



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

APPELLANT: Duelm Enterprises LP  
DOCKET NO.: 09-04322.001-I-2  
PARCEL NO.: 05-16-307-001

The parties of record before the Property Tax Appeal Board are Duelm Enterprises LP, the appellant, by attorney Terrence J. Benshoof of Glen Ellyn, Illinois, the DuPage County Board of Review; and Wheaton-Warrenville Community Unit School Dist. No. 200, intervenor, by attorney Ares G. Dalianis of Franczek Radelet P.C., Chicago, Illinois.

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

**LAND:** \$129,150  
**IMPR:** \$496,420  
**TOTAL:** \$625,570

Subject only to the State multiplier as applicable.

**ANALYSIS**

The subject property is improved with what is described as a one-story commercial building with approximately 11,842 square feet of building area. The building was constructed in 1923. The property has a land to building ratio of .97:1. The property is located at 222-226-230 Front Street, Wheaton, Milton Township, DuPage County.

The appellant appeared by counsel contending over valuation as the basis of the appeal. In support of this argument the appellant submitted a report, marked as Appellant's Ex. #1, prepared by Lee H. Neuschaefer of Barron Corporate Tax Solutions (Barron). Neuschaefer estimated the subject property had a market value of \$1,400,000.

Neuschaefer was called as the appellant's witness. He has a degree in Business Administration from Elmhurst College and the Certified Assessment Evaluator (CAE) designation from the International Association of Assessing Officers (IAAO). In 1973 the witness began working in the York Township Assessor's Office

as the commercial/industrial field man and chief deputy assessor. In 1981 Neuschaefer began doing valuation analysis work in the private sector for ad valorem tax purposes for commercial and industrial property owners. He asserted that he has testified before the Illinois Property Tax Appeal Board, the Michigan Tax Tribunal, the Kansas State Tax Commission and the Missouri State Tax Commission.

The appellant's witness described the property as being a .27 acre site improved with a retail structure with 11,842 square feet of building area that was constructed in 1923. Neuschaefer also testified the building has three retail tenants composed of two restaurants and a salon. The witness testified that in 2009 the subject property had two tenants in 222 and 230 Front Street while 226 Front Street was vacant. The witness testified that appellant's rebuttal Exhibit A disclosed that 226 West Front Street was listed as having 3,500 square feet of building area with a listing rental of \$17.50 per square foot of building area. In estimating the value of the subject property Neuschaefer used the sales comparison approach to value and the income approach to value.

Neuschaefer submitted information on three comparable sales located in Wheaton, Glen Ellyn and Elmhurst. The comparables ranged in size from 3,892 to 14,618 square feet of building area and were built from 1904 to 1948. Comparable #1 was improved with a three-story three tenant building, constructed in 1948 with a land to building ratio of .60:1. The comparable was located ½ block from the subject. This property sold in June 2008 for a price of \$2,500,000 or \$171.02 per square foot of building area, land included. Comparable #2 was improved with a two-story two tenant building built in 1914 with a land to building ratio of .82:1. This property sold in August 2008 for a price of \$675,000 or \$173.43 per square foot of building area including land. Comparable #3 was improved with a three tenant building constructed in 1904 with a land to building ratio of 1:1. This property sold in June 2008 for a price of \$850,000 or \$127.23 per square foot of building area, including land. After considering adjustments to the comparables for time, size and age Neuschaefer estimated the comparables had adjusted prices ranging from \$99.24 to \$141.95 per square foot of building area, including land. Using these sales the appellant's witness estimated the subject property had an indicated value of \$125.00 per square foot of building area, land included, for a total value of \$1,480,000.

The appellant's witness also developed the income approach to value. Referencing appellant's rebuttal Exhibit B, Neuschaefer testified that he obtained information from the property owner that the subject's rental income for 2008 was \$185,588. He also testified that the owner indicated that the expenses were \$32,209. The witness also provided testimony that the property located at 230 Front Street with 4,800 square feet of building area had a modified gross rent of \$15.00 per square foot and the property at 222 Front Street with 3,800 square feet of building

area had a modified gross rent of \$18.95 per square foot. The witness explained within his report that he attributed a rental of \$17.50 per square foot of building area for the space at the subject property that was vacant for 5 months in 2008 and added that to the \$185,588 to arrive at a potential gross income of \$211,000. The potential gross income equates to a rent of approximately \$17.81 per square foot of building area, which the witness indicated was within the range of retail space on Roosevelt Road. Neuschaefer next deducted 10% of potential gross income or \$21,100 for vacancy and collection loss to arrive at an effective gross income of \$189,900. The vacancy rate was based on brokers that the witness has talked to. The witness next deducted the actual expenses for 2008 of \$32,209 as reported by the owner to arrive at a net income of \$157,691. Neuschaefer next estimated the capitalization rate of 9.40% to which he added an effective tax rate to arrive at an overall rate of 11.69%. The capitalization rate was determined by using the Real Estate Research Corporation (RERC) capitalization rate study for the 4<sup>th</sup> quarter of 2008. The RERC studies showed second tier power center properties had an average going in capitalization rate of 9.0% and third tier power center properties had an average going in capitalization rate of 9.8%. Capitalizing the net income of \$157,691 using an overall capitalization rate of 11.69% resulted in an estimated value of \$1,349,000.

Using these two estimates of value Neuschaefer estimated the subject property had a market value of \$1,400,000 or \$118.22 per square foot of building area, including land, as of January 1 2009. Based on this evidence the appellant was requesting the subject's assessment be reduced to reflect the appraised value.

Under cross-examination Neuschaefer testified he considered the subject to be in fair condition. He further testified he inspected the interior of the subject property. He stated there was an error on page 9 of his report that stated the interior of the property was not inspected. The witness also stated there was an error on page 3 of his report where he indicated a value conclusion of \$188.22 per square foot of building area. The witness explained that his time adjustment on page 5 reflected a negative two percent per month due to the market downturn. Neuschaefer also explained the age adjustments were based on percentages.

The witness also explained that the rent for the vacant space of \$17.50 per square foot was based on the asking rent. Neuschaefer also explained that the term "modified gross" as it relates to the rent means the tenants are paying some of the expenses. He further explained the second and third tier investment categories were selected due to the subject's age and the RERC study was for the Midwest.

Neuschaefer further testified he is not a licensed appraiser in the State of Illinois nor any other state. He also agreed that he had developed an opinion of value for the subject property although he testified the report is probably not technically

considered an appraisal. The witness was shown Intervenor's Exhibits #2 and #3, containing definitions of "appraisal" from the 13<sup>th</sup> Edition of the Appraisal of Real Estate and the Appraisal Institutes Uniform Standards of Professional Appraisal Practice (USPAP), respectively.<sup>1</sup> After reading these definitions Neuschaefer did not believe he had prepared an appraisal and did not believe he was acting as an appraiser during the hearing.

Neuschaefer was questioned about his Certification on page 2 of the report where he states in part that, "Barron Corporate Tax Solutions, Ltd., is not performing services that constitute appraisal practice . . . but is providing consulting services which is not under the purview of the Uniform Standards of [Professional] Appraisal Practice (USPAP)." The witness was shown Intervenor's Exhibit #4, which was Standard 4: Real Property Appraisal Consulting, Development from USPAP 2010-2011 Edition.<sup>2</sup> The witness was also shown Intervenor's Exhibit #5, which was Standard 5: Real Property Appraisal Consulting, Reporting from USPAP 2010-2011 Edition. The witness was of the opinion he prepared his consulting services in conformity with Standard 4. The witness thought he covered the certification in varying degrees although he acknowledged he did not make a similar statement with respect to having no bias with respect to any property that is the subject of the report. The witness further testified he did not know specifically what he was referring to in the Certification when he used the word "privileged."

Neuschaefer also agreed that in the income approach he used actual expenses and income from the subject property. The witness explained that although he used the subject's actual numbers, he thought they reflect market conditions. He agreed, however, his report contained no market surveys with respect to market conditions. The witness was of the opinion his income approach was not a leased fee analysis even though he used the subject's actual income and expenses. Neuschaefer was also questioned about the development of his capitalization rate based on "power centers." He explained that a power center is like a 100,000 square foot facility with a typical tenant being a Best Buy or a Target. The witness agreed that a better comparison might be the higher capitalization rate in a neighborhood community shopping center.

The witness also agreed that his three comparable sales were rented at the time of sale but he was not privy to the rental rates. He further testified his comparable sale #3 was the only one-story building with three tenants, similar to the subject.

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<sup>1</sup> Exhibit #2's definition of appraisal read, "The act or process of developing an opinion of value." Exhibit #3's definition of appraisal read, "The act or process of developing an opinion of value; an opinion of value. Also known as valuation."

<sup>2</sup> The intervenor had previously submitted Standard 4: Real Property Appraisal Consulting, Development from USPAP 2008-2009 Edition, as Exhibit B.

Neuschaefer further testified he is a salaried employee but Barron's fee is contingent on the outcome of the appeal meaning the company gets a percentage of the tax savings. If there are no tax savings Barron's does not get paid.

In redirect Neuschaefer was of the opinion that both the subject's rental rates and expenses were reflective of the market.

The board of review (BOR) submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling \$625,570 was disclosed. The subject's assessment reflects a market value of \$1,880,848 or \$158.83 per square foot of building area, including land, when applying the 2009 three year average median level of assessments for DuPage County of 33.26%. In support of the assessment the BOR submitted an analysis prepared by the Milton Township Assessor's office, which was marked as BOR Exhibit #2.

The BOR called as its witness Cathy Zinga, Commercial Deputy Assessor for Milton Township. Zinga has the Certified Illinois Assessing Officer (CIAO) designation. She testified that she was familiar with the subject property and that her job at the Assessor's Office was to value commercial properties. She testified that she prepared the report that was submitted on behalf of the BOR.

Zinga testified that she developed the sales comparison approach and income approach to value in support of the assessment. She testified the subject was considered in average condition for its age. The witness stated that since 1998 there have been \$640,000 in renovations to the property. She testified that the HVAC, the electrical and the plumbing have been updated. She further stated that the subject has had a new fire alarm system installed, a new roof and exterior renovations.

Zinga used seven comparable sales in the sales comparison approach with her sale D being the same property as Neuschaefer's sale #1. The sales were located in Wheaton, Carol Stream, Elmhurst and Naperville. Her report included a map depicting the location of her comparable sales as well as Neuschaefer's comparable sales. The comparables were improved with one 1-story building, five 2-story buildings and one 3-story building that ranged in size from 2,992 to 21,304 square feet of building area. The buildings were constructed from 1890 to 2007 and the properties had land to building ratios ranging from .48:1 to 4.68:1. The sales occurred from February 2006 to April 2009 for prices ranging from \$550,000 to \$5,100,000 or from \$171.02 to \$385.71 per square foot of building area, including land.

In support of her estimate of market rent, Zinga submitted copies of listing sheets reporting lease rates ranging from \$18.00 to \$26.00 per square foot. She also provided a listing for a property located on Main Street in Wheaton with rental rates ranging from \$18.35 to \$40.25 per square foot of building area.

Based on this data she estimated the subject property had a gross rental rate of \$21.50 per square foot of building area resulting in a potential gross income of \$254,603. Zinga determined the subject property had a vacancy and collection loss of 6% or \$15,276 based on a 2010 survey using 2009 data from owners that replied. Deducting the vacancy and collection loss resulted in an effective gross income of \$239,327. From this she deducted expenses in the amount of \$32,209, the same as used by Neuschaefer, to arrive at a net operating income of \$207,118. She next estimated the subject property would have a capitalization rate of 8.50% using a local study and Kopacz Realty Advisors, which reported an overall capitalization rate for a neighborhood center for the first quarter of 2009. To this she added an effective tax rate of 2.34% to arrive at a total capitalization rate of 10.84%. Capitalizing the net income she estimated the subject property had an estimated value under the income approach of \$1,910,683.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination Zinga testified she began working with the Milton Township Assessor's Office in 2006 and for the first two years she did residential work. She further stated she is not an appraiser and does not belong to any appraisal societies. She further stated other than seeing the subject building from the outside she had not inspected the building.

Zinga testified that in estimating the market rent she used rental rolls from downtown Wheaton owners that responded to a survey, LoopNet, the MLS and reviewed current asking rents.

Zinga testified the first floor of her comparable sale A was used as a real estate office. She further testified she did not make any adjustments to her sales. Her comparable sale B was used as a medical office building. She also agreed that this property was reported to have a bad warranty deed. She agreed that her comparable sale C was not located in downtown Wheaton and is a multi-tenant free-standing building. With respect to comparable sale G, this property had residential and/or office units.

Zinga also explained that on page 31 of her report was another graph of capitalization rate trends with the title Cap Rate Trends in 2010 - Champion Partners Commercial Real Estate. For the first quarter in 2009 the graph showed a capitalization rate for the Midwest of 6.68%.

In support of its position, the intervener submitted a brief and data sheets on comparable sales which included Neuschaefer sales #1 and #2 and Assessor comparable sales D, E and F. The data included one additional sale located at 109 W. Schiller Ct., Elmhurst. This property was improved with a two-story retail/office building with 12,272 square feet of building area. The building was constructed in 1932 and the property had a land to building ratio of .59:1. The sale occurred in August 2007 for

a price of \$2,000,000 or \$162.97 per square foot of building area, including land. The intervenor called no witnesses.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (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)). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant submitted a report prepared by Lee Neuschaefer, CAE, of Barron Corporate Tax Solutions containing an estimate of value of \$1,400,000. During the hearing Neuschaefer asserted this was not an appraisal even though he and the report offered an opinion of value. The Board finds this testimony not to be credible. Furthermore, Neuschaefer testified that Barron Corporate Tax Solutions' fee is contingent on the outcome of the appeal. He explained that the company gets a percentage of the tax savings and if there are no tax savings Barron's does not get paid. The Board finds the fact that Neuschaefer's employer's fee is contingent on the outcome of the appeal calls into question the objectivity of the preparer of the report. Neuschaefer, in fact, stated within the Certificate on page 2 of his report that, "Barron Corporate Tax Solutions, Ltd. is not performing services that constitute appraisal practice, requiring impartiality . . . ." The Board finds that Barron's has a direct pecuniary interest in the outcome of the appeal that may result in a biased report. The Board finds that by his employer having a direct interest in the outcome of the hearing undermines Neuschaefer's testimony as an impartial unbiased expert.<sup>3</sup> For these reasons the Board finds Neuschaefer's testimony, the report and the opinion of value offered by Neuschaefer are not credible.

In reviewing the evidence offered by the appellant and that offered by the board of review, the Property Tax Appeal Board finds the evidence and testimony presented by the BOR to be more credible. With respect to the income approach, the testimony and evidence provided by Zinga supported the conclusion the subject's

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<sup>3</sup> The Property Tax Appeal Board finds that the IAAO, the organization which awarded Neuschaefer his CAE designation, has a Code of Ethics and Standards of Professional Conduct which was adopted by the IAAO executive Board, September 19, 2005. IAAO Ethical Rule ER 3-3 provides: It is unethical to accept an assignment or participate in an activity where a conflict of interest exists and could be perceived as a bias, or impair objectivity.

estimated rent of \$21.50 per square foot of building area was market derived. The Board further finds that her testimony with respect to estimating the vacancy and collection loss was credible and reflective of local market conditions. The Board further finds Zinga used the same expenses as Neuschaefer in calculating the subject's net income. The Board further finds that Zinga's estimate of the overall capitalization rate was better supported by reference to two published sources and a survey of the local market. Neuschaefer's estimate of the capitalization rate was derived from reference to "power centers" described as 100,000 square foot facilities with a typical tenant being a Best Buy or a Target. The Board finds a "power center" is not reflective of the subject property. For these reasons the Board finds Zinga's estimate of value under the income approach of \$1,910,000, rounded, is better supported and more credible than the estimate developed by Neuschaefer.

With respect to the sales comparison approach, the Board finds Zinga's sales A, B and D are most similar to the subject in location and occurred most proximate in time to the assessment date at issue. Furthermore, Zinga's sale D is the same property as Neuschaefer's sale #1. These three sales had varying degrees of similarity to the subject property in that they differed from the subject in story height and in size with two being significantly smaller than the subject with 2,992 and 3,264 square feet of building area, respectively. The comparables sold from June 2008 to April 2009 for prices ranging from \$550,000 to \$2,500,000 of from \$171.02 to \$261.03 per square foot of building area, including land. The comparable sale common to both witnesses sold in June 2008 for a price of \$2,500,000 of \$171.02 per square foot of building area. The subject's assessment reflects a market value of \$1,880,848 or \$158.83 per square foot of building area, including land, when applying the 2009 three year average median level of assessments for DuPage County of 33.26%, which is well supported by the best sales in the record.

In conclusion, based on this record, the Board finds the assessment of the subject property as established by the board of review is correct and a reduction is not justified.

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

*Ronald R. Cuit*

Chairman

*Frank J. Huff*

Member

*Mario M. Louie*

Member

*J.R.*

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: March 22, 2013

*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.