



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

APPELLANT: 1411 N. State Condominium Association  
DOCKET NO.: 09-28335.001-R-3 through 09-28335.029-R-3  
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are 1411 N. State Condominium Association, the appellant(s), by attorney Thomas J. McNulty, of Neal, Gerber & Eisenberg in Chicago; and the Cook County Board of Review.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
09-28335.001-R-3	17-03-102-037-1001	14,487	126,558	\$141,045
09-28335.002-R-3	17-03-102-037-1002	14,487	126,558	\$141,045
09-28335.003-R-3	17-03-102-037-1003	14,487	126,558	\$141,045
09-28335.004-R-3	17-03-102-037-1004	17,169	149,982	\$167,151
09-28335.005-R-3	17-03-102-037-1005	17,169	149,982	\$167,151
09-28335.006-R-3	17-03-102-037-1006	17,169	149,982	\$167,151
09-28335.007-R-3	17-03-102-037-1007	14,865	129,854	\$144,719
09-28335.008-R-3	17-03-102-037-1008	14,865	129,854	\$144,719
09-28335.009-R-3	17-03-102-037-1009	14,865	129,854	\$144,719
09-28335.010-R-3	17-03-102-037-1010	13,441	117,418	\$130,859
09-28335.011-R-3	17-03-102-037-1011	13,441	117,418	\$130,859
09-28335.012-R-3	17-03-102-037-1012	13,441	117,418	\$130,859
09-28335.013-R-3	17-03-102-037-1013	9,306	81,296	\$90,602
09-28335.014-R-3	17-03-102-037-1014	8,551	74,705	\$83,256
09-28335.015-R-3	17-03-102-037-1015	995	8,697	\$9,692
09-28335.016-R-3	17-03-102-037-1016	995	8,697	\$9,692
09-28335.017-R-3	17-03-102-037-1017	995	8,697	\$9,692
09-28335.018-R-3	17-03-102-037-1018	995	8,697	\$9,692
09-28335.019-R-3	17-03-102-037-1019	995	8,697	\$9,692
09-28335.020-R-3	17-03-102-037-1020	995	8,697	\$9,692
09-28335.021-R-3	17-03-102-037-1021	995	8,697	\$9,692
09-28335.022-R-3	17-03-102-037-1022	995	8,697	\$9,692
09-28335.023-R-3	17-03-102-037-1023	995	8,697	\$9,692
09-28335.024-R-3	17-03-102-037-1024	995	8,697	\$9,692

09-28335.025-R-3	17-03-102-037-1025	995	8,697	\$9,692
09-28335.026-R-3	17-03-102-037-1026	995	8,697	\$9,692
09-28335.027-R-3	17-03-102-037-1027	995	8,697	\$9,692
09-28335.028-R-3	17-03-102-037-1028	995	8,697	\$9,692
09-28335.029-R-3	17-03-102-037-1029	254	2,227	\$2,481

Subject only to the State multiplier as applicable.

**Statement of Jurisdiction**

The appellant timely filed the appeal from a decision of the Cook 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 (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

**Findings of Fact**

The subject consists of a three-story condominium building of masonry construction with 47,680 square feet of building area. The subject contains 14 living units (identified as PINs 17-03-102-037-1001 through -1014), 14 indoor parking spaces (PINs -1015 through -1028), and 1 outdoor parking space (PIN -1029). The building is 103 years old. The property has a 16,900 square foot site, and is located in North Chicago Township, Cook County. The subject is classified as a class 2-99 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of \$13,000,000 as of January 1, 2009. The appraisal was received by the Board on September 27, 2009. The appraisal was purportedly prepared by Robert W. Schlitz, M.A.I., C.A.E., R.E.S., C.I.A.O. However, Mr. Schlitz's signature is not present on the appraisal. In the location for the appraiser's signature, the appraisal is blank.

The Cook County Board of Review submitted its "Board of Review Notes on Appeal," wherein the subject's total assessment of \$2,063,349 was disclosed. This assessment reflects a market value of \$23,183,697 after applying the 2009 three year average median level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 8.90% as determined by the Illinois Department of Revenue. In support of the subject's assessment, the board of review submitted a memorandum from Matt Panush, Cook County Board of Review Analyst. The memorandum shows that two units in the subject building and those units' associated parking spaces, or 14.8374% of ownership, sold in 2008 for an aggregate price of \$3,250,002. An allocation of 2.00% for personal property was subtracted from the sales prices, and then divided by the percentage of interest of the

units sold to arrive at a total market value for the building of \$21,466,038.

At hearing, the appellant was represented by Joshua A. Boggioni and David S. Martin, both of Neal, Gerber & Eisenberg LLP., while the Cook County Board of Review was represented by Gabriela Nicolau. Ms. Nicolau made two preliminary objections prior to the parties' opening statements. First, Ms. Nicolau objected to the appellant's appraisal being entered into the record as evidence on hearsay grounds and also under Rule 1910.67(1) of the Official Rules of the Property Tax Appeal Board (the "Rules"). Rule 1910.67(1) states, in its entirety:

Appraisal testimony offered to prove the valuation asserted by any party shall not be accepted at the hearing unless a documented appraisal has been timely submitted by that party pursuant to this Part. Appraisal testimony offered to prove the valuation asserted may only be given by a preparer of the documented appraisal whose signature appears thereon.

86 Ill.Admin.Code § 1910.67(1). Second, Ms. Nicolau objected to any testimony that may be offered by the appellant's witness, Michael T. Gilligan, M.A.I.

Messrs. Boggioni and Martin both responded to Ms. Nicolau's preliminary objections. First, Mr. Boggioni argued that the appraisal is already a part of the record, and that it cannot be excluded on hearsay grounds. In support of this assertion, Mr. Boggioni argued that, had a hearing not been held, the case would be decided on the evidence submitted without testimony from Mr. Schlitz, in accordance with the Rules. Mr. Boggioni also opined that Mr. Schlitz was not present because he had passed away in April 2012. In regards to Ms. Nicolau's second objection, Mr. Boggioni stated that Mr. Gilligan was not going to testify as to any conclusion of value of the subject property. Mr. Martin essentially restated Mr. Boggioni's arguments, but added that Rule 1910.67(1) does not preclude the admission of an appraisal into evidence, but only prevents someone other than the signatory of the appraisal from testifying about its value conclusion.

Ms. Nicolau responded that an appeal to the Board may be decided with a hearing, and that Rule 1910.67(1) applies to such hearings when an appraisal is offered as evidence, such as in the instant appeal. Ms. Nicolau further argued that the appraisal was not signed by Mr. Schlitz, and should be excluded under Rule 1910.67(1).

Mr. Boggioni responded to this objection by offering the signature pages into evidence. Mr. Boggioni also reiterated the previous argument he made regarding the applicability of Rule 1910.67(1).

Ms. Nicolau responded that, under the Illinois Rules of Evidence, the board of review has a fundamental right to cross-examine the

preparer of the appraisal, and that his absence from the hearing abridges that right.

Mr. Martin retorted that there is no such right because there is no witness, and, under the Rules, no witness is required.

The hearing officer then queried Messrs. Boggioni and Martin as to the purpose of Mr. Gilligan's testimony. Both attorneys responded that Mr. Gilligan was present to testify regarding the death of Mr. Schlitz, the general condition of the real estate market around January 1, 2009, and to testify in rebuttal to the board of review's evidence.

Mr. Boggioni then requested that the Board take judicial notice of a combined decision from the Board, whereby the Board reduced the subject's assessment for tax years 2003, 2004, and 2005 (docket numbers 03-27364.001-R-3 through 03-27364.029-R-3; 04-27345.001-R-3 through 04-27345.029-R-3; and 05-25392.001-R-3 through 05-25392.029-R-3). Mr. Boggioni presented courtesy copies of this decision, as well as a copy of the court reporter's transcript from the hearing. Mr. Boggioni argued that Mr. Schlitz used the same methodology in determining the subject's market value in 2003, 2004, and 2005 as he did in the appraisal for the instant appeal. Mr. Boggioni further argued that the Board accepted Mr. Schlitz's methodology in the previous decision.

Mr. Boggioni further asked the Board to take judicial notice of the Board's combined decision regarding the Fulton House Condominium Association, whereby the Board reduced the Fulton House Condominium Association's assessment for tax years 2003, 2004, and 2005 (docket numbers 03-27407.001-R-3 through 03-27407.113-R-3; 04-26444.001-R-3 through 04-26444.113-R-3; and 05-23475.001-R-3 through 05-23475.113-R-3). Mr. Boggioni presented courtesy copies of this decision, as well as a copy of the court reporter's transcript from the hearing. Mr. Boggioni argued that Mr. Schlitz used the same methodology in determining the Fulton House Condominium Association's market value in 2003, 2004, and 2005 as he did in the appraisal for the instant appeal. Moreover, Mr. Boggioni asked the Board to take judicial notice of Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 395 Ill.App.3d 776 (1st Dist. 2009), whereby the Illinois Appellate Court upheld the Board's determination of the Fulton House Condominium Association's assessment for tax years 2003, 2004, and 2005. Mr. Boggioni provided a courtesy copy of the Illinois Appellate Court's decision in the Fulton House Condominium Association matter. Mr. Boggioni further argued that the Board accepted Mr. Schlitz's methodology in the Fulton House Condominium Association decision, and that the appellate court affirmed the Board's decision.

Ms. Nicolau objected to Mr. Boggioni's requests for judicial notice, because, she argued, they were being offered as opinion evidence, and not to prove or disprove a relevant fact. Ms. Nicolau further argued that these decisions are irrelevant to the

instant appeal because they were from a different triennial period, they do not discuss the subject's market value as of January 1, 2009, and Mr. Schlitz was available to testify at those hearings, and he is not able to testify in the instant hearing.

Mr. Martin then reiterated that, based on Rule 1910.67(1), the appraisal is not hearsay, and that Ms. Nicolau has no right to cross-examine a witness who does not testify at hearing.

The hearing officer then sustained the board of review's second objection, and stated that Mr. Gilligan would be precluded from testifying about the appraisal. The hearing officer then overruled the board of review's first objection, and stated that the Board would give the appraisal the appropriate consideration in determining the subject's assessment. Ms. Nicolau stated, for the record, that the board of review would like to have a continuing objection to the admission of the appraisal, and the hearing officer noted this objection for the record.

During the appellant's opening statement, Mr. Boggioni stated that the evidence would show that the evidence in this appeal, and the evidence in previous appeals regarding the subject's tax assessment, were nearly identical. Ms. Nicolau objected to this assertion based on relevancy. Mr. Martin intervened, and instructed Ms. Nicolau that she was not allowed to make an objection during opening statements. The hearing officer overruled the objection, and allowed Mr. Boggioni to continue his opening statement.

Further along in his opening statement, Mr. Boggioni stated that Mr. Schlitz used similar methods in determining the subject's market value in previous years as he did in the appraisal in this appeal. One of these methods, Mr. Boggioni asserted, was the multiple regression analysis. Ms. Nicolau objected, and stated that such evidence would be inadmissible hearsay evidence. The hearing officer overruled the objection, and Mr. Boggioni continued his opening statement.

Mr. Boggioni then began to discuss the analysis contained in the appraisal regarding the sales comparison approach. The hearing officer then asked Mr. Boggioni if he intended to discuss the analysis in the appraisal. Mr. Boggioni stated that he intended to do so briefly, and that he intended to do so to show that this analysis is similar to the analysis Mr. Schlitz had done in previous years. Mr. Martin then, again, intervened, and demanded that Mr. Boggioni be allowed to present his opening statement "without having multiple interruptions," as he believed Ms. Nicolau's objections to be "inappropriate." At this time, the hearing officer asked that Mr. Boggioni continue his opening statement, which he did, to its conclusion, without interruption. Ms. Nicolau then presented her opening statement.

During the appellant's case-in-chief, Mr. Boggioni began by asking the hearing officer to take judicial notice of the Board's

combined decision regarding the subject's assessment for tax years 2003 through 2005 (citations *supra*). The hearing officer took judicial notice of this decision, over objections from Ms. Nicolau based on relevancy, hearsay, and foundation, and marked the decision as "Appellant Exhibit 'A'." Mr. Boggioni then asked that the hearing officer take judicial notice of the hearing transcript from that combined decision as well. The hearing officer took judicial notice of the hearing transcript, over an objection from Ms. Nicolau based on hearsay, and marked the transcript as "Appellant Exhibit 'B'." At this point, Mr. Martin stated that these documents were being offered "to show the consistency between the methodologies applied in both appraisals."

Mr. Boggioni then continued his case-in-chief, and asked that the hearing officer take judicial notice of the Board's combined decision regarding the Fulton House Condominium Association assessment for tax years 2003 through 2005 (citations *supra*). The hearing officer took judicial notice of this decision, over an objection from Ms. Nicolau based on relevancy, and marked the decision as "Appellant Exhibit 'C'." Mr. Boggioni further asked the hearing officer to take judicial notice of the Illinois Appellate Court's decision in Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 395 Ill.App.3d 776 (1st Dist. 2009) (discussed *supra*). The hearing officer took judicial notice of this case, and marked the courtesy copy provided by Mr. Boggioni as "Appellant Exhibit 'D'." Mr. Boggioni then asked that the hearing officer take judicial notice of the hearing transcript from the hearing before the Board regarding the Fulton House Condominium Association case. The hearing officer took judicial notice of the hearing transcript, over an objection from Ms. Nicolau based on hearsay, and marked the transcript as "Appellant Exhibit 'E'." At this point, Mr. Martin, again, interceded, and asked that the appellant's attorneys be allowed to present their case-in-chief without commentary from Ms. Nicolau. The hearing officer asked the appellant's attorneys to please continue with their case-in-chief.

At this point, Mr. Boggioni requested that the appellant's attorneys be allowed to make an offer of proof as to what Mr. Gilligan would testify to, were his testimony allowed to be a part of the record. The hearing officer allowed the appellant's attorneys to proceed with this offer of proof. During the offer of proof, Mr. Gilligan testified as to his qualifications as an appraiser, and as to the appropriateness of the appraisal methodology used in the appraisal prepared by Mr. Schlitz for the instant appeal. Ms. Nicolau cross-examined Mr. Gilligan regarding his qualifications, and as to whether he prepared an appraisal report for the subject for tax year 2009. After the offer of proof, the appellant's attorneys concluded their case-in-chief.

During the board of review's case-in-chief, Ms. Nicolau argued that the Fulton House Condominium Association decisions from the

Board and the Illinois Appellant Court were irrelevant to the instant appeal.

At this point, Mr. Martin interrupted Ms. Nicolau's presentation of her case-in-chief to ask whether this was, in fact, the board of review's case-in-chief, or not. Ms. Nicolau stated that she was presenting her case-in-chief. Mr. Martin retorted that he was not asking Ms. Nicolau, but was asking the hearing officer. The hearing officer responded that she was under the belief that Ms. Nicolau was presenting the board of review's case-in-chief.

Ms. Nicolau then attempted to ask Mr. Gilligan additional questions about the appraisal. Mr. Boggioni objected to these questions, as Mr. Gilligan's testimony had already been ruled inadmissible by the hearing officer.

Ms. Nicolau then continued her case-in-chief, and argued that the appraisal states that it was not developed for unintended users, who may not understand the analyses, opinions, and conclusions contained within the appraisal. Ms. Nicolau further argued that various portions of the appraisal were speculative, including the land value conclusion contained in the cost approach, the expense ratios and capitalization rate in the income approach, and the adjustments contained in the sales comparison approach. Ms. Nicolau then restated the evidence previously submitted by the board of review.

On cross-examination, Mr. Martin asked Ms. Nicolau whether the evidence submitted by the board of review was in evidence and submitted timely. Ms. Nicolau responded that, to the best of her knowledge, the evidence was admitted into the record, and that it was submitted timely. Mr. Martin then conducted a cross-examination of Ms. Nicolau regarding the evidence submitted by the board of review. At this time, Ms. Nicolau concluded the board of review's case-in-chief.

In rebuttal, Mr. Boggioni asked for the hearing officer's permission to present an offer of proof as to what Mr. Gilligan would testify to regarding the board of review's evidence were his testimony allowed to be a part of the record. The hearing officer allowed Mr. Boggioni to proceed with this offer of proof. During this offer of proof, Mr. Gilligan testified that the board of review's evidence was not in compliance with the Uniform Standards of Professional Appraisal Practice, and that, in comparison, he believed Mr. Schlitz's methodology to be more accepted than the board of review's methodology. Ms. Nicolau cross-examined Mr. Gilligan about his qualifications as to determining the appropriate way for the board of review to assess condominium buildings. Ms. Nicolau also cited John J. Moroney and Co. v. Ill. Prop. Tax Appeal Bd., 2013 IL App (1st) 120493, and argued that, in Moroney, an expert witness was precluded from testifying about policies and procedures of the board of review when the witness was never an employee of the board of review. Ms. Nicolau presented a courtesy copy of this appellate court

decision. The hearing officer took judicial notice of this case and marked it as "Board of Review Exhibit 'A'."

Ms. Nicolau then asked the hearing officer to take judicial notice of Cook County Ordinance 08-O-51, whereby the Cook County Board of Commissioners reduced the statutory level of assessment for class 2 properties in Cook County from 16% to 10% effective for tax year 2009. The hearing officer took judicial notice of this ordinance, without objection from the appellant's attorneys, and marked it as "Board of Review Exhibit 'B'."

The hearing officer then ruled that the signature pages of the appraisal, which were offered by the appellant's attorneys, would be excluded, as they were not made a part of the record prior to the hearing. After closing arguments were made by both parties, the hearing was concluded.

After hearing, Mr. Martin filed a post-hearing motion with the Board entitled, "Motion to Substitute Unsigned 'Reconciliation and Final Value Conclusion' and 'Appraiser Certification' Pages of Appraisal Report with Signed Copies." This motion sought to have the Board overrule the hearing officer's ruling at hearing to exclude the signed pages of the appraisal, which were offered by the appellant's attorneys. Ms. Nicolau filed a response motion, entitled "Board of Review's Brief in Response to Appellant's Motion to Substitute Unsigned 'Reconciliation and Final Value Conclusion' and 'Appraiser Certification' Pages of Appraisal Report with Signed Copies." This response sought to have the hearing officer's ruling at hearing sustained by the Board. At the Board's monthly meeting on June 10, 2014, the Board considered the appellant's motion, and granted it on a vote of 4-0, with one Board member recusing himself.

#### Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant has not met this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant initially presented an appraisal allegedly prepared by Mr. Schlitz which was unsigned. After the appellant's post-hearing motion, the signature pages of the appraisal were admitted into evidence. However, the Board still finds that the appraisal report is hearsay, and that it shall not be considered as competent evidence in this appeal.

In Novicki v. Department of Finance, 373 Ill. 342 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his

personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Id. at 344. In Novicki an action was brought under the provisions of the Retailers' Occupation Tax Act that contained a section providing in part that: "In the conduct of any investigation or hearing, neither the department nor any officer or employee thereof shall be bound by the technical rules of evidence and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made or approved or confirmed by the department." The Court stated that this section permits the asking of leading questions and other informalities, but that the General Assembly did not intend to abrogate the fundamental rules of evidence. Id.

Similarly, in Grand Liquor Co., Inc. v. Dept. of Revenue, 67 Ill.2d 195 (1977), the Supreme Court of Illinois, following Novicki, again asserted that the rule against hearsay evidence is founded on the necessity of an opportunity for cross-examination, and is a basic and not a technical rule of evidence. Furthermore, in Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence, which was prepared by an appraiser not present at the hearing, was in error.

Based on this case law, the Board finds that the appraisal in this case is hearsay. While the Board's rules allow for informal procedures that eliminate formal rules of evidence (see 35 ILCS 200/16-180 and 86 Ill.Admin.Code §1910.92(a)), the Novicki court unambiguously stated that the opportunity to cross-examine a witness is fundamental, and was not abrogated by the informal evidentiary process employed by the Illinois Department of Revenue in that case. Similarly, the Board finds that the Board's permissive evidentiary rules do not allow for fundamental evidentiary processes, such as cross-examination, to be disregarded at hearing.

However, there is a unique aspect of this appeal that was not present in the above cited cases. In this appeal, the appraiser was unavailable to testify due to his untimely passing prior to hearing. The appellant's attorneys strenuously argued at hearing that it would be prejudicial to exclude the appraisal on hearsay grounds due to Mr. Schlitz's death. On this point, the Board finds Ocasio-Morales v. Fulton Machine Co., 10 Ill.App.3d 719 (1st Dist. 1973), persuasive.

In Ocasio-Morales, the plaintiff-appellant was injured by a machine at his place of employment, and he initiated a lawsuit to recover for his injuries. Id. at 721. After the injurious incident, the defendant-appellee (the employer), asked an engineering company to examine the faulty machine part that caused the plaintiff-appellant's injuries. Id. at 725. M. F. Surls, a metallurgical engineer, examined the faulty part, and authored a report of his examination. Id. Several years prior

to trial, Mr. Surls passed away. Id. The plaintiff-appellant (apparently admitting that Mr. Surls's report was hearsay) sought to admit the report under the business records exception to the hearsay rule. Id. The trial court precluded the report from being admitted into evidence, and the appellate court affirmed this ruling. Id. In upholding the trial court's ruling, the appellate court stated that the report was not a routine business record, and appeared to have been prepared in anticipation of litigation. Id. For these reasons, the appellate court found that "the report was clearly inadmissible." Id.

Read in conjunction, Novicki and its progeny, and Ocasio-Morales, stand for the proposition that a report, which is presented as evidence at a trial or hearing and whose author has died, should be excluded as hearsay, unless, of course, there is a hearsay exception that applies. Ocasio-Morales clearly states that the business records exception is not applicable in such a situation. Id. In the instant appeal, the appellant's attorneys did not offer any purported hearsay exceptions that would allow Mr. Schlitz's appraisal report to be admitted into evidence. Instead, they continually insisted that the Rules allow the admission of the appraisal. Based on Novicki and its progeny, and Ocasio-Morales, the Board finds that the appellant's attorneys' interpretation of the Rules cited at hearing are without merit. Thus, the appraisal is excluded as hearsay, and will not be considered in this appeal.

Next, the appellant presented the Board's decision regarding the subject's assessment for tax years 2003 through 2005 (citations *supra*), the Board's decision regarding the Fulton House Condominium Association's assessment for tax years 2003 through 2005 (citations *supra*), and the Illinois Appellate Court's decision in Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 395 Ill.App.3d 776 (1st Dist. 2009). At hearing, the Board took judicial notice of all of these decisions, and marked them as "Appellant's Exhibits 'A-E'." The appellant's attorneys argued that these decisions were being offered for the limited purpose of showing "the consistency between the methodologies applied in both appraisals."

The Board does not find these cases relevant to the instant appeal. As stated by the board of review analyst at hearing, these cases are from a different tax year than the instant appeal, and the Fulton House Condominium Association cases address a property other than the subject. The appellant's attorneys would have the Board use these cases as support for Mr. Schlitz's methodologies in the appraisal submitted in this appeal. However, this argument is moot, as the Board has already ruled that the appraisal is inadmissible hearsay for which no exception applies.

Were the Board to find that the appraisal was not hearsay, the Board would still find these cases irrelevant. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination

of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401. The Board, in this appeal, is charged with determining the correct assessment for the subject for tax year 2009. See 35 ILCS 200/16-180. Thus, any fact that is of consequence in determining the subject's assessment for tax year 2009 is relevant. However, the cases proffered by the appellant's attorneys do not speak to the subject's assessment or market value for tax year 2009. The fact that Mr. Schlitz may have used the same methodology in determining the subject's market value as of January 1, 2009 as he did in determining the market value for the properties that are the subject of Appellant's Exhibits "A-E" would simply go to show that Mr. Schlitz is consistent in his appraisal methodology in regards to condominium buildings. In essence, these cases could be used as evidence of Mr. Schlitz's *credibility* as an appraiser of condominium buildings. However, Mr. Schlitz's credibility as an appraiser cannot be tested without an opportunity for the board of review to cross-examine him. Thus, Mr. Schlitz's credibility cannot be an issue in this appeal, rendering any evidence offered in support of his credibility inadmissible as irrelevant under Illinois Rule of Evidence 401.

After excluding the appraisal on hearsay grounds, and excluding the extrinsic cases as moot, the evidence remaining for the Board to analyze consists of the raw sales data discussed in the appraisal (excluding any adjustments and value conclusions made by the appraiser), and the raw sales data submitted by the board of review. The sales data included in the appraisal within the sales comparison approach consists of ten sales of condominium units from within the subject with sale dates ranging from 1987 to 2008. Also included were six sales of apartment buildings which, according to the appraisal, were intended to be converted to condominium units.

"Proof of the market value of the subject property may consist of the following: 4) documentation of not fewer than three recent sales of suggested comparable properties together with documentation of the similarity, proximity and lack of distinguishing characteristics of the sales comparables to the subject property." 86 Ill.Admin.Code §1910.65(c)(4). Based on this standard, the Board finds that these sixteen sales do not warrant a reduction in the subject's assessment.

Of the ten sales from within the subject's building, only two occurred within four years of the lien date. The Board notes that these two sales were also submitted by the board of review in its initial evidentiary submission. The Board finds that the remaining eight sales are too remote in time to accurately depict the subject's market value as of January 1, 2009, and these sales were given no weight in the Board's analysis.

Furthermore, the six sales of apartment buildings were given no weight in the Board's analysis. The Board finds that these sales are not similar to the subject, and have several distinguishing characteristics from the subject. See, id. Most notably, these

sales were not condominium units and/or buildings, such as the subject.

What remains are two sales of units from within the subject's building that occurred in 2008. Both parties submitted these sales in support of their respective arguments. The Board finds that two sales are insufficient to reduce the subject's assessment. See, id. (suggesting that "documentation of *not fewer than three recent sales* of suggested comparable properties" (emphasis added) should be supplied for the Board to sustain an argument based on comparable sales). For these reasons, the Board finds that the appellant has not proven, by a preponderance of the evidence, that the subject was overvalued, and the Board further finds that a reduction is not warranted in the subject's assessment for tax year 2009.

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

*Donald R. Cuit*

Chairman

*Tracy A. Huff*

Member

*Marko M. Louie*

Member

*JR*

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: November 21, 2014

*Allen Castrovillari*

Clerk of the Property Tax Appeal Board

**IMPORTANT NOTICE**

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

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

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

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

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