State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2005

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PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
Printed by Authority of the State of Illinois

www.state.il.us/agency/ptab

State of Illinois
PROPERTY TAX APPEAL BOARD

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FORWARD

In the following pages, representative decisions of the Property Tax Appeal Board are reported. An index is also included. The index is organized by subject matter, and is presented in alphabetical sequence. Section 16-190(a) of the Property Tax Code (35 ILCS 200/16-190(a)) requires the Board to publish a volume of representative cases decided by the Board during that year.

Should the reader wish to become more completely informed about an appeal that is permitted by a reading of this volume, he need only write to the Board at its Springfield office requesting access to the appeal file, including in the letter a description of the material requested. Access to Board records is addressed in Section 1910.75 of the Official Rules of the Property Tax Appeal Board. Arrangements can be made to inspect the documents.

The reader should note that a docket number is created as follows: the first two digits indicate the assessment year at issue; the digits following the first hyphen identify the particular case; the letter following the second hyphen indicates the kind of property appealed ("R" for residential, "F" for farm property, "C" for commercial property, and "I" for industrial property), and the number which follows the final hyphen indicates the amount of assessed valuation at issue ("1" indicates less than $100,000 in assessed valuation is at issue, "2" indicates between $100,000 and $300,000 is at issue, and "3" indicates $300,000 or more is at issue). Thus, a docket number might appear as: 03-01234.001-I-3.

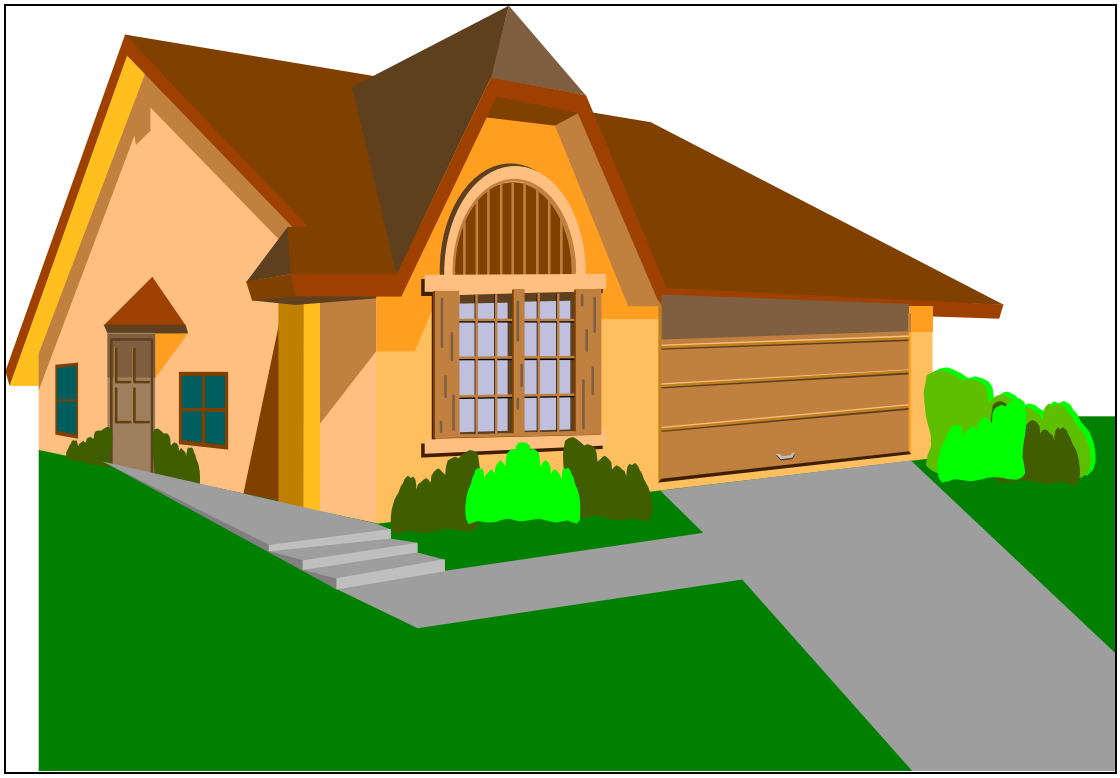
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial facility might have a letter in the docket number that is inconsistent with the actual property type in the appeal.

The Property Tax Appeal Board anticipates this volume of the 2005 Synopsis will continue to aid in the understanding of the issues confronted by the Board, and the kinds of evidence and documentation that meet with success.

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

RESIDENTIAL DECISIONS



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RESIDENTIAL CHAPTER

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APPELLANT: **Joanne Nelson**
DOCKET NUMBER: **01-24090.001-R-1**
DATE DECIDED: **July 1, 2005**
COUNTY: **Cook**
RESULT: **No Change**

The subject property consists of a 104-year old, two-story, frame, single-family dwelling located on a 28,716 square foot parcel of land. The improvement contains 5,848 square feet of living area with five full baths, one half bath, a partial basement, air conditioning, one fireplace, and a three-car garage.

At hearing, the appellant's attorney argued there was unequal treatment in the assessment process of the improvement as the basis of this appeal.

In support of the equity argument, the appellant's pleadings included: the attorney's brief; a color photograph of the subject's improvement; and written correspondence from two real estate brokers with attachments. The attorney's brief stated that the subject property is located within the Village of Golf. It indicated that a review of the subject's area reflected only nine properties including the subject within the village that are accorded the same classification by the county assessor as the subject. The statement continued by indicating that three of the aforementioned nine properties are accorded a partial assessment, while the remaining five properties contain improvements that are allegedly not as old as the subject's improvement. No descriptive or assessment data was submitted for these properties.

The first real estate broker submitted a one-page statement indicated a market value for the subject of $725,000 as of December 14, 2001. In addition, the broker submitted copies of four multiple listing sheets. The second real estate broker submitted a multi-page document identifying a listing price for the subject of between $695,000 to $705,000, while he indicated a market value in the range from $660,000 to $670,000. As the basis for this opinion, he identified three suggested comparables within his correspondence. The data failed to provide complete descriptive data and was absent any assessment data for these properties. However, the correspondence noted that all three properties were located within Glenview, one specifically located in the newly developed section of the Glenview Naval Air Station.

At hearing, the appellant's attorney admitted that the brokers' were not appraisers. Based upon this analysis, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's improvement assessment was $61,622 or $10.54 per square foot. The board

also submitted copies of the property characteristic printouts for the subject as well as three suggested comparables. The board's properties each contain a two-story, frame or stucco, single-family dwelling. They range in age from one to 78 years and in size from 5,273 to 9,626 square feet of living area. The properties all contain a basement, five or seven bathrooms, two to four fireplaces, and a multi-car garage, while two have air conditioning. The improvement assessments range from $11.38 to $14.52 per square foot of living area. In addition, the board submitted copies of its file from the board of review's level appeal.

At hearing, the board of review's representative testified that these properties are located within the subject's subdivision. As a result of its analysis, the board requested confirmation of the subject's assessment.

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 this appeal.

Appellants who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the suggested comparables to the subject property. *Property Tax Appeal Board Rule* 1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960). Having considered the evidence presented, the PTAB concludes that the appellant has not met this burden and that a reduction is not warranted.

The PTAB finds that the appellant failed to provide any comparables to substantiate the claim that the subject's improvement is inequitably assessed. Moreover, the PTAB finds that the real estate brokers' statements fall short of sufficient evidence to merit an assessment reduction. The opinions of value were not based upon market sales, only listing prices. The opinions of value did not adhere to accepted assessing and appraising methodology and failed to address the three traditional approaches to value. As such, the PTAB accords these opinions little weight.

In contrast, the PTAB finds that the board of review submitted three comparables. After considering adjustments and differences in the board's comparables, the PTAB finds that the subject's improvement assessment is supported by the properties contained in this record.

As a result of this analysis, the PTAB further finds that the appellant has failed to adequately demonstrate that the subject's dwelling was inequitably assessed by clear and convincing evidence and that a reduction is not warranted.

APPELLANT: James Solomon
DOCKET NUMBER: 01-24185.001-R-1
DATE DECIDED: May 19, 2005
COUNTY: Cook
RESULT: No Change

The subject property consists of a three-year-old, two-story style single-family dwelling of frame construction containing 3,696 square feet of living area and located in New Trier Township, Cook County. Amenities include two full baths, one half bath, a finished full-basement, central air-conditioning, a fireplace and a two-car garage.

The appellant, through counsel, appeared before the Property Tax Appeal Board arguing unequal treatment in the assessment process as the basis of the appeal. In support of this argument, the appellant offered a spreadsheet detailing six suggested comparable properties located in the same coded assessment neighborhood as the subject. Additionally, the record disclosed that three of the properties are located in the same survey section and block as the subject, while the three remaining properties are located in different survey sections more than one-half mile from the subject. These properties consist of two-story style single-family dwellings of masonry or frame and masonry construction ranging from one to sixty-two years old. All of the comparable dwellings contain full or partial basements, four of which are finished, two or three car garages, between one and three fireplaces, and from two to four full baths; five have additional half-baths and three have central air-conditioning. The comparables range in size from 2,229 to 3,664 square feet of living area and have improvement assessments ranging from $7.95 to $13.32 per square foot of living area. A copy of the subject's 2001 board of review final decision was also included. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final improvement assessment of $99,545, or $17.44 was disclosed. In support of the subject's assessment, the board of review offered property characteristic sheets and a spreadsheet detailing three suggested comparable properties located within the same survey block as the subject. The comparables consist of two-story style single-family dwellings of frame and masonry construction between 36 and 62 years old. All of the comparables contain full or partial finished basements, central air-conditioning, one or two fireplaces and two car garages. These properties range in size from 2,151 to 3,659 square feet of living area and have improvement assessments of $17.74 or $17.68 per square foot of living area. The board's witness argued that the subject and one of its comparables sold in 1999 and 2001 for prices of $1,086,706 and $1,110,000, respectively, thus supporting the board's assessment. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

In rebuttal, appellant's counsel asserted that the basis of the current appeal is the equity of the subject's improvement assessment not its market value.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has failed to overcome this burden.

The Board places the most weight on the properties located in closest proximity to the subject, or the appellant's comparables one through three and the board of review's three comparables. In addition, overall these properties appear be similar to the subject in amenities and style, thus the Board finds these six properties the most similar to the subject. The Board also finds that these six properties are significantly older than the subject and three are of a different construction type than the subject. The Board places little weight on the appellant's remaining three properties due to their greater distance from the subject than the six properties found the most similar. After considering adjustments and the differences in both parties' suggested comparables when compared to the subject property, the Board finds the subject's improvement assessment is supported by the most comparable properties contained in the record.

As a result of this analysis, the Property Tax Appeal Board finds the appellant failed to adequately demonstrate that the subject dwelling was inequitably assessed by clear and convincing evidence and no reduction is warranted.

APPELLANT: Edward Goldberg
DOCKET NUMBER: 01-25331.001-R-1 and 01-25331.002-R-1
DATE DECIDED: August 15, 2005
COUNTY: Cook
RESULT: No Change

The subject property consists of two contiguous land parcels. One parcel is improved with an 80-year old, two-story, stucco, single-family dwelling. The improvement contains 1,746 square feet of living area with three full baths, a full basement, air conditioning, one fireplace, and a one-car garage. The second parcel is unimproved or vacant land.

At the hearing, the appellant's attorney raised four issues. First, that the PTAB has subject matter jurisdiction over the unimproved subject parcel; second, that the land sizes of both parcels were inaccurate; third, that the land assessment of the unimproved parcel was incorrect; and lastly, that there was unequal treatment in the assessment process of the improvement as the bases of this appeal.

As to the matter of jurisdiction, the appellant's attorney argued that the PTAB had jurisdiction over both subject parcels even though the board of review's decision erroneously related only to the improved parcel and not the unimproved parcel. He asserted that upon receipt of the board of review's initial decision, counsel requested an actual decision on the unimproved parcel during the board of review's re-review process. At hearing, the board of review's representative had no position on this point. However, the PTAB noted that within the board of review's attachments were copies of the documents submitted at the board of review's appeal level. A copy of the appellant's complaint in that appeal reflects two subject parcels. Moreover, a copy of the appellant's request for re-review clearly reflected that the board of review failed to issue a decision regarding the second subject parcel without any explanation. The appellant's written request indicated that the decision on the second parcel was 'missing'. Therefore, the PTAB finds that the appellant has exhausted its administrative remedies and that PTAB does have jurisdiction over both subject parcels.

As to the land sizes of both parcels, the appellant argues that both are inaccurate. In support of this assertion, the appellant submitted copies of the subject's plat of survey. This survey is signed and dated as of May 19, 1996 and reflects both subject parcels. The size of the improved parcel is identified as 9,876.97 square feet, while the unimproved parcel is identified as containing 2,838.18 square feet of area. At hearing, the appellant's attorney stated that the surveyor at or around the date reflected thereon placed these figures upon the survey. In contrast, the board of review asserted that the subject's improved parcel contains 10,452 square feet, while the unimproved parcel contained 2,950 square feet of area. In support of these figures, the board submitted a

copy of the property's characteristic printout for the subject's improved parcel, only. The PTAB finds that the appellant submitted the best evidence of size. Therefore, the PTAB finds that the subject's improved parcel contains 9,877 square feet, while the unimproved parcel contains 2,838 square feet of area.

As to the parcels' land assessments, the appellant's attorney argued that using a square foot methodology to calculate the subject's land assessments reflects an inequity. His analysis included five vacant land parcels within the subject's neighborhood. This analysis indicated land sizes that ranged from 1,873 to 7,831 square feet with land assessments that range from $2,090 to $6,725, or from $0.58 to $2.12 per square foot of area.

At hearing, the appellant's attorney indicated that he had no personal knowledge of whether the land assessments for the subject's parcels were determined by a front foot methodology or by a square foot methodology. Moreover, the appellant submitted three properties as equity comparables. Those land assessments range from $25,425 to $30,172 without any explanation of the methodology used to make these determinations. The board's representative also testified that she had no personal knowledge of the methodology employed in making this determination for the subject property. However, the board's attachments reflect the submission of characteristic printouts for the improved parcel. These printouts reflect that the assessor using a front foot methodology determined the land assessment. The subject's improved parcel was identified as containing 80 front feet with varying depth factors and a unit price of $2100.00. However, no printout was submitted for the unimproved parcel. Therefore, the PTAB ordered the board's representative to submit a copy of the property characteristic printouts for the subject's unimproved parcel for the tax year at issue. The submitted printouts are identified for the record as Hearing Exhibit #1. These printouts reflect a land size of 2,950 square feet and an unimproved lot unit price of $19.00 per square foot of area for the tax years 2002 through 2004. The printouts are silent as to the methodology used to determine the land size or land assessment for tax year 2001.

In support of the improvement's equity argument, the appellant submitted assessment data and descriptions of three properties suggested as comparable to the subject. A black and white photograph of the subject was submitted along with copies of assessor database printouts for each property. The data in its entirety reflects that the properties are located within a two-block radius of the subject. The suggested comparables are improved with a two-story, frame or stucco, single-family dwelling that contains a fireplace. The improvements range in age from 85 to 88 years and in size from 1,719 to 2,160 square feet of living area. Two properties also contain a garage, while only one has a basement. The improvement assessments range from $12.34 to $12.58 per square foot of living area. Based upon this analysis, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's improvement assessment was $22,292 or $12.77 per square foot. The board also submitted copies of the property characteristic printouts for the subject as well as three suggested comparables. The board's evidence was silent as to the proximity of these properties to the subject. However, at hearing, the board's representative testified that the properties were located within the subject' neighborhood, while property #1 and #2 were located on either side of the subject property. As to the properties' land assessments, they ranged from $24,542 to $27,871. The supporting printouts reflected that the assessments were determined using a front foot methodology. Specifically, the properties contained from 63 to 75 front feet with varying depth factors and a unit price of $2100.00 per front foot.

The board's properties are improved with a two-story, stucco or frame and masonry, single-family dwelling. They range in age from 75 to 88 years and in size from 1,828 to 2,415 square feet of living area. They each contain a full basement, one fireplace, and a multi-car garage. The improvement assessments range from $13.66 to $14.23 per square foot of living area. As a result of its analysis, the board requested confirmation of the subject's assessment.

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 this appeal.

Appellants who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the suggested comparables to the subject property. *Property Tax Appeal Board Rule* 1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960).

Having considered the evidence presented, the PTAB concludes that the appellant has not met this burden and that a reduction is not warranted.

The PTAB finds the appellant's argument regarding an inequity in the subject's unimproved land assessment unpersuasive. The printouts for this parcel submitted by the board of review reflect an inaccurate land size. It reflects 2,950 square feet of area with an unimproved lot unit price of $19.00 per square foot. The PTAB found that this parcel's land size was 2,838 square feet. However, these printouts reflect data for the tax years 2002 through 2004; and unfortunately, do not reflect any calculations applicable to tax year 2001 wherein the land assessment was $8,064. Assuming *arguendo*

that this data was actually applicable to the tax year at issue, it would have conceivably resulted in an increase in land assessment. With respect to the subject's improved parcel, the PTAB found a different square footage applicable to this parcel; however, the board of review's documents reflect that this parcel's land assessment is determined based upon a front foot methodology. The unrebutted evidence submitted by the board of review reflects that the subject and the board's three suggested comparables contain land assessments calculated with the same methodology and the same unit price per front foot. Furthermore, the appellant failed to provide any property printouts to evidence the methodology used by the assessor in determining the land assessments for the appellant's suggested comparables.

As to the appellant's equity argument with respect to the subject's improvement, both parties presented assessment data on a total of six equity comparables. The PTAB finds that the appellant's comparables #1 and #2 as well as the board's comparables #1 and #2 are most similar to the subject. These four comparables range: in age from 77 to 88 years; in size from 1,719 to 1,910 square feet; and in improvement assessments from $12.34 to $14.23 per square foot of living area. The subject's improvement assessment of $12.77 per square foot of living area falls within the range established by these comparables. The PTAB accords less weight to the parties' remaining properties due to a disparity in the improvement exterior construction and size.

As a result of this analysis, the PTAB further finds that the appellant has failed to adequately demonstrate that the subject's improvement and unimproved parcel were inequitably assessed by clear and convincing evidence and that a reduction is not warranted.

APPELLANT:	**James Dendor**
DOCKET NUMBER:	**01-26754.001-R-1**
DATE DECIDED:	**May 19, 2005**
COUNTY:	**Cook**
RESULT:	**Reduced Assessment**

Containing 4,072 square feet of living area, the subject property consists of a 33-year-old, two-story, single-family dwelling of frame and masonry construction with a three-car garage sited on a 49,484 square foot land parcel. The subject is located in Palatine Township, Cook County, Illinois.

The appellant appeared before the Property Tax Appeal Board and argued unequal treatment in the assessment process as the basis of the appeal. The land assessment is not in dispute. In support, the appellant testified that he purchased the subject in August 1997. Shortly thereafter, the subject suffered ruinous damage throughout the interior and exterior due to plumbing failure rendering the structure unlivable during both 2000 and 2001. Mr. Dendor testified that in his attempts to remediate the situation, he consulted with a structural engineer and construction professionals. It was opined the structure was un-repairable. He then testified that in 2001 the building inspector for the Village of Inverness inspected the structure concluding the improvement should be demolished. Subsequently, the Village began condemnation proceedings. The building was condemned and demolished in 2002. Photographs of the subject's exterior before and after demolition were also submitted. Based on the appellant's testimony and documents, the appellant requested $0.00 as an improvement assessment as of January 1, 2001.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's improvement assessment of $49,133, or $12.07 per square foot of living area, was presented. The board also submitted assessment data for and descriptions of three properties suggested as comparable to the subject. The properties are located within the same survey block as the subject. The comparables are two-story, single-family dwellings of frame or frame and masonry construction ranging from 25 to 29 years old. Ranging in size from 2,408 to 2,712 square feet of living area, the improvement assessments range from $11.99 to $12.23 per square foot of living area. Also submitted were copies of documentation from the board of review level complaint file, which disclosed the subject's proposed 2002 improvement assessment was reduced to $9,826, or $2.41 per square foot of living area.

The board's witness testified that the usual practice of the board of review under the circumstances like those testified to by the appellant would result in a 60% reduction of the improvement assessment. He could not explain why this was not done in the instant cause.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds that a reduction in the subject property's assessment is warranted. The appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). After an analysis of the assessment data, the Board finds the appellant has overcome this burden.

In this appeal, the Board finds that the appellant testified to and supported with documentation the subject was uninhabitable during 2001. Further, the Board finds the board of review's witness testified that in circumstances similar to those described by the appellant the board's usual practice is to reduce the improvement assessment 60%. Moreover, the Board finds that the board of review's proposed 2002 assessment of the subject improvement is reduced 60%. Therefore, the Property Tax Appeal Board finds that a reduction of the assessment is appropriate.

APPELLANT:	**Bridgette Maile**
DOCKET NUMBER	**01-26976.001-R-1**
DATE DECIDED:	**May 19, 2005**
COUNTY:	**Cook**
RESULT:	**Reduced Assessment**

The subject property consists of a 110-year-old, three-story style single-family dwelling of masonry construction containing 7,665 square feet of living area and located in North Chicago Township, Cook County. Amenities include an unfinished full basement, central air-conditioning, four bedrooms, six full baths, six fireplaces, a brick patio, a wood deck, and a brick fence.

At the hearing before the Property Tax Appeal Board, the appellant, through counsel, argued both the that the market value of the subject is not accurately reflected in its assessment and unequal treatment in the assessment process as the bases of the appeal.

In support of the market value argument, the appellant offered an appraisal report prepared by a State of Illinois certified appraiser. Reasoning that the income approach to value was inappropriate to estimate a market value for a single-family residential property, the appraiser employed the cost approach to value and the sales comparison approach to value to determine an estimated market value for the subject, as of January 1, 2001, of $1,600,000.

Although the appraiser was not called as a witness at the hearing, the appraiser's report indicated the subject was not sold in the year prior to the appraisal. In the appraiser's statement of conditions, he affirmed that he has no interest in the subject property; has performed the appraisal in conformity with Uniform Standards of Professional Appraisal Practice; and has personally inspected the property.

In the cost approach to value, the appraiser estimated a land value for the subject of $850,000 by means of the land extraction method and/or recent land sales. Utilizing *Boechk's Cost Approach Guide,* modified for local requirements and the appraiser's interviews of local builder/contractors, the appraiser estimated a depreciated value for the improvements of $744,306. He then added an "as is" value for site improvements of $5,000, resulting in an indicated value for the subject via the cost approach of $1,599,306.

Next, the appraiser implemented the sales comparison approach to value. For this approach, the arm's length sales of three vintage properties were examined. Located within three blocks of the subject, the improvements range from 103 and 120 years old. Ranging in size from 3,175 to 8,000 square feet of living area, these properties sold between May 2000 and December 2000 for prices ranging from $1,300,000 to $1,600,000, or from $168.75 to $503.04 per square foot of living area. After adjustments to the sales

comparables for size, quality of construction, condition, and other amenities, the appraiser estimated an adjusted sales range of $1,556,200 to $1,669,325, or $194.53 to $525.77 per square foot of living area. Based on the foregoing data, the appraiser estimated a market value for the subject of $1,600,000, or $208.66 per square foot of living area, as of January 1, 2001 through the sales comparison approach.

Lastly, in the reconciliation of the two approaches to value, he placed primary emphasis on the sales comparison approach with the cost approach given secondary consideration. The appraiser's final conclusion of value for the subject was $1,600,000, as of January 1, 2001.

In support of the inequity argument, the appellant presented a spreadsheet detailing twelve suggested comparable properties located in the same coded assessment neighborhood as the subject, five of which are located on the same street as the subject. These properties consist of two-story or three-story style single-family dwellings of masonry construction ranging from 75 to 117 years old. The comparable dwellings contain between three and ten full baths, additional half baths; nine have fireplaces, seven have garages, eight have full basements, either finished or unfinished, two have finished partial basements and two have concrete slab foundations. The comparables range in size from 5,288 to 13,140 square feet of living area and have improvement assessments ranging from $11.33 to $21.04 per square foot of living area. A copy of the subject's 2001 board of review final decision was also included. The appellant's attorney argued that the subject is both over valued and over assessed and requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $241,120 was disclosed. Of this figure, $48,576 is allocated to the land assessment and $192,544 is allocated to the improvement assessment. The total assessment reflects a total market value of $2,368,566 for the subject, when the 2001 Illinois Department of Revenue's three-year median level of assessments of 10.18% for Class 2 property, such as the subject, is applied.

In support of the subject's assessment, the board of review offered property characteristic sheets and a spreadsheet detailing three suggested comparable properties located in the same coded assessment neighborhood as the subject. The comparables consist of three-story style single-family dwellings of masonry construction between 102 and 110 years old. All of the comparables contain full basements, finished or unfinished; one has central air-conditioning; one has four fireplaces and all have garages. These properties range in size from 3,120 to 8,794 square feet of living area and have improvement assessments ranging from $25.37 to $62.72 per square foot of living area. The board's evidence revealed that its comparable number one and number two were upgraded prior to 1997 as they both had Home Improvement Exemptions applied in that year. The record was silent as to the type of upgrades. Further, the board's data

disclosed its comparables one and two were sold in August and September 1998 for prices of $4,150,000 and $2,450,000, respectively. No details of the sales were offered. The board's data and witness suggested that the subject sold in August 2000 for a price of $4,087,418. Finally, the board of review presented a list of sales, without descriptions, and documentation from the board of review level file. Thus, the board of review asked for confirmation of the subject's assessment.

In rebuttal, the appellant's attorney argued that the board of review made errors in its calculations specifically in its description of comparable number two. Counsel suggested that the actual living square footage of this improvement was 6,610 square feet, thus reducing its per square foot assessment to $29.63. Counsel also suggested that the subject was not sold in 2000, as indicated on the board of review's grid. He further argued that after analysis of the board's three comparables and the appellant's equity comparables one, two and six, an average of the assessments of $19.41 per square foot of living area should be applied to the subject.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant argued both overvaluation of the subject and unequal treatment in the assessment process.

When overvaluation is claimed the appellant has the burden of proving the value of the property 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); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Section 1910.65 *The Official Rules of the Property Tax Appeal Board* (86 Ill. Adm. Code §1910.65(c)). Having considered the evidence and testimony presented, the Board concludes that the appellant has satisfied this burden and a reduction is warranted.

The Board's analysis of the board of review's evidence did reveal errors in the presentation. The Board finds that the sale attributed to the subject (PIN 17-03-102-009-0000) on the board's grid was attributed PIN 17-03-106-009-0000 on the board's list of sales. Therefore, the Board finds that the subject's sale as indicated on the board's grid erroneous. Moreover, the property record printouts presented by the parties for the board's comparable number two reflect 6,310 square feet of living area and an improvement assessment of $194,680, or $31.01 per square foot of living area. Consequently, the Board finds that the range of assessments for the board of review's equity comparables to be $25.37 to $41.10 per square foot of living area.

The Board finds that the best evidence of the subject's market value is the appellant's appraisal. While the appraiser did not appear before the Board, the appraisal presented recent arm's length sales of three comparables with clearly explained adjustments to each. Further, although he placed little weight on it, a cost approach utilizing a nationally recognized cost manual, locally adjusted, was presented. Next, the Board finds that the two sales presented by the board of review lacked any details as to nature of the sales or any type of adjustments. In addition, the Board finds that the board of review did not present any probative evidence challenging that the fair market value as determined by the appellant's appraisal. Therefore, on the basis of the appellant's appraisal, the Property Tax Appeal Board finds that the subject had a fair market value of $1,600,000 as of January 1, 2001.

Since fair market value had been established, the 2001 three-year weighted average median level of assessments for Cook County Class 2 property of 10.18% shall apply.

As a result of this analysis, the Property Tax Appeal Board finds the appellant has adequately demonstrated that the subject is over valued by a preponderance of the evidence and a reduction is warranted.

With regard to the appellant's contention the subject is inequitably assessed, after an analysis of the data contained in the record, the Board finds that no further reduction of the subject's assessment is appropriate. In addition, the Board finds the appellant's argument that the subject's per square foot assessment should be an average of six selected properties unpersuasive. The Board finds that averaging assessments of particular properties in a particular area to assess one property is not accepted assessment or appraisal practice.

APPELLANT: Marshall Marcovitz
DOCKET NUMBER: 01-27254.001-R-1
DATE DECIDED: May 26, 2005
COUNTY: Cook
RESULT: Reduced Assessment

Containing 2,976 square feet of living area, the subject property consists of a 112-year-old, two-story style single-family dwelling of frame and masonry construction built on a slab foundation and located in North Chicago Township, Cook County. Amenities include central air-conditioning and a fireplace.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. In support of this argument, the appellant offered a spreadsheet detailing nineteen suggested comparable properties located in the same coded assessment neighborhood as the subject. These properties consist of two-story style single-family dwellings of masonry, frame, or frame and masonry construction ranging from 70 to 132 years old. Eleven of the comparable dwellings contain full basements, either finished or unfinished; fourteen have central air-conditioning; thirteen have fireplaces; and eleven have garages. The comparables range in size from 2,607 to 3,195 square feet of living area and have improvement assessments ranging from $13.11 to $21.34 per square foot of living area. A copy of the subject's 2001 board of review final decision was also included. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final improvement assessment of $132,844, or $44.64 was disclosed. In support of the subject's assessment, the board of review offered property characteristic sheets and a spreadsheet describing the subject. The record also disclosed the subject was sold in October 1998 for a price of $1,500,000. Finally, the board of review presented documentation submitted at the board level and a list of property sales in the subject's general area. Descriptions of the properties were not tendered. The board's witness asserted that the 1998 sale supports the current assessment and requested confirmation of the subject's assessment.

In rebuttal, the appellant's counsel argued that the assessments of the list of sales presented by the board of review confirm the appellant's contention that the subject is inequitably assessed. Counsel presented an analysis with descriptions and current assessments of the board's list of sales. These properties are located in the same assessment neighborhood as the subject and range from 109 to 144 years old. The improvements are two or three story, single-family dwellings of frame, masonry, or frame and masonry construction; seven have garages and ten have full basements either

finished or unfinished. The improvements range in size from 2,222 to 4,356 square feet of living area with improvement assessments ranging from $18.18 to $40.34 per square foot of living area. The appellant also used one of the properties listed on the board of review's sale list as an equity comparable.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has overcome this burden.

The appellant presented nineteen properties as comparable to the subject. The Board finds that all of these properties bear strong similarities to the subject in size, age and amenities. Thus, the Board finds the appellant's comparables to be the most similar to the subject in the record.

In rebuttal to the board's evidence, the counsel asserted the appellant's equity analysis of the board of review's list of properties that sold supports his contention of inequitable assessment of the subject. The Property Tax Appeal Board concurs. In its analysis of the evidence, the Board also noted that of the 30 properties in the record, 29 have improvement assessments ranging from $13.11 to $26.77 per square foot of living area. The subject's improvement assessment of $44.64 per square foot of living area is substantially above this range, as well as substantially above the range of the properties found the most similar. After considering adjustments and the differences in the appellant's suggested comparables when compared to the subject property, the Board finds the subject's per square foot improvement assessment is not supported by the most comparable properties contained in the record.

The Property Tax Appeal Board takes note that the board of review has raised an ancillary issue of the recent sale of the subject property, however, the controlling issue in the instant cause is equity and the appellant has provided clear and convincing evidence of inequity pursuant to *The Official Rules of the Property Tax Appeal Board* §1910.63(e) and §1910.65(b).

As a result of this analysis, the Property Tax Appeal Board finds the appellant has adequately demonstrated that the subject dwelling was inequitably assessed by clear and convincing evidence and a reduction is warranted.

APPELLANT: John Giuliani
DOCKET NUMBER: 01-27480.001-R-1
DATE DECIDED: May 19, 2005
COUNTY: Cook
RESULT: Reduced Assessment

Containing 6,642 square feet of living area and located in North Chicago Township, Cook County, the subject property consists of a 107-year-old, three-story style multi-family dwelling of masonry construction with an unfinished full basement.

At the hearing, the appellant, through counsel, submitted evidence before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. In support of this argument, the appellant offered a spreadsheet detailing five suggested comparable properties located in the same coded assessment neighborhood as the subject, two of which are located on the same street as the subject. These properties consist of two-story or three-story style multi-family dwellings of masonry or frame and masonry construction from 70 to 116 years old. Four of the comparable dwellings contain finished or unfinished full basements and one is built on a slab foundation. One of the improvements has central air-conditioning and two fireplaces. The comparables range in size from 3,888 to 8,456 square feet of living area and have improvement assessments ranging from $7.85 to $9.84 per square foot of living area. A copy of the subject's 2002 board of review final decision was also included. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final improvement assessment of $98,072, or $14.77 per square foot of living area, was disclosed. In support of the subject's assessment, the board of review offered property characteristic sheets and a spreadsheet detailing two suggested comparable properties located in the same coded assessment neighborhood as the subject. The comparables consist of three-story style multi-family dwellings of masonry construction 112 and 117 years old. Both of the comparables contain unfinished full basements. One of the comparables also has central air-conditioning, two fireplaces and a two and one-half car garage. These properties contain 2,457 and 3,249 square feet of living area and have improvement assessments of $15.79 and $15.11 per square foot of living area, respectively. The board's witness suggested that these improvements were similar to the subject and requested confirmation of the subject property's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack

of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has overcome this burden.

The Board finds that the appellant's comparables numbered two, four and five are the most similar to the subject. These properties are similar in style, age, construction type, location and amenities to the subject. The properties found the most similar to the subject have per square foot improvement assessments ranging from $7.85 to $9.68. The Board finds that the subject's per square foot improvement assessment of $14.77 is above the range established by the properties found the most similar. The Board finds that the remaining properties are not as similar to the subject due to disparities in size, amenities and/or construction type when compared to the subject. After considering adjustments and the differences in both parties' suggested comparables when compared to the subject property, the Board finds the subject's per square foot improvement assessment is not supported by the most comparable properties contained in the record.

As a result of this analysis, the Property Tax Appeal Board finds the appellant has adequately demonstrated that the subject dwelling was inequitably assessed by clear and convincing evidence and a reduction is warranted.

APPELLANT: Henry Zwirkoski
DOCKET NUMBER: 02-28939.001-R-1
DATE DECIDED: December 19, 2005
COUNTY: Cook
RESULT: No Change

The subject property consists of an improved parcel containing approximately 12,987 square feet of land area located in Worth Township, Cook County. The appellant appeared before the Property Tax Appeal Board arguing unequal treatment in the assessment process as the basis of the appeal. The appellant asserted that only the subject land is inequitably assessed and is not contesting the subject's improvement assessment.

In support of his inequity argument, the appellant offered a spreadsheet detailing six suggested comparable properties located in the same coded assessment neighborhood as the subject. These parcels range in size from 12,500 to 23,365 square feet of land area and have assessments ranging from $.33 to $.36 per square foot of land area. A copy of the subject's 2002 board of review final decision was also included. Based on this evidence, the appellant requested a reduction in the subject's land assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final land assessment of $6,947 was disclosed. In support of the subject's assessment, the board of review offered property characteristic sheets and a spreadsheet detailing three suggested comparable properties located in the same coded assessment neighborhood as the subject. The comparables consist parcels contain between 10,965 and 12,025 square feet of land area and have land assessments ranging from $4,116 to $5,663 per square foot of living area. The board's witness testified that a review of the property characteristic printouts submitted by the board disclosed that all of its land parcels are assessed utilizing the front foot method. The unit of value on which the assessments are based is $425 per front foot with the application of a depth factor based on a standardized 125 feet of land depth. The board's suggested comparables land frontages ranging from 51 to 101.46 feet with depths ranging from 143 to 215 feet or depth factors from 1.041 to 1.187. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

At the hearing, the board of review was requested by the Board to submit property characteristic printouts detailing land assessments for the appellant's comparables. The board of review complied with this request in a timely manner. A review of the details of the appellant's comparable's revealed these land parcels are assessed utilizing the front foot method. The unit of value on which the assessments are based is a uniform $425 per front foot with the application of a depth factor based on a standardized 125 feet of land depth. The appellant's suggested comparables land frontages ranging from

50 to 97.85 feet and have depths ranging from 220 to 266 feet or depth factors from 1.196 to 1.274.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant's argument was unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has failed to overcome this burden.

While the appellant presented evidence that the subject land parcel contains 12,987 square feet of land area, the Board finds that this fact is not relevant when evaluating the equity of the subject's land assessment. The evidence presented by the parties revealed the subject's land, as well as the land of all the comparables are assessed utilizing the front foot method. The unit of value used as the base of all the land assessments in this appeal is $425 per front foot with depth factors appropriate to each parcel's depth applied. Therefore, the Property Tax Appeal Board finds that the subject's land is treated equitably when compared to similar properties and no reduction is warranted.

APPELLANT: **Florian and Anne Szydelko**
DOCKET NUMBER: **03-00181.001-R-1**
DATE DECIDED: **August 1, 2005**
COUNTY: **Lake**
RESULT: **No Change**

The subject property consists of a one-story frame dwelling that is 33 years old and contains 1,829 square feet of living area. Amenities include a central air conditioning, a fireplace, and a 625 square foot garage.

The appellants submitted evidence before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. In support of the inequity claim, the appellants submitted a spreadsheet detailing three suggested comparables. They consist of one-story frame dwellings that are 32 years old and contain 1,737 square feet of living area. The comparables have central air conditioning, one fireplace, and garages ranging in size from 260 to 519 square feet. They have improvement assessments ranging from $52,694 to $56,053 or from $30.34 to $32.27 per square foot of living area. The subject property has an improvement assessment of $62,470 or $34.15 per square foot of living area. The comparables also sold from July 2002 to February 2003 for prices ranging from $212,000 to $230,000. The appellants purchased the subject property in August 2003 for $255,000. Based on this evidence, the appellants requested a reduction in the subject property's assessment

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $74,947 was disclosed. In support of the subject's assessment, the board of review submitted property record cards and a spreadsheet detailing three suggested comparables. The evidence indicates the comparables are "Eaton" model dwellings like the subject. The appellants' comparables are "Farmington" model dwellings unlike the subject. They consist of one-story frame dwellings that were built from 1970 to 1971. The comparables contain central air conditioning and garages that contain 462 square feet. Two comparables have a fireplace. They range in size from 1,305 to 1,529 square feet of living area and have improvement assessments ranging from $47,038 to $63,478 or from $36.04 to $41.52 per square foot of living area. The comparables also sold from September 2002 to September 2003 for prices ranging from $207,000 to $240,000. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted. The appellants argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an

assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have not overcome this burden.

The parties submitted six suggested assessment comparables for the Board's consideration. The Board gave less weight to two comparables submitted by the board of review due to their smaller size when compared to the subject. The Board further finds four comparables submitted by the parties to be most similar to the subject in age, size, style, location and amenities. They have improvement assessments ranging from $30.34 to $41.52 per square foot of living area. The Board finds the subject's improvement assessment of $34.15 per square foot of living area falls within the range established by the most similar assessment comparables contained in the record. After considering adjustments to these comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is supported. Therefore, no reduction is warranted.

When an appeal is based on assessment inequity, the appellant has the burden to show the subject property is inequitably assessed by clear and convincing evidence. Proof of an assessment inequity should consist of more than a simple showing of assessed values of the subject and comparables together with their physical, locational, and jurisdictional similarities. There should also be market value considerations, if such credible evidence exists. The supreme court in Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 169 N.E.2d 769, discussed the constitutional requirement of uniformity. The court stated that "[u]niformity in taxation, as required by the constitution, implies equality in the burden of taxation." (Apex Motor Fuel, 20 Ill.2d at 401) The court in Apex Motor Fuel further stated:

> "the rule of uniformity ... prohibits the taxation of one kind of property within the taxing district at one value while the same kind of property in the same district for taxation purposes is valued at either a grossly less value or a grossly higher value. [citation.]
>
> Within this constitutional limitation, however, the General Assembly has the power to determine the method by which property may be valued for tax purposes. The constitutional provision for uniformity does [not] call ... for mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute in its general operation. A practical uniformity, rather than an absolute one, is the test.[citation.]" Apex Motor Fuel, 20 Ill.2d at 401.

In this context, the Supreme Court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent level. Kankakee County Board of Review, 131 Ill.2d at 21. The Board finds the comparables submitted by the appellants sold for prices ranging from $212,000 to $230,000 and have improvement assessments ranging from $30.34 to $31.27 per square foot of living area. The subject property sold within 12 months of these comparables for $255,000, or from $25,000 to $43,000 more than the appellants' comparables. The subject property has an improvement assessment of $34.15 per square foot of living area, slightly higher than appellants' similar assessment comparables. The Board finds the subject's slightly higher per square foot improvement assessment is well justified giving consideration to the credible market evidence contained in this record.

Although the comparables presented by the appellants disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellants have not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, the Property Tax Appeal Board finds that the subject's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: **Ward S. and Sandra F. Wood**
DOCKET NUMBER: **03-00184.001-R-1**
DATE DECIDED: **May 27, 2005**
COUNTY: **Madison**
RESULT: **No Change**

The subject property is improved with a one-story frame dwelling containing 960 square feet of living area that was built in 1970. Features include a full, partially finished basement, central air conditioning, a fireplace, and an 800 square foot garage.

The appellant, Ward S. Wood, appeared before the Property Tax Appeal Board contesting the subject's property taxes. The appellant argued the subject property is not a residence as defined in the Property Tax Code. In addition, the appellant argued he is not a "person" as defined in the Property Tax Code. He also argued the descriptions contained in the Property Tax Code do not fit the description of the subject property. Thus, the appellant protested the property taxes levied against the subject property. The appellant did not submit a legal brief citing applicable statues or case law in support of the legal arguments.

At the hearing, the appellants acknowledged the appeal before the Property Tax Appeal Board was initially filed based on an assessment inequity claim rather than a legal contention. However, the appellants claimed the appeal was filed without his knowledge.

The appellants' evidence also contained photographs and property record cards for 19 suggested assessment comparables located within 1.5 miles of the subject. They consist of one-story frame or masonry dwellings that were built from 1920 to 1960. Six comparables have unfinished basements and 13 comparables have crawl space foundations. All the comparables have central air conditioning and garages ranging in size from 180 to 1,298 square feet. The dwellings range in size from 720 to 1,316 square feet of living area. The comparables have improvement assessments ranging from $9,097 to $18,250 or from $8.96 to $18.83 per square foot of living area. The subject property has an improvement assessment of $14,110 or $14.70 per square foot of living area. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $15,870 was disclosed. The board of review argued the evidence submitted by the appellants justifies the subject's assessment. Thus, the board of review requested confirmation of the subject's assessment.

The appellants asked the board of review's representative why they do not listen to the laws. The Board sustained the board of review's objection based on a lack of foundation for the question. The appellants objected that the Property Tax Appeal Board sustained the board of review's objection. The Board overruled the appellants' objection. In closing, the appellants argued the subject property is not a residence but a dwelling. The appellants argued statutes consider a residence to be a condominium and/or a coop, not a dwelling. The appellants also argued he is not a "person" because he is not a federal citizen as provided by statues. Again, the appellants cited no statutes in support of these claims.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties regarding the subject property's correct assessment. The Board further finds no reduction in the subject's assessment is warranted.

The appellants argued the subject property is not a residence but a dwelling. The appellants argued statutes contained within the Property Tax Code consider a residence to be a condominium and/or a coop, not a dwelling like the subject. The appellants also argued he is not a "person" because he is not a federal citizen as provided by applicable statues. The Board gave no merit to the appellants' legal contentions. The appellants failed to submit a legal brief citing applicable statues or case law in support of the legal arguments. Sections 1910.30(h) and 1910.65(d) of the Official Rules of the Property Tax Appeal Board provides:

> **Every petition for appeal shall state the facts upon which the contesting party bases his objection to the decision of the board of review, together with a statement of the contentions of law, which he desires to raise**. **Each petition must also set forth the assessment for the subject property which the contesting party considers to be correct. If contentions of law are raised, the contesting party shall submit a brief in support of his position with the petition**. (86 Ill. Adm. Code §1910.30(h)).
>
> The Property Tax Appeal Board may consider appeals based upon contentions of law. **Such contentions of law must be concerned with the correct assessment of the subject property. If contentions of law are raised, the party shall submit a brief in support of his position**. (86 Ill. Adm. Code §1910.65(d)).

More importantly, the Board finds the legal issues raised by the appellant at the hearing are considered new arguments. Neither the Property Tax Appeal Board nor the board of review was aware of the appellants' legal claims at the time of hearing. Section 16-180 or the Property Tax Code provides in part:

> Each appeal shall be limited to the grounds listed on the petition filed with the Property Tax Appeal Board. (35 ILCS 200/16-180).

The Board finds in this appeal the appellants listed an assessment inequity as the basis of the appeal. Therefore, the Board will not consider the new legal arguments raised at the hearing.

The appellants also protested the property taxes levied against the subject property based on the unsubstantiated legal claims. Again, the Board gave this claim no weight. Section 1910.10(f) of the Official Rules of the Property Tax Appeal Board provides:

> The Property Tax Appeal Board is **without jurisdiction to determine the tax rate, the amount of a tax bill**, or the exemption of real property from taxation. (86 Ill. Adm. Code §1910.10(f)).

The Board finds the appellants initially filed the appeal claiming unequal treatment in the assessment process as the basis of the appeal. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the evidence, the Board finds the appellants have not overcome this burden.

The Board finds the appellants submitted assessment information for 19 comparables for consideration. The Board finds the comparables range from 10 to 50 years older in age than the subject. The board gave less weight to 13 comparables submitted by the appellants. These properties have crawl space foundations, dissimilar to the subject's full, partially finished basement. The Board finds the remaining five comparables to be most similar to the subject in size, style, design, construction, and amenities. Again, all of these properties are considerably older in age than the subject. They have improvement assessments ranging from $8.96 to $18.83 per square foot of living area. The subject property has an improvement assessment of $14.70 per square foot of living area, which falls within the range established by the most similar comparables submitted by the appellants. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is well supported. Therefore, the Board finds the appellants failed to show the subject property was inequitably assessed by clear and convincing evidence and no reduction is warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the

burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. Therefore, the Board finds the appellants failed to demonstrate the subject property was inequitably assessed by clear and convincing evidence and no reduction is warranted.

In conclusion, the Board finds the appellants failed to demonstrate the subject property was inequitably assessed by clear and convincing evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: J and K Property Management
DOCKET NUMBER: 03-00739.001-R-1
DATE DECIDED: August 2, 2005
COUNTY: Winnebago
RESULT: No Change

The subject property consists of a one-story frame dwelling containing 1,142 square feet of living area that was built in 1930. Amenities include an unfinished basement, an enclosed porch and a 280 square foot garage.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation and unequal treatment in the assessment process as the bases of the appeal. In support of these claims, the appellant indicated the subject property was purchased from HUD (Housing and Urban Development) in December 2000 for $21,955. In addition, the appellant submitted a grid analysis detailing three suggested comparables located within six blocks of the subject. They consist of a one-story style and two, two-story style frame dwellings that were built from 1900 to 1925. The comparables have unfinished basements and garages ranging in size from 252 to 440 square feet. One comparable was reported to have central air conditioning and a fireplace. The dwellings range in size from 988 to 2,310 square feet of living area. The comparables have improvement assessments ranging from $6,191 to $12,300 or from $2.68 to $9.99 per square foot of living area. The comparables also sold from December 2002 to May 2003 for prices ranging from $27,000 to $42,000 or from $14.29 to $34.84 per square foot of living area including land. The subject property has an improvement assessment of $12,396 or $10.86 per square foot of living area. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $13,151 was disclosed. The subject's assessment reflects an estimated market value of $39,457 or $34.55 per square foot of living area including land using Winnebago County's 2003 three-year median level of assessments of 33.33%.

In support of the subject's assessment, the board of review submitted photographs, property record cards, a location map, and grid analyses detailing sales and assessment information for eight suggested comparables. The comparables are located in close proximity to the subject. The first spreadsheet addressed the appellant's market value claim. These four comparables consist of one-story frame dwellings that were built from 1925 to 1955. Three comparables have unfinished basements, one comparable has a partial finished basement, and two comparables have garages that contain 352 and 572 square feet. The dwellings range in size from 936 to 1,258 square feet of living area. They sold from May 2000 to May 2003 for prices ranging from $35,000 to $65,500 or from $37.39 to $52.07 per square foot of living area including land.

To demonstrate the subject property was uniformly assessed, the board of review submitted a second spreadsheet detailing four suggested comparables. They consist of one-story frame dwellings that were built from 1925 to 1931. Three comparables have unfinished basements, one comparable has a partial finished basement, and all the comparables have garages that range in size from 216 to 400 square feet. The dwellings range in size from 1,012 to 1,243 square feet of living area and have improvement assessments ranging from $12,204 to $13,318 or from $10.50 to $12.83 per square foot of living area. Based on the evidence submitted, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellant argued the subject property was inequitably assessed. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. The Board finds the appellant has not overcome this burden.

The Property Tax Appeal Board finds the parties submitted seven suggested assessment comparables for consideration. The Board gave less weight to two comparables submitted by the appellant. These suggested comparables are two-story style dwellings, dissimilar to the subject's one-story design. In addition, one comparable is considerably larger in size than the subject. The Board finds the remaining five comparables to be most similar to the subject in age, size, style, construction, location, and amenities. They have improvement assessments ranging from $9,871 to $13,318 or from $9.99 to $12.83 per square foot of living area. The subject's improvement assessment of $12,396 or $10.86 per square foot of living area falls within the range established by the most similar assessment comparables contained in the record. After considering adjustments to these comparables for differences when compared to the subject the Board finds the subject's improvement assessment is supported. As a result of this analysis, the Board finds the appellant has not demonstrated the subject property was inequitably assessed by clear and convincing evidence.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in

its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables contained in the record disclose that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. Therefore, the Board finds no reduction in the subject's assessment is warranted.

The appellant also argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Property Tax Appeal Board finds the appellant has not overcome this burden. The Property Tax Appeal Board finds the parties submitted seven suggested comparable sales for consideration. The Board gave less weight to two comparables submitted by the appellant. These suggested comparables are two-story style dwellings, dissimilar to the subject's one-story design. In addition, one comparable is considerably larger in size than the subject. The Board also gave less weight to two comparables submitted by the board of review. One comparable is newer in age than the subject and another comparable sold in May 2000 and is not considered indicative of the subject's fair market value as of the January 1, 2003, assessment data at issue in this instant appeal.

The Board further finds the remaining three comparables to be most similar to the subject in age, size, style, construction, location, and amenities. They sold between December 2002 and February 2003 for prices ranging from $27,000 to $65,000 or from $27.33 to $52.07 per square foot of living area including land. The Board finds the subject's estimated market value of $39,457 or $34.55 per square foot of living area including land, as reflected by its assessment, falls within the range established by the most similar comparable sales submitted by the parties. After considering adjustments to these comparables for differences when compared to the subject, the Board finds the subject's estimated market value as reflected by its assessment is supported.

The Board also gave no weight to the subject's sale price of $21,955 in December 2000. This sale occurred over two years prior to the subject's January 1, 2003, assessment data and is not considered reflective of its fair market value. This finding is further supported by the most similar aforementioned comparable sales contained in the record. As a result of this analysis, the Board finds the appellant failed to demonstrate that the subject property was overvalued by a preponderance of the evidence and no reduction is warranted.

In conclusion, the Board finds the appellant failed to demonstrate the subject property was inequitably assessed by clear and convincing evidence or overvalued by a preponderance of the evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: Donald D. and Jacqueline F. Zaretsky
DOCKET NUMBER: 03-01477.001-R-1
DATE DECIDED: November 30, 2005
COUNTY: Lake
RESULT: No Change

The subject property consists of a two-story brick and frame dwelling containing 3,108 square feet of living area that was built in 1963. Features include a 942 square foot unfinished basement, central air conditioning, a fireplace, and a 600 square foot attached garage.

The appellants submitted evidence before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. In support of this claim, the appellants submitted a letter outlining the appeal, photographs, and a grid analysis detailing three comparables. The comparables consist of two-story brick or brick and frame dwellings that were built from 1939 to 1952. The comparables have basements ranging in size from 822 to 1,230 square feet, with two comparables containing 550 and 738 square feet of finished area, respectively. Other features include central air conditioning, one or two fireplaces, and garages ranging in size from 253 to 822 square feet. The dwellings range in size from 3,165 to 3,478 square feet of above grade living area and have improvement assessments ranging from $120,016 to $131,180 or from $34.51 to $41.29 per square foot of living area. The appellants also included the finished basement area for comparables 2 and 3, resulting in per square foot improvement assessments of $33.48 and $34.05. The subject property has an improvement assessment of $121,846 or $39.20 per square foot of living area.

The comparables have lots ranging in size from 16,426 to 42,322 with land assessments ranging from $38,929 to $55,600 or from $1.31 to $2.37 per square foot of land area. The subject property has a land assessment of $39,369 or $2.30 per square foot of land area. The appellants argued there are cogent reasons why the subject is less valuable on a per square foot basis than the comparables, primarily due to its location and elevation. The appellants argued the comparables are located on dead-end streets, near a public park with sidewalks. The appellants argued the subject is located on an arterial street near Lake-Cook Road that has no public sidewalk with heavy traffic. The appellants also argued the subject's lot is the lowest point in elevation along the subject's street and has historically flooded during minor rains or snowmelt.

The appellants also argued the subject's basement continues to flood even though new storm sewers were installed. For these reasons, the appellants contend any real estate professional knows that it would be relatively difficult to sell the subject property to people who object to wet basements and mold. The appellants suggested logic and common sense is the most basic of all evidence. The appellants contend the subject

property is clearly not as valuable as an interior property with a higher elevation. Although the appellants had no precise amount as to the diminution in value, justice and fairness dictate that a 25% reduction in the subject's land assessment is warranted.

The appellants also submitted the rules governing the Lake County Board of Review appeal and hearing procedures. In summary, the appellants contend they did not receive a fair hearing and the board of review violated its own rules. The appellants also submitted the evidence prepared and submitted by the township assessor at the local board of review hearing. This evidence comprised of a grid analysis detailing three comparables that consist of two-story brick and frame dwellings that were built from 1965 to 1969. The comparables have unfinished basements ranging in size from 1,400 to 1,688 square feet. Other features include central air conditioning, one fireplace, and garages ranging in size from 460 to 541 square feet. The dwellings range in size from 2,800 to 3,278 square feet of living area and have improvement assessments ranging from $118,079 to $137,519 or from $41.60 to $42.17 per square foot of living area. The comparables have lots ranging in size from 12,677 to 15,148 with land assessments ranging from $35,019 to $38,106 or from $2.52 to $2.76 per square foot of land area. Again, the subject property has an improvement assessment of $121,846 or $39.20 per square foot of living area and a land assessment of $39,369 or $2.30 per square foot of land area. Based on the evidence submitted, the appellants requested a reduction in the subject's land and improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $161,215. No other evidence to support the subject's assessment was submitted.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellants argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellants have not overcome this burden.

With regard to the subject's improvement assessment, the appellants submitted six assessment comparables, including an analysis of three assessment comparables prepared by the township assessor that was used at the local board of review hearing. The proximate location of the comparables in relation to the subject was not disclosed, but a review of the evidence indicates all the comparables are located in the subject's assessment neighborhood as defined by the local assessor. The Board gave less weight to three comparables. These comparables range from 11 to 24 years older in age than

the subject. Additionally, comparables 2 and 3 have partial finished basements, dissimilar to the subject, as well as considerably smaller garages than the subject. Notwithstanding these differences, the Board finds comparables 2 and 3 have improvement assessments of $130,681 and $131,180 or $41.29 and $39.71 per square foot of living area, respectively, which are higher than the subject's improvement assessment of $121,846 or $39.20 per square foot of living area.

The Board finds the remaining three comparables to be most similar to the subject in age, size, design, location, and amenities. They have improvement assessments ranging from $118,079 to $137,519 or from $41.60 to $42.17 per square foot of living area. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's improvement assessment of $121,846 or $39.20 per square foot of living area falls below the range established by the most similar assessment comparables contained in this record. Therefore, the Board finds the subject's improvement assessment is supported and no reduction is warranted.

With regard to the subject's land assessment, the Board finds the record contains assessment data for six land comparables. The Board gave less weight to one comparable due its larger size when compared to the subject. The Board finds the remaining five comparables to be most similar to the subject in size. They have land assessments ranging from $35,019 to $39,371 or from $2.30 to $2.76 per square foot of land area. One of these comparables is located on the subject's street and has a land assessment of $2.52 per square foot of land area. The subject property has a land assessment of $39,369 or $2.30 per square foot of land area, which falls at the lower end of the range established by the most similar land comparables contained in the record. As a result of this analysis, the Board finds the subject's land assessment is supported and no reduction in warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the appellants disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellants have not proven by clear and convincing evidence that the subject property is inequitably assessed.

The appellants also made various ancillary arguments regarding the perceived lack of uniformity regarding the subject's land assessment. These arguments include heavy traffic on the subject's street, close proximity to busy Lake Cook Road, a lack of a

sidewalk, and flooding. For these reasons, the appellants contend the subject would be difficult to sell and common sense suggests the subject property is less valuable than the comparables cited. The Board gave these arguments little merit. The Board finds the appellants failed to present any substantive evidence indicating the subject's land assessment was inequitable or incorrect. The Board recognizes the appellants' premise that the subject's value may be affected due to the aforementioned factors. However, without credible market evidence showing the subject's land or total assessment was inequitable or not reflective of fair market value, the appellants failed to show the subject's property assessment was incorrect.

Additionally, the Board finds the context of the claims raised by the appellants falls within the realm of a market value complaint. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). As previously found, the Board finds there is no market evidence contained in the record indicating the subject property's assessment is not reflective of its fair market value.

Finally, the appellants contend they did not receive a fair hearing and the board of review violated its own rules. The Board finds it does not have jurisdiction over this issue. Proceedings before the Property Tax Appeal Board are *de novo,* meaning the Property Tax Appeal Board is not bound by the board of review hearing record and is to have its decision based only on the evidence and testimony presented before it. In Geneva Community Unit School District 304 et al v. Property Tax Appeal Board, Ill.App.3d 630 (2nd Dist. 1998), the court held the only power placed in the PTAB by statute is "to receive appeals from decisions of boards of review [citation], make rules of procedure [citation], conduct hearings [citation], and make a decision on the appeal [citation]." The Property Tax Appeal Board finds it has no authority nor plays any part in reviewing the manner or method local boards of review use to enforce rules, conduct hearings, or make decisions regarding assessment complaints.

Based on this analysis, the Property Tax Appeal Board finds the appellants have not demonstrated a lack of uniformity in the subject's assessment by clear and convincing evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: Kevin Kane
DOCKET NUMBER: 03-01554.001-R-1
DATE DECIDED: July 8, 2005
COUNTY: DuPage
RESULT: No Change

The subject property consists of a part two-story and part one-story style frame dwelling built in 1920. The home was expanded by two additions in 1983 and 1997 and now contains 3,249 square feet of living area. The subject has features that include a partial, unfinished basement, central air conditioning, three fireplaces and a one-car attached garage.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal of the subject property with an effective date of January 1, 2003. The appraiser used two of the three traditional approaches to value in estimating the subject's market value to be $750,000.

Using the cost approach, the appraiser determined the subject's land value to be $550,000 based on a review of land sales in the area. The appraiser noted the subject's site value exceeds guidelines due to demand and scarcity of vacant land in the area. The appraiser further noted many older homes in the subject's neighborhood are being torn down and replaced with new homes. A reproduction cost new of the subject improvements was estimated at $421,850 based on the appraiser's knowledge supplemented by the Marshall & Swift cost manual. Depreciation was calculated at $224,051 using the age/life method. Site improvements were estimated at $10,000 and the final value indication for the subject by the cost approach was $757,799.

The sales comparison approach section of the appraisal included a grid analysis of four comparable properties located from one-quarter mile to one mile from the subject. The comparables consist of two-story style dwellings of frame, brick and frame, or stucco exterior construction built between 1899 and 1975. The comparables range in size from 2,544 to 3,618 square feet of living area and feature central air-conditioning, one to five fireplaces, two-car attached or detached garages and full basements, three of which were reported to be partially finished. The appraiser reported two comparables were remodeled in 1988 and 1995. The comparables sold between May 2002 and December 2002 for unadjusted sale prices ranging from $687,500 to $830,000. The appraiser made numerous adjustments to the comparables for location, lot size, quality, finished basement areas, garage size, dwelling size, fireplaces and other amenities. The appraiser made no adjustments for age differences because he claimed the comparables had similar effective ages when compared to the subject. He noted comparable 2 was torn down subsequent to its June 2002 sale for $687,500. After adjustments, the

comparables had sale prices ranging from $736,500 to $758,000. The appraiser estimated the subject's value by the sales comparison approach at $750,000. He stated that primary consideration is given to the comparable sales analysis, as it best measures the actions of buyers and sellers in the market and supports the principle of substitution. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $300,920 was disclosed. The subject has an estimated market value of $902,850, or $279.00 per square foot of living area including land, as reflected by its assessment and DuPage County's 2003 three-year median level of assessments of 33.33%.

In support of the subject's estimated market value, the board of review submitted property characteristic sheets and a grid analysis of four comparable sales. According to a map submitted by the board of review, the comparables were located within approximately five blocks of the subject. These properties consist of part one-story and part two-story style dwellings of frame or brick and frame exterior construction built between 1922 and 1953. The comparables were remodeled at various times between 1983 and 1997 and range in size from 3,106 to 3,471 square feet of living area. They have features that include one or two fireplaces, partial, unfinished basements and garages that contain from 560 to 700 square feet of building area. The board of review did not specify whether or not the comparables had central air conditioning. The comparables sold between March 2001 and September 2003 for prices ranging from $850,000 to $1,075,000 or from $273.66 to $310.51 per square foot of living area including land. Based on this evidence the board of review requested confirmation of the subject's total assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant argued overvaluation as a basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2nd 1256 (2nd Dist. 2000). After analyzing the market evidence submitted, the Board finds the appellant has failed to overcome this burden.

The Board gave little weight to the appellant's appraisal for a number or reasons. The Board finds the appellant's appraiser acknowledged his comparable 2 was razed subsequent to its June 2002 sale, suggesting it most likely sold for its land value, due to the increasing appearance of teardowns in the subject's neighborhood. For this reason, the Board gave little weight to this comparable. The Board also finds the appellant's comparable 3 was given less weight because it was built 55 years after the subject. The Board further gave less weight to the appellant's comparable 4 because it was

apparently never updated or remodeled after its 1912 construction, unlike the subject. The Board finds the appellant's comparable 1 was given less weight because it was located approximately one mile from the subject. The Board finds the comparables submitted by the board of review were similar to the subject in style, size and amenities. Furthermore, these comparables all received additions and remodeling like the subject and were located within five blocks of the subject. The comparables sold for prices ranging from $273.66 to $310.51 per square foot of living area including land. The subject's estimated market value of $279.00 per square foot of living area including land falls near the lower end of this range. Therefore, the Board finds the evidence in the record supports the subject's assessment.

In conclusion, the Board finds the appellant has failed to demonstrate overvaluation by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: Ali Khounsary
DOCKET NUMBER: 03-01726.001-R01
DATE DECIDED: June 22, 2005
COUNTY: DuPage
RESULT: No Change

The subject property consists of a split-level style dwelling of brick and frame exterior construction built in 1966. The home contains 1,744 square feet of living area and has features that include a partial basement and a 528 square foot two-car garage.

The appellant submitted evidence claiming overvaluation as the basis of the appeal. In support of the overvaluation argument, the appellant submitted an appraisal of the subject property. The appraiser used only one of the three traditional approaches to value in his analysis, wherein he estimated the subject's market value at $385,000, as of January 8, 2004. Under the sales comparison approach to value, the appraiser utilized three suggested comparable sales. The appraiser stated in his report that these comparables were located from .13 mile to .81 mile from the subject. The comparables consist of two, split-level style dwellings and one, one and one-half-story style dwelling that were built between 1906 and 1966. The homes range in size from 1,413 to 1,815 square feet of living area and have features that include partial basements and two-car or three-car garages. The comparables sold between June 2003 and December 2003 for prices ranging from $350,000 to $410,000 or from $192.84 and $288.53 per square foot of living area including land. The appraiser performed several adjustments to the comparables for differences such as view, living area, number of rooms, construction quality, garage size and basement finish. The adjustments resulted in adjusted sales prices ranging from $385,000 to $393,000, or $141.39 to $163.10 per square foot including land. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $155,810 was disclosed. The subject has an estimated market value of $467,477, or $268.05 per square foot including land, as reflected by its assessment and DuPage County's 2003 three-year median level of assessments of 33.33%.

In support of the subject's estimated market value, the board of review submitted a narrative letter, property characteristic sheets and a grid analysis of six comparable properties. A map submitted by the board of review indicated these comparables were located from one block to approximately 23 blocks from the subject. The properties consist of part one-story and part two-story style dwellings of frame or brick and frame exterior construction built between 1966 and 1969. The homes range in size from 1,526 to 2,160 square feet of living area and feature garages that contain from 420 to 484

square feet of building area. Four comparables have full or partial basements, while two comparables have no basements. Sales information was provided for only comparables 2 and 3. The two sales comparables sold in February 2000 and August 2003 for prices of $420,000 and $495,270 or $207.55 and $237.20 per square foot of living area. Based on this evidence the board of review requested confirmation of the subject's total assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted. The appellant argued overvaluation as the basis of the appeal. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2nd 1256 (2nd Dist. 2000). After analyzing the market evidence submitted, the Board finds the appellant has failed to overcome this burden.

The Board finds the record contained sales data on five comparables. The Board analyzed the raw sales data on these five comparables submitted by the parties. The Board finds the appellant's comparable 2 was given less weight in the analysis because it was 60 years older than the subject. One of the board of review's comparables for which sale information was provided received less weight because it sold nearly three years prior to the assessment date. The Board finds the appellant's comparables 1 and 3 and the board of review's comparable 3 were similar to the subject in some respects, although they differed in size. These properties had unadjusted sale prices ranging from $192.84 to $288.53 per square feet of living area including land. The subject's estimated market value of $268.05 per square foot of living area falls within the range of the most representative comparables in the record, and indeed, falls between the two most representative sales utilized in the appellant's own appraisal.

In conclusion, the Board finds the appellant has failed to demonstrate overvaluation by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: Charles J. DeMory
DOCKET NUMBER: 03-01764.001-R-1
DATE DECIDED: August 29, 2005
COUNTY: DuPage
RESULT: No Change

The subject property consists of a one-story frame dwelling that was built in 1978 and contains 3,270 square feet of living area. The property features three and one-half bathrooms, central air conditioning, one fireplace, a partial-unfinished basement, a 1,307 square foot indoor swimming pool enclosure, and a 567 square foot attached garage. The dwelling is situated on a 30,039 square foot lot. The subject property is located in the western half of Arboretum Estates subdivision.

The appellant submitted documentation before the Property Tax Appeal Board claiming the subject's assessment is incorrect based on a contention of law. The appellant's evidence consists of a letter prepared by the appellant and various exhibits.

Exhibit A is the assessment history of the subject property showing the percentage increase in its assessment from 1996 to 2003.

Exhibit B is a summary of land and improvement assessments for parcels located in the subject subdivision. The summary compares properties equalized assessments from 2001 to 2003, including the subject, showing their increased assessment on a percentage basis. The appellant claimed this analysis indicates the median price of homes in the subject's subdivision is $419,602.

Exhibit C is a 17-page report listing single-family detached incorporated and unincorporated dwellings from the subject's area that sold from 2002 through January 2004. The appellant identified the only three properties from the subject's subdivision that recently sold. They sold from February 2003 to April 2003 for prices ranging from $374,000 to $509,000. No descriptions of these properties were submitted. Exhibit D is a four-page summary similar to Exhibit C and indicates no sales have occurred within the subject's subdivision between 2000 and 2001.

Exhibit E is a report from the Illinois Association of Realtors from 2001 through the first quarter of 2003. The appellant argued this report shows the western suburbs, which includes the subject's subdivision, shows median sale prices increased by 1.1% from 2001 to 2002; decreased by 4.5% from 2002 to 2003; and increased by 7.8% from the first quarter of 2002 to the first quarter of 2003. The appellant calculated an overall median sale price increased by 12.32% for the three-year period.

The appellant also submitted a comparative analysis of three comparables used by the township assessor at the local board of review hearing. One comparable is located in the western half of Arboretum Estates subdivision while two comparables are located in the eastern half of Arboretum Estates. They consist of one-story brick dwellings that were built from 1955 to 1967 and range in size from 2,063 to 3,084 square feet of living area. Two comparables have partial finished basements and one comparable has a partial unfinished basement. Other features include central air conditioning, one or two fireplaces, and garages ranging in size from 631 to 1,043 square feet. The comparables have improvement assessments ranging from $97,330 to $180,760 or from $46.73 to $58.61 per square foot of living area. The subject property has an improvement assessment of $152,580 or $46.66 per square foot of living area.

Based on the evidence submitted, the appellant argued annual increases in the subject's assessment since 2001 are unjustified and do not reflect fair market value. As a result, the appellant requested the Property Tax Appeal Board to reduce to the subject's assessment to reflect a fair market value of $500,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $179,980 was disclosed. The subject's assessment reflects an estimated market value of $539,994 using DuPage County's 2003 three-year median level of assessments of 33.33%.

In support of the subject's assessment, the board of review submitted property record cards, a location map, and a spreadsheet detailing three comparables located in the eastern half of Arboretum Estates subdivision. They consist of one-story brick dwellings that were built from 1953 to 1956. The comparables have full or partial basements, two of which are partially finished. Other features include central air conditioning, one or two fireplaces, and garages ranging in size from 580 to 1,043 square feet. One comparable has an outdoor swimming pool. They dwellings range in size from 2,217 to 3,636 square feet of living area and have improvement assessments ranging from $103,590 to $202,810 or from $46.73 to $55.78 per square foot of living area. Comparable 1 sold by foreclosure in April 2004 for $530,000 or $171.85 per square foot of living area including land. The board of review also indicated comparables 1 and 2 are located on a busy street, unlike the subject. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

In rebuttal, the appellant argued the board of review's comparables have city water and sewer services. The appellant reiterated the basis of the complaint was that board of review had no logical comparable sales within Arboretum Estates subdivision to increase the subject's assessment. The appellant argued the evidence previously submitted proves market conditions for homes in the subject area have increased by only 4.6%, not the 23% increase levied by the board of review. The appellant also noted differences in the subject property compared to the one sale submitted by the board of

review. The appellant also claimed properties located in the western half of Arboretum Estates subdivision are subject to teardown with new larger homes being constructed, raising property values in the entire area. The appellant also argued lots in the western half of Arboretum Estates are larger than in the eastern half, which would also affect overall sale prices.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellant submitted documentation before the Property Tax Appeal Board claiming the subject's assessment is incorrect based on a contention of law. The Board finds the appellant did not raise any legal issue that would suggest the subject's assessment is incorrect. The appellant failed to submit a legal brief citing applicable statues or case law in support of a legal argument showing the subject's assessment is incorrect. Sections 1910.30(h) and 1910.65(d) of the Official Rules of the Property Tax Appeal Board provides in applicable part:

> Every petition for appeal shall state the facts upon which the contesting party bases his objection to the decision of the board of review, together with a statement of the contentions of law which he desires to raise. . . If contentions of law are raised, the contesting party shall submit a brief in support of his position with the petition. (86 Ill. Adm. Code §1910.30(h)).
>
> The Property Tax Appeal Board may consider appeals based upon contentions of law. Such contentions of law must be concerned with the correct assessment of the subject property. If contentions of law are raised, the party shall submit a brief in support of his position. (86 Ill. Adm. Code §1910.65(d)).

The appellant's evidence implies the subject property is overvalued based on various statistical analyses. The Property Tax Appeal Board gave this evidence and argument no weight. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellant has not overcome this burden. Section 1910.65(c) in the Official Rules of the Property Tax Appeal Board states proof of market value may consist of the following:

1) an appraisal of the subject property as of the assessment date at issue;

2) a recent sale of the subject property;

3) documentation evidencing the cost of construction of the subject property including the cost of land and the value of any labor provided by the owner if the date of construction is proximate to the assessment date; or

4) documentation of not fewer than three recent sales of suggested comparable properties together with documentation of the similarities and lack of distinguishing characteristics of the sales comparables to the subject.

The Board finds the appellant did not submit any other evidence that satisfies this rule in establishing the subject's market value. The Board further finds the record contains only one suggested comparable sale for consideration. This property sold for $530,000 or $171.85 per square foot of living area including land. As noted by the appellant, this property contains a larger partially finished basement and has more land than the subject. However, the subject is considerably newer in age, has larger indoor swimming pool, and in not located on a busy street like the comparable sale. The subject's assessment reflects an estimated market value of $539,994 or $165.14 per square foot of living area including land. After considering adjustments to this comparable for differences when compared to the subject, such as age, size, and amenities, the Board finds the subject's estimated market value as reflected by its assessment is supported.

As previously noted, the Board gave little merit to the market and assessment statistical analyses submitted by the appellant. The appellant attempted to demonstrate the subject's assessment was inequitable and not reflective of market value because of the percentage increases in its assessment from year to year. The Board finds these types of analyses are not an accurate measurement or a persuasive indicator to demonstrate an assessment inequity by clear and convincing evidence overvaluation by a preponderance of the evidence. Foremost, the Board finds this type of analysis uses median sale prices and percentage increases from year to year. There was no credible evidence showing the market activity described by the appellant in these various analyses are indicative of the subject's fair market value. The Board finds rising or falling assessments or sale prices from year to year on a percentage basis do not indicate whether a particular property is inequitably assessed or overvalued. Actual assessments and sale prices of properties together with their salient characteristics must be compared and analyzed to determine whether uniformity of assessments exists or if a particular property is overvalued. The Board finds assessors and boards of review are required by the Property Tax Code to revise and correct real property assessments, annually if necessary, that reflect fair market value, maintain uniformity of assessments, and are fair and just. This may result in many properties having increased or decreased

assessments from year to year of varying amounts and percentage rates depending on prevailing market conditions and prior assessments.

The appellant's evidence also alludes that the subject was inequitably assessed. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the evidence submitted, the Board finds the appellant has not overcome this burden and no reduction is warranted.

The Board finds the record contains assessment information for six comparables. All of the comparables are older in age than the subject. The Board gave less weight to three comparables due to their smaller size when compared to the subject. The Board further finds three comparables to be most similar to the subject in age, size, style, location, and amenities. They have improvement assessments ranging from $156,190 to $202,810 or from $50.65 to $58.61 per square foot of living area. The subject's improvement assessment of $152,180 or $46.66 per square foot of living area falls below the range established by the most similar comparables contained in this record. After considering adjustments to these comparables for differences when compared to the subject, such as age, size, and amenities, the Board finds the subject's improvement assessment is well supported. Therefore, the Board finds the appellant failed to demonstrate the subject property was inequitably assessed by clear and convincing evidence.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same geographic area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist based on the evidence submitted.

In conclusion, the Board finds the appellant failed to demonstrate a lack of uniformity in the subject's assessment by clear and convincing evidence or overvaluation by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: **Stanley Haake**
DOCKET NUMBER: **03-01820.001-R-1**
DATE DECIDED: **November 16, 2005**
COUNTY: **Monroe**
RESULT: **Reduced Assessment**

The subject property consists of a 5.38-acre tract of land improved with a residential dwelling, garage and three farm buildings.

The appellant submitted evidence before the Property Tax Appeal Board claiming the Monroe County Board of Review improperly classified and assessed the subject parcel as residential land. The appellant argued 3.68-acres have been dedicated as pastureland and barns to raise feeder calves for resale since 1999. The appellant also indicated 1.7-acres of the parcel are dedicated to the dwelling, garage and lane. Multiple photographs were also submitted depicting farm implements, barns, hay bails, bedding, and grazing cattle. An aerial photograph of the subject parcel was also submitted. Based on this evidence, the appellant requested the farm buildings and 3.58-acres of the subject parcel be reclassified and assessed as agriculture property.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $58,520 was disclosed. In support of the subject's assessment, the board of review submitted Monroe County's assessment policy that requires a parcel or tract of land be at least 7.5-acres in size and used for agricultural purposes to receive a farmland classification and assessment. Additionally, the minimum home site size for land located in unincorporated areas of the county must be 2.5-acres. The board of review also submitted a memorandum from the Illinois Department of Revenue dated October 11, 1994, titled GUIDELINE ON PRIMARY USE PROVISION OF FARM DEFINITION. The board of review relied upon the guideline identified as PARCEL USES-CONVENTIOANAL FARM/RESIDENTIAL, which states:

> The primary use of a parcel containing only conventional farm and residential uses is residential unless the conventionally farmed portion of the parcel meets both of the following requirements:
>
> (1) it is larger than the residential portion of the parcel; and,
> (2) is not less than five acres in area,
>
> which creates a presumption that the primary use of the parcel is residential. This presumption may be rebutted by evidence received by the assessor that the primary use of the parcel is not residential.

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

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the 3.58-acres of the subject parcel is entitled to a farmland classification and assessment. Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

> any property used solely for the growing and harvesting of crops; **for the feeding, breeding and management of livestock**; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming.

The Property Tax Appeal Board finds the appellant submitted ample documentation and evidence showing the subject property has been used for agricultural purposes since at least 1999. In order to qualify for an agriculture assessment, the land must be farmed at least two years preceding the date of assessment (35 ILCS 200/10-110). The evidence clearly shows 3.58-acres of the subject parcel has been consistently used for pasture ground with farm buildings for the two years preceding the assessment date. Therefore, the Property Tax Appeal Board finds 3.58-acres of the subject parcel are entitled to a farmland classification and assessment as pasture ground.

The Property Tax Appeal Board finds a portion of a parcel may be classified as farmland for tax purposes, provided those portions of property so classified are used solely for the growing and harvesting of crops. Property that is used solely for the growing and harvesting of crops is properly classified as farmland for tax purposes, even if that farmland is part of a parcel that has other uses. Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999). Santa Fe Land Improvement Co., 113 Ill.App.3d at 875, 69 Ill.Dec.708, 448 N.E. 2d at 6.

The Board finds board of review did not dispute the appellant's agricultural use of the subject property, but claimed the subject parcel is not large enough to meet the requirements for a farmland classification as provided by Illinois Department of Revenue's guidelines and Monroe County's farmland assessment policy. The Board finds the controlling statutes do not require a minimum amount of acreage to receive an agricultural assessment. Thus, the Board finds the board of review's interpretation of section 1-60 of the Property Tax Code (35 ILCS 200/1-60) and the implementation of the Illinois Department of Revenue's assessment guidelines regarding farmland

classifications to be in error. The Illinois Department of Revenue issues guidelines and recommendations for the assessment of farmland to achieve equitable assessments within and between counties. The Board finds the Illinois Department of Revenue's guidelines clearly indicate the assessor's judgment is primary in determining the classification of a parcel and they are only intended to supplement that judgment. However, the guidelines next state the presumption may be rebutted with evidence. The Board recognizes assessors and board of review's duty in determining farmland classifications, but the board of review in this appeal appears to ignore credible evidence of the subject's agricultural use. Most importantly, the Property Tax Appeal Board finds Illinois Department of Revenue guidelines are advisory in nature and have no statutory authority.

As to Monroe County's assessment policy regarding the minimum amount of acreage required to receive an agricultural assessment, the Board finds the controlling statutory authority does not support this policy. The Board finds state statutes, specifically sections 1-60 and 10-110 of the Property Tax Code (35 ILCS 200/1-60 and 10-110) control in determining the proper classification of agricultural property. Thus, the Board finds Monroe County's farmland assessment policy cannot supersede the applicable provisions of the Property Tax Code. The Board finds Monroe County assessment officials continues, as in other Property Tax Appeal Board appeals regarding farmland classifications, to rely on its assessment policy for determining farmland classifications rather than following the statutory requirements enumerated in the Property Tax Code.

In conclusion, the Property Tax Appeal Board finds the board of review's assessment of the subject property is incorrect and a reduction is warranted. The Board hereby orders the Monroe County Board of Review to compute a farmland assessment for 3.58-acres of the subject parcel that is used for pasture ground in accordance with this decision. The board of review is herby ordered to submit the revised assessment to the Property Tax Appeal Board within 15 days from the date of this decision.

APPELLANT: **John & Colleen Hubay**
DOCKET NUMBER: **03-02961.001-R-1**
DATE DECIDED: **May 3, 2005**
COUNTY: **Kane**
RESULT: **No Change**

The Kane County Board of Review filed a Motion to Dismiss the appeal. The basis of the Motion to Dismiss is the assertion that the appellants did not timely file the petition contesting the decision of the board of review with the Property Tax Appeal Board. The board of review contends that the Kane County Board of Review Notice of Findings was mailed to the appellants on September 17, 2004. The board of review contends the appellants did not file their appeal to the Property Tax Appeal Board until October 20, 2004, which is after the 30-day deadline for filing assessment complaints with the Property Tax Appeal Board.

With their petition, the appellants had submitted copies of the "Kane County Board of Review Notice of Findings". The notice was dated September 17, 2004. The notice further informed the appellants in part that, "You may appeal this decision to the Illinois Property Tax Appeal Board by filing a petition for review with the Property Tax Appeal Board within 30 days of the postmark on this Notice of Findings." The appellants timely filed a response to the Motion to Dismiss. The appellants indicated in their response to the motion to dismiss that their omitted property tax appeal was filed with the Property Tax Appeal Board on October 20, 2004. The appellants' residential appeal petition was sent by UPS Next Day Air to the Property Tax Appeal Board and received by the Board on October 21, 2004.

The Kane County Board of Review filed a Verified Reply of the Kane County Board of Review to Appellant's Response to the Board's Motion to Dismiss. In the reply, Donna King, Administrative Officer for the Kane County Board of Review, asserted that she personally mailed the Kane County Board of Review Notice of Findings to the property owners on September 17, 2004.

After reviewing the record and the arguments of the parties, the Property Tax Appeal Board finds that it does not have jurisdiction over the appeal. The record discloses that the parties agree the appeal was filed with the Property Tax Appeal Board on October 20, 2004.

Section 16-160 of the Property Tax Code provides in part that:

> [F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review . . . as such decision pertains to the assessment of his or her

> property for taxation purposes . . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review . . . appeal the decision to the Property Tax Appeal Board for review. . . .(35 ILCS 200/16-160).

Furthermore, sections 1910.30(a) and 1910.60(a) of the Rules of the Property Tax Appeal Board (86 Ill. Adm. Code 1910.30(a) & 1910.60(a)) both state that the petition for appeal shall be filed within 30 days of the postmark date of the decision of the board of review.

Additionally, section 1910.25(b) of the Rules of the Property Tax Appeal Board provides in part that:

> Petitions . . . sent by United States Mail to the Property Tax Appeal Board shall be considered filed as of the postmark date. . . Petitions . . . sent to the Property Tax Appeal Board by a delivery service other than the United States Mail shall be considered as filed with the Property Tax Appeal Board on the date sent as indicated on the tracking label. (86 Ill. Adm. Code 1910.25(b)).

The facts in this appeal indicate the Kane County Board of Review issued its written Notice of Findings bearing a date of September 17, 2004. The Board finds thirty-days from September 17, 2004, expired on Sunday, October 17, 2004. Since the time period to file the appeal expired on a Sunday, the appellants had until the next following business day or until October 18, 2004, to file their appeal with the Property Tax Appeal Board. (86 Ill. Adm. Code 1910.25(a)). As previously indicated, both of the parties agree that the appellants' petition contesting the decision of the Kane County Board of Review was filed with the Property Tax Appeal Board on October 20, 2004, two days late. The Board finds the appeal was filed more than 30-days after the board of review's decision in violation of section 16-160 of the Property Tax Code. As a result the Property Tax Appeal Board finds the appeal was not timely filed and the Board has no jurisdiction to consider the merits of the appeal. Therefore, the Property Tax Appeal Board grants the board of review's motion and the appeal is hereby dismissed.

APPELLANT: **Rebecca L. Meyer**
DOCKET NUMBER: **04-00093.001-R-1**
DATE DECIDED: **July 19, 2005**
COUNTY: **Sangamon**
RESULT: **Reduced Assessment**

The subject property is improved with an owner occupied two-story, frame constructed single-family dwelling that contains approximately 2,200 square feet of living area. The dwelling is approximately 12 years old with features that include a two-car attached garage, a fireplace and central air conditioning. The property is located in Sherman, Sangamon County.

The appellant claims overvaluation as the basis of the appeal. In support of this argument the appellant submitted documentation disclosing she purchased the subject property in July 2003 for a price of $144,500. The appellant indicated that the parties to the transaction were not related and the property was listed on the open market 90 days prior to the purchase.

The evidence further revealed that the subject property was the subject matter of an appeal before the Property Tax Appeal Board the prior year under docket number 03-02065.001-R-1. In that appeal the Property Tax Appeal Board rendered a decision on December 20, 2004, lowering the assessment of the subject property to $56,196 based on the evidence submitted by the parties. The appellant filed her assessment complaint on January 18, 2005, within 30 days of the Board's decision.

Based on this evidence the appellant requested the subject's assessment be reduced to $48,166, to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $56,196 was disclosed. The subject's assessment reflects a market value of approximately $168,588. The board of review indicated that the appellant did not file a complaint contesting the 2004 assessment with the Sangamon County Board of Review nor had the 2004 equalization notices been mailed at the time the assessment complaint was filed. The board of review submitted no other evidence.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. Based upon the evidence submitted, the Board finds that a reduction in the subject's assessment is supported.

The Board first finds the appellant timely filed the complaint with the Property Tax Appeal Board. The board of review appears to argue that the Property Tax Appeal Board has no jurisdiction over the appeal because the appellant did not file a complaint contesting the 2004 assessment with the Sangamon County Board of Review nor had the 2004 equalization notices been mailed at the time the assessment complaint was filed. The Board finds neither of these arguments have merit. Section 16-185 of the Property Tax Code provides in part that:

> 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 board of appeals or after adjournment of the session of the board of review or board of appeals 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. 35 ILCS 200/16-185.

The facts in this appeal disclosed the Property Tax Appeal Board issued a decision lowering the 2003 assessment of the subject property on December 20, 2004. The evidence further disclosed the appellant filed the 2004 assessment complaint with the Property Tax Appeal Board on January 18, 2005, which was within 30 days of the Board's decision for the 2003 assessment year. The Sangamon County Board of Review did not aver that the deadline for filing complaints with the board of review had not expired or that the board of review was still in session at which assessments for the subsequent year were being considered at the time the appellant filed her appeal directly to the Property Tax Appeal Board. Therefore, the Property Tax Appeal Board finds the appellant timely filed the 2004 assessment complaint with the Board pursuant to section 16-185 of the Property Tax Code.

The appellant contends the market value of the subject property is not accurately reflected in the property's assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the best evidence of market value in the record was that presented by the appellant disclosing the subject property was purchased in July 2003 for a price of $144,500. The board of review submitted no evidence to refute the arm's length nature of the transaction or to demonstrate the purchase price was not reflective of market value.

The Board finds that the subject property was the subject matter of an appeal before the Property Tax Appeal Board the prior year under docket number 03-02065.001-R-1. In that appeal the Property Tax Appeal Board rendered a decision lowering the subject's assessment to reflect a market value of approximately $168,590 as of January 1, 2003. The Board is mindful that section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in part:

> If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, **unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based (emphasis added)**, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

The Board finds the record contains evidence disclosing the subject property sold in an arm's length transaction subsequent to the assessment date reflected in the Board's decision issued for the 2003 assessment year under docket number 03-02065.001-R-1. The July 2003 sales price established a lower market value than reflected by the Board's decision for the 2003 assessment year. For this reason the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted to reflect the July 2003 purchase price of $144,500.

APPELLANT: John and Nancy Ochi
DOCKET NUMBER: 04-00986.001-R-1
DATE DECIDED: December 20, 2005
COUNTY: Lake
RESULT: No Change

The subject property is an owner occupied residential property located in Hawthorn Woods, Illinois. The subject property is improved with a two-story frame dwelling that contains 2,852 square feet of living area that was built in 1978. Amenities include a partial finished basement, central air conditioning, two fireplaces, and a 1,358 square foot attached garage.

The appellants submitted documentation before the Property Tax Appeal Board claiming a lack of uniformity in the subject's assessment as the basis to the appeal. In support of this claim, the appellants submitted three suggested comparables located in close proximity to the subject. They consist of two-story dwellings of frame or brick and frame construction that were built in 1978 or 1979. The comparables have unfinished basements, one or two fireplaces, central air conditioning, and garages ranging in size from 550 to 618 square feet. They range in size from 2,472 to 2,980 square feet of living area and have improvement assessments ranging from $107,986 to $125,967 or from $42.27 to $43.94 per square foot of living area. The subject property has an improvement assessment of $132,287 or $46.38 per square foot of living area. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The evidence also disclosed the subject property was previously the matter of an appeal before the Property Tax Appeal Board under docket number 02-00735.001-R-1. In that appeal, the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to $123,720 based on the evidence submitted by the parties. The subject property is located in Ela Township, which has a quadrennial assessment cycle that began January 1, 2001 and ends in 2004.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $156,716 was disclosed. In support of the subject's assessment, the board of review submitted a letter from the township assessor and spreadsheet detailing three suggested comparables. Only one comparable is located in the subject's subdivision. They consist of two-story dwellings of frame construction that were built from 1987 to 1992. Two comparables have unfinished basements and one comparable has a full finished basement. Other features include one or two fireplaces, central air conditioning, and garages ranging in size from 528 to 1,259 square feet. They range in size from 2,738 to 3,347 square feet of living area and have improvement assessments raging from $130,812 to $159,775 or from $47.74 to $47.85 per square foot of living area.

The letter from the township assessor noted the Property Tax Appeal Board reduced the subject's assessment to $123,720 for the 2002 assessment year. The assessor argued the subject's 2004 final assessment reflects the Property Tax Appeal Board's 2002 decision plus application of subdivision equalization factor of 1.10 applied by the township assessor and a 1.0305 equalization factor applied by the Chief County Assessment Officer in 2003. In addition, the subject's 2004 final assessment includes application of an improvement only equalization factor of 1.11 applied by the township assessor and a 1.024 equalization factor applied by the Chief County Assessment Officer. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. Based upon the evidence submitted, the Board finds no reduction in the subject's assessment is warranted.

The appellants argued the subject property was inequitably assessed. However, the Board finds the subject property was the subject matter of an appeal before the Property Tax Appeal Board in a prior year under docket number 02-00735.001-R-1. In that appeal, the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to $123,720 based on the evidence submitted by the parties. The record also indicates the subject property is an owner occupied residential property. 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 on which a residence occupied by the owner is situated, such reduced assessment, **subject to equalization, shall remain in effect for the remainder of the general assessment period** (Emphasis Added) as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. (35 ILCS 200/16-185)

Based on this statutory language, the Board finds its 2002 decision shall be carried forward to the subsequent assessment years of the same general assessment period plus annual application of equalization factors applied by the proper authority. This finding is pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185). The Board finds the subject's final assessment for the 2004 assessment year reflects the Board's 2002 decision plus application of equalization factors applied by the township assessor and Chief County Assessment Officer. There is no evidence in this record indicating the equalization factors applied to the subject's assessment for the years 2003 and 2004 were

not published or applied according to the governing statutes contained within the Property Tax Code.

Additionally, the record contains no evidence indicating the subject property sold in an arm's-length transaction subsequent to the Board's decision or that assessment year in question is a different general assessment period. As a result, the Property Tax Appeal Board finds the board of review's assessment of the subject property is in accordance with section 16-185 of the Property Tax Code (35 ILCS 200/16-185). For these reasons, the Board finds no reduction in the subject property's assessment is warranted.

APPELLANT: **Robert Zymali**
DOCKET NUMBER: **04-01093.001-R-1**
DATE DECIDED: **November 1, 2005**
COUNTY: **Kane**
RESULT: **Reduced Assessment**

The subject property consists of a one-story frame dwelling that was built in 1999 and contains 1,778 square feet of living area. Amenities include an unfinished basement, central air conditioning, a fireplace, and a 562 square foot garage. The subject is commonly known as a "Mackinac" model dwelling and is located in the Sun City community of Kane County.

The appellant appeared before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. In support of the inequity claim, the appellant submitted property record cards, photographs, and a spreadsheet detailing four suggested comparables that are "Cantigny or Arlington" model dwellings, unlike the subject. These properties are located in Sun City, but are located in McHenry County. They are one-story frame dwellings that were built in 2003 and range in size from 1,804 to 1,924 square feet of living area. Features include unfinished basements, central air conditioning and garages ranging in size from 406 to 514 square feet. They have improvement assessments ranging from $50,606 to $53,755 or from $27.16 to $28.20 per square foot of living area. The subject property has an improvement assessment of $76,836 or $43.22 per square foot of living area.

The comparables have land assessments ranging from $15,317 to $17,140 whereas the subject has a land assessment of $19,366. Based on this evidence, the appellant requested a reduction in the subject's land and improvement assessments.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $96,202 was disclosed. In support of the subject's assessment, the board of review submitted the evidence that was presented by the appellant at the local board of review hearing. The evidence also contained a list of 13 "Mackinac" model dwellings that were built from 1999 to 2002. These dwellings range in size from 1,642 to 2,720 square feet of living area and have garages raging in size from 518 to 674 square feet. No other descriptions or analysis was submitted. The board of review's representative testified these properties are similar to the subject in most respects, but some unidentified comparables do not have basements. They have improvement assessments ranging from $25,113 to $37,438 and land assessments of $18,981, prior to application of the 2004 Rutland Township equalization factor of 1.0202%. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

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 this appeal. The Property Tax Appeal Board further finds a reduction in the subject property's assessment is warranted. The appellant argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has overcome this burden.

The parties submitted 17 assessment comparables for the Board's consideration. The Board finds three suggested comparables submitted by the appellant are located in a different county and taxing jurisdiction than the subject property. In Cherry Bowl v. Property Tax Appeal Board, 100 Ill.App.3d 326, 331 (2nd Dist. 1981), the appellate court held that evidence of assessment practices of assessors in other counties is inadmissible in proceedings before the Property Tax Appeal Board. The court observed that the interpretation of relevant provisions of the statutes governing the assessment of real property by assessing officials in other counties was irrelevant on the issue of whether the assessment officials within the particular county where the property is located correctly assessed the property. Therefore, the Board finds the assessments of other similar models in McHenry County is not relevant or probative of whether the assessments established by Kane County assessment officials are correct. Thus, the appellant's comparables were given no weight.

The Board further finds the board of review submitted a list of 13 "Mackinac" model dwellings that were built from 1999 to 2002. Limited descriptions were submitted. They have improvement assessments ranging from $25,113 to $37,438 prior to the 2004 township equalization factor of 1.0202%. The board finds every comparable contained in this record is assessed less than the subject. The subject property's improvement assessment of $76,836 falls well above the range of these comparables. After considering adjustments to these comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is excessive. Therefore, a reduction is warranted.

With respect to the inequity claim regarding the subject's land assessment, the board of review submitted 13 comparables that have land assessments of $18,981, prior to application of the township equalization factor of 1.0202%. The Board finds the subject property's land assessment of $19,366 subsequent to equalization is supported. Therefore, no reduction in the subject's land assessment is warranted.

Based on the foregoing analysis, the Board finds that the appellant has proven by clear and convincing evidence the subject's improvements were inequitably assessed. Therefore, the Property Tax Appeal Board finds the subject's improvement assessment as established by the board of review is incorrect and a reduction is warranted.

APPELLANT: Zhijian Liu and Weiyan Yan
DOCKET NUMBER: 04-01406.001-R-1
DATE DECIDED: November 16, 2005
COUNTY: DuPage
RESULT: Reduced Assessment

The subject property consists of a two-story frame dwelling containing 2,695 square feet of living area that is 2 years old. Features include two and one-half bathrooms, an unfinished basement, central air conditioning, a fireplace, and 682 square foot attached garage.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellants submitted an appraisal and documentation detailing the subject's sale price. The appraisal estimated a fair market value for the subject property to be $472,000 as of November 15, 2003, using two of the three traditional approaches to value. The appraiser placed most weight on the sales comparison approach. In this approach to value, the appraiser utilized three comparable sales located in a different neighborhood and subdivision than the subject. They consist of two story frame dwellings that were built from 1981 to 1994 and range in size from 2,720 to 3,062 square feet of living area. Amenities were similar to the subject in most respects. They sold from June to September of 2003 for prices ranging from $410,000 to $495,000 or from $143.49 to $161.66 per square foot of living area including land. After considering adjustments to the comparables for differences to the subject, the appraiser concluded the subject property has a fair market value of $472,000 or $175.13 per square foot of living area including land.

A settlement statement submitted disclosed the appellants purchased the subject property in January 2004 for $470,000 or $174.40 per square foot of living area including land. However, the appellant cited numerous factors, which they opine decrease the subject's market value. They argued the neighbor's new construction is overwhelming, resulting in two-thirds of the subject dwelling being blocked from sunlight so that the electric bill and bulb costs increased by $50 to $70 per month. The appellants argued this factor results in a loss in value of $60,000. The appellants also submitted a plat of survey arguing the subject property's frontage is 533 inches, but in actuality the frontage is 521 inches. Thus, the appellants argued the subject lot is short 270 square feet, resulting in a loss in value of $4,000. The appellants further argued the county damaged landscaping when rebuilding sidewalks resulting in a loss in value of $4,000. In addition, the appellants claim the master bathroom is not functioning resulting in a loss in value of $7,000 until repaired. Finally, the appellants argued they repaired a broken door, window and ceiling fan for $1,573 and the prior owner blocked the

drainage system. Based on this evidence, the appellants requested a reduction in the subject's assessment to $144,000, which reflects an estimated market value of $432,043.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $156,870 was disclosed. The subject's assessment reflects an estimated market value of $470,657 or $174.68 per square foot of living area including land using the statutory level of assessments of 33.33%.

In support of the subject's assessment, the board of review submitted property record cards, a location map, and a market analysis of two suggested comparables located on the subject's street. They consist of two-story frame dwellings that were built in 2002, like the subject. Amenities include unfinished basements, two and one-half or three bathrooms, one fireplace, central air conditioning, and attached garages containing 524 and 722 square feet. The dwellings contain 2,806 and 3,031 square feet of living area and sold for prices of $457,500 and $514,705 or $163.04 and $169.81 per square foot of living area including land. The transactions occurred in March and September of 2002. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds a slight reduction in the subject property's assessment is warranted.

The appellants argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellants have overcome this burden.

The Property Tax Appeal Board finds the best evidence of the subject's fair market value is its January, 5, 2004, sale price of $470,000, which occurred only four days subsequent to its January 1, 2004, assessment date. The subject's assessment reflects an estimated market value of $470,657, which is $657 higher than its recent sale price. From a review of the record, the Board finds the there is no evidence suggesting the subject sale was not an arm's-length transaction. The Illinois Supreme Court defined fair cash value as 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). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120

Ill.App.3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc, 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

The Board further finds the appraisal of the subject property submitted by the appellants for $472,000 further supports the subject's sale price, although the Board finds the suggested comparable sales contained within the report are dissimilar to the subject in age and were not located in the subject's subdivision. The Board gave no weight to the appellants claims that the subject property has lost value due to the size of the neighboring dwelling that blocks sunlight, its increased electric bills, damaged landscaping, and a non-functioning master bathroom. The Board finds the record contain no market evidence to support the appellants claim regarding the purported loss in value, if such loss exists, or overcome the subject's 2004 sale price of $470,000. The Board also gave no weight to the appellant's claim the subject lot contains only 521 inches, rather than 533 inches as detailed on its plat of survey. A review of the plat of survey indicates the subject has 43.51 feet of frontage or 521.4 inches. Finally, the Board also gave little weight to the two suggested sales submitted by the board of review. The Board finds these sales occurred in 2002 and are not considered indicative of the subject's fair market value as of the January 1, 2004, assessment date at issue in this appeal.

In conclusion, the Board finds the appellants have demonstrated overvaluation by a preponderance of the evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is incorrect and slight reduction is warranted. Since fair market value has been established, the statutory level of assessment of 33.33% shall apply.

APPELLANT: **RBW Enterprises**
DOCKET NUMBER: **04-01469.001-R-1**
DATE DECIDED: **September 21, 2005**
COUNTY: **DuPage**
RESULT: **No Change**

The subject property consists of a 7,800 square foot residential lot located in Lombard, DuPage County, Illinois.

The appellant submitted evidence to the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. In support of this claim, the appellant submitted three suggested land comparables located approximately two blocks from the subject. They contain 7,500 square feet of land area and have land assessments of $5,630. Based on this evidence, the appellant requested a reduction in the subject's land assessment to $7,020.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final land assessment of $25,740 was disclosed. In support of the subject's assessment, the board of review submitted a letter from the township assessor, property record cards, aerial photographs of the subject and the appellant's comparables, and a spreadsheet detailing six suggested comparables located in close proximity to the subject.

The letter indicates land throughout Lombard was revalued in 2004 based on market sales resulting in increased land assessments. The letter also explained that the appellant's comparables are landlocked and do not have street frontage or access. They are assessed at $.75 per square foot of land area. The aerial photographs submitted depict the comparables used by the appellant have no street frontage or access. The board's evidence further disclosed Ann Street, which is the address and is north of the appellant's comparables, was never built and is not a dedicated thoroughfare. In reviewing the subject's assessment, the township assessor was of the opinion the subject property is under assessed and should be increased to be uniform with other vacant build-able residential lots in the subject's assessment neighborhood.

The land comparables submitted by the board of review range in size from 7,275 to 7,500 square feet of land area and have land assessments ranged from $32,040 to $33,030 or $4.40 per square foot of land area. The subject property has a land assessment of $25,740 or $3.30 per square foot of land area. One comparable sold in October 2002 for $205,000.

In rebuttal, the appellant was of the opinion that a landlocked parcel is totally surrounded by property owned by others. Ingress and egress would have to be granted

by easement across property owned by others. The appellant also offered various definitions of the word "landlocked". As a result, the appellant argued the comparables are not landlocked, but the property owner has elected to ignore the issue there are platted and dedicated streets offering ingress and egress to all the lots. The appellant argued through the use of assemblage, the property owner acquires the sole use of all surrounding parkways, amenities and streets in the area without any monetary payment and the appellant (subject) should have fair assessment equity with regards to these (appellant's comparables) parcels. The appellant argued just because other property owners elect not to fill out forms, hire professional consultants and take time off work to protest their assessments, does not confirm the revalued square foot land value at $4.40, as determined by the assessor.

The appellant also submitted sale information for a small vacant lot that sold in 2005 for $500 in an attempt to demonstrate the square foot valuation (as determined by the assessor) is not always obtainable or arrived at between a buyer and a seller. The appellant was the seller in the transaction. Additionally, the appellant submitted the land assessments of six small parcels in York Township to demonstrate variations in land assessments. Finally, the last paragraph of the appellant's rebuttal letter states:

> This letter is added, as an addendum to the previously submitted evidence, which was filed with the original residential appeal, but this is also rebuttal evidence confirming that a reduction in the subject's assessed value is warranted for the year 2004.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and subject matter of this appeal. The Board further finds no reduction in the subject's assessment is warranted.

The Board finds the appellant's rebuttal evidence attempts to raise an alternative market value issue that was not argued in the original submission of evidence. In addition, the Board finds the appellant's rebuttal evidence contains seven new comparables not previously or timely submitted. The Board finds it will not consider the seven additional comparables. Section 1910.66(b) of the Official Rules of the Property Tax Appeal Board states:

> Rebuttal evidence shall not consist of new evidence such as an appraisal or **newly discovered comparable properties. (**Emphasis Added) A party to the appeal shall be precluded from submitting its own case in chief in guise of rebuttal evidence. (86 Ill. Adm. Code §1910.66(b)).

Additionally, section 16-180 or the Property Tax Code provides in part:

> Each appeal shall be limited to the grounds listed on the petition filed with the Property Tax Appeal Board. (35 ILCS 200/16-180).

The Board finds in this appeal the appellant listed and submitted assessment evidence to demonstrate a lack of uniformity in the subject's land assessment as the basis of its argument. Therefore, the Board will only consider the inequity claim raised by the appellant.

The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the evidence, the Board finds the appellant has not overcome this burden. Therefore, no reduction is warranted.

The Board finds the record contains nine comparables timely submitted for consideration. The Board gave no weight to the comparables submitted by the appellant. The Board finds the record illustrates the comparables submitted by the appellant are landlocked, dissimilar to the subject, and were therefore assessed at a lesser rate of value. The aerial photographs submitted by the board of review clearly show the appellant's comparables have no street frontage for ingress or egress, unlike the subject. The Board finds the evidence further disclosed Ann Street, which is the address of the appellant's comparables, was not constructed and is not a dedicated thoroughfare as of the assessment date. Furthermore, there was no evidence submitted indicating an easement was granted by the neighboring property owner(s) to access the appellant's comparables.

The Board finds the comparables submitted by the board of review to be most representative of the subject in size and location. They range in size from 7,275 to 7,500 square feet of land area and have land assessments that ranged from $32,040 to $33,030 or $4.40 per square foot of land area. The subject property has a land assessment of $25,740 or $3.30 per square foot of land area, which falls below the range established be the most similar land comparables contained in this record. Therefore, the Board finds the appellants failed to show the subject property was inequitably assessed by clear and convincing.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same area are not

assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed.

In conclusion, the Board finds the appellant failed to demonstrate the subject property was inequitably assessed by clear and convincing evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

RESIDENTIAL CHAPTER

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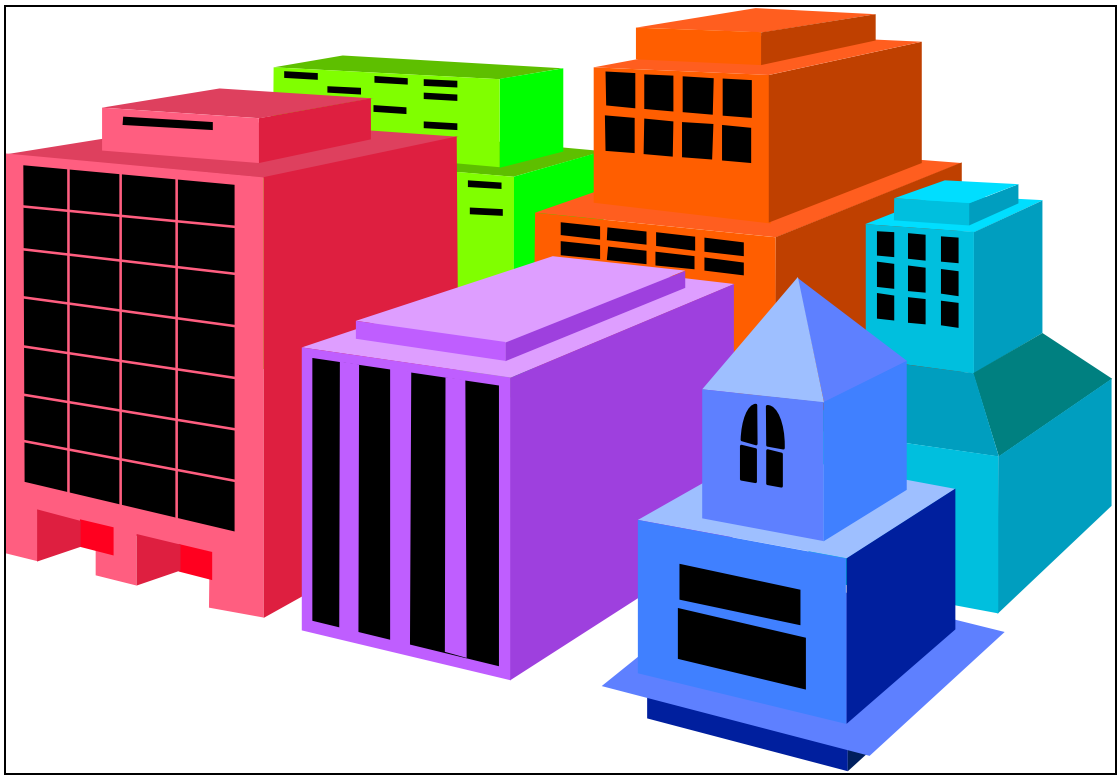
PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

COMMERCIAL DECISIONS



PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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COMMERCIAL CHAPTER

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APPELLANT:	**U.S. Steel Group**
DOCKET NUMBER:	**00-24208.001-C-3 through 00-24208.003-C-3** **01-24775.001-C-3 through 01-24775.003-C-3** **02-27076.001-C-3 through 02-27076.003-C-3**
DATE DECIDED:	**May 16, 2005**
COUNTY:	**Cook**
RESULT:	**Reduced Assessment**

The subject property consists of three vacant parcels, two of which are adjacent, totaling 246.03 acres. Parcel 1 identified as PIN 21-32-100-002-000 contains approximately 149.28 acres, Parcel 2 identified as PIN 21-32-212-002-000 contains approximately 3.36 acres and Parcel 3 identified as PIN 21-32-213-004-000 contains approximately 93.39 acres. The subject matter of this appeal is part of a former industrial complex commonly known as the U. S. Steel's South Works. According to the Cook County Real Property Classification Ordinance the subject property is currently classified as Class 1 vacant land and assessed at 22% of market value.

The appellant contends the subject parcels qualify for open space valuations for the years 2000, 2001 and 2002 pursuant to Section 10-155 of the Property Tax Code. (35 ILCS 200/10-155) The 2000, 2001 and 2002 appeals were consolidated.

The appellant, through its attorney, argued the subject meets some of the criteria as open space set forth in Section 10-155 of the Property Tax Code (35 ILCS 200/10-155) as it is preserved in its natural condition and acts as a buffer between the lakefront and nearby residential, commercial and industrial developments; it enhances the value to abutting parks; it promotes the conservation of soil, wetlands, beaches or marshes, including ground cover or planted perennial grasses, trees and shrubs and other natural perennial growth and including any body of water whether man-made or natural; and protects Lake Michigan, which serves as the water supply for the City of Chicago. Further, he asserts the property beginning in 1997 was used for open space and meets the statutory requirement that it be used for open space for the three years immediately preceding the years at issue, 2000, 2001 and 2002. Therefore, the appellant contends, the subject should be classified as open space under Section 10-155 of the Property Tax Code. Copies of the following Property Tax Appeal Board Decisions granting open space designations: Docket Nos. 89-3707-R-3, 97-20606-C-3, 97-21464-C-3, and 97-1443-C-3, along with the supporting testimony of two witnesses, a rebuttal brief and the following exhibits were submitted on behalf of the taxpayer:

EXHIBIT NO.	DESCRIPTION
1.	A street map of the City of Chicago from approximately 63rd Street on the north, Dr. Martin Luther King Jr. Drive on the west, approximately 119th Street on the south, and Lake Michigan on the east. The subject's position is indicated by a circled area;
2.	An application to the Cook County Assessor for valuation of real property used for open space purposes dated January 31, 2000 for PINS 21-32-100-002, 21-32-212-002 and 21-32-213-004 with copies of Sidwell Plats;
3.	An application to the Cook County Assessor for valuation of real property used for open space purposes dated January 31, 2001 for PINS 21-32-100-002, 21-32-212-002 and 21-32-213-004 with copies of Sidwell Plats;
4.	An application to the Cook County Assessor for valuation of real property used for open space purposes dated January 31, 2002 for PINS 21-32-100-002, 21-32-212-002 and 21-32-213-004 with copies of Sidwell Plats;
5.	A 1991 aerial photograph of the subject prior to demolition;
6.	A 1998 aerial photograph of the subject subsequent to demolition;
7.	A 2002 aerial photograph of the subject subsequent to demolition
8.	A VHS video presentation of subject prepared in December 1999 and January 2000;
9.	A DVD same as Exhibit 8
10.	An installment sales agreement between the City of Chicago and USC Corporation regarding the South Works site;
11.	An engineers drawing of the South Works site with lake front parcels identified as North Phase 1, 8.70 acres; North Phase 2, 17.40 acres; North East, 25.50 acres; and North East, 18.00 acres;
12.	A report prepared by an ecologist.
13.	A copy of *Whitman Corp. v. Pappas*, Circuit Court of Cook County, 1996 Objection No. 2355, etc. (February 7, 2004). According to appellant's brief, no appeal of this decision was taken.

The appellant's first witness testified he is the Midwest Regional Manager of USS Real Estate, which is a division of United States Steel Corporation, the subject's owner. Historically, the witness explained, the site was created during the steel-mill's active years by discarding primarily cooled molten limestone (slag), a by-product of the steel making process, along Lake Michigan thus establishing a landfill site. The ownership then utilized these landfill areas to expand. Overall, the area contained a steel producing plant from 1880 until 1992, when all production ceased. On Parcels 1 and 3, all of the existing buildings were demolished by 1996, the parcels were cleared to grade and debris was removed. The witness testified the subject's ownership, while remaining the same company, has undergone several name changes since 1986, which were USX Corporation, U.S. Steel Group, United States Steel, LLC, and United States Steel Corporation, its current name. Since 1992, his office has been located in a small building in an area adjacent to the subject. The witness described the subject property

as running along the shores of Lake Michigan, which is bordered on the north by Rainbow Park, part of the City's park system that runs along Lake Michigan. The witness testified subsequent to the demolition, he has observed various types of wildlife and birds, which have taken up residence on the subject site. When questioned regarding site contamination, the witness testified as site manager he was involved in meetings with the Illinois Environmental Protection Agency (IEPA) and ownership's environmental people. He testified in 1992 ownership entered into the Illinois Voluntary Clean-Up Program and in 1997 received a no further remediation declaration from the IEPA. He also testified he possesses a copy of the declaration letter in his office.

The appellant's witness testified that the 2001 agreement entered into by ownership and the City of Chicago includes provisions for the incremental conveyance of a strip of the subject's land approximately 300 feet deep along the Lake Michigan waterfront. At the time of the agreement, he testified, the City of Chicago took physical possession of the waterfront strip and erected a fence to delineate this strip from the remaining portion of the subject. The City then posted the strip with signs indicating its possession. While, the witness testified, the appellant maintains title to these lakefront parcels will be conveyed to the City when certain infrastructure improvements spelled out in the installment sales agreement are accomplished. The appellant's witness testified that other than fencing, the only change was in 2004 when the City acquired some dredging materials that were placed on the parcels in its possession. The witness testified that the appellant does maintain other fencing on the perimeter of the site. He also testified he has been amazed by the amount of the plants, trees and brush that thrived on the subject site.

During cross-examination, the witness testified that the subject site was basically created of a landfill of "slag" or a limestone material, a by-product of steel making. He further testified after cooling this by-product becomes rock-like similar to the original mined limestone. He also testified that during dismantling the subject site, some of the material was recycled into the steel making process and some was used to fill basements, tunnels and other below grade areas. Additionally, his testimony indicated that although the site was essentially leveled to ground level, no paved roadways were removed. The witness also testified that even though the public does not have general access to the site, an appointment through the appellant's public affairs department can be made and an escorted visit can be arranged.

In re-direct, the appellant's witness testified that during demolition the site was graded and leveled. Further, he pointed out no large pieces of building debris jut-out above ground level.

The next witness called by the appellant's counsel was an ecologist employed as head of the environmental resources department of an engineering firm. He has a bachelor's degree in forestry and a master's degree in forest ecology. He has consulted in matters

for the Illinois Department of Transportation, the Illinois Toll Authority, the Cook County Highway Department, a village forest service and a private home building contactor during his employment with the engineering company. This witness testified his assignment with regard to the subject property was to render an opinion of whether the site consisted of open space. To accomplish this assignment, he visited the site and viewed the historic aerial photographs taken between 1991 and 2002. His testimony indicated beginning in 1998 there was limited greening of the subject's interior and as time progressed through 2002 the site's vegetation is increasing. The appellant's witness described "ruderal secondary succession" plants he observed on the site. These plants consist of Sweet Clover, Queen Ann's Lace, Thistles, Cottonwood Trees, and Golden Rod, among others. The witness explained that "ruderal secondary succession" plants are the vegetation community in a pioneer stage of development compared to a later movement towards a climax community. According to the witness' testimony, "ruderal secondary succession" sites are sites that were extremely disturbed and become vegetated over time beginning when the disturbance stops. The witness testified that from his observations vegetation is encroaching onto the abandoned features. Likewise, he saw wildlife, such as birds, present on the property. He testified the presence of vegetation on a site has benefits to the air and water quality of the environment. This, he explained, is accomplished through the plants interception and use of rain, thus reducing storm water run-off and erosion; plants production of oxygen; plants cooling effect on surrounding environment; and plants providing habitat functions for wildlife and birds. It was, his opinion that these processes were accelerated by the removal of the steel-making facilities on the subject site.

Although the witness saw three types of birds while visiting the site, during cross-examination, he testified he did not personally see any other wildlife. The witness also testified, during cross-examination, that the species of plants viewed on his visit to the site are found throughout northeastern Illinois, primarily in open fields.

During re-direct, the appellant's witness testified that he did not evaluate the percentage of the subject's surface area as un-vegetated versus vegetated. He also indicated many if not all of the species at the subject site are found in the forest preserves of Cook County.

The board of review presented its "Board of Review - Notes on Appeal" wherein the subject's final total assessment of $2,706,285, or $10,988 per acre based on 246 acres, was presented. The subject's property characteristic printouts indicate Parcel 1 contains 149.28 acres, Parcel 2 contains 3.36 acres and Parcel 3 contains 93.39 acres. The property characteristic printouts also revealed the assessments for the subject property are based on an estimated market value of $50,000 per acre. A memorandum to the board of review the Cook County Assessor's office suggests that the subject's current classification is Class 1 or vacant land. It was the writer's recommendation that the open space valuation be denied. Various copies of photographs along with assessment data for the subject were also submitted. The board's counsel argued that the subject

does not qualify for an open space classification under the governing statue. The board further contends the subject is vacant land, which does not equate to open space. The intervenors joined with the board of review in its opening argument as well as the presentation of the case in chief; therefore, hereinafter those parties are referred to jointly as respondents.

The following exhibits were presented into evidence on behalf of the respondents:

EXHIBIT NO.	DESCRIPTION
A.	Land conveyance and use agreement between City of Chicago and USX-USX South Works site;
B.	South Works USX Redevelopment agreement between City of Chicago and USX-USX South Works site;
C.	USX South Works redevelopment diagram;
D.	1998 Aerial photo of USX South Works site;
E.	2000-2002 Aerial photo of USX South Works site;
F.	Various photos of USX South Works site;
G.	Various photos Lake Peoria sediment
H.	Various photos of USX South Works site;
I.	Foundations map – USX South Works site;
J.	Various photos of USX South Works site – Cook County Assessor's office;
K.	A photo of USX South Works site.

The first witness called by the respondents was a practicing attorney currently employed by the City of Chicago, Department of Aviation, as Deputy Commissioner of Real Estate. The respondents' witness indicated prior to his current position, for nine years he was an Assistant Corporation Counsel, Department of Law, Real Estate Division for the City of Chicago. Along with other attorneys from the law department the respondents' witness testified that for an extended period of time he was primarily involved in the negotiations of the land conveyance and land use agreement between the City of Chicago and the appellant. Essentially, the witness testified, the agreement binds the City of Chicago and the appellant to a redevelopment project for the subject. The witness suggested this agreement created an obligation on the part of the City to make various infrastructure improvements and the appellant is to convey certain parcels to the City in the future. The witness identified the parcels to be conveyed by the appellant to the City as the Lake Michigan waterfront parcels on Exhibit C, the USX South Works redevelopment diagram. The witness acknowledged these parcels as Phase 1, Phase 2, Phase 3, 4a North East, and 4b North East. The agreement, according to the witness, binds the appellant to the land use plan within the redevelopment project area plan, which calls for a mixed use residential and commercial development. The witness further indicated there is no timeline contained in the agreement for this redevelopment.

Under cross-examination, the witness admitted there are no penalties or specific prohibitions in the aforementioned agreements against the appellant's application for an open space designation.

The second witness called by the respondents was an employee of the City of Chicago in the Department of Planning and Development. The respondents' witness is employed as a coordinator planner and has been so since 1993. The witness testified she, in her capacity with the City, made many visits to the subject and that the photographs entered into evidence by the respondents fairly and accurately depict the general appearance of the site in the years 2000, 2001 and 2002.

When cross-examined, the respondents' witness indicated she saw green areas and trees throughout the property. She testified that she did not take the photographs. Her testimony also indicated that some of the foundations are visible at ground level. Her testimony further indicated some re-bar may stick up a bit but it is difficult to see because the parcels are covered by vegetation.

The respondents called the Assistant Commissioner in the City of Chicago's Department of Planning and Development as its next witness. The respondents' witness has been employed with the City of Chicago since 1999. Currently, she testified that she and her staff do the open space planning and acquisition for the City. The witness testified that in her current position the subject is one of the properties with an open space component on which she is currently working. The witness testified that the portions of the subject she deals with directly are the designated lake front parcels, which she identified on the USX South Works redevelopment diagram. In her testimony, she indicated that these parcels are planned open space, which will be ultimately transferred to the Chicago Park District to develop and manage. She testified she believed that 11A Lakefront Park South East was accepted by the City and transferred to the Park District in 2002. Further, she suggested that sediment from Lake Peoria was then distributed over the 11A to use as a growing medium. She indicated, although the City does not have possession of the remaining parcels, Phase 1, Phase 2, Phase 3, 4a North East, and 4b North East, some of the sediment might be mounded on them.

The respondents then called an employee of the Chicago Park District. The witness is Deputy Director of Planning and Development. The witness testified that it is his understanding that part of the aforementioned agreements in exchange for certain infrastructure improvements by the City approximately 100 acres of the subject is to be transferred to the Chicago Park District for open space use. This witness suggested that the site is a primary succession site rather than a secondary site. He explained that a secondary site is a regenerating disturbed site, while the subject is a primary site with a manmade base. He also testified that during his visits, while he has not seen specific wildlife and birds, he has heard coyote.

While being cross-examined the respondents' witness indicated the subject site has a number of cottonwood trees and a lot of invasive plant material such as thistle, milkweed and other weedy type plants. It was his opinion that the type of plant life existing on the site has minimal impact on air quality. He testified that the slag base prevents water run-off directly into the lake because the water percolates down readily. His testimony suggested when testing the site one of the concerns was retention of water when a bio-solid mixture is placed over the base. Ultimately, it was decided sediment from Lake Peoria was a better option and it was distributed over part of the area in the City's possession.

The respondents called an industrial-commercial valuations flow coordinator for the Cook County Assessor's Office. Prior to his current position, this witness was director of land valuations for seven years. During his tenure as director of land valuations, he testified that he visited the subject site in October or November 2001. This was in response to the appellant's application for an open space designation. He testified he was not allowed access to the interior of the property, so he photographed the property from its outside perimeter. After visiting the site, the witness testified he recommended the open space designation be denied the appellant because the site didn't appear to fit the criteria of what is regarded as open space by the assessor's office.

When cross-examined, the witness testified that in the assessor's office determining an open space designation was a judgment call and he was unaware of any specific rules to follow or criteria a parcel must meet to be declared open space. The respondents' witness also testified the assessor uses a market value of $.16 per square foot for open space in Cook County south of Madison Street, Chicago. During his re-direct, the respondents' witness testified he was aware that a minimum requirement for an open space designation is 10 acres.

As the final witness for the respondents was an urban planner and a State of Illinois licensed landscape architect. The witness, in addition to other qualifications, has written approximately 35 master plans for park districts and municipalities and approximately 60 comprehensive plans for cities and villages over his 49-year career. The witness testified he first was made familiar with the subject site in 1963 while working for Northeastern Illinois Planning Commission (NIPC). At that time, he observed every dumpsite, landfill and incinerator in the six county Chicago-land area. He again became involved with the subject in about 1995, when buildings were still on premises. At that time, he did not observe any landscaped areas at the site. His next contact with the subject was in the summer of 2002 when he was provided a cityscape report prepared by the City, the forest preserve and the park district. Included with the documentation were the City's framework plan, Property Tax Appeal Board decisions for Square D and Quaker Oats, photos, videotape, the appellant's report from its first witness, an installment contract agreement and a contingency agreement. He also testified although he did not gain access, he visited the subject again in 2002. Although, he did not observe landscaping he did observe vegetation at the site. The vegetation he

observed, he characterized as weeds. His testimony indicated as a landscape architect he would not recommend any of the plants included in the appellant's report, including the Cottonwood trees. According to this witness, the Cottonwood tree has a beauty when it is mature but its cotton ball like seeds or fruit are troublesome. It was his opinion that the seeds and soil on the subject were airborne deposits. The witness also observed that Parcel 2 is an asphalted parking lot, which is cracked and breaking up with weeds growing in the cracks. The witness testified, in his opinion, the subject does not meet any of the criteria of open space.

When cross-examined, the respondents' witness testified that in a deposition and report for property formerly known as the Illinois Central (IC) Railroad switching yard, now known as Illinois Golf Center at Columbus Avenue and Randolph Boulevard, he opined the IC site did not meet the statutory requirements for open space. He also suggested that the subject site is less amenable to landscaped growth than the IC site. This witness indicated to meet his perception of open space whether public or private; the property should be accessible and landscaped. The respondents' witness also indicated that the decaying organic matter on the surface of a property such as the subject would over time produce topsoil to sustain other plant life.

In rebuttal, the appellant offered a brief arguing that the statute governing the open space classification excludes only one class of property, that is, residential. The appellant's brief and argument contends that all property, other than residential, consisting of ten or more acres used for any one or more of the purposes cited in 35 ILCS 200/10-155 is eligible for an open space classification.

In the closing brief, the appellant's counsel pointed to the decisions of the Property Tax Appeal Board cited in its exhibits and the Circuit Court of Cook County Memorandum Decision issued in *Whitman Corp. v. Pappas* (Appellant's Exhibit 13), which he argued all indicate that for an open space classification the land must be open, but not necessarily used, developed, or improved. Further, he contends nothing in the statute requires open space be maintained, rather that land must only be used generally for "open space purposes." Counsel also asserts this was intended by the legislature as indicated by passage in the 80th General Assembly (HB 121) and its approval by the then governor. Further, he asserts that subsequent attempts to modify the statute have been defeated in the General Assembly. Counsel contends that the evidence and testimony presented by the ecologist clearly indicated that the subject has been transformed from a steel manufacturing plant to a razed development site with greening in a manner consistent with secondary succession patterns. Further, counsel suggested the testimony of Mr. Gent and Mr. Dyke, both landscape architects, indicated that soil and plants do exist on the site. Thus, the appellant requested an open space classification and evaluation for the subject property.

In closing, the respondents presented a consolidated brief. The respondents argued the appellant failed to adequately describe the property for which it seeks an open space

assessment; failed to prove the subject qualifies under the open space act; failed to show the subject is used for open space purposes; that Section 10-165 of the Property Tax Code strongly discourages open space property owners from subsequently developing their property by assessing such property owners with retroactive taxes and penalties; that the subject property is used primarily for residential purposes; and that the appellant failed to complete the appropriate application required under the Section 10-160 of the Property Tax Code in 2002.

The appellant presented a brief in rebuttal to the respondents' consolidated brief arguing its evidence utilized the appropriate property index numbers (PIN) in its petitions to the Property Tax Appeal Board; the appellant complied with Section 10-160 of the Property Tax Code by filing the appropriate applications in 2000, 2001 and 2002; that the testimony of the representative from the Cook County Assessor's office indicating the Cook County Assessor's office values open space land at $.16 per square foot is the only evidence of value for open space in south Cook County; and the subject is not used for residential purposes. In conclusion, the appellant requested the subject property be valued as open space as indicated by the witness from the Cook County assessor's office.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of this appeal.

The issue before the Property Tax Appeal Board is the determination of the subject's eligibility for an open space classification and the determination of the appropriate assessment with this classification.

Section 10-155 of the Property Tax Code (35 ILCS 200/10-155) sets forth the criteria for land to be classified and assessed as open space. Section 10-155 states:

> Open space land valuation: In all counties, in addition to valuation as otherwise permitted by law, land which is used for open space purposes and has been so used for the 3 years immediately preceding the year in which the assessment is made, upon application under Section 10-160, shall be valued on the basis of its fair cash value, estimated at the price it would bring at a fair voluntary sale for use by the buyer for open space purposes.
>
> Land is considered used for open space purposes if it is more than 10 acres and:
>
> (a) is actually or exclusively used for maintaining or enhancing natural or scenic resources,
> (b) protects air or streams or water supplies,

(c) promotes conservation of soil, wetlands, beaches, or marshes, including ground cover or planted perennial grasses, trees and shrubs and other natural perennial growth, and including any body of water, whether man-made or natural,
(d) conserves landscaped areas, such as public or private golf courses,
(e) enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, natural reservations, sanctuaries, or other open spaces, or
(f) preserves historic sites.

Land is not considered used for open space purposes if it is used primarily for residential purposes.

Considering the evidence submitted and testimony of the witnesses the Property Tax Appeal Board finds that Parcel 2 does not meet the requirements specified within the open space classification. The Board finds that Parcel 2, as plainly indicated by the Sidwell Plats submitted by the appellant, is not adjacent to or connected to Parcel 1 and Parcel 3 as it is located south and west of these parcels. The Board finds that Parcel 2 does not meet the first test of open space pursuant to 35 ILCS 200/10-155, as it is less than 10 acres. The Board finds that Parcel 2, as clearly established on the Sidwell Plats contains approximately 3.36 acres. Furthermore, the only reliable testimony or evidence regarding the state of Parcel 2 is that of the respondents' witness indicating that Parcel 2 is an asphalted parking lot, which is cracked and breaking up.

The Property Tax Appeal Board finds that the evidence and testimony indicated the following:

A. that Parcels 1 and 3 of the subject property comprises 242.7 acres of land;
B. that the subject property is not utilized for residential purposes;
C. that the subject property contains natural ground cover, perennial grasses, trees, and shrubs;
D. that the subject property contains an easement created by the installment sales agreement between the City of Chicago and USC Corporation regarding the South Works site, conveying a strip along Lake Michigan containing approximately 83+/- acres to the City when certain infrastructure improvements are made;
E. that while this agreement may be a plan for future development of these parcels no action has been taken in 2000, 2001 or 2002;
F. that said infrastructure improvements are to be made in the future at some undetermined time;
G. that these infrastructure improvements are generally not begun or completed;
H. that these aforementioned facts have related to the subject for at least three years preceding the assessment dates at issue.

Section 10-155 of the Property Tax Code (35 ILCS 200/10-155) states that land is considered used for open space when it meets one of the six criteria. The Board recognizes the Statute is open to broad interpretation, but nothing in the Statute mandates a single open space use must be maintained, rather, that land must be only used generally for "open space purposes". (35 ILCS 200/10-155)

Next the Board finds that Parcel 1 and 3 of the subject property meet the requirements specified within the open space statute. Specifically Parcels 1 and 3 contain more than 10 acres and the property is used in accordance with and Sections 10-155 (a), (b), (c) and (e). These four criteria provide that the land must be used:

(a) is actually or exclusively used for maintaining or enhancing natural or scenic resources,
(b) protects air or streams or water supplies,
(c) promotes conservation of soil, wetlands, beaches, or marshes, including ground cover or planted perennial grasses, trees and shrubs and other natural perennial growth, and including any body of water, whether man-made or natural.
(e) enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, natural reservations, sanctuaries, or other open spaces,

The Board finds that Parcel 1 and 3 of the subject property have been allowed to remain fallow, thus enhancing natural or scenic resources. The photographs and video submitted by the appellant along with the testimony and report of its witness clearly indicate that secondary succession plant life is surviving on Parcels 1 and 3. The Board acknowledges that while perhaps not the landscaper's ideal, plant life and animal life is flourishing. The respondents' witness while referring to the plant life as primary admitted to its existence and admitted to hearing coyote. Primary or secondary is not the issue in the instant cause; the issue is the sustained existence and proliferation of perennial plant life and animal life on these two parcels, which the appellant and its witnesses have adequately demonstrated.

Next, the Board finds that Parcels 1 and 3 protect water supplies. Lake Michigan, as the testimony indicated, is the water supply for the City of Chicago. The testimony of one of the respondents' witnesses suggested that storm water run-off directly into the Lake is prevented by the existence of the plant life and the ready percolation traits of subject's slag base. The Board's reasonable conclusion is that the City's water supply is thus protected from storm water run-off in this area.

Further, Parcels 1 and 3 are bordered on the north by Rainbow Park and Beach, part of the City's park system that runs along Lake Michigan, therefore, the Board finds the value to the public of abutting or neighboring parks is enhanced.

The Board further finds that based upon the evidence, the appellant timely filed application for open space classification with the Cook County Assessor for the years 2000, 2001 and 2002. The evidence indicated that these timely applications were denied; however, the witness from the assessor's office had no explanation for said denial other than in his judgment the parcels did not appear to meet the open space qualifications. Further, questioning of the witness indicated he was not cognizant of those qualifications. This witness presented the only factual testimony regarding the market value applied to open space by the Cook County Assessor's office of $.16 per square foot of land area.

The respondents would have this Board accept that although the City has taken possession of part of the subject for its open space plans, the appellant is not eligible for the open space designation for the greater parcels. These parties would also have this Board allow the open space designation only to professionally landscaped park space. The language of Section 10-155 of the Property Tax Code does not support this argument. In addition, the respondents would have this Board accept the premise that at some unknown future time the subject may be used for residential purposes and this projected use should determine its current assessment. The language of Section 10-155 of the Property Tax Code does not support this argument.

The respondents also argued that Section 10-165 of the Property Tax Code strongly discourages open space property owners from subsequently developing their property by assessing such property owners with retroactive taxes and penalties. The Board acknowledges the intent of this Section and should this property ever be developed in line with the City's redevelopment plan remedies are in place to reassess and collect due and owing taxes on the property.

Therefore, based on a review of the evidence and testimony contained in the record, the Property Tax Appeal Board finds that the appellant has, in part, supported its legal contention. The Board finds that Parcels 1 and 3 meet the qualifications for an open space assessment, while the Board additionally finds that Parcel 2 does not meet the first test of an open space classification. Therefore the Board finds no change in the assessment of Parcel 2 (21-32-212-002-0000) is warranted. The Board further finds that the testimony of the respondents' witness from the Cook County Assessor's office is the only evidence in the record indicating the Cook County Assessor uniformly utilizes an estimated market value of $.16 per square foot for open space south of Madison Avenue in Cook County. Consequently, the Board finds Parcels 1 (21-32-100-002-000) and Parcel 3 (21-32-213-004-0000) have and estimated market value of $.16 per square foot or $6,970 per acre as open space. Thus, the Board finds a reduction of the assessments for Parcels 1 and 3 is warranted.

APPELLANT:	**David Heidt**
DOCKET NUMBER:	**00-26646.001-C-1**
DATE DECIDED:	**November 17, 2005**
COUNTY:	**Cook**
RESULT:	**Reduced Assessment**

The subject property consists of two-story style mixed-use building of located in West Township, Cook County. The subject contains commercial space on the first floor and an owner-occupied apartment on the second floor.

The appellant submitted evidence before the Property Tax Appeal Board claiming that the subject property should be re-classified from a Class 5 commercial to Class 2 residential property. In support, the appellant submitted two affidavits dated August 17, 2000 and January 5, 2001 indicating the subject consists of one apartment above a single commercial unit. Further, the appellant asserts that the subject improvement contains 4,700 square feet of building area. The appellant argued that according to the Cook County Real Property Classification Ordinance Class 5 real estate is to be assessed at 38% of fair market value and Class 2 real estate is to be assessed at 16% of fair market value. As a Class 5 property, the appellant contends the 1997 sale price of $270,000 reflects the subject's estimated market value for the current assessment year. The appellant's petition indicated the sale was not between related parties or related corporations; was sold by a real estate company; was advertised and on the market for 12 months; and the seller's mortgage was not assumed. In addition to a change to a residential classification under the Cook County Real Property Classification Ordinance, the appellant requested the application to the 1997 sale price of the Illinois Department of Revenue's three-year median level of assessments for Cook County Class 2 property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $52,584 was presented. The board also submitted a memorandum to the board of review's chief deputy. The writer of the memorandum concurs with the appellant that the subject contains 4,700 square feet of building area. The writer also indicates that sale data from three sales support an estimated assessed value of $138,370, or $29.44 per square foot of building area, for the subject. The CoStar COMPS reports for three sales were included with the board's evidence. The properties are one-story or two-story buildings ranging in age from 93 to 105 years. The improvements range in size from 3,550 to 4,900 square feet of building area. The properties sold between April and July 2000 for prices ranging from $599,000 to $840,000, or an unadjusted range from $168.73 to $205.59 per square foot of building area. The record is silent with regard to the classifications and assessments of the three sales comparables.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The Official Rules of the Property Tax Appeal Board states, in pertinent part as follows:

> Under the burden of going forward, the contesting party must provide substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property. (86 Ill. Adm. Code §1910.63(b)

Further,

> The Property Tax Appeal Board may consider appeals based upon contentions of law. Such contentions of law must be concerned with the correct assessment of the subject property. (86 Ill. Adm. Code §1910.63(d)).

In this appeal, the appellant presented a brief contending the subject is incorrectly classified according to the Cook County Real Property Classification Ordinance. Documentation supporting this contention was also proffered. Therefore, the Property Tax Appeal Board finds that the appellant has met this burden.

Next, the Property Tax Appeal Board finds that according to the Cook County Real Property Classification Ordinance Class 5-97 real estate is defined as:

> Special commercial improvements.

While, the Cook County Real Property Classification Ordinance Class 2-20 is defined as:

> Mixed-use commercial/residential with apartments above six units or less and building square footage of less than 20,000.

Further, the Board finds that the appellant submitted evidence that the subject contains one apartment above a commercial space and that the subject improvement contains 4,700 square feet of building area. Therefore, the Board finds that the subject property's correct classification according to Cook County Real Property Classification Ordinance is Class 2-20.

With regard to the appellant's contention that the subject is overvalued as determined by the subject's 1997 sale of $270,000; when market value is the basis of the appeal, the appellant has the burden of proving the value of the property 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); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). Proof

of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. The Board finds that the appellant provided information with regard to the subject's 1997 sale and it appears to be arm's length in nature. In contrast, the board of review presented what appears to be an in-house memorandum reiterating raw data from the sales of three commercial buildings. The Board finds that the memorandum lacked any analysis of the suggested comparables similarity or dissimilarity to the subject; there are no adjustments to the sales for time of sale, conditions of sale, condition of the buildings, location, size, or any other factor used in a conventional comparative analysis. As a result, the Board accords no weight to the board of review's memorandum. Therefore, the Property Tax Appeal Board finds that the subject had a fair market value of $270,000 as of January 1, 2000.

As the Board has found that the subject property's correct classification according to Cook County Real Property Classification Ordinance is Class 2-20 residential and further as the Board has established the subject had a fair market value of $270,000 as of January 1, 2000, the Illinois Department of Revenue's 2000 three-year median level of assessments for Cook County of 10.13% shall apply and a reduction is warranted.

APPELLANT:	**Bernardino Juarez**
DOCKET NUMBER:	**00-26647.001-C-1**
DATE DECIDED:	**January 4, 2005**
COUNTY:	**Cook**
RESULT:	**No Change**

For judicial economy, the PTAB set this matter for hearing along with the PTAB 2001 property tax appeal without objection from the parties. However, distinct decisions shall be rendered for each appeal year. In this appeal, the appellant raises two issues: first, that the subject is misclassified under Cook County's Classification Ordinance; and second, that there was unequal treatment in the assessment process of the improvement as the bases of this appeal.

The subject property, in totality, comprises four land parcels. However, only the improved parcel is at issue in this appeal. It consists of a 122 year old, four-story, masonry, multi-family dwelling located on a 2,600 square foot parcel of land. The improvement contains 7,200 square feet of living area as well as seven bathrooms and a garage.

The appellant's pleadings include: a color photograph of the subject's building; four affidavits; a map depicting the subject's block; two black and white photographs of the building's exterior; three black and white photographs of the first floor, interior of the building; and copies of rent receipts from January, 2000, through December, 2000.

The appellant-owner completed all the affidavits. The first affidavit reflects that the remaining data submitted into evidence is authentic and that the subject's dwelling only contains six units. The second affidavit reflects that the subject's six apartments were fully rented throughout the 2000 tax appeal year. The third affidavit is a general affidavit that had been submitted to the Cook County board of review at that hearing level. Therein, the affiant states that the subject's building contains only six units, and that the two former apartments located on the first floor are only used for storage purposes. The copies of the rent receipts support this assertion, while depicting rent collected from five tenants with the remaining apartment belonging to the owner. The last affidavit reflects a breakdown of the building's six units by renters name and monthly rent paid. It reflects a total rent from all units at $34,200 per year including the owner's rent.

As to the photographs, the subject's color photograph depicts a four-story, masonry dwelling. The black and white, exterior photographs reflect six doorbells and six mailboxes. The remaining photographs reflect numerous boxes and other miscellaneous material located within the subject. At hearing, the appellant testified that these items are located in the subject's first floor storefront that is currently used by

the tenants as storage area. He also stated that these photographs accurately reflect the subject's improvement, but that the photographs were taken by the tax consultant he had hired to prepare the evidence for his appeal.

The appellant's hand-drawn map depicts the subject's block with 11 parcels reflected thereon, while only four are depicted with buildings besides the subject property. The parcels' addresses are written at the top of each parcel, while at the top of the map is the statement: "storefront converted into apartments' storage, six apartments only" thereon.

At hearing, the appellant testified, at length, regarding the subject's improvement. He stated that he purchased the building in 1975 and that a store had occupied the first floor area. He indicated that the store was closed in the late 1980's and since that time it was used as apartment area. He also indicated that the store had been converted in the late 1980's into two apartments.

He testified that there are actually eight units within the apartment building and then explained a breakdown of the subject's tenants for the 2000 tax year. Specifically, he stated that there are two units on each of the four floors comprising a front and rear apartment. On the first floor, the front unit was used for tenant storage and the rear unit was rented. He stated that the second floor front unit was his unit and that he rented the second floor rear as well as the two units on the third floor. As to the fourth floor, he stated that the front unit was rented, but that the building's manager and/or janitor occupied the rear unit. He stated that he did not collect any rent from his janitor.

As of the date of this hearing, the appellant also testified that his son who moved in approximately two years ago currently occupied the first floor rear unit. Moreover, as to the configuration of the first floor, he stated that the first floor front unit contains plumbing and a bathroom even though it is currently used as storage space.

Based upon this analysis, the appellant requested a reduction in the subject's land assessment to reflect $4,207 and the improvement assessment to reflect $15,846.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's improvement assessment was $32,684, while the land assessment stands at $8,677. The board also submitted copies of the subject's property characteristic printouts as well as ancillary documents. The board's notes reflect haphazard comments summarized as follows: that the City of Chicago's building records show the subject's dwelling as containing eight units; that this registration was repeatedly made from 1990 through 2001 by the owner; that an exterior inspection was undertaken in January of 2002 without conclusively indicating whether the basement was used as living area; that there were multiple telephone and cable connections; that there were six exterior mailboxes and eight garage cans; and lastly, that there was a small yard. The board's notes assert that the appellant submitted rent receipts for six apartments, but that the mailboxes show more families named thereon. Beyond these assertions, the

board did not proffer any evidence in support of the subject's current assessments. As a result of its analysis, the board requested confirmation of the subject's assessment.

At hearing, the State's Attorney asserted that Cook County's classification ordinance distinguishes between buildings containing six units or less as a class 2 building; and then, seven units or more as a class 3 building. He argued that the undisputed testimony is that the subject's improvement clearly contains eight apartment units and does not qualify as a class 2 building.

In rebuttal, the appellant submitted written argument and photographs as well as a videotape of the subject's location. The appellant's written statement explains the board's assertions: that there were eight dwelling units; however, now there are only six units; that the multiple families' names reflect tenants that may have a mother, father, or daughter residing with them; that there are eight garbage cans, but that several are not used because they have no lids; and that his tenants' connections are for television, telephone, and computer usage. The appellant submitted color photographs of the subject's exterior, side lots, and garbage cans. At hearing, the appellant testified that his tax consultant took the pictures for he is actually depicted in several photographs. His statement also asserts that he was accorded no tax relief at the county level hearing because he did not utilize the services of a lawyer, only a tax consultant. The appellant also submitted copies of several newspaper articles reflecting tax breaks for certain politicians and friends of the board of review, while he asserted that he has been denied tax relief.

Lastly, the appellant submitted several copies of the same videotape, a copy of which was tendered to the board of review along with the appellant's written evidence. The video depicts the prior documents submitted into evidence as part of the appellant's initial pleadings. It also reflects a complete view of the exterior of the subject's building as well as the side lots. The video continues with a brief walk through the storage area, unit #6 that is asserted to be the janitor's storage area, and the basement area that is reflected as unfinished and used as a storage room. Finally, the tape depicts six gas meters within the building's interior.

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 this appeal.

As to the classification issue raised by the appellant, the appellant's own testimony reflected that the subject's improvement contains eight apartment units. However, he indicated that six units are actually being rented, while the building's janitor occupied the seventh unit without a rental payment. The undisputed testimony is that the eighth unit is used by the tenants for storage area. He also indicated that the store had been converted in the late 1980's into two apartments. Therefore, the PTAB finds that the appellant has not demonstrated that the subject's improvement is misclassified.

Appellants who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the suggested comparables to the subject property. *Property Tax Appeal Board Rule* 1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960). Having considered the evidence presented, the PTAB finds that the appellant has not met this burden and that a reduction is not warranted.

The PTAB finds that the appellant failed to submit any evidence indicating that the subject's improved parcel was inequitably assessed in comparison to any neighboring properties. The PTAB finds that the evidence has demonstrated that the subject is not assessed in excess of that which equity dictates. Therefore, the PTAB finds that a reduction in the subject's improvement assessment is not warranted.

APPELLANT:	**Village Apts. of Effingham II Ltd. Partnership**
DOCKET NUMBER:	**01-03226.001-C-2**
DATE DECIDED:	**June 2, 2005**
COUNTY:	**Effingham**
RESULT:	**Reduced Assessment**

The subject property consists of a 1.4-acre site improved with two, two-story frame apartment buildings on slab foundations containing a total building area of 28,326 square feet and a one-story office and laundry building with 740 square feet. The buildings were constructed in 1998 or 1999. There are 32 apartments in the two buildings composed of ten, 1-bedroom units; fourteen, 2-bedroom units; and eight, 3-bedroom units. The property is operated as a low-income apartment complex under the rules of Section 42 of the Internal Revenue Code. The property is located in Effingham, Illinois.

The appellant appeared before the Property Tax Appeal Board through its attorney contending the assessment of the subject property was excessive and not reflective of its market value. In support of this argument the appellant submitted a consulting report prepared by a property tax consultant and real estate appraiser. The property tax consultant was called as the appellant's witness. The appellant's witness testified that he has been a real estate appraiser and property tax consultant since 1987. The witness is a State of Illinois State Certified General Real Estate Appraiser.

During his testimony and within the report the property tax consultant explained that the subject property is a low-income property that was built under the rules of Section 42 of the Internal Revenue Code, which restricts rent that is charged tenants. Appendix "B" of the consulting report contained the Regulatory and Land Use Restriction Agreements entered between the taxpayer and the Illinois Housing Development Authority ("Authority") that are associated with the property." The agreements established the rent restrictions and how rent is to be calculated. The agreements also indicated that either 50% or 75% of the units were to be occupied with tenants whose income did not exceed the income limits of "very low income tenants", which was defined as being 50% of the median family income for the area. The remaining units were to be occupied by tenants whose income does not exceed the income limits for "low-income tenants". There were also restrictions with respect to the use of the property as low-income housing for a number of years and there were numerous acts such as conveying the property, transferring management of the property, leasing or subleasing and the like that had to be approved by the Authority. The restrictions in the agreement run with the project for a period of 30 years and bind any new borrower or owner of the property. The witness also testified that the program provided for a 1% mortgage and tax credits.

According to the appellant's appraiser the tax credits and the one percent subsidy lower the cost structure and make up for the below market rents that are charged. The witness indicated there is no rental subsidy associated with the project. The property tax consultant further explained that Public Act 91-502 provided that these properties are to be valued according to their actual income potential using the actual income of the property. Therefore, in his consulting report he developed an income approach to value using the actual income and expenses of the property for the 1999, 2000 and 2001. The consultant also used a 5% vacancy rate and a market derived capitalization rate in valuing the property.

The appellant's witness indicated the subject property had gross income from 1999 through 2001 ranging from $108,225 to $119,298. He estimated the subject would have a projected gross income of $131,412. From this amount he deducted 5% for a vacancy allowance to arrive at an effective gross rental income of $124,942. Using the subject's historical expenses, the appraiser then estimated operating expenses, excluding real property taxes, to be $62,917. The witness estimated the subject had a net income of $62,025. The property tax consultant used the band of investments technique to develop a capitalization rate of 12.50% to apply to the subject's net income. This rate included an effective tax rate of 2.3%. Capitalizing the net income resulted in an estimate of value of $496,200.

The appellant's witness also testified he reviewed the appraisal prepared on behalf of the Effingham County Board of Review. He was of the opinion this appraisal would be appropriate for a commercial property of this nature that wasn't under a government program with rent restrictions.

Under cross-examination the witness acknowledged that his fee is contingent on the outcome of the proceeding. He also noted that he characterized his submission as a consulting report and not an appraisal. His intent was that the report would be outside the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). He could not articulate a distinction between a consulting report with an income approach to value and an appraisal. The witness indicated the numbers contained in the income approach to value set forth in his report were extracted from the certified audits presented to him that are located in Appendix C of the report.

The witness also stated the actual cost of the project was included on page 8 of his report. The project had an actual cost of $1,787,418. He stated that $1,005,225 of that cost had a 30 year 1% mortgage while the remaining $782,193 was raised through selling of the tax credits and other equity the owner would have to invest. He was of the opinion the actual worth of the property with the section 42 restrictions is significantly less than its cost of construction. He was of the opinion that no one would build this property with the income restrictions without the one percent mortgage and the tax credits.

He opined that if the statutory restriction in estimating the value of the subject property using the income approach wasn't in place then the board of review's appraisal would probably more correct than his consulting report. He also noted that in his band of investment technique he used a mortgage rate of 7.5% and not the 1% government subsidized rate.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $271,750 was disclosed. The subject's assessment reflects a market value of $815,821 using the 2001 three year median level of assessments for Effingham County of 33.31%. In support of the assessment the board of review submitted an appraisal of the subject property prepared by a real estate appraiser estimating the subject property had a market value of $868,000 as of January 1, 2001. The board of review called the appraiser as its witness.

The board of review's appraiser testified that he is a local appraiser from the Effingham area. He has been appraising property since 1988 and became an Illinois State Certified General Real Estate Appraiser in 1991. The witness prepared an appraisal on the subject property and was instructed to base his opinion on the income approach.

The appraiser determined the highest and best use of the property was for apartment construction. The appraiser stated that in determining the highest and best use he did not consider the restrictions with respect to low-income tenants and the Section 42 requirements. He stated that he did not assume any special contracts with the government or anything like that in his appraisal report, which was based on a market value assignment.

The board of review's appraiser testified the first step in his appraisal was to estimate the gross potential income of the subject property using three other similar apartment buildings located in the Effingham area. He compared the rents of these apartment buildings with the subject property to determine a fair market rent of the property to be $6.25 per square foot. The subject's gross potential income was calculated to be $177,038. The appraiser then deducted 5% for vacancy and collection loss to arrive at an effective gross income of $168,852. Expenses were estimated to be $76,606, which included $18,480 in real estate taxes, and replacement reserves were estimated to be $4,800. Deducting the expenses and reserves resulted in a net operating income of $86,680.

In estimating the capitalization rate the appraiser used market extraction, an underwriter's method and the band of investment method. Using these methods he determined the subject property would have a capitalization rate of 10%. Capitalizing the net income using a 10% capitalization rate resulted in an estimated value of $868,000.

During his testimony the appraiser performed another calculation by eliminating real estate taxes as an expense and adding a 2.25% effective tax rate to the 10% capitalization rate to arrive at a loaded capitalization rate of 12.25%. Using a net income of $105,260 and a capitalization rate of 12.25% resulted in an estimated value of $859,000.

The appraiser testified his fee is based on time and is not based on the outcome of the appeal. Under cross-examination the appraiser stated the comparables utilized in his report to develop the market rent and capitalization rate were not Section 42 housing and were unrestricted in terms of market rent. He agreed the comparables were unrestricted in terms of market rents and are typical commercial rental units.

The appraiser also indicated the subject was determined to have a market rent of $6.25 per square foot resulting in an average monthly rent of approximately $460. This estimate of market rent was without regard to the fact that the subject has rent restrictions. The report indicates the subject has a gross potential income based on its actual income of $4.64 per square foot or an average monthly rental of $342, which is approximately 26% below his estimate of market rent. The board of review's appraiser also agreed that he did not consider the fact the subject property was a Section 42 housing complex in his analysis.

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 the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The standard for determining the fair cash value of property is the price at which ready, willing, and able buyers and sellers would agree. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 16 (1989). A property's income-earning capacity is the most significant element in arriving at its fair cash value for assessment purposes. Kankakee County, 131 Ill.2d at 15. A taxing authority must weigh both the positive and negative aspects of a subsidy agreement and adjust the actual income figure to accurately reflect the true earning capacity of the property in question. Kankakee County, 131 Ill.2d at 17. In Kankakee County, the supreme court held a subsidy agreement affecting a property's income-earning capacity must be considered in calculating fair market value if the property is designed for use as subsidized

housing, its best and highest use is as subsidized housing, and it is transferable to others for use as subsidized housing. Kankakee County, 131 Ill.2d at 18-19.

In Rainbow Apartments v. Illinois Property Tax Appeal Board, 326 Ill.App.3d 1105 (4th Dist. 2001) the court followed Kankakee County in holding that the positive and negative aspects of a subsidy agreement must be considered by taxing authorities in valuing properties designed, developed and used with section 42 restrictions.

Furthermore, the Property Tax Code contains provisions relating to section 42 low-income housing. Section 1-130 of the Property Tax Code (35 ILCS 200/1-130) in defining real property for assessment purposes specifically excludes "low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42." In addition section 10-235 of the Property Tax Code in effect as of the assessment date at issue provided that:

> In determining the fair cash value of property receiving benefits from the Low-Income Housing Tax Credit authorized by section 42 of the Internal Revenue Code, 26 U.S.C. 42, emphasis shall be given to the income approach, except in those circumstances where another method is clearly more appropriate. (35 ILCS 200/10-235).

As noted the subject property is operated as a low-income apartment complex under the rules of Section 42 of the Internal Revenue Code. Under section 42 the subject property qualifies for a 30-year 1% mortgage and tax credits. In turn there are rent restrictions and residents whose income does not exceed the income limits for "very low-income tenants" or "low-income tenants" as defined in the agreement must occupy the units. There are also restrictions with respect to the use of the property as low-income housing for a number of years and there are numerous acts such as conveying the property, transferring management of the property, leasing or subleasing and the like that are to be approved by the Authority. The restrictions in the agreement run with the project for a period of 30 years and bind any new borrower or owner of the property.

In reviewing the reports and testimony presented by the parties, the Property Tax Appeal Board finds that only the taxpayer's witness valued the subject property considering the positive and negative aspects as section 42 low-income housing. The record is clear that the subject property was designed as section 42 low-income housing and its highest and best use is as rental property in compliance with section 42 restrictions. Thus the impact of the section 42 restrictions must be considered in estimating the fair cash value of the property for assessment purposes. Of the two valuation witnesses, only the appellant's consultant recognized and considered the subject property is operated as a section 42 low-income housing project in deriving his estimate of value.

The record is equally clear that although the board of review's appraiser used the income approach, he valued the subject property as a typical apartment complex not subject to section 42 restrictions. The board of review's appraiser acknowledged that he did not consider the fact the subject property was a section 42 housing complex in his analysis. Ignoring the effects of the section 42 restrictions distorts the earning capacity and fair cash value of the property.

For these reasons the Property Tax Appeal Board finds the subject property had a market value of $496,200 as of January 1, 2001. Since market value has been established the 2001 three year median level of assessments for Effingham County of 33.31% shall apply.

APPELLANT:	**Christina Chang**
DOCKET NUMBER:	**02-20734.001-C01**
DATE DECIDED:	**March 18, 2005**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property is improved with a one-story, masonry constructed retail building situated on a 1,645 square foot parcel. The building is approximately 79 years old and is located in Evanston, Cook County.

The appellant contends the market value of the subject property is not accurately reflected in the property's assessed valuation. In support of this argument an income approach to value prepared by appellant's counsel was submitted. In developing the income approach the appellant's counsel utilized the subject's actual income for 2001 taken from federal income tax form Schedule E, Supplement Income and Loss. From this amount counsel deducted 15% for expenses and vacancy to arrive at a net income of $20,809. Counsel then used a loaded capitalization rate of 17% to arrive at an estimate of value of $122,405. Utilizing the level of assessment of 38% for class 5a property as contained in the Cook County Real Property Assessment Classification Ordinance, counsel calculated the subject's assessment should be reduced to $46,514.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling $61,703 was disclosed. The subject's assessment reflects a market value of $162,376 or $98.71 per square foot of building area using the level of assessment of 38% for Class 5a property as contained in the Cook County Real Property Assessment Classification Ordinance. To demonstrate the assessment is reflective of the property's market value the board of review submitted information on four comparable sales. The comparables consisted of one-story commercial buildings that ranged in size from 1,350 to 2,340 square feet of building area. The information indicated the comparable buildings were constructed from 1942 to 1973. The comparables sold from August 2000 to August 2003 for prices ranging from $170,000 to $275,000 or from $106.84 to $204.32 per square foot of building area.

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

The appellant contends the market value of the subject property is not accurately reflected in the assessment. 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); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). The Board finds the appellant has not met this burden of proof and a reduction in the subject's assessment is not warranted.

To support the argument that the subject's assessment is not reflective of the property's market value the appellant's counsel developed an "income approach" using the subject's actual income from the 2001 federal income tax returns. The Board gives the appellant's analysis no weight. The Board finds the appellant's argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses unconvincing and not supported by evidence in the record. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

> [I]t is the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value".

Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d at 431.

Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate through an expert in real estate valuation that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using an income approach, as the appellant's counsel attempted, one must establish through the use of market data the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. Further, the appellant must establish through the use of market data a capitalization rate to convert the net income into an estimate of market value. The appellant did not provide such evidence; therefore, the Property Tax Appeal Board gives this argument no weight.

The Board further finds problematic the fact that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion testimony of value for that client's property.

The Board also finds that the board of review submitted information of four comparable sales that had prices ranging from $170,000 to $275,000 or from $106.84 to $204.32 per square foot of building area. The subject's assessment of $61,703 reflects a market value of $162,376 or $98.71 per square foot of building area using the level of assessment of 38% for Class 5a property as contained in the Cook County Real Property Assessment Classification Ordinance. The Board finds this evidence supports the market value reflected in the subject's assessment and no reduction is warranted.

APPELLANT:	**Spyglass Land Trust**
DOCKET NUMBER:	**03-00491.001-C-1**
DATE DECIDED:	**November 21, 2005**
COUNTY:	**Madison**
RESULT:	**No Change**

Subsequent to the hearing, the intervening parties filed motions to dismiss the subject appeal based on unauthorized practice of law by the appellant's witness. After reviewing the briefs submitted by all parties, the Board hereby denies the intervenors' motion to dismiss.

The subject property consists of eight; two-story frame and brick veneer apartment buildings that were built between 1998 and 1999. The buildings were constructed on concrete slab foundations. Each building contains four, two bedroom units or a total of 32 units. The units range in size from 945 to 1,008 square feet of living area and contain one and one-half bathrooms and a wood deck. The subject's property record card indicates the structures total 30,240 square feet of building area. The subject complex is located near the Illinois Route 157 corridor in Edwardsville, which is located in close proximity to the Southern Illinois University-Edwardsville campus.

The appellant appeared before the Property Tax Appeal Board through counsel claiming a lack of uniformity regarding the subject's improvement assessment as the basis of the appeal. The subject's land assessment was not contested. In support of this claim, the appellant called its witness. The witness testified he has been a real estate broker and property tax consultant in the State of Missouri since 1980. He currently has no designations in the assessment or appraisal fields.

The witness prepared an assessment analysis comparing the subject and 18 suggested comparables. The assessments of the comparables were prior to the application of township equalization factors issued by the Madison County Board of Review. The comparables are located near the Illinois Route 157 corridor, with the furthest property located approximately 1.5 miles from the subject. The comparables consist of two or three-story apartment buildings of brick, frame or brick and frame construction ranging in age from 5 to 33 years. The buildings contain from 8 to 12 apartment units that reportedly have an average unit sizes ranging from 1,024 to 1,498 square feet of living area. Eleven comparables have basements used for apartments while seven comparable do not have basements. Five comparables have garages or carports. Other amenities include various decks, porches and patios. The assessment analysis indicates the average rental rates for twelve of the comparables were reported to range from $500 to $800 per unit. Occupancy rates for eight comparables were reported to be 100%. No evidence to support the average rental or occupancy rates was submitted. Improvement assessments ranged from $55,840 to $139,900 or from $6,980 to $14,229

per unit. Total assessments ranged from $61,480 to $147,890 or from $7,685 to $17,108 per unit including land. The subject property has an improvement assessment of $474,430 or $14,826 per unit excluding land and a total assessment of $521,420 or $16,294 per unit including land.

Although the witness's analysis did not disclose the total amounts of building area for the comparables, he calculated the comparables have improvement assessments that reflect estimated market values ranging from $19.83 to $33.07 per square foot of building area excluding land for 15 of the 18 comparables. He also calculated the comparables have total assessments that reflect estimated market value ranging from $21.83 to $37.34 per square foot of building area including land for all the comparables. The witness calculated the subject's improvement assessment reflects an estimated market value $45.18 per square foot of building area excluding land and its total assessment reflects an estimated market value of $49.66 per square foot of building area including land using 31,500 square feet of total building area.

The witness testified the subject's units are in excellent condition and have an average monthly rental rate of $725. He noted they do not have car shelters or garages like many of the comparables. The witness also testified that he selected comparables located near the Route 157 corridor that are similar to the subject in proximity, size, and rental rates. He did not use comparables from Glen Carbon or any properties from the subject area that are currently under appeal to the Property Tax Appeal Board. The witness also testified the average age of the comparables was 10 years. Based on his analysis, the witness determined a value for the subject is $35.00 per square foot of building area using 16 of the 18 comparables, after considering an adjustment of 2% annually for the average age of the comparables when compared to the subject. Comparables 12 and 13 were excluded due to their older age. The per square foot value results in an improvement assessment for the subject of $367,500 or $11,484 per rental unit excluding land or a total assessment of $414,490 or $12,953 per rental unit including land. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment to $367,500 resulting in a total assessment of $414,490.

Under cross-examination, the witness testified there were other similar comparables located in close proximity to the subject, however, he did not use them because their assessments are under appeal with the Property Tax Appeal Board. He did not know of any rule that would prohibit the use of these properties as comparables. These property owners are also clients of the witness. The witness also testified he considered the differences in the comparables ages when compared to the subject. Maddipati explained 16 of the 18 comparables have an average per square foot improvement assessments that reflect an average market value of $30.15 per square foot of building area. He adjusted this value upward to $35.00 per square foot to compensate for the approximately eight years of the average age difference between the subject and comparables using the Marshall and Swift Cost Manual. The commercial and residential make-up of the subject and comparables neighborhoods was also discussed.

The witness agreed no age adjustments were performed in his assessment analysis, but were considered in the narrative. He did not perform any other adjustments for differences to the subject in design, size, or amenities.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final equalized assessment of $543,270 was disclosed. The subject has an improvement assessment of $474,430 or $14,826 per unit prior to equalization. The board of review submitted an assessment analysis to support its assessment of the subject property prepared by a state licensed appraiser. The appraiser is also an employee for the Madison County Assessor's Office, but is not an employee of the board of review. Like the appellant's assessment analysis, the comparables' assessments were prior to the application of township equalization factors issued by the Madison County Board of Review. Both intervening parties adopted the board of review's evidence.

In his first analysis, the appraiser analyzed the comparables identified by the appellant's witness. He performed qualitative adjustments (+ or -) to the comparables for differences to the subject in design, appeal, age, condition, basements, and car shelters. The comparables have improvement assessments ranging from $6,980 to $14,229 per unit. The appraiser determined 13 comparables warranted overall upward adjustments because of their inferior characteristics when compared to the subject. The appraiser also performed quantitative adjustments to the these comparables for differences to the subject in age, exterior construction, and garage space from –16% to +52% resulting in adjusted improvement assessments ranging from $7,978 to $13,446 per unit. The adjustments were based on the age /life method of deprecation, the Marshall & Swift Valuation Service in conjunction with the Madison County CAMA cost system.

To demonstrate the subject was equitably assessed, the appraiser prepared an assessment analysis of 24 comparables. Six of the comparables are located in the neighboring community of Glen Carbon, which is approximately 5 miles from the subject. Eighteen comparables are located in Edwardsville. The comparables are improved with two-story apartment buildings of brick, frame or brick and frame construction that are new to 23 years old. The appraiser calculated the average age of the comparables to be 6.29 years. The apartment buildings contain from 7 to 36 apartment units that reportedly have average unit sizes ranging from 734 to 1,045 square feet of living area. Five comparables have basements used for apartments; eighteen comparables do not have basements; and two comparable have unfinished basements. Two comparables have attached garages. One comparable has an elevator. Other amenities include various decks, porches and patios. Improvement assessments ranged from $75,504 to $535,704 or from $9,442 to $27,363 per unit. The appraiser performed qualitative adjustments (+ or -) to the comparables for differences to the subject in appeal, age, condition, basements, and car shelters to determine if the comparables are overall inferior or superior to the subject.

The appraiser also prepared a list of all the remaining multi family dwellings located in Edwardsville Township. The grid disclosed the properties' age, number of rental units, per unit assessments, story height, exterior construction, garages, and basements. The appraiser claimed this analysis shows that as the age of a building increases, its per unit value slightly decreases. Based on the assessment analysis, the appraiser was of the opinion that the subject property was being uniformly assessed. Therefore, the board of review requested confirmation of the subject's assessment

Under cross-examination, the witness testified he is a salaried employee for the Madison County Supervisor of Assessments. He was requested to perform the assessment analysis of the subject property by the Madison County Board of Review. The appraiser testified 90% of his appraisal work is performed for Madison County. He testified he performs approximately 100 to 150 assessment reviews per year. On a private basis, he prepares approximately 75 appraisals per year. The appraiser also testified that until the date of the hearing, he opined all the subject units were the same size based on his inspection and information from an unknown employee of Spyglass. The witness also agreed the appropriate unit of measurement in an assessment analysis is on a per square basis foot as well as a per unit basis. The witness's role in the assignment was discussed as well as the scope of the report. The appraiser testified then appellant's valuation witness's method was credible. However, he determined the comparables were deficient due to their dissimilar age and lack of adjustments. The appraiser conceded three of his comparables are 23 years old and one comparable is 14 years old. The appraiser also agreed he did not attach property record cards to his report unlike appellant's valuation witness. The witness testified he did not physically inspect the interior of the comparables. The witness did not perform a rental marketability study. He considered this factor to be irrelevant for an assessment equity appeal. The witness was also questioned at length regarding the adjustment process and sources of the adjustments. He was also questioned regarding the number of units contained in comparable 8. It was also discovered comparable 11 contains 8 rental units rather than 7 as detailed in Loman's report. In addition, the appraiser omitted that this property has a swimming pool and a office building, which would need adjustment. This property has a per unit assessment of $17,055 using 8 units. There was also some debate regarding the story height for some of the comparable properties.

The witness was also subjected to lengthy examination regarding quantitative and qualitative adjustments. The appraiser also conceded his qualitative adjustments for condition were incorrect by one plus (+) or minus(-). The witness agreed it is a matter of discretion to utilize any particular property as a comparable in which that assessment is being contested. He agreed there is no industry standard on this issue.

After reviewing the record and hearing the testimony, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds no reduction in the subject's assessment is warranted.

The appellant argued unequal treatment in the assessment process as the basis of the appeal. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the evidence, the Board finds the appellant failed to overcome this burden.

Both parties submitted assessment analyses to support their respective positions regarding the subject's correct uniform assessment. Both parties' assessment reports contained comparative analyses for 42 suggested comparables, with three properties being common to both parties. Thus, the Board finds record contains assessment information for a total of 39 suggested comparables.

First, the Board gave no weight to the per square foot assessment analyses detailed in the appellant's limited assessment report. In one analysis, the appellant's witness included the land assessments for the subject and comparables in the per square foot analysis. The Board finds the appellant's report is void of any evidence to showing the subject property contains similar amounts of land area as the comparables. The land assessments of the suggested comparables range from $5,540 to $23,030 whereas the subject property has a land assessment of $46,990. These land assessments alone suggest the comparables are dissimilar to the subject. Thus, the Board finds this analysis concludes meaningless results. Additionally, the appellant did not request a reduction in the subject's land assessment or argue its land assessment was incorrect, did not reflect its fair market value, or was inequitably assessed in comparison to similar properties, which calls into the question why the appellant's witness included land assessments in his per square foot analysis. The Board finds the same holds true wherein the land assessments were included in his per rental unit assessment analysis.

The Board further finds nowhere in the appellant's report is the square footage amounts of the comparables disclosed for verification and consideration, which further calls into question the validity of the analysis. The appellant's assessment analysis merely showed the comparables per square foot assessments, in market value form, for comparison to the subject. The Board finds the appellant's witness made no attempt to adjust the comparables for difference to the subject with the exception of age. However, the Board finds the appellant's witness age adjustment to be highly suspect. The age adjustment was made to the average per square foot improvement assessment of his comparables based on their average age, excluding two older comparables, rather to each individual property. The Board finds this adjustment method was give little weight because more weight was placed on averages rather then the most similar properties.

The Board finds the board of review's assessment analysis is far more detailed and complete than that performed by appellant's witness. The Board further finds the board

of review's witness was made aware of some minor or perceived errors within his report during cross-examination. However, the Board finds the errors do not undermine the board of review's analysis with respect to the selection of comparables and his methodology. The Board further finds the board of review's witness provided competent professional testimony to support his analysis. Although, there was some dispute regarding the adjustment methodology, the board of review's witness attempted to make logical adjustments to the comparables for differences to the subject.

However, the Board finds 27 comparables contained in both parties' reports are dissimilar to the subject in a variety of aspects. Fifteen comparables contained in the appellant's assessment report were given little weight. Two comparables are three-story structures, dissimilar to the subject two-story design. Eleven comparables have unfinished or finished basements use for apartment, unlike the subject's concrete slab foundation. Eleven comparables are considerably older in age than the subject and five comparables have garages and carports, dissimilar to the subject. The Board also gave less weight to 14 comparables contained in the board of review's report. Eight comparables have unfinished or finished basements use for apartments, unlike the subject's concrete slab foundation. Five comparables are considerably older than the subject and two comparables have garages, dissimilar to the subject. Finally, five comparables are located in Glen Carbon, which is considerable distance from the subject in a neighboring community.

The Board finds 13 comparables contained in both parties' evidence to be most similar to the subject in age, style, location, and features. All of these comparables these comparables contain considerably fewer rental units than the subject. These comparables are from new construction to nine years old and contain from 8 to 11 rental units. These comparables have improvement assessments ranging from $93,070 to $136,780 or from $11,186 to $17,098 per rental unit. The subject's improvement assessment of $474,430 or $14,826 per rental unit falls within the range established by the most similar comparables contained in this record. After considering adjustments to the comparables for differences to the subject, the Board finds the subject's per unit improvement assessment is supported.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, no reduction is warranted.

In conclusion, the Property Tax Appeal Board finds the best evidence contained in the record demonstrates the subject property was equitably assessed by clear and convincing evidence. As a result, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT:	**Phoenix Management Group II, LLC**
DOCKET NUMBER:	**03-00874.001-C-3**
DATE DECIDED:	**October 17, 2005**
COUNTY:	**Effingham**
RESULT:	**No Change**

The subject property is improved with two, one-story buildings containing 17,560 and 12,810 square feet of building area, respectively, used as a truck stop. The larger building is a block building housing the truck stop restaurant, fuel service and trucker's store with shower and recreation facilities. The smaller building is of steel construction and houses the truck maintenance and repair facilities. The improvements are located on a 12.16-acre site adjacent to interstates 57 and 70 in Effingham County.

The appellant contends overvaluation as the basis of the appeal. In support of this contention the appellant's attorney argued the appellant purchased the subject property in February 2003 with two other properties used as truck stops for a total price of $3,350,000. The appellant's attorney indicated the subject had 25,276 square feet of building area with an assessment that reflects a fair cash value of $2,734,560 or $108.19 per square foot of building area.

In support of this argument the appellant submitted a copy of a closing statement dated February 13, 2003, disclosing a purchase price of $3,350,000. The three properties were located in the Illinois communities of McLean, Tuscola, and Effingham. The attorney stated the property in McLean contained 16,560 square feet and the property in Tuscola contained 23,450 square feet. He stated the three truck stops had an aggregate building area of 68,320 square feet. Dividing the price of $3,350,000 by the aggregate square footage indicated a price of approximately $50.00 per square foot of building area.

The appellant's attorney stated the subject property was sold out of bankruptcy. He also stated that conversations with the owner indicated that of the three truck stops this one is performing the least favorably. It was the attorney's position that even though the subject has good visibility from the interstate its access is below average and there have been newer truck stops in the area that have taken business away. He contends that the subject's assessment reflects a value attributable to a newer truck stop, not one that is aged and has experienced the use of the subject.

Under questioning the appellant's attorney stated he was not an attorney involved in the transaction concerning the sale of subject property. The appellant's attorney stated that he was not privy to the terms of the sale and was not representing the buyer when the purchase was made. The appellant's attorney indicated there was nothing in the record with respect to how the property was advertised for sale. He agreed there was nothing in the record with respect to whether a Realtor or broker handled the sale. The

appellant's attorney did not know how long the property was exposed on the market and he did not know the original listing price. Furthermore, he did not know the number of bids or offers that were received on the property while it was exposed and for sale through the bankruptcy. He did not know how many other bidders attempted to buy the subject property.

In a written statement signed by the appellant's counsel concerning the circumstances surrounding the sale he indicated that the price included $750,000 in personal property. The attorney indicated this number was from the owner, however, he was unable to obtain a written confirmation or breakdown on each item considered as personal property. The attorney indicated his estimate of size for the building was taken from the property record card. Based on this evidence the appellant requested the subject's assessment be reduced to $333,000.

The board of review presented a written statement prepared by the Effingham County Supervisor of Assessments and Clerk of the board of review. The board of review also submitted a copy of the subject's property record card disclosing the final assessment totaling $911,520 reflecting a market value of approximately $2,729,000 or $89.86 per square foot of building area using the 2003 three year median level of assessments for Effingham County of 33.40%. The board of review estimated the subject improvements contained 30,370 square feet of building area.

The supervisor of assessments testified the subject property is a major truck stop at the southernmost exit in Effingham. He indicated that the Illinois Department of Transportation website states there is a traffic count of 38,200 units per day with 14,000 being trucks at that location. The witness stated there are five truck stops and ancillary providers of truck services in Effingham and the area is known as a stopping place for trucks.

To demonstrate the subject's assessment was reflective of market value the supervisor of assessments provided information on six sales located in Effingham. The first sale was of a truck stop improved with four buildings containing a total of 50,832 square feet of building area located on an 18.74-acre parcel. This property sold in February 2002 for a price of $4,438,700 or $87.32 per square foot of building area. The board of review's witness indicated in August 2003 the owner of this parcel obtained a building permit for $4,280,000 and in August 2004 a demolition permit was obtained to demolish the original truck stop buildings.

A second sale was of a 10.44-acre parcel improved with an old block building used as a restaurant. The sale occurred in January 2003 for a price of $1,600,000. After the sale the building was removed indicating the purchase was for the land indicating a value of approximately $153,000 per acre.

A third sale consisted of a commercial tire business located ½ mile from the subject. This property consisted of 1.4 acres improved with an 8,060 square foot building. The sale occurred in January 2004 for a price of $550,000. The transfer declaration indicated that $10,000 of personal property was associated with the sale resulting in a net consideration for the real estate of $540,000 or $67 per square foot of building area.

The fourth sale consisted of a discount truck stop composed of 5.78 acres and a 3,696 square foot building. The supervisor of assessments indicated the property sold in November 2001 for a price of $1,000,000. The real estate transfer declaration indicated personal property in the amount of $350,000 was included in the price resulting in a net consideration for the real estate of $650,000 or $175.87 per square foot of building area. Subsequently, in May 2004, a 1.7-acre tract from this parcel was sold to Hardee's Food Systems for $430,000 or for $252,941 per acre.

A final sale consisted of a 25,000 square foot building located on a 3.82-acre site. The sale occurred in April 2002 for a price of $700,000 or $28 per square foot of building area.

The board of review also argued the sale of the subject relied on by the appellant was not an arm's length transaction and the transaction was for multiple properties with no support for the allocation. Based on this evidence the board of review requested confirmation of the subject's assessment.

Under cross-examination the supervisor of assessments explained the subject improvements contained 30,370 square feet of building area based on the dimensions of the buildings contained on the property record card. He could not explain why the property record card stated 25,276 square feet.

The supervisor of assessments further explained that the cost approach is used to value the subject property for assessment purposes. He testified that commercial properties in Effingham County are valued using the Marshall and Swift cost manual. The witness submitted the cost calculations generated by the cost approach, which was marked as Board of Review Exhibit No. 2. The witness explained that the calculations were originally generated in 1997. The improvements had a cost new of $2,500,710. Each building was depreciated 35% and a land value of $1,059,379.20 or $2.00 per square foot was added to arrive at a market value of $2,359,748.60. The witness explained that township multipliers of 1.159 were used to update the estimated value to 2003.

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 that a reduction in the subject's assessment is not justified based on this record.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant has not met this burden of proof and a reduction in the subject's assessment is warranted.

In support of the overvaluation argument the appellant submitted evidence disclosing the subject property was purchased out of bankruptcy with two additional properties for a total price of $3,350,000 in February 2003. The appellant allocated the purchase price among the three properties based on the size of the buildings on the respective properties. The Board finds the record is absent any testimony from a person associated with the sale or from a person with expertise in the field of real estate appraisal to confirm that the purchase price and allocation was reflective of market value or that the allocation had some relationship with real estate values in the respective areas where the properties were located.

The Board finds that the appellant presented no testimony from any witness associated with the sale to explain the nature of the transaction or to provide facts demonstrating the sale was an arm's length transaction reflective of market value. The evidence disclosed the sale of the subject was out of bankruptcy, which indicates that there was an element of duress that in turn undermines the conclusion that the property sold at arm's length for a price reflective of market value.

This record contains only statements by the appellant's attorney concerning the sale of the subject. However the attorney had little or no first-hand knowledge about the circumstances surrounding the sale. The Board further finds problematic the fact that appellant's counsel was the only "witness" that appeared on behalf of the appellant to offer an opinion of value based on the sale of the subject property. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion testimony of value for that client's property.

The Board finds the record also contains market data in the form of comparable sales located in the subject's area provided by the Effingham County Board of Review. Furthermore, the record contains the cost calculations used to estimate the value of the subject for assessment purposes. The Board finds that this evidence is the best evidence of market value in the record and supports the assessment of the subject property.

In conclusion, based on the facts contained in this record, the Property Tax Appeal Board finds that the assessment of the subject property as established by the Effingham County Board of Review is correct and no reduction in the assessment is warranted.

APPELLANT:	**Oliver-Hoffman Corporation** [1]
DOCKET NUMBER:	**03-01507.001-C-3**
DATE DECIDED:	**November 16, 2005**
COUNTY:	**Kane**
RESULT:	**No Change**

The subject property consists of a clubhouse facility located on real property commonly known as Tanglewood Hills Club in Batavia Township, Kane County. The Tanglewood Hills Club is a recreation facility built within the Tanglewood Hills subdivision. The clubhouse and its accompanying amenities are located on lot 4 of Tanglewood Hills Unit 2. Lots 2, 3, and 5 will be open space managed by the association. Lot 1 is improved with a school that has been operating for two years. Lot 6 is farmed. None of these lots have their own individual assigned parcel number. The subject parcel, composed of these lots, totals 60.23 acres. The part of the property that is the subject matter of this appeal is the clubhouse that features a swimming pool, decks, a snack bar, and an event room.

The appellant appeared before the Property Tax Appeal Board arguing the clubhouse facility is a common area and should have an assessment of $1.00 pursuant section 10-35 of the Property Tax Code. (35 ILCS 200/10-35). Section 10-35(a) provides:

> Residential property which is a part of a development, but which is individually owned and ownership of which includes the right, by easement, covenant, deed or other interest in property, to the use of any common area for recreational or similar residential purposes shall be assessed at a value which includes the proportional share of the value of that common area or areas.
>
> Property is used as a "common area or areas" under this Section if it is a lot, parcel, or area, the beneficial use and enjoyment of which is reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development.
>
> The common area or areas which are used for recreational or similar residential purposes and which are assessed to a separate owner and are located on separately identified parcels, shall be listed for assessment purposes at $1 per year. (35 ILCS 200/10-35(a)).

[1] Decision on Administrative Review-Appellate Court of Illinois, Second District, Case No. 05-1235, status pending.

The appellant's counsel argued the subject's clubhouse facility is a common area for the use and enjoyment of the appurtenant property owners of the Tanglewood Hills residential community. Therefore, the appellant argued the subject property meets the elements outlined in section 10-35 of the Property Tax Code. (35 ILCS 200/10-35(a)). In further support of this argument, the appellant submitted Exhibit A, Declarations of Covenants and Restrictions for Tanglewood Hills. Pages 17 and 18 of the Declaration identifies Article VIII, Tanglewood Hills Club, which provides in pertinent part:

Section 1. Tanglewood Hills Club Membership.

(a) Every person or entity who is a record owner of a lot in Tanglewood Hills shall be a resident member of Tanglewood Hills Club. All members, resident or annual, shall be subject to such rules and regulations relating to the use and operation of the clubhouse, grounds, and facilities as may be established from time to time by the Board of Directors. . .

(b) Each fiscal year the Board of Directors shall determine whether a sufficient number of residential memberships will exist to satisfy the estimated budget of the Club for that fiscal year. . . The total membership, equity and annual, shall not exceed 550.

Section 2. Resident Membership.

(a) The privileges of a resident membership are reserved to those persons or entities who own and occupy a single family home in Tanglewood Hills. The number of resident members of the club shall not exceed 500. . .

Section 3. Annual Membership.

(a) Annual Memberships are for one year. Memberships may only be acquired through and from the Tanglewood Hills Club, or Oliver-Hoffman Corporation, as defined herein. The Tanglewood Hills Club may offer annual memberships for such amounts and on such terms as the Board of Directors establishes from time to time . . . The total number of both residential and annual memberships shall not exceed 550.

(b) Upon application to the Board, a person over 25 years of age may seek annual membership in the Tanglewood Hills Club. This member, his/her spouse and single unmarried children under the age of 25 years residing in a member's home shall have, subject to Tanglewood Hills Club rules and Bylaws, all the rights and privileges afforded to Tanglewood Hills Club, however, this membership shall carry no ownership rights, no voting privileges, no proprietary nor property interests in the assets of Tanglewood Hills Club and shall terminate one year from the date of acceptance, unless sooner terminated. . . Annual members shall be responsible for all of the charges, costs, and damages incurred by his/her family members and guests.

(c) (Not Applicable)

(d) Annual memberships have no right to renewal. Annual memberships completely terminate on May 31st of each year regardless of when they begin. Annual dues of Annual memberships shall be fixed from time to time by the Board of Directors.

(e) Annual memberships shall not be issued to any owner of a single-family home in the Tanglewood Hills subdivision.

Section 4. Total Memberships. When the combined total of resident memberships and annual memberships is 550, no further annual memberships shall be issued until such combined total is less than 550.

Based on the evidence presented, the appellant requested a $1.00 assessment for the clubhouse and its underlying land footprint, with a farmland assessment of $7,128 for the remaining land areas as detailed on the board of review's final decision.

Under questioning from the board of review, the appellant's counsel indicated the homeowner's association sells a limited number of annual memberships to use the Tanglewood Hills Club. These persons do not live or own lots within the Tanglewood Hills development. The appellant's counsel indicated the revenue generated is used for maintenance and to defray the associated costs of lot owning members. The clubhouse also contains a snack bar, which also generates revenue to defray costs of the property owners. Counsel also indicated swimming lessons are available for both lot owning and annual members for a fee. The Hearing Officer also questioned counsel regarding his interpretation of the section 10-35(a) of the Property Tax Code, specifically the language that states "the beneficial use and enjoyment of which is reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development". (35 ILCS 200/10-35(a)).

The board of review presented its "Board of Review Notes on Appeal" wherein the subject's final assessment of $375,266 was disclosed. The board of review argued the issue in the appeal is the correct interpretation of section 10-35 of the Property Tax Code and whether the board of review correctly applied the statute to the subject property. The board of review argued the statute refers to common areas as those areas used for the exclusive use for property owners of that planned residential development.

In addition, the board of review argued the subject parcel has not been deeded to the Tanglewood Hills Homeowners Association, but the property was platted and remains under the ownership of Oliver-Hoffman Corporation, the developer as well as the owner and operator of the clubhouse facility. As of the assessment date, the subject parcel was not deeded to Tanglewood Hills. The board of review also argued the clubhouse has not been assigned its own parcel number and is situated on a 60.23-acre parcel. Finally, the board of review noted the building permit for the subject property was for a commercial building, which is not a residential use. As a result, the board of review argued the subject property at issue does not meet the statutory requirements

outlined in section 10-35 of the Property Tax Code (35 ILCS 200/10-35), much less the intent and spirit of the law. Therefore, the subject property was assessed at its estimated market value. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant's counsel argued the governing statutes do not require title of the property to be held by the homeowners association. Counsel argued the statute requires the property to be residential, the ownership of which includes the right by easement, covenant, deed, or other interest in the property to the use of any common area for similar residential purposes. The appellant's counsel argued the subject property is controlled by the covenants of the homeowners association, which requires the subject property to be used as a recreational facility for the homeowners association.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds no reduction in the subject's assessment is warranted. The appellant argued Tanglewood Hills Club containing a clubhouse facility is a common area as defined under section 10-35 of the Property Tax Code. (35 ILCS 200/10-35). Thus, the appellant requested the subject's clubhouse facility and land footprint be assessed for $1.00 as provided by section 10-35(a) of the Property Tax Code. (35 ILCS 200/10-35(a)).

Section 10-35(a) of the Property Tax Code provides:

> Residential property which is a part of a development, but which is individually owned and ownership of which includes the right, by easement, covenant, deed or other interest in property, to the use of any common area for recreational or similar residential purposes shall be assessed at a value which includes the proportional share of the value of that common area or areas.
>
> Property is used as a "common area or areas" under this Section if it is a lot, parcel, or area, the beneficial use and enjoyment of **which is reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development**. (Emphasis Added)
>
> The common area or areas which are used for recreational or similar residential purposes and which are assessed to a separate owner and are located on separately identified parcels, shall be listed for assessment purposes at $1 per year. (35 ILCS 200/10-35(a)).

The Property Tax Appeal Board finds the Tanglewood Hills Club and the associated clubhouse facility are not reserved in whole for individual property owners within the Tanglewood Hills residential development. Therefore, the Board finds the subject's

clubhouse facility is not common area reserved in whole for members of the association and is not entitled to a $1.00 assessment as provided under section 10-35(a) of the Property Tax Code. (35 ILCS 200/10-35(a)).

After reviewing the declaration of covenants and restrictions for Tanglewood Hills (Appellant's Exhibit A), the Board finds the parcel in this appeal (12-20-300-030) is not part of the Tanglewood Hills Development Tract. (See Article I, Section 1, (page 1) and Exhibit A within the declaration of covenants and restrictions for Tanglewood Hills (page 31)). The Board further finds Article VIII, Section 3 of the declaration of covenants and restrictions provides for annual memberships to the Tanglewood Hills Club for persons who are not property owners in the Tanglewood Hills subdivision. Upon approval by Tanglewood Hills Club or Oliver-Hoffman Corporation, annual memberships are sold to use Tanglewood Hills Club for persons whom do not reside or own lots within the Tanglewood Hills residential community. The Board finds since the Tanglewood Hills Club is open to the public by membership without being a property owner within the Tanglewood Hills residential community, the property in question of this appeal is not reserved in whole for the appurtenant property owners of Tanglewood Hills residential community.

Furthermore, counsel readily admitted annual memberships, swimming lessons, and the snack bar generate revenue for the homeowners association to offset expenses. The Board finds these activities are revenue generating commercial enterprises that are not reserved in whole for a recreational or residential use. In Lake Point Tower Garage Association v. Property Tax Appeal Board, 346 Ill.App.3d 389 (1st Dist. 2004), the court stated it is the "character of the property in question, not the activity performed at any given time" that determines if a property is a common area and to be assessed at $1.00. Furthermore, the court held in that case the facts demonstrate Standard Parking was operating as a commercial parking business. A commercial parking business certainly does not fall within the ambit of "recreational or similar residential purposes." The Board finds this language analogous in this appeal. Although Tanglewood Hills Club or Oliver-Hoffman Corporation sold annual memberships to persons who do not reside within Tanglewood Hills subdivision for "recreational" purposes, the revenue generating activities are commercial in character, which is not an exclusive residential use.

Section 10-35 states that a common area is a "lot, parcel or area, the beneficial use and enjoyment of which is reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development." (35 ILCS/200-10-35(a)). The Board further finds this section of the Code does not provide for a proportional use in the application of the statute, but clearly states "reserved in whole". Lastly, the Board finds the appellant did not dispute or offer any alternative market value to refute the subject's estimated market value as reflected by its assessment.

Based on this analysis of the record, the Property Tax Appeal Board finds the subject property is not entitled to a common area assessment of $1 as provided by section 10-35 of the Property Tax Code. (35 ILCS 200/10-35). As a result, the Board finds the subject's assessment as established by the board of review is correct. Therefore, no reduction in the subject's assessment is warranted.

APPELLANT:	**GC Properties, LLC**
DOCKET NUMBER:	**04-00007.001-C-2**
DATE DECIDED:	**July 19, 2005**
COUNTY:	**Vermilion**
RESULT:	**No Change**

The subject property consists of a 5.386-acre parcel improved with a one-story distribution warehouse that contains 86,000 square feet of building area. The warehouse was constructed in stages in 1981 and 1987. The property is located in Danville, Vermilion County.

The appellant submitted evidence in support of the contention that the market value of the subject property was not accurately reflected in its assessed valuation. In support of this argument the appellant submitted a narrative appraisal estimating the subject property had a market value of $1,720,000 as of January 1, 2003.

Also submitted with the petition was a copy of a letter dated November 14, 2004, from the Clerk of the Vermilion County Board of Review to the appellant's attorney. In the letter the clerk stated that the board of review had determined that the complaint before it was void. The letter indicated that the board of review complaint was not completely and thoroughly filled out according to instructions. The letter averred that Rule #5 states that the complaint must be signed by the owner or attorney for the owner.

The board of review filed a motion to dismiss the appeal contending the Property Tax Appeal Board lacks jurisdiction. The board of review asserted that the appellant filed an assessment complaint with the board of review for 2004 and assigned number 21-00384. Pursuant to Rule 2 of the Vermilion County Board of Review Rules and Regulations, the board of review notified the appellant on September 23, 2004, of its proposed decision. Subsequently the appellant requested a hearing before the board of review in accordance with Rules 3 and 4 of the Vermilion County Board of Review Rules and Regulations. On November 5, 2004, the appellant's complaint was called for hearing with an attorney appearing for the owner. Upon reviewing the complaint prior to conducting the hearing, the board of review determined that an attorney as required by Rules 1 and 5 of the Vermilion County Board of Review Rules and Regulations did not sign the complaint. Based on these circumstances the board of review refused to proceed with the hearing. By letter dated November 14, 2004, the Clerk of the Vermilion County Board of Review, informed the attorney that appeared before the board of review of its determination that the complaint before the board of review was void due to non-compliance with Rules 1 and 5 of the Vermilion County Board of Review Rules and Regulations. The board of review asserts that these rules were adopted pursuant to section 9-5 of the Property Tax Code (35 ILCS 200/9-5). The board of review contends that it made no final written decision on the taxpayer's complaint

conferring jurisdiction on the Property Tax Appeal Board pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160). A copy of the Vermilion County Board of Review Rules and Regulations was attached to the Motion to Dismiss as Exhibit A.

In response to the motion to dismiss, the appellant asserts that it timely filed the assessment complaint with the board of review with a letter signed by the taxpayer authorizing the attorney's law firm to act as its attorney. A copy of the assessment complaint and letter of authorization was attached as Exhibit A. Although the complaint contained the initials of the counselor it had no signature thereon. The appellant argued that its rights of due process and equal protection were violated by the refusal to have an opportunity to be heard on the assessment complaint. The appellant also argued that the board of review form was defective in that it did not have a designated signature line.

The appellant further contends that the board of review's rule exceeds its authority and violates section 16-55 of the Property Tax Code that only requires in counties of less than 3,000,000 inhabitants that:

> All complaints of errors in assessments of property shall be in writing, and shall be filed by the complaining party with the board of review, in duplicate. (35 ILCS 200/16-55).

The appellant contends this provision does not require a signature on the complaint form as does a similar provision for complaints filed in counties of more than 3,000,000.

The appellant also argued the board of review issued a decision on September 23, 2004, wherein the board of review did not change the assessment of the subject property. The appellant contends this decision together with the board of review's scheduling a hearing and ultimately issuing a letter on November 14, 2004, indicating that the assessment complaint was void is a final decision that confers jurisdiction on the Property Tax Appeal Board.

After reviewing the record and considering the evidence filed by the parties, the Property Tax Appeal Board finds that it does not have jurisdiction over the appeal.

The Property Tax Appeal Board finds that section 9-5 of the Property Tax Code grants the board of review the authority to promulgate rules relating to its duties. Section 9-5 of the Code states in part that:

> Each county assessor, board of appeals, and board of review shall make and publish reasonable rules for the guidance of persons doing business with them and for the orderly dispatch of business. . . . (35 ILCS 200/9-5)

Pursuant to this authority the Vermilion County Board of Review Rules and Regulations provide in part as follows:

> Rule 1. Assessment Complaints. Complaints concerning 2004 property assessments must be filed with the Board of Review no later than August 10, 2004. Complaints must be filed, in duplicate, on forms approved by the Board of Review, and must be completely and thoroughly filled out according to instructions. . .
>
> Complaints must be signed by the owner(s) entitled to appear before the Board of Review, on his or her own behalf, or by an attorney at law authorized to practice in the State of Illinois. (See rule 5). . . .
>
> Rule 5. Appearance. The owners(s) may appear and be heard on his or her own behalf, but may not represent others unless he or she is an attorney at law authorized to practice in the State of Illinois. A Corporation, partnership, trust, association, or other legal entity other than the owner(s), shall appear and be heard only by an attorney at law authorized to practice in the State of Illinois. Any complaint or document required to be signed, shall be signed by a person authorized by this rule to appear and be heard by the Board of Review. Any document in violation of this rule shall be rejected by the Board of Review and filing of such a document shall be considered void and of no effect.

Section 16-55 of the Property Tax Code provides in part that:

> On written complaint that any property is overassessed or underassessed, the board of review shall review the assessment, and correct it, as appears to be just. . . . (35 ILCS 200/16-55).

Section 12-50 of the Property Tax Code (35 ILCS 200/12-50) requires a mailed notice to the taxpayer if the board of review action results in an increase, decrease or no change in the assessment. The notice is also to inform the taxpayer of the write to appeal the decision to the Property Tax Appeal Board within 30 days of after the notice is mailed.

In further delineation of the assessment appeal procedural process, section 16-160 of the Property Tax Code provides in part that:

> [F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review . . . as such decision pertains to the assessment of his or her property for taxation purposes . . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the

> decision of the board of review . . . appeal the decision to the Property Tax Appeal Board for review. . . .(35 ILCS 200/16-160).

Generally, based on section 16-160 of the Property Tax Code, as a prerequisite for the Property Tax Appeal Board to acquire jurisdiction, there must be a decision from the board of review pertaining to the assessment of the property in question. The taxpayer must then file an appeal with the Property Tax Appeal Board within 30 days of that board of review decision. See Spiel v. Property Tax Appeal Board, 309 Ill.App.3d 373, 722 N.E.2d 306 (2nd Dist. 1999).

The non-refuted assertion in this appeal is that an attorney on behalf of the corporation did not sign the board of review assessment complaint. The failure to sign the assessment complaint is in violation of Rule 1 and Rule 5 of the Vermilion County Board of Review Rules and Regulations. The record further disclosed the board of review subsequently informed the appellant by letter dated November 14, 2004, that the 2004 assessment complaint was void.

After determining the appellant's assessment complaint was void, the record indicates the board of review refused to further act on the complaint and issued no other decision relative to determining or pertaining to the correct assessment of the subject property for 2004.

The facts in this appeal indicate the Vermilion County Board of Review considered the taxpayer's 2004 complaint void and in violation of its rules because the complaint was not signed by the owner or an attorney at law authorized to practice in the State of Illinois. The board of review took no further action on the appellant's complaint once it determined that it was not fully completed.

The taxpayer cites no authority that allows a taxpayer to circumvent a board of review rule promulgated pursuant to section 9-5 of the Property Tax Code requiring the signature on the complaint form of an Illinois licensed attorney appearing in a representative capacity on behalf of a corporation.

The Board finds that there was no written notice of a final decision issued in response to an assessment complaint filed by the taxpayer in accordance with section 12-50 of the Property Tax Code (35 ILCS 200/12-50) pertaining to the assessment of the subject property, which would in turn provide a basis for conferring jurisdiction on the Property Tax Appeal Board under section 16-160 of the Property Tax Code (35 ILCS 200/16-160). Therefore, the Property Tax Appeal Board grants the board of review's motion and the appeal is dismissed based on a lack of jurisdiction.

APPELLANT: The Lurie Company
DOCKET NUMBER: 99-25370-C-3
DATE DECIDED: February 25, 2005
COUNTY: Cook
RESULT: Reduced Assessment

The subject property consists of a 71-year-old, 23-story, multi-tenant, commercial office building, located in the Chicago Loop Central Business District on LaSalle Street. The improvement contains approximately 700,000 square feet of gross building area of which 616,429 square feet is rentable area. The subject has three basements of which one basement is rentable area. The subject is situated on a parcel of land containing approximately 35,000 square feet.

The appellant, through its attorney, appeared before the PTAB and argued that the market value of the subject was not accurately reflected in its assessed value.

As a preliminary matter, the board made a motion to enter evidence not in the record. Specifically, the board argued that appraisals not in evidence should be allowed into the record in the present case. These appraisals were part of the evidence in a year 2000 case with the PTAB for the same subject property. The year 2000 represents the first year of a new triennial. However, the board argued that since these appraisals were not in existence at the time of the closing of evidence in the instant matter that they should be allowed in as evidence at the time of the hearing. The appellant argued that the new evidence submitted at the time of the hearing was not timely, and, as such, should not be allowed.

The PTAB denied the board's motion to admit the appraisals in the 2000 case into the present case since the time to file evidence had long since been closed and that such evidence would unfairly prejudice the appellant's case. Moreover, such evidence may constitute rebuttal evidence specifically prohibited by the *Official Rules of the Property Tax Appeal Board, Section 1910.66 (b)* wherein the rule states "Rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. A party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence." *86 Ill. Adm. Code 1910.66(b).* Accordingly, the board's motion was denied.

Opening statements followed. The appellant's attorney, in his opening statement, requested that the PTAB find the subject's market value for the year 1999 as $14,500,000; this is the same PTAB market value finding as the years 1997 and 1998, all of which are in the 1997 triennial assessment period.

In response, the board's attorney requested that the current board of review's 1999 assessment figure of $10,162,639, reflecting a market value of approximately $26,700,000 be upheld. The board's attorney argued that the subject had undergone a major renovation thereby increasing its value in line with the current assessment.

In support of the appellant's argument, two appraisals were entered into evidence along with the supporting testimony of one of the appraisers. The appellant's first witness was the appellant's appraiser, the author of one of the appraisal reports entered into evidence. The witness testified that he prepared an appraisal report on the subject. The witness holds the designation of Member of the Appraisal Institute (MAI) and has a Certified General Real Estate Appraiser's license in the State of Illinois. He testified that he has prepared appraisals for over 25 years and completed approximately 100 full narrative appraisals for properties similar to the subject, two of which he specifically mentioned on LaSalle Street, which were also prepared for the appellant, The Lurie Company. The witness was offered as an expert in appraisal theory and practice without objection from the board of review. The PTAB accepted the witness' qualifications as an expert in the field of real estate appraisal.

The witness testified that he had prepared a complete, self-contained appraisal report on the subject property with an effective date of January 1, 1997. He had estimated the market value of the subject to be $14,500,000 as of the 1997 assessment date. At the time of his inspection the appraiser stated that the building was 69-years-old. The appraiser classified the property as a Class C property, which is reflective of its age. For purposes of his report, the appraiser assumed the building to be in average condition. However, since its age was 69 years, it suffered from an inefficient design consisting of an open light courtyard in the center of the building in sharp contrast to a more modern designed building wherein the center consists of elevators, stairways and restrooms. The subject's original design anticipates higher than average expenses and maintenance due to inefficiency and wasted space.

At the time of his report, the vacancy rates for Class C properties were approximately 28%. The witness testified that he personally inspected the interior and exterior of the subject. At the time of his inspection, August 1997, the building was undergoing major renovation and was completely vacant. However, the witness appraised the property at market rental rates and market levels of occupancy using a blended rate for Class A, B and C properties of 18%.

The appraiser testified that he utilized all three approaches to value in his report and that the highest and best use of the subject, as if improved, is its current use as an office building since the existing improvements still gave value to the site.

In his first approach, the cost approach, the appraiser initially valued the land using five comparable land sales. These sales had occurred between July 1995 and April 1997 and ranged in size from 2,900 to 43,000 square feet. Unit prices ranged from $94 to $266 per

square foot. After making adjustments between the sales and the subject's land, the witness testified that he assigned a unit value of $325 per square foot to the subject's land for a final land value of $11,400,000, rounded.

In valuing the improvements, the witness estimated the reproduction cost new (RCN) to be $65,194,047. This figure was based upon the E. H. Boeckh Automated Cost Estimator and a survey of local cost indexes. He stated that the subject property had an effective age of 57 years and an estimated life of 60 years. The total amount of depreciation from all sources (physical, functional and external) was estimated at 95% or $61,934,345. The depreciated value of the subject was $3,259,702. Adding the value of the land resulted in an estimated final market value of the subject, under the cost approach, of $14,700,000, rounded.

In his estimate of market value using the income approach, the appraiser analyzed 22 rental properties to estimate the subject's market rent. The comparables had rents that ranged from $12.00 to $20.56 gross per square foot. The appraiser selected a unit rental of $15.50 gross per square foot for the subject property. When multiplied by the subject's rentable area of 616,429 square feet, the appraiser arrived at a potential gross income of $9,554,650. Although the property was entirely vacant at the time of his appraisal the appraiser, nevertheless, assigned a vacancy and collection loss of 12%. This figure was low in comparison to the previously stated average for Class C buildings of 28% vacancy, not including collection losses.

The witness opined operating expenses for the subject of $5,865,000 based upon an analysis of the Building Owners and Managers Association (BOMA) studies and utilizing the subject's own operating history and other similar buildings' operating histories. Net operating income (NOI) before real estate taxes for the subject were estimated at $2,548,092.

In determining a capitalization (CAP) rate the witness undertook the band of investment technique. This technique is based upon mortgage interest rates and loan-to-value figures. The appraiser used a 70% mortgage amount (loan-to-value) and a 9.5% interest rate amortized over 30 years with a 5-10 year call provision. The appraiser's analysis stated that an informed investor would require a 10% return on his equity investment of 30% of the property's value (market value less mortgage amount). Using the band of investment approach resulted in a CAP rate of 10%. After adjustment, the appraiser opined a figure of 10.25%, rounded. In order to determine a total CAP rate, the witness then added a tax load, or effective tax rate, of 7.73%. This figure was derived by multiplying the level of assessment of 38% (see the Cook County Real Property Classification Ordinance for Class 5a property) by the state equalization factor in 1997 of 2.1517 by the local tax rate of 9.453%. The total CAP rate was determined to be 17.98%. When applied to the NOI of $2,548,092 a value of $14,171,813 was determined. The final market value using the income approach was $14,200,000, rounded.

In his appraisal, the witness also utilized a discounted cash flow analysis to project the subject's value through the income approach. The appraisal reflects that PRO-JECT software was used in this analysis to project figures through the course of the analysis. The appraiser used this approach to determine value because at the time of his valuation, January 1, 1997, the subject was entirely vacant. By projecting an expected cash flow the appraiser was able to determine a value as if the building had tenants and, of course, tenant income.

A single tenant had agreed to lease 372,747 square feet of the subject building and will be occupying the basement, sub-basement, half of the first floor and floors 2-12 in their entirety. That tenant was, at that time of the appraisal date, located in another building owned by The Lurie Company, 33 North LaSalle St. Estimated time of occupancy for this 372,747 square feet of space was to be accomplished in two phases: March 1998 and no later than December 1999 for areas of 235,636 square feet and 137,111 square feet, as of the respective dates. Using an annual rental rate of $25.00 per rentable square foot, gross, with annual increases the appraiser was able to estimate a cash flow for the subject property. The appraiser estimated a lease buyout of $8,000,000 amortized at 10.25% over 20 years or $940,000, annually.

As of October 1997 there were no other signed leases in place on the subject property. The appraiser took into consideration the anticipated $24,000,000 renovation costs on the subject. Half this cost was allocated to the year 1997 with the other half divided equally between 1998 and 1999. An estimated 38% of the building will be leased by March 1998 and an estimated 60% of the building by December 1999. Full occupancy is expected by mid-year 2000.

By analyzing the rental market in the subject's area the appraiser used a figure of $25.00 per rentable square foot after renovation. A three-year history of the subject and the BOMA studies were used to estimate operating expenses. Vacancy rates were projected over a ten-year period. The market rent growth rate was estimated at 1.5% and the expense growth rate was estimated at 1.5% and real estate taxes were expensed by adding the effective tax rate to the discount rate and the overall CAP rate. The discount rate is the rate used to convert future payments into a net present value. Korpacz Real Estate Investor Survey estimated discount rates for the Chicago office market from 9.5% to 13% as of the second quarter of 1997 and the appraiser selected a rate of 10.25% for the subject property. This figure was based upon an analysis of the office building market rates and rates of return on various types of cash investments taken from the publication Appraiser News in Brief.

The appraiser next selected a terminal capitalization rate (TCAP). The Dictionary of Real Estate Appraisal defines a TCAP as "an overall capitalization rate used to estimate the resale price of a property; usually based on the anticipated stabilized income for the year beyond the holding period." See the Dictionary of Real Estate Appraisal 3d edition

at page 306; see also appellant's appraisal at page 88. This TCAP rate is applied to a net income figure beyond the holding year; once the income is capitalized using the TCAP rate an estimate of value can be derived and discounted to its net present value. Based upon the Korpacz report, the TCAP rate was estimated at 10.5% for the subject property.

For purposes of this analysis, the subject was anticipated to have an occupancy rate of 40.8% for the year 1999 or approximately 235,636 square feet as of the lien date in question, January 1, 1999. For the previous year 1998 the subject was anticipated to have occupancy rates of 31.85%. On the other hand the subject was estimated to have an occupancy rate of 94.34% for the year 2000. Gross rental income allocated using this analysis for year 1999 was $6,391,651 and a total income, after vacancy and collection losses, of $5,885,470. Years 1998 and 2000 total incomes were projected at $4,521,332 and $15,115,934, respectively. NOI was estimated at $3,862,745 for year 1999; NOI was estimated for years 1998 and 2000 at $2,857,838 and $10,824,278, respectively. Subtracting commissions and bank renovation costs yields a *negative* cash flow for the year 1999 of $11,532,661. The subject only begins to show a positive cash flow in the subsequent year, 2000, of $5,597,197.

The conclusions of the subject's value change from year to year based upon this analysis due to occupancy, rental rates and lease expirations. Also, the property's value is expected to increase over time. Based upon all these factors, the present value of the leased fee in the subject, with a ten-year holding period, is $14,219,906. The appraiser therefore opined a value for the subject of $14,500,000, rounded, as of January 1, 1997.

The witness also testified as to his estimate of value for the subject using the sales comparison approach. The witness testified that he utilized eight suggested sales comparables. Each was a Class "C" office building and is located within one mile of the subject; three of the comparables are located on LaSalle Street within three blocks of the subject. These properties were sold between March 1994 and March 1997, for prices that ranged from $2,510,000 to $12,750,000, or from $15.41 to $44.64 per square foot of net rentable building area, including land. Seven of the eight sales ranged from $15.41 to $29.51 per square foot of net rentable building area, including land. The suggested comparable properties improvements ranged in age from 32 to 103 years while seven of the eight ranged in age from 66 years to 103 years. The comparables sizes ranged from 93,788 to 827,494 square feet of net rentable area and the land to building ratios ranged from 0.05:1 to 0.08:1. The subject contains 616,429 square feet of net rentable area and a land to building ratio of 0.06:1.

The suggested comparables ranged in occupancy rates at the time of sale from 20% to 88%. The subject was 100% vacant as of the appraisal date of January 1, 1997 due to the loss of its two anchor tenants.

The appraiser testified that he made adjustments to the sales comparable properties based upon various differences from these properties when compared to the subject. Those differences included location, building size and design, age and occupancy factors. The appellant's appraiser valued the subject at $24.00 per square foot of net rentable building area, including land, and reached a value estimate of $14,794,296 via the sales comparison approach. This figure was rounded to $14,800,000.

The witness reconciled the three approaches to value by giving primary consideration to the income approach. Least amount of consideration was given the cost approach since it is an older, Class "C" building. The sales comparison was given secondary consideration. The witness stated that the income approach was given the most consideration since a typical buyer would be interested in the income producing potential of this type of property. He estimated the subject to have a market value of $14,500,000 as of January 1, 1997.

The witness was then cross-examined by one of the board's attorneys. During this cross-examination, the witness was questioned about the timing of the renovation project in the subject property. The witness recollected that the project began in early 1997 but was not able to determine when the project was completed. However, as previously stated, the appraiser was informed of a figure of $24 million to complete the renovation. The entire building was being renovated and tenants were scheduled to move in starting in 1998, the witness testified. However, as the witness elaborated, it was not possible for him to opine a value for the subject as of January 1, 1999 without seeing the property during that year to determine what renovations had been done as part of the project. The witness did, however, take into account the property's renovation in his discounted cash flow analysis.

As the cross-exam continued the appraiser testified that if he were appraising the property as of January 1, 1999 the subject could have had a different effective age (as utilized in the cost approach) had the property's renovation been completed. That change would be related to a change in a factor of depreciation. However, other factors of depreciation would not change. For example, functional depreciation would not necessarily change since the building's design would remain the same, outdated.

Continuing the witness testified that rents could have changed as of the year 1999 and that could have an effect on the subject's market value via the income approach. Nevertheless, the witness stated that the vacancy rate of 12% as used in his report was as low as possible between the years 1997-1999 since Class "C" properties, such as the subject, were actually experiencing up to 28% vacancy rates. Moreover, the expenses on the subject may have changed, or even lowered, due to an increase in efficiency as part of the renovation project. However, this was considered speculation by the witness.

Turning to the sales comparison approach, the witness was questioned on his use of suggested comparables. A number of facts were questioned and considered, including

ages of comparables, the dates of sales of the comparables, whether or not renovations were done to the comparables and whether or not the comparables were fully or partially renovated. The witness testified that the comparables were adjusted based upon these factors, including one comparable that was a court ordered sale where back taxes were owed. Adjustments were made accordingly. The witness' answers to the questions posed by the board of review were complete, confident and concise.

On re-direct examination by the appellant's attorney, the witness testified that it is possible to spend $24,000,000 on a renovation and not significantly increase the property's value. At this point, the witness was excused.

Although originally scheduled to testify, the author of the appellant's second appraisal was not called as a witness and did not testify. The report indicated that the second appraiser also holds the MAI designation from the Appraisal Institute. His appraisal report was entered into evidence.

Similar to the appraisal by the first appraiser, the appellant's second appraiser developed three approaches in estimating the subject's market value. He inspected the property in December 1996. The appraisal report's letter of transmittal dated August 29, 1997 opined a market value of $12,500,000 for the subject property as of the January 1, 1997. The second appraiser utilized the three approaches to value in estimating the subject's market value as of January 1, 1997. The value estimates under each of the approaches to value were as follows: cost approach, $11,340,000; sales comparison approach, $12,590,000; and the income approach, $12,780,000.

After reconciling all three approaches to value, the final market value for the subject was determined to be $12,500,000 as of January 1, 1997. The appellant originally expected to call the second appraiser as a witness, but did not. At this time, the appellant rested its case-in-chief.

The board of review presented its "Board of Review Notes on Appeal." The board of review's assessed value for the subject is $10,162,639, which translates into a market value of $26,743,787 using the Cook County Real Property Classification Ordinance level of 38% for Class 5a property. Also, the board submitted an appraisal report disclosing a final market value for the subject of $32,000,000 as of January 1, 1997.

The board submitted the Cook County Real Property Assessment Classification Ordinance. Said ordinance provides an assessment level of 38% for Class 5a property. The board also submitted case law, In re: Application of Rosewell v. U.S. Steel Corp., 106 Ill. 2d 311, 478 N.E.2d 343 (1985) and In re: Application of County Treasurer v. Twin Manors West of Morton Grove Condominium Association, 175 Ill. App. 3d 564, 529 N.E.2d 1104 (1st Dist. 1988). No brief or any explanation as to each case's relevance to the present appeal was submitted.

Also, the board submitted two reports. The first report is entitled The Illinois Ratio Study for Commercial and Industrial Properties: Review and Recommendations, by Robert J. Gloudemans and Alan S. Dornfest [hereinafter, the "Dornfest report"]. The "Dornfest report" reviewed and evaluated the procedures and methodology used by the Illinois Department of Revenue in its annual sales ratio studies. The second report is entitled IAAO Technical Assistance Project-Review of the Assessment/Sales Ratio Study Program for the Illinois Department of Revenue, by Roland Ehm [hereinafter, the "IAAO report"]. The purpose of the "IAAO report" was to ascertain compliance with IAAO standards and offer recommendations for improvement.

A C.I.A.O authored the appraisal report submitted by the board of review. The author of the board's appraisal report was not tendered as a witness to provide testimony and be cross-examined about her report. Nevertheless, to fully understand the board of review's argument and the rebuttal testimony offered by the appellant, the PTAB finds it necessary to summarize the board's appraisal.

The appraisal report references the subject property as a 23-story, masonry, commercial office building situated on a land parcel containing 35,010 square feet. The report states that the improvement contains approximately 700,100 square feet of gross building area and a net rentable area of 524,649 square feet. The board's report states that the author had not personally inspected the subject; rather, the subject was inspected by a member of the Commercial/Industrial field department. The report listed the subject as in average condition, with an effective age of 55 years, a total economic life of 70 years and a remaining economic life of 15 years. The highest and best use is as presently used.

The board's report also developed the three approaches to value for the subject. The first method employed was the cost approach. Ten suggested comparable land sales were listed while eight were used on the appraiser's grid analysis. The two land sales not used were both priced at $1,500,000. Of the eight land sales utilized, the sales prices ranged from $2,586,300 to $46,770,000, or from $106.50 to $972.62 per square foot. The land sizes ranged from 8,424 to 104,304 square feet and the sales occurred from May 1996 to April 1998. Of the land sales used, the average sales price was $342.08. However, land sale #2 at $972.62 per square foot was considered to be the most comparable. The report states a value of $600 per square foot is a reasonable indicator of value for the subject's land. When this figure is multiplied by the subject's land area, the total land value is $21,006,000.

The next step in the cost approach estimated the replacement cost new of the subject prior to depreciation. Using the Marshall & Swift Valuation Manual the report used a base cost new of the subject of $67,905,249, or $108.16 per square foot of basic structure cost while attributing $31.52 per square foot of basement area. The subject property was allocated an effective age of 55 years and a total economic life of 70 years; therefore, $53,645,147 is attributed to physical depreciation, resulting in a depreciated value of $14,260,102. The report did not account for any other types of depreciation. When the

depreciated cost of the improvement is added to the land value of $21,006,000 the subject's estimated value using the cost approach is $35,000,000, rounded.

Turning to the income approach, the report used ten rental comparables to estimate market rent. Their sizes ranged from 152,725 to 1,202,740 square feet and had net rents ranging from $8.30 to $32.25 per square foot. The report stated that the average rental rate was $17.47 per square foot and the median rental rate was $16.33 per square foot. Based upon this information, a rental value of $17.00 per square foot was used for the subject property. Vacancy and collection losses were estimated at 10%.

Based on a net rentable area of 524,649 square feet for the subject, the potential gross income was estimated at $8,919,033; after subtracting for vacancy and collection loss an effective gross income of $8,027,130 was given for the subject. The subject's operating expenses of 30% were estimated but no analysis was provided to support this figure. These expenses were for management, salaries, insurance, utilities, supplies, materials, miscellaneous, maintenance, repairs and reserves totaling $2,408,139. Deducting the expenses from the effective gross income resulted in a net operating income (NOI) of $5,618,991.

The third step in the income approach was to estimate a capitalization (CAP) rate. The mortgage equity rate of 10% was added to an effective tax rate of 7.73% for a total CAP rate of 17.73%. After capitalizing the net income of $5,618,991, the estimate of market value for the subject using the income approach was $32,000,000, rounded. Again, there existed no analysis or supporting information on which to base this estimate.

The appraiser also developed an estimate for the subject using the sales comparison approach. The appraiser used nine suggested sales comparables of which four were Class "A" buildings, one was a Class "B" building and four were Class "C" buildings. The properties were sold from July 1995 to March 1998. Prices ranged from $7,500,000 to $129,528,830, or from $34.26 to $95.03 per square foot. The building sizes ranged from 218,290 to 1,363,050 square feet and the land-to-building ratios ranged from 0.04:1 to 0.20:1. At the time of sale the suggested comparables had occupancy rates that ranged from 0% to 77%.

The report states that the improved sales ranged from $34.26 to $95.03 per square foot of net rentable area with an average of $55.82 per net rentable square foot and a median sales price of $52.45 per net rentable square foot. The appraiser opined that improved sale #1 at $95.03 per square foot was the most comparable to the subject; however, no reasoning was provided. After the appraiser's analysis, which was not evident in the report, a figure of $55.00 per square foot of net rentable area was used. The indicated value by the sales comparison approach was $29,000,000, rounded.

The final reconciliation and estimate of value for the subject was $32,000,000 as of January 1, 1997. Based upon this estimate of value, the board requested that the PTAB find in favor of the current assessment of $10,162,639.

The board rested its case after requesting a directed verdict in favor of the current assessment. The motion for a directed verdict was denied.

The appellant tendered a rebuttal witness. This witness was presented to rebut the board of review's appraisal report, and was offered to and accepted by the PTAB as an expert in the field of real estate appraisal. This witness was hired by the appellant's law firm to perform a technical review of the board's appraisal report.

The rebuttal witness' assignment was to examine and perform a review of the information presented by the board's appraiser. The witness' purpose in reviewing the report was to determine if the report made sense and if the report complied with the provisions of the *Uniform Standards of Professional Appraisal Practice* (USPAP) and the *International Association of Assessment Officers* (IAAO).

The witness testified that the report did not meet the standards proscribed by USPAP, although the report certifies that it complies with the USPAP standards. First, he opined, the report failed to mention: the type of appraisal, whether or not it was a complete or limited appraisal, and whether or not it was a self-contained report. The witness testified that this information, which was not provided, is also a requirement of IAAO.

Second, the report was not signed, which is a requirement of USPAP and the Illinois Office of Banks and Real Estate (OBRE), the governmental body that regulates appraisal-licensing practice. Also, above the signature line the appraisal indicates a final value of $3,200,000, not $32,000,000 as reported. Both the value given and the lack of signature may be an oversight; however, the lack of signature allows the author not to be held responsible for the report.

Third, the witness testified as to the weakness of the cost approach used in the board's report. The witness determined that the land sales used in the board's report were questionable and the final value was incorrect. For example in the cases of land sales #1 and #2, as used by the board's appraiser, these land sales would be considered misleading since they are both improved sites; one site was improved with a hotel and the other with a office building. Essentially, this cannot be considered a sale of vacant land. However, the appraiser used land sale #2 as her basis for the land value for the subject of $600 per square foot without any analysis.

Turning to the cost approach of the improvements for the subject, the board's appraiser uses two different figures for the remaining economic life. Further, the appraiser in the board's report determined the subject does not have economic obsolescence because the

building is being rehabbed. However, the witness testified that a Class "C" building intrinsically has obsolescence of this nature due to its very age. While a rehab of the property would correct some items of obsolescence others simply cannot be corrected. The witness testified that this is a shortcoming of the appraisal report.

The location of the subject, the Central Loop Business District, was not discussed in the board's report; nor were Class "C" buildings in the Central Loop Business District discussed. The witness testified that the Class "C" market was actually losing tenants at the time. This fact is evidenced by vacancy rates of 30% to 80% for Class "C" properties. Also, the board's report does not detail the use of the subject and its viability as an investment. This lack of detail is evident in the sales comparison approach and the income approach, the witness testified.

Fourth, the witness went on to testify as to the failure of the income approach to properly determine what the rentals used in this approach represent. That is to say, are the rentals used by the board's appraiser gross rents, average rents for a particular building or rents for specific tenants. Furthermore, the report's broad use of market expenses by merely stating a figure of 30% with literally no supporting information cannot be justified. Similarly, the figure of 10% for vacancy and collection is unsubstantiated. Moreover, the CAP rate used in this approach does not give an adequate explanation as to how it was determined.

Fifth, the sales comparison approach is merely summarized in the report. While the report gives the "COMPS" service (a nationally syndicated sales data reporting service) as the source of the information, there exists no information from which to make an educated determination of each sale and what interest was represented by each sale. For example, were the various sales arm's-length transactions; furthermore, can one determine the motivation of the buyers and sellers in each case. The board's appraiser also uses Class "A" and Class "B" buildings as comparables to the subject, a Class "C" property. The witness testified that this is improper since, of course, Class "A" and "B" properties are much newer and more desirable properties than the subject, a Class "C" property.

The appellant identified three of the source documents, from which the board's appraiser relied upon in her report, as exhibits. These appellant's exhibits 1 through 3 were allowed into evidence over the objection of the board of review. They were used to establish the information presented by the board's appraiser because that person was not present to testify. The first exhibit entailed the "COMPS" printouts for several of the sales utilized by the board's appraiser in the sales comparison approach.

The credibility and the reliability of the board's reporting data for its sales comparison approach were called into question by the rebuttal witness. For example, on the board's appraiser's comparable sale number one, a mortgage was given in excess of sales price without any explanation; a finite negotiated sales price of $129,528,830 was not

explained and the term "private sale" was not explained. For another sale, the "COMPS" service states the listing broker as the seller and the market time for the sale property is not accounted for. On this same comparable sale, the terms include a mortgage assumption of $31,800,000 of which $21,100,000 is cash and $6,700,000 is an operating unit. The term "operating unit" is not explained; and, further, the nature of the sale was not explained. In the same transaction there was an additional seller listed with a 23.35% interest. This, too, was not elaborated upon. Another example of the use by the board's appraiser of a flawed comparable is a property that was 50% vacant at the time of sale. The condition of the suggested comparable and other pertinent facts were not given that would have a bearing on the sales price. The rebuttal witness referenced yet another sale that did not have either a listing or selling broker in the transaction; the witness questioned if this property was ever exposed to the market since no information for market time was provided. Moreover, this suggested comparable is a six-year old property, while the subject is a 71-year-old property thereby calling its comparability into question.

Cross-examination of the rebuttal witness followed. The witness was questioned as to whether or not he had ever appraised the subject property. The witness testified that he had done an appraisal, however, it was for the year 2003. The witness testified that although there had been remodeling done, there was still ongoing work at the time of his inspection, during the year 2003. The witness went on to state that he would still, in spite of the remodeling, classify the subject as a Class "C" building and that it is not possible to convert a Class "C" building into a Class "B" building merely by renovating it. The Class "C" building will still contain its functional obsolescence, which is not possible to remove since it is a design feature of the original structure. The witness further testified that by renovation it might be possible to remain more competitive with other Class C buildings in the rental market. However, renovation alone would not increase the effective rent of the subject in line with a Class "A" or Class "B" property.

When cross-examined about the general market trends in the Central Loop Business District from 1995-1999, the witness stated that there was a number of Class "A" buildings being completed. Testimony indicated that tenants were leaving Class "C" buildings for Class "B" and Class "A" buildings since tenants desired newer and cleaner properties. The board had no other questions for the witness. The witness' answers to the questions posed during cross-examination were confident and complete. The board ended its cross-exam and the witness was excused.

The board of review renewed its motion to admit The Lurie Company filing for the year 2000 PTAB case with its petition for appeal and appraisals on the subject property. That motion was again denied. The PTAB allowed the board to make an offer of proof over the objection of the appellant. The offer of proof presented by the board was that the appellant had appealed the 2000 tax year assessment on the subject property to the PTAB and the appellant's requested a market valuation of $30,000,000. In support

thereof, the board's offer of proof stated that the appellant, in its PTAB filing for the year 2000, had submitted two separate appraisals, each by MAI's. Both concluded a value of $30,000,000 for the year 2000 for the subject property.

At this point, the proceedings were concluded. Written closing statements were granted at the request of the parties. Both parties submitted their written closing statements in a timely fashion and each is outlined below.

The appellant's closing encompassed the following arguments: First, that the subject of the appeal, tax year 1999, is the last year of the triennial assessment period for the City of Chicago and the subject property was not in a reassessment area for the year in question. Because Cook County raised the assessment on the subject property for the year 1999, which is not a reassessment year, the appellant argues that increase is illegal. Second, the appellant argued that it successfully appealed its assessment for the years 1997 and 1998 at the PTAB; in both cases the PTAB found the market value of the subject property was $14,500,000; the appellant argues for the PTAB to find a market value of $14,500,000 for 1999, as well. Third, the appellant presented its first appraiser as a witness at the hearing in its case-in-chief and another appraiser as a rebuttal witness; the board did not present any witnesses. Because of these facts, the appellant argued that it has met its burden of proof and the PTAB should reduce the subject's assessment to $5,510,000, based on a market value finding of $14,500,000.

The board's closing statement presented the following arguments. First, the appellant did not meet its burden of proof because it did not submit market value evidence for the property reflective of its condition as of January 1, 1999. The argument states that the subject's assessment should not be reduced since it underwent substantial renovation that would have been reflected in a 1999 appraisal, which was not provided. Second, the board argued that in support of its request to confirm the present assessment despite it being higher than the assessment based upon market value findings for tax years 1997 and 1998, the PTAB has precedent for previously issuing different market values in the same triennial. The board cites to PTAB docket numbers 98-29272 et. al and 99-28000 et. al; the appellant in these cases was Dayton Hudson and the assessment findings in these cases by the PTAB were $13,110,000 for the year 1998 and $14,060,000 for the year 1999. Therefore, the board requests a similar result for the subject property at issue by confirming its higher assessed value for the year 1999. Using these arguments, the board claims that the appellant did not meet its burden of proof in the present case and a reduction should not be granted.

After hearing the testimony and reviewing the record, the PTAB finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellant contends that the market value of the subject property is not accurately reflected in its assessed valuation. When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. See

National City Bank of Michigan/Illinois v. Property Tax Appeal Board 331 Ill.App.3d 1038 (3rd Dist. 2002) and Winnebago County Board of Review v. Property Tax Appeal Board 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *86 Ill. Admin. Code 1910.65(c).* Having considered the evidence and testimony presented, the Board concludes that the appellant has satisfied this burden and that a reduction is warranted.

In granting a reduction in the subject's assessed value, the PTAB reviewed the record and the testimony before it. Three appraisals were submitted; two by the appellant and one by the board. Testimony was given by two of the appellant's witnesses; one is an author of one of the appellant's appraisals and the second witness is a rebuttal witness attacking the reliability, validity, and credibility of the board's appraisal. The board provided no witnesses to support its position. The appellant's appraisals reached conclusions of value of $12,500,000 for one appraisal and $14,500,000 for the other appraisal. The board's appraiser reached a market value conclusion for the subject property of $32,000,000. Each appraiser's report cited the three approaches to value. The appellant's appraisals gave the greatest weight to the income approach and secondary weight to the sales comparison approach. The cost approach was given the least weight. The appellant's first appraisal gave the greatest weight to the income approach and the testimony by this witness on his income approach was compelling. The methodology of the income approach was particularly sound and detailed in its analysis.

The Board finds that the best evidence of market value in the record is the appraisal and testimony provided by appellant's first appraisal witness. This witness is the only appraisal witness called by the parties who had prepared an appraisal estimating the market value of the subject property. The Board gives no weight to the appellant's appraisal prepared by its second appraiser or to the board of review's appraisal. Neither party was called as witness to give testimony and be cross-examined about their appraisals and final estimates of value. The Board finds that it cannot give any weight to these two appraisals under the circumstances of this appeal where there is no opportunity to conduct a meaningful examination of these witnesses and no opportunity to observe their demeanor while be questioned under oath. Therefore, the PTAB finds that the market value for the subject property as of January 1, 1999 to be $14,500,000.

The cost approach for a building of this age is of limited value. Built in 1928 the building suffers from a number of outdated design features. As a result, functional obsolescence is present due largely to the building's "open light courtyard" setting. This feature of the original design takes away from the potential useable space in the heart of the building. Over the years, later design has trended towards the use of such space for elevators, stairways and restroom. Without this useable space in the subject, the corridors become narrow and the elevators are at the ends of the hallways. Due to the

age of the building and its design, the cost approach is of limited use in analyzing the subject's market value. Replacement cost new is very difficult to determine for such a structure. These facts are discussed thoroughly in the appellant's first appraisal report and testimony.

This witness emphasizes the income approach to value. This is sound analysis since the buyer of the subject property would be a party that is purchasing the property based upon its ability to produce income. That is the purpose of the $24,000,000 renovation. The appellant's objective in spending this amount of money is to attract tenants and maintain rentals in the subject property. Therefore, the best approach determinative of market value of the subject is as an income producing property. The witness' income analysis is complete and concise in its analysis.

Although the subject was totally vacant at the time of the inspection by the appraiser opted to use what he determined to be normal vacancy rates for the subject. Furthermore, the appraiser utilized 22 rental properties in his income approach and fairly and adequately assessed a market rent rate for the subject. Using BOMA the appraiser estimated operating expenses based upon similar buildings. The CAP rate to be applied to the subject was also determined by sound analysis using the band of investment approach and adding a tax load based upon the Cook County Real Property Classification Ordinance, the state equalization factor and the local tax rate. The witness estimated a value for the property using this approach of $14,200,000.

Based upon the fact that the subject was entirely vacant at the time of inspection the witness also used a discounted cash flow analysis to project the subject's market value via the income approach. Using this methodology the appraiser was able to estimate a value for the subject by projecting rental income as the subject began to acquire tenants. As stated previously, the building's income and rental structure would most accurately determine what a ready, willing, and able buyer would pay for the property. Therefore, the income approach is the best judge of the market value of the subject property.

The appraiser's information was based upon tenant information supplied to him. It was detailed, thorough and complete. One tenant would be occupying the property in the time period ranging from March 1998 to December 1999. The appraiser also took into consideration the costs of renovation and spread the $24,000,000 cost over a three-year period of time from 1997 through 1999. It was indicated that the one tenant that would be in place as of January 1, 1999 would occupy 235,636 square feet, or approximately 41% of the building's rentable area. This is a logical conclusion since the property was completely vacant less than two years before this date. Moreover, since the subject is a Class "C" building it would be more difficult for the subject property to attract tenants than if it were a Class "A" or Class "B" building.

Total rental income for year 1999 was determined by the discounted cash flow method using PRO-JECT software as $5,885,470, a slight increase over the 1998 figure of

$4,521,332, which used an estimated occupancy of approximately 32%. This is approximately the same value for the year 1998 and it cannot support the board's conclusion that the value of the property has doubled in one year. Rather, it is not until the year 2000 that the building is expected to experience a noticeable increase in percentage of tenancy and hence, rental income. Also, by this time the costs of renovation would have been absorbed. The estimated income for the year 2000 is $15,115,934 based upon an occupancy figure of 94%. This would lend credence to the board's argument that the property experienced a dramatic increase in value; however, it is not until the year 2000 does this occur and that is the time when the subject property is expected to rise to almost full occupancy. There exists little change in value of the subject for the year 1999 from the previous year based upon the fact that the property is undergoing its transition from renovation to formation of a tenant base. As such, the market value for the three years from 1997 through 1999 using this approach is basically consistent. In the subsequent triennial the subject may begin to experience a definitive increase in market value, starting with the year 2000. The appraiser concluded a market value of $14,500,000 for the year 1997 using this methodology under the income approach and the PTAB finds this value of $14,500,000 is consistent for the year 1999.

The sales comparison approach utilized by the appellant's witness is further support of the appraiser's conclusion of market value. The appraiser used eight sales of Class "C" office buildings in the downtown market, three of which are located on the same street as the subject. These suggested comparable properties' sales ranged from $2,510,000 to $12,750,000 or from $15.41 to $44.64 per square foot of net rentable building area. Ages ranged from 32 to 103 years and sizes of building area ranged from 93,788 to 827,494 square feet of net rentable area. The witness valued the subject at $24.00 per square foot of net rentable building area in reaching a market value of approximately $14,800,000 using the sale comparison approach. This estimate is given secondary weight after the income approach and serves to bolster the appraiser's final market value for the subject of $14,500,000. As was stated by the appellant's rebuttal witness, Class "C" buildings during the period of the late 1990's were experiencing an exodus of tenants to the newer and more modern Class "A" and Class "B" office buildings. Class "C" buildings such as the subject did not attract the same tenant base as Class "A" or Class "B" buildings and a renovation as experienced by the subject property would most likely only allow the subject to remain competitive in the Class "C" market. As such, neither a dramatic nor a definitive rise in market value can be established from the time of 1997 to 1999. This further supports the PTAB's market value finding for the subject of $14,500,000 for the year 1999.

As previously stated, the PTAB also gives little weight to the board of review's report. The board's appraiser was not called as a witness to testify to the report's findings. The report indicates that the board's appraiser did not personally inspect the subject property. Additionally, obvious errors exist in the report. For example the report is not signed and lists a figure of $3,200,000 as a market value on the certification instead

of $32,000,000 as listed in the report. The board's report also lists a net rentable area of the subject as 524,649 square feet, which is incorrect. Only the appellant's first appraisal report properly states the net rentable area of the subject as 616,429 square feet.

The board's report does not verify its data and there exists no analysis of the adjustments presented when comparing the subject to the comparables used. The board's report does not give any analysis for its apparently arbitrary use of the figure of 30% for operating expenses. Similarly, there is absolutely no explanation why in the cost approach land sale number two at $972 per square foot is considered closest to the subject in terms of comparability; after this statement is made a figure of $600 per square foot is used for the subject without any reasoning. This lack of analysis is also present in the sales comparison approach wherein the report determines without any explanation that sale number one at $95 per square foot is most comparable to the subject. The appraiser applies a figure of $55 per foot to the subject without explanation. These figures are seemingly pulled out of thin air as convenient figures from which to reach a desired conclusion of value. Also, the board's report uses Class "A" and Class "B" properties as suggested comparable properties to the subject, which is a Class "C" property.

The rebuttal witness for the appellant pointed to a number of the above errors and many others in the board of review's report. He pointed out that by not signing the report the appraiser violated the requirement of both USPAP and OBRE. The report did not list what type of appraisal report it was in violation of USPAP rules. Several of the land sales used in the cost approach contained improved property on the site and thus were misleading. The subject is determined to have no economic or functional obsolescence in spite of its age and design according to the board's report.

The rebuttal witness testified that in the board of review's report the income approach is flawed since the appraiser does not explain the use of rents as either gross rents or average rents. Further, the rentals used do not indicate if these are rentals for specific tenants or entire buildings. This makes the conclusions reached in the income approach unreliable. In the sales comparison approach the board's report does not explain its use of the "COMPS" service as verification of the data provided. A number of questions are left open as to the nature of the sale transactions provided in this approach and the relationship and motivations of the buyers and the sellers. The interests of the various parties to the transactions are not determined to verify the usefulness of the comparables. The report cannot be deemed reliable. Hence, the PTAB gives the board's appraisal little weight.

The PTAB finds the appellant's first appraisal to be the most credible of the appraisals presented. Furthermore, this witness' testimony was clear, concise and convincing. He was the only one of the three appraisers to have personally inspected the interior and exterior of the subject property. Furthermore, he was the only one of the three appraisers to testify in the case. He had an intimate knowledge of the data relied upon

in his report. Detailed rent information was provided and the sources of back up data were also provided in a detailed addendum. Data used in his sales approach was verified with parties that had personal knowledge. Adjustments to various comparables were explained and the comparables used were superior to those of the other appraisers. All factors used in the various approaches to value were thoroughly explained. The income approach to value was compelling. Therefore, the PTAB finds that the subject had a market value of $14,500,000 as of January 1, 1999.

Furthermore, the board's entire argument is based upon the building's improvements as of January 1, 1999. However, the board presents no independent evidence of its own to support its contention of the building's market value. No witnesses were presented. Rather, the board's argument rests upon attempting to discredit the appellant's appraiser and the appellant's evidence to bolster its claim that the current assessment is correct. The board had ample opportunity to present their own evidence and testimony pertinent to the date in question. Instead, the board attempted the day before hearing to present the appellant's own appraisals for a later year into evidence to support the increased assessment for the year 1999. Accordingly, the PTAB rules against the board.

Lastly, the PTAB finds the board of review's closing argument unpersuasive. The Lurie Company more than adequately met its burden of proof in the matter by a preponderance of the evidence. The board's closing states that the appellant's second appraiser was not called as a witness. What it does not state is that the board failed to call a single witness while the appellant produced an appraiser as a witness in its case-in-chief and another appraiser as a rebuttal witness. The closing argument misstates the rebuttal witness by saying that the real estate market was trending upward. The witness explained that Class "C" properties, such as the subject, still experienced higher than normal vacancy rates and that tenants were leaving Class "C" properties for newer and more modern Class "A" and Class "B" properties.

As a final point, the board's closing argument cites to a previous PTAB decision as precedent for the PTAB issuing differing market value findings for the same subject property in the same triennial. In Dayton Hudson Corporation v. Cook County Board of Review (PTAB Docket Nos. 98-29272-C-3 et. al. consolidated with 99-28000-C-3 et. al.) the PTAB found a market value of $34,500,000 for the year 1998 and a market value of $37,000,000 for the year 1999 for the same subject property. Applying the Cook County Real Property Classification Ordinance level of assessment of 38% of market value for the subject property yielded assessed values of $13,110,000 and $14,060,000 for years 1998 and 1999, respectively. What the board's closing statement fails to mention is that in that decision there was testimony given by the appellant's appraiser as to the differing market values for the two years in question. In that case, the appraiser utilized a retail sales multiplier (RSM) for the subject property, a retail department store, to determine value from year to year. Also, a sale comparable that was previously used by the appraiser as a sale offering had sold during the year 1998. This comparable was very similar to the subject and gave the appraiser additional facts upon which to base

his conclusion of value. Based upon the evidence and the testimony presented in Dayton Hudson Corporation, the PTAB issued a finding that the subject had a differing market value from the year 1998 to 1999. In its closing argument, the board of review misapplied the facts from that case. The facts presented in Dayton Hudson Corporation are not the same as the in the instant case. Therefore, the PTAB finds this argument by the board unpersuasive.

In conclusion, the PTAB finds that the appellant's appraiser and witnesses were more credible than the board of review's appraisal and evidence. Further, the PTAB finds that the appellant met its burden of proof by a preponderance of the evidence.

The PTAB further finds that the Cook County Real Property Classification Ordinance shall apply to the market value finding. In Cook County, class 5a property such as the subject is assessed at 38% of its market value. In his original pleadings, the appellant requested that the PTAB apply a level of assessment to the subject based upon the "2 and ½" provision in Article IX, Section 4(b) of the Constitution of the State of Illinois. Ill. Cons. 1970 Art. IX Section. 4(b). The appellant's pleadings requested that the PTAB apply this provision based upon a level of assessment argument. The Illinois Department of Revenue's (IDOR) three-year median level of assessment for Cook County class 2 properties of 9.88% is the lowest level of assessment of any class of property in the county. Multiplying this level of assessment by the Constitutional provision of 2.5:1 yields an assessment of 24.70% of the subject's market value. The appellant's argument is that this level of assessment should apply and not the Cook County Ordinance of 38% of the subject's market value. However, in order to show a lack of uniformity by using the sales ratio studies of the IDOR the taxpayer must show by clear and convincing evidence that the studies are random, representative properly edited and properly adjusted. See Cook County Board of Review v. Property Tax Appeal Board, 339 Ill.App.3d 529 (1st Dist. 2002) and Cook County Board of Review v. Property Tax Appeal Board, 345 Ill.App.3d 539 (1st Dist. 2003). In these cases, the court places the burden of establishing the correct level of assessment on the party making the claim. In this case, the appellant has not met that burden.

Therefore, considering the evidence and the testimony presented, the PTAB finds that the subject had a market value of $14,500,000 as of the 1999 assessment date. Furthermore, the PTAB finds that the Cook County Real Property Classification Ordinance of 38% for class 5a commercial property, such as the subject, shall apply. Applying the figure of 38% to the subject property's market value, the PTAB finds that the correct assessed value of the subject property is $5,510,000. Since the subject property's current assessment for the year 1999 is $10,162,639, a reduction is warranted.

Note: This case was appealed by the Cook County Board of Review, and was affirmed unanimously on appeal by the Appellate Court of Illinois, First Judicial District, Third Division, on May 10, 2006 (Case

No. 1-05-0849, Cook County Board of Review v. Illinois Property Tax Appeal Board and the Lurie Company).

APPELLANT:	**School District #54**
DOCKET NUMBER:	**99-28045-C-3 & 99-28046-C-3 Consolidated with 00-21626.001-C-3 & 00-21626.002-C-3**
DATE DECIDED:	**March 29, 2005**
COUNTY:	**Cook**
RESULT:	**No Change**

Procedurally at hearing, the PTAB informed the parties that appellant School District #211 had withdrawn from these appeals. Thereafter, by order of the PTAB the two years of property tax appeals were hereby consolidated for hearing without objection from any party.

The subject property consists of an apartment complex sited on two land parcels of 13.76 acres. The improvements include a 12-story, masonry, apartment building with 357 units therein as well as a 10,332 square foot recreational building and parking structure. These structures were built in 1975 and are located in Schaumburg, Illinois.

The appellant argued that the fair market value of the subject is not accurately reflected in its assessed value and that said assessment should be increased. At hearing, the appellant's attorney amended the appellant's final opinion of market value from $21,000,000 to $19,000,000 for both tax appeal years at issue.

In support of this market value argument, the appellant submitted a complete, self-contained appraisal of the subject with an effective date of January 1, 1999 and an estimated market value of $21,000,000. One of the appraisers was the appellant's witness in these appeals. The witness testified that he has been a real estate appraiser and consultant for approximately 31 years. He indicated that he is a state-certified appraiser and also holds the designation of Member of the Appraisal Institute (hereafter MAI). He indicated that in the five years prior to 2000 that he had undertaken anywhere from 500 to 600 appraisals with 50% of those within Cook County. He further testified that perhaps two dozen of those appraisals had been of multi-family properties. The appellant's appraiser was offered as an expert in the field of property valuation without objection from the remaining parties. A review of the qualifications of the other appraiser reflects that he had not appraised apartment buildings prior to the subject property.

The appellant's appraisal gave an estimate of market value as of the effective date of January 1, 1999 that was amended at hearing to $19,000,000. The appraisal reflects that a personal inspection of the exterior of the subject property was undertaken in August of 2000. The witness testified that both appraisers conducted this inspection. The appraisal identifies and fully describes the subject property's improvements.

The appellant's appraiser testified that the subject's 13.76 acres of land is improved with a 12-story, masonry and steel high-rise apartment complex consisting of 357 units that was built in 1975. The appraisal reflects that additional improvements include a 10,332 square foot, detached, recreational building and a parking structure. It reflects a net rentable building area of approximately 331,372 square feet. Amenities include: a fitness club, an outdoor pool, tennis courts, a playground, on-site laundry, storage lockers, and a parking garage.

The appraisal indicated that the highest and best use of the subject, as improved, would be its current use. The highest and best use, as vacant, would be as a multi-family residential project. An effective age of 25 years was accorded the subject as well as a land-to-building ratio of 1.41:1. In addition, the appraisal reflects that the subject sold on May 18, 1998 for $24,232,271.

As to the subject's neighborhood, the appraisal reflects that the subject's surrounding area consists of a mixture of office, commercial, industrial, and multi-family residential uses. Immediately north of the subject are low and mid-rise, multi-family residential units. The appraiser stated that the subject is located approximately three miles northwest of Woodfield Mall in Schaumburg.

The appellant's appraisers developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $22,000,000, while the income approach indicated a value of $20,900,000, rounded. The sales comparison approach indicated a value of $22,300,000, rounded. The appraisers concluded a market value of $21,000,000 for the subject property as of January 1, 1999.

The first method developed was the cost approach. The appraiser testified that land comparables were compared to the subject on a price-per-buildable-unit basis. Therefore, a reconciled value was utilized in relationship to the number of units relating to the subject's site. He stated that this type of comparison is used for high-density parcels.

The initial step under the cost approach was to estimate the value of the site at $6,250,000, or $17,500 per unit of density. In doing so, the appraiser reviewed four land comparables. The properties sold from May, 1996, through September, 1999, for $20,000 to $31,250 per price unit. The properties ranged in size from 6.829 to 19.20 acres with a density per unit that ranged from 5.00 to 14.92 per acre. The appraisal reflects that each land sale was then developed for either townhouse or condominium use. Moreover, a map was included depicting the location of the land sales in relation to the subject.

Using the Marshall Valuation Service, the appraisers estimated the reproduction cost new to be $112,165 per unit or $40,043,071. This value was determined by using the gross building area of 426,024 square feet with a cost per square foot of $81.34 that resulted in $34,652,792. A lump sum of $1,750,000 was added for other site

improvements with entrepreneurial profit estimated at 10% or $3,640,279. The appraisers indicated that the economic life of the subject to be 50 years, thereby estimating physical depreciation at 50%. Functional depreciation was estimated at 10% due to the subject's floor plans and somewhat small units by current market standards; thereby, resulting in a depreciated cost of $16,017,228. Adding the land value resulted in a final value estimate of $22,267,228, or $22,300,000, rounded.

Under the income approach, the appraisers looked to five rental comparables located within four miles of the subject. The appraisal stated that the subject was the only high-rise apartment project of its type in the immediate market area, and thus, the appraisers had to look to low-rise and garden-style apartment projects. These projects contain from 428 to 752 units and were built from 1970 to 1987. The monthly market rents ranged from $825 to $1,440 per unit, or from $0.90 to $1.37 per square foot.

Annual possible rental income was estimated at $4,301,400 with other income listed as $129,042, resulting in a gross potential income (hereafter GPI) of $4,430,442. Vacancy and collection loss was estimated at 5% of GPI, resulting in an effective gross income (hereafter EGI) of $4,208,920, or $11,790 per apartment unit. Operating expenses excluding real estate taxes were estimated at 32.50% of EGI or $3,832 per unit. Therefore, the net operating income (hereafter NOI) was estimated at $2,841,021 or $7,958 per unit.

In determining the appropriate capitalization rate, three methods were used by the appraisers: 1) the overall rate extraction from market sales, 2) rate extraction from national reports, and 3) rate extraction using the band of investment technique. In summary, the first method resulted in a CAP range from 7.60% to 9.52%. The second method was developed using the Korpacz Investor Survey, fourth quarter, 1998, wherein rates for apartment properties ranged from 7% to 11% with an average rate of 8.77%. Referring to the Real Estate Research Corporation publication, the appraisers estimated an 80% loan-to-value ratio at 7.75% with a 25-year amortization and an equity dividend rate of 10% resulting in an overall CAP rate of 9.25% for the subject.

The appellant's appraiser testified that in determining a tax load factor to be added to the overall CAP rate for the subject that an assessment ratio of 22.65% was utilized. At hearing, he stated that this was not an appropriate ratio and that the correct ratio should have been 33%. He indicated that this change should occur based upon recent court decisions in this area based upon the Cook County Real Property Classification Ordinance. The appraisal reflected that a tax load factor of 4.34% was added to the overall rate to arrive at a loaded capitalization rate of 13.59% for the subject. However, he stated that the changed assessment ratio would increase the load factor by approximately 2%. Therefore, he testified that the correct percentage is 15.57%. He also stated that using the revised load factor would alter the estimated market value for the subject under this approach to value to reflect $18,250,000 rather than the appraisal's value of $20,905,232 for the subject.

The final method developed was the sales comparison approach. Under this approach, the appraisers utilized four suggested sale comparables. The sale dates ranged from August, 1998, through September, 1999, for prices that ranged from $12,000,000 to $39,400,000, or from $61,429 to $71,034 per unit. The structures were built from 1970 to 1988 and range in size from 195,043 to 508,239 square feet of net rentable area. The properties contained from 174 to 615 units with an average NOI estimated from $5,242 to $6,764 per unit.

After making adjustments for date of sale, location, unit mix, and age/condition, the appraiser determined a value for the subject from $60,000 to $65,000 per unit. Using $62,500 per unit, a market value under this approach of $22,312,500, or $22,300,000, rounded was determined.

In reconciling the various approaches, greatest weight was accorded the income approach due to the fact that the subject was an income property, while the sales comparison approach was considered a viable indicator of value. The appellant's appraiser testified that the income approach should be accorded most weight because typically properties similar to the subject are purchased for their income-producing capabilities. The cost approach was given minimal consideration. The appraisal indicated a final market value estimate of $21,000,000 amended at hearing to $19,000,000. Based upon this evidence submitted in each appeal year, the appellant requested an increase in the subject's market value for the 1999 and 2000 property tax years at issue.

Under cross-examination, the appellant's witness testified that his appraisal was done in compliance with USPAP standards and the code of ethics of the Appraisal Institute as well as certain limiting conditions. He stated that a limiting condition would be if a property had planned modernization to a significant degree that was made a part of the appraisal as requested by the client, but yet had not been done; and therefore, the value was assuming that it would be done. He also testified that data used in his appraisal was obtained using the CoStar Comps service. He indicated that beyond using this source, no other confirmation was undertaken. He stated that he believed that CoStar Comps service verifies the data in its reports and that he relied on this in preparing his appraisal without undertaking any independent verification. The appraiser further testified that he might review public records to verify information obtained from sources, but that he did not do so in this case. It was noted that he undertook this appraisal assignment after the subject had sold, and he also stated that he completed other appraisals for the appellant-school district after the particular properties had recently sold.

As to appraiser's sale comparables, he admitted that he did not identify the land size of these suggested comparables even though he indicated that this is a relevant factor to his analysis for he made adjustments for land size at the time of doing the appraisal. He

testified that he considered the comparables' lot sizes and found that all of the properties contained adequate land to support the improvements. However, he stated that in hindsight that he should have put the lot size in his appraisal as factual information.

As to appellant's sale #2, his appraisal identifies a particular property index number (hereafter PIN) for the property's parcel. Taxpayer's Hearing Exhibit #1 was admitted into evidence over the objection of the appellant. This exhibit is a certified copy of a property characteristic printout commonly prepared by the assessor's office. The PTAB also notes that this hearing exhibit was a part of the intervenor's initial pleadings as a portion of Group Exhibit #3 timely submitted into evidence. Taxpayer's Hearing Exhibit #1 for the PIN identified as relating to comparable #2 reflects a total improvement assessment of $9,285 that translates to a market value of $28,000. The appellant's appraiser stated that either the PIN is incorrect or that there are other related PINs. However, he admitted that he had not verified this data.

As to appellant's sale #3, Taxpayer's Hearing Exhibit #2 was used to elicit his testimony relating to the three PINs identified in the appellant's appraisal as having been related to sale #3. This exhibit is another certified assessor's printout relating to the first of three PINs asserted by the appellant's appraiser as relating to the aforementioned sale. He did testify that the document reflects that the first PIN contains a residential classification for a single-family dwelling located in Palatine. The appellant's appraiser then stated that he did not verify the PINs for this sale.

Taxpayer's Hearing Exhibit #3 was admitted without objection from the remaining parties. It is a copy of the CoStar Comps service report relating to sale #3. The appellant's appraiser testified that he used this report as the basis for including this sale in his appraisal. He indicated that the report reflects a land size for this sale of 1,455,339 square feet. However, Taxpayer's Hearing Exhibit #4 which is a certified copy of the assessor's printouts for the three parcels of land that comprise this sale property reflects a different land size. Intervenor's attorney calculated the land size reflected on these printouts to actually be 1,149,722 square feet. The appellant's appraiser could not explain why the CoStar report's data differed from that reflected in the assessor's public records nor was he aware of the discrepancy at the time he completed his appraisal. He did state that the additional land square footage could potentially vary the value estimate.

Moreover, in review, this CoStar printout indicates that there was a special condition related to the sale. Specifically, the printout indicated that $1,000,000 worth of personal property was purchased. The appellant's appraiser testified that he was aware of this fact when undertaking his appraisal, but that he failed to place it within the appraisal report because he felt it would have no impact on the sale's value.

Taxpayer's Hearing Exhibit #5 is the CoStar report for appellant's sale comparable #1. It was admitted without objection from the parties. The appraiser testified that he relied on a sale price for this suggested comparable of $12,000,000 and that he utilized this CoStar report as the source of this sale price. However, upon review of the entire report, the fourth page stated that "county records indicated that the property sold for $8,351,220; however, the buyer confirmed the sale price of $12,000,000". The report goes on to state that "they were unable to determine the reason for this discrepancy for it was reported that the property sold with no deferred maintenance". The appellant's appraiser testified that he reviewed this statement and that he went with the sale price confirmed by the buyer according to the CoStar report. He further stated that he did not review the county's records regarding the sale. Moreover, he indicated that he did not note in his appraisal that there had been a discrepancy in the sale price.

Taxpayer's Hearing Exhibit #6 was admitted over the objection of the appellant. This exhibit is a copy of the special warranty deed with a recording document No. 99790922 and the County stamp, thereon. The recording number is the same number attributed within the appellant's appraisal for sale comparable #1. Under questioning, the appraiser testified that he is aware of what a transfer stamp declaration is as well as the procedures in Cook County for the transfer of real estate. This exhibit reflects on page 2 thereof a State stamp for $8,351.50 and a County stamp for $4,175.75. He concurred that based upon the two stamps, this property's sale price was $8,351,500. Nevertheless, he stated that he stood by a sale price of $12,000,000 for this property.

As to appraiser's land sale analysis in his cost approach, he testified that those sales were also obtained from the CoStar Comps service. The appellant's appraiser stated that the land sales were more valuable than the subject property and were accorded a negative adjustment. The appraisal states that to "the best of the appraiser's knowledge, all these sales were arm's-length transactions". He stated that if one of the sales was not arm's length it could have an effect on the value in his appraisal report. He also indicated that under certain circumstances one could use such a sale if one was able to verify what the sale's circumstances were. Therefore, he stated that an appraiser would have to contact the buyer and the seller to ascertain the nature of the sale's circumstances; however, he reiterated that he had not done this for this particular appraisal.

Taxpayer's Hearing Exhibit #7 is a chart compiled by the Intervenor-taxpayer reflecting the four land sale comparables used in the Mundie appraisal. It was admitted without objection from the parties; and at hearing, the taxpayer utilized an enlarged version of this chart as a demonstrative exhibit. This exhibit reflects that land sales ranged from $2.86 to $7.58 per square foot and that the subject was attributed a land value of $10.43 per square foot by the appellant's appraiser. To clarify his earlier testimony, he testified that the land sale comparables were inferior on the basis of their per-buildable-unit value; and therefore, an overall downward adjustment was made in each instance. He also indicated that the subject contains an actual unit density of 26 units to the acre. He

testified that the subject's market area did not reflect any land sales that had a similar density. Therefore, when one uses a density that is significantly different than the subject, it skews the picture and requires a downward adjustment because on a per-unit basis, one would pay more for the lower density. He testified that he was aware that the assessor's office did not use this methodology in valuing land. He also stated that the land value he has attributed to the subject of $10.43 is higher than the land value the assessor accorded to each of the appellant's land sale comparables of $4.00 per square foot.

Taxpayer's Hearing Exhibit #9 is a chart that reflects data in the appellant's appraisal regarding the improved, sale comparables. It was admitted over the parties' objections; and at hearing, the taxpayer used an enlarged version of the chart as a demonstrative exhibit. The subject's data was amended at hearing to reflect the amended market value requested by the appellant. The data reflects that the four, improved properties contain 1999 and 2000 tax year assessments that range from $1,848,002 to $6,096,205, for a market value of $30,038 to $32,334 per unit. Using the assessor's total assessment for the subject property for tax years 1999 and 2000, the subject's assessment is $4,362,357 that translates into a market value of $13,219,263, or $37,028 per unit. Therefore, the appellant's appraiser testified that the assessor's office has valued the subject property higher than the appellant's four suggested comparables, while appellant's appraisal estimates the subject's value at $19,000,000, or $53,221 per unit. The appellant's appraiser admitted that the assessor's values per unit of his suggested comparables in and of themselves are not comparable to his value per unit for the subject.

In estimating the market value of the subject under the income approach to value, the appellant's appraiser testified that he used actual income and expenses of three comparables. However, he stated that he did not review a breakdown of the expenses to determine whether the expenses were reasonable by marketplace standards or whether real estate taxes were included in the summary expense figures. He testified that CoStar was a source for the first suggested comparable, while confidential sources were used for the remaining properties.

In reference to the appellant's improved sale comparables, Taxpayer's Group Hearing Exhibit #8 was admitted into evidence without any objection. This group exhibit contains certified copies of the assessor's property characteristic printouts for each of the properties used in the sale comparison approach to value within the appellant's appraisal. Based upon the evidence and testimony, the appellant-taxing body requested an increase in the subject's market value.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment of $4,362,357 was presented for both tax years under appeal. As to the appellant's under-valuation argument for tax year 1999, the board of review's evidence reflects the submission of: a memorandum, a Comps service summary report of seven sales, Comps service printouts for the seven suggested comparables, and

ancillary documentation. The PTAB notes that for the 2000 appeal the board of review used six of the aforementioned seven Comps service properties with an addition of a new property. Moreover, the board's 2000 appeal evidence does not include any Comps service summary report. The board's memorandum succinctly states that the subject's 1999 and 2000 assessment reflects a market value of $13,219,263.

In the 1999 appeal, the board also submitted a Comps service summary report and printouts for seven suggested comparables. The properties are improved with apartment complexes. The improvements were built from 1965 to 1972 and range in size from 87,773 to 723,800 square feet of living area. The complexes also contained from 156 to 752 apartment units. The properties sold from August, 1996, to August, 1999, for prices that ranged from $9,050,000 to $22,264,000, or from $29,255 to $42,968 per unit.

In the 2000 appeal, the board withdrew one of the prior properties and included a new suggested comparable. All of the comparables are apartment complexes. The improvements were built from 1965 through 1974 and contain the same range of square footage and units as in the 1999 appeal. These properties sold from August, 1996, through March, 2000, for prices that ranged from $7,985,517 to $22,264,000, or from $29,255 to $42,968 per unit. At hearing, the board of review did not proffer any witnesses. The board's representative asserted that the subject's assessment is currently correct and that the applicable level of assessment to be used in this matter is a 33% level of assessment for an apartment structure as is the subject as per the Cook County Real Property Classification Ordinance. As a result of its analysis, the board requested confirmation of the subject's assessment.

The intervenor-taxpayer submitted the same evidence in both the 1999 and 2000 property tax appeals. The intervenor's pleadings include: a legal brief, an appraisal undertaken by Urban Real Estate Research, Inc. reflecting a market value of $12,600,000 for an appraisal date of January 1, 1998; certified copies of the subject's property record cards; and certified copies of the property record cards for the improved, sale comparables referenced within the appraisal submitted by the appellant.

The intervenor's brief raises two arguments. First, the intervenor asserts that the assessor's office incorrectly increased the subject's assessment outside of its triennial reassessment period. The intervenor argues that pursuant to statute (35 ILCS 200/9-85) that the assessor has the authority to revise and correct assessment books annually as appears to be just; however, the assessor is not required to do so in a non-reassessment year. The intervenor's brief states that the subject property is located in Assessment District #2 which required a reassessment in the 1998 tax year. The brief further states that the assessor did in fact reassess the subject and increase the total assessment by approximately 5%. It argues that the appellant-taxing body did not object to the 1998 reassessment of the subject, nor did any taxing body allege a change to the subject's property since 1998 that would necessitate a subsequent reassessment in 1999 or 2000.

The intervenor further states that if the taxing body's request to increase the 1999 and 2000 assessments is granted such action would manifestly violate the core of the property tax system.

The second argument raised in the intervenor's pleadings is that the subject property is currently assessed higher than other similar properties in its class and that an increase would violate the tenets of uniformity. Specifically, the brief references case law stating that uniformity requires equality in the burden of taxation. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 3d. 1,20,544 N.E.2d. 762 (1989). This, in turn, requires equality of taxation in proportion to the value of the property taxed. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d. 395, 169 N.E.2d. 769 (1960). Any revision to the assessment must be made in harmony with the requirements of uniformity within the class of property. Chicago Title and Trust Co. v. Tully, 76 Ill. App. 3d. 336, certiorari denied, 100 S.Ct. 1653.

The intervenor asserts that in support for the appellant-taxing body's under-valuation complaint, the appellant submitted an appraisal that utilized four sale comparables to support its findings. A review of the assessor's records for these properties demonstrates that the subject is currently assessed higher and taxed higher in proportion to its value than are the comparables. The pleadings included a chart reflecting assessment and market value data for the four appellant's sales comparables and the subject. The data reveals that the four properties contain assessments that range from $1,848,002 to $6,160,561 for market values that range from $30,355 to $32,334 per unit, or from $28.71 to $44.58 per square foot. These values represent a sales ratio from 14.6% to 17.4%, whereas the subject property has a current sales ratio of 18%. Therefore, the intervenor argues that the appellant-taxing body's own evidence proves that the subject property has been assessed higher than other properties within its class, and that a reduction in the subject's assessment is warranted. Thereby, the intervenor requested that the subject's assessment be reduced for tax year 1999 to $3,416,704 and for tax year 2000 to $2,853,900.

In support of this argument, the intervenor submitted a complete, summary appraisal of the subject with an effective date of January 1, 1998 and an estimated market value of $12,600,000. One of the appraisers was the intervenor's witness in these appeals. The intervenor's witness testified that he has been a state certified, real estate appraiser for approximately 25 years and also holds the designation of MAI. He indicated that the second appraiser was also a real estate appraiser at the time of the subject's appraisal and that he now also holds the designation of MAI, as well as the witness.

As to his experience, Murphy testified that for eight years he had worked in the Cook County Assessor's office as the chief appraiser. Moreover, he stated that he has engaged in teaching real estate appraisal practice and has completed hundreds of appraisals of different types of properties similar to the subject's apartment building.

Murphy stated that he inspected the exterior of the subject, while his colleague, Hynes, personally inspected the interior and exterior of the subject.

The intervenor's appraisal gave an estimate of market value as of the effective date of January 1, 1998 of $12,600,000. The appraisal transmitted in summary report was based upon a personal inspection of the subject as well as a meeting with the buildings' manager. The appraisal states that during the inspection the subject's condition, quality of construction and functionality of design was noted. Therefore, the appraisers' description of the subject's improvements is based upon their personal inspection, review of the buildings plans, and information supplied by the owner or its agent.

With this foundation, the appraisers indicated that the subject contains 426,024 square feet of gross building area as well as 341,704 square feet of net rentable area. The rentable area was broken down as follows: 331,372 square feet attributed to the apartments and 10,332 square feet attributed to the clubhouse. The Murphy appraisal provided a chart reflecting a further breakdown of square footage per particular type of apartment unit. Thereafter, the appraisal's description of the subject concurred with that proffered by the appellant's appraisal.

The appraisal also notes that the subject's current owner purchased the property in May of 1998 for $24,232,271. The appraisers state that the property was bought with the intention of converting the units to condominiums at a later date. The appraisers indicated that the sale price represents the investment value of the property, rather than the market value.

As to the subject's condition, the intervenor's appraisal states that the subject is in average overall condition with very few signs of deferred maintenance. Moreover, the apartments that were inspected were also in average overall condition. As to the subject's immediate environs, the appraisal indicates that the subject has high visibility along Roselle Road and exhibits good curb appeal.

The appraisal developed a highest and best use analysis. It indicated that the highest and best use of the subject, as improved, would be its current use. Whereas, the highest and best use, as vacant, would be for development of a modern, functional apartment building as permitted under current zoning.

Murphy testified that based upon his prior experience with the assessor's office that condominium sales were not comparable to income-producing apartment properties. He stated that often large apartment complexes have high sales when the condominium developer offers a purchase price that is double what the current income stream would indicate that the property is worth. He testified that he had reviewed a national report on this type of sale and that the report urged assessor's to reassess property after it actually converted to condominiums rather than at the time of sale. He testified that if an owner changed the use of a property, than the value should be changed. Therefore,

he stated that he valued the subject as an income-producing property and his analysis was not based upon any intention to possibly convert the subject's apartments to condominiums. Moreover, he indicated that as of the date of this hearing, the subject property was still an apartment building. Murphy further testified that the subject was in good condition with an economic life of 45 years and an effective age of 25 years.

Murphy and Hynes developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $12,700,000, while the income approach indicated a value of $12,600,000, rounded. The sales comparison approach indicated a value of $12,500,000, rounded. The appraisers concluded a market value of $12,600,000 for the subject property as of January 1, 1998.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site at $2,350,000, or $4.00 per square foot. In doing so, the appraiser reviewed five land comparables. The properties sold from December, 1994, through April, 1998, for $1,275,000 to $3,995,000, or from $115,699 to $303,232 per unit price per acre. The properties ranged in size from 457,380 to 1,263,240 square feet with a sale price that ranged from $2.66 to $7.01 per square foot. The appraisal states that since the subject's neighborhood was fully developed, the appraisers looked to neighboring areas for land comparables. A grid reflecting any adjustments was supplied as well as land sale details and a map depicting the location of the land sales to the subject.

Murphy testified that in using the land sale to estimate a land value for the subject, he used a per square foot and a per acre analysis. He stated that he did not use the per-buildable-unit measurement because when land sales are hard to obtain as with this subject, adjustments can be very difficult unless you have very similar areas. After Murphy was asked to review the Intervenor's Group Exhibit 2 that had been in the initial pleadings, he stated that it appeared that the assessor was valuing the subject's land based upon a per square foot basis using $4.00 per square foot. Moreover, he stated that since Mundie's land sales are all valued by the assessor at $4.00 per square foot, it would not be uniform to value the subject's land at $10.43 per square foot.

Using the Marshall Valuation Service, the appraisers estimated the replacement cost new to be $33,560,327. This value was determined by using varying values for each type of area located on the subject property. Specifically, a value of $74.15 per square foot was estimated for the apartment building, a value of $70.90 per square foot was accorded the clubhouse building, while a value of $33.69 per square foot was accorded the parking garage. With soft costs at 3% and entrepreneurial profit estimated at 5%, the total cost new was estimated at $36,295,494. The appraisers indicated that the subject had an effective age of 25 years with an economic life of 45 years; thereby, physical depreciation was estimated at 56%. Since the appraisers were utilizing a replacement cost new, they did not allow a deduction for functional obsolescence. External depreciation was estimated at 10%. Thereby, resulting in a depreciated cost of

the building improvements of $10,162,738, while the depreciated cost of other site improvements such as driveway and walkways was estimated at $148,500. Adding the land value resulted in a final value estimate of market value for the subject of $12,711,238, or $12,700,000, rounded.

Under the income approach, the appraisers used two types of analysis. First, they looked to six apartment comparables. The appraisal stated that the subject was the only high-rise apartment project of its type in the area; therefore, the appraisers looked at garden-style apartment projects. However, they did note that both rental comparable #1 and #6 contain high-rise buildings, therein. The appraisal provided a detailed analysis of each rental as well as identification of the party contacted for verification purposes. These projects contain from 192 to 831 units and were built from 1969 to 1988. The monthly market rents ranged from $739 to $1,300 per unit, or from $0.78 to $1.29 per square foot. The PTAB notes that the appellant also used three of the aforementioned, six rental comparables.

Second, the appraisers reviewed the market rental rates as listed in a study undertaken by Grubb and Ellis, Metro Apartment Study, January 1998 for an area covering the northwest suburbs. The study grouped the northwest suburbs into four district sections. Reviewing the data from the subject's district reflects that rents range from $784 to $1,093 per month with an average rent of $824 per month and an average rent of $0.98 per square foot. Murphy reviewed the actual rental data of the subject that was included in the appraisal's addendum. He testified that the subject's rental rates were in line with the market data accumulated in this report.

The appraisers stabilized apartment rental income for the subject at $3,889,200. Vacancy and collection loss was estimated at 9% with the addition of laundry income, parking income, and commercial income resulting in an EGI of $3,700,697. The supporting analysis reflects the appraisers' use of historical data in order to estimate the aforementioned incomes for the subject. Moreover, the appraisers stated that the stabilized EGI was appropriate in light of the fact that the subject's actual income averaged $3,699,718 over the prior three years.

Expenses were stabilized using two analyses. First, the appraisers reviewed actual expenses for tax years 1995 through 1997 for the subject property. A chart depicting the accumulation of this data was included in the appraisal. The data reflects that the actual expenses of the subject for 1995 were $4.69 per square foot, for 1996 they were $4.09 per square foot, and for 1997 they were $3.30 per square foot. Second, they referred to the historical income and expenses published by the Institute of Real Estate Management (hereafter IREM). A chart depicting the IREM data was also included in the appraisal. The IREM 1998 data reflects expenses from $6.37 to $8.73 per square foot. Operating expenses excluding real estate taxes were estimated at $1,494,812. Therefore, the NOI was estimated at $2,205,885 or $3.54 per square foot.

In determining the appropriate capitalization rate, three methods were used by the appraisers: 1) the overall rate extraction from market sales, 2) rate extraction from national reports, and 3) rate extraction using the band-of-investment method. In summary, the first method resulted in a range of CAP rates from 7.34% to 11.66% using rates derived from apartment sales in the Chicago area. The second method was developed using the Korpacz Investor Survey, first quarter, 1998, wherein rates for apartment properties nationwide ranged from 7% to 11% with an average rate of 8.88%. Lastly, the appraisers estimated a 75% loan-to-value ratio with an 8.75% interest rate with a 20-year term. An overall CAP rate of 11.03% was deemed appropriate for the subject. At hearing, Murphy testified that because of low expenses and a high income that the subject had not been achieving that there was some risk relating to the subject because the subject's area was in high demand for development. Therefore, the appraisers used a safe capitalization rate. NOI was then capitalized by a loaded capitalization rate of 17.5% to reflect a market value estimate under the income approach of $12,605,057, or $12,600,000, rounded, for the subject.

The final method developed was the sales comparison approach. Under this approach, the appraisers utilized five suggested sales comparables. Murphy testified that the comparables were all located within the general vicinity of the subject. The sale dates ranged from July, 1994, through July, 1997, for prices that ranged from $4,557,100 to $20,979,000. The structures were built from 1965 to 1971 and range in size from 162,180 to 732,800 square feet of gross building area. The properties contained from 144 to 752 units with land sizes ranging from 9.71 to 48.21 acres. The sale prices range from $20,527 to $34,335 per unit, or from $24.71 to $33.16 per square foot. Sale details, black and white photographs, and a map depicting the properties locations were also provided. The PTAB noted that the board of review utilized four of the five aforementioned sale properties within its market analysis.

After making adjustments, Murphy determined a value for the subject from $34,000 to $35,000 per unit, or $30.00 per square foot. The appraisal indicated that most emphasis was placed on the sale price per unit in arriving at a concluded value, as this unit of comparison is generally considered more often by investors. Therefore, a market value under this approach of $12,500,000, rounded, was determined.

In reconciling the various approaches, substantial weight was accorded to both the income approach and the sales comparison approach. The cost approach was given least consideration. The appraisal indicated a final market value estimate of $12,600,000 as of January 1, 1998. Murphy testified that his opinion of value for the subject would vary slightly for tax year 1999 and 2000. However, he stated that he had appraised the subject property as of January 1, 2001 for a market value of $13,900,000. Therefore, he indicated that his opinion of market value for the two years at issue in this hearing would be reflected within the two market values of $12,600,000 and $13,900,000.

Murphy testified that he had reviewed the comparables reflected in the Mundie appraisal. Murphy stated that in reviewing the improved sales' values per unit and reviewing Mundie's value for the subject of $53,221 per unit, he testified that he would not consider those properties Mundie used as comparable to the subject. Based upon the evidence submitted in each appeal year, the intervenor requested a reduction in the subject's market value for the 1999 and 2000 property tax years at issue.

Upon cross-examination, Murphy stated that the subject's actual purchase price according to the closing statements was $26,000,000 less buyer's expenses to then reflect $24,232,000. He also explained that the appraisers were counseled to appraise the subject pursuant to current Illinois law or to look at the subject's intrinsic value of the real estate, while adhering to the tenets required by Uniform Standards of Appraisal Practice (USPAP).

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 this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. *Property Tax Appeal Board Rule* 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. *Property Tax Appeal Board Rule* 1910.65(c).

Having considered the evidence presented, the PTAB concludes that the appellant has not satisfied this burden and that an increase is not warranted.

In determining the fair market value of the subject property, the PTAB examined the appellant's appraisal, the intervenor's appraisal, as well as the board of review's evidence. The appraisals utilized the three approaches to value in valuing the subject property, while the board's analysis included submission of printouts of suggested sale comparables.

The PTAB finds that the intervenor's appraisal is the best evidence of the subject's market value. The intervenor's appraisers utilized the traditional approaches to value in determining the subject's market value. The PTAB finds this appraisal to be persuasive for the appraisers: have had experience in appraising and assessing; personally inspected the interior and exterior of the subject property and reviewed the property's history; utilized appropriate market data in undertaking the three approaches to value; and lastly, used similar properties in the sales comparison approach while providing sufficient detail regarding each sale as well as adjustments where necessary.

Specifically, as to site value, both the intervenor and the board of review espoused the same values. Murphy used sound and unrebutted land and rental comparables. He

provided a detailed analysis of market rental comparables as well as verification sources for this data. Murphy analyzed both the subject's actual, historical expenses and market expenses. Finally, Murphy utilized appropriate market comparables in his sales comparable approach to value. All this credible data and testimony provide a solid foundation for Murphy's estimate of market value for the subject.

The PTAB further finds that even though the board of review failed to provide a witness to testify regarding the documentary submissions, four of the board's sale comparables were also utilized by the intervenor's appraisers. Thereby, two parties in this matter presented very similar valuation estimates.

Moreover, the PTAB found credible the testimony of the intervenor's appraiser as to the subject's recent sale. Mr. Murphy's unrebutted testimony was that the subject property's recent sale was not indicative of the subject's fair market value. He stated that upon consultation with the subject's management and a review of county records that the buyer's intent in purchasing the subject was to convert the subject's apartments into condominiums. Murphy also testified that this had not been undertaken as of the date of this hearing and that based upon his prior experience in the assessing field, until conversion takes place it is inappropriate to change assessments. His testimony is corroborated by the fact that the assessor's office has not varied the subject's assessment throughout this triennial reassessment period despite the subject's sale.

The PTAB further finds that the appellant's evidence lacks support for the requested increase in the subject's market value. The appellant's evidence for reasons previously enunciated in this decision lacks credibility due to errors, omissions, and oversights in material matters within the Mundie appraisal. Mr. Mundie testified regarding completing an appraisal for the subject; however, under examination, the appraiser repeatedly testified that his reliance on source documents without independent verification of the data therein was misplaced, at best.

Specifically, the PTAB finds such errors and omissions within the income and sales approaches to value which Mundie placed greatest weight upon in estimating a market value for the subject. The most prevalent omission and oversight by Mundie was the lack of independent verification of the data relied upon in the CoStar reports. These reports were the source documents for Mundie's comparables in both approaches to value. He also failed to identify the land sizes in his analysis. Suggested comparables with varying land sizes, incorrect PINs for suggested comparables, varying assessment and market value data, contradictory sales prices, personal property inclusive in a sale price, as well as the usage of unsubstantiated actual expenses for his rental comparables in his income approach to value, all lead to a less than supported value estimate for the subject.

Therefore, the PTAB finds that the subject property contained a market value of $13,219,263 as of the 1999 and 2000 assessment dates. Since the market value of the

subject has been established, the PTAB will apply the level of assessment from the Cook County Real Property Classification Ordinance for Class 3, rental property of 33%. Applying the level of assessment for rental property yields a total assessment of $4,362,357. Since the subject is currently assessed at this amount, no change in the assessed values is warranted.

APPELLANT:	**Omni Ambassador Hotel**
DOCKET NUMBER:	**99-31584-C-3**
DATE DECIDED:	**May 16, 2005**
COUNTY:	**Cook**
RESULT:	**Reduced Assessment**

The subject property consists of a 16,200 square foot parcel improved with a 17-story full service hotel constructed in 1926. The building's exterior is solid masonry construction composed of brick and limestone. The subject's interior is composed of marble, carpeted, or ceramic tile floors; drywall or plaster walls, either painted or with vinyl wall coverings; and ceilings of painted drywall, suspended acoustical tile or plaster. The building has a sprinkler system and smoke detectors. A building adjoining the subject's basement contains a laundry facility. In addition to the subject's 285 guest suites, the hotel contains the Pump Room Restaurant, Byfield's Lounge, multiple meeting and/or banquet rooms, a gift shop, and an exercise room. The hotel's guest suites include a presidential suite and 53 king suites. Additionally there are 154 king, 63 double, and 15 queen rooms.

Appearing before the Property Tax Appeal Board on behalf of the appellant was its attorney arguing the fair market value of the subject was not accurately reflected in its assessed value. In support of its market value argument, the appellant submitted a limited appraisal summary report with a valuation date of January 1, 1999. The author of the appraisal was tendered as an expert witness. The witness testified that he is a State of Illinois certified appraiser and has the Member of the Appraisal Institute (MAI) designation. The appellant's appraiser testified he has been a full-time appraiser since 1979 and that the subject was appraised as a fee simple estate. Stating that he has personally inspected the subject, it was the appraiser's opinion that the subject's remaining economic life is 20 years and its highest and best use, as improved, is its current use.

To estimate a total market value for the subject of $12,400,000 as of January 1, 1999, the witness testified he employed the income and sales comparison approaches to value. He indicated that the cost approach was not employed due to the subject's age.

The first approach to value employed by the appraiser was the income approach. As sources to determine an income estimate for the subject, the appraiser relied on the subject's historical operating statements for 1996, 1997 and 1998, and Smith Travel Research's publication *Hotel Operating Statistics 2000* for 1999. From the hotel types included in the publication, the appraiser selected full service hotels due to their overall comparability to the subject in size, type, and average daily room rate. After analysis of the foregoing, as well as an analysis of competitive properties, a stabilized daily rate of $160.00 and a stabilized occupancy rate of 65% were determined. Thus, the appraiser

projected total room revenue to be $10,820,000, rounded. As the subject's food and beverage services are leased to outside vendor, revenue generated from this source is included in another category. Telephone income was stabilized at 3.7% of the projected income, within industry standards, which reflected a range of 3.3% to 4.0% of room revenue. Other income, which includes a guest laundry, restaurant and lounge leases, room service, vending machines and miscellaneous was stabilized at 3.7% of projected income. When determining a stabilized figure for expenses, established expenses were examined using both industry data and the subject's historical expenses. Each category was stabilized at a percentage of the projected income based on either industry standards or the subject's history. Total expenses were stabilized at $9,407,020. The appraiser deducted the estimated expenses from stabilized income and estimated the subject's net operating income (NOI) to be $2,330,000.

To develop a capitalization rate of 10.5%, the appraiser used several sources including the *Real Estate Research Corporation's Investor Survey* and *Korpacz Real Estate Investor Survey.* An effective tax rate of 7.30% was then added resulting in total capitalization rate of 17.80%. Applying the total capitalization rate to the NOI resulted in the appraiser's estimate of value for the subject by the income capitalization approach of $12,400,000, rounded, as of January 1, 1999.

In the sales comparison approach, the appellant's appraiser examined the sales of six hotels in the subject's general area he considered comparable to the subject. Containing between 151 and 1,172 guest rooms, the buildings ranged from 22 to 73 years old. They sold between January 1997 and January 2000 for prices ranging from $14,400,000 to $175,000,000, or from $71,591 to $149,317 per guest room. Adjustments were made to the comparables for the physical differences between the comparables and the subject, property rights conveyed, market conditions, location, design and use and number of rooms. The appellant's appraiser analyzed this information and determined $80,000 per room, including land, as the indicated value for the subject. Following this he deducted $30,625 per room as a depreciated value for personal property and $5,754 per room as management fee, in his opinion, due to several factors including the volatility and cyclical nature of the hotel business. His final indicated value through the sales comparison approach is $43,500 per room, rounded, for real estate only, or a total of $12,400,000, rounded, as of January 1, 1999.

In his reconciliation of the two methods of estimating value, the witness placed the most weight on the income approach. The appraiser indicated that the sales comparison approach lent support to the income approach and gave it secondary consideration. His final opinion to value for the subject was $12,400,000 as of the assessment date at issue.

During cross-examination, the appellant's appraiser was thoroughly questioned regarding information sources and methodologies used when preparing the appraisal and determining a value for the subject. He was also questioned in detail with regard

to his understanding the components of market value and the appraisal techniques. The witness replied to the inquiries with detailed, confident and comprehensive answers.

At the conclusion of the witness' testimony, the Cook County State's Attorney's Office on behalf of the board of review moved for a directed finding from the Property Tax Appeal Board confirming the subject's assessment. The board contended the appellant failed to meet its burden because the appellant's limited scope appraisal and reliance on the income approach was insufficient to establish market value. The appellant's counsel countered by arguing that the appraiser did more than just the income approach and he did employ the sales comparison approach to value. However, the appraiser did not place as much weight on the sales comparison approach as he did the income approach when arriving at his opinion of value. The Board finds the board of review's motion goes to the weight of the evidence and hereby denies the motion for a directed finding.

The appellant's counsel then made a motion that the board of review be defaulted and objected to its participation in the instant matter, as it has not filed either an appearance or evidence. The board responded that it has a statutory right to take an active part in the hearing. The attorney for the intervenor did not object to the board of review's participation and suggested that the board be allowed as an active participant in the hearing process.

In this appeal, the Property Tax Appeal Board granted the board of review extensions of time, with a final termination date of September 18, 2002, to file evidence. The board of review did not submit either its "Notes on Appeal" or evidence in support of its assessed valuation of the subject property as required by Section 1910.40(a) of *The Official Rules of the Property Tax Appeal Board* (86 Ill. Adm. Code §1910.40(a)). Therefore, the Property Tax Appeal Board hereby grants the appellant's motion and defaults the board of review based on its failure to present any evidence to support its assessment of the subject property or to refute the appellant's argument.

Next, the intervenor, the City of Chicago Board of Education presented a limited, self-contained appraisal report and the testimony of its author. The witness testified that she is a State of Illinois licensed and certified general appraiser with a MAI designation and has been in practice for over 20 years. She further testified that she personally inspected the publicly accessible areas of the subject. She indicated that the subject was appraised as fee simple and in her opinion the subject's highest and best use as improved is its current use. In her report, she noted that she relied on some of the information contained in the appellant's appraisal report, and thus not responsible for the accuracy of such information. She further testified the purpose of the valuation was to arrive at a fair market value for the subject as of January 1, 1999, which she concluded was $17,580,000.

Similar to the appellant's appraiser, of the three classic valuation techniques, the intervenor's appraiser did not undertake a cost approach, as information regarding the size of the subject improvement was unavailable. The first technique used by the appraiser was the income approach to value. To determine an average daily rate for the subject the appraiser presented an analysis of three hotels, she considered competitive with the subject. In 1999 these three hotels had average daily rates ranging from $145.85 to $150.24 and occupancy rates ranging from 70.5% to 80.2%. She also examined the 17 hotels considered to be competitive with the subject contained in the appellant's appraisal. In the appraiser's opinion a number of these hotels, particularly two, are superior to the subject. In addition, she examined data compiled by PKF Consulting and Smith Travel Research, which presented overall Chicago central business district figures. For 1999, this data suggests, the average daily rate for the overall Chicago central business district hotels was $158.84 with a 71.0% occupancy rate. Using this forgoing data, the appraiser estimated an average daily rate for the subject to be $170.00 with a 70% occupancy rate, resulting in an estimate of total room revenue of $12,378,975 for 1999. Noting that this occupancy rate is slightly lower than the competitive set of 17 included in the appellant's appraisal, the witness suggested this was due to a rebuilding of the subject's customer base after its remodel and refurbish. Telecommunication services income was stabilized using Smith Travel Research 1998 estimate of 3.8% of the revenue from guest rooms, or $470,401. Based on the subject's 1995 and 1996 "other revenues" category, and a 3% inflation rate, the appraiser estimated "other income" to be $435,000. The subject's 1997 other income figure of $398,824 was not used because as the appraiser reasoned the restaurant operator likely was less motivated in its last year of a lease. The appraiser estimated $13,284,376 as total revenue for the subject.

To determine a stabilized figure for expenses both industry data and the subject's historical expenses were examined. Each category was stabilized at a percentage of the projected income within nationwide industry standards. Total expenses were stabilized at $8,048,744. The appraiser noted expenses related to food and beverage service were not included because the subject's management leases these facilities to an outside company. After deducting the estimated expenses from stabilized income, the result was a net income of $5,235,633. From the net income, the appraiser's also deducted $1,102,238 for income attributable to personal property (return on) and income attributable to working capital to conclude a provisional net operating income attributable to real estate of $3,877,357.

Using *Real Estate Research Corporation's* first quarter 1999 investor survey and *Korpacz Real Estate Investor Survey's* first quarter 1999 investor survey as resources, the appraiser determined a 10.5% capitalization rate was appropriate for the subject. To this she added 7.3% as a tax load, resulting in an indicated capitalization rate of 17.8%, the same as the appellant's appraiser's estimate. Applying this capitalization rate to the provisional net operating income attributable to real estate, or $3,877,357, resulted in $21,783,902. Using a net house profit of $3,645,481, an incentive management fee of

15%, or $546,822 was added and the resulting $4,206,324 was capitalized using 13.0%. It was unclear from the witness' testimony why she used this methodology. From these calculations, the appraiser concluded a value for the subject, via the income approach, of $17,580,000, rounded.

The intervenor's appraiser developed a sales comparison approach to value for the subject using six sales. However, the appraiser suggested that no properties included are sufficiently comparable to the subject to make a properly supported opinion of value through this approach. She did select two of the sales that she felt supported her concluded value through the income approach. These properties sold in February 1997 and July 1997 for prices of $34,000,000 and $13,899,999, respectively. The first sale was purchased without allocation for personal property and was subsequently totally rehabilitated and renamed. The second sale included a substantial allocation for personal property. The per room sales prices were $88,773 and $63,182, unadjusted.

After reconciliation of the various elements of the appraisal, the appraiser opined that although the sales comparison approach was inconclusive it supported the income approach. Her final opinion of the subject's market value as of January 1, 1999, was $17,580,000, rounded.

When cross-examined, the intervenor's witness testified she relied on factual information and market data from the appellant's appraisal in her analysis. The intervenor's appraiser was queried fully with regard to the appraisal techniques and other sources used in the appraisal.

In rebuttal, a second appraiser was called as the appellant's expert witness. The witness testified he is a Member of the Appraisal Institute (MAI), and a certified general appraiser in Illinois, Indiana and Michigan. He stated he has been an appraiser since 1979 and has taught appraisal theory and practice. Further, he has been qualified an expert before this Board, various circuit courts, and federal courts. Additionally, he testified he does and has done many reviews and/or technical reviews of other appraisals. The appraiser was tendered as an expert witness.

The appellant's review appraiser testified he was employed by the appellant's attorney to complete a desk review to determine the appropriateness of the appraisal techniques and methodologies employed by the intervenor's appraiser. Although the witness pointed out several minor errors and contradictions in the appraisal, he focused on what he opined as incorrect application of the income approach. He testified the intervenor's appraisal utilized not only real estate value but also value contributed by furniture, fixtures, and equipment (FF&E) as well as business value. He explained both the teachings of Appraisal Institute and USPAP (Uniform Standards of Professional Appraisal Practice) state that these two items must be deducted from any income stream before a conclusion to value for real estate only. It was his belief that a fee simple interest was the goal of the intervenor's analysis. In his opinion, if using a

capitalization rate reflecting the risk inherent in the operation of a hotel business, such as the 13% used by the appraiser, a tax load factor should be added thus resulting in a much higher overall rate. This he pointed out would drop the indicated value precipitously. In conclusion, the witness suggested that methodologies used by the intervenor's appraiser were not appropriate to the subject. The witness was briefly cross-examined regarding his opinions. His answers were clear and succinct.

The intervenor also presented a second witness as its rebuttal witness. The witness testified that he is a State of Illinois certified general appraiser, holds a MAI designation and has been appraising real estate since 1991. He stated that he has been qualified as an expert witness in various courts and municipalities. The witness testified the scope of his assignment in the current matter was to provide a technical review of the appellant's appraisal report. First the appraiser discussed several typographical and/or mathematical errors he perceived were in the appraisal. He next discussed several of the expenses presented by the appellant's appraiser and his disagreement with the methodology used to determine them. In the witness' opinion, in several instances the appraiser's expenses were reconciled toward the historical aspect rather than the market data available. He also suggested that the appraiser utilized industry and market data from quarters in 2000 and 2001, which is inappropriate for a 1999 appraisal. After analyzing the appellant's appraiser's sales data, the intervenor's witness testified in his opinion at least two of the sales were inappropriate comparables when compared to the subject because the sales were after the date at issue. During the witness' brief cross-examination, he answered questions with self-assurance.

In closing, the appellant's counsel requested that the Board determine $12,400,000 as a fair market value for the subject. Counsel for the intervenor argued the subject's assessment be increased to reflect a fair market value of $17,580,000.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of this appeal. The issue before the Property Tax Appeal Board is the determination of the subject's market value for ad-valorem tax purposes.

When market value is the basis of the appeal, the value of the subject property must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. (86 Ill. Adm. Code §1910.65(c)).

The Property Tax Appeal Board finds that the best evidence to estimate the subject property's market value contained in the record is in testimony, data and analyses contained in the appraisal performed by the appellant's appraiser. The Board finds the content of the intervenor's report weak. Moreover, the intervenor's appraiser testified

her appraisal was essentially based on data provided through the appellant's appraisal. Such testimony by the intervenor's witness is an indication of the inadequacies of the report. It appears that her report was little more than a re-working of data researched by the appellant's appraiser. Subsequently, little reliance can be placed on its contents.

Neither appraisal presented a cost approach to value. In the sales comparison approach, the intervenor's primary appraiser presented six hotel sales. Four of these sales were also included in the appellant's appraisal. While she suggested that two of the sales have some comparability to the subject, she then concluded that determining a value through the sales comparison proved inconclusive. But she also concluded that these two sales support her value through the income approach. The appellant's witness on the other hand provided sufficient detail and analysis to conclude comparability of his six sales and accomplished a well-documented conclusion of value for the subject through the sales comparison approach.

Regarding the income approach to value, the intervenor's appraisal's also appears to be a re-working of the research and calculations of the appellant's appraiser. Additionally, the methodology used to determine capitalization rates and conclusions was difficult to follow, not explained clearly, and not well supported. Thus, the Board accords the intervenor's income approach little weight. In contrast, the appellant's appraiser utilized a method to determine the capitalization rate that was reasonable and based on market-based data. The appellant's appraiser's development of the stabilized income and expenses was clearly based on comparables in the market. During testimony, the appellant's witness displayed a comprehensive knowledge of the components making up the subject's revenue stream and the competing marketplace. As cited above, the Board finds the appellant's appraisal and supporting testimony to be the best evidence to estimate the subject property's market value contained in the record.

After hearing the testimony considering the evidence, the Property Tax Appeal Board finds the subject property had a market value of $12,400,0000, as of January 1, 1999.

As a final point the Property Tax Appeal Board finds that the Cook County Real Property Classification Ordinance for class 5a property of 38% shall apply to the market value finding. The Property Tax Appeal Board gives reduced weight to the appellant's level of assessment arguments. In Cook County Board of Review v. Property Tax Appeal Board, 339 Ill.App.3d 529, 274 Ill.Dec. 212, 791 N.E.2d 8 (1st Dist. 2002); and Cook County Board of Review v. Property Tax Appeal Board, 345 Ill.App.3d 539, 280 Ill.Dec. 825, 803 N.E.2d 825 (1st Dist. 2003), the court places the burden of establishing the correct level of assessment on the party making the claim. In this case, the appellant failed to meet that burden.

Given the subject's actual market value found herein, the subject parcel should reflect a total assessment of $4,712,000. Since the current total assessment of $5,628,350 is greater than the assessment warranted by the subject's market value, a reduction is appropriate.

COMMERCIAL CHAPTER

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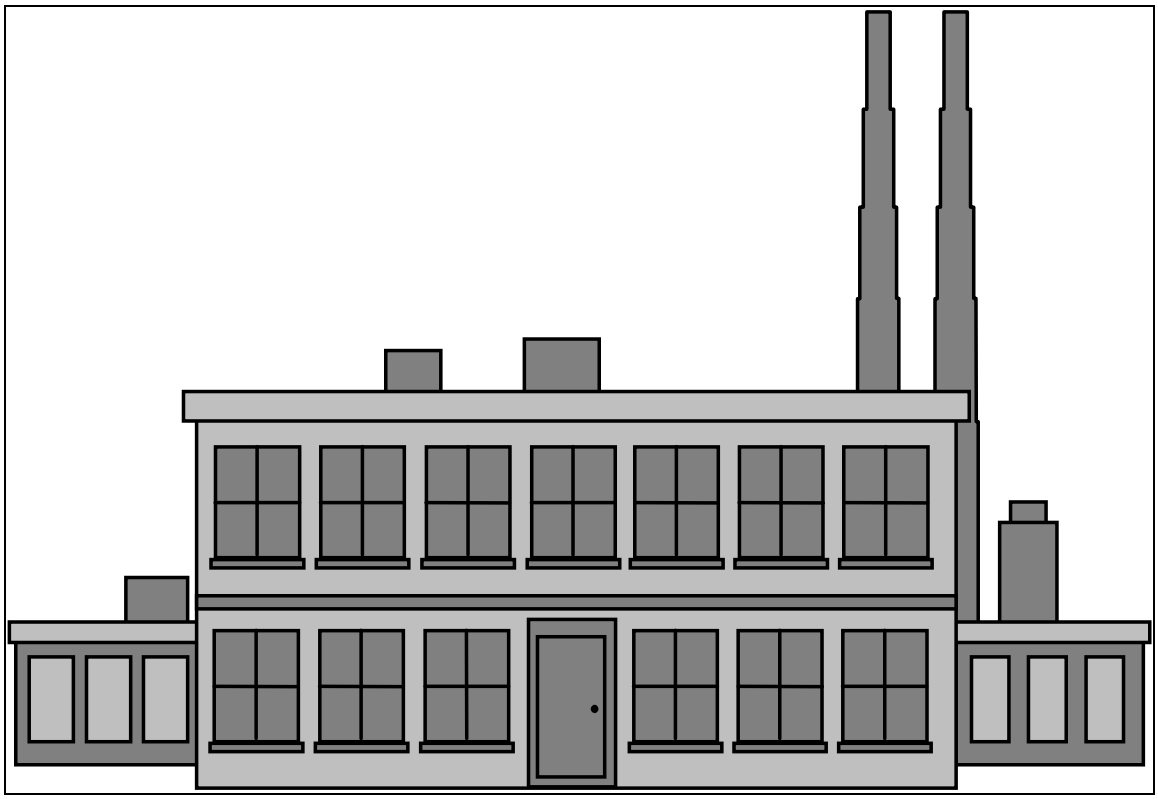
PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

INDUSTRIAL DECISIONS



PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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INDUSTRIAL CHAPTER

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APPELLANT: Sauer Danfoss, Inc.
DOCKET NUMBER: 03-02513.001-I-2
DATE DECIDED: November 6, 2005
COUNTY: Stephenson
RESULT: Reduced Assessment

The subject property consists of a 19.12-acre parcel zoned M-3, heavy industrial, located in central Freeport. The property is improved with a concrete block, corrugated metal and glass block manufacturing building that was constructed in 1957 with additions in 1960, 1965, 1969, 1991 and 1994. The total building size of the plant is 182,793 square feet. Of this figure, 82,000 square feet is two-story plant area with 41,000 square feet on each floor. The majority of the plant was built between 1957 and 1960. The original 1957 plant consisted of 82,478 square feet with 64,761 square feet added in 1960. The remaining four additions were much smaller and consisted of between 2,560 and 12,624 square feet for each addition. Clear ceiling heights range from 10.5 feet to 24 feet and there are eight overhead doors. The manufacturing portion of the plant has 41,000 square feet of second story building area and 133,000 square feet of ground floor space. There is a 6,000 square foot office and an additional 3,000 square feet of office space in the plant area resulting in 4.9% total office space in the facility. The air-conditioned office has painted concrete block with wallpaper and tile floors.

The subject site is also improved with asphalt and gravel parking lots, concrete loading area, sidewalks, lighting and a six-foot chain link fence around most of the property.

The appellant appeared before the Property Tax Appeal Board through its attorney arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of that argument the appellant submitted an appraisal prepared by a state certified appraiser and called the appraiser as a witness.

The appraiser testified he inspected the interior and exterior of the subject property and noted the additions over the years. He stated that one section comprises 82,000 square feet and is a two-story section with 41,000 square feet on each floor. Newer additions that were approximately 9,000 and 12,000 square feet and have ceiling heights of 18 to 24 feet. However, 80% of the plant has clear ceiling spans of only 12 to 13 feet.

The witness testified the subject has several functional problems, one of which is the 82,000 square foot two-story section. The appraiser stated he has not seen a two-story industrial building built since the early 1960s and that 99% of all industrial users prefer a one-story building with good ceiling span. The functional utility is poor in a two-story building because users want to receive raw material at one end, work through the

manufacturing process and then ship out the product on the other end in one, continuous flow.

The appraiser also testified the subject suffers from functional problems due to the low ceiling heights in the vast majority of the building. Most buildings today are built with 28 to 32 foot clear spans with some built at 24 feet. The witness explained that the higher spans are due to newer technological advancements that allow some equipment to be stacked higher than in prior years. Therefore, high clear ceiling heights are prerequisites for most manufacturing facilities. With 80% of the subject having ceiling heights of only 12 to 13 feet, the subject would not fit the needs of 90% of all industrial users today.

A third functional problem for the subject is the multiple additions. Additions make it more difficult to move the manufacturing line from one area to another. It is common in additions to see holes cut through common walls so they can be traversed throughout the facility; however, it continues to impede the process. Having the choice, a buyer would choose one large, open building over one that has numerous additions.

The appraiser also testified the different additions also create another problem in the subject facility. The floors are different elevations. One floor is six feet higher than the floor in the adjoining addition, which impedes product flow and the movement of equipment. Ramps had to be built to get from one section to the other.

The subject's location also presents a problem. Manufacturing users prefer to be located on an interstate. Freeport does not have an interstate but does have Route 20, a four-lane highway that connects Freeport and Rockford. Industrial and manufacturing users also prefer being located in industrial parks where their industrial neighbors do not complain about noise and smoke. The subject is located within the north part of town, which is not on an interstate and not in an industrial park near other manufacturing users. The industrial park is located on the southern end of Freeport.

The witness testified one of the subject's walls is predominately of glass and concrete block construction. This type of construction was used early in the 1900s to allow both light and fresh air into the buildings. However, it increases heating and air conditioning costs.

The highest and best use of the subject property as if vacant was found to be for industrial use. As improved was for a continued industrial use. A weighted age was calculated for the subject because it was built over the years with numerous additions. The size of the addition is divided by the total square footage of the facility to get a percentage of the total size. This percentage is then multiplied by the actual age of the addition to get a weighted age. Those ages are then added to arrive at the weighted age for the facility. The subject's weighted age was 40 years using this method.

The appellant's appraiser testified using a weighted age for a property with multiple additions is better than using an effective age for several reasons. An effective age is subjective and many appraisers would come up with many different estimates of effective age on the same property. Also, if an appraiser has not seen the interior of a property a weighted age using actual dates of construction in the calculations is factual rather than speculating as to the condition of the interior. While an effective age could represent a property is acting at an age younger than its actual age, the appraiser, having actually seen the interior of the subject, found issues with the subject that would indicate it is acting at an older age than its actual age.

The appraiser next discussed the approaches to value he utilized in his appraisal. He did not prepare an income approach on the subject because older facilities with numerous additions will typically be purchased by syndicates that will incubate the property. He explained the new owners rehabilitate one section of the building at a time and then attempt to rent that section while the remainder is vacant and unused. Therefore properties like this are usually never fully rented. It is difficult to prepare an income approach calculating this incubation time period and the costs associated with separating utilities, etc. during this time. Also, there are very few properties like the subject that are rented, most are owner-occupied. He also found no two-story manufacturing rentals to use in an income analysis.

For his cost analysis, the appraiser first reviewed land sales to estimate a value for the subject land using four land sales located in Freeport. These properties ranged in size from 6 to 29.89 acres and sold from 1990 to 1997. Sales prices ranged from $6,842 to $24,059 per acre. Adjusting these properties to the subject for sale date, location, size, utilities and zoning, the appraiser estimated a value for the subject's 19.12 acres of $15,000 per acre or $290,000.

The Marshall Valuation Service was used to estimate replacement costs for the subject improvements. The subject was considered a light industrial facility, C grade, of average quality. Adding the appropriate descriptive calculations, the subject's base cost was estimated to be $32.01 per square foot. Adding the appropriate cost multipliers resulted in a refined cost estimate of $39.17 per square foot or $7,160,000. A lump sum addition of $365,000 was added for site improvements for a total cost estimate new of $7,525,001.

The appraiser next explained his depreciation analysis. He stated industrial properties typically depreciate the most in the first ten years then tend to stabilize in subsequent years. He utilized four sales from his sales comparison approach where the land values were known and costs could be calculated. The depreciation rates for these properties ranged from 1.95% to 3.4% per year. He estimated a depreciation rate for the subject of 2.3% per year or 92%. Deducting 92% depreciation from the estimated total costs

resulted in an estimated value for the improvements of $602,001. Adding the estimated land value of $290,000 resulted in a total estimated value under the cost approach of $900,000.

In discussing his sales comparison approach, the appellant's appraiser testified that the subject, at just under 200,000 square feet, would be marketed throughout the Midwest and could possibly get come national exposure. The appraiser first attempted to find sales of other industrial buildings with two-story designs and only found one. He then looked for sales with similar type locations, similar ages and clear ceiling heights.

The appraiser found seven properties located in Rockford, Lincoln, Pana, Bloomington and Rochelle. One property is a two-story facility while six are one-story facilities. Two properties are original construction and five have had additions over the years. The weighted ages ranged from 25 to 51 years. Building sizes ranged from 94,360 to 445,767 square feet and land sizes ranged from 7 to 22 acres. The percentage of office space ranged from 2% to 18% and clear ceiling heights ranged from 12 to 18 feet to 20.7 to 25.2 feet. Land to building ratios ranged from 1.24 to 1 to 7.55 to 1. The sales occurred from July 1997 to October 1999 for prices ranging from $200,000 to $1,950,000 or from $1.03 to $6.52 per square foot.

The appraiser made adjustments to the comparables for date of sale, location, size, land to building ratio, age and clear ceiling span. The witness testified that in his 30 years in the business he has never seen a two-story industrial building sell for over $5.00 per square foot. He estimated a value for the subject of $5.00 per square foot or $900,000.

In reconciling his approaches, the appraiser gave least weight to the cost approach because it is difficult to establish depreciation in older buildings and you almost always have to use replacement costs rather than reproduction costs. Reproduction costs are difficult to obtain because some materials in older buildings are no longer available and you would have to find some way to get costs for products that no longer exist. He gave most weight to the sales comparison approach because it gives a true picture of actions of buyers and sellers in the marketplace. The final estimated value for the subject as of January 1, 2002 was $900,000.

The appraiser testified he inspected the subject in April 2003 for his retrospective report. He found the market had turned downward from 2000 to 2005. There have been no changes to the subject property that would account for any differences in valuation. He therefore found there would be no significant changes in his estimated valuation of the subject from the January 1, 2002, valuation of the property in his report to January 1, 2003, the date of valuation in this appeal.

During cross-examination, the appellant's appraiser testified the subject is located closer to the Route 20 bypass than the industrial park on the south side of Freeport. He agreed

the properties in the subject's immediate area are predominately industrial, commercial and agriculture properties.

The appraiser was next questioned about the adjustments made to the sales he used in his sales comparison approach. The appellant's appraiser stated his positive and negative adjustments give indications as to whether he thought the properties were superior or inferior to the subject using various factors. He stated a positive (+) and a negative (-) adjustment to the same property do not necessarily create an equal (=) adjustment because it depends on each particular adjustment and the weight each is given in the analysis.

The appraiser testified he did not arbitrarily omit the income approach in his report. He considered the approach and, after reviewing his database of available rental properties throughout the state, determined it would not be appropriate to use in this case.

The appraiser testified his second sale was a like-kind exchange and this type of transaction should be reviewed to determine if it should be used in a sales comparison approach. He stated he contacted several people on his third sales comparable and could not confirm with certainty if the sale included business value. He indicated if it did, the value of the real property would be lower. He also agreed this property is located in an area inferior to the subject. His fourth sale was being used as a warehouse at the time of sale. His fifth sale was in a more rural area than the subject and had been vacant for over one year. However, he testified it is common for industrial properties to sell in arm's length transactions as vacant and rare to sell when occupied. Although questioned whether his sixth sale had more than one parcel that sold in the transaction, the appellant's appraiser testified the real estate transfer declaration indicated only one parcel in the sale. He also stated that at one time there were environmental concerns associated with this property. The majority of the property was in average condition with some parts being in below average condition from an exterior only inspection.

During redirect examination, the witness stated it was not necessary for his determination that the subject would have the same value as of January 1, 2003, to run new cost calculations because the property was only one year older. He again stated he did not place much weight on the cost approach. The appraiser also testified the weight given to adjustments in the sales comparison approach depends on the item and the degree of importance of that item.

In again discussing his determination that the income approach was not appropriate in this instance, the appraiser testified he did review his rental database. Properties like the subject, if rented are only partially rented at low rates. More importantly, during the incubation time, many large expenses are incurred to divide utilities, separate office areas, retrofit the building for other uses, install divider walls for the various spaces and

so on and so forth. These are hard to determine however, they must be included in the start-up costs in order to rent the property.

The appraiser was next questioned regarding his vacant sales comparables. He testified his appraisal estimates a marketing time for the subject of 15 to 24 months, which is typical for these types of properties. It is therefore common for them to be vacant prior to being purchased. With lower ceiling heights on 40-year-old buildings it is typical for them to be vacant when sold and converted to warehousing and storage use.

For his sale that sold in a like-kind exchange, the appraiser testified he contacted the parties and the sale price was determined based on a previous sale of that property in 1997 for $1,840,200. The agreed new sales price for 1999 was $1,856,700. Based on this research, the appraiser concluded the sale was an arm's length transaction. The witness talked to the township assessor and a person involved in the actual sale on the sales comparable that may have had business value involved in the transaction. Neither mentioned any business value was involved in the sale. He also testified there was a 2003 sale of this property that, although slightly higher, validated the 1999 sale price of $615,000. A copy of the 2003 transfer declaration for this property was presented indicating this property sold in November of 2003 for $679,500.

The appellant's appraiser testified it is rare and he could not recall finding an industrial property that was occupied and for sale at the same time, unless it was leased to a third party. Also, the correct valuation is value-in-exchange not value-in-use.

During re-cross examination, the appraiser explained in detail the 2003 transaction he discussed on re-direct examination. The transfer declaration indicates 3.09 acres transferred while the 1999 sale transferred 4.23 acres. The appraiser also testified that if the cost approach manual an appraiser uses does not allocate a number for entrepreneurial profit, then the appraiser to account for this. However, most cost manuals already include a figure for entrepreneurial profit.

The board of review presented "Board of Review Notes on Appeal" wherein the subject's final assessment of $597,610 was disclosed. The assessment reflects an estimated value for the subject of $1,801,658 using the 2003 three year median level of assessments for Stephenson County of 33.17%. The board of review presented an appraisal prepared by state certified appraisers and called one of the appraisers as the board of review's witness.

The board of review's appraisal witness testified he inspected the interior and exterior of the subject property on November 4, 2004, and prepared a retrospective estimate of value for the subject for January 1, 2003. He walked the property and measured the exterior of the building and marked dimensions from a sketch he received from an employee of the appellant. He estimated the subject facility contains 184,005 square feet

of building area from a perimeter measurement. The witness testified the subject is very well maintained and in good repair. He stated 21% of the facility is second floor area while 79% is one-story area. He was told there had been no changes to the property from January 1, 2003 to the date of his inspection.

The board of review's appraiser testified that there is a problem of functional utility pertaining to the ramps from one addition floor height to another. There is also a functional problem with work flow due to the second floor. Modern processes generally are all on one floor. The highest and best use as improved was for a modern industrial use.

The appraiser stated the subject has access to Route 20 via Henderson Road to Stephenson Street to the Route 20 bypass. This is a distance of approximately three miles. He later changed this to two miles. An alternative would be Henderson Road to Stephenson Street to Business 20 and 26 to the bypass which is approximately four or five miles.

The appraiser indicated he had sufficient data to perform all three approaches to value. He first testified he found enough rental properties of similar size, location and modern industrial utility to compare to the subject in the income approach. He did not testify further to this approach. In his appraisal the board of review's appraiser utilized four rentals and one rental offering located in Freeport, Ottawa and Loves Park. The properties are industrial/warehouse, industrial/manufacturing or industrial properties. Four were built from 1951 to 1990 with one having no age reported. They were of brick and concrete block, masonry, pre-cast metal, concrete block and pre-engineered metal construction in average to average/good condition. Two comparables were rentals in a 473,000 square foot building and two more comparables were located in another building. The rentals are from 90,000 to 216,000 square feet. Ceiling heights ranged from 17 to 20 feet.

Rental rates ranged from $1.68 to $2.13 per square foot. Two leases were modified gross leases with the owner paying taxes, two were net leases and the offering was on a net basis. The asking lease rate was $1.75 per square foot. After adjusting for size, age, location and minimally for ceiling height, the adjusted rental rates ranged from $.95 to $1.41 per square foot. The appraiser estimated a rental rate for the subject of $1.25 per square foot on a net basis or $230,006 potential gross income.

The appraiser estimated vacancy and collection loss at 10% resulting in an effective gross income of $206,006. Management fees of 4%, insurance, accounting and administrative expenses of $750 and reserves of $.15 per square foot were deducted resulting in total expenses of 17.7% or $36,631. Deducting these expenses resulted in a net operating income of $170,375. Using an 11% capitalization rate from the band of

investment method, the appraiser capitalized the net operating income to arrive at an estimated value under the income approach of $1,550,000.

The appraiser was questioned at the hearing regarding his cost approach. He was not questioned regarding his estimated land value. In his report the appraiser utilized three industrial land sales and one offering located in Freeport. Three are located in an industrial park. The four properties contain from 95,645 to 633,798 square feet or from 2.19 to 14.55 acres. The three sales sold from October 2000 to July 2003 for prices ranging from $35,860 to $110,000, or from $8,730 to $20,000 per acre or $.20 to $.46 per square foot. The offering had an asking price of $363,750 or $25,000 per acre or $.57 per square foot. After adjusting the properties for date of sale, location/linkages, topography, size, shape and flood area, the appraiser estimated the 832,867 square foot subject land to have a value of $.21 per square foot or $175,000.

For his costs the appraiser testified he used a weighted age of 41.67 years for the subject based on the size and construction dates of the original section and each addition. The appraiser testified he used the Marshall and Swift Commercial Cost Manual to obtain reproduction base costs new of the facility. Contrary to appellant's appraiser's testimony, the board of review's appraiser testified this cost manual does not include entrepreneurial profit in its costs. He stated any entrepreneurial profit would have to be added by the appraiser after using the base costs. He also testified his perimeter measurements were used to determine costs of each addition using the various construction types used. However, he did not indicate what cost schedules were used for the subject.

The base reproduction costs new was estimated at $43.44 per square foot plus elevators at $8,085,177. An entrepreneurial incentive of 10% was added to this figure resulting in total building reproduction costs new of $8,893,695. Site improvement reproduction costs were estimated at $495,687 with an additional 10% added for entrepreneurial incentive resulting in total reproduction costs of the improvements of $9,438,951.

The board of review's appraiser next discussed his depreciation analysis. He stated the subject was well maintained and that an effective age of 25 years rather than the weighted age of 41.67 years should be used. Physical depreciation of 55% was therefore taken, along with 10% functional and 20% external obsolescence for total depreciation of 85%. Site improvements were depreciated 75%. Deducting these depreciation figures from the total reproduction costs new resulted in an estimated improvement value of $1,470,368. Adding the estimated land value of $175,000 resulted in a total estimated value under the cost approach of $1,650,000.

The board of review's appraiser next discussed his sales comparison approach. He testified he was looking for properties that possess a "modern industrial utility" in the subject's size and location. He utilized six sales located in Freeport, Rockford and

Roscoe. The appraiser testified the first property is located in an industrial park in Rockford, the second property is similar to the subject in construction materials, the third property, although listed in the appraisal as two story, only has a portion that is two story. Also, it is located in a Superfund environmental area and the appraisal indicates there are office, shop and warehouse areas with no mention of manufacturing. The fourth property is also located in a Superfund site and has one-story additions. The fifth sale is located in Freeport in an enterprise zone, was built in 1985, has no additions and is all pre-engineered steel. It is listed as having both 6 inch and 8-inch reinforced concrete floors with insulated walls and ceilings. The sixth property is located in Freeport, was built as a one-story facility in 1981 with no additions and is a warehouse.

The properties were constructed from 1945 with a 1968 addition to 1985. They ranged in size from 96,000 to 294,355 square feet. The appraiser indicated the "floor height" for four of the comparables ranged from 14-26 feet to 22 feet. No floor or ceiling heights were given for two of the six properties. The properties sold from January 2000 to May 2004 for prices ranging from $4.40 to $12.84 per square foot. The appraiser made percentage adjustments for location, land to building ratios, office area, size, condition, age, ceiling heights, functional adequacy, sprinkler systems and Superfund locations. The adjusted sales prices ranged from $4.40 to $12.84 per square foot. The appraiser testified there were no excessive adjustments needed and that means the subject fits well in the market of industrial properties with modern utility. Giving most weight to his comparable two due to similar additions, he estimated a value for the subject under the sales comparison approach of $8.60 per square foot or $1,600,000, rounded.

The appraiser testified that all three of his approaches had similar estimated values for the subject. He indicated this would mean all three approaches were appropriate to use, that he identified all of the characteristics of the subject and that he determined a good opinion of value.

The appraisal indicated the cost approach was given less weight than the sales and income approaches due to subjective opinions of depreciation on older properties. The sales comparison approach was given weight as there were sufficient comparables available. The report indicates the income approach was given less weight because "there is a lack rental data available other than that, which our opinion would not be comparable to this property." The final estimated value for the subject as of January 1, 2003, was $1,600,000.

The board of review's appraiser was next asked to discuss three of the sales comparables used by the appellant's appraiser. The appraiser testified the appellant's appraiser's first comparable is vacant with broken windows and the building is not secure. However, the condition as of the date of the hearing is not relevant to this appeal. He stated it is a two-story frame building with little modern utility. The board of review's witness testified the second comparable used by the appellant's appraiser

was not listed on the open market. The third comparable is a frame structure with part of it built under a street bridge in a distressed area with no modern industrial utility.

During cross-examination, the board of review's appraiser testified he has only been inside one of the sales in his own sales comparison approach. He also attempted to explain his statement regarding his reconciliation and whether or not his rental properties were comparable to the subject. He seemed to indicate he was discussing the lack of comparability to properties he did not select for his analysis rather than discussing the properties he did select and use in his report.

The appraiser was next questioned regarding his repeated use of the term "modern industrial utility." Part of the reliance on this phrase came from his observations and discussions with an employee of the appellant that the plant worked well for what they were doing there. He also would not make a general statement that a two-story industrial building would be less attractive on the market than a one-story industrial building.

The board of review's appraiser did agree that the changes in floor elevation would be considered a functional problem. He testified a building with very high or very low ceiling heights would potentially have functional utility problems. He agreed that 41,000 square feet of the subject is second floor area.

The appraisal witness agreed that his report states that all but 21,750 square feet of the 184,000 square foot subject has a 12 foot ceiling height. The witness also agreed his appraisal states that in Freeport there is a decrease in the labor force, Freeport is not in a growth area, Freeport unemployment is higher than other comparable areas and that there has been a drop in rental rates and increased vacancies in industrial and commercial properties.

The appraiser testified the subject has an effective age of 25 years rather than its 41.67 weighted age. He testified 12 foot ceiling heights and two-story areas would not be considered in the effective age analysis, only in the functional obsolescence. The witness also testified that if need be, he estimated effective ages different from actual ages of his sales comparables. However, he has only seen the interior of one comparable. He agreed he made an effective age determination of the subject from an interior inspection and made effective age determinations for comparables from a drive-by inspection of the exterior. He also agreed he estimated a typical marketing time of 18 to 24 months. However, he testified it was his opinion that properties that someone can move into and start using right away don't remain vacant. He did not explain this obvious discrepancy in marketing time for the subject.

The witness was next questioned about his reproduction costs new. He again testified he found these costs in the Marshall Valuation Service cost manuals. He agreed that

reproduction costs means using exactly the same materials that were used when the property was built. He also stated he got his costs to reproduce the subject in the updated manuals. He added an entrepreneurial incentive of 10%. He indicated there were typographical errors in his report discussing functional obsolescence. He explained that only the two-story portion and the add-on construction layout were used in determining the subject suffered from 10% functional obsolescence. He found 20% external obsolescence due to the market area and the recession in that market and agreed these figures are very subjective. He did not prepare any market extraction analysis for the 10% functional and 20% external obsolescence figures he used.

In discussing his capitalization rate, the board of review's appraiser testified his rate was not derived from the market because there were insufficient sales in the area to extract a rate.

The witness next discussed one of the appellant's appraiser's sales comparables. The board of review's appraiser testified about the broken windows he saw in this property. He testified he purposely drove by the property on Sunday and noticed the broken windows. He was reminded that property sold in 1998, not last Sunday.

The appraiser then discussed his sales comparables. He testified he confirms the sales through reviewing public records, talking to parties involved, discussions with brokers and sometimes looking at appraisals if he prepared one on the sold property.

The board of review's appraiser testified his first comparable is a one-story facility built in 1971 that is located in an industrial park in Rockford. He listed the property as having 14 to 26 feet of floor height. When asked if he meant clear ceiling height the appraiser testified he did not know because he has not been inside the building. He stated he did not know if the 14 foot ceilings applied only to the office. The same was true for his second comparable. The witness was shown a broker's listing for his first sales comparable wherein the clear ceiling heights were listed as 18 feet for 76,720 square feet and 22.6 feet for the back 865,170 square feet. (App. Ex. 1) The appraisal indicated heights of 14 to 26 feet. The witness' comment was this listing does not look like the listings he obtains.

The witness was next questioned about the adjustments he made to his sales comparables. He stated his location/linkage adjustments considered whether the sales were located in Rockford, a superior market, or Freeport, the subject's market. He testified he did not consider it a factor whether a property is located in or outside of an industrial park. The only external factor he found or considered was the location of a comparable in a Superfund site. He also agreed he used subjective effective ages in his age adjustment for the subject and the comparables even though he had actual ages and actual weighted ages in the report and he has not been inside five of the six comparables.

The appraiser testified he made an adjustment for clear ceiling height to his comparable one with 14 to 26 foot heights but did not make any adjustment for comparables two, three and four with ceiling heights of 18 to 22 feet when compared to the 12 to 20 foot ceiling heights in the subject. He stated comparable one has a high bay area and high bays are proven in the market to sell for higher prices. He apparently made no adjustment to the comparables for clear ceiling heights in the remaining square footage of the properties as compared to the subject. He was questioned again regarding the ceiling heights and he testified he could not remember what he did. He was asked if he could recall any two-story industrial buildings being built in the last 30 years. It was apparent he could not. He also testified he could recall only one industrial building that has been built in the last 30 years that was constructed with 12 foot clear ceiling heights.

The appraiser made 5% adjustments for use/buildout for two comparables because their highest and best uses were as warehouses, not manufacturing facilities. His functional adequacy adjustment concerns the add-on type construction of the subject and its two-story section. He made no adjustments to comparables 2, 3 and 4. He testified his second comparable is similar because it has a combination of construction types and has had many additions. When asked why he only used the original construction date and no dates for any additions to compare to the subject, the appraiser testified the dates and additions were not listed on the data he used.

During re-direct examination the board of review's appraiser stated that while he did not make interior inspections of his sales comparables, he made assumptions that properties were well maintained inside if they were visibly well maintained outside.

In rebuttal, the appellant recalled its appraiser. The witness testified any cost in the Marshall Cost Service is a replacement cost and there are no reproduction costs as the board of review's appraiser stated. The appellant's appraiser testified that by definition reproduction costs are costs to construct an exact duplicate property using the exact same materials. So, as an example, if lead pipes were used back when the property was built, lead pipes must be costed out and used in the calculations. Replacement costs are costs to construct a building similar in nature and size but using today's construction techniques and materials. He therefore testified that the cost calculations set forth in the board of review's appraisal cannot possibly be reproduction costs as he stated.

The witness next discussed App. Ex. 1, the broker's listing data sheet on the board of review's comparable one. The appellant's appraiser stated that this is the information that was given to him from the listing broker. The information states the clear ceiling heights are between 18 and 22.6 feet. The rebuttal witness then identified and discussed several exhibits over the board of review's objection. The objections were overruled as the board must have known that an appraisal presented as true and factual for the board's reliance were subject to scrutiny and rebuttal from the opposing party and to

discredit the board's witness if necessary. The appellant's appraiser attempted to discuss the data in various exhibits with the board's appraiser, however, the witness was evasive or did not understand.

The appellant's appraiser identified App. Ex. 2 as a fact sheet given to him by the Roscoe Township Assessor's office regarding the board of review's second sales comparable. These two sheets are from an appraisal of this property that are in the assessor's file. The clear ceiling heights are listed as 25 to 35 feet while the board of review's appraisal states they are 22 feet. The age was listed as 1957 for the original structure with four or five additions up to 1978. This exhibit was allowed as the board of review's appraiser previously testified this is the type of information appraisers typically rely upon. The witness next identified App. Ex. 3 as documentation that the buyer and seller of this property were related and that the property was not advertised for sale on the open market.

The witness went on to identify three more documents, App. Ex. 5, 6 and 7. One document from the Rockford Township Assessor's Office indicates the board of review's third comparable has only 14,208 square feet of second floor space built in 1965 that is part of the two-story office, not shop and warehouse space. That property contains 185,094 total square feet so the two-story office is minimal in size. A property record card was also presented indicating this information along with information on a total of two additions and one remodel were not listed in the board of review's appraisal. The board of review's appraisal states the entire property was built in 1954.

Appellant's Ex. 6 was identified by the witness as a data sheet, transfer declaration, three diagrams and property record cards for the board of review's appraiser's comparable sale four. All indicate the lot size and the building size listed in the board's appraisal are incorrect. The last set of documents, App. Ex. 7, was identified by the witness as township documents pertaining to the board of review's fifth comparable sale. The board of review's appraiser indicated the floor height was 18 feet. The six pages of property record card information from the Freeport Township Assessor's Office indicates that the building height is 32 feet. The appellant's appraiser testified with 32 foot exterior wall heights the interior ceiling heights would be well over the 18 feet as reported by the board's appraiser.

In cross-examination, the appellant's appraiser testified the Marshall Valuation Service provides replacement costs new, not reproductions costs. He testified they do provide an alternative method that allows more specific costs, however, they are definitely not reproduction costs as the board of review's appraiser stated.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellant argued the subject property was overvalued. 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. Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant has met this burden.

The appellant presented an appraisal estimating a value for the subject as of January 1, 2002, of $900,000. The appellant's appraiser testified the market has declined in the subject's area and his estimate of value would be the same as of January 1, 2003, the date of valuation in this appeal. The appellant's witness was present and testified to his analysis and methodology and the Board finds his testimony supports the appraisal and the value estimate in the report.

The board of review presented an appraisal of the subject property estimating a value for the subject property as of January 1, 2003, of $1,600,000. The board of review's appraiser was present and testified to his report. The Board finds the appraisal does not adequately account for functional inutility in the subject, his cost approach was discredited, easily obtainable information on five of six sales comparables was incorrect and very defined percentage adjustments were made to properties he had not even seen when a more factual method was available.

Several facts are undisputed. The appellant's appraiser and reluctantly, the board of review's appraiser agreed that the subject is an older manufacturing facility with 80% of the plant having clear ceiling heights of only 12 to 13 feet. The subject also has had numerous additions built over the years that negatively affect product flow. One addition has an elevation difference of six feet. Ramps have been installed to move the process in and out of this section. Furthermore, the subject has an 82,000 square foot two-story building section with 41,000 square feet on each floor. Neither appraiser knew of any two-story manufacturing buildings being built in the last 30 years and the board of review's appraiser indicated he knew of only one built with 12 foot ceiling heights.

The Board finds the appellant's appraiser more than adequately explained that manufacturing facility users much prefer one-story, single building properties to facilitate the flow of production from one end to the other. He also adequately explained the need for higher ceiling heights to accommodate the newer stacked technology. While the board of review's appraiser testified the subject's layout works for the appellant, it is clearly designed around the functional problems that exist to accommodate that particular user. This is a value-in-use analysis, not a value-in-exchange determination required in valuing property for ad valorem purposes. The multiple additions and different floor elevations were explained as were their effect on production by the appellant's appraiser and, although identified, were basically ignored by the board of review's appraiser.

The Board finds both appraisers prepared cost approaches to value in their reports. The Board finds the appellant's cost approach to be reasonable and supported by testimony. Replacement costs new were estimated using the Marshall Valuation Service Cost Manuals. In his depreciation analysis he used the weighted actual ages of each portion of the facility rather than a subjective effective age due to the multiple additions and the ages of these sections. Depreciation was extracted from sales and deducted from the cost new estimate. The resulting depreciated cost of the improvements was estimated to be $602,001. The Board finds this analysis to be reasonable and supported.

The estimated land value in the appellant's appraisal included dated sales from 1990 and 1991. The Board finds both parties indicated there has been a downturn in industrial values from 2000 to 2005. The Board finds these sales are too dated to give a good estimated of value for the subject land in 2003.

The board of review's appraiser prepared a land estimate for the subject but did not discuss it at the hearing. Three land sales and one offering located in Freeport were used in the analysis. While these properties were adjusted from 35% to 55% for differences to the subject, the Board finds it is the only land analysis of recent sales. The properties sold for $.20 to $.57 per square foot and were adjusted to $.13 to $.31 per square foot. The subject's land was estimated to have a value of $.21 per square foot or $175,000. The Board therefore finds the subject's land value to be $175,000.

The Board finds the remainder of the board of review's cost approach to be suspect. The board of review's appraiser testified he used reproduction costs from the Marshall Valuation Service. The appellant's appraiser testified that service provides replacement costs new. While it has a section with more refined costs, they are not reproduction costs. Reproduction costs new are costs to reconstruct an exact duplicate using the same older techniques and the same materials that were used to construct the property. The Board finds this calls into question the board of review's cost analysis. The Board finds the appellant's appraiser's testimony to be more credible.

The appellant's appraiser reviewed data to prepare an income approach to value. He found there are very few properties similar to the subject that are rented. They are typically owner-occupied. Also, there are costs of conversion during an incubation period to ready the property for rent. The appraiser testified these costs must be included in any income analysis in order to justify the costs to convert. He also found no two-story manufacturing rentals. The Board finds the appraiser analyzed the situation and reviewed data on other properties to determine this approach was not appropriate for the subject property.

The board of review's appraiser prepared an income analysis for the subject. The Board finds most of the four rental properties and one rental offering are not similar to the subject and do not have the functional concerns of the subject. Two properties are half

the size of the subject with only 15% downward adjustments made for size. Clear ceiling heights were only considered in the bay areas of the properties while the overall plant heights were ignored in the analysis. Minimal 2% adjustments were made to two properties with overall 17-foot clear ceiling heights, but again it was based strictly on bay area heights. No adjustment was made for clear ceiling heights for properties with 20-foot clear ceiling heights. One property was only ten years old. The Board also finds the board of review's appraiser used subjective effective ages to compare the properties to the subject. The Board finds the subject's actual weighted age would have been a better choice based on the fact that actual ages were known and the subject has many additions. The Board finds little weight can be given this approach as the suggested comparables are not very similar to the subject and the adjustments ignore important functional issues found in the subject facility that could impact the rental rate. Furthermore, a statement made in the appraisal tends to suggest there were no true rental comparables found.

The Board finds the appellant's appraiser prepared a sales comparison approach and indicated the subject's size would indicate exposure in the Midwest with some possible national exposure. He utilized seven properties located in Rockford and the Midwest area. One property is a two-story building and one is a one with part two-story facility. Like the subject, five of the six have had additions built on over the years. They contain from 94,360 to 445,767 square feet and had clear ceiling heights ranging from 12-18 feet to 21-25 feet. Land sizes were from 7 to 22 acres. The sales occurred from July 1997 to October 1999 for prices ranging from $200,000 to $1,950,000 or from $1.03 to $6.52 per square foot. He made adjustments, including adjustments for clear ceiling heights and estimated a value for the subject of $5.00 per square foot or $900,000. His positive and negative adjustments were thoroughly explained and easy to understand contrary to the board of review's arguments. He also testified he has never seen a two-story industrial building sell for more than $5.00 per square foot.

The Board finds the appellant's appraiser's sales comparison approach to be reasonable and supported. Although one sale was a like-kind exchange, it was based on a previous sale two years earlier for roughly the same price. The appellant's witness contacted the parties associated with the sales and reviewed county public records to confirm his information. Most weight was placed on this approach in the appellant's appraiser's final estimate of value for the subject of $900,000 as of January 1, 2002. The Board finds while the sales are somewhat older, the market downturn from 2000 to 2005 could, if anything, lower the subject's value. The appellant's appraiser stated his estimate of value for January 1, 2003, would be the same.

The Board finds the board of review's appraiser prepared a sales comparison approach utilizing six sales, five of which the appraiser has not been inside. The appraiser used effective ages on properties he has not seen inside and made detailed percentage adjustments for specific characteristics within the buildings he has not seen. Also, the

adjustments that were made to effective ages, clear ceiling heights and add-on construction to name a few, were insignificant. The Board finds by making these adjustments, minimal as they were, makes it appear the appraiser properly lowered the sales prices of superior properties to reflect the subject. These minimal adjustments are then carried forward to create adjusted sales prices that ultimately reflect values too high for the subject. The board's witness placed most reliance on this approach. The Board also finds that on its own, these issues would indicate little weight could be placed on this approach. However, the appellant presented easily documents, most of them through township assessor records, which indicate significant errors on significant items in this approach. Ages, clear ceiling heights and various additions were incorrectly listed or omitted in the report. The Board finds there is one comparable presented in the board of review's appraisal that supports these findings and conclusions with abundant clarity. Thes third comparable is almost identical to the subject in both land size and building size. It is similar in age to the vast majority of the subject's facility. Clear ceiling heights were superior to the subject, however, it is located in a Superfund site. This property also has a 14,208 square foot two-story section. Even though this section is office space, this property sold for $4.36 per square foot. Even after the board's appraiser's own adjustments, the adjusted sales price was $4.40 per square foot and the total adjustment made to this property was only 1%, indicating similarity to the subject. However, in his final determination of value under the sales comparison approach, The board of review's appraiser found the subject to have a value double this property at $8.60 per square foot. The Board finds this result illogical. The Board also finds this particular property lends great support to all the appellant's appraiser's testimony regarding two-story space in industrial facilities.

Based on this analysis of the record, the Property Tax Appeal Board finds the appellant has supported by a preponderance of the evidence that the subject property was overvalued. The Board also finds the best evidence of value for the subject land is that found in the board of review's appraisal of $175,000. The Board also finds the best evidence in the record for the subject's total value is the value estimated by the appellant's appraiser. Although the sales are slightly dated, it is the best evidence in the record of reliable and supportable value.

The Property Tax Appeal Board finds that the subject had a fair market value of $900,000 as of January 1, 2003. Since fair market value had been established, the three year weighted average median level of assessments for Stephenson County of 33.17% shall apply.

APPELLANT: First National Bank of Olney
DOCKET NUMBER: 03-00506.001-I-1
DATE DECIDED: November 11, 2005
COUNTY: Richland
RESULT: Reduced Assessment

The subject property is improved with a one-story, metal clad building that contains 68,600 square feet of building area. The building was constructed in 1981. The improvement has 3,300 square feet of office space and 65,300 square feet of warehouse space. The subject has a ceiling height of 24 feet, one loading dock, and a sprinkler system. The improvements are located on a 275,299 square foot parcel resulting in a land to building ratio of 4.01:1. The property is located in Olney, Richland County.

The appellant contends assessment inequity and overvaluation as the bases of the appeal. The appellant's counsel explained the subject property is an industrial/commercial property and all the comparables submitted by the parties are industrial/commercial properties located in the industrial park in Olney.

The appellant's evidence contains an analysis of six comparables improved with one-story, metal clad industrial type properties that ranged in size from 30,500 to 673,340 square feet of building area. The buildings were constructed from 1963 to 1998. The comparables had office areas ranging from 1,456 to 25,000 square feet; clear ceiling heights ranging from 20 to 30 feet; and from 3 to 16 loading docks. Three of the comparables had wet sprinkling systems. These buildings were located on parcels that ranged in size from 91,911 to 2,339,172 square feet of land area resulting in land to building ratios ranging from 2.69:1 to 9.59:1. These properties had improvement assessments that ranged from $67,870 to $1,447,450 or from $2.15 to $3.45 per square feet of building area.

The appellant's evidence further stated that comparables 2, 3 and 5 sold in 2001 or 2003 for prices ranging from $220,000 to $850,000 or from $7.21 to $10.17 per square foot of building area.

The appellant's counsel specifically compared the subject property to comparable number two, identified as the Heritage and Eagle property. This comparable is improved with a one-story building with 83,520 square feet of building area. This property had 14,740 square feet of office area; 5 loading docks; a 20 foot ceiling height; 112,000 square feet of gravel parking and a land to building ratio of 3.15:1. The building was constructed in stages in 1980 and 1998. The comparable had an improvement assessment of $271,330 or $3.25 per square foot of building area. The record also indicates this property sold in November 2001 for a price of $850,000 or $10.18 per

square foot of building area. The appellant's attorney compared these two properties considering the differences in office area and assigning cost values of $20.00 and $30.00 per square foot of office area.

Based on this evidence the appellant's attorney requested the subject's improvement assessment be reduced to $187,720 or $2.74 per square foot of building area.

Under questioning the appellant's attorney stated he did not have any appraisal or assessment designations. He further indicated that his fee is contingent on the outcome of the appeal proceeding. He also stated that that the $20 and $30 dollar per square foot estimates for the value of the office area were amounts he estimated.

The board of review submitted its "Board of Review Notes on Appeal" form wherein its final assessment of the subject totaling $246,880 was disclosed. The subject's assessment reflects a market value of $739,826 or $10.78 per square foot of building area using the 2003 three year median level of assessments for Richland County of 33.37%. The subject property has an improvement assessment of $234,600 or $3.42 per square foot of building area.

Appearing on behalf of the board of review was the Richland County Supervisor of Assessments and the chairman of the board of review. The board of review also presented an analysis prepared by the supervisor of assessments using the same six industrial/commercial properties presented by the appellant's attorney as well as the two other properties under appeal and consolidated with this hearing. The board of review indicated that the property identified as the Pacific Cycle building with 673,340 square feet was not comparable due to its size and the conditions of its sale. The seven remaining properties had improvement assessments ranging from $2.23 to $3.45 per square foot of building area.

The supervisor of assessments also asserted that the sales of these industrial type buildings do not demonstrate that buildings with larger office areas are commanding greater prices on a per square foot basis.

The board of review's evidence indicated that four of the industrial properties sold prior to the assessment date at issue for prices ranging from $2.38 to $10.18 per square foot of building area. One sale was of the larger Pacific Cycle building that had a unit value of $2.38 per square foot. Another transaction was identified as a Sheriff's sale with a unit price of $7.21 per square foot of building area. The remaining two sales had prices of $9.67 and $10.18 per square foot of building area. The board of review also disclosed in its analysis the subject property sold in July 2004 for a price of $725,000 or $10.57 per square foot of building area.

The board of review also submitted a copy of a four page appraisal associated with the subject property estimating it had a market value of $800,000 as of October 11, 2002. The appraisal was prepared on behalf of the First National Bank of Olney. No appraisal witness was called to testify about the contents of the report. The report contained no data associated with the three approaches to value.

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.

First, the Board finds the appellant's counsel prepared and presented the evidence and argument in support the contentions the subject's assessment was inequitable and excessive in relation to the its market value. The attorney did not call any expert in the field of real estate appraisal or in the field of real estate assessment to testify on behalf of the appellant. The appellant's attorney further stated that he had no designations in either the field of real estate assessment or real estate appraisal. Furthermore, the appellant's attorney indicated his fee was contingent on the outcome of the appeal proceeding. The Board finds problematic the fact that appellant's counsel developed the assessment analysis rather than an expert in the field of real estate valuation or assessment. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion testimony of value for that client's property, especially when the attorney's fee is contingent upon the outcome of the appeal. Nevertheless, since both parties are relying on the same data to support their respective positions, the Board will examine the evidence submitted by both parties to determine whether the subject's assessment is inequitable or overvalued.

The appellant argued in part that the subject's assessment was not reflective of market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds this burden of proof has been met and a reduction in the subject's assessment is warranted on this basis.

The record contains information in the board of review's submission on five sales that occurred from April 2000 to July 2004. The sale that occurred in April 2000 was of a facility much larger than the subject with 673,340 square feet of building area that was built in 1963. This building was not similar to the subject in age or size; therefore, little weight was accorded this sale. Another transaction was identified as a Sheriff's sale that occurred in September 2003. No witness was called to specifically testify about the terms of the sale but the fact that it was a Sheriff's sale calls into question the arm's length nature of the transaction and whether the purchase price was reflective of market value. Two of the remaining sales were properties improved with one-story buildings

that contained 34,140 and 83,520 square feet. One of the buildings was constructed in 1981 while the other was constructed in stages in 1980 and 1998. These properties sold in October 2000 and November 2001 for prices of $330,000 and $850,000 or $9.67 and $10.18 per square foot of building area, respectively. The comparable most similar to the subject in age and size had a unit price of $10.18 per square foot of building area. Most importantly, the Board finds the record disclosed the subject property sold in July 2004 for a price of $725,000 or $10.57 per square foot of building area. Based on the other sales in the record this price appears to be reflective of market value. The subject's assessment reflects a market value of $739,826 or $10.78 per square foot of building area using the 2003 three year median level of assessments for Richland County of 33.37%, which is above the 2004 sales price. The Board finds this evidence demonstrates the subject's assessment is excessive based on its July 2004 sale and the most similar comparable sale that had a unit price of $10.18 per square foot of building area. Based on this record the Board finds the subject's assessment should be reduced to reflect a market value of $725,000.

The Property Tax Appeal Board gives no weight to the appraisal of the subject property submitted by the board of review. No witness was called to testify about the appraisal report and the report lacked any data to support the conclusion of value contained therein.

The appellant also asserted assessment inequity as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data the Board finds a further reduction to the subject's assessment is not warranted on this basis.

The record contains assessment information on eight industrial properties. One comparable is not similar to the subject due to its age and size. Two of the properties are also under appeal and were consolidated with this action for hearing purposes. The five remaining industrial/commercial properties located in Richland County had improvement assessments ranging from $2.23 to $3.45 per square foot of building area. After considering the adjustment to the subject's assessment based on the market value finding of $725,000, the subject property has a revised improvement assessment of $229,650 or $3.35 per square foot of building area, which is within the range established by these properties. The Board finds this evidence demonstrates a further reduction to the subject's improvement assessment is not warranted based on a lack of uniformity.

In conclusion the Board finds the subject property had a market value of $725,000 as of the assessment date at issue. Since market value has been established the 2003 three year median level of assessments for Richland County of 33.37% shall apply.

APPELLANT: ADM/Country Mark, Inc.
DOCKET NUMBER: 03-00162.001-I-3
DATE DECIDED: February 28, 2005
COUNTY: Vermilion
RESULT: No change

The subject property consists of country grain elevator with a capacity of 3,610,000 bushels. The improvements are located on a 16.70-acre parcel in Grant Township, Vermilion County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal estimating the subject had a market value of $1,400,000 as of January 1, 2003. Also submitted with the appellant's petition was a copy of the "Notice of Assessment Change" dated October 16, 2003, establishing an assessment for the subject property of $649,005 reflecting a market value of approximately $1,947,015. The notice further provided in part that:

> If you wish to present additional evidence please send a written request for a hearing within 10 days of this notice. If you do not request and attend a hearing, this will be the final assessed value.

The appellant's submission also included a copy of a letter from the Vermilion County Board of Review to ADM/Country Mark, Inc., dated December 18, 2003, informing the appellant that the assessment complaints for the 2003 assessment year before the board of review were void based on a violation of its rules #1 and #5. The letter asserts that the assessment complaint was determined to be void because the appellant's representatives were not the owners or attorneys.

In a letter the appellant's counsel explained that the property tax manager for the appellant had filed an assessment complaint with the board of review on August 4, 2003. Counsel indicated a tentative decision was mailed to the property tax manager on October 28, 2003, directing him to request a hearing on the matter if he was not satisfied with the assessment. A hearing was requested and scheduled for December 2, 2003. The property tax manager appeared at the appointed time and place and was informed by the board of review that it had a rule against non-attorneys appearing before it on behalf of corporations. The hearing was not allowed to proceed. Counsel explained the appellant then received the aforementioned letter dated December 18, 2003, informing it that the complaint had been voided because the property tax manager was not an attorney licensed to practice in Illinois. Counsel also averred that on information and belief other non-attorney employees of corporations had filed complaints and been

allowed to go to hearing before the Vermilion County Board of Review. Counsel argued the actions of the Vermilion County Board of Review are arbitrary and capricious and worked to deny the taxpayer the equal protection and due process of law guaranteed by the United States and Illinois Constitutions. The appellant's petition was sent to the Property Tax Appeal Board by mail in an envelope postmarked January 16, 2004.

In response to the petition, the board of review filed a motion to dismiss the appeal contending the Property Tax Appeal Board lacks jurisdiction. It asserts that the appellant filed an assessment complaint with the board of review dated August 4, 2003, which was assigned number 33-00289. Pursuant to Rule 2 of the Vermilion County Board of Review the complaint was reviewed and a decision issued on October 16, 2003. Pursuant to Rules 3 and 4 of the Vermilion County Board of Review the appellant subsequently requested a hearing before the board of review. On December 2, 2003, the complaint was called for hearing and the appellant appeared by its property tax manager. At the hearing it was determined that the property tax manager was not an attorney authorized to practice law in the State of Illinois. The hearing was recessed to allow the board of review to confer with legal counsel. The board of review subsequently determined and notified the appellant by letter dated December 18, 2003, that the appellant's assessment complaint was void due to violations of Rule 1 and Rule 5 of the Vermilion County Board of Review Rules and Regulations because the complaint was not signed by an attorney authorized to practice law in Illinois, as required in the case of a corporate complainant. The board of review contends that by ruling the complaint void it refused to accept jurisdiction and render a decision on the merits. The board of review contends that Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) and section 1910.10(c) of the rules of the Property Tax Appeal Board (86 Ill.Adm.Code 1910.10(c)) provide for appeals to the Property Tax Appeal Board when the board of review accepts jurisdiction and issues a decision pertaining to the assessment of the subject property. It contends there being no decision from the Vermilion County Board of Review, the Property Tax Appeal Board has no jurisdiction. The board of review submitted a copy of the Vermilion County Board of Review Rules and Regulations as Exhibit A.

In response to the motion to dismiss the appellant asserts that the stated reason for the board of review decision was the complaint file by the corporation's property tax manager. The appellant argued that the property tax manager had previously appeared before the Vermilion County Board of Review in 1999 and 2000. It also argued that another non-attorney had appeared before the board of review on behalf of a corporation in 2003, and the complaint was not dismissed.

The appellant also argued that Section 16-160 of the Property Tax Code provides for a deadline to file complaints with the Property Tax Appeal Board and is not jurisdictional except when an appeal is dismissed at the board of review level for failure of the

taxpayer to appear. The appellant also argued that the board of review misread section 1910.10(c) of the Official Rules of the Property Tax Appeal Board (86 Ill.Adm.Code 1910.10(c)) and that in this instance the owner was dissatisfied with the board of review decision and timely filed the appeal to the Property Tax Appeal Board.

The appellant further argued the board of review's complaint form is not in conformity with its rules because there is no notation on the form that a corporate complaint must be signed by a licensed Illinois Attorney. The appellant further argued that the grant of power to the board of review to make and publish reasonable rules does not include the power to void a complaint that is otherwise in compliance with the rules of the Illinois Property Tax Code.

The Board takes notice that in another appeal pending before the Property Tax Appeal Board under docket number 03-00163.001-I-1, wherein ADM/Country Mark, Inc. is also the appellant, the board of review responded to the appellant's assertion stating that in prior years it was not aware that neither the appellant's property tax manager nor another individual appearing on behalf of a corporation were licensed Illinois attorneys when they appeared before the board of review.

After reviewing the record and considering the evidence filed by the parties, the Property Tax Appeal Board finds that it does not have jurisdiction over the appeal.

The Property Tax Appeal Board finds that section 9-5 of the Property Tax Code grants the board of review the authority to promulgate rules relating to its duties. Section 9-5 of the Code states in part that:

> Each county assessor, board of appeals, and board of review shall make and publish reasonable rules for the guidance of persons doing business with them and for the orderly dispatch of business. . . . (35 ILCS 200/9-5)

Pursuant to this authority the Vermilion County Board of Review Rules and Regulations provide in part as follows:

> Rule 1. Assessment Complaints. Complaints concerning 2003 property assessments must be filed with the Board of Review no later than August 11, 2003. Complaints must be filed in duplicate, on forms approved by the Board of Review, and must be completely and thoroughly filled out according to instructions. . .
>
> Complaints must be signed by the owner(s) entitled to appear before the Board of Review, on his or her own behalf, or by an attorney at law authorized to practice in the State of Illinois. (See rule 5). . .

> Rule 5. Appearance. The owners(s) may appear and be heard on his or her own behalf, but may not represent others unless he or she is an attorney at law authorized to practice in the State of Illinois. A corporation, partnership, trust, association, or other legal entity other than the owner(s), shall appear and be heard and be heard only by an attorney at law authorized to practice in the State of Illinois. Any complaint or document required to be signed, shall be signed by a person authorized by this rule to appear and be heard by the Board of Review. Any document in violation of this rule, shall be rejected by the Board of Review, and filing of such a document shall be considered void and of no effect.

Section 16-55 of the Property Tax Code provides in part that:

> On written complaint that any property is overassessed or underassessed, the board of review shall review the assessment, and correct it, as appears to be just. . . . (35 ILCS 200/16-55).

Section 12-50 of the Property Tax Code (35 ILCS 200/12-50) requires a mailed notice to the taxpayer if the board of review action results in an increase, decrease or no change in the assessment. The notice is also to inform the taxpayer of the right to appeal the decision to the Property Tax Appeal Board within 30 days after the notice is mailed.

In further delineation of the assessment appeal procedural process, section 16-160 of the Property Tax Code provides in part that:

> [F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review . . . as such decision pertains to the assessment of his or her property for taxation purposes . . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review . . . appeal the decision to the Property Tax Appeal Board for review. . . .(35 ILCS 200/16-160).

Generally, based on section 16-160 of the Property Tax Code, as a prerequisite for the Property Tax Appeal Board to assert jurisdiction, there must be a decision from the board of review pertaining to the assessment of the property in question. The taxpayer must then file an appeal with the Property Tax Appeal Board within 30 days of that decision. See Spiel v. Property Tax Appeal Board, 309 Ill.App.3d 373, 722 N.E.2d 306 (2nd Dist. 1999).

The non-refuted assertions in this appeal are that a person not authorized to practice law in the State of Illinois signed the board of review assessment complaint and

appeared at a hearing before the board of review on behalf of the appellant, a corporation. These acts clearly were in violation of Rule 1 and Rule 5 of the Vermilion County Board of Review Rules and Regulations. The record further disclosed the board of review subsequently informed the appellant by letter dated December 18, 2003, that the 2003 assessment complaint filed on its behalf was void.

After determining the appellant's assessment complaint was void, the record indicates the board of review refused to further act on the complaint and issued no other decision relative to determining the correct assessment of the subject property for 2003.

The facts in this appeal indicate the Vermilion County Board of Review considered the taxpayer's 2003 complaint void and in violation of its rules because the complaint was signed and the taxpayer was represented by someone other than the owner or an attorney at law authorized to practice in the State of Illinois. Because the board of review did not accept the appellant's property tax manager as a representative of the appellant no further action was taken on the appellant's complaint. The board of review issued no other decision pertaining to the assessment of the subject property other than its "Notice of Assessment Change" dated October 16, 2003, confirming the assessment of the subject property at $649,005.

The Board finds the taxpayer cites no authority that allows a non-attorney to appear in a representative capacity before a board of review to contest an assessment. Furthermore, the taxpayer cites no authority to allow it to circumvent a board of review rule promulgated pursuant to section 9-5 of the Property Tax Code requiring the presence of an Illinois licensed attorney in to appear in a representative capacity on behalf of a corporation challenging an assessment.

In conclusion, the Property Tax Appeal Board finds it has no jurisdiction to consider the merits of the appeal because the taxpayer failed to exhaust its remedies by filing a proper complaint and making an appearance in accordance with the rules of the board of review. The Board finds that there was no written notice of a final decision issued in response to a complaint filed by the taxpayer in accordance with section 12-50 of the Property Tax Code (35 ILCS 200/12-50), which would in turn provide a basis for conferring jurisdiction on the Property Tax Appeal Board under section 16-160 of the Property Tax Code (35 ILCS 200/16-160). Therefore, the Property Tax Appeal Board grants the board of review's motion and the appeal is hereby dismissed based on a lack of jurisdiction.

APPELLANT: **RLR Investments**
DOCKET NUMBER: **01-01350.001-I-3 & 02-00260.001-I-3**
DATE DECIDED: **February 28, 2005**
COUNTY: **St. Clair**
RESULT: **Reduced Assessment**

As an initial matter, one of the intervenors did not appear at the hearing. Section 16-180 of the Property Tax Code sets forth the procedures for determining the correct assessments of properties appealed and states in pertinent part as follows:

> The Property Tax Appeal Board shall establish by rules an informal procedure for the determination of the correct assessment of property which is the subject of an appeal. 35 ILCS 200/16-180.

Section 1910.69(b) of the Official Rules of the Property Tax Appeal Board states as follows:

> When a hearing is ordered by the Property Tax Appeal Board, all parties shall appear for the hearing on the appeal on the date and at the time set by the Property Tax Appeal Board. Failure to appear on the date and at the time set by the Property Tax Appeal Board shall be sufficient cause to default that party. 86 Ill.Adm.Code 1910.69(b).

The Property Tax Appeal Board finds counsel for the intervenor was notified by letter, dated September 28, 2004, of the date, time and place of the November 10, 2004 hearing in this matter. The intervenor failed to appear at the hearing. Pursuant to rule, the Property Tax Appeal Board herby finds the intervenor in default in this appeal.

The subject property consists of 72.5 acres zoned light industrial located in the Sauget Industrial Park in Sauget, Illinois. The site is improved with a truck terminal constructed in 1998. The main building consists of an 80,000 square foot poured concrete structure that is divided into a 7,500 square foot (7.8%) office section and a 72,500 square foot truck terminal. The office has glass plate, drywall, tile floors, a suspended ceiling, heat and air conditioning and is sprinklered. The truck terminal has exposed concrete walls, an open ceiling and clear ceiling heights of 20.7 feet. The facility has 118 loading docks with 9 by 9 foot overhead doors. This part of the building has no heat and no sprinkler system.

The subject also contains a 15,360 square foot concrete maintenance building, a small guard house and a fueling station. The maintenance building has six service bays,

storage areas and an office area at one end. The roof is steel and the floors are reinforced concrete. The interior is exposed concrete block with an open ceiling with a clear height of 17 feet. There are 12, 16 by 19 foot overhead doors. The building is heated and has a sprinkler system.

Site improvements consist of asphalt and gravel parking areas, asphalt drives and a concrete apron for trucks. There are also concrete sidewalks and landscaping around the office area.

The appellant appeared before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of that argument, the appellant presented an appraisal of the subject property with an effective date of January 1, 2001, prepared by Illinois Certified Real Estate Appraiser. An updated limited restricted appraisal was also prepared by the appraiser with an effective date of January 1, 2002, was also submitted. The appraiser was present at the hearing and called as a witness on behalf of the appellant. The parties stipulated to appraiser's qualifications as an expert in real estate appraisal.

The witness testified that in both his 2001 appraisal and his updated report he estimated a value for the subject property of $4,700,000. He described the subject property and the surrounding area. He indicated the subject is in an industrial park with a lot of vacant land yet to be developed. His opinion of highest and best use both as vacant and as improved was for industrial use.

The appraiser prepared all three approaches in estimating a value for the subject facility. The first step in his cost approach was to estimate a land value for the subject. Five land sales, one of which was the subject's land sale, were utilized. The properties are all located in the same industrial park. The comparables range in size from 3.97 acres to 15.03 acres with the subject having 72.50 acres. All five sales occurred in 1998. Sales prices ranged from $19,960 to $26,700 per acre. The subject's sale price was $19,998 per acre. Because the comparables are located in the same industrial park as the subject and have a similar location, zoning and utilities, the appraiser made no adjustments for these features. The subject is much larger than these properties and a negative size adjustment was made to all but the subject's sale. He indicated that in his research he has found that larger industrial parcels of land sell for less per acre than smaller parcels.

The appraiser testified that he found no recent sales that were similar in size to the subject both in his research for the 2001 appraisal and for his 2002 updated report. The appellant's appraiser estimated a land value for the subject of $20,000 per acre or $1,450,000.

For his costs new of the improvements, the appraiser testified he was told by the appellant that the construction costs for the subject improvements were $4,500,000 or $47.19 per square foot. He checked these reported costs against the Marshall Cost Service to make sure they were reasonable. He also talked with two developers that build truck terminals to see what their construction costs typically run. He testified one developer indicated costs were approximately $34,000 per door, excluding land. The other developer broke down the costs into $125 per square foot for office space, $40 per square foot for the maintenance building and $25,000 per door for the terminal and site improvements. When he applied these figures to the subject, the appraiser testified he found the costs to be very close to the subject's actual costs new. He therefore determined the subject's actual costs new from 1998 should be used in his cost analysis. The appraiser found that costs increased in the subject's area from October 1998 to January 2001 by a factor of 1.054. Applying a cost multiplier of 1.054 to the $4,500,000 actual construction costs resulted in estimated reproduction cost new of $4,743,000.

For his depreciation, the appellant's appraiser testified that as a general rule, industrial buildings depreciate from 4% to 10% per year in the early years. The depreciation tends to stabilize as the building gets older. Toward the end of its economic life an older industrial building may only depreciate 1.5% per year. He testified he has appraised hundreds of industrial properties throughout Illinois and industrial properties do not depreciate on a straight-line basis.

The appellant's appraiser testified that even though the subject is a newer building it is located in an area that has the highest real estate tax rate in Illinois. The tax rate for the subject is over 25% and is over two times any other rate known to the appraiser in the State of Illinois. As an example, the appraiser noted that a rate of 12.5% (half the subject's tax rate) would result in a difference in tax liability of $166,500 or $1,411 per door per year. This high rate may be seen in the fact that there has been no new development or industrial land sales in the area since 1998. He stated that industrial users would consider this when looking at the location. Based on the subject's estimated effective age of three years and the external depreciation due to the high tax rate, the appellant's appraiser estimated the subject suffered from 25% depreciation. Deducting the depreciation from the $4,743,000 costs new and adding the $1,450,000 estimated land value resulted in an estimated total value for the subject under the cost approach of $5,000,000.

For his income approach the appellant's appraiser utilized six truck terminal rentals located in East Peoria and Des Plaines, Illinois; Pleasant Valley, St. Louis and Strafford, Missouri; and Indianapolis, Indiana. Two of these properties were also used in his sales comparison approach. The properties contain from 5,050 to 120,292 square feet of leased area and from 6 to 200 loading docks. The lease rates ranged from $167 to $400 per door. The appraiser indicated that this wide range of rates represents the differences between the buildings and their ages, location and amenities offered as well

as the structure of each individual lease. After making adjustments to the comparables for location, date of lease and age and condition, the appellant's appraiser estimated a lease rate for the subject of $450 per door. Multiplying this rate by 12 months results in an annual potential gross income of $637,200.

After discussions with leasing agents and consulting rental surveys, the appraiser estimated a vacancy rate of 5% for the subject, resulting in an estimated effective gross income of $605,340. Operating expenses for exterior maintenance, management fees and reserves for replacements were estimated to be $7% or $42,374, leaving a net operating income of $562,966.

For his capitalization rate, the appellant's appraiser used two of his sales comparables that were leased at the time of sale. These two were also used as rental comparables. These properties had overall rates of return of 11.8% and 13.6%. He also indicated that the appellant owns 120 truck terminals and that the terminals that are leased to third parties have rental rates ranging from $250 to $400 per door. These rates were based on overall rates of return at the time of purchase of 12% to 14%. The appraiser indicated these rates are consistent with rates he found in the market. Based on this information, he estimated an overall capitalization rate for the subject of 12%. Dividing the estimated net operating income by the overall capitalization rate resulted in an estimated value for the subject under the income approach of $4,700,000 rounded.

The appellant's appraiser next discussed his sales comparison approach. He testified that many buyers of truck terminals conduct business on a national basis. Therefore truck terminals in this area are, at a minimum, marketed for sale on a regional basis that would include the Midwest and possibly on a national basis.

The appraiser utilized ten sales in his sales comparison approach. Two of these properties were also used in his income approach. The properties are located in Bedford Park, Summit, Chicago, Decatur and Bloomington, Illinois; Pleasant Valley, Missouri; Brookpark, Ohio; and Indianapolis, Indiana. They are one-story truck terminals with one having a one and one-half story office and one being one-story and part two-story in construction. They were built from 1957 to 1987 and have from 5 to 20.74 acres of land. Building sizes ranged from 13,560 to 129,316 square feet with office space from 0% to 33% and clear ceiling heights from 14 to 24 feet. The number of truck doors for these facilities ranged from 40 to 196. The properties sold from May 1997 to September 2000 for prices ranging from $9,677 to $32,143 per door. Eight of the ten had sales prices from $20,125 to $32,143 per door.

The appellant's appraiser made adjustments to the sales comparables for date of sale, age, clear ceiling heights, office space, number of doors, land size and location. He indicated the subject has significantly more land area than the comparables and that only one would have a land value near the subject on a per acre basis. All the others

would have a per acre land value from two to five or six times the subject's per acre land value. The overall adjustments for all of the properties were positive. Based on this analysis, the appellant's appraiser estimated a value for the subject facility under the sales comparison approach of $40,000 per door or $4,700,000.

In reconciling the three approaches to value, the appellant's appraiser placed some weight on the cost approach, moderate weight on the income approach and most weight on the sales comparison approach. His final estimate of value for the subject as of January 1, 2001, was $4,700,000.

In the 2002 update to his appraisal of the subject property for 2001, the appellant's appraiser found no additional land sales that would alter his 2001 estimated land value of $1,450,000. The slight increase in the replacement costs new would be offset by additional depreciation. His income research indicated no new rental comparables or market abstracted capitalization rates that would change the estimated value in his 2001 income approach. Lastly, he found no additional truck terminal facilities that would change his 2001 estimated value under the sales comparison approach. Therefore, his estimated value for the subject facility for January 1, 2001 of $4,700,000 would not change for January 1, 2002.

During cross-examination, the appellant's appraiser testified site improvements are improvements and were included in his improvement costs delineated as a cost per square foot of building area. He also indicated his statement that industrial properties depreciate from 6% to 10% per year in the first five years and then taper off in later years comes from his depreciation studies on hundreds of industrial sales statewide.

The appellant's appraiser was next told by the intervenor's attorney that the subject was located in a TIF District and that the appellant was receiving reimbursements of 60% of their taxes and that the reimbursements would continue until 2013. The appellant's appraiser testified that if this was actually the case, his figure for external obsolescence based on high taxes would change.

The appraiser testified that the subject has between 40 and 50 acres of land the appellant does not need for the operation of the facility. He stated he factored this into the income approach as an amenity the subject would have. A tenant leasing the subject would have access to use that extra land. He agreed the largest of his sales comparables had 20.74 acres. The appraiser testified he found that land values for his sales comparables would be higher than the subject's land value. He reviewed land sales in the area of most of his sales comparables in order to determine land values.

During re-direct examination, the appellant's appraiser testified he made location adjustments for his sales comparables, the adjustments consider the land values of each of the properties and the adjustments are included in the appraisal.

The board of review presented "Board of Review Notes on Appeal" wherein the subject's final assessments of $2,354,799 for 2001 and $2,515,396 for 2002 were disclosed. The assessments reflect estimated values of $7,050,296 for 2001 and $7,524,367 for 2002 using the three year median levels of assessments of St. Clair County of 33.40% for 2001 and 33.43% for 2002. In addition, the board of review presented a cost approach for the subject buildings and site improvements. The board argued the subject was built in 1999 and the costs would be a good indicator of value. The costs were generated using a mass appraisal system. Depreciation in the form of external obsolescence was found to be 25% based on the industry and the area tax rate. The subject's equalized improvement assessment reflected a value of $5,319,647 for 2001 and $5,677,346 for 2002. The subject's land sale in 1998 was used to estimate the land value for the assessment. The subject's equalized land assessment reflected a value of $1,730,650 for 2001 and $1,847,020 for 2002.

The intervenor presented an appraisal of the subject property with an effective date of January 1, 2001, prepared by a Missouri Certified Real Estate Appraiser and reviewed by an Illinois Certified Real Estate Appraiser. The intervenor's appraiser was present at the hearing and was called as a witness. The parties stipulated to the appraiser's qualifications to give testimony in this appeal.

The intervenor's appraiser first discussed his cost approach. He indicated he used the same five sales that the appellant's appraiser used and arrived at a similar value for the land. He testified the main difference between the two land estimates is that he found the subject to have excess land and valued it separately from the primary site. The intervenor's appraiser determined the primary site to be 21.9 acres and estimated its land value at $21,750 per acre or $476,325. He then estimated the remaining 50.6 acres to be excess land and also valued it at $21,750 per acre or $1,100,550. Adding the estimated values for the primary and excess land areas resulted in a final estimated land value for the subject of $1,580,000.

The Marshall Valuation Service was utilized to arrive at a building cost for the main truck terminal building of $44.65 per square foot or $3,572,000. The maintenance building costs were estimated to be $38.93 per square foot or $597,965 resulting in total estimated building costs of $4,169,965. Site improvement costs including landscaping and paving were estimated to be $1,580,000 resulting in total estimated costs of $5,749,965.

The intervenor's appraiser testified that he always includes entrepreneurial profit in the costs. He indicted this profit is for assuming the risk of developing a new property and are costs associated with start-up or lease-up time. He chose an entrepreneurial profit for the subject of 5% and indicated these figures are usually from 5% to 10% of the total

hard costs. Adding this profit to the replacement costs new resulted in an adjusted total estimated cost of $6,037,463.
For depreciation, the intervenor's appraiser used the straight-line method. He testified that Marshall Swift manuals would suggest only 3% depreciation based on a three-year-old building with a 40-year life expectancy. He stated he used to include a chart that showed buildings retain their cost value for three to five years with very little depreciation. However, there was no depreciation chart in the report. He testified that it was only in later stages that buildings tend to lose value due to depreciation. He therefore chose 8% physical depreciation for the buildings from the straight-line method. The site improvements were depreciated 25% as they have a shorter economic life. Subtracting the depreciation from the total costs resulted in an estimated depreciated value for the subject improvements of $5,272,436.

No functional or external obsolescence were taken. The appraiser testified he knew the subject had a high tax rate, however, it is in a TIF district with a 60% tax rebate until 2013. He testified this reduces the subject's taxes down 27% to about $11 per hundred of assessed value. He stated this is in line with industrial areas throughout the St. Louis region. Adding the estimated land value resulted in an estimated value for the subject under the cost approach of $6,850,000.

The appraiser next discussed his income approach and stated that both he and the appellant's appraiser arrived at the same rental rate of $5,400 per door per year. The intervenor's appraiser utilized five truck terminal leases, one of which was used by the appellant's appraiser. These properties are located in Columbus, Ohio; Northlake, Illinois; and Pleasant Valley and St. Louis, Missouri. The properties have building sizes ranging form 16,640 to 303,935 square feet; land to building ratios from 4.4 to 1 to 12.4 to 1; 40 to 442 doors; and were built from 1962 to 2000. Rental rates ranged from $2,400 to $6,140 per door. He estimated a rental rate for the subject of $5,400 per door for a gross potential income of $637,200. Vacancy and collection loss was estimated to be 5% resulting in an effective gross income of $605,340, identical to the appellant's appraiser's figures.

Expenses of management fees were estimated at 4% of the estimated gross income and $.15 per square foot for reserves for replacements. Total expenses of $38,518 were subtracted, resulting in an estimated net operating income of $566,822.

For his capitalization rate, the intervenor's appraiser consulted a truck terminal broker and several appraisers in the St. Louis and St. Clair County area. He was told that a capitalization rate of 10% to 11% would be realistic. He also checked with a national publication, Korpaz Real Investor Survey, and found that industrial properties had rates ranging from 7.5% to 10% with an average of 9.09%. His appraisal includes the band of investment technique that indicated a 10.25% capitalization rate. The intervenor's appraiser chose a 10.5% capitalization rate producing an estimated value of

$5,398,305. Adding his estimated value of excess land of $1,100,000 resulted in a total estimated value for the subject under the income approach of $6,500,000.
The intervenor's appraiser next discussed his sales comparison approach. He testified that there were no sales of new truck terminals in the subject's area. He found seven sales located in Pleasant Valley and St, Louis, Missouri; and Northlake, Bedford Park, Chicago Ridge, Mundelein and Bensenville, Illinois. The properties were constructed from 1965 to 2000; had land to building ratios of 4.4 to 1 to 24.0 to 1; had building sizes from 20,000 to 303,935 square feet; and had from 49 to 442 doors. The sales occurred from July 1998 to December 2002 for prices ranging from $865,000 to $13,045,562 or from $17,653 to $85,119 per door. No other descriptive information, photographs or buyer and seller information was included.

The intervenor's appraiser made adjustments to the comparables for time and market conditions, age and condition, size and land to building ratios. Based on these sales and adjustments, the appraiser estimated a value for the subject, exclusive of the excess land, of $45,000 per door or $5,310,000. Adding his estimated value of $1,100,000 for the 50.9 acres he deemed excess land resulted in a final estimated value for the subject under the sales comparison approach of $6,410,000.

The appraiser also testified the appellant has been trying to sell the excess land since 2001 for $1.00 per foot or $43,500 per acre. He testified $1.00 per square foot is also the asking price in the Sauget Business Park. The appraiser's estimated value for the excess land is $27,500 per acre.

In reconciling his three approaches to value, the intervenor's appraiser testified he gave weight to all three approaches with most weight going to the income approach. His final estimate of value for the subject was $6,500,000.

During cross-examination, the intervenor's appraiser testified he relied most heavily on the income approach with secondary weight given the sales comparison approach. He also testified he was familiar with The Appraisal of Real Estate, 12th Edition, published by the Appraisal Institute. He agreed it was the definitive textbook on appraising property. He also testified to his sales comparables. The appraiser testified that he was valuing the subject as a fee simple interest. He agreed his appraisal report states that all of the sales comparables were leased to single tenant occupants and that no adjustments for property rights conveyed were warranted. He testified his appraisal would not be correct because there should be adjustments to account for the leases in place at the time of sale.

With regard to his sales comparable 7 the appraiser testified he did not list the buyer and seller and did not know if the property was leased. He testified he used the CoStar Comps sales reporting service. The appellant's attorney showed the witness a copy of the CoStar Comps report and a map for his sales comparable 7. He agreed this property

was one or two blocks from Chicago's O'Hare International Airport while the subject is in an industrial park where much of the land is being farmed.
The appraiser also agreed the CoStar Comps report states the sale was a sale and leaseback transaction wherein the seller sold the property with a contract in place to lease the property back after the sale. He did not know the terms, length of the lease or whether the sale and leaseback was simply a financial mechanism for the seller. He agreed an appraiser should know these factors in order to make proper adjustments. He also agreed the sale should be discarded if factors necessary to make proper adjustments are unknown. The Real Estate Transfer Declaration for this property was presented and indicates the property was not advertised on the open market.

The appraisal report indicates this property sold for $85,000 per door or $197 per square foot. The appraiser agreed his costs new for the subject buildings and land, without any depreciation taken, was $68 per square foot while comparable 7 is 19 years old and sold for $197 per square foot. He agreed this would indicate that the appraiser should know the details of a lease on this sales comparable. He testified that after receiving the CoStar Comps Report from a fellow appraiser he did not contact either the buyer or seller to confirm the sale information.

The appraiser was next asked about his sales comparable 6. He did not list the buyer and seller of this or any other property. This property is located in Mundelein and is seven to ten miles from O'Hare International Airport. He did not know if this property was offered for sale on the open market and did not review any Real Estate Transfer Declaration for the property which he indicated would not be difficult to obtain. He was shown a CoStar Comps Report for this property that states on the face that no broker was involved for either the buyer or seller. The transfer declaration was blank where it asked for the number of days the property was on the open market. It also indicated the buyer occupied the property at the time of sale and would occupy the property after the sale. The witness stated it was reasonable to assume the property was not listed on the open market and was purchased by the tenant.

Comparable sale 6 sold for $55,000 per door or $170 per square foot while the appraiser estimated a value for the subject under the cost approach, without depreciation, at $68 per square foot. Also, this property has a land to building ratio of 24.0 to 1. The $55,000 per door sale price does not include any adjustment for excess land. He agreed 24 acres would include some excess land and the land values in the area of this comparable would be from $4.00 to $5.00 per square foot. Deducting $4.00 per square foot for the excess land on property in the same fashion as the appraiser did for the subject, this property would have a sale price of $36,905 per door, not $55,000 per door.

For his comparable sale 6 the appraiser again testified he did not report the buyer and seller in his appraisal, did not know if the property was leased at the time of sale, whether there were multiple tenants, and did not talk to either buyer or seller.

Comparable sale 4 was leased and was also used in the income approach. Only sale 4 was reviewed by both appraisers and the appellant's appraiser indicated it was not subject to a lease at the time of sale. That property sold for $30,123 per door and was built in 1965.

The intervenor's appraiser testified that the average sale price of all of his sales comparables was $44,046 per door. If sales 5, 6 and 7 are removed due to lack of lease information, buyer and seller information, etc., the average sale price of the remaining four properties is $26,000 per door.

The appraiser testified he used the subject's land sale in 1998 in his land sales analysis in the cost approach. He agreed he increased the subject's land value for inflation even though there had been no land sales in the subject's industrial park or in the subject's area since 1998.

In discussing the entrepreneurial profit he added to the costs of the subject, the intervenor's appraiser agreed the appellant had the subject built and that no extra entrepreneurial profit would have been paid.

In discussing his income approach, the intervenor's appraiser testified that he found the same rental rate per door for the subject as the appellant's appraiser found except he added $1,100,000 as a value for the excess land. He also testified that only his rental comparable 1 had a monthly rent higher than the rental rate he estimated for the subject. The appraiser did not know the terms of the lease on this property and did not know whether it was a build-to-suit arrangement. He was shown the CoStar Comps Report for this property that indicates the property sold on January 22, 2003, for $1,750,000 or $40,967 per door. He also agreed he prepared his report on May 22, 2003, after the date of this sale. He also subscribes to the CoStar Comps Report and that this sale was reported by CoStar Comps. He agreed $40,967 per door is close to the appellant's appraiser's estimated value for the subject of $40,000 per door.

The intervenor's appraiser also agreed that one property he used in both the income and sales comparison approaches and the appellant's appraiser used as a sales comparable sold with a capitalization rate of 13% while he used a 10.5% rate for the subject. He also used $14,304 for reserves for replacements for the $1,580,000 of site improvements that he indicated would only last 10 years. He then stated the reserves were also for the building, indicating insufficient funds for repairs and replacements on the property.

Next discussed was the subject's TIF district agreement. The intervenor's appraiser had previously testified that the subject's high tax rate was offset by a 60% TIF agreement that reduced the subject's tax rate down to $11 per hundred in assessed value, which is

comparable to other areas. The intervnor's appraiser testified he did not read the TIF agreement but was told by the TIF Coordinator that the agreement went through to the year 2013. The appraiser was shown a copy of a fax from TIF Coordinator showing that although the agreement goes until 2013 there is a maximum amount that can be reimbursed. The first year the appellant received $410,000. The chart on the agreement indicates the maximum is $2,710,000. Taking $410,000 per year would deplete the reimbursement in 6 years. The intervenor's appraiser testified that he would have to consider, if he were a buyer, that the subject's taxes were $600,000 per year and at some point there would be no reimbursement for those taxes.

In rebuttal, the appellant recalled its appraiser as a witness, who testified that he reviewed the intervenor's appraisal. The appellant's appraiser testified he spoke to the owner of the intervenor's rental comparable 1 and found that this property was constructed in 2000 as a build-to-suit truck terminal. He indicated a build-to-suit arrangement should never be used as an indication of a market lease rate because the lease terms determine the rent, not the market.

The appellant's appraiser next discussed the intervenor's sales comparable 6. He reviewed the CoStar Comps Report, the deed and talked to the real estate manager for the buyer. The seller is a developer that already had a working relationship with the buyer. The property was a build-to-suit arrangement. The seller sold a property in another state, had available funds and purchased this property as a 1031 exchange. The property was purchased by the tenant and was never exposed to the open market.

The appellant's appraiser was then questioned about his knowledge of the intervenor's sales comparable 7. He testified he talked with the seller and a broker with knowledge of the property. The sale was a sale and leaseback transaction with the seller agreeing to become the tenant. The appellant's appraiser testified the property was not listed on the open market and would not be a proper comparable sale to estimate a fee simple interest.

With regard to the intervenor's sales comparable 5, the appellant's appraiser testified he spoke with the owner. He built the property and signed stable, long-term leases with two national, Triple A type tenants, one of which was Penske Trucking. The buyer of the property was basically purchasing the leased fee interest in these two tenants. The appraiser testified that there are many conditions that would have to be met before he would use this type of a transaction to indicate a fee simple interest value for a property. Copies of the CoStar Comps Reports, transfer declaration and title policy listing the tenants were also presented.

During cross-examination, the appellant's appraiser was asked to guess at what land value adjustment, if any, he would make for the intervenor's sales comparable 5 which he stated contains seven acres. The appellant's appraiser stated the area ranges from

$2.50 to $11 per square foot in that area but he would not guess as to the exact adjustment he would make to the intervenor's comparable. The Board notes this property contains over ten acres, not seven acres as indicated in the question posed to the appellant's appraiser by the intervenor's attorney.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellant argued the subject property was overvalued. 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, 331 Ill.App.3rd 1038 (3rd Dist. 2002), Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000).

The appellant presented an appraisal prepared by appraiser estimating a value for the subject property as of January 1, 2001, of $4,700,000. He also prepared an update to the 2001 appraisal estimating a value for the subject as of January 1, 2002, of $4,700,000. The appellant's appraiser was present and gave testimony at the hearing. The board of review was present at the hearing and gave a brief summary of the cost approach used to determine the subject's 2001 assessment. The intervenor presented an appraisal estimating a value for the subject as of January 1, 2001, of $6,500,000. The intervenor's appraiser was present and gave testimony at the hearing.

The Board finds the appellant's appraisal to be superior to that prepared by and presented by the intervenor. The appellant's appraiser's appraisal was thorough, logical, reasonable and supported by his testimony. The Board finds the intervenor's appraisal lacked substance and the weight that could have been attributed to the report was greatly diminished by the lack of information, lack of basic verification and lack of similarity of comparables used.

The Board first finds both the appellant's appraiser and the intervenor's appraiser used the same five 1998 land comparables located in the same industrial park to estimate a land value for the subject. There are no other more recent land sales in the area that the appraisers found. One of the sales was the subject's land sale in 1998. The comparables contain from 3.97 to 72.50 acres and all sold in 1998 for prices ranging from $19,960 to $26,700 per acre. The smaller properties sold for $22,378 to $26,700 per acre while the larger properties sold for $19,960 and $19,998 per acre indicating an economy of scale in the land market. The subject is by far the largest property at 72.50 acres and sold for $19,998 per acre. The appellant's appraiser adjusted these sales to the subject and estimated a value for the subject of $20,000 per acre or $1,450,000.

The appellant's appraiser prepared costs new for the improvements using the subject's actual reported costs, the Marshall Cost Service and conversations with two truck terminal developers. Since all costs were very similar the appraiser used the subject's

actual costs. Depreciation was based on the appraiser's experience in appraising hundreds of industrial properties in Illinois and finding that these types of properties depreciate the most in the early years. It was also based on the subject's high tax rate of 25%. He indicated that the effects of this high rate can be seen by the fact that there has been no new industrial development in the area since 1998. Deducting depreciation of 25% from the costs and adding the land value resulted in an estimate of value under the cost approach of $5,000,000. This approach was given only some weight in the final estimate of value.

The Board finds the appellant's appraiser's cost approach to be reasonable and well researched. The actual costs were supported and justified through three other sources. The depreciation included consideration for the high tax rate. The board of review also depreciated the subject 25% in its valuation for the higher tax rate. The Board finds the appellant's appraiser's explanation that any investor would consider this factor in purchasing a property to be reasonable. Although the subject is located in a TIF district and has part of the taxes rebated, the appellant showed that the rebate would probably run out in six years and that a buyer would consider this fact. The land value is slightly higher than the subject's actual land sale in 1998 and is supported by the other four sales. No sales in the area have transpired since 1998 to indicate any different value.

The appellant's appraiser's income approach utilized six truck terminal rentals that contain from 5,050 to 120,292 square feet of leased area. Rental rates ranged from $167 to $400 per door. After comparing them to the subject and making adjustments for location, date of lease and age and condition the appraiser found the comparables to be overall inferior to the subject. He therefore determined a rental rate for the subject of $450 per door. Vacancy and collection loss of 5% was used after talking with leasing agents and consulting rental surveys. Expenses for maintenance, management and reserves were estimated at 7%. The capitalization rate of 12% was found using the market extraction method on two of his sales comparables that were also his rental comparables. Their sales indicated capitalization rates of 11.8% and 13.6%. The appellant has 120 truck terminals and the rate of return at the time of purchase ranged from 12% to 14%. Capitalizing the net income results in an estimated value under the income approach of $4,700,000. The appellant's appraiser gave moderate weight to this approach.

The Board finds the research in the income approach was thorough and supported. The adjustments were reasonable and the capitalization rate was taken from the market as well as other sources.

The appellant's appraisal contains ten improved truck terminal sales comparables with varying degrees of similarity to the subject with age and land size being the main differences. These properties contain from 13,560 to 129,316 square feet of building area and from 40 to 196 truck doors. Land sizes range from 5.0016 to 20.74 acres and ages

ranged from 22 to 44 years old. Sales prices ranged from $9,677 per door for a property located in Decatur to $32,143 per door for the largest property with the most recent sale date. The properties were all adjusted for date of sale, age, clear ceiling height, office space, number of truck doors, land size and location. All of the properties were adjusted up to the subject for age and land size with most adjusted up for date of sale and clear ceiling height. The appellant's appraiser estimated a value for the subject under the sales comparison approach of $40,000 per door or $4,700,000. He gave most weight to this approach.

The Board finds the appellant's appraiser verified all of his sales and completely explained each property, each sales transaction and each adjustment so that the estimated value for the subject was logical, reasonable and supported. His testimony was consistent with and supported the appraisal report. Most weight was given this approach in his final estimate of value for the subject of $4,700,000.

The Board finds the board of review presented the subject's property record cards containing a cost of components compilation minus 25% for the industry and excessive area tax rate. Adding an estimated land value indicates a total value of $7,050,296 for 2001 and $7,524,367 for 2002. The board of review indicated it was supporting the appraisal value of $6,500,000 presented by the intervenor.

The Board finds the board of review's assessments for 2001 and 2002 reflect values considerably higher than both appraisals presented by the appellant and the intervenor in these appeals. The Board also finds the board of review indicated the subject's land assessments were made using the subject's 1998 land sale of $19,998 per acre. However, the land assessment for 2001 reflects an estimated value of $23,871 per acre and the land assessment for 2002 reflects an estimated land value of $25,476 per acre. Both are considerably higher than the subject's $19,998 per acre sale price.

The intervenor's appraiser found a land value for the subject of $21,750 per acre or $1,580,000 based on the same land sale used by the appellant's appraiser. The intervenor's appraiser determined the subject had a primary site of 21.9 acres and excess land of 50.6 acres. As previously mentioned, there are no land sales after 1998 in the area that would indicate the subject's sale price of $19,998 per acre is incorrect. Although the sale is three years old, the record contains no evidence of any increase in value. A portion of the subject property as well as other land parcels in the industrial park are available for $43,560 per acre that, if sold at that price, would indicate a higher value. However, the subject land has been for sale for four years with no sale, which would indicate this price is not realistic.

The intervenor's appraiser also prepared costs new for the subject buildings of $4,169,955 and an additional $1,580,000 for site improvements for a total of $5,749,965. The appraiser then added an additional $287,498 for an entrepreneurial profit, resulting

in total estimated costs new of $6,037,46. The Board finds the appraiser agreed the appellant had the property built and no entrepreneurial profit would have been paid.

For his depreciation the intervenor's witness used 8% from the straight-line method. He found no functional or external obsolescence and indicated the subject was in a 60% TIF District receiving tax rebates until 2013. The Board finds the intervenor's appraiser did not read the TIF agreement and was unaware that at the current rate the TIF rebate would run out in six years. The Board also finds the board of review depreciated the subject property 25% due to the industry and high tax rate. The Board finds little weight can be placed on the intervenor's appraiser's cost approach.

The Board next finds little weight can be placed on the intervenor's appraiser's income approach. Although he estimated the same rental rate per door as the appellant's appraiser, he added an additional $1,100,000 because of excess land. The Board finds the appraiser did not do basic research on his comparables as he did not know lease terms of the comparables and did not know one property was a build-to-suit arrangement indicating it would not be useful in finding market rental rates.

The Board also finds the reserves for replacements in the intervenor's income approach were inadequate for his analysis. His capitalization rate was low compared to the capitalization rate of a property he used in both the income and sales comparison approaches. Another of his income comparables sold prior to his appraisal being prepared and was reported in the CoStar Comps Report to which he subscribes. This property sold for $40,967 per door, very close to the estimated value placed on the property by the appellant's appraiser.

The Board finds the intervenor's sales comparison approach is lacking in basic research and finds the sales do not present values that can be used to estimate a fee simple value for the subject.

To begin with, no narrative indicating the buyers and sellers were included nor were there photographs of the properties. The intervenor's appraiser agreed that all of his sales comparables were leased at the time of sale and he made no adjustments for property rights conveyed. He agreed this was a mistake. Next, neither the intervenor's appraiser nor anyone in his office personally verified the sales data. He indicated he relied on the CoStar Comps Report. However, as the appellant showed, this service clearly indicated his sales were questionable comparables.

The Board finds the intervenor's comparables 5, 6 and 7 are not at all similar to the subject with regard to location, the appraiser did not know the buyer or seller of any of these, the transactions were sale and lease back, build-to-suit or purchased for the leases in place. Two of these properties were within two blocks and seven miles from O'Hare International Airport while the subject is in an industrial park where property for sale

with no sales since 1998 and parcels are being farmed. Removing these three sales from consideration, the intervenor's remaining sales comparables sold for prices ranging from $17,653 to $32,143 per door, for an average of $26,735 per door. The Board finds the intervenor's appraiser's estimate of value for the subject under the sales comparison approach of $45,000 per door plus $1,100,000 for excess land to be totally lacking in credible support.

Based on the aforementioned analysis of the record, the Property Tax Appeal Board finds the best evidence and only credible evidence of the subject's value is the appellant's appraisal and updated analysis. The Property Tax Appeal Board therefore finds that the subject had a fair market value of $4,700,000 as of January 1, 2001. The Board also finds the subject had a fair market value of $4,700,000 as of January 1, 2002. Since fair market value had been established, the three-year weighted average median level of assessments for St. Clair County for 2001 of 33.40 % and 33.43% for 2002 shall apply.

INDUSTRIAL CHAPTER

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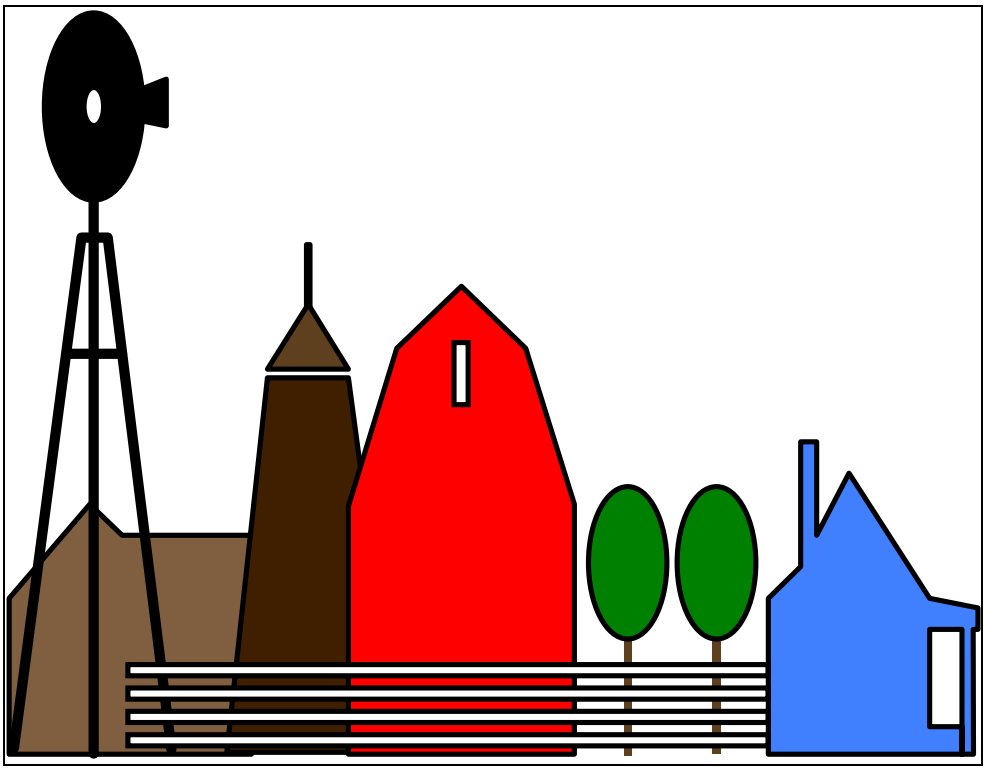
PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

FARM DECISIONS



PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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FARM CHAPTER
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APPELLANT: Kyle Carson
DOCKET NUMBER: 02-02419.001-R-1
DATE DECIDED: December 20, 2005
COUNTY: Williamson
RESULT: No change

The subject property consists of a 42.53-acre parcel classified as farmland. The subject property has 26.78 acres of cropland and 15.75 acres of woodland or other land. The property is located in Herrin Township, Williamson County.

At the hearing the appellant stated that he was contesting the assessment of two parcels identified by property index number (PIN) 02-16-200-006 and PIN 02-16-100-009. In reviewing the appeal filed by the appellant, the Property Tax Appeal Board finds that no petition or addendum was completed with reference to PIN 02-16-100-009. On the petition filed with the Property Tax Appeal Board the appellant did not indicate that he was requesting any assessment relief with respect to this parcel or make any specific assessment request for PIN 02-16-100-009 as required by section 1910.30(c), (h) & (j) of the Official Rules of the Property Tax Appeal Board. (86 Ill.Adm.Code 1910.30(c), (h) & (j)). For these reasons the Property Tax Appeal Board will not consider any assessment complaint, argument or evidence with respect to PIN 02-16-100-009 and will only consider the appellant's assessment complaint associated with PIN 02-16-200-006.

The appellant contends the assessment of the subject property should receive a debasement for flooding as provided in Bulletin 810 from the University of Illinois. The publication provides for an adjustment to the assessment for flooding if the history of flooding is known. The appellant provided a copy of relevant pages from Bulletin 810. The appellant contends the soil at issue is noted as Soil Type 70 - Beaucoup silty clay loam with a productivity index of 116. The appellant testified that the insurance paid for a total loss on the property in 1999 and 2000 to the tenant who farmed the property. He also asserted that he had a crop loss in 2003. He argued the productivity index should be reduced 30% to account for the flooding. He did not calculate what the assessment should be using this revised estimated productivity index for the soil.

The appellant also asserted that there should be some revision to the subject's assessment to account for the 10 acres of filter strip. He also contends he has 10 acres of CRP wetland, 10 acres of wasteland and 7.21 acres of woods. These estimated acreage amounts were for both PIN 02-16-200-006 and PIN 02-16-100-009.

Under cross-examination the appellant stated the acreage amounts he used were an estimated guess. The board of review also represented to the appellant that one year of crop loss on the subject was due to the property being too wet to crop and another year there was a crop but it was poor. The appellant did not dispute this assertion.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $5,426 was disclosed. In support of the assessment the board of review submitted an aerial photograph of the subject; a soil survey overlay; copies of pages from Soil Report 79 published by the University of Illinois; a copy of the subject's property record card; the weighted productivity index for the property; the 2002 certified Illinois Department of Revenue Productivity Indexes and the associated equalized assessed values for Williamson County; the productivity indexes assigned to soil types with debasement for slope and erosion; a memorandum regarding the vegetative filter strip legislation from the Illinois Department of Revenue; a copy of the certificate of error reducing the assessment of the subject from $7,225 to $5,426 giving consideration to flooding and the vegetative filter strip; and a copy of the corrected tax statement issued by the Williamson County Treasurer's Office indicating an assessed valuation of $5,426 and tax bill of $352.88.

The supervisor of assessments testified as to the method used to calculate the assessment of the subject property using the soil survey map for Williamson County. The soil survey identifies the types of soils in Williamson County. The soil map is overlaid on an aerial photograph to get the soil types on the parcel. The witness testified the types of soil on the parcel included Beaucoup silty clay loam, Colp silt loam and Hurst silt loam. A planimeter is then used to measure the different types of acreage on a parcel such as cropland, wooded land and other land. Cropland is given the full productivity index as certified from the Department of Revenue, pasture is 1/3 the value of cropland, and other land is at 1/6 the value of cropland.

The supervisor of assessments testified this is the process used to assess all farmland in Williamson County. He also indicated this process is in accordance with the farmland assessment guidelines contained in the Property Tax Code.

He also testified that the subject was assessed as having 26.78 acres of cropland and 15.75 acres of woodland and other land. The soil types of the subject parcel were identified as 70A and 84A. He also stated that the 5.0-acre vegetative strip was included in the 15.75 acres of woodland and other land. Using these figures the assessment on the subject parcel was calculated to be $5,426.

The supervisor of assessments stated that he did not do any debasement for flooding because the history indicated that there was only one year with some flooding and a partial crop for one year. Because of the 10-year average they did not compute a debasement for flooding. Additionally, he testified that cropland enrolled in the CRP program gets no debasement for flooding. However, the certificate of error indicates that the subject's assessment was adjusted to account for flooding and the vegetative filter strip.

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 that the evidence in the record does not support a reduction in the subject's assessment.

The Board finds that the assessment established by the board of review is correct. The farmland assessment guidelines require that farmland is to be assessed according to its productivity. The guidelines require that productivity indices be to be developed and applied to the various soil types that are identified on soil maps for a particular parcel. The Board further finds that the supervisor of assessment's testimony demonstrated the subject's assessment was calculated in accordance with section 10-115 through 10-140 of the Property Tax Code (35 ILCS 200/10-115 through 10-140) and the farmland assessment guidelines developed by the Illinois Department of Revenue. His testimony disclosed that the subject's assessment was calculated using the same process used to assess all farmland in Williamson County.

The appellant asserts the subject's assessment should be debased to account for flooding and a vegetative filter strip on the property. The Board finds that based upon a review of the record the Williamson County Board of Review issued a certificate of error reducing the subject's original assessment from $7,225 to $5,426 to account for the subject's flooding and the 5-acre vegetative filter strip. The Board finds the appellant presented no calculations demonstrating that the assessment of the subject is incorrect. The Board further finds that the testimony and evidence presented by the appellant at the hearing was not persuasive in demonstrating that the subject's farmland assessment was calculated in error.

In conclusion the Board finds that the assessment of the subject property as reflected by the certificate of error issued by the Williamson County Board of Review is correct and no further reduction is warranted.

APPELLANT: **Jim & Dinah Laseman**
DOCKET NUMBER: **03-01741.001-R-1**
DATE DECIDED: **November 1, 2005**
COUNTY: **Boone**
RESULT: **No Change**

The subject property consists of a 5.17-acre parcel improved with a two-story house that has 2,605 square feet of living area. The dwelling was constructed in approximately 1870 and remodeled in 1992 and 1998. The dwelling has a two car attached garage. The property is also improved with five detached sheds. The property is located in Caledonia Township, Boone County.

The appellants appeared before the Property Tax Appeal Board contesting the classification of the land. The appellants were not contesting the assessments placed on the improvements. The appellants contend the subject land should be classified as 011-rural and assessed as farmland. The appellants also made alternative arguments that the land is overvalued or inequitably assessed.

In testifying about the use of the land the appellants testified that a neighbor had approximately two-dozen head of cattle that grazed on the subject property. The neighbor used the front pasture located on the subject property in conjunction with some of his own land to pasture the cattle. The appellants were not sure if the neighbor used the subject in 2001 or 2002. He paid them $25.00 to use the pasture and he used the pasture 2 or 3 months.

The appellants also testified that on three occasions during 1999 and 2000 they had calves on their property. Two of the calves died and one was raised to maturity. The appellants also testified that have had chickens on the property from 1992 to the present. The appellants used the chickens for egg production. The appellants testified that in 2002 and 2003 they sold the extra eggs that were produced. They sold approximately 12 dozen eggs in 2002 and 14 dozen eggs in 2003. In 2001 the appellants sold no eggs. They explained that they also consumed the eggs that were produced and that from time to time their dogs would kill the chickens and they would buy more. The appellants testified that they have had from 1 to 10 chickens on their property.

The appellants explained that in those years that grazing of cattle did not occur a neighbor would mow the pasture a couple of times a year. The appellants contend they have about 2.5 acres of pasture.

The appellants also presented information on other properties similar to their property in acreage that are receiving a farmland classification. The appellants contend some of these properties are receiving a farmland assessment even though no farming activities are occurring on these parcels. The appellants' appeal form contained four properties

with acreage that ranged from 2.47 to 5.73 acres with land assessments ranging from $6,824 to $9,994. The appellants also provided documents numbered 9 through 24, which consisted of photographs of the properties and assessment information on the comparables. The documents also included a summary of what the appellants observed when they viewed the properties. The appellants explained these properties are classified as 011-rural even though they observed no agricultural activities on most of the properties. Their notes indicated that a portion of property identified on document 19 was baled and each property referenced on documents 22 and 23 had a horse. The photographs depicted on these documents are what the appellants observed on the properties in 2004. The appellants did not talk to any of the persons that owned these properties. The appellants argued this assessment treatment is inequitable.

The appellants also submitted documents 26 and 27 depicting two properties in a heavy residential area. These properties had newer homes located on sites of 4.67 and 5.45 acres that were classified the same as the subject as 0040-lots improved. The appellants explained these parcels are landscaped and manicured unlike the subject property.

To support the contention the subject land was overvalued, the appellants submitted information on two sales noted on documents 28 and 29. These sales include a 4.50-acre parcel that sold in January 2003 for a price of $50,000 or $11,111 per acre and a 13.69-acre parcel that sold in October 2002 for a price of $59,833 per acre or $4,370 per acre. The assessment information provided by the appellants describing these properties indicates both had improvement assessments.

Under cross-examination the appellants testified that the comparables they used were not all located in Caledonia Township. The appellants indicated that they currently have a couple of cows, a couple of goats, one chicken, and a sheep grazing on the property's pasture. The pasture is composed of grass or weeds.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $62,428 was disclosed. The subject's total assessment equates to a market value of $187,415 using the 2003 three-year median level of assessments for Boone County of 33.31%. The subject has an improvement assessment of $35,389 and a land assessment of $27,039. The subject's land assessment reflects a market value of $81,174 or $15,700 per acre using the 2003 three-year median level of assessments for Boone County of 33.31%.

Appearing before the Property Tax Appeal Board on behalf of the board of review were the Boone County Chief County Assessment Officer and a Deputy County Assessment Officer. The Boone County Chief County Assessment Officer testified that she and the deputy county assessment officer reassessed Caledonia Township during the 1999 and 2003 quadrennial reassessments.

The supervisor of assessments testified that the deputy county assessment officer does all the fieldwork for her and the board of review and has been to the property a number of times. She has also been to the subject property the week prior to the hearing date in this matter and observed the condition of the property. She did observe two calves but did not think the property was being farmed. She testified the property was just being over grown basically with grass and the use was just incidental to the primary use as residential.

The deputy county assessment officer testified he was present on the property in January 1, 1999, and noted no farming activity other than one Holstein heifer tied to a tree. The witness explained he again was on the property on June 25, 2003, and re-inventoried the buildings, re-measured the house and added a deck. At that time he witnessed no farming activity. He testified the front pasture had waist high weeds. He testified that he has been by the property a number of times over the years and has never observed any farming operation going on other than some incidental use. He has only observed one cow and no chickens. He testified that the pastures are no more than weed patches.

The chief county assessment officer testified it is the board of review's position that the primary use of the subject property is residential. The board of review submitted a sales analysis that shows what land prices were throughout the county with the exception of two small townships. She explained that based on this data, small rural parcels are valued at $25,000 for the one acre home site with the remaining acreage being valued based on a regression analysis. The raw sales data included 46 sales that occurred from 2000 to 2002. The parcels ranged in size from 1 to 17.5 acres and sold for prices ranging from $20,000 to $333,000 or from $1,969 to $54,113 per acre.

The board of review also submitted a document entitled Vacant Rural Small Acreage Study listing 10 sales that occurred from January 2002 through October 2003. The board of review also submitted copies of the front page of the Illinois Real Estate Transfer Declaration associated with each sale. The documents indicated that the parties to the sales were not related although two of the sales involved buyers who are adjacent land owners. The parcels ranged in size from .59 to 16.94 acres. The prices ranged from $30,000 to $135,000 or from $6,667 to $33,898 per acre. The median sales price for 2002 was $7,969 per acre with a median price for 2003 of $13,604 per acre. The information indicated that five of the sales were not exposed on the open market.

To further support the assessment the board of review submitted sales information on seven rural properties improved with older farmhouses. The comparables contained parcels that ranged in size from .77 to 6.35 acres. One property was improved with a part 1.5-story and part 1-story dwelling and six were improved with part 2-story and part 1-story dwellings. The homes were constructed from 1859 to 1930 and ranged in size from 1,166 to 2,220 square feet of living area. These properties sold from April 2002

to May 2003 for prices ranging from $124,900 to $205,000 or from $53.32 to $137.24 per square foot of living area, land included.

The board of review also submitted an exhibit printed from the assessment rolls containing 120 parcels of small rural residential parcels located outside any subdivision. These parcels have no farming activity and are classified and assessed based on their market values, as is the subject property, and not as a farm.

In conclusion the board of review contends that the subject property has insufficient farming activity to be classified and assessed as a farm. The board of review also contends the subject's assessment is reflective of its market value and that the property is being equitably assessed.

In rebuttal the appellants submitted an exhibit marked as Appellant's Group Exhibit No. 2 containing numerous other parcels being coded and assessed as farms. The appellants also submitted copies of bills for chicken feed.

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

The appellants contend in part that the subject property is entitled to a farm classification and assessment. The Board finds the evidence and testimony does not support this argument. Section 1-60 of the Property Tax Code defines farm for assessment purposes as:

> Sec. 1-60. Farm. When used in connection with valuing land and buildings for an agricultural use, any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to, hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. The dwellings and parcels of property on which farm dwellings are immediately situated shall be assessed as a part of the farm. Improvements, other than farm dwellings, shall be assessed as a part of the farm and in addition to the farm dwellings when such buildings contribute in whole or in part to the operation of the farm. For purposes of this Code, "farm" does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use.

> The ongoing removal of oil, gas, coal or any other mineral from property used for farming shall not cause that property to not be considered as used solely for farming. (35 ILCS 200/1-60).

Additionally, section 10-110 of the Property Tax Code provides that in order for a parcel to be classified and assessed as a farm the property must be used the two preceding years as a farm. Section 10-110 states in part that:

> The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, except tracts subject to assessment under Section 10-145, shall be determined as described in Sections 10-115 through 10-140. . . . (35 ILCS 200/10-110).

It is the use of real property that determines whether the property is to be assessed at an agricultural assessed valuation. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d 872, 448 N.E.2d 3 (3rd Dist. 1983).

The Board finds the testimony and evidence provided by the appellants did not establish that the subject property was being used for a farming purpose within the meaning of the Property Tax Code for the two years prior to the assessment date or during the assessment year at issue. The appellants' testified there was some minimal agricultural use in 2001, 2002 and 2003. The Board finds the testimony presented by the appellants was not very persuasive in that they had difficulty answering questions about the use of the property during the hearing. Testimony was that the appellants successfully raised one calf in 2000 and had from 1 to 10 chickens on the parcel from 2001 through 2003. The appellants also indicated that another person grazed cattle on the subject in 2001 or 2002.

To counter the appellants' argument concerning the use of the property the board of review presented the testimony of the deputy county assessment officer. He testified he was present on the property in January 1, 1999, and noted no farming activity other than one Holstein heifer tied to a tree. The witness explained he again was on the property on June 25, 2003, and re-inventoried the buildings, re-measured the house and added a deck. At that time he witnessed no farming activity. He testified the front pasture had waist high weeds. He testified that he has been by the property a number of times over the years and has never observed any farming operation going on other than some incidental use. He has only observed one cow and no chickens. He testified that the pastures are no more than weed patches. The Board finds the deputy county assessment officer's testimony to be more credible.

The Board finds the testimony provided by the witnesses indicates the primary use of the subject property is for residential purposes with some minimal farm products grown or farm animals fed on the property incidental to its primary use. For these

reasons the Board finds the subject property does not qualify for a farm classification and assessment under the Property Tax Code.

The appellants also argued in part the subject property is being assessed inequitably when compared to other similar properties in the county. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data the Board finds a reduction is not warranted on this basis.

The appellants submitted assessment information on numerous small parcels improved with dwellings that were receiving a farm classification and assessment. The appellants contend that they did not observe any farming activities on many of these properties even though they were receiving the preferential farm classification and assessment. The board of review countered with assessment information on numerous small rural parcels improved with dwellings that were not receiving a farm classification but were being assessed based on their market value as is the subject property. The Board finds the appellants' conclusion that no farming activities were occurring on these parcels was based on what they observed in 2004 and not based on any conversations or interviews with the owners or those occupying the parcels concerning the use in 2003. The Board finds the testimony and evidence provided by the appellants did not clearly and convincingly establish that the comparables they submitted were being used in a fashion similar to the subject property as of January 1, 2003, but were being classified and assessed differently. The Board further finds the comparables provided by the board of review demonstrate the subject property is being assessed equitably when compared to properties with similar attributes.

As a final point the appellants argued the market value of the subject property was not accurately reflected in the assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellants have not met this burden of proof and a reduction in the subject's assessment is not warranted on this basis.

The Board finds the appellants submitted information on two sales to demonstrate the subject's land was overvalued. However, the data indicated these properties had improvement assessments suggesting the properties may have been improved at the time of sale.

To rebut the appellants' argument the board of review submitted a sales analysis showing land prices throughout the county with the exception of two small townships.

The board of review's witness explained that based on this data, small rural parcels are valued at $25,000 for a one acre home site with the remaining acreage being valued based on a regression analysis. The raw sales data included 46 sales that occurred from 2000 to 2002. The parcels ranged in size from 1 to 17.5 acres and sold for prices ranging from $20,000 to $333,000 or from $1,969 to $54,113 per acre.

The board of review also submitted a separate document entitled Vacant Rural Small Acreage Study listing 10 sales that occurred from January 2002 through October 2003 along with the front page of the Illinois Real Estate Transfer Declaration associated with each sale. The documents indicated that the parties to the sales were not related although two of the sales involved buyers who are adjacent land owners. The parcels ranged in size from .59 to 16.94 acres. The prices ranged from $30,000 to $135,000 or from $6,667 to $33,898 per acre. The median sales price for 2002 was $7,969 per acre with a median price for 2003 of $13,604 per acre. The subject's land assessment reflects a market value of $81,174 or $15,700 per acre using the 2003 three-year median level of assessments for Boone County of 33.31%. Based on this evidence the Board finds the subject's land assessment is reflective of its market value.

As a final point the board of review submitted sales information on seven rural properties improved with older farmhouses. The comparables contained parcels that ranged in size from .77 to 6.35 acres. The properties were improved with one, part 1.5-story and part 1-story dwelling and six, part 2-story and part 1-story dwellings. The homes were constructed from 1859 to 1930 and ranged in size from 1,166 to 2,220 square feet of living area. These properties sold from April 2002 to May 2003 for prices ranging from $124,900 to $205,000 or from $53.32 to $137.24 per square foot of living area, land included. The subject's total assessment equates to a market value of $187,415 or $71.94 per square foot of living area, land included, using the 2003 three-year median level of assessments for Boone County of 33.31%. The Board finds the subject's assessment reflects a market value within the range and supported by these comparable sales.

In conclusion, based on this record, the Board finds a reduction in the subject's assessment is not warranted.

APPELLANT: Edward and Deb Henry
DOCKET NUMBER: 03-02652.001-F-2
DATE DECIDED: October 17, 2005
COUNTY: LaSalle
RESULT: No Change

The subject property consists of 17.71 acres of rural land, which includes 11 tillable acres, approximately 6 permanent pasture acres and one woodland acre.

The appellants appeared with their attorney before the Property Tax Appeal Board claiming the subject property's classification and assessment was improperly changed from farmland to rural residential land as the basis of the appeal. The appellants purchased the subject property on March 21, 2003 for $349,780. The appellants argued the subject parcel's tillable acreage, while laying fallow in 2002, had been farmed in 2001, was farmed again by the appellants within a few weeks of their 2003 purchase and should thus have continued to enjoy without interruption a farmland classification and assessment for the 2003 assessment year. In support of this argument, the appellants submitted an affidavit from a tenant farmer who had planted and harvested soybeans on the subject parcel in 2001. The land was not farmed in 2002 because it was acquired by Sandwich Hospital, which, sometime in 2002, sold the land to Fox River Investments. The property was split, rezoned as residential land and sold, along with six other parcels, by Fox River, from the two parcels acquired from the hospital. The appellants offered a down payment on the subject parcel in September or October of 2002 and the transfer closed in March 2003. The appellants had a soil survey completed by the end of March, 2003, then fertilized the tillable acreage, purchased seed in April, and planted alfalfa shortly thereafter. The appellants argued they should not have been penalized by losing the farmland classification of the subject parcel just because it could not be farmed in 2002, a situation beyond their control because of the change in ownership from the hospital to the developer.

The appellants acknowledged Section 10-110 of the Property Tax Code, which provides as follows:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

During the hearing, the appellants cited several court cases they claimed mitigate the requirement of the provision above that land be farmed for at least two years prior to a given assessment year. The appellants claimed the language in Rosewell, et al, v. Lakeview Limited Partnership, et al, 120 Ill.app.4d 369 (1st Dist., 1983) stipulates that tax laws should be strictly construed and do not extend beyond the clear meaning of the

language used. Further, the appellants cited Getto v. Chicago, 77 Ill.2d 346 (1979), which held that any doubt concerning a tax law's application will be construed against the government and in favor of the taxpayer. The appellants claimed the subject land had been farmed in 2001, was farmed in 2003 and thereafter, and was capable of being farmed in 2002. Based on this evidence, the appellants requested a reduction in the subject's assessment.

The board of review submitted its Board of Review Notes on Appeal wherein the subject's total assessment of $104,934 was disclosed. In support of the change in the subject's classification and assessment from farmland to rural residential land the board of review called the supervisor of assessments as a witness. The witness testified the classification of the subject was changed for 2003, in conformity with provisions of Section 10-110 of the Property Tax Code (35 ILCS 200/10-110), because the appellants supplied no evidence the land was farmed in 2002. The witness further testified that, in relation to equity, the board of review denied farm assessments to the other parcels sold by Fox River Investments based on their acknowledgment that no farming activity had occurred in 2002.

During cross-examination, the appellants questioned the witness as to whether land could be properly classified as farm if any portion of the parcel is farmed. The witness responded that the portion farmed should be classified as farmland, even if other portions had different uses. The appellants then questioned the witness regarding the common farming practice of occasionally letting certain farmland lay fallow to replenish the soil. The witness responded that for this to apply, the land in question must be associated with a federal farm program with guidelines governing such usage. The witness testified the appellants submitted no evidence that the subject land was found to qualify for such a program.

The board of review then addressed the case law cited by the appellants in support of their contention. The board of review argued the appellants' reliance on Rosewell was misplaced, as that case dealt with a condominium conversion and involved market value, rather than a classification issue. Further, the board of review testified that Getto dealt with ambiguity in statutory language. The board of review contends no ambiguity exists regarding Section 10-110 of the Property Tax Code, which clearly states land must be used as a farm for the two years preceding a given assessment year, not just capable of being farmed (35 ILCS 200/10-110).

The board of review then referred to several cases in support of its decision to change the subject's classification for 2003. It cited Bond County Board of Review v. Property Tax Appeal Board, 343 Ill.App.3d 289 (5th Dist 2003), where land in that case had actually been farmed for two years prior to the assessment year in question, even though it had been subdivided in a prior year. The board of review further cited Dupage Bank and Trust Company v. Property Tax Appeal Board, 151 Ill.App.3d 624 (2nd Dist 1986), which held that in order to qualify for assessment as farmland, real

property must have been used as a farm for two years preceding the tax year in question.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over that parties and the subject matter of this appeal. The Board finds the subject parcel is not entitled to a farmland classification for 2003, because, while it was farmed in 2001, no farming activity took place on any portion of the subject land in 2002. The Board finds the appellants' reliance on Rosewell is unfounded. The appellants' own evidence cites the Property Tax Code in several pertinent parts. Section 1-60 of the Property Tax Code defines "farm" in part as:

> Any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming (35 ILCS 200/1-60).

The appellants' evidence further cited Section 10-110 of the Code, which provides in part:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

The Board finds no ambiguity in this language. The subject was clearly farmed in 2001 and again in 2003, subsequent to the appellants' purchase. There is no factual dispute that the subject parcel lay fallow for all of 2002, during its transfer from Sandwich Hospital to Fox River Investments. The Board gave no weight to the appellants' claim that the land could have been farmed, had its ownership not been in the process of transfer. The Board further finds no evidence in the record that the subject parcel was associated with any federal farm program with guidelines covering fallow land. The Board finds the language in Dupage Bank and Trust Company v. Property Tax Appeal Board, 151 Ill.App.3d 624 (2nd Dist 1986), supports this finding where it states in part:

> However, the Revenue Act does not contain an exception for fallow lands and, in any event, no evidence was offered to support the conclusion that the subject property was farmed prior to 1981 and then allowed to lie fallow as a farming practice.

Therefore, the Board finds no indication the subject parcel was either farmed in 2002, or deliberately allowed to lay fallow as a farming practice by either Sandwich Hospital, or Fox River Investments, both of whom owned the subject parcel prior to the appellants' purchase of it in March 2003. Thus, the Board finds the board of review properly changed the subject's classification for 2003 from farmland to rural residential land. Finally, the Board finds the record shows the board of review uniformly changed the classification of all parcels, including the subject, sold by Fox River Investments, from farmland to rural residential.

Based on the evidence in the record, the Property Tax Appeal Board finds the subject property was properly classified as rural residential land for 2003 and no reduction is warranted.

APPELLANT: Harry D. Deatherage
DOCKET NUMBER: 04-00935.001-F-1
DATE DECIDED: December 20, 2005
COUNTY: Madison
RESULT: No Change

The subject property consists of a rural parcel of approximately 8,200 square feet of land area, or about 0.2 acre. The appellant purchased the property in September 2003 for $15,000.

The appellant appeared before the Property Tax Appeal Board claiming the board of review improperly changed the subject parcel's classification from farmland to residential land. The subject abuts other cropland owned and farmed by the appellant along its rear property line. The appellant's evidence stated the subject lot, while part of a platted subdivision, has no public sewers, sidewalks, or streetlights. The appellant also submitted evidence including several county ordinances. The first ordinance requires that residential building lots have an area of not less than 9,000 square feet of land area. The second ordinance requires that where an individual private sewage system is used in place of public facilities, the minimum lot area must be not less than 40,000 square feet. The appellant contends the subject lot's 8,200 square feet of land area meets neither of these ordinance's requirements and thus, cannot be considered residential land. Plat maps and aerial photographs submitted by the appellant depict Knight's Home Sites, a subdivision that includes the subject parcel, as well as other large residential developments just south of the subject. The parcel adjacent to the south line of the subject contains a dwelling, while the parcel adjacent to the north contains an automobile repair business.

The appellant further claimed the subject parcel should be classified and assessed as farmland because he has, for at least three years prior to the 2004 assessment year, picked up walnuts from trees on the subject parcel, as well as from trees on other land he owns. In support of this argument, the appellant cited Bond County Board of Review v. Property Tax Appeal Board, 343 Ill.App.3d 289 (5th Dist 2003), where land in that case had actually been farmed for two years prior to the assessment year in question, even though it had been subdivided in a prior year. The appellant contended that since the subject parcel is contiguous to his cropland, his gathering of walnuts thus meets the requirements of a farm. Based on this evidence, the appellant requested a reduction in the subject's assessment.

During the hearing, the Hearing Officer questioned the appellant as to how many walnut trees are on the subject parcel. The appellant responded that there are two mature trees and several seedlings. The appellant testified he has an affinity for walnuts and collects them for his personal consumption, but has no plans to market them. The appellant opined that the court found in Bond County that if land is farmed,

it should be classified and assessed as farmland. The appellant further testified that the walnut trees could also be sold for their wood and that he may at some point clear the land and plant crops on it.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $1,960 was disclosed. In support of the board of review's decision to change the subject parcel's classification from farm to residential, the board of review also submitted numerous photographs of the subject, as well as an aerial photograph that depicts the subject as well as the dwelling and auto service business on adjacent parcels, as discussed above. The board of review also submitted a copy of the Illinois Real Estate Transfer Declaration that documents the purchase of the subject by the appellant for $15,000 on September 22, 2003. The board of review further submitted plat maps of the Knight's Home Sites and Canteen Subdivisions in Chouteau Township. Finally, the board of review also cited the Bond County decision in support of its contention that the subject was platted in a subdivision.

During the hearing, the board of review's representative testified the appellant owned the subject for only a few months prior to the subject's January 1, 2004 assessment date. The representative testified the board of review recognized the purchase price of $15,000 for the subject parcel may not reflect the market and reduced the assessment accordingly from $4,650, as established by the township assessor, to $1,960. The representative opined that collecting walnuts from trees not planted and cultivated by the appellant does not constitute farming. The representative also testified the appellant submitted no evidence the subject parcel is associated with a timber management program as administered by the Illinois Department of Conservation and further, that the subject parcel is too small to meet the minimum requirements for such programs. Finally, the board of review's representative testified the appellant submitted no evidence the subject property's previous owner himself had collected walnuts, or had given the appellant permission to collect walnuts, and that the appellant, by his own testimony, may have been trespassing when he supposedly collected the nuts in prior years.

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 this appeal. The Board further finds the subject parcel is not entitled to classification and assessment as farmland, and a reduction in the subject's assessment is not warranted.

The Board finds that, while two mature walnut trees and several seedlings occupy part of the subject parcel, the appellant submitted no substantive evidence indicating any intensive, deliberate, or ongoing farming activity performed on the subject parcel for two years prior to the 2004 assessment year by the previous owner. Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

> Any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming.

Section 10-110 of the Property Tax Code provides in part:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

The Board finds the appellant provided no testimony he had pruned, fertilized, cultivated, or otherwise maintained the two mature walnut trees or seedlings, planted additional trees with the prospect of walnut harvesting for consumption or sale, or in any way modified the character of the subject land as it was when he purchased it. The Board finds the collection of nuts from the ground beneath trees that were not planted and maintained for the purpose of nut production does not constitute an ongoing active farm. In addition, the appellant did not submit an accepted forestry management plan to show the subject property is actively being operated in accordance with a forestry management program. Thus, the Board finds the appellant's argument that the subject property is a farm is not persuasive. As a result, the Board finds the subject parcel is not entitled to a farmland assessment based on its use.

The appellant also argued the subject parcel is entitled to a farmland assessment because of the potential value of the walnut trees for their wood.

Section 10-150 of the Property Tax Code provides in part:

> In counties with less than 3,000,000 inhabitants, any land being managed under a forestry management plan accepted by the Department of Natural Resources under the Illinois Forestry Development Act shall be considered as "other farmland" and shall be valued at 1/6 of its productivity index equalized assessed value as cropland. (Emphasis added) (35 ILCS 200/10-150).

Section 2 of the Illinois Forestry Development Act provides in part that:

> (a) "Acceptable forestry management practices" means preparation of a forestry management plan, site preparation, brush control, purchase of

> planting stock, planting, weed and pest control, fire control, fencing, fire management practices, timber stand improvement, timber harvest and any other practices determined by the Department of Natural Resources to be essential to responsible timber management. (525 ILCS 15/2(a)).
>
> (e) "Forest product" means timber which can be used for sawing or processing into lumber for building or structural purposes, for pulp paper, chemicals or fuel, for the manufacture of furniture, or for the manufacture of any article. (525 ILCS 15/2(e)).
>
> (g) "Timber" means trees, standing or felled, and parts thereof, excluding Christmas trees and producers of firewood. 525 ILCS 15/2(g)).

Section 5 of the Illinois Forestry Development Act describes what is to be included in a forestry management plan. This section states in part:

> A timber grower who desires to participate in the [forestry development] cost share program shall devise a forestry management plan. To be eligible to submit a proposed forestry development management plan, a timber grower must own or operate at least 5 contiguous acres of land in this State on which timber is produced . . . The proposed forestry management plan shall include a description of the land to be managed under the plan, a description of the types of timber to be grown, a projected harvest schedule, a description of forestry management practices to be applied to the land, an estimation of the cost of such practices, plans for afforestation, plans for regenerative harvest and reforestation, and a description of soil and water conservation goals and wildlife habitat enhancement which will be served by the implementation of the forestry management plan. (525 ILCS 15/5).

The Board finds the appellant submitted no evidence he had fulfilled any of the forestry management plan requirements of the Illinois Forestry Development Act described above. The Board finds that allowing a parcel to grow wild with the haphazard collection of walnuts does not constitute a systematic management plan for the production of timber. The Board further finds that, at 0.2 acre, the subject parcel does not meet the minimum size requirement of the Section 5 of the Illinois Forestry Development Act.

In conclusion, the Board finds the appellant failed to show the subject parcel is entitled to a farmland assessment for any reason. Therefore, the Property Tax Appeal Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT: **Jim Engel**
DOCKET NUMBER: **04-0114.001-F-1**
DATE DECIDED: **November 30, 2005**
COUNTY: **Carroll**
RESULT: **No Change**

The subject property consists of 37-acre parcel improved with a two-story, frame constructed, dwelling and a farm building. The property is located in Washington Township, Carroll County.

The appellant contends assessment inequity with respect to the home site, dwelling and farm building. In support of this argument the appellant completed Section IV, Comparable Sales/Assessment Grid Sheet contained on the Farm Appeal petition. The appellant also submitted a copy of the Supervisor of Assessment's Notice of Assessment dated December 29, 2004. The notice indicated that the assessment may be appealed to the Carroll County Board of Review by filing a complaint with the board of review on or before January 27, 2005.

Following receipt of the notice of the appeal the Carroll County Board of Review filed a Motion to Dismiss based on the contention that the appellant did not file an assessment complaint with the board of review. The board of review argued that since no complaint was filed with the board of review it issued no final decision pertaining to the assessment of the property, which in turn would confer jurisdiction to the Property Tax Appeal Board. Therefore, the board of review requested the appeal be dismissed based on a lack of jurisdiction.

In response to the Motion to Dismiss the appellant contends he was not notified of any board of review assessment change. He contends he first became aware of the assessment change when he received his tax bill.

In reply the board of review submitted a copy of the 2005 tax bill demonstrating the board of review did not change the subject's assessment in 2004. The board of review also submitted a copy of the docket listing for 2004 assessment complaints filed from Washington Township to the Carroll County Board of Review. The listing demonstrated that the appellant did not file an assessment complaint with the board of review contesting the 2004 assessment. The board of review also indicated that 2004 was a quadrennial tax year for Washington Township and all property in the township, including the subject property, received a notice of assessment change. The board of review also submitted a copy of the aforementioned Notice of Assessment from the supervisor of assessments disclosing the subject's assessment increase from $14,305 in 2003 to $19,804 in 2004. Based on this record the board of review requested the appeal be dismissed.

After reviewing the record and considering the evidence the Property Tax Appeal Board finds that it does not have jurisdiction over the appeal. Therefore, the Property Tax Appeal Board hereby grants the Carroll County Board of Review's Motion to Dismiss.

Section 16-160 of the Property Tax Code provides in part that:

> [F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review . . . as such decision pertains to the assessment of his or her property for taxation purposes . . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review . . . appeal the decision to the Property Tax Appeal Board for review. . . . (35 ILCS 200/16-160).

Generally, based on section 16-160 of the Property Tax Code, as a prerequisite for the Property Tax Appeal Board to acquire jurisdiction, there must be a decision from the board of review pertaining to the assessment of the property in question. The taxpayer must then file an appeal with the Property Tax Appeal Board within 30 days of that board of review decision. See Spiel v. Property Tax Appeal Board, 309 Ill.App.3d 373, 722 N.E.2d 306 (2nd Dist. 1999).

The non-refuted facts in this appeal are that the appellant did not file an assessment complaint with the Carroll County Board of Review contesting the 2004 assessment of his property after receiving the Assessment Notice from the supervisor of assessments. Therefore, the board of review did not issue any decision pertaining to the assessment of the subject property, which in turn could be used as a basis to confer jurisdiction on the Property Tax Appeal Board.

After determining the appellant did not file an assessment complaint with the board of review and the board of review did not otherwise issue a decision pertaining to the subject property's 2004 assessment, the Property Tax Appeal Board finds it does not have jurisdiction over the appeal. Accordingly the Property Tax Appeal Board grants the board of review's motion and the appeal is hereby dismissed.

FARM CHAPTER
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