FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: The Meadows of Glen Ellyn
DOCKET NO.: 09-04386.001-C-3
PARCEL NO.: 05-14-422-061

The parties of record before the Property Tax Appeal Board are The Meadows of Glen Ellyn, the appellant, by attorney Donald F. Hemmesch of Smith Hemmesch Burke & Kaczynski in Chicago; the DuPage County Board of Review; and the intervenors, Community Consolidated School Dist. No. 89 and Glenbard Township High School Dist. No. 87, by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds ***an increase*** 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:	$ 1,711,690
IMPR.:	$ 9,189,610
TOTAL:	$10,901,300

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2009 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property is improved with a five-story 234 unit retirement facility composed of 178 units designed for independent living and 56 units designed for assisted living.

The units range in size from 332 square foot studio units to 1,086 square foot two bedroom units with complete kitchens and bathrooms. The subject has 83 studio units, 118 one-bedroom units and 33 two bedroom units. The subject has an above grade building area of 228,135 square feet and a 12,783 square foot basement. The building is of brick and concrete block construction and was completed in 2000. The shape of the building is an "H" with four separate wings housing the apartments. Each wing goes out from a common core that contains the common areas on the first floor and apartments on all upper floors. The first floor has an entrance and offices, general elevator core, the dining room, kitchen, housekeeping, laundry rooms, storage rooms, mechanical rooms, fitness room, various resident meeting rooms, a library, hair salon, fitness room, 20 independent living apartments and two guest suites. The second floor has 65 apartments (52 studio) that are mostly assisted living units. The third, fourth and fifth floors each have 50 independent living apartments. Each apartment has an individually controlled gas-fired forced air central HVAC unit. The property also has a convenience store, an enclosed garage for 22 cars, 18 covered stalls and outside parking for 126 cars. The property has a 354,143 square foot or 8.13 acre site and is located in Glen Ellyn, Milton Township, DuPage County. The property is commonly known as The Meadows.

At the hearing the parties stipulated to the land size of 354,143 square feet or 8.13 acres; the building description; the land value of $4.25 million or $12.00 per square foot of land area; and the highest and best use of the subject property as currently improved.

At the hearing the Property Tax Appeal Board hearing officer also stated that the assessment determined by the Property Tax Appeal Board will be prior to the application of any exemptions that may be applicable.

At the hearing the board of review representative also stipulated that the 2010 assessment of the subject property was reduced to $7,908,320.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by James Hamilton of James O. Hamilton & Company, Inc., estimating the subject property had a market value of $17,000,000 as of January 1, 2008.

MARIE GURNIK

The appellant called as its first witness was Marie Gurnik, Executive Director of The Meadows, a position she has had for ten years. Her employer is Brookdale Senior Living. Gurnik is responsible for the day-to-day managing and operation of The Meadows.

The witness testified there are about 240 residents at the facility with an average age of 86 years. She testified, however, that the average age of the person who applies to move into The Meadows has increased to 90 years plus. She also explained there are about 120 associates and nine managers that provide the services to the elderly residents.

Gurnik is also charged with the responsibility of managing the business, putting the budget together and managing the profit and loss on a daily, weekly and monthly basis. She also has oversight of the acquisition of materials to provide the services to the elderly. There are nine departments at the property including dining services, housekeeping, assisted living, resident services, sales and marketing, maintenance, therapy, home health and the business office.

Gurnik testified the assisted living services provided at The Meadows is regulated and they also provide licensed personal care for the residents in independent living. She explained they provide "a la carte" services that works out cheaper for the resident if they want to stay in independent living and do not need a lot of services. She agreed that the "assisted living" is a residential and social model and not a medical model. She stated there is no healthcare provided in the assisted living component.

The witness testified that the average stay of a resident in independent living is 2½ years and in assisted living 1 to 1½ years. She explained that residents transition from the independent living section to the assisted living section. She explained that one of the shortcomings they have is that they do not provided skilled nursing.

Gurnik testified the subject property has 178 independent living units and 56 assisted living units. She explained there are more studio units in assisted living than in independent living. She testified that 48 of the studio units are used for assisted living. The witness indicated that aside from size, the assisted living units and the independent living units are the same; each is equipped with a stove, refrigerator and a sink.

She testified that those in assisted living get three meals a day, which is required under the Assisted Living Act. (210 ILCS 9/1 et seq.) Gurnik explained the only real difference between independent living and assisted living is in assisted living you get three meals per day and have constant 24-hour oversight. Furthermore, the service plan is unique to the services the resident requires. They may need assistance with such things as medication, cognitive cuing, bathing and dressing. The witness testified that according to the assisted living licensing regulations anybody that needs assistance with more than two daily living activities cannot stay in assisted living.

Gurnik testified there are about 75 parking spaces around the building, 25 parking spaces in the garage and 25 spaces under the carport. She explained that in recent years the parking has not been adequate due to many residents having private care givers that need parking, the number of events given at the facility and staff parking. She also was of the opinion there are not enough handicapped spaces. She explained that the residents will take covered parking in the winter and outside parking in the summer to save the money because there is a charge for covered parking.

With respect to dining services, for those residents in independent living there is a large dining room that has breakfast served buffet style from 7:30 to 9:30 AM. Dinner starts at 3:45 PM and stops at 6:00 PM with seating at 3:35, 4:30, 5:00, 5:30 and 6:00. The dining room is not large enough to accommodate all the residents at one time. Gurnik explained there is more staff in the dining room in the morning to observe and seat people so they are not in the buffet line. For dinner there is a hostess and a pre-dining area where people sit until a table is available. At dinner the resident is given a menu from which an entree is selected and given to someone who takes the order. The kitchen has four cooks and a chef that puts together the meals on site. The director of dining services and the chef order and stock the inventory. After the meal "bussers" clear the tables and there are two dishwashers throughout the day.

Housekeeping and laundry is provided. Laundry is in the basement with one full-time laundry person from 7:30 AM to 3:30 PM doing residents' laundry plus the linens from dining. There is also a director of housekeeping with five housekeepers, one for each floor. There is also a man that cleans the public area in the evenings. The dining, laundry and housekeeping services are included in the base rent.

With respect to security there is a person at the front desk 24-hours. Gurnik explained everyone (resident) has a pendant that is worn around the neck. She also stated that each morning each person (resident) must press a button in their bathroom to check in. There is also a pull cord in the bathroom for emergencies. If someone hits their pendant or pulls their cord that goes across the radio, that most staff carry, and someone goes to check on the resident.

Gurnik also testified they provide transportation six days a week to local shopping areas, doctors' appointments, church services on Sundays and theaters. They also provide trips once a week and one dinner trip out per week.

The Meadows also provides activities that the residents are interested in such as exercise, tai chi, walking groups and entertainment that comes in. Furthermore, they have a group that will teach residents how to use computers, e-mail, Skype and the like to keep them active and connected with their families.

The witness also explained that with residents on site 24 hours a day, maintenance and housekeeping require constant cleaning of the carpet, replacing carpeting, painting and repair work. She noted that there are dents in walls in need of repair, which were caused by residents with scooters, wheelchairs and walkers.

Gurnik testified there is no entrance fee at The Meadows. She explained that she budgets for all the services provided by the various departments. She was of the opinion that 45 to 50 percent of the rent goes towards the services that are provided.

Under cross-examination Gurnik explained that the difference between independent living and assisted living is oversight. With assisted living the resident gets more individualized services and it is more 24-hour care. With independent living if a resident needs services they get it when needed on a time the staff can fit it into the schedule. For independent living the monthly fee starts at about $2,200 for a small studio and goes to $4,700 for the largest two-bedroom unit as of the date of the scheduled hearing in 2013. She stated the fees were higher as of January 1, 2009.

She testified there is no skilled nursing center associated with the facility. In preparing the budget 40% is figured as profit.

Gurnik testified that when the building was constructed in 2000 it was built to industry standards. She also agreed that by providing multiple seating times during dinner you can actually give more individualized service.

JAMES HAMILTON

The next witness called on behalf of the appellant was James Hamilton, a self-employed appraiser at James O. Hamilton & Company, Inc. Hamilton has the MAI designation and is an Illinois Certified General Real Estate Appraiser. During the previous five years he has appraised a little over 1,000 properties and 12 to 15 homes for the elderly.

Hamilton prepared an appraisal of the subject property which was identified and marked as Appellant's Exhibit #1. The report was prepared in the spring of 2009 and has a valuation date of January 1, 2008. The purpose of the appraisal was to estimate the fee simple market value of the real estate component of The Meadows retirement home.

Hamilton testified in preparing the appraisal he inspected the interior and exterior in April 2009. He had previously appraised the property in 2004. He estimated the subject property had a market value of $17,000,000 as of January 1, 2008. Hamilton testified the subject property is located on Nicoll Avenue approximately half a block north of Roosevelt Road. To the north of the property is a municipal park. West of the subject property is a detention pond and then a single family home subdivision. In estimating the market value of the subject property the appraiser developed the three standard approaches to value; the cost approach, the income approach and the sales comparison approach.

The first step under the cost approach was to estimate the land value using seven comparable land sales located within a five mile radius of the subject property. The sales ranged in size from 2.65 to 30.67 acres. The sales occurred from July 2005 to May 2008 for prices ranging from $7.48 to $14.73 per square foot of land area. Hamilton estimated the subject property had a land value of $12.00 per square foot of land area or $4,250,000, rounded.

The next step under the cost approach was to estimate the cost new of the improvements. Hamilton testified he used the *Marshall & Swift Estimator Program 7.0*. He described the subject property as a Class C building. He testified the commercial estimator program is more precise because it is more up-to-date with multipliers built into the program. He testified monthly updates are sent with new multipliers for location, timing, etc. He was of the opinion that the *Marshall & Swift Commercial Estimator Program* includes both soft costs and hard costs into the program. He also testified he did not include any entrepreneurial profit in the cost approach because on January 1, 2008, we were at the beginning of the worst recession since the 1930s so there was no profit to be made. Second, the subject building was built by the owner to be used as an asset in its business. The building was not constructed for speculative purposes and making a profit on the real estate was not contemplated. Hamilton was of the opinion if the owner is not thinking of entrepreneurial profit it does not apply.

Hamilton estimated the subject building had a cost new of $99.70 per square foot of building area or $22,745,680. To this he added $116,600 for the parking garage, $47,520 for the covered parking and $151,200 for the parking lot to arrive at a total replacement cost new of $23,061,000.

In estimating physical depreciation Hamilton estimated the subject property had an effective physical age of 11 years. He testified *Marshall & Swift* gives a life expectancy of 45 years. Dividing the effective age by the expected life resulted in estimated physical depreciation of 24.4% or $5,626,884.

With respect to functional obsolescence the appraiser was of the opinion there were five items that would decrease the value which included no indoor heated parking spaces, the small dining room, no healthcare facility, the apartment sizes are small and the quality of construction is more than needed and is not offset by high enough entry or monthly service fees. Hamilton estimated functional obsolescence to be 20% of the replacement cost new or $4,612,200. The appraiser did not believe the subject suffered from any external obsolescence. Deducting depreciation resulted in a depreciated cost of $12,821,916. To this the appraiser added the estimated land value of $4,250,000 to arrive at an estimated value under the cost approach of $17,070,000.

The appraiser next developed the income approach to value. The first step was to estimate the market rent of the subject property using seven comparables. The comparables were located in Carol Stream, Wheaton, Lombard, Elmhurst, Lisle and Glen Ellyn. Rental comparable #1 had 334 independent living apartments, 35 catered living apartments, 38 assisted living apartments and an 80 bed skilled nursing healthcare. This comparable had entrance fees ranging from $72,900 to $295,600 and monthly fees ranging from $2,001 to $3,000 or from $2.46 to $4.60 per square foot. Comparable #2 had 219 apartments, 26 townhouses, 77 assisted living apartments and a 209 bed skilled nursing facility. This comparable had entrance fees ranging from $107,100 to $587,100 and monthly fees ranging from $1,643 to $4,614 or from $2.98 to $3.66 per square foot. Comparable #3 has 198 units and a 215-bed independent nursing care facility adjacent to the living units. The independent living units had monthly service fees ranging from $1,955 to $4,840 or from $4.54 to $6.27 per square foot. The assisted living units had monthly service fees ranging from $3,317 to $3,845 or from $6.15 to $9.50 per square foot. Comparable #4 had 348 units with monthly service fees ranging from $3,442 to $5,960 or from $4.39 to $5.78 per square foot. Comparable #5 had 283 independent living units and 38 assisted living units. The independent living units had monthly service fees ranging from $2,810 to $5,110 or from $5.70 to $6.43 per square foot. The assisted living units had monthly service fees ranging from $4,295 to $5,540 or from $6.52 to $11.07 per square foot. Rental comparable #6 had 65 assisted living apartments and 20 modules for a total of 85 units. This property had monthly service fees ranging from $4,050 to $4,410 or from $9.38 to $13.59 per square foot. Comparable #7 had 130 assisted living apartments and 24 other care units for a total of 154 units. This comparable had monthly service fees ranging from $3,900 to $7,150 or from $8.41 to $11.14 per square foot.

In the appraisal (Appellant's Exhibit #1, page 56) Hamilton stated the rentals for the independent living units at The Meadows ranged from $6.39 to $7.18 per square foot for the studios; $5.21 to $5.58 per square foot for the one-bedroom units; and $4.72 to $4.84 per square foot for the two-bedroom units. He stated in the report that the most comparable of the pay for service (rental only) were rental comparables #3, #4 and #5. He indicated their rents are mostly between $4.00 and $6.43 per square foot for studios; $4.54 to $6.10 per square foot for one-bedroom units; and $4.39 to $5.98 per square foot for two-bedroom units. He was of the opinion these were very similar to the subject.

He further stated in the appraisal that rentals for assisted living units at The Meadows range between $10.05 and $10.45 per square foot for studios and $7.50 to $7.51 per square foot for one-bedroom units. Hamilton stated in the report that rental comparables #5, #6 and #7 had assisted living facilities with rentals ranging between $8.71 and $13.59 per square foot for studios and $7.50 to $10.50 per square foot for one-bedroom units. He was of the opinion these were very similar to the subject.

Hamilton concluded that rents at The Meadows represented market rent levels.

Hamilton testified page 60 of the appraisal (Appellant's Exhibit #1) contains the historical actual income and expenses of the subject property that he used to develop the income approach. These were based on the operating statements from 2005, 2006 and 2007. Table 6 on page 67 of the appraisal (Appellant's Exhibit #1) contains his stabilized income and expenses. The total income from all sources for 2005, 2006 and 2007 was $7,817,462, $8,376,575 and $8,814,570, respectively. (Appellant's Exhibit #1, p. 60.) Hamilton stabilized the total revenue at $8,178,600, which was less than each of the 2006 and 2007 reported total income figures. He explained this was due to resident rent revenue decreasing over 4% from 2006 to 2007. He also made an additional 2.7% reduction because this was at the beginning of the recession.

Hamilton next deducted the stabilized operating expenses. The actual operating expenses for 2005, 2006 and 2007 were $4,191,942, $4,238,254 and $4,131,568, respectively. (Appellant's Exhibit #1, p. 60.) He testified these expenses were without a reserve fund, which he added, to arrive at stabilized expenses of $4,496,930, or 55% of gross revenue.

Hamilton testified his expenses were based on three things. First was the study of the historical income and expenses. Second was a review of five competing properties that were listed on page 61 of his report (Appellant's Exhibit #1, p. 61) with expenses ranging from 52% to 80.1% of total income. He explained the first two had nursing homes or healthcare centers which would make their expenses higher. The three remaining comparables were like the subject with expenses of 52% and 62.9% of total income. The third reason was outlined on page 62 of the report (Appellant's Exhibit #1, p. 62). The witness testified this page had two errors. The column on the left should be 66.72% and the column on the right should be 68.72%.

The data on this page was based on 2008 studies done by the National Investment Center for Senior Housing (NIC) and the American Seniors Housing Association (ASHA) and has expenses expressed as a percentage of gross revenues. Hamilton noted that his stabilized expenses of 55% were less than the studies.

Deducting the stabilized expenses from the total revenue resulted in a net income before real estate taxes; return on furniture, fixtures and equipment (FF&E); and entrepreneurial profit of $3,681,670. Hamilton testified that since you are valuing the real estate you need to pull out the income attributed to FF&E and the business value. According to Hamilton the most recent balance sheet indicated the cost new of all FF&E as of December 31, 2007 was $1,568,042. He depreciated the FF&E on a straight line basis over a 10 year period, requiring an annual charge of 10%. He also asserted that an investor should receive a 10% return on the cost new. Thus he calculated the return on and of FF&E at 20% of the cost new or $313,600, rounded.

Hamilton described entrepreneurial profit as the profit on the business that goes to the owners. He asserted that you have to take out the amount of money that goes to support the business value. He testified that the Department of Housing and Urban Development (HUD) has developed guidelines which recognize that a portion of the income associated with nursing facilities, assisted living facilities and boarding homes relate to business assets. He stated in the report that HUD refers to this income as proprietary income which is defined as "a return to the business of running a skilled nursing facility, an intermediate care facility, a board and care facility, or an assisted living facility or any combination of the above." (Appellant's Exhibit #1, p. 65) HUD's guidelines have entrepreneurial profit for skilled nursing beds of 15% to 25%; assisted living facilities of 10% to 15%; and independent living facilities of 5% to 10% of stabilized net income.

He also stated a second method of estimating the business value component is to compare the operating expense ratios of similar structures used solely as real estate with those used as real estate including a business component. According to Hamilton this is based on the fact that the higher expenses at a facility that includes a business component is due not to the real estate but to the services provided by the business. Hamilton asserted that the Institute of Real Estate Management (IREM) 2007 edition, reported elevator apartment buildings in the Chicago area had an average expense ratio of 47.6% or 48%, rounded. The

2008 edition of *The State of Senior Housing* published by NIC and ASHA reported that assisted living residences without Alzheimer's had expense ratios of 66%. Hamilton asserted this 18% difference in operating expenses represents an increase of 37.5%. (Appellant's Exhibit #1, p. 66) The appraiser noted these percentages were guidelines and the key to identifying the appropriate ratio is the intensity of the services provided by the proprietary operation. He estimated 25% of the net income or $920,418 as being applicable to entrepreneurial value. Deducting the FF&E and entrepreneurial profit resulted in a net income attributable to the real estate of $2,447,700, rounded.

The next step under the income approach was to estimate the capitalization rate. Hamilton testified there are no capitalization rates for real estate only because real estate only never sells. He asserted that you cannot get a capitalization rate for the real estate out of the market. Hamilton analyzed investor surveys that included Korpacz Investor Survey, National Investment Center (NIC) for Senior Housing & Care Industries and Senior Living Valuation Services. He used the band of investment method. Using this data the appraiser estimated an overall rate of 12.50%. To this the appraiser added a tax load factor of 1.89% to arrive at a total capitalization rate of 14.39%. Capitalizing the net income of $2,447,000 resulted in an estimated value under the income approach to value of $17,000,000, rounded.

The final approach to value developed by Hamilton was the sales comparison approach to value. The appraiser selected seven comparable sales located in Kansas City, Missouri; Sewell, New Jersey; Savannah, Georgia; Dallas, Texas; North Aurora, Illinois; Englishtown, New Jersey; and Daytona Beach, Florida. The comparables were described as having independent living, assisted living and/or skilled care units. These properties had from 100 to 256 units and had from 65,000 to 233,793 square feet of building area. The appraiser indicated that comparables #1, #3, #4, #6 and #7 were constructed from 1974 to 1999. Hamilton reported comparable #2 was constructed after 1980 and comparable #5 was constructed about 1980. He further indicated the property rights sold for comparables #1, #2, #3, #4, #6 and #7 were the leased fee-going concern interest. The comparables sold from February 2006 to April 2009 for prices ranging from $5,000,000 to $17,500,000 or from $22,321 to $103,500 per unit or from $57.07 to $89.23 per square foot of building area. Based on these sales and after considering adjustments for property rights conveyed, conditions of sale, market conditions, financing terms, location, age, size and/or land-to-building ratio Hamilton estimated the subject property had an indicated value of $62,500 per unit or $15,200,000, rounded.

Hamilton testified he does not like the sales comparison approach and gave it almost no consideration because of the difficulty of pulling out a component that represents business value and the FF&E on the properties. Hamilton testified the sales comparison approach has almost no weight in estimating the real estate value of this type of property.

Hamilton asserted there were no sales of properties in the immediate area that conformed to the definition of a fair market value of real estate only. He testified there were three sales in the Chicago area that occurred before the valuation date that he identified as Lincolnwood Place, Lincolnwood; Sunrise of Glenview, Northbrook; and Park Place, Vernon Hills. He opted not to use these sales because of such factors as the transactions being sales of going concerns including FF&E, sale leaseback transactions and allocated prices due to bulk sales of many properties.

In the reconciliation Hamilton gave least weight to the sales comparison approach, some consideration to the cost approach and most consideration to the income approach. He estimated the subject property had a market value of $17,000,000 as of January 1, 2008.

Under cross-examination Hamilton asserted he used a combination of reproduction costs and replacement costs in the cost approach to value. He asserted that *Marshall Valuation Service* provides for a combination of both in the calculator. Hamilton also stated the building was seven years and eight months old as of his date of valuation. The witness further testified that *Marshall & Swift* provided a hard number of 45 for the useful life.

With respect to his estimate of functional obsolescence Hamilton stated he did not discuss the parking spaces, garage spaces or covered parking spaces associated with his rental comparables. He did not think there was an industry standard with respect to parking spaces. He also did not discuss the dining room size associated with his rental comparables or sales comparables.

Hamilton agreed the subject property is approximately 75% independent living and 25% assisted living. He also agreed the subject property is not a continuing care retirement community (CCRC) and not a skilled nursing facility. The appraiser stated the occupancy rate at the time of his valuation was 93%. He agreed that when people move in they know the subject is not a skilled nursing facility and there is no hospital present.

With respect to functional obsolescence Hamilton also stated in the report the units were somewhat small. (Appellant's Exhibit #1, p. 36). Intervenors' Exhibit No. 3, which was based on the size of the rental comparables in Hamilton's report, was shown to Hamilton and depicts the subject studio units as ranging in size from 332 to 561 square feet with the comparables' studio units ranging in size from 298 to 685 square feet; the subject's one bed/one bath units range in size from 610 to 850 square feet with the comparables' one bed/one bath units ranging in size from 427 to 850 square feet; and the subject's two bed/two bath units ranging in size from 925 to 1085 square feet with the comparables' two bed/two bath units ranging in size from 850 to 1,350 square feet. He agreed that looking at these comparables the subject property is at the market size-wise.

He also agreed that the he should not have said CCRC in paragraph 5 of his discussion of functional obsolescence.

With respect to his rental comparables he agreed that his comparables #1 and #2 are entrance fee properties, which is not the business model of the subject property. He also agreed his rental comparable #5 is the most comparable to the subject property. He also agreed his stabilized rental revenue for the subject was less than both the 2006 and 2007 actual rent received. Hamilton testified the subject's contract rent was actually market rent yet his conclusion of resident rent and total revenue was below what the subject received in 2006 and 2007. Hamilton's stabilized resident rent revenue of $7,506,000 equates to $2,673 per month, which is below the monthly rent range at the subject as quoted on page 59 of his appraisal. (Appellant's Exhibit #1, p. 59).

Hamilton agreed that the trend of total revenue at the subject was going up from 2005, 2006 and 2007. His stabilized total revenue conclusion, however, was below the 2006 and 2007 actual total revenues. He also agreed his stabilized expenses were above the subject's actual expenses for 2005 through 2007 even after excluding the amount Hamilton added for structural reserves.

With respect to his estimate of entrepreneurial profit of 25%, Hamilton agreed HUD guidelines for independent living was 5% to 10% and for assisted living 10% to 15%.

With respect to his estimate of the capitalization rate, Hamilton was shown the Senior Living Valuation Services, Inc. survey (Intervenors' Exhibit No. 4) he used which quoted the average overall capitalization rates for unlicensed congregate living and licensed assisted living of 8.2% and 8.5%, respectively. He agreed the subject property would be closer to the 8.2%.

Hamilton also testified he did not look at any reported capitalization rates associated with his comparable sales. He did not think any capitalization rates were reported for his sales. Hamilton was shown the CoStar report associated with his comparable sale #5 (Intervenors' Exhibit #5) located in North Aurora which showed a pro forma capitalization rate of 5.73%.

With respect to his comparable sale #1 located in Kansas City, Missouri, Hamilton reported this property was a Continuing Care Retirement Center (CCRC) a different use than the subject. This property was not listed on the market and there were no real estate brokers involved. The building was built in 1979 and was 21 years older than the subject building. Hamilton's sale #2, located in New Jersey, was also described as a CCRC, a different use than the subject. He further indicated there were no brokers and this was the seller's "downleg" of a 1031 exchange. It was reported the property was not on the market at the time of sale and the buyer approached the seller. He indicated there are some potential tax benefits associated with a 1031 exchange. Hamilton agreed his sale #4 located in Dallas, Texas was a portfolio sale with seven other properties. With respect to his comparable sale #5 Hamilton indicated it was a retirement home when it sold. Hamilton reported this building as being constructed prior to 1980. He was shown Intervenors' Exhibit #6, a copy of the property record card for this property, which reported the year built as 1961. The witness was of the opinion the prior use of this building as a hotel was irrelevant because it was a retirement home when it sold. Comparable #6, located in New Jersey, was reported to not have been on the market at the time of sale and was a direct transaction without any brokers. With respect to Hamilton's sale #7, the witness was shown a CoStar document, marked as Intervenors' Exhibit #7, which showed this property was part of a 20 property portfolio deal and the price was confirmed for the closing of eighteen of twenty properties totaling 1,820 units. Hamilton's report did not indicate this property was part of a portfolio sale.

MARY O'CONNOR

The next witness called on behalf of the appellant was Mary O'Connor. O'Connor is employed by Sikich, LLP as a partner in charge of the Valuation and Dispute Advisory Services Division. Her duties, responsibilities and assignments primarily deal with business valuation of intangible assets. She has been a partner at Sikich for three years. Her prior employment was with RGL Forensics, an international financial forensics accounting firm, for ten years. Prior to that employment she was employed by Marshall & Stevens, Incorporated, an international valuation company. The primary focus of her professional practice is business valuation and in the area of financial forensics and analysis for damage. O'Connor is a senior member of the American Society of Appraisers and has been accredited in business valuation since 1983. She is currently on the Board of Governors of the American Society of Appraisers and has been the president of the Business Valuation Association of Chicago. The witness has an MBA in finance from Georgia State University and a fraud MBA from St. Xavier University.

O'Connor reviewed the financial records of The Meadows, specifically the profit and loss statement for the years 2005, 2006 and 2007. The witness testified she was asked to develop some inputs that can be used in a business valuation. It was her opinion that she would attribute approximately 45 to 50 percent of the net operating income of the subject facility to the business enterprise value or going concern value.

Based on this evidence the appellant requested the subject's assessment be reduced to $5,666,100 to reflected the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $9,537,540 was disclosed. The subject's assessment reflects a market value of $28,675,707 using the 2009 three year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue. The assessment equates to a market value of $122,546 per unit and $125.70 per square foot of above grade building area, including land.

CARL PETERSON

Appearing on behalf of the board of review was board member Carl Peterson. Peterson indicated that the board of review was not going to present any witness with respect to its evidentiary submission, Board of Review Exhibit No. 2, which was prepared by the Milton Township Assessor's Office. Peterson further stated the board of review was requesting an assessment increase based on the evidence submitted by the intervening taxing districts, which was the narrative appraisal prepared by Eric M. Dost.

Peterson was questioned by the appellant and acknowledged his signature on behalf of the board of review entering a stipulation in the subject appeal with the appellant in the amount of $7,908,320, which was marked as Appellant's Exhibit #3. (The intervening taxing districts did not accept the stipulation.) Peterson also acknowledged signing a certificate of error on behalf of the board of review for the 2010 tax year reducing the assessment of the property from $9,052,630 to $7,908,320, which was marked as Appellant's Exhibit #4.[1]

ERIC W. DOST

In support of their contention of the correct assessment, the intervening taxing districts submitted an appraisal prepared by Eric W. Dost estimating the subject property had a market value of $38,000,000 as of January 1, 2009. The intervenors called Eric W. Dost as their witness.

Dost is president of Dost Valuation Group, a commercial real estate appraisal firm. Dost has been a commercial real estate appraiser for 27 years. He was previously a director and national practice leader for CBIZ Valuation Group, a national appraisal firm, which at that time had one of the largest senior housing practices in the country. Dost received the MAI designation from the Appraisal Institute in 1993. The witness is a certified general real estate appraiser with the State of Illinois as well as Indiana, Iowa, Michigan and Wisconsin. He has completed approximately 2,700 appraisals of commercial properties of which 500 to 600 were senior housing properties with 200 of those being for assisted living facilities or independent living properties.

Dost identified Intervenors' Exhibit #1 as the appraisal of the subject property he prepared. The purpose of the appraisal was to estimate the market value of the real estate. The property rights appraised were the fee simple interest. Dost inspected the subject property on October 25, 2011 and again on the date of the subject hearing. He performed an exterior inspection of the property and a limited interior inspection which consisted

[1] The Board gives no weight to the fact that two of the four parties in the instant appeal had entered into a possible settlement of the appeal for the 2009 tax year or that a certificate of error was issued in the 2010 tax year.

basically of a walk-through of the lobby. Dost had made a written request by letter dated August 26, 2011, to the appellant's counsel to inspect the property and for financial records but received no response. (A copy of the letter was included as the last two pages of Intervenors' Exhibit #1.)

Dost testified the subject property is located in Glen Ellyn, a nice suburb of DuPage County. There is a park to the north of the subject, some commercial and retail south of the subject, a retention pond followed by residential property to the west and office buildings to the east.

Dost described the subject property as being a combined facility with independent living and assisted living. Dost indicated within his report that the subject property has 234 units of which 178 are independent living units and 56 are licensed assisted living units. (Intervenors' Exhibit #1, p. 22.) He testified the subject is improved with a five story building with quite a few amenities including lounges, offices, a dining room, libraries, computer rooms, a fitness center, a wellness center, a heated pool, whirlpool, fitness room and parlors. The witness explained an independent living facility is one where a senior can live independently. As they get older they may require assistance with the activities of daily living (ADL), such as feeding, bathing or dressing, which are provided in an assisted living facility. He explained that in a facility such as the subject property a person may start out in the independent portion and transition to the assisted portion. He testified the subject is not a skilled nursing facility and is not a continuing care retirement community (CCRC). He determined the subject's highest and best use as improved is its current use.

In estimating the market value of the subject property Dost applied the cost approach, the income capitalization approach and the sales comparison approach. According to Dost there is a textbook published by the Appraisal Institute called *Analysis and Valuation of Health Care Enterprises*, which includes nursing homes and assisted living facilities, that indicates the income capitalization approach is to be the primary approach to value, the sales comparison approach is also useful and the cost approach performs an important function in appraisals where the value conclusion must be allocated to its component parts.

At page 27 of his appraisal Dost noted the subject property is an assisted living facility and the business value and equipment value must be separated from the value of the going concern to arrive at the value of the real estate. Dost asserted in the report the textbook *Analysis and Valuation of Health Care Enterprises* states that the simplest technique for isolating business value is to attribute any intangible value to the difference between the value indicated by the cost approach for physical assets only with the total concluded value of the going concern as derived from the income capitalization approach. The text also provides that it may be possible to derive a percentage deduction from net income that represents a fair allowance for the entrepreneurial profit of the property. Dost stated in the report two methods were used to separate the value of the real estate from the intangible business value, comparing the cost approach conclusion to the income capitalization approach conclusion and based on the percentage deduction from net income for the entrepreneurial (business) component. (Intervenors' Exhibit #1, pp. 27-28.)

Under the cost approach Dost first estimated the value of the subject's land using five comparable land sales located in Lisle, Naperville, Warrenville and Lombard. The comparables ranged in size from 133,294 to 348,480 square feet or from 3.06 to 8.00 acres. The sales occurred from May 2007 to March 2009 for prices ranging from $1,837,600 to $5,733,000 or from $9.59 to $29.98 per square foot of land area. Using these sales Dost estimated the subject had a land value of $12.00 per square foot of land area or $4,250,000.

Dost next estimated the improvement value using replacement cost new from the *Marshall Valuation Service*. He described the subject as an average quality, Class C constructed, independent/assisted living facility most similar to Class C, Homes for Elderly. Dost estimated the above grade area had a unit cost of $129.46 per square foot for a total cost of $29,534,357 and the basement area had a cost of $66.90 per square foot for a total cost of $855,183. To this he added soft costs of 10% or $2,953,436 and $85,518, respectively, to arrive at values of $32,487,793 and $940,701. The appraiser then added 15% entrepreneurial profit and arrived at a total replacement cost new of $38,442,768. Dost next determined the subject suffered from 18.18% or $6,989,594 in incurable physical deterioration based on an effective age of 10 years and a total life of 55 years. Dost testified that the total expected life came from tables in the *Marshall Valuation Service*. He testified there is a range depending on the quality. The witness was of the opinion the subject suffered from no functional and no external obsolescence. Deducting depreciation resulted in a depreciated cost new of $31,453,174. Dost also estimated the site improvements; which included the garage, paving and carport, had a depreciated value of $735,000. Adding the depreciated building value, the land value and the site improvements resulted in an estimated value under the cost approach of $36,400,000.

The next approach developed by Dost was the sales comparison approach. The witness explained that the market analyzes these sales based on a going concern and then allocations are made. He testified that he concluded the value of the going concern and made deductions for business and personal property. The appraiser identified four comparable sales located in the Illinois cities of Westmont, Lincolnwood, Vernon Hills and Northbrook.

Dost described sale #1 as being located five to six miles southeast of the subject property and was a 116 unit licensed assisted living facility constructed in 2002. This property sold in May 2008 for $31,500,000 or for $271,552 per unit. He testified he verified this sale with the transfer declaration which had a type written statement that the sale was an arm's length transaction. He also stated there was an allocation for business value and FF&E made by the parties in the amount of $7,228,000.[2] He testified $480,359 was allocated to personal property and $6,727,012 was allocated to goodwill. Dost stated that in making these deductions from the total purchase price results in a value for the real estate only of $24,272,000 or $209,241 per unit.

Sale #2 occurred in November 2006 for a price of $88,350,000 or $295,485 per unit. This property was improved with an independent living, assisted living and skilled nursing facility constructed in approximately 1995 with 299 units. He testified the buyer allocated $1,136,000 to FF&E. Dost stated he reviewed the real estate transfer declaration and the CoStar report. The transfer declaration indicated a portion of the price can be attributed to intangible value but made no specific allocation.

Sale #3 occurred in February 2005 for a price of $50,000,000 or $178,571 per unit. This property has 280 units and was built in 1995. This property has independent living units (80%) and assisted living units (20%). The appraiser indicated this was a sale-leaseback. He testified that he researched this sale

[2] A copy of a portion of the PTAX-203 Illinois Real Estate Transfer Declaration documenting the sale was included at page marked 43 of the board of review submission disclosing $7,228,000 was the amount of personal property included in the purchase.

through CoStar, the real estate transfer declarations and SEC filings, in which the buyer indicated the prices paid for acquisitions are based on fair market value. The buyer allocated $2,367,000 for FF&E and $1,633,000 for intangible value, which would result in a value to the real property of $46,000,000 or $164,286 per unit.

Sale #4 occurred in June 2004 for a price of $38,664,000 or $174,950 per unit. This was a 221 unit independent living and assisted living facility constructed in 2000 and was operated by the same operator as the subject property. Dost believed this may have been a sale-leaseback transaction. He testified the buyer was Ventas, a real estate investment trust (REIT) that only owns real estate. He testified this sale was verified with Cushman & Wakefield.

In summary the comparables sold for prices ranging from $174,950 to $295,485 per unit. After considering adjustments for such factors as market conditions, age, condition, size, location, building area per unit, construction characteristics and economic characteristics Dost arrived at an estimated going concern value of $200,000 per unit or $46,800,000.

Dost testified that on pages 66 through 68 of his appraisal he outlined his calculations to determine the business value that needed to be deducted from the going concern value to arrive at the value of the real estate. Using *Analysis and Valuation of Health Care Enterprises* as a source, he decided to use two methods to separate the value of the real estate from the intangible business value and the personal property. One was to compare the cost approach conclusion with the conclusion by the income capitalization approach to arrive at a residual business value of $7,781,000. The second method was based on the percentage deduction from net income for the entrepreneurial (business) component. He estimated proprietary earnings to be 15% of net operation income or $720,313. The appraiser was of the opinion that the excess earnings associated with the business was the riskiest portion of the cash flow warranting a higher rate of return and a capitalization rate of 15%. Capitalizing the proprietary earnings by 15% resulted in an indicated business value of $4,800,000. Dost also testified one of his sales reported a business value of approximately 21% of the purchase price and sale #3 reported a business value of 3.3% of the purchase price. Based on these two methods Dost estimated a business value associated with the subject property of $6,200,000.

Dost noted using the *Marshall Valuation Service*, the appellant's appraiser's reported the cost new of the FF&E at the subject of $6,701 per unit as of January 1, 2007 and, after considering the actual costs of equipment at numerous proposed facilities, Dost estimated the cost new of the FF&E to be $7,000 per unit. Based on an average age of 5 years and an average life of 10 years, the depreciated value of the FF&E was estimated to be $3,500 per unit or $819,000.

Deducting the business value or $6,200,000 and the depreciated value of the FF&E of $819,000 from the indicated going concern value under the sales comparison approach resulted in an estimated value for the real estate of $39,800,000 using the sales comparison approach.

In developing the income capitalization approach Dost used the subject's historical statements as provided in Hamilton's appraisal for 2005, 2006 and 2007. He testified he requested the subject's actual financial statements for 2006 through 2009 but did not receive a response to the request. The appraiser also examined three expense comparables located in Shorewood, Park Ridge and Carol Stream. The Shorewood facility was an independent and assisted living facility; Park Ridge was an assisted living and an Alzheimer's facility; and Carol Stream was an assisted living facility. Dost had appraised all three of these properties.

Dost also identified four independent living and assisted living rental comparables located in Lombard, Glen Ellyn and Lisle. The base rental rate for comparable #1 ranged from $2,400 to $5,177 per unit; for comparable #2 from $3,741 to $4,562 per unit; for comparable #3 from $3,145 to $6,140 per unit; and for comparable #4 from $1,795 to $6,183 per unit. Dost testified rental #4 was a life care facility that charges a large entrance fees so its rents are slightly lower than the others. Dost's appraisal indicated that the comparable independent living units had average rents for studio apartments of $2,470; $3,314 for one-bedroom units; and $4,713 for two-bedroom units. The assisted living comparables had average rents of $4,713 for studio units and $5,356 for one-bedroom units. Dost further noted that Hamilton stated in his appraisal the subject property had monthly rents for the independent living units of $2,784 to $3,231 for studio units; $3,402 to $4,432 for one-bedroom units; and $4,475 to $5,126 for two-bedroom units. For assisted living units Hamilton reported the rents as ranging from $4,055 to $4,955 for studio units and $4,580 to $5,480 for one-bedroom units. Dost estimated the market rents for the independent living units at the subject to be $2,775 for the studio units; $3,400 per month for the one-bedroom units; and $4,475 for the two-bedroom units. Dost estimated the market rent for the assisted living units at the subject to be $4,050 for the studio units and $4,575 per month for the one-bedroom units. The subject's rental income was estimated to be $10,202,400. Dost also testified the other revenue for the subject from 2005 to 2007 ranged from approximately $224,000 to $350,050. He stabilized other revenue at $292,500. Dost calculated the subject's potential gross income to be $10,494,900.

Dost testified the rental comparables had occupancy rates ranging from 65% to 97% but the 65% rate was due to the comparable property being in the lease-up phase. He further noted that the Hamilton report indicated the subject property had an occupancy rate of 97%. Dost estimated the subject property had a vacancy rate and collection loss of 10% or $1,049,490. Deducting the vacancy and collection loss from the potential gross income resulted in an effective gross income of $9,445,410. Dost stated in his appraisal that the subject's revenue had increased from 2005 through 2007 from $7,817,462 to $8,814,570 or approximately 12.8%. He asserted in the report that based on the historic trend as well as the estimate of market rent, the stabilized gross income was reasonable.

In estimating the expenses for the subject property the appraiser indicated that primary emphasis was given to the subject's historical expense for such items as payroll; general and administrative; dietary; activities and social services; repairs, maintenance, housekeeping and laundry; and utilities. A management fee of 5% of effective gross income was also deducted, an insurance expense was stabilized at $475 per unit and reserves for replacement were estimated to be $500 per unit. Total operating expenses were estimated to be $4,643,321 or 49.16% of effective gross income. He testified the subject's expense ratio for 2006 and 2007 was 52.0% and 48.2%, respectively. He further testified the subject's total expenses for the subject per unit per year for 2006 and 2007 was $18,612 and $18,156, respectively. His stabilized expense for the subject per unit per year was $19,843, higher than both 2006 and 2007.

Deducting the expenses from the effective gross income resulted in a net operating income of $4,802,090. Dost testified the subject's historical net operating income from 2005 through 2007 was increasing by approximately $500,000 per year and his estimated net operating income was approximately $250,000 higher than in 2007.

The next step was to estimate the capitalization rate to be applied to the net operating income. Using the band of investment technique resulted in a capitalization rate of 9.44%. Using two investor surveys for senior housing, *National Investment Center Quarterly Survey* and 2009 *Senior Housing Investment Survey*, Dost arrived at a capitalization rate of 8.5%. He further stated his sale #1 sold at a 6.9% capitalization rate in 2008 and sale #4 was purchased in 2004 for a capitalization rate of 8.5%, for an average of 7.7%. Using these estimates Dost estimated a capitalization rate of 8.75% to which he added an effective tax rate of 1.9307% to arrive at a loaded capitalization rate of 10.681%. Dividing the net income by the capitalization rate resulted in an estimated going concern value under the income approach of $45,000,000, rounded.

The final step under the income approach was to deduct $6,200,000 for the business value component and $819,000 for the FF&E to arrive at an estimated value of the real estate under the income approach of $38,000,000.

In reconciling the three approaches to value Dost placed primary emphasis on the income approach, some emphasis on the sales comparison approach and some emphasis on the cost approach. Based on this analysis Dost estimated the subject property had a market value of $38,000,000 as of January 1, 2009.

Under cross-examination Dost agreed that he used *Analysis and Valuation of Health Care Enterprises* as a resource, which was cited several times in his appraisal. Dost agreed there was nothing in the book that addresses independent living but it does have a section that deals with assisted living. He also agreed that 75% of the subject property is an independent living facility. He also agreed the subject property was licensed under the Assisted Living and Shared Housing Act. (210 ILCS 9/1 et seq.)

Dost agreed that the comments he had on pages 27 and 66 of his report attributed to *Analysis and Valuation of Health Care Enterprises* referencing the technique for isolating business value was in the sections of the publication on Hospitals and Nursing Homes, not specifically in the section on Assisted Living Facilities.

Dost agreed he used the *Marshall & Swift Valuation Service* to develop the cost approach. He described the building as average quality and most similar to a Class C, Homes for the Elderly, with a total life of 55 years. When shown a page from the *Marshall & Swift Valuation Service* marked as Appellant's Exhibit #5, Dost agreed this indicated the typical life for an average Class C, Homes for the Elderly, was 45 years.[3]

Under the cost approach Dost made no deduction for external obsolescence.[4] He testified he did not think it appropriate to make such a deduction without having the subject's financial statements for 2008 and 2009. For impeachment purposes, Dost was shown Appellant's Exhibit #6, an appraisal he prepared for a different property with an effective date of January 1, 2010. At page 32 and 33 of the report he made a deduction for external obsolescence. He stated in the report that the recession's impact was evident by the property's declining income from 2007 to 2009. This Board finds this does not impeach Dost's testimony due to the fact there was no showing in this record that the subject's income declined from 2007 to 2009.

Dost was also show Appellant's Exhibit #7, an appraisal of a different facility as of January 1, 2009 and January 1, 2010. He agreed his cost new differed from that used in calculating the value for the subject property and the local multiplier was different than used to calculate the value of the subject property. Dost also testified the soft costs included in his appraisal are over and above the basic ones included in the *Marshall Valuation Service*. Dost also was of the opinion his estimate of a 15% entrepreneurial profit was appropriate.

With respect to his sales, Dost thought sale #4 was only for the real estate but he was not able to get the transfer declaration. He testified this was purchased by a real estate investment trust (REIT) so he thought this may have been a sale-leaseback of the real estate. Dost was also aware that his first sale had sold in 2004 for a price of $14,500,000. With respect to the second sale, Dost agreed that Senior Lifestyle was on the buying side and on the selling side of the transaction. Dost agreed it was possible this was a sale and leaseback. He further agreed that there was no allocation for business value in this sale. The appraiser also agreed his sale #3 and his sale #4 were sale-leaseback transactions.

[3] A copy of this page from the *Marshall Valuation Service* was included at page marked 31 of the board of review submission.
[4] Hamilton also made no deduction for external obsolescence in his appraisal.

With respect to the income approach Dost testified he did not trend the subject's income up but developed his own stabilized estimate. The expense comparables provided by Dost had expense ratios of 58%, 59% and 64%, rounded. Dost used an expense ratio for the subject of 49%. Dost agreed that if an expense ratio of 60% was used the going concern value would be lower.

Dost also agreed that if his cost approach to value was overstated the business value conclusion would be understated. He also agreed that if his conclusions of value under the income approach and the sales approach would be overstated if the cost approach was too high.

Dost testified that for *ad valorem* purposes less than 5% of his work is done for taxpayers and the majority of his work is for taxing districts. With respect to his rental comparables Dost agreed that the data was as of 2011.

On redirect Dost stated 60 percent of his work is financing work primarily for HUD. He also testified that the subject property is roughly a 75% independent living facility. The appraiser would expect a property with mostly independent living to have a lower expense ratio.

With respect to his comparable sale #4, Dost testified that the buyer, Ventas, is a real estate investment trust (REIT) and 90% of its income is to be from real estate. He explained as a REIT it must buy real estate and are precluded by the Internal Revenue Code from buying the services component. This property sold for approximately $175,000 per unit. With respect to his sale #2, Dost was of the opinion it was not a related party transaction. With respect to his sale #1, Dost testified he reviewed the transfer declaration which was more than 10 pages and had a detailed breakdown listing of the equipment and business value. Removing the amount allocated for the going concern and the FF&E totalling $7,228,000 results in a price of approximately $209,000 per unit for sale #1.

With respect to Appellant's Exhibit #5, a page from the *Marshall Valuation Service*, Dost also identified that Class C, average and good, assisted living retirement complexes have a typical life of 55 years. He testified this was one of the things he considered in estimating the subject's useful life.

On re-cross examination Dost agreed that the amount allocated for business value and FF&E for sale #1 was approximately 23% of the purchase price.

DALE KLESZYNSKI

The next witness called by the intervenors was Dale Kleszynski, real estate appraiser and consultant. Kleszynski has the MAI and SRA designations from the Appraisal Institute. The MAI designation was awarded in 1984. The witness is also a licensed and certified appraiser in Illinois, Indiana and Michigan. The witness is self-employed and president of Associated Property Counselors, Limited, a real estate appraisal and consulting firm. He has appraised approximately 50 senior housing or senior healthcare type properties and has prepared hundreds of appraisal review reports pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) standard number 3.

Kleszynski was given a copy of Hamilton's appraisal with the assignment of completing a technical review in accordance with USPAP standard 3. His client was Community Consolidated School Dist. No. 89 and Glenbard Township High School Dist. No. 87. Kleszynski stated he reviewed the document prepared by Hamilton, inspected the subject property, reviewed data from the CoStar Comps Database Service and reviewed various articles and web sites relating to independent living facilities and assisted living facilities. Upon completion of the technical appraisal review, Kleszynski was of the opinion the appraisal completed by Hamilton was fundamentally incorrect and the conclusion lacked credibility in estimating the value of the subject property.

Kleszynski did not agree with Hamilton's cost approach and his use of both the reproduction cost and replacement cost in the cost approach. The witness was of the opinion Hamilton's categorization of the subject property, which formulates the ultimate conclusion in the cost approach, understated the quality and condition of the subject property. Kleszynski also was of the opinion that Hamilton's estimate of value under the cost approach was understated due to the exclusion of soft costs and entrepreneurial profit.

He also disagreed with the development of the depreciation. The witness was of the opinion Hamilton overstated the subject's effective age and understated the estimated life which has the impact of increasing the amount of physical depreciation. With respect to functional obsolescence, Kleszynski was of the opinion parking was not an issue and was sufficient to meet the needs of the property. He also disagreed with Hamilton's conclusion the dining room was too small. The witness stated his work in this area indicated that the dining room facilities are designed so that people will eat in shifts because of the socialization factor. He thought having a dining room that would serve all the people at once would be an issue of functional obsolescence. He also disagreed with Hamilton's opinion of functional obsolescence due to no healthcare facility on the site because the lack of a healthcare facility is consistent with the design of the property to operate as an independent living facility as well as an assisted living facility. He also disagreed with Hamilton's conclusion that the subject's units were too small based on the size of the comparables used in the report demonstrating the subject units were within the basic range. He asserted these types of units are supposed to be small and are designed to let people downsize. He also disagreed with Hamilton's statement that the construction quality is more than needed. He thought this was an area of inconsistency because Hamilton uses a unit of construction based on the subject being average. Kleszynski was of the opinion that the subject's rising income from 2005 through 2007 as reported in Hamilton's appraisal at page 60 indicates the property does not suffer from the forms of obsolescence identified in the cost approach. The witness was of the opinion the appellant's appraiser overstated depreciation and obsolescence. The review appraiser was of the opinion the steps Hamilton took in the cost approach had the impact of understating and skewing the value conclusion to the lowest end it could.

With respect to the income approach, Kleszynski was of the opinion the rental comparables Hamilton selected support the actual rental rates that were being achieved at the subject property. The review appraiser thought it was inconsistent for Hamilton to state that the rents being achieved at the subject property represent market level rents then to conclude lower rents levels than are being achieved. The witness asserted, after reviewing the trend line from 2005 through 2007 with total revenues increasing and expenses remaining level, Hamilton's stabilized operation of the property reported on page 67 of the appraisal, which was below the past operation of the property, has the impact of skewing the value of the real estate because he understated the revenue and overstated the expenses. Kleszynski also disagreed with Hamilton's entrepreneurial profit analysis. According to the witness an appraisal of a facility such as the subject begins with estimating the value of the going concern and then deductions are made for the business interest and FF&E. He thought Hamilton's use of a 25% entrepreneurial profit was an inconsistency where independent living facilities and assisted living facilities were reported in the appraisal to have entrepreneurial profits ranging from 5 to 15 percent. (Appellant's Exhibit #1, p. 66) By using a higher entrepreneurial profit percentage Hamilton skewed the value of the real estate to the lowest possible level.

With respect to the capitalization rate developed by Hamilton, the witness also disagreed with the calculation of the capitalization rate under the band of investment technique. He was of the opinion Hamilton selected an inordinately high interest rate for the mortgage in an inordinately short period of time. The witness also testified *Korpaz* does not survey senior living or healthcare properties and does not provide a capitalization rate range for this type of property. With respect to the National Investment Center and Senior Living Valuation Services, Inc. data in the report the witness noted the average rates for the various properties were not presented. He was of the opinion the data presented indicated the capitalization range for the subject was between 5.8% and 11.3%. The witness would have also liked to have seen capitalization rates derived from the market. Kleszynski did not agree with Hamilton's capitalization rate of 12½% due to it being outside the range of the data and his opinion that the capitalization rate does not reflect that Hamilton made a number of deductions to take the risk out of the income stream. The review appraiser was of the opinion that Hamilton's decisions throughout the income approach analysis were fundamentally incorrect and consequently skewed the value conclusion in favor of the client.

With respect to the sales comparison approach, Kleszynski disagreed with Hamilton's selection of out-of-state sales asserting there was no reason to go outside the Chicago area in order to develop comparable data for the analysis of the subject property. He also disagreed with Hamilton's 25% downward adjustment to each sale other than comparable #5 for the going-concern value calling it arbitrary. With respect to sale #5 located in North Aurora, Illinois, Kleszynski discovered this property was a former motel retrofitted to become a senior housing apartment that was much older than the subject property. He was of the opinion that the decisions made in the data selection and the analytical techniques, especially the across-the-board deduction of 25%, skewed the value in favor of the appellant.

In conclusion Kleszynski was of the opinion Hamilton's analysis of the subject property was fundamentally incorrect and lacked credibility in estimating the value of the real estate.

Under cross-examination, Kleszynski was aware that Hamilton used a cost estimator and agreed there is a difference between using the calculator and estimator. The witness testified he reviewed the Dost appraisal. He agreed that both Hamilton and Dost described the subject property as a Class C property of average quality. He also agreed, based on a review of Appellant's Exhibit #5, if one was using the calculator method the life expectancy is 45 years.

Kleszynski identified Intervenors' Exhibit #2 as the technical review appraisal he prepared.

Based on this evidence the intervening school districts requested the subject's assessment reflect a market value of $38,000,000.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). In the absence of a "contemporaneous sale between parties dealing at arm's length" that would be practically conclusive on the issue of market value, valuation methods are employed to estimate the properties fair market value. Cook County Board of Review v. Property Tax Appeal Board, 384 Ill.App.3d 472, 480 (1st Dist. 2008). Based on this record the Board finds an increase in the assessment of the subject property is warranted.

The subject's assessment totalling $9,537,540 reflects a market value of $28,675,707 using the 2009 three year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue. The assessment equates to a market value of $122,546 per unit and $125.70 per square foot of above grade building area, including land.

The only evidence of value presented during the hearing was provided by the appellant and the intervenors. The appellant submitted an appraisal and presented the testimony of the appraiser, James Hamilton, who estimated the subject property had a market value of $17,000,000 as of January 1, 2008. The intervenors submitted an appraisal and presented the testimony of the appraiser, Eric Dost, who estimated the subject property had a market value of $38,000,000 as of January 1, 2009. The difference in the estimated values between the two experts was $21,000,000 or 123.5%.

The board of review submitted an analysis prepared by the Milton Township Assessor's Office. At the hearing, however, the board of review did not present any evidence and called no witnesses. Based on this record the Property Tax Appeal Board gives no weight to the conclusion of value contained in the evidentiary documents submitted by the board of review.

The Board finds the appraisers agreed to the general description of the physical characteristics of the subject property, the highest and best use of the subject property and the estimated land value of $4,250,000. The appraisers were also in agreement with the use of the subject property as an independent living and assisted living facility and the unit mix. The Board also finds there was no dispute with the description of the operation of the subject facility as testified to by Marie Gurnik, Executive Director of The Meadows, and the fact the subject property is licensed under the Assisted Living and Shared Housing Act (210 ILCS 9/1 et seq.).

The Board gives little weight to the testimony of Mary O'Connor that she would attribute approximately 45 to 50 percent of the net operating income of the subject facility to the business enterprise value or going concern value. She provided no documentation or calculations to bolster or support her conclusion. Additionally, her estimate of business enterprise value was at odds with both Hamilton and Dost.

The Board finds, however, of the two appraisals presented by the parties, only Dost presented an estimate of value as of January

1, 2009, the assessment date at issue. Hamilton valued the subject property as of January 1, 2008, and presented no appraisal update for the assessment date at issue and did not testify to an opinion of value as of January 1, 2009. The Board finds the fact that the appellant's expert's opinion of value was not for the assessment date at issue detracts somewhat from the credibility, reliability and weight that can be given the opinion of value. Of the two appraisers presented by the parties, the Board finds the most credible witness to be Eric Dost, with adjustments to his estimate of value as explained herein.

Of the two appraisals the Board finds the cost approach developed by Dost to be superior. Dost estimated the replacement cost new of the building components to be $33,428,494. To this amount the appraiser added 15% for entrepreneurial profit, the reward an entrepreneur expects to receive at the completion of a real estate development. The Board finds there was no objective evidence of support for this estimate in this record and Dost did not include any discussion in the appraisal detailing how he arrived at the estimate of entrepreneurial profit. Based on the lack of supporting data or analysis, the Board gives little weight to estimate of entrepreneurial profit included by Dost in his cost approach. The Board finds the replacement cost new of the building components to be $33,428,494.

With respect to physical depreciation the Board finds that Dost's estimate of 18.18% is supported using an effective age of 10 years and an economic life of 55 years. Using the revised estimate of cost new, the Board finds the subject suffered from $6,077,300 in physical depreciation. The Board finds that, in addition to estimating the subject's effective age as of January 1, 2008, Hamilton's estimate of an effective age of 11 years was overstated. With respect to Dost estimating the subject's life expectancy to be 55 years, the Board finds Appellant's Exhibit #5 indicated that Class C, average and good, assisted living retirement complexes have a typical life of 55 years, which supports his conclusion.

The Board finds neither appraiser attributed any external obsolescence to the subject property.

Hamilton attributed 20% functional obsolescence to the subject property while Dost determined the subject property suffered from no functional obsolescence. The Board finds Hamilton's estimate of functional obsolescence was not supported. The

Board finds there was no objective market evidence showing that the lack of heated parking spaces was an element of functional obsolescence. The Board finds the fact the residents eat in shifts and the fact each unit has its own kitchen undermines Hamilton's conclusion of functional obsolescence due to the size of the dining room. The Board finds the subject's highest and best use was determined to be its present use as an independent living and assisted living facility which undermines Hamilton's conclusion of functional obsolescence attributed to the lack of a healthcare facility in proximity to the subject. The Board also finds the subject's units are similar in size to the comparables in this record which undermines Hamilton's conclusion of functional obsolescence attributed to the subject's unit sizes. The Board further finds Hamilton's conclusion the subject suffered from functional obsolescence due to the quality of construction being more than needed was not supported based on his determination the subject was average construction. The Board finds that Kleszynski's comments with respect to this aspect of Hamilton's cost approach were credible. In conclusion the Board finds the subject suffered from no functional obsolescence.

Based on this record the Board finds the subject building had a depreciated cost new of $27,351,194. To this amount the land value of $4,250,000 and the site improvements of $735,000 as calculated by Dost need to be added to arrive at an estimated value under the cost approach of $32,336,194 or $32,340,000, rounded.

Under the income approach the Board finds Dost's estimate of the potential gross income is better supported than the estimate developed by Hamilton. Dost's estimate of income was supported by rental comparables as well as an analysis of the subject's income history from 2005 through 2007 that showed total revenue increasing. Hamilton's total stabilized revenue was for 2008 and was below both the 2006 and 2007 revenues generated by the subject property. The Board finds Hamilton understated the subject's potential gross income. The Board finds that Dost's estimate of a 10% vacancy and collection loss was supported by the comparable data in his report and was not otherwise challenged. The Board finds the subject's effective gross income of $9,445,410 was supported.

With respect to expenses, the Board finds Dost underestimated the expenses associated with the subject property. The subject had historical expenses from 2005 to 2007 ranging from 48% to 55%. The expense comparables presented by Dost had expense ratios ranging from 58% to 64% with the comparables containing both independent living units and assisted living units having an expense ratio of 58%. The Board finds that Dost's conclusion that the subject's expenses were 49.2% of effective gross income was too low. The Board finds that the subject's expenses should equate to 55% of the effective gross income resulting in a stabilized net operating income of $4,250,435.

With respect to the capitalization rate, the Board finds Dost's estimated loaded capitalization rate of 10.681% was the best supported in the record. Dost relied upon the band of investment technique, investor surveys and two sales in arriving at the capitalization rate.

Based on this record and giving more credence to the Dost analysis. Capitalizing the net income, the Board finds the subject property had an indicated going concern value under the income approach of $39,794,355 or $39,795,000, rounded.

The Board must next determine the value of the FF&E and the business value to be deducted from the going concern value to arrive at the value of the real estate under the income approach. The Board finds that Dost's estimated value of the FF&E of $819,000, is better supported. When one deducts the estimated value of the FF&E from the going concern value results in a value of the real estate and intangibles of $38,976,000. When one deducts the estimated value under the cost approach of $32,340,000 from the value of the real estate and intangibles of $38,976,000 results in a residual business value of $6,636,000. The Board finds that Dost's estimate that 15% of the net income or $637,565 is proprietary earnings is appropriate. Capitalizing the proprietary earnings by 15%, as determined by Dost, results in an indicated business value of $4,250,000, rounded. Considering both estimates of business value, the Board finds Dost's estimated business value of $6,200,000 is appropriate.

In conclusion, the estimated value of the real estate under the income approach is $32,776,000 ($39,795,000 - $819,000 (FF&E) - $6,200,000 (Business Value) = $32,776,000).

The Board also finds that Kleszynski's testimony with respect to Hamilton's income capitalization approach concluding that the analysis was fundamentally incorrect and consequently skewed the value conclusion in favor of the client was credible.

With respect to the sales comparison approach the Board finds that the analysis prepared by Dost was superior to that developed by Hamilton. Unlike Hamilton, Dost used comparables located in close proximity to the subject property. In summary the comparable sales used by Dost sold for prices ranging from $174,950 to $295,485 per unit. After considering adjustments for such factors as market conditions, age, condition, size, location, building area per unit, construction characteristics and economic characteristics Dost arrived at an estimated going concern value of $200,000 per unit or $46,800,000. Deducting the business value and FF&E resulted in an estimate of value under the sales comparison approach of $39,800,000. The Board finds this value conclusion is supported by the best sales used by Dost, which included sale #1 and sale #4. He testified the documents he reviewed regarding sale #1 had a detailed breakdown of the equipment and business value. Eliminating the amount allocated resulted in a sale price of $209,000 per unit, rounded. He also explained that sale #4 was purchased by a REIT, which is only allowed to invest in real estate. This comparable sold for a unit price of $175,000, rounded. These two unit prices would be for the real estate only. When one applies a value of $175,000 per unit to the subject the result is in an estimated value of $40,950,000, which is supportive of Dost's conclusion of value under the sales comparison approach.

The Board also finds that Kleszynski's testimony with respect to Hamilton's sales comparison approach concluding that the analysis skewed the value conclusion in favor of the client was credible.

After reviewing this record and considering the testimony of the witnesses and giving more emphasis to the Dost appraisal and the techniques Dost utilized, the Property Tax Appeal Board finds the subject property had an indicated value under the cost approach of $32,340,000; an indicated value under the income approach of $32,776,000; and an indicated value under the sales comparison approach of $39,800,000. After considering these three estimates and giving most emphasis to the income approach, the Board finds the subject property had a market value of $32,776,000 as of January 1, 2009. Since market value has been determined the 2009 three year average median level of assessments for DuPage County of 33.26% 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. Crit

Chairman

Member

Member

Member

Member

DISSENTING:

CERTIFICATION

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: September 19, 2014

Eileen 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.