FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Moran Canyon LLC
DOCKET NO.: 09-04747.001-C-3 & 10-01971.001-C-3
PARCEL NO.: 07-16-204-009

The parties of record before the Property Tax Appeal Board are Moran Canyon LLC, the appellant, by attorney Paul J. Reilly of Chicago, the DuPage County Board of Review; and Indian Prairie Community Unit School Dist. No. 204, intervenor, by attorney Joshua S. Whitt of Whitt Law LLC, Aurora.[1]

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

LAND:	$2,237,670
IMPR.:	$7,332,900
TOTAL:	$9,570,570

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property consists of an irregular shaped site that contains a total land area of 771,012 square feet or 17.7 acres that is improved with two, three-story, masonry and frame constructed apartment buildings containing approximately 306,048 square feet of building area. The improvements were constructed in 2002. There are a total of 348 units consisting of one-bedroom with one-bath apartments and two-bedroom with two bathroom units. The one-bedroom units range in size from 700 to 928 square feet of living area. The two-bedroom units range in size from 1,091 to 1,184 square feet of living area. Additional improvements include a clubhouse, garages and a swimming pool. The property is commonly known as the Bristol Station Apartments and is located in Naperville, Naperville Township, DuPage County.

[1] A consolidate hearing was held for Docket Nos. 09-04747.001-C-3 and 10-01971.001-C-3. The evidence from the appellant and intervenor was the same in both appeals. However,the DuPage County Board of Review was found to be in default in the appeal for the 2010 tax year due to the failure to submit its "Board of Review Notes on Appeal" and evidence in support of its contention of the correct assessment.

The appellant appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Joseph M. Ryan of LaSalle Appraisal Group, Inc. estimating the subject property had a market value of $25,600,000 as of January 1, 2009. The appraisal was marked as Appellant's Exhibit #1.

Ryan became involved in the assessment and appraisal field in 1980. He spent five years at the Cook County Assessor's Office and experience with two appraisal firms between 1985 and 1990. In 1990 he founded LaSalle Appraisal Group, Inc. Ryan has the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute and has the State of Illinois Certified General Real Estate Appraiser license. Most of Ryan's appraisal work has been in the Chicagoland area and he has appraised over 130 apartment buildings since 2001.

The purpose of Ryan's appraisal was to estimate the fee simple market value as of January 1, 2009 for ad valorem taxation purposes. Ryan testified that the events of October 2008 had affected the apartment market by the fact that financing became more difficult to obtain. He testified the collateral mortgage backed security option for financing larger properties was no longer available requiring owners or buyers of property to have higher equity stakes when buying property. The witness also testified rents had been declining and capitalization rates had been increasing creating a situation where property values decreased.

Ryan determined the highest and best use of the property both as vacant and as improved was for the continuation as an apartment property. The appellant's appraiser developed the sales comparison approach to value and the income capitalization approach to value in estimating the market value of the subject property.

Ryan utilized six comparable sales in developing the sales comparison approach to value. The comparable sales were located in Aurora, Naperville and Oswego from approximately 1 mile to 11 miles from the subject property. The comparables were constructed from 1980 to 1991 and had from 150 to 352 units. Comparable sales #2, #3, #4 and #5 were described as having total building areas ranging in size from 108,420 to 276,240 square feet of building area. The comparables had sites ranging in size from 342,382 to 912,146 square foot of land area. Comparable sales #1, #2, #5 and #6 had a mix of one-bedroom and two-bedroom apartments. Comparable sales #3 and #4 had mix of one-bedroom, two-bedroom and three-bedroom apartments. Comparables #1, #2, #4, #5 and #6 were described as being improved with two-story buildings. The sales occurred from June 2006 to October 2009 for prices ranging from $8,150,000 to $33,500,000 or from $54,333 to $115,079 per unit.

At page 31 of his report Ryan asserted the sales that occurred prior to the economic downturn in 2008 do not reflect the current

market. He testified that according to federal statistics the economy entered a recession in 2007 and the most dramatic event of that was the stock market collapse in October 2008. Ryan testified the banking crisis changed how the world operated. He asserted that financing dried up for big projects, banks had higher equity requirements, there were stricter lending requirements, rents were going down and overall capitalization rates were going up. He testified only his comparable sales #5 and #6 reflected those conditions. Ryan asserted the remaining sales occurred in a different economic time and required substantial downward adjustments for market conditions.

In analyzing the sales, the appraiser indicated in the report there were no adjustments necessary for financing terms; no adjustments were necessary for condition of sale as all were "arm's-length" transactions; downward adjustments were made to sales #1 through #4 for market conditions, an upward adjustment was made to sale #4 due to its location in Oswego, Kendall County; no adjustment was made for age and condition; sales #3 through g#5 were adjusted downward due to the smaller number of units; and sale #6 was adjusted downward due to the above market occupancy rate of 97%. Based on this analysis the appraiser estimated the subject property had a market value of $73,500 per unit or $25,600,000, rounded.

According to Ryan he received income information following the completion of the appraisal that supported his adjustments to sales #5 and #6. This documentation was marked as Appellant's Exhibits #2 and #3. He also compared the incomes on these properties with the subject on a document that was marked as Appellant's Exhibit #4. The intervenor objected to the exhibits as not being submitted to the Property Tax Appeal Board and not being used in the preparation of the report. The Property Tax Appeal Board sustains the objection finding the documents were not timely submitted pursuant to the Sections 1910.30(g) & (k) and Section 1910.67(k) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.30(g) & (k) & §1910.67(k)). As such the Property Tax Appeal Board will give this aspect of the appraiser's testimony no weight.

The next approach to value developed by Ryan was the income approach to value. He explained he was estimating the fee simple interest, therefore, under the income approach market rents as of January 1, 2009 have to be used rather than contract rents.

The appraisal contained information on five comparable rentals improved with apartment complexes located in Aurora and Naperville. The comparables contained from 319 to 420 units. Two of the properties were described as garden type apartment complexes and one was described as a three-story apartment complex. Comparable #2 was constructed in 1999 and comparables #4 and #5 were constructed in 1997. The comparables had one-bedroom apartments had monthly rental rates ranging from $775 to $1,330 per month or from $.93 to $1.57 per square foot and two-bedroom apartments with monthly rentals ranging from $869 to

$1,970 or from $.86 to $1.41 per square foot. The comparables had occupancy rates of 83%, 85%, 90%, 95% and 98%, respectively. Ryan reported the subject as having an occupancy rate of 92%.

Ryan testified he looked at the rent roll for the subject as of January 1, 2009. He testified the asking rents were lower than the contract rents that were signed sometime during 2008. He asserted the rents in place during 2008 were higher than market rents as of January 1, 2009. According to the appraiser by January 1, 2009 a decision had been made to lower rents to maintain occupancy.

On page 47 of Ryan's appraisal he set forth the unit rental mix at the subject property which disclosed that the one-bedroom/one-bathroom units had current rents ranging from $795 to $1,125 or from $1.00 to $1.21 per square foot per month and the two-bedroom/two-bathroom units had rents of $1,099 and $1,199 or $1.01 per square foot per month. He further testified that he was made aware of rents at the subject property on January 1, 2009, which are reported on page 56 of the appraisal. The four model one-bedroom/one-bathroom units had monthly rentals of $825, $850, $899 and $1,125, respectively. The two model two-bedroom/two-bathroom units had month rentals of $1,099 and $1,199, respectively. The resulting monthly income was calculated to be $330,768. The appraiser stated in the report the potential monthly gross income $330,768 was taken from the current rent roll. The annual potential gross income was calculated to be $3,969,216 ($330,768 x 12).

The appraiser next estimated the subject's vacancy and collection loss. In the apartment overview section of the appraisal Ryan reported that the national vacancy rate rose to 7.5%; the overall vacancy rate in Chicago was 6.6% and in the suburbs the vacancy was 6.8%. Ryan stabilized vacancy at 7.0% and added .5% for collection loss resulting vacancy and collection loss deduction of $297,691 and a gross income of $3,671,525.

Ryan then explained that management charges tenants per month for trash collection and water and sewer usage, which he stabilized at $65,000. The appraiser also stabilized other income from categories such as pet rental income, parking revenue, apartment damages and termination and application fees to be $200,000. Adding these components resulted in an effective gross income of $3,936,525. Ryan testified this amount is less than contract rent because the rents in place in 2008 were higher than the asking rents as of January 1, 2009. The appraiser asserted this would be consistent with the fee-simple interest he was appraising.

The appraiser than calculated operating expenses for common area utilities, management, administration, cleaning, maintenance and repairs, insurance, marketing, professional fees, payroll and reserves. The appraiser included a table of the subject's operating statements for 2007 and 2008 which reflect operating expense ratios (calculated by dividing the operating expenses by

the total revenue) of 40.43% and 41.30%, respectively. The report also had the typical operating expenses for the Chicago apartment market according to the "2009 IREM Income/Expense Analysis; Conventional Apartments" published by the Institute of Real Estate Management (IREM).

Ryan testified that utilities were trending up and were stabilized at $575 per unit or $200,000 compared to the IREM median expense of $694 per unit. Marketing expense was stabilized at $160,000 or $460 per unit. Professional fees were stabilized at $35,000 or $101 per unit. Payroll was stabilized at $365,000 or $1,049 per unit, which was in line with historical records but above the IREM median expense of $848 per unit. Management fees were stabilized at $130,000 or $374 per unit which was slightly higher than historical range from $352 to $365 per unit but below the IREM median management fee for 2007 of $547 per unit. Maintenance and repair were stabilized at $195,000 or $560 per unit which was below the IREM median maintenance and repair expense of $563 per unit. Expenses associated with apartment turnover such as cleaning and painting were stabilized at $287 per unit or $100,000. Insurance expenses were stabilized at $115,000 or $330 per unit which was above the historic range and above the IREM expense of $310 per unit. Other or miscellaneous expenses were stabilized at $1.44 per unit or $500. Administrative and general expenses for such expenses as bank charges, telephone, office supplies and computer expenses were stabilized at $330 per unit or $135,000. The historic administrative and general expenses were $152 and $160 per unit in 2008 and 2007, respectively, and the IREM expenses were $330 per unit. The replacement reserves for building components were stabilized at $374 per unit or $130,000, compared to historical expenses that ranged from $150 to $400 per unit. Stabilized expenses totaled $1,565,500 or 39.77% of effective gross income. Excluding reserves for replacements the operating expenses were approximately 36% of effective gross income. Deducting the expenses from the effective gross income resulted in a net operating income of $2,371,025.

The final step under the income approach was to estimate the capitalization rate to be applied to the net income. Ryan considered both the direct capitalization technique and the band of investment technique. Using the direct capitalization technique the appraiser used a published survey that derived a capitalization rate from recent sales of properties. Ryan testified that Realtyrates.com, an investment survey of different types of properties, reported capitalization rates in the second quarter of 2009 between 4.7% and 12.2%. He selected a capitalization rate of 7.25%. Under the band of investment technique the appraiser determined the mortgage portion would be 70% with a 6% percent interest rate and a 25 year loan resulting in a mortgage constant of 7.73%. The equity portion was estimated be 30% with an 8.00% interest rate. Using the band of investment technique Ryan calculated a capitalization rate of 7.81%. Ryan indicated in the report that the band of investment method was used to support the direct capitalization technique

resulting in an overall capitalization rate of 7.25%. To this the appraiser added a 2% tax load resulting in a loaded capitalization rate of 9.25%. Capitalizing the net income resulted in an estimated value under the income approach of $25,600,000.

In reconciling the two approaches to value Ryan gave significant consideration to the income approach and secondary consideration to the sales comparison approach and arrived at an estimated value of $25,600,000 as of January 1, 2009. He testified that market participants tend to look at the market derived overall capitalization rates to make their investment decisions. He asserted that the income approach was given significant weight because basically that is how investors make their decisions.

It was Ryan's opinion that the value of the property as of January 1, 2010, would not have changed from the value opinion contained in his appraisal. He testified that market rents did not significantly change through January 1, 2010. Ryan's opinion of value for the subject property was the same as of January 1, 2010 as it was for January 1, 2009 of $25,600,000.

Under cross-examination Ryan testified that vacancy rates in similar complexes increased from 2008 to 2009 while rental rates decreased from 2008 to 2009 and were stable from 2009 to 2010. With respect to the comparable sales, Ryan testified that he determined an adjustment for age was not needed. He testified that there could be an adjustment for age but it is often based on condition and revenue generation.

With respect to the subject's location Ryan stated I-88 is approximately one mile north of the subject property. Additionally, a train station is within walking distance of the subject property. The witness asserted the subject's location was considered in the overall location adjustments in the report. The report disclosed only a positive location adjustment was made to sale #4 for its inferior location in Oswego, Kendall County.

Ryan testified that there is an apartment complex between the subject property and the train station named Railway Station. He indicated this property sold recently but he did not use it because it was much superior overall. He further testified that representatives of the subject property informed him that Railway Station was a property the subject competes with.

Ryan was of the opinion the mortgage crisis had not had an impact on the demand for apartments by January 1, 2009 and January 1, 2010. Ryan agreed that the total revenue of the subject property increased from 2007 to 2008 as depicted on the table on page 59 of his appraisal. He further testified that he based his income projections for the subject property off the price sheet although he stated on page 56 of his report that he used the rent roll. He testified the price listing sheet he examined was dated 12/31/2008 and further agreed a promotion was being run at that time. He further testified that when he looked at the property

in November 2009 the price sheet was lower than the 12/31/2008 price sheet. Ryan asserted it would not surprise him if the rental rates being received at the subject property were higher than what he projected because the rents were contracted for in 2008, prior to the rental rates being lowered. The appraiser did not know if the owner of the subject property was projecting to receive less in rental income than in 2008 and asserted he was more interested in market rent than contract rent.

With respect to the table on page 47 of the report, Ryan testified the column identified as "market rent" was the owner's term and that "contract rent" would be a better identifier. He testified this was the contract rent in 2008. The witness testified the column identified as "current rent" was the asking rent as of January 1, 2009, based on the price sheet that they were asking. Ryan asserted the asking rent as of January 1, 2009 was used throughout the year based on information from the leasing manager. He also indicated the promotion was yearlong.

With respect to the rental comparables, Ryan testified that the rents quoted were the rates at the beginning of the year. He agreed the subject property was asking less than other complexes in Naperville.

With respect to the administrative and general expenses identified on page 61 of the appraisal, Ryan had math an error in that if $321 per unit is applied, the math results in expenses of $111,708 not $135,000 as stated in the report.

In the income approach Ryan concluded the subject had a stabilized operating expense of 36%. He also stated the subject operated at an expense ratio of approximately 40% and 41% for 2007 and 2008, respectively, but that included real estate taxes. Excluding real estate taxes the subject had an expense ratio of just under 30% each year. Ryan agreed that to properly compare his stabilized expenses to the subject's historical expenses real estate taxes should be taken out.

With respect to the comparable sales Ryan testified he performed an exterior inspection of each property. He testified he had information on the average rents for comparables #1, #2, #3, #5 and #6. Ryan testified that one comparable sale had a lower price per unit than his estimated value per unit under the sales comparison approach of $73,500. The next closest comparable was sale #5 that occurred in October 2009 for a price of $77,328 per unit.

With respect to the capitalization rate Ryan testified he looked at Realtyrates.com, which is a national survey. He also explained that the return on equity portion of 8% equity in the band of investment approach was also from Realtyrates.com that reported rates ranging from 7.07% to 15.21% during the second quarter of 2009, as stated on page 66 of his appraisal.

With respect to the appeal for the 2009 tax year, the board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling $10,214,260 was disclosed. The subject's assessment reflects a market value of $30,710,034 or $88,248 per unit, including land, when applying the 2009 three year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue.

With respect to the appeal for the 2010 tax year, the board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of the assessment. By letter dated June 8, 2012, the Property Tax Appeal Board found the board of review in default. The appellant had submitted a copy of the Notice of Final Decision issued by the DuPage County Board of Review for the 2010 tax year establishing a total assessment for the subject property of $9,805,690. The total assessment reflects a market value of $29,464,213 or $84,667 per unit when applying the 2010 three year average median level of assessments for DuPage County of 33.28% as determined by the Illinois Department of Revenue.

The board of review presented no witnesses or evidence but deferred to the intervenor.

The intervenor contends the subject property is under-valued. In support of this argument the intervenor submitted an appraisal prepared by Jason A. VanDevelde, Thomas P. Lowery and James A. Gibbons of Gibbons & Sidhu, Ltd. estimating the subject property had a market value of $36,700,000 as of January 1, 2009. The appraisal was marked as Intervenor's Exhibit #1.

The intervenor called at its witness James A. Gibbons. Gibbons identified Intervenor's Exhibit #1 as the appraisal of the subject property he prepared. Gibbons has the MAI designation and is a State of Illinois Certified General Real Estate Appraiser. Gibbons has had the MAI designation for approximately 25 years.

Gibbons personally inspected the subject property and described it as being in good condition. He testified the subject property has 348 units with 228 one-bedroom units and 120 two-bedroom units. The complex features a fitness center, a clubhouse with a business center, an outdoor swimming pool and garage parking. The property is located a couple of blocks west of Route 59 and approximately ¼ mile from the Naperville train station.

During the inspection the representatives of the subject property informed him that the two main competitors were the Railway Plaza apartment complex located a couple of blocks south of the subject property and the Grand Reserve of Naperville located a approximately two miles southeast of the subject property.

Gibbons testified his research disclosed the subject property sold in September 2005 for a price of $42,643,000 and included a copy of the Special Warranty Deed in the appraisal documenting

the transaction. He testified that the LaSalle Appraisal Report (Appellant's Exhibit #1, pg. 7) indicated the sale was not arm's length but he found no evidence of that.[2]

Gibbons determined the highest and best use of the subject property as improved was for the continued use of the existing improvements as an apartment complex. In estimating the market value of the subject property Gibbons excluded the cost approach to value and used the income and sales comparison approaches to value.

With respect to the income approach Gibbons testified they looked at the historical information of the subject property including actual rentals, gross income from the apartment rentals, historical vacancy rates and historical operating expenses. The appraiser also considered the market for other apartment complexes, vacancy rates in the general area and compared historic operating expenses with general operating statistics and surveys such as IREM. Gibbons stated they used the 2009 income and expense statistics published by IREM. The report included the 2006, 2007 and 2008 income and expense statements of the subject property.

In estimating the market rent the appraiser used four rental comparables located in Naperville. The comparables had from 13 to 34 buildings that were either two or three story and were built from 1991 to 2000. These properties had from 200 to 417 one-bedroom and two-bedroom units. The occupancy rates ranged from 91.0% to 94.5%. Rental comparables #1 and #2 were the properties identified as main competitors of the subject by the subject's representatives according to Gibbons. According to Gibbons these properties had average gross rentals per unit ranging from $1,089 to $1,280 per month or from $1.14 to $1.28 per square foot. The table on page 37 of Gibbons' appraisal (Intervenor's Exhibit #1) indicated the subject had an average gross rent per unit of $1,172 per month or $1.33 per square foot based on market rent as indicated on the rent roll dated 1-25-09.

Gibbons testified he was provided a January 25, 2009, rent roll for the subject property and the 2006, 2007 and 2008 income and expense statements, which were included in the addenda of the appraisal. He testified the rent roll showed what is referred to as market rent of $408,038 per month, which was annualized to be $4,896,456 ($408,038/month x 12). He then deducted $73,176 as "Loss to Lease", which typically means the difference between contract rent and market rent. Gibbons also deducted $219,615 for concessions based on what was shown on the rent roll as concessions of $18,301 per month. Vacancy of $49,677 per month as shown on the rent roll was annualized to be $596,127 was deducted. Employee rent as reported on the rent roll of $1,524

[2] The LaSalle Appraisal stated, "[T]his sale was not an arm's length sale, since the buyer and seller were the original developers of the property, and the buyers purchased the sellers' share of the property. (Appellant's Exhibit #1, page 8.)

per month or $18,288 annualized was also deducted. Gibbons arrived at a net rental income for the subject of $4,025,826.

Gibbons summarized the 2006 through 2008 income and expense statements for the subject property on page 38 of his report and stated they reported market rents of $4,728,840 for 2006, $4,672,824 for 2007 and $4,833,648 for 2008. For 2009 the market rent was reported to be $4,896,456. Gibbons stated the market rent for the subject had gone up from 2006 through 2009. Gibbons testified the rent roll he was given included the individual apartment, name of the tenant if occupied, square footage of the unit, rent, loss to lease and the date of inception of the lease. Gibbons testified that the historical rental revenue information he received from the owner was consistent with what he observed in the market with regard to rental comparables.

Gibbons determined the subject had a gross rent of $4,896,456. To this amount he added $225,000 in other income for such items as pet fees, garage parking, utility income and late fees. Gibbons also made a $73,176 deduction to the income for loss to lease, which is caused when market rent is above the contract rent. Gibbons also made an adjustment of $391,716 for vacancy. He testified that historical vacancy at the subject property was 6.8% in 2006, 6.5% in 2007 and 8.7% in 2008. He further testified the rent roll as of January 25, 2009 showed a vacancy of 12.2%, which was an aberration in his opinion. The witness explained that Marcus & Millichap reported a vacancy of 5.9% for the first quarter of 2009 for the suburban market and for the Naperville/Aurora submarket of 5.7%. He also noted the market comparable rentals had vacancy rates from 5.5% to 9%. Based on the subject's historical data and the surveys he stabilized vacancy at 8% of gross rental income. The appraiser also made adjustments to the income for concessions of $219,615 and $18,288 for the employee unit. The net rental income was calculated to be $4,230,236 to which he added $225,000 for other income to arrive at an effective gross income of $4,455,236. (See Intervenor's Exhibit #1, pages 38 & 39.)

Gibbons testified the historical expense ratio for the subject from 2006 to 2008 ranged from 29.14% to 30.41%, prior to reserves for replacements and real estate taxes. Gibbons testified a 30% operating expense ratio is generally consistent with the market for properties like the subject and supported by IREM.

Gibbons stabilized the expenses for the subject property as follows: management fees $365 per unit, repairs and maintenance $550 per unit, apartment turnover $250 per unit, administration $160 per unit, payroll & benefits $1,075 per unit, marketing and advertising $415 per unit, utilities $515 per unit, professional fees $75 per unit, property insurance $325 per unit, other/miscellaneous $13 per unit and reserves for replacements of $300 per unit. Total operating expenses were calculated to be $1,404,180. Gibbons testified that the stabilized operating expense ratio excluding reserves was 29.17%, within the subject's

historical range, and with reserves is 31.52%. Deducting expenses resulted in a net operating income of $3,051,056.

In estimating the capitalization rate to be applied to the subject Gibbons consulted the *Korpacz Real Estate Investor Survey* for the first quarter of 2009 that indicated an average rate for institutional grade national apartments of 6.88%; Marcus & Millichap Second Quarter 2009 Apartment Research Market Update for the Chicago Metro Area reported capitalization rates in the mid 7% range; the Real Estate Research Corporation Spring 2009 report indicated the going-in capitalization rate for Chicago apartments was 7.2% and the 2010 Chicago Apartment Sales Summary report published by Hendricks & Partners indicated the average capitalization rate in 2009 was in the mid-6% range. Using the band of investment the appraiser estimated a capitalization rate of 6.78%. Using the comparable sales #1, #3, #4 and #5 Gibbons extracted capitalization rates ranging from 5.05% to 7.38% for an average of 5.83%. Considering these calculations Gibbons estimated a capitalization rate of 6.50% for the subject property. To this he added a tax load of 2.0185% resulting in an overall capitalization rate of 8.50%. Capitalizing the net income resulted in an indicated value under the income approach of $35,900,000, rounded.

Gibbons used five comparable sales located in Naperville and Glendale Heights in developing an opinion of value under the sales comparison approach. The comparable apartment complexes had from 12 to 20, two-story or three-story buildings with 200 to 417 apartments. The total building area ranged from 191,040 to 440,840 square feet. The comparables had sites ranging in size from 731,808 to 933,304 square feet of land area resulting in land to building ratios ranging from 2.06:1 to 4.12:1. The comparables had occupancy rates ranging from 91% to 96.4%. The sales occurred from October 2006 to June 2009 for prices ranging from $19,500,000 to $66,250,000 or from $97,500 to $163,636 per unit or from $102.07 to $159.66 per square foot of building area. Gibbons sale #4 was the same property as Ryan's sale #5. Gibbons testified the primary unit of comparison was the price per apartment unit. Sale #1 was located ¼ south of the subject property next to the Metra rail commuter station. Gibbons testified that residents from the subject property and this comparable have the ability to walk to the train station, which he stated is a positive amenity. Comparable #2 is located two miles south of the subject property. Gibbons testified sale #3 is actually located in Woodridge, Illinois but has a Naperville address. Sale #4 is located approximately ¾ of a mile east of the subject property. Gibbons testified sale #5 is located about 10 miles northeast of the subject property in Glendale Heights and is about 15 years older than the subject property. The witness was of the opinion Glendale Heights is not as desirable as Naperville.

Gibbons was of the opinion age does have an impact on sales price. He testified that as a property gets older it generally would not be as desirable in terms of rental standpoint and

probably would have higher operating or maintenance expenses. He testified that all factors being equal the newer property would be superior.

With respect to the market condition adjustment, Gibbons adjusted sales #1, #2, #3 and #5 downward because they sold in October 2006, May 2007, January 2008, and April 2007, respectively, during a time of superior market conditions than in January 2009. Gibbons made no market condition adjustment to sale #4 that sold in June 2009. Gibbons also made adjustments to the comparables for such items as location, condition/age, occupancy rates and land to building ratios. Gibbons also testified that the buyer of comparable #5 assumed an outstanding mortgage but he was not able to determine the terms of the note. Gibbons assumed the terms of the mortgage were favorable so a downward adjustment was made for financing. Overall downward adjustments were made to sales #1, #2 and #3; while upward adjustments were made to sales #4 and #5. After analyzing the sales Gibbons determined an adjusted unit value range from $105,000 to $110,000 and concluded a unit value for the subject property of $107,500 or $37,400,000, rounded, under the sales comparison approach.

In conclusion Gibbons estimated the subject had an estimated value under the sales comparison approach of $37,400,000 and under the income approach of $35,900,000. In reconciling the two approaches to value Gibbons stated in the report that both the sales comparison approach and the income approach were given significant weight and ultimately estimated the subject property had a market value of $36,700,000 as of January 1, 2009.

With respect to the mortgage crisis, Gibbons testified generally apartment complexes have fared better than other asset types because there has been a decline in the single family home building and a lot of people lost their homes and had to find alternate sources of housing.

Under cross-examination Gibbons testified there were some negative effects to multi-family housing as the result of the economic recession, which intensified in the latter half of 2008. Gibbons testified during this period capitalization rates were rising. With respect to market rents for multi-family property, Gibbons testified he did not have the information on hand with respect to whether market rents for multi-families declined from January 1, 2008 to January 1, 2009, but suspected there was probably some weakness in the market which would have been reflected in the concessions that were being offered.

Gibbons indicated the adjustments to the comparable sales were qualitative adjustments and a significant portion of the downward adjustments for comparable sales #1 and #2 were for market conditions. Gibbons was shown the Illinois Real Estate Transfer Declaration (PTAX-203), which was marked as Appellant's Exhibit #5, associated with his comparable sale #3. Gibbons was aware that the answer was "No" to question 7, which read "Was the property advertised for sale?" He did not give this sale any

less emphasis due to the parties to the transaction answering "Yes" to question #8 on the PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A, asking "In your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?" For sale #5, Gibbons was shown Appellant's Exhibit #6, the Illinois Real Estate Transfer Declaration (PTAX-203) and the associated PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A completed by the parties. One of the parties answered "No" to question #8 on form PTAX-203-A and stated, "The purchase included the assumption of $14,845,000 in tax-exempt bond financing, which carries intangible value from the buyer's perspective." Gibbons testified the idea is that a party is willing to pay more for a property if he is able to assume below market financing. Gibbons did not have the terms of the note so he was not able to make a cash equivalency adjustment but made a qualitative adjustment to the sale.

Gibbons testified the rents quoted for sale #1 were as of February 2009, the rents quoted for sale #2 were as of February 2009, the rents quoted for sale #1 were as of January 2008, the rents quoted for sale #4 were as of the date of the transaction (June 2009), and the rents quoted for sale #5 were as of February 2009 were as of the sale date (April 2007).

With respect to the rental comparables, Gibbons stated on page 37 of his report, "The rents noted above represent the quoted market rent, and do not include concessions." With respect to his rental comparable #1, the management was offering 1.5 to 2 months of free rent on select units, which would cause the $1.14 average rent to be adjusted lower after concessions are backed out. On page 38 of his appraisal Gibbons, using the rent roll dated January 25, 2009, indicated the market rent of the subject property was $408,038 per month, $4,896,456 annually, $1,172.52 per unit per month and $1.33 per square foot per month. He indicated that almost all the subject units would have rents that commenced in 2008.

With respect to the chart on page 46 of his report, Gibbons agreed there was a typo with his reference to "Health Club/Fitness Center." Gibbons agreed he did not cite published sources for his determination of a 5% return on equity in developing the band of investment technique. With respect to the extracting capitalization rates from the market, Gibbons agreed he cited the CoStar report, which was marked as Appellant's Exhibit #7, as the source for the 5.49% rate for sale #1. Gibbons did not know author of the report, did not independently review the assumptions made in extracting the capitalization rate and did not know if the income was "trailing income" or "year one income." The income and expense date on page two of the exhibit did not show a line item for reserves. Appellant's Exhibit #8 was the CoStar report associated with Gibbons sale #3 that sited a pro-forma capitalization rate of 5.5%. Gibbons did not independently gather information to verify that the capitalization rate was extracted properly and did not know

whether the rate was before or after reserves were deducted. With respect to sale #5, Gibbons did not do anything to independently verify the 5.38% capitalization rate reported by CoStar COMPS was extracted correctly. For comparable sale #6, Gibbons had the information to extract the capitalization rate of 7.38%. Gibbons also agreed that with respect to the chart on the bottom of page 47 or his report, the second, third and fourth surveys were the local surveys he cited with capitalization rates of 7.20%, 7.50% and 6.50%, respectively.

Under re-direct, Gibbons testified that Co-Star COMPS is a proprietary service that is paid for to provide research materials used by brokers and just about every appraiser. He asserted this is a resource that appraisers typically rely upon. Gibbons further testified if the leases are at market, there is no difference between the leased fee and the fee simple.

The next witness called on behalf of the intervenor was James Donovan, Chief Deputy Assessor for Naperville Township. Donovan has been employed at the Naperville Township Assessor's Office for 25 years. As chief deputy assessor his primary responsibilities include assessing commercial, retail, industrial and multi-family properties including apartment complexes.

Donovan prepared a document marked as Intevernor's Exhibit #2. Page 14 of Intervenor's Exhibit #2 was described as an income statement based off the appellant's stated gross potential income from the appraisal of $3,969,216. Donovan deducted 10% of potential gross income or $396,921 for vacancy and collection loss and added $200,000 for other income, also from the appellant's appraisal, to arrive at an effective gross income of $3,772,295. Donovan also accepted the appellant's appraiser's estimate of expenses of $1,565,500 to arrive at a net income of $2,206,795. In addition to disagreeing with the appellant's appraiser's estimate of the vacancy and collection loss, Donovan also disagreed with the capitalization rate used by the appellant's appraiser. Donavan testified he went to the market to derive a loaded capitalization rate of 7.15% composed of an overall rate of 5.13% plus a tax load of 2.02%. Capitalizing the net income resulted in an estimated value of $30,864,270, which Donovan testified supported the subject's assessment.

Donovan also developed the sales comparison approach using 6 comparable sales that were outlined on page 16 of Intervenor's Exhibit #2. Of the six comparable sales, comparables #1, #2, #5 and #6 were located in Naperville Township. Five comparables were located in Naperville and one comparable was located in Aurora. The comparables were apartment complexes with buildings constructed from 1973 to 2004 and five of the comparables were described as having buildings ranging in size from 272,400 to 442,205 square feet of building area. The comparables had from 319 to 417 apartments. These properties had sites ranging in size from 435,600 to 1,379,108 square feet of land area with five having land to building ratios ranging from 1.02:1 to 3.39:1. Donovan's sale #1 was the same property as Ryan's sale #2 and

Donovan's sale #2 was the same property as Gibbons' sale #2. The sales occurred from April 2006 to May 2007 for prices ranging from $33,500,000 to $66,250,000 or from $95,170 to $163,636 per unit. Donovan indicated the 2009 assessment of the subject property reflects a market value of roughly $30,600,000 or $87,931 per unit. Based on his review of the sales Donovan was the opinion an upward adjustment of the assessment was warranted.

Under cross-examination Donovan testified he thought Naperville Township fared better than most places and that values did not deteriorate as much as nationally during the latter part of 2008, although he did agree values did deteriorate a little bit. He also agreed that his capitalization rate of 5.13 percent was an average rate that was extracted from sales that did not take place in the same conditions that were happening in the latter part of 2008 or later.

Donovan also testified the 2010 assessment of the subject property was reduced to $9,805,690 due to a negative equalization factor.

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 supports a reduction in the subject's assessment.

The appellant contends overvaluation as the basis of the appeal. Conversely, the intervenor contends the subject property is undervalued for assessment purposes. 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)). The Board finds the evidence in this record demonstrates a reduction in the subject's assessment is warranted.

In this consolidated hearing for the 2009 and 2010 tax years the parties presented the same evidence for both years with the only difference being the DuPage County Board of Review was defaulted in the 2010 appeal for the failure to submit its "Board of Review

Notes on Appeal" or any evidence. During the hearing only the appellant and the intervening school district presented evidence for this Board's consideration. The owner presented the testimony and an appraisal prepared by Joseph M. Ryan estimating the subject property had a market value of $25,600,000 as of January 1, 2009. The intervenor presented the testimony and an appraisal prepared by James A. Gibbons estimating the subject property had a market value of $36,700,000 as of January 1, 2009. The intervenor also presented the testimony and a report prepared by James Donovan, Chief Deputy Assessor for Naperville Township. The subject's 2009 assessment reflects a market value of $30,710,034 or $88,248 per unit, including land, 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 subject's 2010 assessment reflects a market value of $29,464,213 or $84,667 per unit, including land, when applying the 2010 three year average median level of assessments for DuPage County of 33.28% as determined by the Illinois Department of Revenue.

Initially, the Board gives little weight to the evidence and testimony provided by Donovan. Using an income approach to value Donovan primarily relied on the potential gross income and expenses used by Ryan in his appraisal. Donovan used a 10% vacancy and collection loss but provided no citation to any surveys or studies that would support this estimate. Additionally, Donovan used an overall capitalization rate of 5.13%, which was extracted from sales that occurred prior to the 2008 economic downturn. The Board finds this capitalization rate is not supported by relevant data reflective of the market as of January 1, 2009 and January 1, 2010. Second, the comparable sales used by Donovan sold from April 2006 to May 2007. All the sales occurred prior to the economic downturn that took place in the latter part of 2008. The Board finds these sales are not representative of the market as of January 1, 2009 and January 1, 2010 and are given little weight.

The remaining evidence for the Board's consideration includes the two appraisals prepared by appraisers who each have the MAI designation and are State of Illinois Certified General Real Estate Appraisers. Despite similar credentials the appraisers arrived at vastly different opinions of market value. Ryan estimated the subject property had a market value of $25,600,000 or $73,563 per unit, including land, as of January 1, 2009. Gibbons estimating the subject property had a market value of $36,700,000 or $105,460 per unit, including land, as of January 1, 2009. The difference in the estimated values put forth by the respective experts was 43%.

The appraisers agreed on the physical description of the subject property and agreed on the subject's highest and best use. Additionally, both appraisers developed the income capitalization approach to value and the sales comparison approach to value. Furthermore, both appraisers were in agreement that there was an

economic downturn in the latter part of 2008 that had a negative impact on the value.

In developing the sales comparison approach Ryan utilized six sales and Gibbons used five comparable sales. Both appraisers used sales that occurred in 2006, 2007 and 2008. Ryan's sales #1, #2, #3 and #4, which sold from June 2006 to August 2007, each received a downward adjustment due to superior market conditions at the time of their respective sales. Gibbons' sales #1, #2, #3 and #5, which sold from October 2006 to January 2008, all received downward adjustments due to superior market conditions at the time of sale. Due to the dates of sale and the fact that each sold during a time of superior market conditions, the Board gave these sales less weight.

Ryan's comparable sale #5 and Gibbons' sale #4 was a common sale identified as Brookdale Lakes, 1812 Gowdey Road, Naperville. This comparable was improved with 20, two-story apartment buildings constructed in 1991 located on a 787,129 square foot site. Both appraisers described the comparable as having 200 apartment units. Ryan described the comparable as having 181,040 square feet of building area while Gibbons described the comparable as having 191,040 square feet of building area. The sale occurred in June 2009, after the economic downturn in the latter part of 2008, for a price of $19,500,000 or $97,500 per unit. Ryan adjusted this sale down due to the fact this comparable had fewer units than the subject, resulting in an overall downward adjustment. Gibbons adjusted this comparable downward for its larger land-to-building ratio and upward for age and overall inferior quality, resulting in a net upward adjustment.

Ryan's comparables sale #6 sold in 2009, after the economic downturn. This comparable was located in Naperville and was improved with a two-story garden style apartment complex constructed in 1985 with 320 units. The sale occurred in October 2009 for a price of $24,745,000 or $77,328 per unit. Ryan adjusted this sale down due to its above market occupancy rate at the time of sale.

The Board finds the two sales submitted by the appraisers that occurred after the economic downturn in late 2008 had unit prices, prior to adjustments, of $77,328 and $97,500 per unit. The Board finds both appraisers made general qualitative adjustments to their sales that were not particularly well supported. Ryan ultimately estimated the subject had an indicated value under the sales comparison approach of $73,500 per unit. The Board finds this estimate understates the value considering the two sales that sold most proximate in time to the assessment date at issue, after the market downturn in 2008, for unit prices of $77,328 and $97,500. Gibbons ultimately estimated the subject property had an indicated value under the sales comparison approach of $107,500 per unit. The Board finds Gibbons' estimated value overstates the market value of the subject property considering the two sales that sold most

proximate in time to the assessment date at issue, after the market downturn in 2008, for unit prices of $77,328 and $97,500. The sale most similar to the subject in number of units was Ryan's sale #6 with 320 units. However, this comparable was seventeen years older than the subject indicating an upward an adjustment for age would be appropriate. The sale common to both appraisers had fewer units requiring a downward adjustment. The comparable also had a slightly larger site and a higher land-to-building ratio supporting a downward adjustment. Considering the two best sales in this record the Board finds a value of $82,500 per unit or $28,700,000 is appropriate under the sales comparison approach.

Under the income approach to value a major difference between the two experts was the estimate of market rent to be applied to the subject property. Using comparable rentals and a price sheet for the subject, Ryan estimated the subject had a potential gross income of $3,969,216, which equates to a rent of $1.08 per square foot of gross building area per month. Using the subject's rent roll and comparable rentals, Gibbons estimated the subject property had an annual potential gross income of $4,896,456 which equates to $1.33 per square foot of building area per month. The Board finds Ryan's estimate of market rent is better supported using the comparable rentals and the price sheet used to rent the subject units as of December 31, 2008. The Board finds that Gibbons' estimate of market rent of $1.33 per square foot of building area per month was greater on an average square foot basis than the comparable rentals he used as set forth on page 37 of his appraisal. Additionally, Gibbons seemed to ignore the Marcus & Millichap report contained at pages 14 through 17 of his appraisal indicating that asking rent trends decreased in 2008 and into 2009. Ryan at page 15 of his appraisal referenced Marcus & Millichap in discussing the drop in asking rents and effective rents. Based on this record the Board finds Ryan's estimate of potential gross income of $3,969,216 is better supported.

Ryan and Gibbons were in near agreement with respect to the vacancy and collection loss associated with the subject property. Ryan estimated a stabilized vacancy and collection rate of 7.5% while Gibbons estimated a stabilized rate of 8%. The Board gives most weight to Ryan's estimate of a 7.5% loss of potential gross income or $297,691 for vacancy and collection loss. Ryan estimated other income to be $200,000 while Gibbons stabilized other income at $225,000. Gibbons included in his report a copy of the 2006 through 2008 income statements for the subject property that indicated other income ranged from $227,310 to $333,289 after excluding bad debt recovery and interest. The Board finds Gibbons estimated stabilized other income is better supported. After deducting vacancy and collection loss and adding other income the Property Tax Appeal Board finds the subject property had an effective gross income of $3,896,525.

In estimating expenses to be deducted from the effective gross income both appraisers examined the subject's operating history

and compared the results to IREM. During the course of cross-examination it was pointed out that Ryan erred in calculating the administrative and general expenses. Ryan estimated operating expenses to be 36% of effective gross income, excluding reserves and approximately 40% inclusive of reserves. During testimony Ryan indicated that excluding real estate taxes the subject had an historical expense ratio of just under 30% for 2007 and 2008. Ryan further agreed that to properly compare his stabilized expenses to the subject's historical expenses the real estate taxes should be taken out. Gibbons stabilized operating expenses at 31.52% of effective gross income, inclusive of reserves and 29.17% excluding reserves. The subject's historical expense ratio from 2006 through 2008 ranged from 29.14% to 30.41%, excluding reserves. Based on this evidence and testimony the Board finds an expense ratio of 31.52% of effective gross income or $1,228,185, inclusive of reserves, is supported. After deducting the expenses from the effective gross income results in a stabilized net income of $2,668,340.

Ryan estimated an overall capitalization rate of 7.25% should be applied to the subject's net income. Gibbons estimated a capitalization rate of 6.50% was appropriate. Gibbons' report had one sale that occurred in June 2009 with a market derived capitalization rate of 7.38%. Gibbons report also had reference to three surveys of the local market reporting capitalization rates ranging from 6.50% to 7.50%. Ryan testified that Realtyrates.com, an investment survey of different types of properties, reported capitalization rates in the second quarter of 2009 between 4.7% and 12.2%. Considering the data in both reports, the Board finds Ryan's estimate that the appropriate overall capitalization rate for the subject of 7.25% is better supported. The Board also finds both Ryan and Gibbons were in near agreement with respect to the effective tax rate to be added to arrive at a loaded capitalization rate. Based on this record the Board finds Ryan's estimate of a loaded capitalization rate of 9.25% is the best estimate in the record. Capitalizing the stabilized net income found herein the Board finds the subject had an indicated value under the income approach of $28,850,000, rounded.

In conclusion, after considering the testimony of the appraisers and the data in the respective reports, the Board finds the subject property had an indicated value under the sales comparison approach of $28,700,000 and an indicated value under the income approach of $28,850,000. Giving equal weight to the two estimates of value, the Board finds the subject property had a market value of $28,775,000 as of January 1, 2009. Since market value has been determined the Board finds the 2009, three year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue, shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

The Property Tax Appeal Board further finds the evidence and testimony in each appeal for the 2009 and 2010 tax years is the same. Therefore, the Board finds that the assessment as

established for the 2009 tax year and the 2010 tax year should be the same.

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

Chairman

Member

Member

Member

Member

DISSENTING:

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

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

Date: October 18, 2013

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

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

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

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

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

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