could not determine if he adjusted rental comparable #3 for location. Kling thought rental comparable #3 was similar to the subject in location. Kling testified that he did not compare the estimated expenses in his stabilized income statement with the subject's actual expenses, and admitted they could be higher or lower. Kling testified that based on his training and experience, appraisal methodology allows for an adjustment for leased fee sales when an appraiser is preparing a fee simple valuation, provided the appraiser had access to contract rents or specific information for the buildings. Kling stated an adjustment could be made based on the differences in income or lack of income. While being questioned on this point, Kling testified that he looked at all the information that was provide for the subject property in terms of income and expenses, however, he was not provided with the actual full leases, and therefore, he did not know if there were specific abatements, concessions, et cetera. Kling acknowledged that he utilized the face rent even though he was preparing an analysis in fee simple. Kling agreed with the statement that the best sale comparable is the one with the least amount of adjustments.

During further cross-examination, Kling testified that it would be important to analyze the subject's prior sale in 2007; however, it was a leased fee transaction and was based on cash flows that were written well before the valuation date. Kling acknowledged that he could have analyzed the contracts and taken them back to what the market was, and made some adjustments, but he found it was just as easy, in terms of his income approach to look at what the market rents were as of the valuation date. Kling testified that the income approach is the stronger approach to value on a property such as the subject. Kling agreed that it was better to use fee simple sales as opposed to leased fee sales when preparing a sales comparison analysis. Kling admitted that he could have gotten the contract rents from the subject to determine how much of the prior sale of the subject involved leased fee. Kling testified that he received the subject's rent roll while appraising the subject; however, he did not look at the former rent roll of the subject from when it sold previously in 2007. Kling's opinion was that the subject's purchase in May of 2007 for $11,975,000 was not indicative of the subject's value mainly because it was occupied with leased tenants. Kling agreed that he would have been required to back out the leases from the purchase price in 2007. Kling explained that he had tenants tell him that they were not paying the same rental rates from the date of purchase in 2007 as they were on the valuation date. Kling felt, based on this, that the leased fee transaction from 2.5 to 3 years prior really wasn't relevant to what the market rents were as of the valuation date. Kling could not explain why he used other sales which occurred in 2007 and yet did not use the subject's actual sale in 2007. Kling testified that he would normally include the sale of the subject itself in a case like this, when preparing a sales comparison analysis.

During re-direct, Kling testified that the subject's 2007 sale contained leases that were in place from 2001 through 2007. Kling testified that the economic times in 2007 were vastly superior than the conditions that existed on January 1, 2009 and

2010. Kling further testified that if he were to take those contract rents and restate them for a fee simple analysis, he would have to ignore those rents and re-compute what they would be in today's market. Kling testified that is what they did in his income approach to value. Kling opined that the historical rents provided very little help from an income point of view. Kling further reiterated that the pass-through amounts at the time the subject sold were $2.72 per square foot and by 2009 and 2010 had increased to $6 or $7 per square foot. If Kling had used the subject's 2007 sale, he testified that he would have had to use the pass-through amounts in effect on January 1, 2009 and January 1, 2010. He would have ignored the pas-through amounts in effect at the time the subject was sold. Kling further reiterated that in 2007 the subject had an occupancy rate of approximately 96.5%; however, in 2009 and 2010 the vacancy was between 16% and 20%, which is what he would have used if he utilized the subject's sale in 2007. Kling testified the capitalization rate in 2007 was somewhere around 7% which would have provided no guidance in his derived market capitalization rate in 2009 or 2010 based on what he saw in the market. Kling testified that he would have used the capitalization rates as determined from the 2009 and 2010 market. Kling estimated the subject's net operating income of approximately $600,000 when in reality the subject's actual net income was $400,000. Kling testified that had he used the subject's actual net income, he would probably value the subject at $4,000,000 or $5,000,000.

Based on the above testimony and evidence, the appellant requested a reduction in the subject's assessment commensurate with the 2009 appraisal and the updated 2010 appraisal reports, respectively.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's 2009 total assessment of $3,037,775 and 2010 total assessment of $3,204,418 were disclosed. The subject's 2009 assessment reflects a market value of approximately $9,119,709 or $127.86 per square foot of building area, including land, using the 2009 three-year median level of assessments for Kane County of 33.31% as determined by the Illinois Department of Revenue. The subject's 2010 assessment reflects a market value of approximately $9,605,570 or $134.67 per square foot of building area, including land, using the 2010 three-year median level of assessments for Kane County of 33.36%. In support of the subject's assessments, a letter from the St Charles Deputy Assessor, David Medlin was submitted along with property record cards, land sales, improved sales, transfer declaration sheets and a Korpacz study.

The board of review did not present testimony regarding its submission of evidence, but rather stood on the evidence as submitted.[3] Appellant's counsel was allowed to question Deputy Assessor Medlin regarding his submission, which is reiterated below in this decision.

David Medlin has the MAI designation and is the Deputy Assessor for the St. Charles Township Assessor's office. Medlin's letter depicts the subject consisting of two multi-tenant office buildings containing a total of 70,628 square feet of building area. The buildings are described as being located on a total of 359,369 square feet of land area. The site contains approximately 92,608 square feet of detention and/or wetlands. The letter indicates a net buildable site area of 266,761 square feet or 6.12 acres of land area. Medlin's letter indicates the subject's fair cash value for the subject's 2009 assessment was established using the Camavision software and was supported using sales ratio studies from the three previous year's sales (2006, 2007 and 2008) of office properties found in the market of the subject. The letter further depicts the subject sold in May 2006 for $12,300,000 or for $174.15 per square foot of building area, including land. The subject sold again in May 2007 for $11,975,000 or $169.55 per square foot of building area, including land. Both sales were described as arm's-length transactions and were above the fair cash value as reflected by its assessment in 2009. A limited grid analysis containing five office building sales was included in the letter. The five sales were located in St. Charles, Geneva, North Aurora and Elgin, Illinois. The sale comparables contained from 8,020 to 54,957 square feet of building area and sold from December 2006 to December 2009 for prices ranging from $2,200,000 to $9,900,000 or from $146.48 to $274.31 per square foot of building area, including land. The subject's May 2006 sale for $12,300,000 or $174.15 per square foot of building area, including land, and its May 2007 sale for $11,975,000 or $169.55 per square foot of building area, including land, were also depicted.

Medlin also questioned various aspects of the appraisals submitted by the appellant. Regarding the cost approach and sales comparison approach to value as prepared by Kling; the letter points out that appraisal land sale #1 was an

[3] The board of review's evidence was substantially the same for both the 2009 and 2010 appeals.

interrelated sale, and therefore, not an arm's-length transaction. In support of this point, a transfer declaration sheet was submitted indicating the seller was Peck Triangle, LLC., with the buyer being Peck Road Venture, LLC., located at the same address as the seller and signed by the same agent. The letter further depicts land sale #2 was incorrectly reported by the appraiser as containing 145,926 square feet of land area, while in fact the transfer declaration sheet attached to the letter depicts the land sale as containing 94,446 square feet of land area, which was supported by the assessor's records. It was reported that land sale #2 contained within the appraisal report split into 2 parcels prior to the sale, and as shown on the attached transfer declaration sheet had an actual sales price of $1,133,352 for 94,446 square feet of land area or $12 per square foot.[4] The letter further depicts the other parcel from the split land sale sold in January 2007 for $757,422 or $12 per square foot of land area for 63,104 square feet of land area. The letter further indicates land sale #4 is located in an unincorporated area of Kane County and is currently zoned for farming. It was argued that using the corrected information as disclosed above, a land value of $4,007,808 should have been used instead of the estimated $2,000,000, which, when added to the estimated value of the improvement, would have resulted in a corrected estimate of $9,584,228, which is supported by the subject's current assessment. Medlin further points out that Kling improperly adjusted sale comparable #1 downward in his sales comparison approach, even though the sale occurred in August 2008 while a valuation date of January 1, 2009 was being considered. Sale #2 was described in the comments section of the report as being similar in location to the subject; however, Medlin points out that Kling incorrectly made a downward adjustment. Medlin also disagreed with the downward adjustment made by Kling to comparable sale #4 for date of sale when the sale took place in June 2008.

Medlin's letter also criticized Kling's income analysis. Medlin indicates that on page 58 of the appraisal report the actual rents of the subject units indicate the subject's rents varied from a net rent of $7.60 to $21.01 per square foot of unit space. Medlin further highlights that only two units were leased for under $12 net per square foot, with four units leasing for over $18 net per square foot. Medlin calculated the remaining seven units had net rental rates ranging from $14.50 to $17 per square foot. From this data, Medlin points out that

[4] The appraisal report depicts land sale #2 as containing 145,926 square feet of land area and sold for $1,133,352 or $7.77 per square foot of land area. (Appraisal, page 36).

on page 58 of the report, the total annual net rent is $868,005. Medlin argues that this net rental income came from only the occupied rental space of 58,141 square feet. However, the subject is reported to contain 71,328 available square feet of leased area, which means the average net rent in the subject complex was $14.93 per square foot of building area. Medlin also argued that the theory of economies of scale in regards to rent did not apply within the subject complex. In support of the this point, Medlin highlights that a 1,387 square foot unit rented for $14.50 per square foot in September 2008 with a 3,530 square foot unit renting in May 2008 for $15 per square foot. Medlin also questioned the overall capitalization rate of 8.25% as determined by Kling. Medlin points out that on page 66 of the report, Kling indicates that the overall rate for comparable sale #1 could not be verified and was derived in 2007. However, Medlin indicates the sale occurred in 2008. Medlin further states in his letter that he was able to discuss sale #1 with the seller of the property and from his discussions learned the property sold for a sub 7% overall capitalization rate. Medlin opined that the 8.25% overall capitalization rate as determined by Kling was too high based on the average rate of 7.7% as indicated in the First Quarter 2009 Korpacz Survey for Chicago Office Market. Medlin's letter indicates that with the understatement of potential rent of the subject units, along with the overstatement of the overall capitalization rate, the concluded value in Kling's appraisal report is under-stated.

During cross-examination, Medlin acknowledged that his letter was not an appraisal report. Medlin testified that he only verified the one sale which indicated a sub 7% capitalization rate and that none of his sales were adjusted. Medlin further testified that even though he only personally verified the one sale, his other sales in the record were supported by the CoStar reports and the transfer declaration sheets. Medlin did not know if his sales were leased fee.

Based on the above evidence and testimony, the board of review requested the Property Tax Appeal Board to confirm the 2009 assessment based on the 2007 purchase of the subject and for the Property Tax Appeal Board to lower the 2010 assessment based on market deterioration from 2009 to 2010.

The appellant submitted rebuttal evidence consisting of various property characteristic sheets, rent rolls and photographs. Testimony regarding this evidence was not elicited at hearing other than set out above.

After hearing the testimony and having considered the evidence, the Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board further finds the best evidence of the subject's market value in this record for 2009 is the subject's sale price in May 2007 and thus no reduction in the subject's assessment is warranted for 2009. For the tax year 2010, the Board finds a reduction is warranted.

Appellant's appraiser, Edward V. Kling testified in support of his appraisal report with a valuation date of January 1, 2009 which estimated the subject's value of $7,600,000 and his updated restricted appraisal report with a valuation date of January 1, 2010 which estimated the subject's market value of $6,700,000. The Board finds the estimated values are not adequately supported by the evidence contained in this record.

The evidence revealed the subject sold in May 2006 for $12,300,000 or for $174.15 per square foot of building area, including land. The subject sold again in May 2007 for $11,975,000 or for $169.55 per square foot of building area, including land. Both sales were described as arm's-length transactions which was not refuted in the testimony or record herein. The Board gave less weight in its analysis to the final value conclusions in Kling's appraisal reports because the board finds the 2009 report contains significant errors which call into question the final value conclusion. As Medlin pointed out, land sale #1 was an interrelated sale, and therefore, not an arm's-length transaction. This was not refuted by the appellant. The information regarding this sale indicating the buyer and seller were related was revealed through a public record, the transfer declaration sheet. The Board finds that with very little due diligence, the appraisers could have discovered these facts and/or chose to not address this issue. Medlin further indicated land sale #2 was incorrectly reported by the appraisers and was split into 2 parcels prior to the sale, and had an actual sales price of $1,133,352 for 94,446 square feet of land area or $12 per square foot, and not the $7.77 per square foot a depicted in the appraisal. Again, the Board finds this information, through collection of the transfer declaration sheets, was easily obtainable with very little due diligence and was not addressed by the appraisers. The Board finds Medlin's argument that using the corrected information as disclosed above, a land value of approximately $4,007,808 should have been used instead of the estimated $2,000,000, which, when added to the estimated value of the improvement, would have resulted in a corrected estimate of $9,584,228, which is supported by the subject's current assessment.

In regards to Kling's sales comparison approach, the Board questions Kling's downward adjustment for sale comparable #1 even though the sale occurred in August 2008 while a valuation date of January 1, 2009 was being considered. Further, Kling made a downward adjustment to comparable sale #4 for date of sale when the sale took place in June 2008. The Board finds that while these adjustments may have been required, they were not well supported in the record. In addition, Sale #2 was described as being in a similar location to the subject, however, Kling made a downward adjustment for location. The Board finds these adjustments were questionable and not well reasoned or supported in the appraisal report, which again, calls into question the final value conclusion of $7,400,000 by the sales comparison approach. In addition, Kling testified that the best sale comparable is the one with the least amount of adjustments. Yet, he did not include the subject's May 2007 sale in his sales comparison approach, which would have required no adjustment, even though, he used other 2007 sales. Further, the Board finds the evidence herein indicates USPAP requires an appraiser to discuss the prior sales history of the subject, if any. Kling admitted that in addition to actually reporting the prior sales history of the subject, he is required to analyze the prior sales history within three years. Kling admitted that he did not do that in this case as he only reported a single sale,[5] leaving out the 2006 sale of the subject.

The Board also gave less weight to the final value conclusion as estimated in Kling's income approach analysis. The Board gave greater weight to Medlin's critique regarding the subject's net rental income. As Medlin pointed out, the actual rents of the subject's units indicate the subject's rents varied from a net rent of $7.60 to $21.01 per square foot of unit space. The record disclosed that only two units were leased for under $12 net per square foot, with four units leasing for over $18 net per square foot. The total annual net rent is $868,005, as found on page 58 of the report. The Board agrees that with 71,328 square feet of available leased area, the average net rent in the subject complex was approximately $14.93 per square foot of building area. Kling estimated the subject's average market rents to be $12.13 per square foot of leased area.

[5] The appraisal only reports the 2007 sale.

Further, the Board finds the appraisers did not exercise due diligence in preparation of the estimated overall capitalization rate. Kling estimated an overall capitalization rate of 8.25%. On page 66 of the report, Kling indicates that the overall rate for comparable sale #1 could not be verified and was derived in 2007. However, the sale occurred in August of 2008. Medlin testified that he verified this sale with the seller and found the property sold for a sub 7% overall capitalization rate. In addition, the First Quarter 2009 Korpacz Survey for Chicago Office Market indicated an average overall capitalization rate of 7.7% which the Board finds lends credence to Medlin's testimony.

Based on the errors, omissions and lack of due diligence, the Board finds the final estimate of value in Kling's appraisal report for 2009 is not well supported and is not credible. The Board further finds, these errors and omissions were not refuted or addressed at the hearing herein, even though the errors and omissions were submitted to the appellant's appraiser well prior to the hearing. The Board finds that with the understatement of potential rent of the subject units, along with the overstatement of the overall capitalization rate, and the errors and omissions contained within the sales comparison approach, the concluded value in Kling's 2009 appraisal report is understated.

Kling also submitted an updated appraisal for the 2010 tax year with an estimated value for the subject of $6,700,000. The Board gave this updated appraisal report little weight in its analysis. The Board finds the sale comparables lacked detail from which the Board could make a valid comparison to the subject and further finds the adjustment process was not supported in any manner. In addition, the income analysis in the 2010 updated appraisal depicts estimated rent at $10 to $14 per square foot on a net basis as of January 1, 2010 with no supporting market data to support this claim. Further the Board finds an 8.5% overall capitalization rate was applied without even the slightest discussion of how the rate was determined. The Board finds this updated appraisal report states conclusory estimates which are not supported in this record. Therefore, the board finds the 2010 updated appraisal is not credible, reliable or a fair indication of the subject's fair market value as of 2010. The Board gave this updated appraisal no weight in its analysis.

The board of review relied on the data submitted by Medlin, the Deputy Assessor for St. Charles Township. Medlin submitted a limited grid analysis containing five office building sales. The comparables sold from December 2006 to December 2009 for prices ranging from $2,200,000 to $9,900,000 or from $146.48 to $274.31 per square foot of building area, including land. The record revealed these sales were not adjusted for differences when compared to the subject, and may have been leased fee sales, with only one having been verified. Based on the lack of detail, lack of adjustments and verification, the Board gave these sales little weight in its analysis.

Having considered both parties' raw sales data, the testimony and evidence herein, the Board finds the appellant has not shown by a preponderance of the evidence that the subject was overvalued as reflected by its 2009 assessment. The subject's 2009 assessment reflects a market value for the subject of $9,119,709 or $127.86 per square foot of building area, including land. Both parties submitted comparable sales, which were given less weight by the Board in its analysis for the various reasons cited above. However, the Board finds the unadjusted sales submitted by both parties sold from December 2006 to December 2009 for prices ranging from $2,200,000 to $12,300,000 or from $79.22 to $274.31 per square foot of building area, including land. The subject's current 2009 assessment reflects a market value for the subject of $9,119,709 or $127.86 per square foot of building area, including land, which is well within the unadjusted range of comparables in this record. The Board finds the subject's 2009 assessment is supported by Kling's cost approach to value with corrections to the land sales estimates, the unadjusted sales submitted by both parties, and is more fully supported by the subject's purchase in May 2007 for $11,975,000 or $169.55 per square foot of building area, including land. The Board finds that based on the credibility of the witnesses, their testimony and the reports herein, the manifest weight of the evidence supports the subject's current 2009 assessment and no reduction in the subject's assessment for 2009 is warranted.

For the 2010 tax year, the Board finds the testimony herein by both parties indicated a reduction in the subject's assessment was in order based on a downturn in the market. Based on the appraisals submitted by Kling and his final value conclusions, the board finds Kling opined a reduction of 12% was appropriate from 2009 to 2010. The board of review, at hearing requested a reduction in the subject's 2010 assessment from 15% to 20% from the 2009 current assessment. The Board finds based on the testimony herein and evidence in this record, a reduction in the subject’s 2010 assessment commensurate with the board of review’s request is warranted.

In conclusion, the Board finds the appellant has not demonstrated the subject property was overvalued in 2009 by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review 2009 is correct and a reduction is not warranted. The Board further finds both parties agreed the 2010 assessment indicated the subject was overvalued for the 2010 tax year and a reduction is warranted in the subject’s 2010 assessment.

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: April 18, 2014

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.