State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2007

Carlos X. Montoya
Chairman

Louis G. Apostol
Executive Director

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

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State of Illinois
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2007 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 than is permitted by a reading of this volume, he or she need only access the Property Tax Appeal Board's website on-line at www.state.il.us/agency/ptab and click on the link that says "Appeal Status Inquiry." Access to Board records is addressed in Section 1910.75 of the Official Rules of the Property Tax Appeal Board.

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.

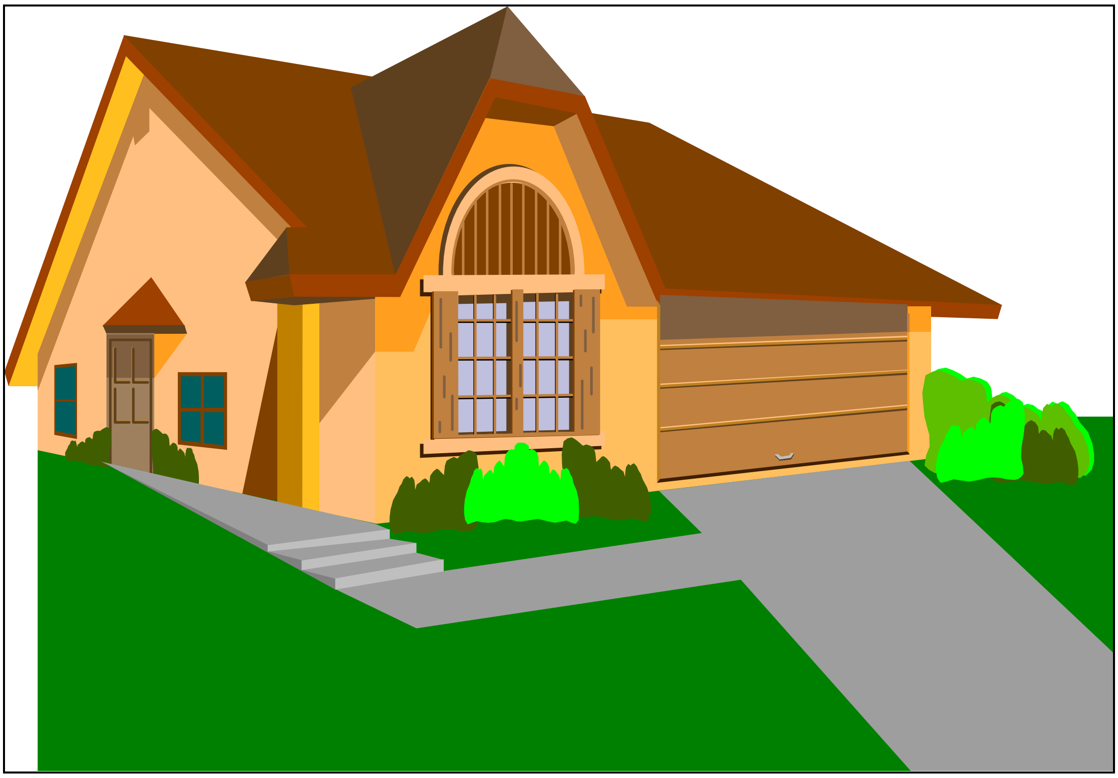
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial 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 2007 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

2007 RESIDENTIAL DECISIONS



PROPERTY TAX APPEAL BOARD
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2007 RESIDENTIAL CHAPTER
Table of Contents

APPELLANT: **Cynthia M. Bloy**
DOCKET NUMBER: **05-02084.001-R-1**
DATE DECIDED: **September, 2007**
COUNTY: **Monroe**
RESULT: **Reduction**

The subject property consists of a one-story frame with brick veneer duplex containing 2,208 square feet of living area that was built in 1994. Features include central air conditioning and a two-car garage. The owner occupies one unit.

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 this claim, the appellant submitted a grid analysis detailing four comparables located in close proximity along the subject's street. The comparables are improved with frame and brick veneer one-story duplexes that were built in 1994. Like the subject, the comparables have central air conditioning and two-car garages. The dwellings range in size from 2,628 to 2,658 square feet of living area and have improvement assessments ranging from $44,250 to $45,550 or from $16.81 to $17.33 per square foot of living area. The subject property has an improvement assessment of $50,510 or $22.88 per square foot of living area. The appellant argued it is illogical that the comparables, which are somewhat larger than the subject, have lower improvement assessments than the subject. The appellant also pointed out none of the comparables have owner occupied units. 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 assessment of $59,950 was disclosed. In support of the subject's assessment, the board of review argued the appellant purchased the subject property in 2005 for $190,000, considerably more than its assessed valuation of $179,850. The board of review further argued the 2005 assessments for the appellant's comparables have been unchanged since 2002 and 2003 because of overrides. Under questioning, the board of review representative explained the Property Tax Appeal Board rendered decisions for the comparables lowering their 2002 or 2003 improvement assessments. As a result, Monroe County assessment officials carried forward the Board's decisions pursuant to the Property Tax Code. (35 ILCS 200/16-185). Thus, the board of review argued the 2005 assessments for the appellant's comparables are not representative assessments. The board of review acknowledged it submitted no assessment comparables to demonstrate the subject property is uniformly assessed with similar properties of similar market value. Based on this evidence, the board of review 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. 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 appellant has overcome this burden and a reduction is warranted.

The record contains four assessment comparables for the Board's consideration. The Board finds the comparables are representative of the subject in age, design, location and amenities, but are slightly larger in size. They have improvement assessments ranging from $44,250 to $45,550 or from $16.81 to $17.33 per square foot of living area. The subject property has an improvement assessment of $50,510 or $22.88 per square foot of living area, which is higher than the similar comparables contained in this record. After considering adjustments to these comparables for differences when compared to the subject, such as size, the Board finds a reduction in the subject's improvement assessment is warranted.

The Board further finds the board of review's argument that the assessments of the comparables offered by the appellant are not representative of the subject due to "assessment overrides" to be without merit. The board of review argued the Property Tax Appeal Board rendered decisions for the appellant's comparables lowering their 2002 or 2003 improvement assessments. As a result, Monroe County assessment officials carried forward the Board's decisions pursuant to the Property Tax Code. (35 ILCS 200/16-185). The Property Tax Appeal Board finds the Monroe County Board of Review misinterpreted section 16-185 of the Property Tax Code, which provides in pertinent 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** (Emphasis added), 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, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. (35 ILCS 200/16-185).

The Property Tax Appeal Board finds that its prior years' decisions regarding the comparables submitted by the appellant were not required to be carried forward to the subsequent assessment year(s) pursuant section 16-185 of the Property Tax Code. (35 ILCS 200/16-185). The testimony and evidence in this record indicates the comparable properties are not owner occupied residences, but are used as rental properties. The Property Tax Appeal Board finds the board of review was not statutorily required by section 16-185 of the Property Tax Code (35 ILCS 200/16-185) to carry forward the 2002 and 2003 assessments that were lowered by the Board through to the 2005 assessment year since they were not owner occupied residences.

Based on this analysis, the Property Tax Appeal Board finds the appellant has demonstrated a lack of uniformity in the subject's improvement assessment by clear and convincing evidence. Therefore, the Board finds the subject's assessment as established by the board of review is incorrect and a reduction is warranted. As a final point, the Property Tax Appeal Board finds the subject's reduced assessment falls under the purview of section 16-185 of the Property Tax Code (35 ILCS 200/16-185) since the appellant is the owner of the residence and resides in one of the duplex units.

APPELLANT: Builder's Cooperative, Inc.
DOCKET NUMBER: 03-26441.001-R-1
DATE DECIDED: September, 2007
COUNTY: Cook
RESULT: Reduction

The subject property consists of a 38-year-old, two-story style multi-family dwelling of masonry construction containing 3,662 square feet of living area and located in Thornton Township, Cook County.

The appellant, through counsel, submitted evidence that the subject's fair market value is not accurately reflected in its assessment. In support of the market value argument, the appellant submitted the subject's settlement statement dated April 12, 2002 reflecting a sale price of $25,000. The appellant's petition disclosed that the sale was not a transfer between family or related corporations; was sold by a bank; was advertised for sale for six months; was sold in settlement of a foreclosure; and the seller's mortgage was not assumed. A copy of the subject's 2003 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 total assessment of $11,402 was disclosed. Of the total assessment $1,150 is allocated to the land assessment and $10,252 is allocated to the improvement. The total assessment reflects a fair market value of $112,557 when the Illinois Department of Revenue 2003 three-year median level of assessment of 10.13% is applied to Cook County Real Property Assessment Classification Ordinance Class 2 properties such as the subject. 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 42 or 43 year old, two-story style multi-family dwellings of masonry or frame and masonry construction. These properties range in size from 3,037 to 3,662 square feet of living area and have improvement assessments ranging from $2.75 to $3.11 per square foot of living area. 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 it has jurisdiction over the parties and the subject matter of this appeal. The issue before the Property Tax Appeal Board is the subject's fair market value. Next, 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 reviewed the record and considered the evidence, the Board concludes that the appellant has satisfied this burden.

The Board finds the best evidence of the subject's fair market value in the record is the April 12, 2002 sale for a price of $25,000. The Board finds that the record disclosed the sale was not a transfer between family or related corporations; was sold by a bank; was advertised for sale for three months; and the seller's mortgage was not assumed. The Board finds that while the record revealed that the subject was sold in settlement of a foreclosure, there is no evidence in the record that the sale price was not reflective of the subject's market value. The Board finds that the board of review did not contest the arm's length nature of the sale. Therefore, the Board finds that the subject's April 12, 2002 sale for a price of $25,000 was arm's length in nature. Further, the Property Tax Appeal Board finds that the board of review did not address the appellant's market value argument and failed to refute the appellant's contention this sale was representative of the subject's fair market value as of January 1, 2003.

Based on the foregoing analysis, the Property Tax Appeal Board finds the subject property had a market value of $25,000 as of January 1, 2003. Since the fair market value of the subject has been established, the Board finds that the Illinois Department of Revenue 2003 three-year median level of assessment of 10.13% shall apply and a reduction is accordingly warranted.

APPELLANT: **Leonard Cahmann**
DOCKET NUMBER: **05-01390.001-R-1**
DATE DECIDED: **October, 2007**
COUNTY: **Lake**
RESULT: **Reduction**

The subject property consists of a one-story brick condominium unit that contains 3,025 square feet of living area. The unit is located in a building that was originally built in 1895. The building was originally constructed for use as an artillery stable on a military base. However, the entire building was completely renovated in 2000 and improved with five condominium units. The property features two and one-half bathrooms, central air conditioning, one fireplace, and a two-car garage.

The appellant submitted documentation before the Property Tax Appeal Board claiming the subject's property is overvalued based on an appraisal (Exhibit B); the subject property is inequitably assessed in comparison to the other four units contained in the subject's condominium building; and the subject's assessment is incorrect based on a contention of law. However, the appellant did not raise any legal issues or submit a legal brief citing applicable statutes or case law that would suggest the subject's assessment is incorrect based on a contention of law. (86 Ill.Adm.Code §1910.30(h)) and §1910.65(d)). The appellant also submitted a letter explaining the appeal and various exhibits.

The appellant, who is an attorney, appeared before the Property Tax Appeal Board. The appellant first presented Exhibit A, which is one page of a condominium declaration that purportedly shows the unit designations and percentage of ownership interest for each of the five units within the subject's condominium building. The appellant attempted to submit the entire unsigned document with no recording date at the hearing. The subject unit (center interior unit) was reported to own 19.1851% of the condominium; the neighboring units were reported to own 18.8455% of the condominium; and the end units were reported to own 21.5619% and 21.5620% of the condominium, respectively. The appellant argued the original sale prices from 2000 or 2001 for each unit establishes the building's market value of $2,945,000. The appellant argued the township assessor used the original sales data and the percentage of ownership allocation method to revise all five units' assessments in 2004. (See charts 1 and 2). In essence, the appellant argued the market value of the subject's condominium building as a whole should be established with the percentage of ownership for each unit applied to establish a fair value and equitable assessment for each unit.

Exhibit B is an appraisal of the subject property that estimated a fair market value for the subject property to be $560,000 as of March 23, 2003, using the sales comparison approach to value. The appraiser was not present at the hearing to provide testimony or be cross-examined regarding the appraisal methodology and final value conclusion. The appellant argued the appraisal was submitted to show the subject dwelling contains 2,607 square feet of living area rather than the 3,025 square feet of living area calculated by the township assessor and depicted on the subject's property record card. However, at the hearing the appellant testified he does not think the subject's dwelling size as determined by his appraiser or the board of review is accurate. The appellant opined it is not possible to get an accurate dwelling size for the entire building or each condominium unit. Thus, the appellant argued the percentage of ownership for each unit should be utilized. No further explanation of this contention was offered after further questioning. The appellant next testified the 2004 assessments for all the units should be used as the base value to establish subsequent years' assessments because they were revised using the actual market data and percentage of ownership interest.

Exhibit C appears to be a listing flier from the developer detailing the units in the subject's building. The flier depicts the unit number, approximate square footage, number of bedrooms, number of bathrooms, and the unit offering price. A disclaimer states the developer reserves the right to change specifications, dimensions, prices and plans without notice. The condominium units are reported to contain three bedrooms with two bathrooms; range in size from 2,792 to 3,170 square feet of living area; and were offered for sale for prices ranging from $555,000 to $635,000. The subject property, an interior unit, was reported to contain 3,025 square feet of living area with a listing price of $565,000. The end units were reported to contain 3,120 and 3,170 square feet of living area and were offered for sale for prices of $635,000. The two other interior condominium units, which contain 2,792 and 2,860 square feet of living area, were offered for sale for prices of $555,000. The appellant argued this evidence clearly shows the end units are more valuable than the interior units.

The four comparables contained on the appellant's grid analysis are again the same four condominium units located within subject's condominium building. The testimony and photographic evidence indicates end units have lofts unlike the interior units. The suggested comparables share similar physical characteristics and amenities when compared to the subject. The dwellings range in size from 2,792 to 3,170 square feet of living area. Improvement assessments ranged from $159,463 to $181,053 or $57.11 per square foot of living area. The subject property has an improvement assessment of $172,771 or $57.11 per square foot of living area. The appellant argued it is unjust to assess all the units at the same per square foot assessed value given the original sale prices of the individual units.

The appellant's grid analysis indicates the comparables originally sold in November 2000 for prices ranging from $555,000 for the interior units to $635,000 for the end units or from $194.06 to $203.53 per square foot of living area including land. However, Real Estate Transfer Declarations requested by the Board indicate comparable 1, an end unit, sold for $625,000 or $197.16 per square foot of living area including land in November 2002. In addition, comparable 2, an interior unit, re-sold in May 2002 for $595,000 or $208.04 per square foot of living area including land, which computes to market appreciation of $40,000 in a 15 month period. The subject property was purchased by the appellant in November 2000 for $555,000 or $183.47 per square foot of living area including land, the lowest sale price on a per square foot basis.

The main thrust of the appellant's lack of uniformity claim was detailed on chart 4 of the evidence packet. The chart depicts the four comparables' 2004 final assessment compared to their final 2005 total assessments. The appellant calculated the comparables had assessment increases ranging from 3.462% to 7.795% between 2004 and 2005. The subject's total assessment increased by 11.462% between 2004 and 2005. The appellant argued the subject's assessment increase from 2004 to 2005 is much higher on a percentage basis than the comparables and is therefore inequitable. The appellant argued the subject should be assessed no higher than $184,474 for the 2005 assessment year, which represents a 3.462% increase from its

2004 assessment. Based on this evidence, the appellant requested a reduction in the subject's assessment.

Under cross-examination, the appellant agreed no independent credible market evidence was submitted that would establish the fair market value of the subject's entire building for 2005 in order to apply the individual percentage of ownerships for each unit. However, appellant agreed to the value of the entire condominium building established by the assessor, which he calculated to be $2,974,089 using all five units' total assessments from 2005. The appellant agreed the subject property was valued using the mass appraisal system.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $198,966 was disclosed. The subject's assessment reflects an estimated market value of $600,924 using Lake County's 2005 three-year median level of assessments of 33.11%. In support of the subject's assessment, the board of review submitted a letter in response to the appeal, property record cards, a comparative analysis of the subject and the same four comparables submitted by the appellant, along with testimony from the deputy township assessor. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

Under questioning, the deputy township assessor testified that it is fair and equitable to assess all the condominium units from the subject's building at the same rate of $57.11 per square foot of living area given the fact the end units sold for $625,000 and $635,000 while the interior units like the subject sold for $555,000 within months of one another. The assessor explained differences in the sale prices are accounted for in the properties' land values and assessments. However, the deputy township assessor did not know and could not attest as to the method used to value land or individual units within the subject's building. Property record cards submitted by the board of review indicate the subject and comparables are valued using the cost approach. The assessor also opined the assessor may have used marketing material to establish dwelling sizes, but the assessor did not know if the building or units were physically measured.

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 slight reduction in the subject property's assessment is warranted.

The appellant argued 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. After an analysis of the evidence submitted, the Board finds the appellant has overcome this burden and a reduction is warranted.

First, the Board gave little merit to the assessment statistical analyses submitted by the appellant. (Chart 4). The appellant attempted to demonstrate the subject's assessment was inequitable because of the percentage increases in its assessment from 2004 to 2005. The Board finds this type of analysis is not an accurate measurement or a persuasive indicator to demonstrate assessment inequity by clear and convincing evidence. The Board finds rising or falling assessments from year to year on a percentage basis do not indicate whether a particular property is inequitably assessed. The assessment methodology and actual assessments together with their salient characteristics of properties must be compared and analyzed to determine whether uniformity of assessments exists. 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 year's assessments.

However, the Board finds the practice of assessing all the units within the subject's condominium building at $57.11 per square foot results in an inequitable assessment for the subject property. The Board finds the record is clear that the end units originally sold for prices of $625,000 and $635,000, respectively. The subject property as well as the other two interior units originally sold for $555,000 or from $70,000 to $80,000 less than the end units. The Property Tax Appeal Board finds the market evidence in this record does not support assessing the subject property at the same rate as the end units. 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 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. 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 market evidence exists, such as in this appeal. The comparables presented by the parties disclosed that properties located in the same building are assessed at identical levels, which is not supported by the market evidence contained in this record.

The appellant also argued the subject property is overvalued. 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.

The Board finds that neither party submitted any credible market evidence relevant to the subject's January 1, 2005 assessment date. 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 or for that matter the value of the building in which the subject is situated. Thus, all arguments pertaining to this issue, including the percentage of ownership interest argument, is given no weight.

In conclusion, the Board finds the appellant demonstrated a lack of uniformity in the subject's assessment by clear and convincing evidence. Therefore, the Board finds the subject property's assessment as established by the board of review is incorrect and a reduction is warranted.

APPELLANT: **Mary J. Carney**
DOCKET NUMBER: **04-02450.001-R-1**
DATE DECIDED: **December, 2007**
COUNTY: **Peoria**
RESULT: **No Change**

The subject property consists of an owner-occupied residence located in Richwoods Township, Peoria Heights, in Peoria County.

The appellant appeared before the Property Tax Appeal Board with her attorney claiming the subject's assessment had been reduced by decision of the Board the prior year under Docket No. 03-00277.001-R-1 to $133,360 and that this assessment should be carried forward for the 2004 assessment year. The appellant submitted the instant appeal within 30 days of the Property Tax Appeal Board's 2003 decision, which was dated September 21, 2005. The appellant's evidence cited Section 16-185 of the Property Tax Code, which states 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, the reduced assessment, subject to equalization, shall remain in effect for the remainder of general assessment period as provided in Sections 9-215 through 9-225 of the Code, 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).

During the hearing, the appellant, through her attorney, also referred to language in the Board's 2003 decision under Docket No. 03-00277.001-R-1 just below the Board's assessment figures for land, improvements and total, which states, "Subject only to the State multiplier as applicable." The appellant contends this language means that no multiplier or equalization factor other than the State multiplier can be applied to the subject's 2003 assessment until the next general assessment period, which begins on January 1, 2007. Based on this evidence, the appellant requested the subject's total assessment be reduced to $133,360.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $138,690 was disclosed. In support of the subject's assessment, the board of review also referred to Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) cited above, as well as Section 1910.50(i) of the Official Rules of the Property Tax Appeal Board (PTAB), which includes this identical language. The board of review called attention to the words "subject to equalization," which it claims indicates that "PTAB decisions involving owner occupied residential property are in fact subject to equalization" but are not limited to just the state multiplier.

At the hearing, the board of review chairman read into the record portions of Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) where the language "subject to equalization" is found. The board of review also submitted at the hearing a copy of a ruling by Judge James

Shadid of the Tenth Judicial Circuit of Illinois for Peoria County dated September 29, 2004. This ruling discusses a similar contention made by a plaintiff named Carney regarding application of a 2002 equalization factor or multiplier to a 2001 decision of the Property Tax Appeal Board. In the ruling, the judge found "the property in question can be subject to the township multiplier or equalization in the years after the specific year for review." The board of review chairman opined that, based on the relevant statute, the Official Rules of the Property Tax Appeal Board and Judge Shadid's ruling, township multipliers or equalization factors can be applied for subsequent assessment years to decisions of the Property Tax Appeal Board where assessment reductions have been granted for owner occupied residential property.

Finally, the board of review chairman testified the subject's 2004 assessment of $138,690 includes the 2004 Richwoods Township equalization factor of 1.0399, which was applied to all parcels in the jurisdiction, and that this factor was properly applied to the subject's 2003 assessment of $133,360 as found in the Property Tax Appeal Board's 2003 decision under Docket No. 03-00277.001-R-1.

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 finds the board of review's application of the 2004 Richwoods Township equalization factor of 1.0399 to the subject's 2003 assessment as determined in the Property Tax Appeal Board's decision under Docket No. 03-00277.001-R-1 is appropriate for the subject's 2004 assessment. The Board finds the meaning of the language "subject to equalization" in Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) and Section 1910.50(i) of the Official Rules of the Property Tax Appeal Board is clear and does not limit equalization to only that related to the State multiplier in years following the assessment year on which the Board has issued its decision. The Board finds the language in its decision which reads "Subject only to the State multiplier as applicable" applies only to the assessment year of the Property Tax Appeal Board's decision, in this case 2003, and does not limit the application of equalization factors or multipliers for subsequent years within a general assessment period. The Board finds the language "subject to equalization" in Section 16-185 of the Property Tax Code provides that county or township equalization factors can and should be applied to subsequent years' assessments of a property where a reduction has been granted in such property's assessment by the Property Tax Appeal Board for a prior assessment year.

In the instant case, the appellant argued no county or township equalization factor can be applied to the subject's 2003 assessment of $133,360 pursuant to the Property Tax Appeal Board's decision in Docket No. 03-00277.001-R-1 until the next general assessment period, which began on January 1, 2007. The Property Tax Appeal Board finds the appellant's contention is incorrect and the appellant has misconstrued the meaning of Section 16-185 of the Property Tax Code. The Property Tax Appeal Board finds that no equalization factors or multipliers other than the State multiplier should have been applied to the subject's 2003 assessment of $133,360 pursuant to the Property Tax Appeal Board's decision regarding the subject's assessment ***for 2003 only***. The subject's assessment for 2004 in the instant appeal is thus subject to any local equalization factor or multiplier allowed by law, including the 2004 Richwoods Township equalization factor of 1.0399. Therefore, the Property Tax Appeal Board finds that the subject's 2004 assessment of $138,690, which includes this equalization factor, is correct and no reduction is warranted.

APPELLANT: **Billy H. and Kris A. Dempsey**
DOCKET NUMBER: **06-00743.001-R-1**
DATE DECIDED: **October, 2007**
COUNTY: **Madison**
RESULT: **Reduction**

The subject property consists of a residential property located in Madison County. The appellants submitted evidence to the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. The evidence revealed the subject property was purchased in November 2007 for $185,000. In addition, the appellants submitted Multiple Listing Sheets for three suggested comparables. The suggested comparables are listed for sale on the open market for prices ranging from $179,900 to $187,400. Based on this evidence, the appellants requested a reduction in the subject's assessment to $56,000, which reflects an estimated market value of $168,000. The evidence further revealed that the appellants filed the appeal directly to the Property Tax Appeal Board following receipt of the notice of an equalization factor.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $67,260 was disclosed. After reviewing the appellants' appraisal, the board of review agreed to reduce the subject's assessment to $62,960 or by the amount of increase caused by the application of the equalization factor.

The appellants were notified of this suggested agreement and given thirty (30) days to respond if the offer was not acceptable. The appellants responded to the Property Tax Appeal Board by the established deadline rejecting the proposed assessment due to the subject's sale price, comparable sales, a descriptive error regarding the subject dwelling, and the realities of the real estate market.

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. However, the record indicates that the appellants did not file a complaint with the board of review but appealed the assessment directly to the Property Tax Appeal Board based on notice of an equalization factor. Since the appeal was filed after notification of an equalization factor, the amount of relief that the Property Tax Appeal Board can grant is limited. Section 1910.60(a) of the Official Rules of the Property Tax Appeal Board states in part:

> If the taxpayer or owner of property files a petition within 30 days after the postmark date of the written notice of the application of final, adopted township equalization factors, the relief the Property Tax Appeal Board may grant is limited to the amount of the increase caused by the application of the township equalization factor. 86 Ill.Admin.Code §1910.60(a).

Additionally, section 16-180 of the Property Tax Code (35 ILCS 200/16-180) provides in pertinent part:

> Where no complaint has been made to the board of review of the county where the property is located and the appeal is based solely on the effect of an equalization factor assigned to all property or to a class of property by the board of review, the Property Tax Appeal Board may not grant a reduction in the assessment greater than the amount that was added as the result of the equalization factor.

These provisions mean that where a taxpayer files an appeal directly to the Property Tax Appeal Board after notice of application of an equalization factor, the Board cannot grant an assessment reduction greater than the amount of increase caused by the equalization factor. Villa Retirement Apartments, Inc. v. Property Tax Appeal Board, 302 Ill.App.3d 745, 753 (4th Dist. 1999). Based on a review of the evidence contained in the record, the Property Tax Appeal Board finds a reduction in the assessment of the subject property is supported. However, the reduction is limited to the increase in the assessment caused by the application of the equalization factor.

APPELLANT:	**Terrance L. Johnson**
DOCKET NUMBER:	**04-02252.001-R-1**
DATE DECIDED:	**March, 2007**
COUNTY:	**Sangamon**
RESULT:	**No Jurisdiction**

The subject property was improved with a single story, frame dwelling constructed in 1949 on a concrete slab foundation with a three-car garage. The dwelling contained 2,508 square feet of living area and was situated on a 2.34 acre parcel on Lake Springfield. The dwelling also featured central air conditioning and a fireplace. The property is located in Springfield, Woodside Township, Illinois.

The record in this appeal contains evidence provided by the appellant suggesting that the fair market value of the subject property is not accurately reflected in its assessed valuation. In support of this argument, the appellant submitted documentation disclosing that he purchased the subject property in April 2004 for a price of $190,000. The appellant indicated that the parties to the transaction were not related, the property was sold by a realtor, and the property was advertised and listed on the open market for two years prior to the purchase. The evidence further revealed that the subject dwelling was torn down shortly after purchase in May 2004. As additional evidence of an excessive assessment, the appellant contended the total assessment in 2003 had been $83,333. Based on this evidence, the appellant requested the subject's 2004 assessment be reduced to $60,349 to reflect a land assessment of $47,561 and an improvement assessment of $12,788 since the dwelling existed for only 128 days in 2004.

On cross-examination, the appellant acknowledged that his original intention upon purchasing the property for $190,000 was to tear the dwelling down. Appellant also testified that he informed the Woodside Township Assessor of the demolition of the dwelling after it was completed.

This record further reveals that the appellant hand-delivered the instant appeal to the Property Tax Appeal Board on May 6, 2005 with an accompanying cover letter that made reference to postponing this matter until a decision was rendered in Sangamon County Circuit Court case number 05 TX 0001102.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $62,467 was disclosed reflecting a land assessment of $49,230 and an improvement assessment of $13,237. The subject's assessment reflects an estimated market value of $187,476 using Sangamon County's 2004 three-year median level of assessments of 33.32%

The board of review also noted that no appeal was filed by the appellant with the board of review, but rather was filed directly based on notice of an equalization factor. Appellant was notified of a change in the 2004 assessment issued on August 18, 2004. Since the instant appeal was filed after notification of an equalization factor issued on April 7, 2005, the amount of relief that the Property Tax Appeal Board can grant is limited to the removal of the equalization factor of 1.0351.

Section 1910.60(a) (86 Ill. Admin. Code, ch. II, Sec. 1910.60(a) of the Official Rules of the Property Tax Appeal Board states in part:

> If the taxpayer or owner of property files a petition within 30 days after the postmark date or personal service date of the written notice of the application of final, adopted township equalization factors, the relief the Property Tax Appeal Board may grant is limited to the amount of the increase caused by the application of the township equalization factor.

Additionally, section 16-180 of the Property Tax Code (35 ILCS 200/16-180) provides in pertinent part:

> Where no complaint has been made to the board of review of the county where the property is located and the appeal is based solely on the effect of an equalizing factor assigned to all property or to a class of property by the board of review, the Property Tax Appeal Board shall not grant a reduction in assessment greater than the amount that was added as the result of the equalizing factor.

Thus, where a taxpayer files an appeal directly to the Property Tax Appeal Board after notice of application of an equalization factor, the Board cannot grant a reduction of assessment greater than the amount of increase caused by the equalization factor.

Furthermore, the board of review noted that the subject's assessment reflects a market value of approximately $187,401 which is below its 2004 purchase price. Based on this evidence, the board of review requested confirmation of the assessment.

After hearing the testimony, reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it lacks jurisdiction over the appeal and must dismiss the claim.

The record discloses that appellant filed a "Tax Assessment Objection Complaint" on May 4, 2005 in the Seventh Judicial Circuit Court, Sangamon County, Illinois, as case number 05 TX 0001102 protesting the assessment of parcel number 22-34.0-451-002. This record also reflects that two days later, on May 6, 2005, the appellant hand-delivered for filing a complaint with the Illinois Property Tax Appeal Board on the same subject parcel which was assigned the instant docket number.

Section 1910.50(f) (86 Ill. Admin. Code, ch. II, Sec. 1910.50(f)) of the Official Rules of the Property Tax Appeal Board states in part:

> If a taxpayer files objections based upon valuation in the Circuit Court as permitted by Sections 21-175 and 23-5 of the Property Tax Code [35 ILCS 200 et seq.], the taxpayer is precluded from filing a petition contesting the assessment of the subject property with the Property Tax Appeal Board. (Section 16-160 of the Code)

Since the instant appeal was filed at the Property Tax Appeal Board after the filing of an assessment complaint in circuit court, the Property Tax Appeal Board lacks jurisdiction to hear this appeal.

Based on these facts, the Property Tax Appeal Board finds the appeal was barred from being filed on May 6, 2005 before the Property Tax Appeal Board and the Board has no jurisdiction to consider the merits of the appeal. Therefore, the Property Tax Appeal Board hereby dismisses the instant appeal for lack of jurisdiction in light of the pending litigation filed on May 4, 2005 in Sangamon County Circuit Court on the same 2004 assessment of this parcel.

APPELLANT: **David Kipnis**
DOCKET NUMBER: **04-28593.001-R-1**
DATE DECIDED: **September, 2007**
COUNTY: **Cook**
RESULT: **No Change**

The subject property consists of a 117-year-old, three-story, multi-family masonry dwelling with 4,644 square feet of living area and a full, unfinished basement.

The appellant submitted documentation to the Property Tax Appeal Board indicating the subject property was the subject of a prior year appeal under docket number 03-29925.001-R-1 in which the Board granted a reduction in the subject's assessment to $76,988 based on evidence submitted by the parties. The appellant requested the reduction granted in the 2003 appeal be carried forward in the instant appeal. The appellant's appeal form indicated the subject is located at 1910 N. Sheffield, North Chicago Township, Cook County. The appellant's mailing address is different from the property address.

The board of review submitted "Board of Review Notes on Appeal" wherein the subject's total assessment of $93,439 was disclosed. In support of the subject's improvement assessment, the board of review submitted property record cards and a grid analysis of three comparable properties. The comparables were described as three-story masonry, multi-family dwellings that are 120 or 123 years old and range in size from 4,599 to 5,700 square feet of living area. One comparable has central air-conditioning, one has a fireplace and one has a three-car garage. Two comparables have full or partial unfinished basements, while the third comparable has a slab foundation. These properties have improvement assessments ranging from $76,690 to $126,264 or from $16.68 to $22.15 per square foot of living area. The subject has an improvement assessment of $77,439 or $16.68 per square foot of living area. The board of review's evidence disclosed that the appellant's complaint before the Cook County Board of Review indicated the appellant did not claim to reside on the subject premises. Based on this evidence the board of review requested the subject's total assessment be confirmed.

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 Board finds the appellant requested the subject's 2003 assessment reduction granted in the Board's decision under docket number 03-29925.001-R-1 be carried forward in the instant appeal. 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** (emphasis added) 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, or unless the decision of

> the Property Tax Appeal Board is reversed or modified upon review. (35 ILCS 200/16-185)

The Board finds the appellant's appeal form indicated the appellant's mailing address is different from the property address. The Board further finds the board of review's evidence indicated the appellant did not claim to reside on the subject premises. Therefore, the Board finds the above statutory provision does not apply in the instant appeal. The Board also finds the board of review submitted three comparables in support of the subject's assessment. The comparables were three-story, masonry, multi-family dwellings like the subject and had improvement assessments ranging from $16.68 to $22.15 per square foot of living area. These properties support the subject's improvement assessment of $16.68 per square foot of living area.

In conclusion, the Board finds the subject's assessment reduction granted in 2003 cannot be carried forward to 2004 pursuant to Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) because the appellant did not occupy the subject property as his residence. Therefore, the subject's 2004 assessment as determined by the board of review is correct and no reduction is warranted.

APPELLANT:	**Lake Terrace Condominium Association**
DOCKET NUMBER:	**03-26783.001-R-1 thru 03-26783.002-R-1**
DATE DECIDED:	**September, 2007**
COUNTY:	**Cook**
RESULT:	**No Change**

The subjects consist of 28-year-old properties described by the appellant as Units #130 and #102 in the Lake Terrace Condominium building and located in Hyde Park Township.

With respect to the subject property, the appellant's counsel appeared before the PTAB and argued that the subject condominium units were entitled to a $1.00 assessment as required by Section 10-35(a) of the Illinois Property Tax Code (35 ILCS 200/10-35(a)). The provision provides in part that:

> Residential property which is 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 $1.00 per year.

In support of this claim, the appellant's attorney submitted an affidavit from the Supervisor of the Lake Terrace Condominium Association testifying that Units #130 and #102 are owned by the Association. That the building's engineer has occupied Unit #130 throughout 2003 and has paid no rent. Accordingly, the appellant requested that the residential units owned by the Association which generate no income both be assessed at $1.00 each for tax years 2003, 2004 and 2005.

In contrast, the board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property.

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). Proof of market value may consist of an appraisal, a recent arms-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)) Having reviewed the record and considering the evidence, the Board finds the appellant has not satisfied this burden.

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 finds that, based on Section 10-35(a), the common areas of any type of residential real property development can be assessed at $1.00, if they conform to the definition and requirements of a common area as defined in the statutes.

The Condominium Act 765 ILCS 605/2, contains the following definitions:

> (c) "Property" means all the land, property and space comprising the parcel, all the improvements and structures erected, constructed or contained therein...
>
> (d) "Unit" means a part of the property designated and intended for any type of *independent use.*
>
> (e) "Common Elements" means all portions of the property *except the units*, including limited common elements unless otherwise specified.
> (*Emphasis added*)

The legislature specifically stated in the Property Tax Code that common areas "used for recreational or similar residential purposes" shall be assessed at $1.00 per year. 35 ILCS 200/10-35(a). The General Assembly broadly defined common areas in section 10-35(a) as property "the beneficial use and enjoyment of which is reserved in whole as an appurtenance to the separately defined lots..." 35 ILCS 200/10-35(a). Likewise, the legislature specifically stated in the Condominium Property Act that "real property owned and used for residential purposes by a condominium association...used exclusively by the unit owners for recreational or other residential purposes" shall be assess at $1.00 per year. 765 ILCS 605/10(a).

The Property Tax Appeal Board finds that Units #130 and #102 are located within a residential development; and that they are owned and maintained by the Association as separate parcels. However, Units #103 and #102 are not reserved in whole as an appurtenance to the separately owned lots, parcels, or areas within the planned development. The Units, as part of the 360 units, are, in fact, recorded residential units that are designated, intended and used for independent use. Each of the subject units is a legal lot of record insofar as each lot was recorded and identified with a specific legal description and covenants that designate the lot for independent use. Each legal lot of record as a unit is excepted from the above definition of a common area. In order to create a common area it would be necessary for the Association to convey and record a lot of record into common area status.

The Board further finds that Units #130 and #102 do not meet all the above requirements and definition of "common area" and thus do not qualify for a $1.00 common area assessment.

APPELLANT: **Ralph and Dorrie Madonna**
DOCKET NUMBER: **03-02164.001-R-2**
DATE DECIDED: **February, 2007**
COUNTY: **DuPage**
RESULT: **No Change**

The subject property consists of a 5.99 acre tract of land that is improved with a one-story brick dwelling that was built in 1977 and contains 3,368 square feet of living area. The dwelling features two and one-half bathrooms, central air conditioning, one fireplace, a partial-unfinished basement, and a 765 square foot attached garage.

The appellants appeared before the Property Tax Appeal Board claiming a lack of uniformity in the subject's land and improvement assessments as the basis of the appeal. In addition, the appellants argued the subject parcel is impacted by 5.3 acres of protected wetlands that is not accurately reflected in its land assessment. Thus, the appellants claim the subject's land assessment was incorrect.

The appellants first presented testimony and evidence contending the subject dwelling was inequitably assessed. In support of this claim, the appellants submitted property detail sheets from the Addison Township Assessor's internet website for three suggested comparables. The property sheets submitted provided limited descriptive information for the suggested comparables. However, the board of review provided a detailed assessment analysis of the appellants' comparables. They consist of one, two-story and two, one-story brick or stucco dwellings that were built from 1975 to 1987. Two comparables have unfinished basements and one comparable has a partial finished basement. Other features include central air conditioning, one or two fireplaces, and garages ranging in size from 632 to 988 square feet. One comparable has a swimming pool. The dwellings range in size from 3,060 to 3,987 square feet of living area and have improvement assessments ranging from $84,610 to $131,070 or from $27.65 to $32.87 per square foot of living area. The subject property has an improvement assessment of $113,630 or $33.74 per square foot of living area.

Under cross-examination, the proximate location of the one comparable was discussed. The appellants also acknowledged comparable 1 is located in a newer subdivision and its basement suffers "some problems." The appellants also agreed comparable 3 is a two-story dwelling, dissimilar to the subject, but maintained its size and features are similar to the subject dwelling.

The appellants next presented the history regarding the subject's land assessment. From 1995 to 2002, the subject property had land assessments ranging from $20,038 to $25,610. In 2003, the subject's land assessment increased to $220,810, representing an increase of approximately 850%. The appellants testified the subject property has been part of legal litigation from 1976 to 1996 due to flooding caused from a new subdivision developed north of the subject. As a result, the appellants claimed the subject tract was designated as critical wetlands. Additionally, the appellants argued the subject parcel was almost completely designated as wetlands by the DuPage County Department of Environmental Concerns. The appellants submitted a map purportedly from the DuPage County Department of Environmental Concerns highlighting the area of the subject parcel reportedly designated as critical wetlands. The map had no official heading or any designation detailing its source.

The appellants also argued the township assessor designated only .69 of an acre of land as wetlands with a $0 assessment and 5.3 acres are assessed as build-able or developable land. The appellants argued the township assessor appears to ignore the reality of the situation when assessing the property. The appellants claimed that if the subject dwelling would be destroyed by fire, local governing officials would not issue a new building permit due to ordinances and criteria established by the DuPage County Department of Environmental Concerns. The appellants further argued the Army Corp of Engineers has a relationship with the subject property. The appellants testified "if, in fact, this is critical wetlands, which is what the Department of Environmental Concerns is saying it is, then the Army Corp of Engineers would also have to waive off anything being done on the property." In summary, the appellants argued the township assessor does not have the responsibility or authority for determining wetlands.

When questioned, the appellants testified the land assessments for the three improvement comparables were used to support the $30,400 land assessment request. These residential lots range in size from 8,901 to 17,000 square feet of land area with land assessments ranging from $31,660 to $38,000 or from $2.03 to $3.56 per square foot of land area. The subject, which contains 5.99 acres or 260,925 square feet of land area, has a land assessment of $220,810 or $.85 per square foot of land area. The appellants argued there are not many comparable parcels in DuPage County that have five or six acres of wetlands.

The appellants also testified the subject parcel was the matter of an appeal before the Property Tax Appeal Board in 1995 and it was determined the subject's wetlands should be assessed at $510 per acre. The appellants argued no assessment should be placed on the subject's wetlands because they cannot be developed or built upon according to the DuPage County Department of Environmental Concerns. No evidence to support this testimony was submitted. The appellants next testified that of the subject's 5.99 acres, only .69 of an acre is usable land. The appellants next testified the correct assessment for the wetlands should be based on its 1995 land assessment of $510 per acre plus 5% appreciation per year. The appellants opined real estate values have increased at a rate of 5% per year from 1995 to 2003. No substantive evidence to support any of this testimony was submitted. Based on this evidence, the appellants requested the Property Tax Appeal Board to reduce to the subject's assessment.

Under cross-examination, the appellants agreed they testified the subject tract contains 5.3 acres of critical wetlands. However, the appellants agreed the maps they submitted do not depict critical wetlands. Besides their testimony, the appellants were asked if they had any documentary evidence from the DuPage County Department of Environmental Concerns that states the subject property is wetlands and not build-able. The appellants responded by testifying "why would you have a wetland designation." The appellants were next asked if the subject parcel has changed and if they still own the property. The appellants testified they still own the subject property, but not the entire 5.99 acres. The appellants reluctantly testified they sold most of the subject parcel, but it was not sold in 2003. The appellants also testified someone from the DuPage County Department of Environmental Concerns indicated the subject's land was un-buildable. However, the appellants' agreed they submitted no evidence from the DuPage County Department of Environmental Concerns to support their testimony.

When questioned regarding the value of wetlands, the appellants testified there are case histories that will show exactly what the value of wetland property would be, which is considerably less than build-able land. The appellants next testified they could not subdivide the subject parcel in 2003 due to its wetland designation. In order to subdivide in 2003, the appellants testified they would have to fulfill costly requirements from the DuPage County Department of Environmental Concerns and Army Corp of Engineers. No evidence was submitted disclosing these requirements or their reported costs. The appellants next testified they had a pre-application for subdividing the subject parcel, but not in 2003. Furthermore, the subject parcel went through a special management program with the county subsequent to 2003. The appellants testified the subject's critical wetland designation for 5.3 acres did not change in 2004 or 2005. The appellants again reluctantly testified they sold a portion of the subject property in 2004. However, the appellants could not recall the sale price. The appellants testified they did not know the buyers motivation regarding the purchase or future use. The appellants also testified the subject's subsequent sale price was irrelevant and should not be considered for a 2003 property tax appeal.

When questioned about the amount of land that was sold, the appellants testified that part of the sale agreement and consent agreement to settle the 1996 litigation required 2 acres of the subject parcel be donated to the City of Wood Dale for a regional water detention basin. This resulted in a one-half acre lot for the subject dwelling and an additional lot located next to the subject dwelling. Thus, the appellants testified they actually sold approximately 3 acres of the subject parcel in 2004. Again, they could not recall the sale price. The Property Tax Appeal Board ordered the board of review to submit the Real Estate Transfer Declaration detailing the sale price and the amount of land sold in the transaction. This document revealed 5.19 acres of the subject parcel sold in October 2004 for $1,504,000 or $289,788 per acre. This document lists Ralph and Dorothy Madonna as the sellers and Ethan Woods, LLC, as the buyer. The appellant objected to this document being admitted into the record. The Board hereby overrules the appellants' objection, pursuant to section 1910.67(h) of the Official Rules of the Property Tax Appeal Board. The appellants' signatures were authenticated on this legal document.

The appellants next testified the $1,504,000 sale price is an error, but could not recall the actual sale price. They also argued the cost incurred to be able to sell the acreage was not taken into consideration. Again, no evidence of any costs incurred was submitted into the record. The appellants agreed that most of the subject parcel was approved by the county, village and village engineer to be legally subdivided and recorded into build-able residential lots after the 2004 sale. However, the appellants argued that no homes have been built on these new residential lots due to litigation because of the wetland situation on an adjacent property. He claimed the county will not release building permits to construct dwellings on the subdivided lots. Again, no evidence to support this testimony was submitted. The appellants agreed the new residential lots have sold, but they did not know their sale or listing prices. The appellants also claimed they sold a portion of the subject parcel because they could not afford the real estate taxes.
The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $334,440 was disclosed. The subject's land assessment of $220,810 for all 5.99 acres reflects an estimated market value of $662,496 or $110,600 per acre 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 offered the testimony of the Addison Township Deputy Assessor, Dawn Aderholt. Her qualifications as a real estate valuation expert were presented for the record. She testified 2003 was the beginning of the new quadrennial reassessment period.

In support of the subject's improvement assessment, an assessment analysis for three suggested assessment comparables was submitted. They consist of one-story brick or brick and frame dwellings that were built from 1948 to 1963. Two comparables have unfinished basements while one comparable does not have a basement. Other features include central air conditioning, one fireplace, and attached brick garages ranging in size from 330 to 882 square feet. The dwellings range in size from 1,225 to 2,220 square feet of living area and have improvement assessments ranging from $44,950 to $73,920 or from $33.30 to $36.69 per square foot of living area.

The deputy township assessor also agreed the appellants' comparables are similar in size when compared to the subject. However, she explained comparable 1 has a lower assessment than the subject due to structural basement damage; comparable 2 is larger in size than the subject resulting in a lower per square foot improvement assessment; and comparable 3 is a two-story dwelling, dissimilar to the subject's ranch design. She also acknowledged the board of review comparables are considerably smaller in size than the subject.

The deputy assessor next testified larger tracts of land located in the subject's assessment jurisdiction are assessed at market value of approximately $125,000 per acre whereas the subject property has a land assessment reflecting a market value of approximately $110,000 per acre using all 5.99 acres. The assessor next explained .69 of an acre was identified as wetlands on the subject parcel. This area was calculated using a plat book and aerial photographs of the subject parcel that showed the actual amount of water on the parcel. To benefit the taxpayers, the assessor deducted this area for assessment purposes and only valued 5.3 acres of the subject parcel at $220,810 or $41,662 per acre, which reflects an estimated market value of $662,496 or $124,999 per acre.

The township assessor next provided testimony in connection with the five suggested land comparables in support of the subject's land assessment. Comparables A and B contain 4.14 and 15.87 acres and sold in April 1993 and March 1999 for $425,000 and $1,395,401 or $87,926 and $101,920 per acre. The deputy assessor testified some areas of these comparables were designated as wetlands at the time of sale. Comparable A was developed into 12 residential sites that were improved with homes between 1999 and 2002. Comparable B was developed into residential condominiums. She also testified comparable C was formally designated as wetlands that were developed into 30 sites with single-family dwellings in 1996. However the size, land assessments, or sale price of this suggested comparable was not disclosed. The assessor testified she used these comparables to demonstrate there is a viable market for wetlands within the subject's township and to demonstrate subsequent redevelopment has occurred on designated wetlands.

Comparables D and E were used to demonstrate market values of acreage that does not contain designated wetlands. Comparable D is comprised of multiple parcels divided into two sales, which occurred in January 2002. One parcel contained 2.05 acres and sold for $360,000 or $175,600 per acre and the other parcel contained 5.61 acres and sold for $1,120,000 or $199,600 per acre. These sales were subsequently subdivided into 18 single-family home sites that sold and were to be built upon in 2004. Typical sites contained 13,940 square feet of land area. As an example, two of the subdivided home sites sold in September 2003 for $240,000 and $249,000, respectively. Comparable E contains 3.59 acres that sold for $867,000 or $241,504 per acre in March 2001. This comparable has a land assessment of $149,570 or $41,663 per acre for 2003.

The assessor also testified that since the subject tract was subdivided into several residential sites after 2003, several transactions have occurred. Seven sites sold for prices ranging from $220,000 to $235,000. Two other sites sold twice; they both originally sold for $250,000 with secondary sales of $260,000 and $280,000, respectively. Two sites are listed for sale at $314,000. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

Under cross-examination, the assessor could not recall the exact amount the appellants' comparable 1 had its assessment debased due to structural damage to its basement from flooding. The assessor testified she personally inspected the structural damage of this comparable in 1999 and no repair work has been performed since that time. The assessor was next questioned regarding a map submitted from the DuPage County Department of Environmental Concerns, dated August 2000, showing the subject and comparable A. The assessor acknowledged a considerable portion of comparable A was not designated as wetlands and most of the subject was outlined (highlighted) as wetlands. The assessor disagreed comparable B is more valuable (than the subject) because it was subsequently developed for multiple condominiums. She also agreed the .69 of an acre of land area she calculated as wetlands was determined from maps in the assessor's office and not an onsite inspection. She also testified nothing has ever been submitted to assessor's office depicting the amount of water on the subject property. The assessor also opined the squiggly line depicted on the map is a creek.

Under further questioning, the assessor testified since 2003 was the beginning of the new quadrennial assessment period, the prior years' assessments have nothing to do with the subject's 2003 assessment. She also testified that accepted real estate valuation theory provides that all factors being equal, as the size of the property increases, its per unit value decreases. In contrast, as the size of a property decreases, its per unit value increases.

In rebuttal, the appellants claimed they did not sell a portion of the subject parcel to Ethan Woods, LLC, as depicted on the Real Estate Transfer Declaration, but rather the second owner of the property sold this portion. They claimed there was another sale of the subject property between 2003 and the October 2004 sale of $1,504,000. The appellants next claimed the sale price, which should not be considered because it occurred in 2004, was incorrect. Again, the appellants claimed they did not know the correct sale price for the large portion of the subject parcel that they sold. The appellants also claimed none of the subdivided residential lots have been built upon because local governing officials will not issue building permits for construction. They also claimed there are lawsuits being filed for these reasons. Again no documentary evidence was submitted to support the appellants' testimony. The appellants also argued the two-acres donated to the City of Wood Dale for the water detention basin has not been constructed. They also claimed these two-acres also had standing water in 2003. The appellants argued that over the years they and other potential buyers have unsuccessfully attempted to subdivide the subject parcel on numerous occasions. Mrs. Madonna testified they were lucky to find a buyer in 2004, but that was not the case in 2003.

Besides their testimony, the appellants submitted no credible documentary evidence clearly defining the area of the subject parcel that is purportedly affected by wetlands. The appellants further disputed the .69 of an acre designated as wetlands by the township assessor. The appellants argued the .69 of an acre is the area where adjoining properties comprising of approximately 110 acres drains onto the subject property. Near the conclusion of the hearing, Mrs. Madonna remembered they sold the large portion of the subject tract to Alan Scimeca. Mr. Madonna next recalled they sold this portion of the subject parcel for approximately $1,100,000. At the hearing, the Board ordered the appellants to submit a copy of the sales contract regarding this transaction within fifteen (15) days of the hearing date for review and consideration. The appellants failed to comply with the Board's order.

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 no reduction in the subject property's assessment is warranted.

The appellants argued the subject property's assessment was incorrect and excessive due to critical wetlands located on the subject parcel. 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 failed to overcome this burden.

First, the Board finds neither party provided conclusive evidence as to the amount of land officially designated as wetlands contained on the subject parcel. The Board finds the maps offered by both parties are not labeled by any governmental authority and were not clear, concise, or legible in some cases. However, the evidence and testimony offered by both parties are in agreement that at least a portion of the subject parcel contains some wetlands. Absent corroborating and foundational testimony or credible evidence from the DuPage County Department of Environmental Concerns clearly defining and designating wetlands on the subject parcel, the Board finds the township assessor provided the most credible testimony in determining .69 of an acre contained on the subject parcel has standing water. However, the assessor did not assess this area as a benefit to the taxpayers, but assessed the remaining 5.30 acres at the prevailing market rate of $125,000 per acre. The Board finds the record is clear this value and method was applied uniformly to larger tracts of land within the subject's township.

Notwithstanding the lack of clear and conclusive evidence as to the amount of wetlands contained on the subject parcel, the question arises as to corresponding value of the subject parcel's land including wetlands. The Board finds this record is void of any evidence regarding diminution of land value due to wetlands contained on the subject parcel. In fact, the Board finds the board of review submitted two sales of properties containing some wetlands. These properties sold for $425,000 and $1,395,401 or $87,926 and $101,920 per acre in 1993 and 1999. These properties were subsequently developed for use as single-family dwellings or condominiums. The assessor also provided sales of three properties that do not contain wetlands. These properties range in size from 2.05 to 5.61 acres and sold for prices ranging from $360,000 to $1,120,000 or from $175,600 to $241,504 per acre. The subject's land assessment of $220,810 reflects an estimated market value of $662,496 or $110,600 per acre using all 5.99 acres or $124,999 using the 5.30 acres that were actually assessed. The subject's land assessment reflects a per acre estimated value considerably less than similar acreage without designated wetlands and slightly higher than similar sized tracts that contained some designated wetlands. After considering logical adjustments for differences to these comparables when compared to the subject, such as size and date of sale, the Board finds the subject's land assessment is well supported.

The Board recognizes the appellants' premise and argument that the subject's value may be affected by wetlands, but submitted no credible market evidence to measure the perceived impact or indicating the subject's estimated market value as reflected by its assessment was incorrect. Moreover, the Board finds the appellants' claim is clearly unpersuasive and without merit given subsequent action. Although primary weight was not given to the subject's 2004 sale price, the record contains a Real Estate Transfer Declaration revealing 5.19 acres of the subject parcel sold for $1,504,000 or $289,788 per acre in October 2004, 22 months after the subject's January 1, 2003, assessment date. This document lists Ralph and Dorothy Madonna (the appellants) as the sellers and Ethan Woods, LLC, as the buyer. The appellants argued they did not sell this portion of the subject parcel to Ethan Woods, LLC, in October 2004 for $1,504,000, but recalled they sold that portion of the subject parcel for approximately $1,100,000 to Alan Scimeca. The date of this transaction was not disclosed. The Board ordered the appellants to submit a copy of this sales contract regarding this transaction within fifteen (15) days of the hearing date for consideration. The appellants failed to comply with the Board's order. The Board finds the appellants' testimony regarding the sale of the subject to be nebulous and suspect. Therefore, the Board finds the appellants' testimony with respect to the subject's sale not credible. Nevertheless, the Board finds the subject's 2004 sale of either $1,504,000 or $1,1000,000 (as attested by the appellants) lends further support to the subject's estimated land value of $662,496 as reflected by its 2003 assessment, regardless of its wetland designation.

The Board also gave little merit to appellants' argument that the subject's land assessment increased by 850% and its improvement assessment increased by 27% from its 2002 assessment is not justified because nothing has changed on the subject parcel for 25 years, except more flooding. The Board finds this type of analyses is not an accurate measurement or a persuasive indicator to demonstrate an assessment inequity by clear and convincing evidence or overvaluation by a preponderance of the evidence. The Board finds rising or falling assessments 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 similar 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 years' assessments.

The appellants also argued 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, the Board finds the appellants have not overcome this burden and no reduction is warranted.

With respect to the subject's improvement assessment, the Board finds the record contains assessment information for six suggested comparables. The Board gave less weight to the comparables submitted by the board of review due to their considerably smaller size when compared to the subject. The Board also gave less weight to one comparable submitted by the appellants. This suggested comparable is a two-story style dwelling, dissimilar to the subject's one-story design. The Board finds the remaining two comparables to be most similar to the subject in age, size, style, location, and amenities. One comparable had its improvement assessment debased due to structural damage to its basement. These properties have improvement assessments of $84,610 and $131,070 or $27.65 and $32.87 per square foot of living area. The subject property has an improvement assessment of $113,630 or $33.74 per square foot of living, which is slightly higher than the two most similar assessment comparables contained in this record. However, after considering logical 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 supported. Accepted real estate valuation theory provides that all factors being equal, as the size of the property increases, the per unit value decreases. In contrast, as the size of a property decreases, the per unit value increases. Based on this analysis, the Board finds the appellants failed to demonstrate the subject's improvement was inequitably assessed by clear and convincing evidence and no reduction is warranted.

With respect to the subject's land assessment, the Board finds the parties submitted assessment information for seven suggested land comparables. Six of the seven comparables are considerably smaller than the subject. They range in size from 8,901 to 25,787 square feet of land area and have land assessments ranging from $29,750 to $38,000 or from $1.31 to $3.56 pr square foot of land area. The subject property has 220,924 square feet of land area and a land assessment of $220,810 or $.85 per square foot of land area, considerably lower than all six of these comparables on a proportional basis. The only comparable similar in size to the subject contained in this record was submitted by the board of review. Although this comparable does not contain wetlands, this property contains 3.59 acres with a land assessment of $149,570 or $41,622 per acre. The Board finds the subject's land assessment of $220,810 or $36,863 per acre is considerably lower than this comparable on a proportional basis. Based on this analysis, the Board finds the appellants 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 appellants 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: **Sara J. Murray**
DOCKET NUMBER: **04-01208.001-R-1**
DATE DECIDED: **March, 2007**
COUNTY: **Rock Island**
RESULT: **Reduction**

The subject property consists of a frame constructed two-story dwelling containing 2,880 square feet of living area that was built in 1901. Amenities include one and one-half bathrooms, an unfinished basement, central air conditioning, an inoperable fireplace, and a 720 square foot detached garage. The subject dwelling is located in the Broadway Historic District in Rock Island Township, Rock Island, Illinois. The subject is commonly known as a Colonial Revival style dwelling.

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 this claim, the appellant submitted a six page letter outlining the appeal, property record cards and nine spreadsheets (attachments A through G) detailing assessment information for 50 suggested comparables. The main thrust of the appellant's argument was that similarly situated properties of similar condition are not equitably assessed. Furthermore, the appellant argued the assessor used different methodologies in assessing similar residential properties within the subject's historical neighborhood. The appellant testified that approximately 25 of the 500 properties located in the subject's neighborhood were reassessed in 2004 based on information provided from the township assessor's office. The appellant testified only properties that sold between 1998 and April 2004 were reassessed. The appellant testified these properties were not reassessed using the cost approach, but their assessments were established based on their most recent sale prices plus application of township multipliers. She also testified some properties have been well maintained over the years and may not have needed extensive renovation. However, these properties were not reassessed because they did not sell.

The appellant also testified the subject property was almost condemned 18 years ago due to its deteriorating condition. The appellant opined the subject is now in average condition, but noted some problems such as splintered wood floors, no doors on the bedrooms, and water damage to the walls. The appellant testified she tried to find comparables similar to the subject's average condition and style. At the hearing, the appellant acknowledged some of her comparables are multi-family dwellings, dissimilar to the subject. As a result, the appellant agreed to withdraw these suggested comparables from the Board's consideration without objection. Therefore, the appellant relied on eight comparables to demonstrate the subject property was inequitably assessed.

The comparables consist of two-story, single-family dwellings of frame construction that were built between 1900 and 1910. Two comparables are Colonial Revival style dwellings like the subject. The comparables are located from one house north or west to six blocks of the subject. Four comparables are located in close proximity on the subject's street. Amenities included from one to two and one-half bathrooms and unfinished basements. Five comparables contain central air conditioning; five comparables have a fireplace; and seven comparables have one or two-car detached garages ranging in size from 280 to 720 square feet. One comparable also has a carport. The dwellings range in size from 2,216 to 5,006 square feet of living area and have improvement assessments ranging from $16,953 to $35,321 or from $6.15 to $9.90 per square foot of living area. The subject property has an improvement assessment of $33,249 or $11.54 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 $36,717 was disclosed. The board of review chairperson first offered testimony addressing the appellant's inequity claim. She explained when a taxpayer files an assessment complaint at the board of review, unlike the township assessor who uses the mass appraisal system to establish property values, the board must make a determination on whether a particular property is correctly assessed. She further explained a property's fair market value is the board's first consideration based on statute. The witness also testified a neighborhood is not necessarily defined by physical closeness, but similar types of properties. The chairperson argued the comparables submitted by the appellant are not similar to the subject in terms of fair market value. The board of review explained the subject property was one of the first group of homes to be renovated in the Broadway Historic District after World War II. The board of review did not know the extent of the subject's renovation. The couple who formerly owned the subject property primarily performed most of the renovation work until August 1998, when the appellant purchased the subject property for $108,000. In this same time period, the board of review argued property values in the Broadway Historic District started increasing. Thus, the board of review argued renovated homes within the Broadway Historic District like the subject create their own distinct market neighborhood.

In the context of fair market value, the board of review pointed out one comparable submitted by the appellant is located across the street from the subject (parcel 09/6006) and sold for $208,000 or $41.55 per square foot of living area including land in April 2004. This much larger home has the highest sale price of a single-family home in the historic district. However, its assessment reflects an estimated market value of $121,392. The board of review opined many home owners from the historic district like the taxpayer in this appeal argue many homes are under-assessed.

In support of the subject's assessment, the board of review submitted property record cards and a spreadsheet detailing sales and assessment data on four suggested comparables. They were selected based on the amount of renovation, size and sale prices. These dwellings were predominantly Queen Ann style two-story dwellings, dissimilar to the subject's Colonial Revival style. The comparables are located from across the street to four blocks from the subject. They consist of two-story single-family dwellings of frame, brick or stucco exterior construction that were built between 1872 and 1914. All the comparables have unfinished basements while three comparables enjoy central air conditioning and garages ranging in size from 342 to 576 square feet. Two comparables have a fireplace. The dwellings are reported to range in size from 2,200 to 2,900 square feet of living area and have improvement assessments ranging from $32,334 to $39,365 or from $11.15 to $15.37 per square foot of living area. The comparables also sold between June 2000 and September 2004 for prices ranging from $99,900 to $121,000 or from $34.45 to $48.14 per square foot of living area including land.

The newly elected township assessor Robert Brown was present at the hearing and provided some limited testimony. The new township assessor and chairperson for the board of review did not know the methodology used by the prior assessor to establish assessments in the subject's neighborhood. However, Brown testified there was a minimum reassessment for some properties in the subject's complex neighborhood. He testified most homes from this area that sold have had some work on them. He also testified one comparable submitted by the appellant (816 22nd Street) has not had electrical updating since the 1950's. For clarification, he did not know if the cost approach or recent sales information was used to assess the subject and comparables identified by the appellant as of the January 1, 2004 assessment date. The chairperson of the board of review testified most complaints at the local board of review from the subject's neighborhood were of renovated historic homes, but she did not know if the assessor "chased sales" in arriving at final assessments for historic homes. Again the chairperson did not know if the prior assessor used the cost approach to establish assessments or if any properties were removed from the mass appraisal system. Based on this evidence, the board of review requested confirmation of the subject's assessment.

The assessment methodology used by the prior township assessor was next discussed. The Property Tax Appeal Board took notice of its prior decision under Docket Number 02-00546.001-R-1. In that appeal, the township assessor testified Rock Island Township is divided into seven sections for assessment purposes. She testified that the red section commonly known as the "Hilltop" section, where the subject is located, has had the greatest amount of sales in volume and sale price. As a result, a portion of the township was reassessed based on the most current market data. Under questioning, the assessor testified she was not aware of the Illinois Supreme Court's holding in Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 229 Ill.Dec. 487 (1998). She also agreed that six of the appellants' comparables were not reassessed for the 2002 assessment year and are located in the "Hilltop" section of the township.

In rebuttal, the appellant argued the sizes and other descriptive information regarding the comparables submitted by the board of review do not match the information on their property record cards. The appellant noted the board of review's information was gathered from the Multiple Listing Service rather than public information. The board of review acknowledged the description discrepancies and noted the information on the property record cards dated back to the 1970's. The board of review did not know the exact method used by the Multiple Listing Service to calculate dwelling sizes. The appellant also reiterated the prior township assessor "chased sales" of historic residences in order to calculate their assessments.

After hearing the testimony 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 a 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 overcome this burden.

The Board finds both parties submitted a total of 12 suggested assessment comparables for consideration. The Board gave less weight to the comparables submitted by the board of review. The Board finds the board of review analysis to be flawed. As pointed out by the appellant and acknowledged by the board of review, the descriptive data used by the board of review was gleaned from the Multiple Listing Service without foundational support, rather than property record cards, which are fundamental in the Illinois property assessment and taxation system. The Board finds using this information rather than public, property record cards maintained by Rock Island County Assessment Officials amounts to a moving target. The Board further finds it to be highly problematic that county assessment officials have not maintained or updated property record cards in the subject township since the 1970's. Based on this analysis, the Property Tax Appeal Board finds the comparables used by the board of review to be unreliable.

The Board further finds the facts in this appeal to be somewhat analogous to its decision under Docket Number 02-00546.001-R-1. The subject property in that appeal is located in the same township as the subject in this instant appeal. Under Docket 02-00546.001-R-1, the township assessor testified Rock Island Township was divided into seven sections for assessment purposes. The township assessor testified a **portion** (emphasis added) of Rock Island Township, where the subject is located, was reassessed in 2002 based on the most current market data. She also testified some of the comparables submitted by the appellant were not reassessed for the 2002 assessment year. The Board further finds the current township assessor and board of review could not identify or attest to the method used to calculate the subject's and comparables' assessments.

After reviewing this record, the Board finds the appellant's argument regarding the non-uniform method of establishing assessments has merit. In reviewing the sales and assessment information submitted by the parties, it appears there is a clear pattern of assessing properties that had recently sold using their actual sales prices plus application of township multipliers. In contrast, properties that had not sold were assessed at a considerably lesser value than those properties that sold dating back to 1998 regardless as to the amount of renovation. Based on this evidence, the Board finds similarly situated properties were not assessed using a uniform assessment methodology. Uniformity requires not only uniformity in the level of taxation, but also in the basis for achieving the levels. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). Any attempts to correct disparities in assessments must be applied in a uniform manner. Thus, the Board finds the board of review and township assessor violated the uniformity clause of the Illinois constitution and their assessment practices are against the holding in Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 229 Ill.Dec. 487 (1998). In Walsh, the Illinois Supreme Court concluded the removal of one property or a group of properties from the mass appraisal system was in violation of the constitutional requirements of both equity in the assessment methodology and equality in the tax burden.

The Board also gave less weight to one comparable submitted by the appellant due to its considerably larger size when compared to the subject. The Board finds the remaining seven comparables to be most similar to the subject in age, size, style, location, condition, and amenities. These comparables had varying degrees of renovation like the subject. They have improvement assessments ranging from $6.15 to $9.57 per square foot of living area. The subject property has an improvement assessment of $11.54 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 falls above the range established by the most similar assessment comparables. As a result, the Board finds the subject's improvement assessment is excessive and a reduction is warranted.

In conclusion, the Board finds the appellant has demonstrated that the subject property was inequitably assessed by clear and convincing evidence. Based on this analysis, the Board finds the subject's assessment as established by the board of review is incorrect and a reduction is warranted.

APPELLANT: **Dwight and Grace Pope** [1]
DOCKET NUMBER: **03-02716.001-R-1 & 04-02374.001-R-1**
DATE DECIDED: **April, 2007**
COUNTY: **Christian**
RESULT: **Reduction**

The above cited appeals were consolidated for purposes of hearing. The subject property consists of a double-wide Dutch mobile home containing 1,976 square feet of living area. Amenities include a porch, central air conditioning and a barn. The home was manufactured in 1997 and is located on a 25.66-acre parcel in Mechanicsburg, Christian County, Illinois.

The appellants, through counsel, appeared before the Property Tax Appeal Board contesting the assessment on the mobile home. The appellants argued the mobile home should not be classified and assessed as real estate because the dwelling is not resting in whole on a permanent foundation as required by section 1-130 of the Property Tax Code. (35 ILCS 200/1-130). Upon request of the appellants' counsel, the Board takes notice of Property Tax Appeal Board Docket Nos. 01-03107.001-R-1, 02-02417.001-R-1 and Christian County Administrative Review Decisions 2003-MR34, 2003-MR37 and the appeal filed in Christian County Board of Review v. Property Tax Appeal Board et al., 858 N.E.2d 909, 306 Ill.Dec. 851 (5th Dist. 2006) regarding the subject property. Appellants' counsel indicated no changes to the subject parcel has occurred to the property, condition of the home, or statutes since the above cited decisions were written.

The testimony of appellant, Dwight Pope, was stipulated to by the parties to remain unchanged from testimony previously provided in the above cited Property Tax Appeal Board cases. A review of the appellant's prior testimony reveals as follows: The subject mobile home was not attached to a permanent foundation because the mobile home rests on unmortared concrete block piers situated on concrete footings. The concrete piers do not extend into the ground below the frost line. Wooden shims are placed between the piers and the dwelling's "I-beam" frame for leveling purposes. The "I-beam" frame is anchored into the ground with metal tie down straps to prevent the dwelling from shifting during inclement weather. The mobile home has a plastic skirting placed around its perimeter, but does not support the dwelling. The mobile home was transported on wheels to its present location in 1990 from its place of purchase and its wheels, axles, and tongue were attached at time of registration with Christian County. The appellants paid mobile home privilege taxes on the mobile home for tax years 1998, 1999 and 2000.

In support of the claim the appellants submitted a Certificate of Title, a list of mobile home property in the township of Mt. Auburn, Mobile Home Local Services Tax receipts, a Christian County notice of final decision on assessed value, Property Tax Appeal Board decisions regarding the subject parcel and a previously filed affidavit by the appellants.

Under cross-examination appellant, Dwight Pope, testified the tongue and hitch were removed in approximately 1997 and the subject has been improved with a front porch and wheelchair ramp. Based on this evidence the appellants requested a reduction of the subject's assessment.

[1] Affirmed on Administrative Review.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total final assessment for tax years 2003 ($24,440) and 2004 ($25,010) were disclosed. The board of review argued the subject property was properly classified and assessed as real estate. In support of its argument the board of review submitted its Notes on Appeal, a property record card, a building permit, photographs of the subject property, copies of the 1975 to 1978 real estate assessment books, real estate assessment records for mobile home parks, property tax records for Mt. Auburn Township, photographs of homes situated on piers, a recorded television documentary, a U.S. Dept. of Housing and Urban Development (hereinafter "HUD") guide to foundation and support systems, including permanent foundations for manufactured homes, previous Property Tax Appeal Board decisions, a HUD report, factory built structure regulations and a University of Illinois study.

Richard Dodson testified on behalf of the board of review regarding the setup procedures involved for mobile homes and modular homes. He has been involved with setting mobile homes and modular homes since 1968 and has setup approximately 400-500 homes. He testified that modular and pre-fab homes have a yellow sticker attached which indicates it must follow the Illinois building codes, while manufactured homes have a maroon sticker which indicates it must comply with the HUD guidelines. He further testified that the foundations are setup differently for each. A manufactured home rests on piers and is secured with straps to the earth, with the frame supporting the floor joists. A perimeter foundation is required along with internal piers to prevent sagging of the inner floor area. Manufactured homes can be moved by removing the straps, plumbing and electricity, jacking up the structure, and applying the axles, wheels and tongue. On the other hand, modular homes require jack posts or center piers from 6.5 to 7.0 foot apart, with the floor joist supports being down the center of the structure. Modular homes are moved by jacking the system up and while the structure is rolled on dollies. The siding is removed and running gear is placed underneath the structure. Mr. Dodson revealed he had never seen the subject property.

The board of review next called Ron Finley, the Supervisor of Assessments for Christian County, as a witness. He testified the subject property was assessed as real estate. He testified that mobile homes are assessed as real estate when the wheels are removed and it is placed on a foundation. Mr. Finley further testified that this determination is based on ownership of the land underneath the structure. He explained that Exhibit "E" depicts the difference between modular and mobile homes being treated as real estate based on ownership of the land. He considers the structure being placed on a permanent foundation if the wheels and tongue of the structure are removed. He further testified that prior to 1979 the assessment as real property did not depend on the foundation, but rather on the wheel and tongue being removed. Exhibit "F" depicts mobile homes owned by mobile home parks taxed as real estate. Exhibits "L" and "M" are prior Property Tax Appeal Board decisions similar to the subject property. Exhibit "I" describes the set-up of mobile homes recorded from a TV documentary.

During cross-examination the witness acknowledged that the appellants had a previous mobile home on the subject parcel in 1990 and paid a privilege use tax on that mobile home until 1997, when the structure was removed. He further testified that the appellants paid a privilege use tax on their current mobile home through 2000. The witness's actual knowledge on the taxation of mobile homes in Christian County is limited from 1978 to present when he began his employment as a Supervisor of Assessments. He testified that to the best of his knowledge the entries labeled "M.H." on exhibit "E" depicted the term "mobile home" in 1975 and in October, 1978 and continued in that designation today. He did acknowledge the term "M.H." could mean "modular home" or "manufactured home." The witness testified that in October 1978 he performed no inspections of the mobile homes in Christian County, and had no knowledge whether every mobile home situated on a lot owned by the owner, with the tongue, wheels and hitch removed was taxed as improved real estate. The subject parcel never had a mobile home placed on the parcel until the appellants placed a home on the tract of land in 1990. The witness acknowledged that the appellants' mobile home was not taxed as real estate from 1990 to 2000. The witness further testified that a determination to tax a structure as real or personal property is based in part on whether the homeowner owns the land underneath the home and whether the home is situated on a permanent or temporary foundation. The term "permanent foundation" remains in dispute. The witness testified that prior to 1979 some manufactured homes within the County's jurisdiction, Bear Creek Township, were taxed as real property and some were taxed as personal property. Corrections were made concerning how these homes were taxed. Certain mobile homes located in Pana were taxed as either real or personal property based on an agreement between the lessor, the City of Pana, and the homeowner for the payment of taxes. He acknowledged that under the system in place some mobile homes on leased ground were taxed as real estate when they should have been assessed as personal property because they still had the wheels and tongue attached. The County taxes those homes inside a mobile home park and outside a mobile home park the same, with the wheels and tongue attached, they are taxed as personal property. If the wheels and tongue are removed, the determination is based on whether the home is situated on a block foundation, and how it is anchored to the lot. The witness argues that a permanent foundation is defined as anything that transfers the weight of the home with the intent to last the lifetime of the home.

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 appellants argued the subject property was incorrectly classified and assessed as real property. The Board finds the record supports this claim.

The board of review argues that the subject parcel should be taxed as real property under the like-kind provision contained in section 24-5 of the Property Tax Code. However, the Supervisor of Assessments acknowledged that prior to 1979 certain mobile homes in Bear Creek Township, a jurisdiction within Christian County, were taxed as real property; while others were taxed as personal property, and certain mobile homes in Pana were taxed based on a lease agreement which required the payment of taxes, and that certain corrections were required to correct or adjust for same. Section 24-5 of the Property Tax Code prohibits a change in property classification after January 1, 1979.

Section 24-5 states in pertinent part:

> No property lawfully assessed and taxed as personal property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as real property subject to assessment and taxation. No property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property. (35 ILCS 200/24-5).

Section 24-5 was enacted in 1979 to prevent the reclassification of personal property to real property after the General Assembly abolished the *ad valorem* personal property tax. Oregon Community Unit School District No. 220 v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176, 220 Ill.Dec. 858, 674 N.E.2d 129 (1996). This section mandates that property *lawfully assessed* as real property or personal property prior to January 1, 1979, including property of like kind, shall be classified the same way after January 1, 1979.

The Court in Christian County Board of Review v. Property Tax Appeal Board, 858 N.E.2d 909, 306 Ill.Dec. 851 (5^{th} Dist. 2006), based on the same or similar evidence presented herein, determined the Property Tax Appeal Board's findings that the county did not have a *lawful method* of assessing mobile home property prior to 1979, and therefore, the status of the mobile home property or property of like kind in Christian County did not freeze under section 24-5, was correct. In the instant appeals, based on the exhibits and testimony herein, the County fails to demonstrate that mobile home property, including property of like kind, were uniformly assessed prior to January 1, 1979, and therefore, cannot maintain that mobile homes were lawfully assessed prior to that date. Because the county failed to demonstrate that mobile home property or property of like kind had been lawfully assessed as real property prior to January 1, 1979, section 24-5 does not provide a means for the subject mobile home to be taxed as real property.

Finding the county did not have a uniform system in place to tax mobile homes prior to January 1, 1979, and hence, a lawful method, section 24-5 does not apply to determine if the subject should be taxed as real or personal property. The Board next looks to other statues to determine if the subject should be assessed as real property or personal property. The appellant argues the mobile home should not be taxed as real estate but should be subject to the Mobile Home Local Services Tax Act as personal property.

Section 1-130 of the Property Tax Code defines real property in part as:

> The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, . . . and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. Included therein is any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place**,** if the structure is resting in whole on a permanent foundation. . . . (35 ILCS 200/1-130).

Additionally, section 1 of the Mobile Home Local Services Tax Act defines a mobile home as:

> [a] factory assembled structure designed for permanent habitation and so constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, from the place of its construction to the location, or subsequent locations, and placement on a temporary foundation, at which it is intended to be a permanent habitation, and situated so as to permit the occupancy thereof as a dwelling place for one or more persons, provided that any such structure resting in whole on a permanent foundation, with wheels, tongue and hitch removed at the time of registration provided for in Section 4 of this Act, shall not be construed as a 'mobile home', but shall be assessed and taxed as real property as defined by Section 1-130 of the Property Tax Code. (35 ILCS 515/1).

Both the Property Tax Code and the Mobile Home Local Services Tax Act require a mobile home to be resting in whole on a permanent foundation before it can be classified and assessed as real estate. Absent a permanent foundation a mobile home is subject to the privilege tax provided for in the Mobile Home Local Services Tax Act. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711, 719 (2nd Dist. 1996); Berry v. Costello, 62 Ill.2d 342, 347 (1976). The Property Tax Code and the Mobile Home Local Services Tax Act provide that the determining factor in classifying a mobile home as real estate as being the physical nature of the structure's foundation. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 724.

Neither the Property Tax Code nor the Mobile Home Local Services Tax Act defines "permanent foundation." The Board may, however, look to other statutes that relate to the same subject to determine what constitutes a permanent foundation for assessment purposes. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 720; Christian County Board of Review v. Property Tax Appeal Board, 858 N.E.2d 909, 306 Ill.Dec. 851 (5th Dist. 2006).

Section 2(l) of the Illinois Manufactured Housing and Mobile Home Safety Act defines a "permanent foundation" as:

> a closed perimeter formation consisting of materials such as concrete, mortared concrete block, or mortared brick extending into the ground below the frost line which shall include, but not necessarily be limited to cellars, basements, or crawl spaces, but does exclude the use of piers. (430 ILCS 115/2(1)).

The Manufactured Home Quality Assurance Act provides a definition of permanent stating in part:

> [T]hat any such [factory assembled] structure resting on a permanent foundation, which is a continuous perimeter foundation of material such as mortared concrete block, mortared brick, or concrete which extends into the ground below the established frost depth and to which the home is secured with foundation bolts at least one-half inch in diameter, spaced at intervals of no more than 6 feet and within one foot of the corners, and embedded at least 7 inches into concrete foundations or 15 inches into block foundations, shall not be construed as a mobile home or manufactured home. . . . (430 ILCS 117/10).

The Mobile Home Park Act also speaks in terms of an "immobilized mobile home" which means:

> [A] mobile home served by individual utilities, resting on a permanent perimeter foundation which extends below the established frost depth with the wheels, tongue and hitch removed and the home secured in compliance with the Mobile Home Tiedown Act. 210 ILCS 115/2.10.

The Manufactured Home Installation Code (77 Ill.Adm.Code 870) also contains a definition of "permanent foundation" which mirrors language contained in Manufactured Home Quality

Assurance Act as quoted above. Section 870.10 of the Illinois Manufactured Home Tiedown Code states in part that:

> "Permanent Foundation" is a continuous perimeter foundation such as mortared concrete blocks, mortared brick, or concrete that extends into the ground below the established frost depth and to which the home is secured with foundation bolts at least one-half inch in diameter, spaced at intervals of no more than 6 feet and within one foot of the corners, and embedded at least 7 inches into concrete foundations or 15 inches into block foundations. (77 Ill.Adm.Code 870.10).

The Board finds that each of these statutory provisions requires that a permanent foundation must be a continuous perimeter foundation composed of concrete, mortared concrete block, or mortared brick that extends below the frost line. The home must be actually attached, supported and anchored by this type of continuous perimeter foundation to be considered a permanent foundation.

The Board finds under the facts of this appeal the mobile home is not resting in whole on a permanent foundation so as to be classified and assessed as real estate under the provisions of the Property Tax Code. The Board finds the subject mobile home is not resting on, supported by and anchored to a perimeter foundation that extends below the frost depth. The evidence disclosed the subject mobile home was not attached to a permanent foundation because the mobile home rests on unmortared concrete block piers situated on concrete footings anchored into the ground with metal tie down straps to prevent the dwelling from shifting during inclement weather, with a plastic skirting around its perimeter that does not support the dwelling. Wood shims are placed between the non-mortared blocks and the under-side frame of the mobile home to support and level the dwelling. The mobile home is not attached to the concrete blocks but is held in place by its own weight and with straps that go through the frame of the home to anchors that are screwed into the ground to anchor the home.

In conclusion the Property Tax Appeal Board finds the mobile home located on the subject property should not be classified and assessed as real property. Therefore, the Property Tax Appeal Board finds that a reduction in the subject's assessment for tax year 2003 and 2004 is warranted in accordance with its findings.

APPELLANT: **Walter and Delores Romanus**
DOCKET NUMBER: **03-00893.001-R-1**
DATE DECIDED: **July, 2007**
COUNTY: **McHenry**
RESULT: **No Change**

The subject property consists primarily of vacant land along the Fox River with a portion of a garage on this lot (Lot 53; PIN # 15-18-152-016). The subject lot, located in Nunda Township, is approximately 40' by 164.52' with about 40' of street frontage. For purposes of this appeal, it is necessary to note that appellants also own the adjoining lot (Lot 52; PIN # 15-18-152-015) which is of similar size and has been improved with the majority of a one-car garage built in 1948 which is situated only partially on Lot 53.

The appellants appeared before the Property Tax Appeal Board contending lack of uniformity. The appellants' petition indicated unequal treatment in the land assessment process based on the assessed value of Lot 52 as compared to the assessment under appeal herein on Lot 53. Namely, the appellants presented evidence of the total land only assessment of Lot 52 for $6,050 in comparison to the total assessment of Lot 53 (the subject property) of $25,974 consisting of $24,197 for the land assessment and $1,777 for the improvement assessment. Appellants also noted the total assessment on Lot 53 had increased substantially as in 2002 the total assessment was only $7,605 as compared to its current 2003 assessment which is on appeal. On the basis of this evidence and only comparison to Lot 52, the appellants felt that a total assessment of $7,705 consisting of $5,928 for the land and $1,777 for the improvement was appropriate for Lot 53.

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of $25,974 for the subject property was disclosed consisting of a land assessment of $24,197 and an improvement assessment of $1,777. In support of the assessed value of the subject lot, the board of review submitted both equity and market value data in a spreadsheet concerning six comparable properties along with property record cards for a total of ten properties. Testimony was also provided by the Nunda Township Assessor Dennis Jagla.

In testimony, the assessor's office acknowledged that their records are in error and will be corrected in that the records reflect the majority of the subject's one-car garage of 480 square feet of building area as situated on Lot 53 whereas in actuality it is situated primarily on Lot 52. However, the assessor contends this error does not change the uniform treatment of adjoining parcels owned by the same owner with one lot including an improvement and one lot being vacant as set forth in the comparable properties presented.

The assessor testified that land is assessed based on site value and even though both Lot 52 and 53 are considered buildable lots, the assessor did not put a full assessment value on both lots. Instead, the assessor's methodology was that each improved comparable lot has a land assessment of $24,197 and in each instance the first adjoining unimproved lot has a land assessment of $6,050 or approximately one-quarter of the improved lot assessment. Any additional adjoining lot would be valued again at half as much as the second lot. The township assessor testified these improved lot values were derived from lot sales.

As presented in the board of review's grid analysis, five of the comparables were located on the same street as the subject property; the sixth comparable was located less than two miles to the south of the subject property. Board of review comparable numbers 1 through 3 presented as assessment equity comparables consist of improved lots ranging in size from 40' by 156' to 60' by 180'. In each instance, the owners of comparable numbers 1 through 3 own one or two vacant adjoining lots or secondary lots which have been considered as part of the site by the township assessor. Thus, the assessor contends the assessments are uniform where improved lots have a land assessment of $24,197 and the first adjoining unimproved lot has a land assessment at one-quarter of the improved lot of $6,050 just like the subject; a second adjoining lot has a land assessment of even less at $3,025 as shown by comparable number 3. Thus, the assessor seeks confirmation of the instant assessment where an improved lot is assessed at $24,197 and the unimproved lot is assessed at $6,050, although for the subject, due to the actual positioning of the garage, the assessment values were reversed for Lots 52 and 53.

To further support the assessed values with market value evidence, the assessor presented sales prices for comparable numbers 4 through 6 which consist of unimproved buildable lots of either 60' by 180' or 66' by 205' in size. These vacant lots sold between June 1999 and September 2001 for prices ranging from $90,300 to $120,000. The smaller lot size had a land assessment of $24,197 and the larger lot had a land assessment of $29,611.

Based on its analysis, the board of review requested confirmation of the subject's assessment.

Appellants indicated in rebuttal testimony that they did not agree with the assessor's methodology in treating two similarly sized lots differently for purposes of assessed valuation, however, the appellants provided no evidence of similar lots like the appellants' Lots 52 and 53 being treated in a different manner by the township assessor. Appellants also questioned whether under current zoning guidelines Lots 52 and 53 were buildable lots, however, they supplied no evidence whatsoever to support this line of argument.

As allowed by rules of the Property Tax Appeal Board, appellants had previously filed a written rebuttal in this proceeding. The appellants reiterated that the subject lot in this appeal is primarily a vacant lot and should not be compared to other improved properties in the area.

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 a reduction in the subject's land assessment is not warranted.

The appellants contend unequal treatment in the assessment process of their land 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 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. Having considered the evidence presented, the Board concludes that the appellants have failed to meet this burden and thus finds a reduction is not warranted.

Appellants presented their adjoining lot of similar size as evidence that the instant lot under appeal should be assessed in a similar manner. The board of review presented three equity comparables of similar sized lots on the same street as the subject lot, each of which was an improved lot assessed with a land assessment of $24,197 like the subject lot and each of which had at least one adjoining similarly sized vacant lot owned by the same owner which was assessed at one quarter of the improved lot or $6,050.

The Property Tax Appeal Board is mandated only to determine the correct assessment prior to state equalization of any parcel of real property which is the subject of an appeal based upon the facts, evidence, exhibits and briefs submitted to the Board. (Official Rules of the Property Tax Appeal Board, Sec. 1910.10(b)). In this regard, the Board does not have the authority to mandate the methodology used by a county assessment official so long as the evidence supports a given assessment. In all, the parties submitted four equity comparable properties for comparison to the subject property. In each instance, improved properties of similar size with an adjoining vacant lot were assessed similarly in that the improved lot was assessed at $24,197 and the vacant adjoining lot was assessed at $6,050. On the basis of the assessment equity information submitted by the parties, the Board finds that the evidence has demonstrated that the subject lot is being equitably assessed.

This determination is further supported by the recent sales prices of vacant lots ranging from $90,300 to $120,000. The subject's total assessment of $25,974 reflects a market value of $78,047 using the 2003 three year median level of assessments for McHenry County of 33.28% as determined by the Illinois Department of Revenue.[2] Thus, the subject's assessment reflects a market value less than the recent sale prices of similarly sized properties which indicate the subject's assessment is not excessive in relation to its market value.

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 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.

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[2] It is also noted that the assessed values of Lots 52 and 53 taken together result in a total assessed value of $32,024 or at the 2003 three year median level of assessments for McHenry County of 33.28% results in an estimated market value for both lots of $96,226; the lots taken together would be approximately 80' x 160', larger than board of review sales comparable numbers 2 and 3 which sold in 1999 and 2001 for $105,000 and $120,000, respectively. Thus, the estimated market value of Lots 52 and 53 as determined by the assessed value appears to be lower than the likely market value of the lots based on recent sale prices.

APPELLANT:	**Douglas and Nancy Rowley**
DOCKET NUMBER:	**05-01114.001-R-1**
DATE DECIDED:	**June, 2007**
COUNTY:	**Livingston**
RESULT:	**No Change**

The subject property consists of a one-story frame dwelling that was built in 2000 and contains 2,096 square feet of living area, which includes a 224 square foot loft. The dwelling features central air conditioning, a fireplace, a full walkout basement with 1,232 square feet of finished area, a 598 square foot attached garage, and a 1,728 square foot pole building. The dwelling is situated on an 11.91 acre site.

The appellant, Douglas Rowley, appeared before the Property Tax Appeal Board claiming unequal treatment in the assessment process with respect to the subject's land and improvement assessment as the basis of the appeal. In support of this claim, the appellant offered testimony, a letter explaining the appeal, property record cards, and an assessment analysis detailing three suggested comparables located seven to ten miles from the subject. During the hearing, the evidence and testimony revealed the appellants used incorrect assessment amounts for their suggested comparables.

The comparables consist of a one and one-half story and two, one-story frame or brick dwellings that were built from 1979 to 2003. The comparables contain full or partial basements, two of which are reported to contain 1,190 and 1,600 square feet of finished area. Two comparables have walkout basements like the subject. All the comparables contain central air conditioning and garages ranging in size from 588 to 832 square feet. Comparable 1 has two garages. Comparables 1 and 2 have at least one fireplace. Comparable 1 has a 448 square foot apartment; comparable 2 has a 1,375 square foot machine shed; and comparable 3 has a 1,944 square foot utility building. The dwellings range in size from 2,121 to 3,576 square feet of living area and have improvement assessments ranging from $89,509 to $112,943 or from $31.58 to $42.20 per square foot of living area. The subject property has an improvement assessment of $87,612 or $41.80 per square foot of living area.

The comparables are situated on lots ranging in size from 11.53 to 16 acres of land. However, comparables 2 and 3 are classified and assessed for 14 and 15 acres of farmland, respectively, based upon their agricultural use. (35 ILCS 200/1-60 and 35 ILCS 200/10-110 through ILCS 200/10-140). Thus, comparables 2 and 3 are assessed as having one-acre homesites. Comparable 1 contains a large pond of an unknown size. The comparables have residential land assessments ranging from $2,185 to $16,142 or from $1,400 to $2,185 per acre. The subject parcel has a land assessment of $16,674 or $1,400 per acre.

The appellant argued the subject's land assessment should be reduced in consideration of its steep topography of non-developable land; its location in a special use floodplain, little road frontage; and its lot line extends into the middle of the Vermilion River that accounts for three acres of the subject parcel that can be used by the general public. The appellant contends the water should not be assessed at the same rate as dry ground. The appellant also argued the average sale price for land located in the subject's township is $3,933 per acre, less than the subject's estimated land value of $4,200 per acre. No land sales to support this claim were submitted.

The appellant also argued seventeen homes sold for prices ranging from $250,000 to $400,000 in the past three years from Livingston County. The appellant argued homes of this price range usually sell for less on resale because of the smaller pool of potential buyers. The appellant acknowledged he purchased the subject property in May 2003 for $300,000 or $143.13 per square foot of living area including land. However, the appellant opined the subject's assessment should reflect a fair market value of $275,000. No credible evidence to support any of these contentions was submitted by the appellants. 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 assessment of $104,286 was disclosed. The subject's assessment reflects' an estimated market value of $316,594 or $151.04 per square foot of living area including land using Livingston County's 2005 three-year median level of assessments of 32.94%.

In support of the subject's assessment, the board of review submitted property record cards, a letter explaining the evidence, and a spreadsheet detailing four suggested comparables, two of which were utilized by the appellants. The evidence was prepared by the clerk for the board of review who was present at the hearing and offered testimony. The comparables are located from one to 16 miles from the subject. They consist of one-story brick or frame dwellings that were built from 2001 to 2003. One comparable has a crawl space foundation, one comparable has a full unfinished basement, and two comparables have full, partially finished basements. Other features include central air conditioning and garages ranging in size from 320 to 750 square feet. One comparable has a fireplace. One comparable has a small shed while two comparables have larger farm buildings. The dwellings range in size from 2,022 to 3,226 square feet of living area and have improvement assessments ranging from $61,593 to $110,830 or from $25.43 to $42.20 per square foot of living area.

The comparables have lots or homesites ranging in size from 1 to 9.28 acres. Parts of three comparables contain land that is classified and assessed based upon their agricultural use. (35 ILCS 200/1-60 and 35 ILCS 200/10-110 through ILCS 200/10-140). Comparable 1 contains a large pond that is approximately 7 acres in size. They have residential land assessments ranging from $2,185 to $15,931 or from $1,716 to $2,185 per acre. The subject parcel has a land assessment of $16,674 or $1,400 per acre. The witness also testified land under water, such as ponds and rivers, are not valued differently than dry land. The witness also testified water frontage is viewed as an amenity in the marketplace. Based on this evidence, the board of review 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. The Property Tax Appeal Board further finds no change in the subject property’s assessment is warranted.

The appellants 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. After an analysis of the evidence submitted, the Board finds the appellants have not met this burden.

The Board finds the record contains assessment information for five suggested comparables. The Board gave diminished weight to three comparables submitted by the parties due to their considerably larger dwelling sizes when compared to the subject. Additionally, one of these comparables has a crawl space foundation, unlike the subject, while another comparable is considerably older in age when compared to the subject. The Board finds only two comparables submitted by the parties to be representative of the subject in age, size, style, and amenities. They have improvement assessments of $61,593 and $89,509 or $30.46 and $42.20 per square foot of living area. The subject has an improvement assessment of $87,612 or $41.80 per square foot of living area. After considering adjustments to these comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is supported.

With respect to the appellants' argument regarding the subject's land assessment, the Board finds the record contains land assessment information for five suggested comparables. The Board gave less weight to three comparables. These properties have one acre homesites, which are considerably smaller than the subject's 11.91 acres. The Board finds the remaining two comparables to be most similar to the subject in size. Furthermore, these parcels have water frontage like the subject due to the presence of ponds. They contain 9.28 and 10.53 acres and have land assessments of $15,931 and $16,142 or $1,400 and $1,717 per acre. The subject has a land assessment of $16,674 or $1,400 acre, which is well supported by the most similar land comparables contained in this record.

With regard to the land under water, the appellants contend the acreage should be valued at a lesser rate of value than the dry ground. The Board finds the appellants' submitted no substantive evidence to support this assertion or any evidence that clearly shows the acreage under water decreases the subject's market value. In <u>Lake County Board of Review v. Property Tax Appeal Board</u>, 91 Ill.App.3d 117, 414 N.E.2d 173 (2^{nd} Dist. 1980) property owners argued underwater property had no value for tax assessment purposes due to a reverter clause in the deed. The Court held that the reverter clause made it unlikely that anyone would be interested in purchasing the property at any price did not sustain finding that such underwater property had no taxable value. The Court further held that "[A]ll property in Illinois is subject to taxation unless specifically exempted." Additionally, the Court held that "Land" has been defined as meaning "not only the soil or earth but also things of a permanent nature affixed thereto or found thereon, [such] as water . . . " (Black's law Dictionary 1019 (4^{th} ed. 1968)), and it has been held to include lakes, streams, and submerged property. <u>Slayton Gun Club v. Town of Shetek, Murray County</u>, 286 Minn. 461, 176 N.W.2d 544 (1970). All real Property in Illinois is assessed according to its "fair cash value," which has been held to mean "what a 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 so to do." <u>Springfield Marine Bank v. Property Tax Appeal Board</u>, 44 Ill.2d 428, 430, 256 N.E.2d 334, 336 (1970).

Furthermore, Section 9-145(a) of the Property Tax Code provides that for the purposes of taxation, [e]ach lot or tract of property shall be valued at 33 1/3% of its fair cash value. (35 ILCS 200/9-145(a)). Additionally, Section 1-130 of the Property Tax Code defines Property; real property; real estate; land; tract; or lot as the land itself, with all things contained therein . . .and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. (35 ILCS 200/1-130). Based on the aforementioned case law and statutes, the Board finds the acreage located on the subject that is under the river is assessable. Moreover, the Board finds the appellants failed to show the subject's land assessment is incorrect.

The Board recognizes the appellants' lack of uniformity premise. However, the constitutional provision for uniformity of taxation and valuation does not require mathematical equality. 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 and assessment jurisdiction are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist based on the evidence submitted. Therefore, the Board finds the appellants failed to demonstrate the subject property was inequitably assessed by clear and convincing evidence.

In conclusion, the Board finds the appellants failed to demonstrate a lack of uniformity in the subject's assessment by clear and convincing 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:	**Robert D. Schnelle**
DOCKET NUMBER:	**05-00069.001-R-1**
DATE DECIDED:	**March, 2007**
COUNTY:	**Vermilion**
RESULT:	**No Change**

The subject property consists of a two-story style brick and stucco dwelling that contains 3,513 square feet of living area. The home is approximately 100 years old and has features that include central air-conditioning, two fireplaces and a detached garage.

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 argument, the appellant submitted a grid analysis of three comparable properties. The comparables consist of two-story style brick dwellings that range in age from 70 to 100 years and range in size from 2,676 to 3,180 square feet of living area. All three comparables were reported to have attached or detached garages, two comparables have either one or two fireplaces and one has central air-conditioning. The comparables have improvement assessments ranging from $6,545 to $12,684 or from $2.32 to $3.33 per square foot of living area. The subject has an improvement assessment of $21,684 or $5.81 per square foot of living area. The appellant reported the subject sold in July 2005 for $162,500. 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 $13,332 was disclosed. This assessment is a partial one for the last six months of 2005 because the subject had been owned by a non-profit organization for the first half of the year. In support of the subject's assessment, the board of review submitted photographs and a grid analysis of seven comparable properties located on the subject's street. The comparables consist six, two-story dwellings and one, three-story dwelling. Four comparables were described as having brick or stucco exteriors, while the exteriors of three comparables were not described. The comparables range in age from 77 to 116 years and range in size from 2,201 to 4,387 square feet of living area. No other descriptive information about the comparables was provided. The comparables had improvement assessments ranging from $15,198 to $56,739 or from $6.04 to $12.93 per square foot of living area. The subject's improvement assessment for 100% of the year would have been $21,684 or $5.81 per square foot.

The board of review also submitted sales information on four of the comparables used to support the subject's improvement assessment. The comparables sold between August 2004 and May 2005 for prices ranging from $100,000 to $210,000 or from $25.00 to $48.87 per square foot including land.

In addition to the information described above, the board of review submitted a letter describing the subject's neighborhood. The letter stated the subject property, all of the board of review's comparables, and the appellant's comparable 1, were located on Vermilion Street, the primary North-South corridor through Danville, Illinois. Homes in this area were reported to be well-kept and owner-occupied, although some have been converted to commercial uses. However, the appellant's comparables 2 and 3 are located one street west of Vermilion Street in a less desirable area which includes a large number of rental properties. Based on this evidence the board of review requested the subject's total assessment be confirmed.

In rebuttal, the appellant submitted a letter in which it was claimed that Vermilion Street is not a desirable area and that differences in value can be seen on Vermilion north and south of Voorhees Street. The appellant claimed there are several dilapidated houses on Vermilion south of Voorhees. The appellant referred to traffic count information on these streets, but supplied no information as to how these traffic figures impacted market values in the area. The appellant also claimed the alley behind the subject is common to houses on Walnut Street that appear in photographs the appellant submitted to be run down and in need of rehabilitation.

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's assessment is not 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). 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 not overcome this burden.

The Board finds the parties submitted ten comparables for its consideration. The Board gave less weight to two comparables submitted by the appellant because they were located on a secondary street that runs behind the subject's street. The Board gave less weight to three of the board of review's comparables because their exterior construction was not detailed. The Board gave less weight to one of the board of review's comparables because its three-story style differed from the subject's two-story design. The Board finds four comparables were similar to the subject in most respects and had improvement assessments ranging from $2.32 to $12.09 per square foot of living area. The subject's improvement assessment of $5.81 per square foot of living area falls nearer the low end of this range. The Board thus finds the evidence in the record supports the subject's assessment. The Board finds the subject's 2005 sale supports the subject's improvement assessment.

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.

In conclusion, the Board finds the appellant failed to establish unequal treatment in the assessment process by clear and convincing evidence and the subject property's assessment as established by the board of review is correct.

APPELLANT: Westgate, Inc.
DOCKET NUMBER: 05-02133.001-R-1
DATE DECIDED: May, 2007
COUNTY: LaSalle
RESULT: Reduction

The subject property consists of a vacant lot containing approximately 7,000 square feet of land area. The property is located in Streator, LaSalle County.

The appellant contends the market value of the subject property is not accurately reflected in the property's assessed valuation. In support of the overvaluation argument the appellant completed Section IV – Recent Sale Data of the appeal form stating the property was purchased in November 2005 for a price of $1,000. The appellant stated the property was sold through a Realtor, Hart Realty, Inc., and was advertised for sale for 6 months or more in the local newspaper and with a sign in the yard. The appellant also stated the parties to the transaction were not related. The appellant also submitted a copy of the Illinois Real Estate Transfer Declaration associated with the sale. The transfer declaration disclosed the property as being vacant, the sales price as being $1,000, the property was advertised for sale, and their was no indication that the parties to the transaction were related. The board of review's final decision was submitted by the appellant disclosing the assessment of the subject was reduced from $19,056 to $2,100 because the building was destroyed by fire. Based on this data the appellant requested the subject's assessment be reduced to $334.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling $2,100 was disclosed. The subject's assessment reflects a market value of $6,237 using the 2005 three year median level of assessments for LaSalle County of 33.67%. In support of the assessment the board of review submitted land assessment information on 14 parcels located within one block of the subject property. One parcel was noted to be exempt while the remaining 13 had land assessments ranging from $1,394 to $3,674. Nine of the comparables had a land assessment of $2,210.

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 the appeal. The Board further finds a reduction in the subject's assessment is supported by the evidence in the record.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. In counties with 200,000 or fewer inhabitants property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd

Dist. 2002). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The sale of a property during the tax year in question is a relevant factor in considering the validity of the assessment. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983). Furthermore, a contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). The appellant submitted evidence disclosing the subject property sold in November 2005 for a price of $1,000. The Board finds the documentation in the record disclosed the sale had the elements of an arm's length transaction. The Board finds the board of review did not submit any evidence to call into question the arm's length nature of the sale or challenging the contention that the price is not reflective of market value. In conclusion the Property Tax Appeal Board finds the best evidence of market value in the record is the sale of the subject property.

Based on this record the Property Tax Appeal Board finds the subject property had a market value of $1,000 as of January 1, 2005. Since market value has been established the 2005 three year median level of assessments for LaSalle County of 33.67% shall apply.

2007 RESIDENTIAL CHAPTER
Index

*[Items Contained in Brackets Indicate
Arguments or Evidence in Opposition to the Appellant's claim]*

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2007 FARM DECISIONS

PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
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2007 FARM CHAPTER
Table of Contents

APPELLANT:	**Buss Partnership/Rodney S. Buss**
DOCKET NUMBER:	**05-00752.001-F-1**
DATE DECIDED:	**November, 2007**
COUNTY:	**Lake**
RESULT:	**No Change**

The subject property consists of a 19.77-acre parcel located in Libertyville, Libertyville Township, Illinois from which a nursery landscaping business has operated since 1977. In summary, the property consists of a single-family dwelling with homesite, outbuildings, farmland and wasteland (.15-acres).

The appellant appeared before the Property Tax Appeal Board claiming that a larger portion of the subject tract should be classified and assessed based on agricultural use (farmland), thereby reducing the size of the 1.78-acre tract currently classified as homesite down to a .5-acre homesite. In support of this contention, appellant submitted several aerial and ground-level photographs, receipts for plants and provided testimony at the hearing that portions of the area currently classified as homesite have been used for farming purposes for several years prior to 2005.

An aerial photograph of the homesite area in dispute on page 4 of appellant's prepared materials clearly depicts a large wooded area encircling the dwelling on three sides; it is this "mulched propagation area" which appellant contends is erroneously classified as homesite. In testimony, appellant described that as of 1989 the entire area surrounding the dwelling was mowed lawn. He further testified that this forested area around the dwelling is known as a remnant forest consisting of many old oak, black cherry and hickory trees. After having lost a number of large trees in that area, appellant consulted with an arborist in an effort to curtail the loss of these old growth trees.

The arborist advised appellant to stop propagating grass beneath these trees and to instead put down mulch. Appellant also testified that the arborist had advised that placing mulch down instead of grass in the remnant forest would both stop the death of the oak trees and it would also cause some regeneration in that acorns would find a place to germinate. In about 2000 appellant testified that the area had a large crop of acorns from these oak trees. In an effort to nurture these acorns, the entire area was re-mulched to further cover the acorns and as a consequence, appellant testified that these scattered acorns took hold such that about 500 seedling oaks are now (in 2007) from 18-inches to 36-inches in height.

Among the appellant's photographs is one which depicts an open area just west of the dwelling on the edge of mature trees, a grassy area and shrubs surrounding the dwelling with a scattered array of oak seedlings, each apparently with a wooden stick and a protective plastic shield tube, in no particular row or alignment. Another set of smaller photographs depicts rows of smaller shrubs as part of the nursery juxtaposed with the scattered oak seedling plantings in the distance.

Appellant contends that these oak seedlings are a crop just like the rows of cultivated plants depicted and therefore farming activity as appellant believes these locally grown and cultivated oak tree seedlings will have a marketplace in the future, particularly since, historically, oaks grown in the local area tend to more readily survive than imported oak trees. Appellant also testified that for a reforestation project he believes you are better off starting with small things, but their clients may not want to have twenty oaks in their yard and instead would want to have two or three oaks.

Another photograph submitted by appellant depicts a mature-tree wooded area east of the dwelling which is interspersed with more immature trees with tape-wrapped trunks (eight arrows drawn on the photo detail the tree specimens depicted). Appellant's documentation also includes purchase receipts for a total of 126 plants dating from 1998 until 2002 concerning red oak, redbud, white oak, and other species which appellant contends were installed in these disputed areas surrounding the dwelling. In testimony, appellant indicated that beginning in about 1998 he and his brother began planting redbud trees in this remnant forest area based on the theory that redbud trees would thrive in the dappled sunlight beneath these old growth oak trees. They planted 30 redbud trees that year. Then in 1999, they planted 60 red oak trees; in 2000, more redbud trees were planted; they also planted some white oak and then more redbud trees which were doing very well. Appellant further testified that they continue to mulch the area every three to four years and they have continued to plant additional trees from time to time in these areas surrounding the dwelling.

The appellant claimed these trees, such as redbuds, oak, cherry, witchhazel and red oak, could be harvested and sold from its retail nursery located elsewhere on the premises if the tree met the needs and desires of the client (i.e., the nursery would have the tree "in stock"); appellant noted that clients typically do not walk the property and select a particular tree. However, on examination by the hearing officer as to some of the larger trees depicted in the photograph on page 6 of appellant's evidence, appellant could not say when, or if ever, for instance, the redbud tree noted in that photograph would be sold to a client of the landscaping business; it might be sold or as part of managing the area, it or another tree might be cut down if the trees are too crowded. As to the oaks planted in this portion of the disputed area, appellant testified that they could be sold now or they could be "lined out" and allowed to become larger trees, but appellant and his brother have not yet decided what to do with them.

On examination by the hearing officer, appellant was unable to testify as to how many plants have been harvested from the area in dispute over the last nine years as no such location specific records are maintained. Notably, not until specifically asked by the hearing officer did the appellant even affirmatively contend that plants from the disputed area had actually been harvested and sold. In fact, in response to the question, appellant was extremely vague and summary. He asserted that "plants" have been sold to customers from the disputed areas; he could not specify what, when, to whom or for how much the "plants" were sold.

In the course of his testimony, appellant cited to Illinois Department of Revenue "guidelines" as to the definition of a homesite as being "a part of the farm parcel used for residential purposes and includes the lawn and land on which the residence and garage are situated." Appellant also referred to the requirements of Bulletin 810 issued by the Illinois Department of Revenue which requires assessors to use aerial maps and photography to determine farm acreage, rather than assigning an arbitrary number of acres.

For purposes of this appeal, appellant testified that he measured the area around the dwelling with a Rolotape measuring wheel making a distinction between lawn areas as homesite area and mulched areas as not part of the homesite. Thus, appellant asserted based upon his measurements that the footprint of the dwelling, a portion of the dairy barn which contains an apartment, two mowed lawn areas, some of the parking, septic field and some of the road access to the dwelling totaled 21,780 square feet of land area or about .5-acre. (Depicted in Exhibit C of appellant's rebuttal submission).

In conclusion, appellant argued that the area in dispute should be deemed to be part of the farmland because it is not used by the appellant for any other purpose; for instance, there is no swimming pool, swing set or barbeque grill in the disputed area. He noted that the neighboring properties to the north, south and west are part of the Lake County Forest Preserve District which the appellant and his family visit frequently and thus simply walk across the disputed area to enter. Based on this evidence, the appellant requested re-classification of the disputed homesite area as farmland along with a reduced farmland assessment for that portion of the property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment was disclosed. Among the documentation submitted by the board of review was a black and white aerial photograph of the subject property which depicts rows of plantings in an area delineated as cropland. In contrast, the wooded area surrounding the dwelling on three sides has no such planting pattern. The board of review also presented testimony from an on-site inspection of the property to support its contention of the correct classification of the disputed land. Based on its evidence and testimony presented, the board of review was of the opinion that the area in dispute was not primarily agricultural in nature and therefore should more appropriately be deemed to be part of the dwelling homesite. As such, the board of review requested confirmation of the subject's assessment.

Board of review member Gunta Hadac was called by the board of review to testify regarding a field visit she made along with the deputy township assessor as a result of the appellant's original appeal before the Lake County Board of Review. Documentation filed by the board of review indicates the visit occurred in January 2006. As a consequence of that field visit, the board of review adjusted its measurements and classifications of various parts of the subject parcel. Despite these adjustments, however, appellant maintains the contentions made previously regarding the area in dispute.

As to the area in dispute, Hadac testified that she observed the homesite to have different ground types, soils and plants around the dwelling. Along the roadway to the east of the dwelling, she observed a swale area which contained larger oak trees (pictured on page 6 of the appellant's evidence). While Hadac recalled observing one redbud with a wrap on the trunk, she did not observe anything being harvested or grown for the business and believed the area to be primarily used for drainage. Also, given the size of this redbud and from her experience in dealing with mature trees, she did not believe that particular redbud could be removed without disturbing the surrounding mature trees. Furthermore, she testified that the plantings in the area appeared to be a natural part of the landscape rather than plantings ready to be harvested; from her observation, these plantings would serve the purpose as buffering areas, providing some amount of privacy to the dwelling from persons coming up the drive of the landscaping business.

To the south of the dwelling, Hadac observed a slightly higher elevation area of older trees, grass and bushes, but no plantings that she observed that were incubating outside of a "normal yard." Directly to the west of the dwelling, Hadac observed a concentrated landscaped area, but farther to the west of the dwelling the area appeared to be dry and lying fallow; she did not observe any plantings or anything being incubated or harvested as part of a farm site, except that there were plants that had protection around them. When shown the photograph on page 7 of appellant's evidence, Hadac noted that on her visit she did not observe as many oak seedlings with protective sheaths as shown in the photograph. Moreover, in this western area there was no evidence of any activity of harvesting; it appeared to be pristine. There were weeds and other plants growing around this area so that it did not appear to Hadac that there was any activity in this area of the property; nothing reflected that it was similar to harvesting in rows like other parts of the subject property.

On cross-examination by the appellant, Hadac acknowledged that there were "some" potential nursery plants growing in the disputed area. On further cross-examination, she noted that there was no threshold number or density in order for a particular area of land to qualify as a nursery.

In rebuttal, appellant testified that the predominant area of plantings in the disputed area is directly east of the residence (depicted on page 6 of appellant's evidence). He also noted that in the area to the south of the dwelling efforts had failed at growing both serviceberry and propagation of oaks. To the west of the dwelling, appellant contended that the area was densely packed with oak seedlings beneath the mature oak trees as reflected in the photographs submitted, although appellant noted the photographs were probably taken around August 2006.

In closing argument, appellant contended that the evidence established that the disputed area has been used for nursery plants. Moreover, he asserted that there was no agenda when the planting began in 1998; rather, only once the county modified its historical treatment of the size of the homesite due to Bulletin 810 did appellant contest the classification of the property in light of these historic plantings. In summary, appellant noted that this activity in the disputed area is consistent with the nursery and landscaping business engaged in on other parts of the property.

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 that the area in dispute of the subject property is not entitled to a farmland classification and a reduction in the subject's assessment is not warranted.

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. ... [Emphasis added.]

Here, the primary issue is whether the disputed areas of the subject parcel are used primarily for agricultural purposes as required by Section 1-60 of the Property Tax Code. In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3rd Dist. 2005), the court stated that a parcel of land may be classified as farmland provided that those portions of the property so classified are used solely for agricultural purposes, even if the farm is part of a parcel that has other uses. *Citing* Kankakee County Board of Review, 305 Ill. App. 3d 799 at 802 (3rd Dist. 1999). The Board finds that in order to receive a preferential farmland assessment, the property at issue must meet this statutory definition of a "farm" as defined above in the Property Tax Code.

Additionally, to qualify for an agricultural assessment, the land must be farmed for at least two years preceding the date of assessment. (35 ILCS 200/10-110). Testimony did reveal that the disputed property has been planted since 1998 or thereabouts with a variety of plantings both by introduction of new species and by aiding natural growth of acorns from the existing old growth oak trees. The Board finds that, while there has been some effort at planting and encouraging tree growth in the disputed areas within two years prior to the assessment date at issue, the appellant failed to establish that any intensive, deliberate or ongoing farming activity was being performed in these areas. Instead, the existing remnant forest surrounding the instant dwelling appears to be more in the nature of a buffer zone for the dwelling both from the business aspects on the property and the property lines on the west and south. Any tree planting done within this disputed area appears to be incidental to its primary use of maintaining the old growth trees and maintaining this buffer zone.

The Board further finds the addition of mulch to assist in the germination of acorns which dropped from old growth oaks does not constitute ongoing active farming of the disputed land, particularly where the appellant made reference to efforts at reforestation in his testimony. There was insufficient evidence of activity associated with cultivating, pruning, digging up, potting, or transporting these trees in what might be termed farming activity. The board of review's presentation of testimony was clear that these areas appeared to be undisturbed. Additionally, the appellant provided no unbiased witnesses to testify that they had observed farming activity in the disputed areas. In contrast, the member of the board of review testified that, while she saw plantings that could be sold, she did not observe anything akin to farming activity in the disputed areas around the dwelling. A parcel of property may properly be classified as partially farmland, provided those portions of property so classified are used solely for the growing and harvesting of crops. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill. App. 3d 872, 875, 448 N.E.2d 3, 6 (3rd Dist. 1983).

Within the definition of "farm," the Property Tax Code provides that:

> 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. (35 ILCS 200/1-60)

Even without "farming" activity, there also was insufficient evidence that one single planting from the disputed area has been harvested or sold for profit as part of the appellant's landscaping or nursery business which again suggests a lack of farming activity.

The focus of appellant's argument was basically that nothing of the nature of the ground in the disputed area establishes it as being part of the appellant's homesite for recreational or outdoor use and enjoyment; it was not part of his "lawn." However, the mere fact that the disputed area is not used by the appellant for actual recreational purposes does not automatically transform the area into agricultural use. Instead, the question before the Property Tax Appeal Board is what of the nature of the ground in the disputed area makes it fall within the definition of farmland?

On this record, there is nothing in the record to distinguish the instant activities of the appellant on the disputed land from a mere plan to reforest the area as opposed to creating additional cropland for use by the business. The Board finds the evidence submitted by the appellant fails to establish that the land in the disputed areas is being used solely for the growing and harvesting of plants or trees. Thus, the Board finds that the appellant's evidence and testimony has failed to adequately establish the area in dispute as being appropriate for a farmland classification under the Property Tax Code.

The Property Tax Appeal Board finds that the disputed area of the subject property is not entitled to a farmland classification and no change in the classification of the subject's farmland assessment is necessary.

APPELLANT: **Todd Goodman**
DOCKET NUMBER: **03-02564.001-F-3**
DATE DECIDED: **April, 2007**
COUNTY: **Williamson**
RESULT: **No Change**

The subject property consists of a 25-acre parcel improved with a complex of some 23 pole metal buildings including one office building and two wood frame buildings. The property is leased by Timberline Fisheries, Inc. (the business or corporation) for the feeding, breeding and management of bait and pet food/zoo feed products such as crickets and meal worms. The property is located in Marion, East Marion Township, Illinois.

The appellant claimed the assessor erroneously assessed personal property on the subject as real property. In support of the contention that the assessment of 17 of the subject's 23 buildings was incorrect, the appellant submitted information on the cost to construct some of the improvements, invoices to reflect the cost to install three of the disputed personal property units, photographs depicting the interior and exterior of some of the subject buildings, and a brief summarizing the appellant's argument. In the brief, the appellant claimed that, as part of a lease agreement, the appellant is responsible for installation, maintenance, and operation of any heating and air conditioning (HVAC) units installed in the farm buildings. No copy of the referenced lease agreement was submitted in this record. Said brief also stated "The HVAC units are standard units that rest on 'floating' concrete slabs outside the farm buildings. Ventilation ducts enter the buildings via approximately 2' x 2' holes in the side of the metal buildings. Inside the buildings, the ventilation ducts are attached via brackets." The basic contention of the appellant is that these approximately 48 commercial package HVAC units that provide heating and cooling associated with 17 of these "grow rooms" utilized for production have been improperly classified and assessed as real estate.

Appellant as vice-president/general manager of Timberline Fisheries, Inc. testified that these HVAC units are indispensable to the manner in which the business operates; in particular, appellant could not operate his business without the use of the heating aspects of these units, although he could possibly do without the air conditioning although it would reduce efficiency. Other than in the office building, the subject HVAC units were installed in a manner to allow removal and replacement of the units with some regularity either to replace a worn out unit, for greater efficiencies, or to change methods. Removal costs $522 per unit plus labor for ductwork removal of $1,104. If the business relocated, appellant testified that the HVAC units would be removed and taken to the new location. Furthermore, for financing purposes, the corporation's banker has not viewed these HVAC units as part of the landowner's real estate, but rather as personal property of the corporation.

The appellant further testified to his observations of the attachment of the HVAC units to the buildings in that the unit rests on a concrete pad outside the building and is attached to the building via ductwork inserted through two holes in the building(s); inside the building the ductwork is attached by brackets to the surface of the metal pole building along with a control box regulating the heating and/or cooling system. The standard "prototype" for the business is three units to one metal pole building which has an equipment cost of $19,593 plus a labor cost of $13,157. The appellant has had units removed and replaced in the past. Appellant contrasted these units to the system in the office building which is "in the walls" and part of the structure.

In summary based on both the brief and reiterated at hearing, the appellant contended that based on the nature of the relationship between appellant and lessor and based on the intention test, the appellant lacked the intent to permanently annex the HVAC units to the farm buildings. To further support the assertion, the physical nature of the units suggested a lack of permanent attachment and removal would not substantially damage the farm buildings. Additionally, appellant submitted evidence that a local lending institution which had a mortgage on the real estate and farm buildings had also filed a security agreement and UCC-1 financing statement covering personal property, including the HVAC units. On the basis of this analysis, the appellant requested that the Board classify the HVAC units as personal property and not real estate, which is subject to *ad valorem* taxation. The appellant further requested the subject's improvement assessment be reduced to $321,658.

The board of review submitted its "Board of Review – Notes on Appeal" wherein the subject's total assessment of $657,470 was presented. The subject had an improvement assessment of $655,960. In support of its assessment, the board of review provided the subject's property record card and four other property record cards depicting heating and air conditioning systems that were included in the assessed value of those properties in Williamson County dating back to 1967. Furthermore in response to the appeal, pursuant to a discovery subpoena obtained in the course of the proceeding, the board of review also submitted a complete copy of an appraisal of the subject property. As a result of this analysis, the board of review requested confirmation of the subject's assessment.

The board of review called Robert Daun, a certified general licensed real estate appraiser to testify regarding the appraisal he performed as of April 7, 2005 concerning the subject property at the request of corporation's lending institution previously referenced by the appellant as the same entity which treated the HVAC units as personal property. Daun was qualified as an expert witness. He explained the three standard approaches to value and weighted the market value the heaviest in determining an estimated market value of $2,700,000 for the subject property. While as part of his appraisal, Mr. Daun noted the super adequacy nature of these HVAC units, in estimating a value of the property, however, while including them as part of the real estate, he did not account for this excessive capacity.

The board of review also called the Williamson County Supervisor of Assessments to testify to his research of the county's property record cards dating back to 1960 which revealed that heating and air conditioning units attached to buildings were treated as part of the real estate at all times in the Williamson County Assessor's Office. Based on this practice and like-kind treatment, the subject's HVAC units and all such heating and air conditioning systems throughout the county were similarly assessed as real estate. The board of review also called Brenda Dale, an employee of the assessor's office since approximately 1973, who testified that she previously assessed personal property prior to 1979, however, that at all times during her employment the Williamson County Assessor treated heating and air conditioning systems on buildings as part of the real property for assessment purposes. According to Ms. Dale with regard to these heating and air conditioning units, it was never a consideration of the assessor as to how or whether the units were attached to either a concrete foundation or the building structure, or how the ventilation entered the building or was attached to the building. Both Ms. Dale and the supervisor of assessments distinguished these types of HVAC units utilized at the subject property from window air conditioning units which had historically been treated in Williamson County as personal property even prior to 1979.

The assessor further testified that in accordance with the assessor's standard practices under a mass appraisal system, the assessor arrived at an assessed value of the subject property utilizing a cost approach depreciated to arrive at an estimated market value. It was also made clear during testimony that in assessing a property, the type of business going on at a property is not relevant to determining the assessed value; the assessor's function is to value the real estate and structure(s) as defined in the Property Tax Code. (See 35 ILCS 200/9-145 et seq.)

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. No issue was raised with regard to the board of review's market value estimation for the subject property, instead this is a classification question with regard to these HVAC units.

Appellant's contention is that HVAC units used in connection with the breeding and housing of crickets should not be considered as part of the realty subject to *ad valorem* taxation. The board of review argued that the classification and assessment of the disputed HVAC units as real estate was proper based on application of the "like kind" provision contained in section 24-5 of the Property Tax Code and the fact that Williamson County had historically treated any property's central air conditioning and/or heating systems as part of the real property improvement. 35 ILCS 200/24-5. In response to the board of review, appellant through counsel contended that the appellant's HVAC units were not of "like kind" to the heating and air conditioning systems that Williamson County assessed as real property prior to 1979, that these "commercial" units were different. Thus, the issue before the Property Tax Appeal Board is two-pronged: whether the HVAC units on these 17 buildings are real or personal property for *ad valorem* tax purposes and whether these HVAC units are of "like kind" for these purposes.

Section 1-130 of the Property Tax Code defines real property in pertinent part as:

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon, including all oil, gas, coal and other minerals in the land and the right to remove oil, gas and other minerals, excluding coal, from the land, and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. (35 ILCS 200/1-130).

Property used as a farm which has been so used for the two preceding years for farming or agricultural purposes, subject to certain conditions specified in the Property Tax Code, shall be valued for purposes of taxation on the basis of its use for farming or agriculture. (35 ILCS 200/10-110 through 10-145). Section 1-60 of the Property Tax Code defines the term "farm" in pertinent part as:

> When used in connection with valuing land and buildings for an agricultural use, any property used solely for the growing and harvesting of crops; <u>for the feeding,</u>

> breeding and management of livestock; for dairying or for any other agricultural or horticultural use of 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 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. (35 ILCS 200/1-60) [emphasis added].

The testimony of the appellant was clear that these HVAC systems provide a means to heat and cool the buildings and to maintain the internal environment of the buildings at a temperature conducive to cricket production. Photographs of the subject buildings disclosed HVAC units sitting on concrete pads with piping or ventilation incorporated in an exterior wall of one of the subject buildings and a thermostat control box mounted on an interior wall of one of the subject buildings. These HVAC systems of these buildings are applied to the use and purpose of which the property is devoted, namely, cricket and meal worm production.

The Property Tax Code provides that farm improvements, other than the dwelling, appurtenant structures and site, "including, but not limited to, roadside stands and buildings used for storing and protecting farm machinery and equipment, for housing livestock or poultry, or for storing feed, grain or any substance that contributes to or is a product of the farm," are to have an equalized assessed value of 33 1/3% of their contributory value, based upon the current use of those buildings and their contribution to the productivity of the farm. (35 ILCS 200/10-140) [emphasis added]. Insertion of the words "but not limited to" in the statute give a broad and encompassing meaning to the word "improvements." Moreover, the term "improvements" must also be read in conjunction with other provisions of the Property Tax Code to develop an understanding of the word's meaning. The Property Tax Appeal Board finds that the term "improvements" in sections 1-60 and 10-140 of the Property Tax Code includes the HVAC units at issue in this appeal.

As of January 1, 1979, the *ad valorem* taxation of personal property was abolished by the Illinois Constitution, Article IX, §5(c). Section 24-5 of the Property Tax Code states in part that:

> *Ad valorem* personal property taxes shall not be levied on any personal property having tax situs in this State. ... No property lawfully assessed and taxed as personal property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as real property subject to assessment and taxation. No property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in used after January 1, 1979, shall be classified as personal property. (35 ILCS 200/24-5).

The legislature's intent in passing this provision of what became known as the Replacement Tax Act was to "freeze" classifications of property to their pre-January 1, 1979 classifications.

Property that was lawfully classified as real property or personal property before January 1, 1979 cannot be reclassified as personal property or real property after that date. Central Illinois Light Co. v. Johnson, 84 Ill. 2d 275 (1981); People ex rel. Bosworth v. Lowen, 155 Ill. App. 3d 855 (3rd Dist. 1983). In 1983, the provision was amended by inserting the phrase "or property of like kind acquired or placed in use after January 1, 1979" in order to "freeze" not only the pre-1979 property as real or personal, but also any other property of "like kind" subsequently acquired. County of Whiteside v. Property Tax Appeal Board, 276 Ill. App. 3d 182 (3rd Dist. 1995).

The HVAC units at issue in this case were acquired or placed in use after January 1, 1979. The taxpayer has the burden of proving that property is exempt under this provision of the Property Tax Code and, thus, proving that such property or property of like kind acquired and placed in used after January 1, 1979, was lawfully assessed and taxed as personal property prior to January 1, 1979. Trahraeg Holding Corp. v. Property Tax Appeal Board, 204 Ill. App. 3d 41 (2nd Dist. 1990). It is the classification of property as either real or personal prior to January 1, 1979 which controls the status of property after January 1, 1979. Central Illinois Light Co. v. Johnson, 84 Ill. 2d 275 (1981). If the appellant establishes that the disputed property was treated as personal property before January 1, 1979, then the property must be classified as personal property now. Trahraeg, 204 Ill. App. 3d at 43; see also Central Illinois Light Co. v. Johnson, 84 Ill. 2d 275 (1981); Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill. App. 3d 170 (2nd Dist. 1996).

An independent analysis must be made in order to ascertain whether a disputed item should be classified as real or personal property. In this appeal, the taxpayer did not meet the burden referenced above as the taxpayer presented no evidence whatsoever of the treatment of HVAC units by Williamson County assessment officials prior to January 1, 1979. The appellant did not establish that the appellant's HVAC units were not of "like kind" to those heating and air conditioning units which Williamson County treated as part of the real estate for assessment purposes prior to 1979. In fact, there was nothing presented on behalf of the taxpayer that suggested any similar HVAC systems were classified and assessed as personalty prior to January 1, 1979 in Williamson County. To the contrary, the Williamson County assessment officials established through competent testimony and the submission of several property record cards that even prior to January 1, 1979 HVAC units were treated as part of the real property for assessment purposes with regard to all classifications of property. The Board finds the appellant did not meet his burden of proving these HVAC units were lawfully assessed and taxed as personal property prior to January 1, 1979. Board of Educ. of Gibson City-Melvin-Sibley Comm. Unit Sch. Dist. No. 5 v. Property Tax Appeal Board, 354 Ill. App. 3d 812 (4th Dist. 2005); Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill. App. 3d 170 (2nd Dist. 1996). The Board finds the board of review's evidence is persuasive in establishing that there was a policy of classifying and assessing HVAC units as real estate prior to January 1, 1979. Therefore, pursuant to Section 24-5 of the Property Tax Code, the Property Tax Appeal Board finds these HVAC units are properly classified and assessed as real estate for the assessment year in question. Since the only contention made by appellant concerned the treatment of the HVAC units for assessment purposes, the Board further finds the evidence and briefs in the record do not support a reduction in the subject's assessment.

Additionally, while the appellant contended that "removable" HVAC units had been installed in order to heat and cool the buildings for the cricket farming business, no substantive evidence of the nature of those "removable" HVAC units was presented. The testimony of the appellant lacked any foundation so as to establish that the installation of these HVAC units differed from a "non-removable" installation of HVAC units. No installer was called to testify as to how the installation of these units for appellant's metal pole buildings was any different than a "typical" heating and air conditioning unit installation for any other metal pole building. Thus, the appellant's efforts at reliance upon the decision in Beeler v. Boylan, 106 Ill. App. 3d 667, 62 Ill. Dec. 385, 435 N.E.2d 1357 (4th Dist. 1982), is misplaced where the evidence fails to support the lack of annexation to the real property.

Similarly, the appellant contended that these "commercial" HVAC units were not of "like kind" to the heating and air conditioning units that Williamson County treated as part of the real estate prior to 1979. However, besides counsel's closing argument contending such, there is no evidence in the record to support such a conclusion. In fact, appellant's brief described these as "standard" HVAC units.

Appellant's effort to rely upon the tenancy relationship with the land owners was also misplaced. Even though the appellant testified that the lease provided that the HVAC units installed by the tenant were not the property of the landowner and would be removed at the termination or expiration of the lease, the Board finds that these facts do not alter the fact that the subject HVAC units are real property. As noted in Ayrshire Coal Co. v. Property Tax Appeal Board, 19 Ill. App. 3d 41 (3rd Dist. 1974), in matters relating to taxation, the standards used to determine what are considered to be fixtures as between grantor and grantee, vendor and vendee, or mortgagor and mortgagee should apply, rather than the standards applied in landlord-tenant situations. "[P]ersons dealing with land and improvements thereon may consider a building thereon as personalty for their purposes, but such treatment as between individuals, does not change essential characteristics of building as realty." Id. at 44-45 [citation omitted]. The court emphasized that an examination of the item, not the contractual language or booking practices, should establish the classification of an item. In the case of In re Hutchens, 34 Ill. App. 3d 1039, 1042 (4th Dist. 1976), the court recognized that valid business and economic reasons for certain "bookkeeping practices" and agreements between parties are not controlling as far as property taxes are concerned. Thus, the Board finds that based on the aforementioned cases, purported language within a lease or contract that references an object or real property as being personal property does not control the proper classification of the referenced property.

As an aside, the Property Tax Appeal Board notes that if the classification of the property as real or personal prior to 1979 cannot readily be determined based upon its pre-1979 treatment, the courts have set forth two methods to determine whether property is real estate under the Property Tax Code, namely, the intention test and the integrated plant doctrine. Beeler v. Boylan, 106 Ill. App. 3d 667, 435 N.E.2d 1357, 62 Ill. Dec. 385 (4th Dist. 1982). The intention test established three criteria to be used to evaluate whether property is personalty or realty. First, the property must be annexed to the realty or something appurtenant thereto; second, the property must be applied to the use or purpose to which that part of the realty, with which it is connected, is appropriated; and third, the party making the annexation must intend to make a permanent accession to the freehold. Beeler v. Boylan, 435 N.E.2d at 1359, 62 Ill. Dec. at 387. The court in Beeler pointed out that the integrated plant doctrine is merely an extension of the second and third elements of the intention test. Under the integrated plant doctrine, physical annexation is subordinated to the interrelationship between the disputed piece of property and the use of the real estate. The higher the degree of a relationship between the contested property and the uses of the realty, the more likely the property has become part of the realty. Beeler v. Boylan, 435 N.E.2d at 1360, 62 Ill. Dec. at 388. Since the record evidence established that HVAC units were classified as part of the real property in Williamson County prior to 1979, the Property Tax Appeal Board finds that neither of the foregoing tests need be applied in this matter to reach a conclusion as to the applicable assessment of the HVAC units. These HVAC units, like all HVAC units in Williamson County since before 1979, are subject to *ad valorem* real estate taxes.

Based on this record and for these reasons, 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:	**Marvin Henke**
DOCKET NUMBER:	**05-01902.001-R-1**
DATE DECIDED:	**November, 2007**
COUNTY:	**Monroe**
RESULT:	**Reduction**

(Please note, the Property Tax Appeal Board recognizes this case was filed as a residential appeal, however the evidence and context of this decision primarily relates to farmland issues.)

The subject property consists of a 5.46-acre tract of land improved with a residential dwelling and various farm buildings.

The appellant appeared 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 testified 4.46-acres are dedicated for use as pastureland, growing hay and grass for cattle, and barns to raise and feed cattle. The appellant testified one acre of land is dedicated for the dwelling. Multiple photographs were submitted depicting farm implements, barns, and hay bales. The appellant testified he has been a farmer all of his life. Based on this evidence, the appellant requested 4.46-acres of the subject parcel be reclassified and assessed as farmland.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject property's final assessment of $33,440 was disclosed.

In support of the subject's assessment, the board of review argued the appellant purchased 2.78 acres of the subject parcel with the dwelling and farm buildings in February 2002 for $62,000. The board of review acknowledged the appellant purchased an adjoining 2.76 acres used for pasture ground from a neighboring farmer for $5,000 in May 2004, or a total acquisition price of $67,000.

The board of review next presented 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-CONVENTIONAL 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,

These factors create 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. The memorandum also states unlike most department farmland guidelines which are mandatory, this primary use guideline is advisory. The board of review argued that the original parcel was 2.78 acres and was considered residential. The parcel purchased in 2004 is less than five acres in size and does not qualify for a farmland assessment. Based upon the aforementioned guidelines, the board of review opined the entire 5.46 acre is residential, not farmland.

The board of review next referred to three residential parcels located in the general neighborhood as the subject. They range in size from four to six acres with prices (estimated assessed values) ranging from $4,669.34 to $5,252.01 per acre. Using an unexplained adjustment factor of 1.03, the board of review calculated the full value of these parcels ranging from $21,640 to $28,860 or an average of $4,800 per acre. Applying the $4,800 per acre value to the subject reflects an estimated market land value of $26,190 rounded, or a land assessment of $8,730, which is less than its current land assessment of $9,060. The board of review further acknowledged the subject dwelling was built in 1878 and has a poor condition, desirability and utility rating. Based on the photographic evidence, the board of review increased the amount of depreciation from 60% to 75% resulting in an estimated market value for the dwelling of $34,800 or a lower improvement assessment of $11,600 from $21,490. Based on this evidence, the board of review requested confirmation of the subject property's residential land classification, but reduced the subject's land and improvement assessment in accordance with the evidence it presented.

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 4.46-acres of the subject parcel is entitled to a farmland classification and assessment. In addition, the Board further finds the subject's dwelling assessment shall be reduced to $11,600 based on the board of review's evidence.

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 Property Tax Appeal Board finds the appellant submitted ample documentation and evidence showing the 4.46 acres of the subject parcel has been used for agricultural purposes and falls under the definition of a farm as defined by section 1-60 of the Property Tax Code. (35 ILCS 200/1-60). 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 4.46-acres, which includes 2.76 acres used for pasture ground that was purchased from a neighboring farmer in 2004, have been used for crops, pasture ground and farm buildings for the two years preceding the assessment date. Therefore, the Property Tax Appeal Board finds 4.46-acres of the subject parcel are entitled to a farmland classification and assessment.

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 agricultural purposes as defined in the Property Tax Code. 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. v Property Tax Appeal Board, 305 Ill.App.3d 872, 69 Ill.Dec.708, 448 N.E.2d 3.

The Board further finds the 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. The Board finds the controlling statutes do not require a minimum amount of acreage to receive an agricultural assessment. Thus, under the facts of this appeal 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 to be used in determining the classification of a parcel and the guidelines are only intended to supplement that judgment. However, the guidelines state the presumption may be rebutted with evidence. The Property Tax Appeal Board finds Illinois Department of Revenue guidelines are advisory in nature and have no statutory authority.

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 4.46-acres of the subject parcel that is used for cropland and pasture in accordance with this decision. The board of review is hereby ordered to submit the revised farmland assessment to the Property Tax Appeal Board within 15 days from the date of this decision. Finally the Property Tax Appeal Board finds the subject property's homesite shall have an assessment of $1,600 based on the evidence in this record.

APPELLANT:	**Ronald E. Robbins, Jr.**
DOCKET NUMBER:	**05-00071.001-F-1**
DATE DECIDED:	**December, 2007**
COUNTY:	**Fulton**
RESULT:	**Reduction**

The subject property consists of a five-acre parcel located in Orion Township, Fulton County. The parcel is improved with a dwelling.

The appellant appeared before the Property Tax Appeal Board claiming three acres of the subject parcel should be classified and assessed as farmland. The parcel includes a two-acre home site, 1.5 acres of pasture and 1.5 acres of timber. The appellant claims the pasture and timber acreage is being used to graze cattle and horses. The appellant submitted photographs depicting cattle amongst trees in the timber portion of the parcel. The appellant claimed he fenced in the timber area in 2002 to provide additional pasture for cattle and horses. Some of the cattle are owned by a neighbor and allowed to graze the subject parcel, along with the appellant's horses. The appellant did not contest the subject's improvement assessment. Based on this evidence, the appellant requested a reduction in the subject's assessment.

During the hearing, the appellant testified that in 2004, he grazed one cow, three horses and eight neighbor's cows on the subject property. In 2003, three of the appellant's horses and four of the neighbor's cattle were grazed. The appellant testified he does not have a forestry management plan approved by the Illinois Department of Natural Resources.

During cross examination, the appellant admitted he derives no income from the animals being grazed on the subject parcel and that he has not filed income tax forms claiming farm income. When questioned by the board of review's representative regarding the horses, the appellant acknowledged the horses are for recreational use and are not being bred.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $52,140 was disclosed. In support of the subject's assessment, the board of review submitted a letter prepared by the supervisor of assessments, along with an eleven page list of approximately 366 sales of rural Fulton County properties. The sales include information on farms, homesites, recreational land and other uses. The comparables sold between January 2004 and September 2006 for prices ranging from $1,788 for a 0.45-acre parcel to $1,758,958 for a 618.59-acre parcel. The board of review further submitted four comparable sales of five to ten-acre tracts that are improved with dwellings. The comparables sold between November 2001 and September 2005 for prices ranging from $180,000 to $197,000. The board of review contends these parcels are being sold for their residential potential, not for farming potential. The board of review also cited a guideline established by the Illinois Department of Revenue which claims the law dealing with farms "does not apply to parcels which are primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the parcel incidental to its primary use." Finally, the board of review claimed farming is a business and "no farmer would not charge rent for his pasture." The board of review contends the subject property is not the appellant's main source of income, is residential in its use and does not qualify for classification as a farm.

In cross examination, the appellant asked the board of review's representative if he considered raising cattle to be farming, to which the representative had no answer.

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 that three acres of the subject parcel are 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 (emphasis added).

The Property Tax Appeal Board finds a parcel may be classified as partially farmland for tax purposes, provided those portions of property so classified are used solely for the growing and harvesting of crops, or the feeding, breeding and management of livestock. In addition, property that is used solely for the feeding, breeding and management of livestock 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).

A review of the controlling statutes shows the definition of a "farm" does not require the property classification be based on the primary use as a whole. Rather, property that is used solely for the growing and harvesting of crops or the feeding, breeding and management of livestock is properly classified as farmland, even if the farmland is part of a parcel that has other uses. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d at 872 (3rd Dist.1983).

The Board finds no statutory requirement that farming must comprise a primary source of a person's income, or that a fee must be charged for allowing a neighbor's livestock to graze on a person's land for that land to qualify as a farm, as claimed by the board of review.

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). Testimony and evidence revealed that of the five acres contained in the subject parcel, purchased in 1998, two acres are used for a homesite and three acres are used to raise livestock. The appellant testified horses and cattle were grazed on the 1.5-acre pasture and 1.5-acre timber area in 2003 and 2004 and continue to be grazed.

The Board notes Section 10-110 of the Property Tax Code, 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)

Based on the foregoing analysis, the Board finds the 1.5-acre pasture and the 1.5-acre timber tract qualify for farmland classification and assessment. The Board finds the two-acre homesite is properly classified as residential land. The board of review has considered the entire five-acre parcel as residential land. The Board finds the two-acre homesite assessment shall comprise two-fifths of the current land assessment of $4,950 or $1,980.

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 Fulton County Board of Review to compute a farmland assessment for the three acres of the subject property used for agricultural purposes in accordance with this decision. The board of review is hereby ordered to submit the revised assessment to the Property Tax Appeal Board within 15 days from the date of this decision.

2007 FARM CHAPTER
Index

*[Items Contained in Brackets Indicate
Arguments or Evidence in Opposition to the Appellant's claim]*

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2007 COMMERCIAL DECISIONS

PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
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2007 COMMERCIAL CHAPTER
Table of Contents

APPELLANT:	**Agracel, Inc.**
DOCKET NUMBER:	**05-02519.001-C-3**
DATE DECIDED:	**December, 2007**
COUNTY:	**Effingham**
RESULT:	**Reduction**

The subject property consists of a 1,933,695 square foot parcel improved with a one-story industrial building that was built in 1969 and contains 575,598 square feet of building area. The building is constructed of steel and tilt up concrete panels and is located in Effingham, Effingham County, Illinois.

The appellant appeared before the Property Tax Appeal Board with counsel claiming overvaluation and unequal treatment in the assessment process regarding the subject's land and improvements as the bases of the appeal. In support of the overvaluation argument, the appellant submitted a settlement statement detailing the subject's sale on January 26, 2005 for $2,100,000. In further support of the overvaluation argument, the appellant submitted information on three comparable properties. The comparables range in age from 31 to 42 years and are located in the cities of Taylorville, Mt. Vernon and Centralia, Illinois, which are 65 to 75 miles from the subject's location in Effingham, Illinois. The comparable sites range in size from 274,995 to 1,964,250 square feet and are improved with pre-engineered steel, or block and metal one-story buildings that range in size from 144,518 to 441,480 square feet of building area. The comparables sold between September 2002 and January 2005 for prices ranging from $499,192 to $1,575,900 or from $3.45 to $4.15 per square foot of building area including land.

In support of the inequity argument regarding the subject's land assessment, the appellant submitted land assessment information on the same three comparables used to support the overvaluation contention. The comparables had land assessments ranging from $10,485 to $26,974 or from $0.01 to $0.10 per square foot of land area. The subject has a land assessment of $153,530 or $0.08 per square foot of land area.

In support of the improvement inequity argument, the appellant submitted improvement assessment information on the same three comparables used to support the overvaluation contention. The comparables had improvement assessments ranging from $164,766 to $514,815 or $1.14 or $1.17 per square foot of building area. The subject has an improvement assessment of $2,422,980 or $4.21 per square foot. Based on this evidence, the appellant requested the subject's total assessment be reduced to $700,000.

During the hearing, the appellant submitted an affidavit, without objection by the board of review, prepared by Todd Hull, Economic Development Director for the City of Effingham. Hull's affidavit states that one of his duties involves attempting to market industrial sites to prospective buyers. Hull stated he was personally familiar with the subject and was actively involved in marketing it to the general public from August 2004 until the subject was purchased by the appellant in January 2005. Finally, Hull's affidavit stated he "specifically marketed the property to four prospective purchasers during this time frame."

The appellant then called Dean Bingham to testify. Bingham testified he was originally in manufacturing as an engineer, but for 13 years, has been involved in real estate with the appellant company, which buys industrial properties like the subject, rehabilitates them and then sells or leases them. Bingham also testified the subject's January 2005 sale was an arm's length transaction, that no relationship between buyer and seller existed prior to the sale and that the seller had its own real estate marketing department, with whom he dealt directly, in negotiating the appellant's purchase of the subject. Bingham further testified he learned of the subject's availability for sale through the efforts of Todd Hull. Additionally, Bingham testified the subject was in poor condition at the time of its sale, that over $2,000,000 was spent by the appellant in repairing the roof and that $700,000 was spent demolishing improvements in the building that were specific to the seller's printing operation and were of no further use to prospective buyers. The witness also testified most of the dock doors were inoperable, that the floors were cracked in many areas and that a leaking underground storage tank and lagoons required remedial work to satisfy requirements of the Illinois Environmental Protection Agency before the appellant could market the subject for sale. Bingham opined that the subject's poor condition at the time of sale was reflected in its $2,100,000 sale price.

In cross examination, the board of review's representative questioned the appellant regarding the preparation of the Real Estate Transfer Declaration documenting the subject's sale. The appellant's attorney responded that he prepared the declaration and acknowledged the subject had not been advertised for sale in major newspapers, nor had it been listed for sale by a realtor. However, the attorney referred to a letter he prepared and which had been submitted with the appellant's evidence, that the seller aggressively marketed the subject through "its own internal real estate marketing arm and doesn't normally use brokers."

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $2,576,510 was disclosed. The subject has an estimated market value of $6,937,291 or $12.05 per square foot of building area including land, as reflected by its assessment and Effingham County's 2005 three-year median level of assessments of 37.14%.

In support of the subject's assessment, the board of review's evidence claimed the Real Estate Transfer Declaration that details the subject's January 2005 sale indicates the subject was not advertised for sale by a newspaper, trade publication, electronic media, or signs and that it was not sold through a realtor. The board of review contends that for these reasons, the subject's sale was not an arm's length transaction and does not accurately reflect the subject's market value.

In further support of the subject's estimated market value, the board of review submitted property record cards and a grid analysis of three comparable properties located in Effingham, Illinois. The comparable sites range in size from 215,478 to 574,120 square feet of land area and are improved with one-story metal industrial buildings that range in age from 11 to 13 years and range in size from 26,137 to 177,340 square feet of building area. The comparables sold between August 2002 and March 2005 for prices ranging from $750,000 to $4,954,000 or from $18.05 to $28.69 per square feet of building area including land.

In support of the subject's land assessment, the board of review submitted land information on the same three comparables used to support the subject's estimated market value. The comparable sites range in size from 215,478 to 574,120 square feet of land area and have land assessments ranging from $21,860 to $47,970 or from $0.08 to $0.10 per square foot of land area.

In support of the subject's improvement assessment, the board of review submitted improvement information on the same three comparables used to support the subject's estimated market value. The comparables had improvement assessments ranging from $196,830 to $1,337,230 or from $7.53 to $7.80 per square feet of building area. Based on this evidence the board of review requested the subject's total assessment be confirmed.

During the hearing, the board of review's representative testified the comparables submitted by the board of review were located in Effingham like the subject.

In rebuttal, the appellant argued the market area for industrial properties like the subject may often extend several hundred miles or more from the subject's location.

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 a reduction in the subject property's assessment is warranted. The appellant argued the subject's market value is not accurately reflected in its assessment. 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 (2^{nd} Dist. 2000). The Board finds the appellant has overcome this burden.

The Property Tax Appeal Board finds the subject sold in January 2005 for $2,100,000. The appellant contends this sale was an arm's length transaction because the subject was marketed by the City of Effingham and that the buyer and seller were not related parties or corporations. The appellant submitted an affidavit by City of Effingham Economic Development Director Todd Hull. In his affidavit, Hull stated his duties include marketing industrial sites to prospective purchasers and tenants, that he was engaged in marketing the subject between August 2004 and the time of the subject's sale and that he "specifically marketed the property to four prospective purchasers during this time frame." The appellant contends the seller of the subject has its own real estate marketing department and that the seller doesn't normally use brokers. The appellant became aware of the subject's availability through Hull's marketing efforts.

The board of review contends that because the subject was not advertised for sale in a newspaper or other media and was not sold through a realtor, the January 2005 sale of the subject was not an arm's length transaction and did not accurately reflect the subject's market value. The Board finds that Hull's marketing efforts demonstrate that the City of Effingham was actively seeking a buyer or lessee for the subject property and that four prospective buyers were considering purchase of the subject. The Board finds Bingham testified he negotiated directly with the seller's marketing department after having been notified of the subject's availability by Hull's office. The Board further finds Bingham's testimony concerning the subject's poor condition at the time of sale and the extensive remedial costs absorbed by the appellant to bring the subject into marketable condition underscores the appellant's contention that the subject's January 2005 sale price of $2,100,000 reflected its true market value. Notwithstanding the board of review's reliance on the Real Estate Transfer Declaration in its claim the subject's sale was not arm's length, the Board finds the subject was adequately exposed for sale on the market and that its January 2005 sale for $2,100,000 reflects its market value.

The Board also finds the parties submitted six comparable sales for its consideration. The Board gave less weight to the comparables submitted by the board of review because they were considerably newer than the subject and were significantly smaller than the subject. The Board finds the appellant's comparables were more similar in age and size when compared to the subject. The comparables sold for prices ranging from $3.45 to $4.15 per square foot of building area including land. The subject's estimated market value of $12.05 per square foot including land falls well above the range of the most similar comparables in the record.

However, the Property Tax Appeal Board finds the best evidence of the subject's market value is its January 2005 sale for $2,100,000. As stated above, the Board finds the subject was adequately exposed on the market and that the City of Effingham was actively involved in attempts to find a buyer or lessee of the subject property and that this sale was 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 is 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 appellant also argued unequal treatment in the assessment process regarding the subject's land and improvements as a basis of the appeal. The Property Tax Appeal Board finds none of the comparables submitted by the appellant were located in Effingham County, where the subject is located. The Board finds the appellant's reliance on properties in different assessment jurisdictions is inappropriate and insufficient to demonstrate inequity and gives this argument no weight. Cherry Bowl, Inc. v. Property Tax Appeal Bd., 100 Ill.App.3d 326, 426 N.E.2d 618, 55 Ill.Dec. 472 (2nd Dist. 1981).

In summary, the Property Tax Appeal Board finds the appellant has proven overvaluation by a preponderance of the evidence and a reduction in the subject's assessment is warranted on that basis. Since market value has been established, Effingham County's 2005 median assessment level of 37.14% shall apply.

APPELLANT: **Brasserie Jo's**
DOCKET NUMBER: **00-24730.001-C-3 through 00-24703.004-C-3**
DATE DECIDED: **July, 2007**
COUNTY: **Cook**
RESULT: **No Change**

Procedurally at hearing, the intervenor submitted a Motion in Limine based on *Property Tax Appeal Board Rule 1910.94* to bar appellant from presenting any testimony, objection, motion, appraisal critique or other evidentiary material that is offered to refute, discredit or disprove intervenor's evidence regarding the description of the subject properties characteristics due to the unavailability of a full inspection of the subject property by the intervenor's appraiser. All parties presented their positions orally and the motion was granted.

The subject property consists of a 99-year-old, part-one part-three story, masonry commercial type building containing 16,236 square feet of building area on four land parcels of 7,552 square feet. The appellant argued that the fair market value of the subject is not accurately reflected in its assessed value.

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, 1998 and an estimated market value of $780,000. The appraiser is John Moody. Mr. Moody was the appellant's witness in this appeal. Mr. Moody testified that he has been a real estate appraiser since approximately 1971. He indicated that he is a state-certified appraiser. He indicated that prior to his semi-retirement three years ago that he had undertaken approximately 30 appraisals a year with seven to ten of those being restaurant-type properties. Mr. Moody was offered as an expert in the field of property valuation without objection from the remaining parties.

The appellant's appraisal gave an estimate of market value as of the effective date of January 1, 1999 of $780,000. The appraisal reflects that a personal inspection of the exterior of the subject property was undertaken in June of 1999. Moody testified that he conducted this inspection with a field technician. The appraisal identifies and fully describes the subject property's improvements.

Moody testified that the subject's 7,552 square feet of land is improved with an older, three-story, masonry and mill constructed, commercial, general retail-type property having an above-grade floor area of approximately 16,236 square feet. Moody also testified that the ground floor and basement is occupied by a restaurant and that the second and third floor are designed for office use, but on the two occasions he was at the subject property, these spaces were vacant. Moody stated he did not inspect the property in 2000 to see if it continued to be vacant.

The appraisal indicated that the highest and best use of the subject, as improved, would be its current use as a commercial type building. An effective age of 67 years was accorded the subject as well as a land-to-building ratio of 0.47:1.

As to the subject's neighborhood, the appraisal reflects that the subject's surrounding area consists of a mixture of office, multi-story commercial and residential type buildings.

The appellant's appraiser developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $845,500, rounded, while the income approach indicated a value of $783,700, rounded. The sales comparison approach indicated a value of $763,000, rounded. The appraiser concluded a market value of $780,000 for the subject property as of January 1, 1998.

The initial step under the cost approach was to estimate the value of the site at $679,680, or $90.00 per square foot. In doing so, Moody testified that the subject site has been fully improved for over 100 years as is the surrounding area. He testified he considered land sales, reports by CB Ellis and Real Estate Research Corporation, other sources, and spoke to brokers familiar with the market. The appraisal did not contain details of the comparables used.

Using the Boeckh's Automated Cost Estimator and a survey of local cost indexes, the appraiser estimated the reproduction cost new to be $1,507,675 or $92.86 per square foot of building area. The appraiser indicated that the economic life of the subject to be 75 years, thereby estimating depreciation at 90%. A lump sum of $15,000 was added for the depreciated value of the site improvements. Adding the land value resulted in a final value estimate of $845,500, rounded.

Under the income approach, the appraiser testified he used his experience to estimate a market rent of $10.00 per square foot on a net basis, or $78,000, rounded. For the second and third floor office space, Moody testified there were not many leases of comparables properties, so on the basis of his experience, he estimated the market rent to be $2.50 per square foot on a net bases. Moody testified that he did not have any historic leases of the subject property to review. This resulted in a gross potential income (hereafter GPI) of $99,533. Vacancy and collection loss was estimated at 10% of GPI and no operating expenses were included. Therefore, the net operating income (hereafter NOI) was estimated at $89,580.

In determining the appropriate capitalization (CAP) rate, the appraiser extracted the rate using the band of investment technique. Referring to the market and discussions with bankers, the appraiser estimated a 70% loan-to-value ratio at 8.5% with a 15-year amortization and an equity dividend rate of 10% resulting in a weighted CAP rate of 11.43% for the subject. Moody applied this rate to the NOI to estimate the market value for the subject under this approach to value to reflect $783,700, rounded.

The final method developed was the sales comparison approach. Under this approach, the appraiser utilized six suggested sale comparables. The sale dates ranged from January 1996 through September 1997 for prices that ranged from $240,000 to $740,000, or from $34.03 to $62.23 per square foot of building area. The structures ranged in age from 100+ to 118 years and in size from 5,060 to 20,000 square feet of building area.

Moody testified that the suggested comparables were all older, multi-story buildings that are highly comparable in that they are all ground floor commercial with either retail or office or apartments above and in the same general market area. The appraisal notes that suggested comparable #1 is valued on the low end of the range and is inferior to the subject so an upward adjustment was made; suggested comparable #6 is valued at the high end of the range and is superior to the subject so a downward adjustment was made; and that suggested comparable #3 has the highest degree of comparability to the subject property and should be given the most consideration on the final value analysis. Moody testified that based on his experience and the subject's condition, desirability and utility, the subject property's market value under this approach is estimated to be $47.00 per square foot of building area or $763,000, rounded.

In reconciling the various approaches, the appraisal gives primary consideration to the sales comparison approach, substantial consideration to the income approach and consideration to the cost approach. Moody testified that very minimal consideration and weight was placed on the cost approach and only slightly more consideration was given to the income approach. The greatest weight was accorded the sales comparison approach. Moody testified that, based on the number of sales, the high degree of comparability to the subject, physically and in location, the overwhelmingly relied upon approach is the sales comparison approach to value. Based upon this evidence, the appraiser estimated the value for the subject property as of January 1, 1998 to be $780,000.

Moody testified that in the subsequent two years, the appreciation rates for properties ranged from 2%-16% per year. Moody testified that the subject property was not a high quality property and would be at the low end of that range.

Under cross-examination, Moody testified that his appraisal has a date of value of January 1, 1998 and that the report is a complete appraisal presented in a summary fashion. Moody testified that there were typographical errors in the report that incorrectly list the building as a three story and that do not indicate a description of an addition done on the first floor in the 1990s. Moody acknowledged that the subject is located in a high traffic neighborhood and that there is a billboard located on the side of the property. He could not state if that billboard generates income and testified he did not include this as potential income under the income approach.

In response to questions about the cost approach to value, Moody testified that he did not include any of the land sales comparables in the appraisal. In addition, he testified that a one-story building that is five years-old generally would not be depreciated 90%. He testified that a renovation done in late 1999 on the property would change his opinion regarding a 90% depreciation of the subject. He also testified that a renovation could possibly lower the effective age of a property. After acknowledging that a replacement cost attempts to eliminate some obsolescence versus a reproduction cost, Moody testified that he used the reproduction cost new to value the subject because that was the most reliable. He stated that it was not economically feasible to place an elevator in the building under a replacement cost approach.

In response to questions regarding Moody's income approach to value, Moody testified that no lease of the subject property was made available for review. He also testified that, in regards to the CAP rate, he used a 15-year amortization on the loan. He testified that a smaller term on the loan raises the CAP rate and if he had used a 20 or 25-year term the rate would have been lower. In addition, Moody testified that he did not present any rental comparable information in the appraisal. He could not testify as to the number, location, type or adjustments made to the rental comparables he reviewed, but stated it is his business practice to look for rental comparables within the subject's market.

As to Moody's sale comparables, Moody testified that sales date is the key to estimating an opinion of value. He stated paired sales are good for sales data. Moody admitted that he did not know if sale #1 had an exhaust system for restaurant use or ADA compliant bathrooms and that sale #2 occurred four years before the assessment year in question. Moody also acknowledged that these two properties were smaller in land size than the subject.

In regards to sale #4, Moody testified that the property sold in October 1996 and the upper floors were used for storage. He stated he was not aware of any subsequent sale of the property in 1999. He was presented Intervenor's Exhibit Nos. 5.1 and 5.2 which are certified copies of transfer declaration and sales deed for sale comparable #4. These documents indicate the property sold in November 1999 for $1,119,300.

Moody acknowledged that sale #5 sold 35 months prior to the date of value for the subject property. He testified he was not aware of subsequent sale of the property in 1998. He was presented Intervenor's Exhibit Nos. 6.1 and 6.2 which are copies of a multiple listing service and sales deed for sale comparable #5. These documents indicate the property sold in August 1998 for $1,300,000. Under re-direct, Moody testified that transfer declaration forms and sales deeds are a reliable starting point for a sale, but that you speak to a party of the sale to determine the condition and terms of the sale.

As to Moody's sale #6, Moody acknowledged that this sale took place 3 years prior to the assessment date at issue. He also acknowledged that values were increasing from 1998 through 2000.

Moody testified that one of limiting factors for the subject property was the lack of an ADA approved elevator. He did acknowledge that all the sales comparables lack an elevator also. He also testified that many of the comparables use the second and third floors as residential apartments. Moody could not state if the subject property was zoned for residential use on the upper floors, but that there was an entrance separate from the restaurant for these floors.

The board of review submitted "Board of Review-Notes on Appeal" that reflect the subject's total assessment for 2000 of $616,968 yielding a market value of $1,623,600 or $100.00 per square foot of building area using the Cook County Real Property Classification Ordinance for Class 5a property of 38%. In support of this market value, the notes included a retrospective appraisal. The appraiser, Jeffrey M. Hortsch, utilized the income and sales comparison approaches to value to estimate the value of the subject property at $2,000,000 as of January 1, 2000. As a result of its analysis, the board requested confirmation of the subject's assessments. At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions.

The intervenor's pleadings include: a legal brief and an appraisal undertaken by Aronson and Associates reflecting a market value of $2,600,000 for an appraisal date of January 1, 2000.

The appellant first called Mr. Michael MaRous as a rebuttal witness. MaRous testified that he has owned and operated a real estate appraisal firm for 26 years. He indicated that he is a state-certified appraiser; he carries the MAI designation and a member of the Counselors of Real

Estate. He indicated that he has prepared over 8,000 appraisals with over 25 of those in the River North Area of Chicago. MaRous was admitted as an expert in the field of property valuation over the objection of the appellant.

MaRous testified that he reviewed the appellant's appraisal prepared by Moody, the intervenor's appraisal prepared by Aronson, CoStar COMPS, a database service, information about the Freidman Companies, the subject property, Black's Guide, and Korpacz, a research company for transactional cap rates and trends in the industry. He noted that the lien for this appeal is tax year 2000 and the Moody appraisal has a date of valuation of January 1, 1998. He also noted there was some renovation to the subject in 1999 that caused a significant change to the value. MaRous testified that the Moody appraisal contains no zoning information which is significant when comparing the subject to other properties.

Under the cost approach in the Moody appraisal, MaRous noted that there were no land sales provided to support the estimate of value for the land. He testified this is significant because there is no analysis of highest and best use as vacant for the subject; without the land sale information the highest and best use is rendered incomplete.

Under Moody's income approach, MaRous testified there is no consideration of the existing lease and the unit estimates of rent are low when compared to the subject's asking rent listed in Black's Guide. He also testified that, in his opinion, the CAP rate was excessively high.

MaRous testified that the subject property's market is appreciating, particularly for land and retail properties. He stated there was a lot of new development and introduction of residential properties. He testified that the problem of no zoning in the Moody appraisal is compounded because of the flux in the market. He noted that there were no land sales in the appraisal to compare for a zoning analysis.

In regards to the description of the subject property, MaRous testified that the Moody appraisal has some weaknesses. He noted that based on a January 1, 2000 date of value, it appears the description is inadequate due to the renovation of the property. He also noted that there is only a brief mention of a full, finished basement and that it is possible this could add value to the subject, but was not included in any of the approaches to value.

As to the cost approach in the Moody appraisal, MaRous testified that there were no land sales included, but that he did review the land sales in the Aronson appraisal. He noted that these sales were relevant for a January 1, 2000 estimate of value and that the $90.00 per square foot arrived by in the Moody appraisal is not supported by the appraisal or the market. MaRous also testified that the effective age of the property was not realistic based on the renovation and the addition that was only five years old. MaRous was presented Intervenor's Exhibit #7 which is a CoStar Comps report stating the subject was renovated in 1999 and Intervenor's Exhibit #4 which is a copy from the page of Black's Guide 1900 which shows the subject was built in 1900 and renovated in 1999. He agreed these documents are used in his appraisal practice and that they establish the effective age of the subject is not realistic and increases the depreciation to 90%. Finally, MaRous testified that based on all the non-inclusion of information Moody's cost approach to value is not supported.

In regards to Moody's income approach, MaRous testified the approach is very brief and does not discuss any lease in place; in fact the Moody appraisal notes the property is owner occupied. MaRous acknowledged he did not review any lease for the subject property. MaRous opined that the unit rent for the second and third floors was extremely low and the CAP rate was very high. He based this opinion on the fact that the appraisal does not have any rental comparables in it to support the values established by Moody. MaRous reviewed Intervenor's Exhibit #8 which is a CoStar COMPS report of the vacancy history of the subject. After reviewing this document, MaRous testified that based on his experience and review of public records, the Moody's rental unit rate for both the restaurant and the second and third floors are unrealistically low. MaRous also opined that there was no need to utilize a 15-year amortization period on the CAP rate for the subject because the building was renovated and located in a high quality area.

As to Moody's sales comparison approach, MaRous testified the sales comparables are old when compared to the January 1, 2000 lien date. He opined that only one is located in the River North area, most don't have built-out restaurants, and are in an inferior location.

For sale #1, MaRous testified the sale was three years prior to the lien date, is frame, and is located in Old Town. He noted the property is not used as a restaurant and does not have the exhaust system and ADA bathrooms required for a restaurant.

For sale #2, MaRous opined that at the time of the sale, 1996, there was still an influence from Cabrini-Green, but that four years later, most of Cabrini-Green was coming down and development was taking place to the east and west of Cabrini-Green.

For sales #3 and #4, MaRous testified that the areas where these comparables are located were up and coming around the time of January 1, 2000. He noted that for sale #4, which sold in October 1996, there was a subsequent sale. He noted that the property sold in November 1999 for $1,119,300 which is two and one-half times the amount of the sale in 1996.

For sale #5, MaRous opined that this property was located in an area that was experiencing redevelopment and that this property sold subsequently to the February 1997 sale used in the Moody appraisal. He noted that the property sold in September 1998 for $1,300,000. He testified this is almost double what it sold for in 1997. MaRous testified that the paired sales of comparables #4 and #5 show the increase in the market. In conclusion, MaRous opined that Moody's estimate of value under the sales comparison approach was not reliable.

Under cross examination, MaRous testified that the description of the improvement for 1998 was correct, but that the description for a date of value for January 1, 2000 did not include the renovation. In addition, MaRous acknowledged he did not speak with ownership of the subject or anyone else in regards to what specific changes were made during the renovation.

MaRous testified he did not inspect the sales comparables used in the Moody appraisal and that there was not an elevator or air conditioning on the top floors for sales #1, #2, #3 and #6. For sale #4, MaRous acknowledged the property was renovated since the sale.

In support of the intervenor's position, the intervenor submitted a complete, summary appraisal of the subject with an effective date of January 1, 2000 and an estimated market value of

$2,600,000. The appraiser is Brian F. Aronson. Mr. Aronson was the intervenor's second witness in this appeal. Mr. Aronson testified that he has been a state certified, real estate appraiser for approximately 15 years and also holds the designation of MAI. Aronson testified that he has had his own practice for eight years and prior to that worked for MaRous & Company. He stated he has performed approximately 800 to 1,000 appraisals. Aronson was admitted as an expert in the field of property valuation over the objection of the appellant.

Aronson testified he performed a partial inspection of the subject's interior and exterior on March 25, 2002 and April 2, 2002. Aronson testified that he reviewed the document Intervenor's Exhibit No. 7, which is a CoStar COMPS printout of details of the subject property and Intervenor's Exhibit No. 8 which is a CoStar COMPS printout of the subject property's historical vacancy report. Mr. Aronson noted that these documents show the subject was renovated in 1999 and that there was approximately 1,000 square feet vacant for 1999 and the first quarter of 2000 with full occupancy for the balance of 2000. He noted that in 1998 there was approximately 8,000 square feet vacant and that the office space on the second and third floor are about 8,370 square feet of building area.

Mr. Aronson also testified that his appraisal notes that he spoke with a representative of Friedman Properties, the owner of the subject, and he confirmed that the second and third floors were built out for loft style office space, that there was a freight elevator that did not comply with laws for passenger use and that the square feet of building area for the office space as reported in the Moody appraisal was relatively accurate.

As to the subject's neighborhood, Aronson testified the River North area in an established retail and restaurant district with multi-family uses in the area. He opined that the land trends as of January 1, 2000 were development of mixed-use, ground floor commercial and upper floor residential condominium use. Aronson testified the subject is located in a restaurant corridor of the River North area and has many well known restaurants located within blocks. He stated there was also development of art galleries, furniture vendors and high-end hotels in the area.

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 mixed-use retail and residential condominium development. Aronson developed the three traditional approaches to value in estimating the subject’s market value. The cost approach indicated a value of $2,870,000, rounded, while the income approach indicated a value of $2,615,000, rounded. The sales comparison approach indicated a value of $2,600,000, rounded. The appraiser concluded a market value of $2,600,000 for the subject property as of January 1, 2000.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site at $1,705,000, or $210.00 per square foot. In doing so, the appraiser reviewed five land comparables. The properties sold from July 1999 to March 2000 for $900,000 to $3,770,000, or from $160.43 to $260.00 per square foot. The properties ranged in size from 4,448 to 19,275 square feet. A grid reflecting land sale details and a map depicting the location of the land sales to the subject was also included in the appraisal.

Using the Marshall Valuation Service, the appraisers estimated the replacement cost new to be $2,329,009. This value was determined by using varying values for each type of area located on the subject property. With entrepreneurial profit estimated at 8%, the total cost new was estimated at $2,515,330. The appraiser indicated that the subject had an effective age of 20 years with an economic life of 45 years; thereby, physical depreciation was estimated at 44%. The appraiser notes that due to the lack of an elevator for the second and third floor, functional obsolescence was estimated at 10%. Thereby, resulting in a depreciated cost of the building improvements of $1,157,052, while the depreciated cost of other site improvements was estimated at $10,000. Adding the land value resulted in a final value estimate of market value for the subject of $ $2,870,000, rounded.

Under the income approach, the appraiser used ten rental properties in the subject's neighborhood that consisted of restaurant space and loft type office space. Rentals #1 through #5 and rental #10 have restaurant use while the remaining rental comparables are office or retail/office use. Aronson opined that rentals #1, #2, #5 and #10 are considered the most comparable to the subject as a restaurant. He testified these rentals are all ground floor restaurants in renovated, older commercial buildings. As to rentals #3 and #4, Aronson testified these rentals are restaurant space in two floors and that the two story design is inferior to a single story configuration. The rental comparables created a range of $18.75 to $32.50 per square foot. The appraisal places the subject's ground floor restaurant space at $28.00 per square foot on a net basis. As to the office space, Aronson testified the rental comparables are all loft-type office space in older, renovated buildings. The appraisal notes a net rental range of $9.13 to $11.90 per square foot. Aronson estimated the market rent for the subject's office space at $9.00 per square foot on a net basis. Aronson testified that the appraisal applies a contributory value to the basement area of $2.50 per square foot. Based on all the values, the appraisal estimates a PGI for the subject property of $305,927.

The appraisal estimated vacancy and collection loss at 8%. The appraisal notes and Aronson testified this figure is based on market surveys and analysis of the vacancy rate for the rental comparables. Aronson testified that, based on market information and experience, he stabilized expenses at $39,591. Therefore, the NOI was estimated at $241,862 or $14.90 per square foot.

In determining the appropriate capitalization rate, two methods were used by the appraiser: 1) rate extraction from national reports, and 2) rate extraction using the band-of-investment method. In summary, the first method was developed using the Korpacz Investor Survey, fourth quarter, 1999, wherein rates for office facilities in Chicago ranged from 8% to 10% with an average rate of 9.06%. Lastly, the appraiser estimated a 70% loan-to-value ratio with an 8.00% interest rate with a 25-year term. An overall CAP rate of 9.25% was deemed appropriate for the subject. At hearing, Aronson opined that based on his experience and interviews with bankers a 25-year amortization period is an appropriate term for the subject property. NOI was then capitalized by the 9.25% rate to reflect a market value estimate under the income approach of $2,615,000, rounded, for the subject.

The final method developed was the sales comparison approach. Under this approach, the appraiser utilized five suggested sales comparables. Two of the sales were restaurant properties, two were restaurant/office space and one property was office space only. Aronson testified that the comparables were all located within the subject's neighborhood and all older, renovated buildings. The buildings ranged in size from 5,500 to 38,000 square feet of building area. The sale dates ranged from January 1998 to March 2001 for prices ranging from $975,000 to $3,300,000 or from $102.63 to $208.33 per square foot of building area, including land. Sale details, colored photographs, and a map depicting the properties locations were also provided in the appraisal.

As to sale #1, Aronson testified this property was located a few doors east of the subject property. He stated this property is a five story, loft-type building with ground floor restaurant space that was renovated in the mid 1990's. He testified that, based on a conversation with the broker involved with the sale, the third, fourth and fifth floor were in a shell condition and the second floor was built out for office use. He stated there was air conditioning, a basement, and a passenger elevator and that the building was 20% occupied. Aronson testified that there were several sale prices reported based on various sources. He testified the transfer declaration forms indicate a price of $1,500,000, CoStar Comps indicate a purchase price of $3,000,000 and the broker indicated a price of $3,300,000. Aronson opined that the most accurate information come from the broker as this is the best way to verify information in public records. He also testified he asked the broker about the differences in recorded amounts. Aronson testified he utilized the $3,300,000 value when evaluating sale #1. He opined this property was inferior to the subject.

As to sale #2, Aronson testified this is a single-tenant, three-story, renovated masonry and timber loft-type building used as a restaurant. He stated the second floor was used as additional dining space and the third floor is used as banquet space. The building does have an elevator. He opined the property was inferior to the subject.

As to sale #3, Aronson testified this is an older, loft style building that was renovated. He stated the ground floor is restaurant use, while the second, third and fourth floors are occupied for office use. He opined the unit price was higher than appropriate for the subject.

As to sale #4, Aronson testified this building is used as multi-tenant office space. He noted that this property has what is referred to as an English basement and that the property has two elevators. He opined this property was inferior to the subject.

As to sale #5, Aronson testified this two-story, single-tenant, renovated building was demolished over four years after the sale. He opined the unit sale price was higher than appropriate for the subject.

After making adjustments, Aronson determined a value for the subject from $160.00 per square foot. Therefore, a market value under this approach of $2,500,000, rounded, was determined.

In reconciling the various approaches, primary emphasis 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 $2,600,000 as of January 1, 2000.

Upon cross-examination, Aronson acknowledged that the representative of Friedman Properties that he spoke with was a confidential source and would not divulge the name. In regards to questions about the accuracy of intervenor's exhibits, Aronson admitted the documents list varying square feet figures and can be inaccurate.

Regarding the cost approach, Aronson testified that land sale #1 is 70% smaller than the subject. He also acknowledged that land sale #2 is has different zoning than the subject and is currently being used as a parking lot. As to land sale #3, Aronson testified this property is almost double the size of the subject and has a different zoning than the subject. Aronson testified that sale #5 is two and one-half times the size of the subject and improved with a 15 story, 115 unit condominium building. For all the land sales, Aronson did not know the traffic count on the street the properties are located.

In response to questions about the appraisal's income approach, Aronson testified that some of the information was verified from a confidential source. He stated that in analyzing the properties, he looked to only the restaurant portion of the rentals that were being compared to the restaurant portion of the subject.

Aronson testified that, for the sales comparison approach, sale #1 sold 28 days prior to the subject's lien date. He stated this property is similar to the subject and located kitty corner from the subject. Aronson was presented Appellant's Exhibit Nos. 2 and 3 which are certified copies of the transfer declaration and the trustee's deed for sale #1 which shows a sale price of $1,500,000. Aronson noted that it appeared to him that the figure placed on the transfer declaration document as the sale price was crossed out and changed. He also testified that he has experienced discrepancies in documentation before and therefore, attempts to verify the information with a principal of the transaction, a broker or owner.

Aronson acknowledged that he did not know the traffic count on the streets that the sales comparables were located on. Finally, Aronson testified that he used both the sales comparison and the income approach to arrive at the final estimate of value for the subject.

The appellant called their rebuttal witness, Joseph M. Ryan. Mr. Ryan testified that he has been in the appraisal business since 1980 and also holds the designation of MAI. The parties stipulated to the credentials of Mr. Ryan and he was admitted as an expert in the field of property valuation without objection.

Ryan testified he reviewed the intervenor's appraisal prepared by Aronson & Associates. As part of the scope of his review, Ryan stated he re-verified some of the data analyzed in the three approaches to value employed by Aronson.

Ryan opined that the land sales used by Aronson where located in close proximity to the subject, but were mainly purchased for a change in use. He testified the land sales were all developed for condominium use, so this evidences what the value of subject's land is worth for high-rise condominium development and not for its current use.

In Aronson's cost approach, Ryan testified the effective age is somewhat subjective, but that Aronson estimated an age of 20 years for a property over 100 actual years old. He also opined that the functional obsolescence factor used by Aronson was subjective.

In regards to the income approach prepared by Aronson, Ryan testified that he spoke to the general counsel for the landlord for rental comparables #1, #3, #4, #5 and #10 and that the information contained in the Aronson report was inaccurate for the rental rate, the building size or the lease size. Ryan noted that the Aronson appraisal indicates the information for these rental comparables was verified by a confidential source.

Ryan was presented with Intervenor's Exhibit No. 4 which is a copy of the Black's Guide showing information for the subject property. Ryan testified the square footage listing of 14,000 square feet was inaccurate. He also testified that gross rental rate of $18.50 would include taxes and operating expenses. He opined that a net rental rate would be substantially less at under $10.00 asking. Ryan's final opinion as Aronson's income approach was that it was weakened by the inaccurate information of the rental comparables.

As to Aronson's sales comparison approach, Ryan reviewed all the sale comparables presented. Ryan testified he spoke with Kevin Sterling, Vice President and General Counsel for Friedman Properties and was told the transfer declaration form for sale #1 reflects a sale price of $1,500,000 and not the amount of $3,300,000 as listed in the Aronson appraisal.

In regards to sale #1, Ryan testified the $1,500,000 sale price yields a price per square foot price of $53.40 and this property had a couple of advantages over the subject property such as a lobby and an elevator. He noted the subject property was purchased in 1995 for $35.00 per square foot of building area. Ryan opined that based on the sale of the subject in 1995, the sale of comparable #1, a review of the land sales used in the Aronson appraisal and appreciation rates in the area, the final opinion of value in the Aronson appraisal was incorrect. He testified that the sale comparison approach was aggressive.

Ryan testified sale #1 was the most similar to the subject property in regards to location, use, and physical comparability. He noted this property sold for $54.00 per square foot when using the $1,500,000 sale price.

As to sales comparable #2, Ryan testified he spoke with a representative of the sale that indicated there was furniture, fixtures, and equipment included in the sale but that a value for this personal property was not provided to him. Ryan testified that his review showed that properties on a north-south street commanded a higher prices than properties on a east-west street; he opined this was due to a higher traffic count on the north-south streets.

For sale #3, Ryan testified that the property was purchased for condominium development and sold subsequently for less than the 2001 purchase price. Ryan testified that sale #4 was mainly office use and located adjacent to the Brown line elevated train stop. He opined this is an advantage for an office location.

On cross examination, Ryan testified he did not review a lease between Freidman Properties, the owner of the subject property and Lettuce Entertain You, the lessee. He did acknowledge he was told the lease was a percentage lease.

Ryan also acknowledged that Aronson's sale #4 was located next to the Brown Line, that the railroad tracks run directly outside the windows of the second floor and that anyone sitting on that floor looks out onto the Chicago Avenue stop.

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 a reduction 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 appraisal. The appellant's and the intervenor's appraisals utilized the three approaches to value in valuing the subject property, while the board's analysis consisted of the income and sales comparison approach. In addition, the PTAB reviewed the testimony of the two review appraisers.

The PTAB finds that the appellant's appraisal, with a value date of January 1, 1998, was not an accurate value for the subject as the subject property had significant renovation done in 1999 that was not reflected in the appellant's appraisal. The appraisal is also given little weight under the cost and income approaches to value because the appraiser failed to present any details of the comparables used to arrive at a value under those approaches.

The PTAB also gives little weight to the intervenor's cost and income approaches to value. The PTAB finds that the comparables used to estimate a land value for the subject were sales of parcels where the use of the land was altered to residential condominium use. This use is contrary to the current use of the subject property. In addition, the PTAB found the testimony from Ryan credible in that the rental comparable information had inaccuracies.

The PTAB notes that all the witnesses as well as the board of review's evidence placed most weight on the sales comparison approach to value. Therefore, the PTAB will also accord this approach the most weight because the courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. <u>Chrysler Corp. v. Illinois Property Tax Appeal Board</u>, 69 Ill.App.3d 207 (2nd Dist. 1979); <u>Willow Hill Grain, Inc. v. Property Tax Appeal Board</u>, 187 Ill.App.3d 9 (5th Dist. 1989).

The PTAB further finds that even though the board of review failed to provide a witness to testify regarding the documentary submissions, one of the board's sale comparables was also utilized by the intervenor's appraisers.

As to Aronson's sale comparable #1, the PTAB found credible the testimony of the intervenor's appraiser as to the sale price of this property. Aronson testified that there was differing purchase price amounts listed in the sources he reviewed. He testified that he contacted the broker to determine the correct sale price and was informed the price was $3,300,000. The broker has no interest in the outcome of this appeal and was not aware of any circumstances that made the purchase price different. His testimony is corroborated by the fact that the board of review utilized this sale under its sales comparison approach to value. In their appraisal, they utilize $3,000,000 as a sale price. Ryan testified that he spoke with the general counsel for the buyer as to the purchase price. However, the PTAB finds that the buyer has an interest in the outcome of this appeal as the owner of the subject and would benefit from a lower purchase price. In addition, Ryan testified that the general counsel told him the transfer declaration form showed a sale price of $1,500,000. Based on this testimony the PTAB finds that the general counsel never told Ryan the property sold for $1,500,000. Therefore, the PTAB will utilize the purchase price as listed in the intervenor's appraisal.

In totality, the parties' experts submitted 11 suggested sales comparables with one of those properties also submitted by the board of review. Therefore, PTAB shall look to the data on the suggested sales comparables submitted by both appraisers in this matter in order to determine the subject's market value. For in Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9, the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach. Thus, the PTAB finds that the best evidence of value is the market data submitted by the parties under this approach to value. The appellant's sales #1, #2, #4, #5 and #6 were accorded little weight due to the remote date of sale when compared to the lien date. Testimony from intervenor's appraiser and the appellant's review appraiser indicate intervenor's sale #1 (also board of review's sale #1) was the property most similar to the subject in location, use and physical characteristics. In addition, the sale occurred four days prior to the lien date. The PTAB places the most weight when reviewing the sale comparables on this sale. This property sold for $3,300,000 or $117.43. Although similar to the subject, the PTAB finds this property is superior in that it has an ADA approved elevator, air conditioning on upper floors and a lobby entrance for the office portion of the building. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments and differences for sale date, location, building size, building age, and type of legal conveyance in the appellant's and the intervenor's suggested comparables, the PTAB finds that the subject's assessment is supported by the properties contained in this record.

As a result of this analysis, the PTAB finds that the evidence and testimony has demonstrated that the subject property was not overvalued and that a reduction in the subject's assessment is not warranted.

APPELLANT: <u>Candlewood Hotel</u>
DOCKET NUMBER: <u>01-22392.001-C-3</u>
DATE DECIDED: <u>September, 2007</u>
COUNTY: <u>Cook</u>
RESULT: <u>Reduction</u>

For hearing purposes, this appeal was consolidated with Property Tax Appeal Docket Nos. 02-21132.001-C-3 and 03-22082.001-C-3. The intervenor in this appeal will only be allowed to participate in those matters pertaining to the 2001 appeal. Any intervenor arguments will only be considered by the Board as applicable for the date at issue, or January 1, 2001.

The subject property consists of a rectangular shaped 88,339 square foot parcel improved with a seven-story masonry constructed, extended stay, limited-service hotel containing 90,349 square feet of building area with a 1.98:1 land to building ratio. The improvement was constructed in 1999 and contains 160 guest rooms, a laundry room, a vending area and an office. The subject is located in Leyden Township, Cook County.

As a preliminary matter, the board of review made a motion to exclude from evidence the appellant's appraisal based on a decision of The Property Tax Appeal Board in Docket No. 99-25370-C-3, The Lurie Company. Counsel argued that the Board ruled that an appraisal outside of the triennial assessment period is irrelevant.

In the Lurie case at the hearing, the board of review attempted to submit two appraisals submitted to the board of review by The Lurie Company for the year 2000. This Board held that these appraisals were inadmissible because the time to file evidence had long since been closed and that such evidence would unfairly prejudice the appellant's case. Furthermore, this Board held that such evidence may constitute rebuttal evidence specifically prohibited by the *Official Rules of the Property Tax Appeal Board, §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. <u>86 Ill.Adm.Code 1910.66(b)</u>

The Property Tax Appeal Board finds that the board of review misconstrues the findings in the Lurie case. Accordingly, the Property Tax Appeal Board denies the motion.

The appellant, through counsel, 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 the market value argument, the appellant submitted a summary report of a complete appraisal with a valuation date of January 1, 2000 (Appellant's Exhibit No. 1) and the testimony of its author, Joseph M. Ryan. Mr. Ryan is a State of Illinois certified general real estate appraiser with a Member of the Appraisal Institute (MAI) designation. After an examination of Mr. Ryan's appraisal experience, he was tendered and accepted as an expert witness.

Mr. Ryan testified that he completed a full interior and exterior inspection of the subject on April 24, 2001. Although Mr. Ryan's report had an effective date of January 1, 2000, he opined that the subject's value would be more or less the same as of January 1, 2001, 2002 and 2003. He described the subject as being located in an area of mixed commercial and industrial properties which is not a prime hospitality market. The prime hospitality area, in his opinion, is north of O'Hare Airport whereas the subject is south of O'Hare. Further, in the witness' opinion, the extended-stay market in the Chicago area was over-built during the 1990s causing a negative impact on the subject's market value. The subject is considered within a sub-market described by Mr. Ryan as the lower tier of the extended stay market. He based this classification on sources such as Bear Stearns & Co., Smith Travel Research and Coopers & Lybrand L.L.P.

Mr. Ryan testified the subject was appraised as a fee simple estate; appears to conform to current zoning laws; and its effective age is one-year with a remaining economic life of thirty-nine years. After an analysis of the four sequential tests of highest and best use, it was the appraiser's testimony, the subject's highest and best use as vacant would be development for hospitality use and its highest and best use as improved is continued use as an extended-stay hotel building.

To estimate a total market value of $3,800,000 for the subject, the appraiser employed the hypothetical condition that the subject had been open for twelve months prior to January 1, 2000.

In the appraisal and in testimony, the witness indicated, based on Steven Rushmore's analysis in the book *Hotels and Motels: A Guide to Market Analysis, Invest Analysis and Valuations*, the long start up periods, from one to four years for lodging facilities, hostelry investors are advised to financially carry the property until profits are produced. This viewpoint, he suggested, bears out the view that the subject's construction costs are not indicative of its value and a cost approach was not of significance in the subject's estimate of market value. Further, he testified that a typical buyer in this market does not base an investment decision on a cost approach but relies principally on potential income with some emphasis on comparable sales.

In the appraisal's summary of the subject's history it was noted that the subject's recorded land sale price in June 1998 was $3,300,000 or $37.36 per square foot of land area. Mr. Ryan indicated that according to ownership, the building project cost was $8,903,916, or $84.71 per square foot, which included furniture fixtures and equipment (FF&E) as well as other costs.

Although Mr. Ryan did not utilize the cost approach, he prepared an estimate of the subject's land value through an examination of the sales of five vacant properties purchased for hotel development. The appraiser selected parcels in similar market areas to the subject. The parcels range in size from 51,219 to 191,664 square feet in land area with zoning comparable to the subject's zoning. The sale comparables sold from March 1997 to April 2000 for prices ranging from $615,000 to $3,225,000, or from $7.30 to $29.84 per square foot of land area. After adjustments to the comparables for market conditions, location, size, utility/zoning, time of sale, and other pertinent items, Mr. Ryan estimated $32.50 per square foot as a unit of value for the subject land, resulting in an estimated land value of $2,870,000 rounded.

Appellant's counsel inquired of the witness why a party would pay more for land than the appraiser's opinion of its worth. Ryan testified that his client, the appellant, indicated the land was purchased at its asking price in order to quickly construct a hotel and have presence in the market.

As the bases for his income approach to value, the appraiser relied on the 1999 edition of *Trends in the Hotel Industry* (TRENDS 2000), for the nation and the north central market, *Korpacz, First Quarter 2000 Edition* as well as other sources and his experience.

From his sources, the appraiser developed $65.00 as the subject's average daily room rate, which resulted in potential gross room revenues of $3,796,000 for the subject. He then applied an average occupancy rate of 70% to arrive at an estimated $2,657,200, or 94.66% of total revenue, as the effective gross room revenue for the subject. In the main, other income was stabilized by applying industry standard percentages resulting in a potential gross income (PGI) of $2,822,200. Expenses based on industry standards were stabilized at $1,749,765, or 62% of the PGI. The deduction of the stabilized expenses from the PGI resulted in an estimated net operating income of $1,072,435 for the subject. The witness testified that other refinements to the income stream of $330,650 representing return of and return on personalty and $71,932 as amortized start-up costs were deducted, resulting in $669,853 as an adjusted stabilized net operating income (NOI) for the subject.

Mr. Ryan used both the market extraction and the mortgage equity techniques to develop an overall capitalization rate for the subject. Sources such as the *Korpacz Real Estate Investor Study,* a thorough analysis of market activity and his experience led to his conclusion of 10.50% as an overall capitalization rate for the subject. Mr. Ryan then calculated an effective tax rate of 6.80%, which he added to the overall capitalization rate. The total capitalization rate of 17.30% was then applied to the subject's NOI. The appraiser's estimate of value for the subject via the income approach was $3,870,000.

Mr. Ryan testified that he had the opportunity to examine the subject's operating statements subsequent to preparing the 2000 appraisal and found the subject had not achieved the results projected in his report. He testified that the events surrounding the September 11, 2001 terrorist attacks had a profoundly negative impact on all aspects of the hospitality and airline industries. People traveled less, hotel occupancy fell as did room rates.

In the sales comparison approach, Mr. Ryan testified he examined the sales of four hotel properties in the subject's general area, two of which are south of the airport. The other two are located northwest of the airport. Containing between 102 and 197 guest rooms, the buildings ranged from 12 to 35 years old. The improvements were situated on parcels ranging from 117,663 to 196,020 square feet of land area. These sales took place between July 1997 and April 2000 for prices ranging from $2,224,500 to $4,050,000, or from $13,325 to $32,843 per guest room including land.

The appraiser adjusted the sales comparables for conditions of sale, market conditions, location, age, condition, occupancy and services offered along with other unique characteristics individual to the comparables. The appraiser testified that from this information he selected a unit of value for the subject of $22,500 per guest room thus his estimate of value for the subject using the sales comparison approach, as of January 1, 2000, was $3,600,000, rounded. The appraiser testified the same market factors existed in 2001.

Mr. Ryan testified as market participants place more weight on the income approach in his reconciliation of the methods used to estimate a market value for the subject, the income approach was given more weight and less reliance was placed on the sales comparison approach. His final opinion of value for the subject was $3,800,000, as of January 1, 2000. He further testified that his value as of January 1, 2001 would not be significantly different.

Mr. Ryan was questioned by the hearing officer regarding the extensive discussion in the appraisal about Real Estate Investment Trusts (REITs.) Mr. Ryan responded that the mission of REITs is to invest in properties and/or build new properties to generate a return which is in turn paid to shareholders. In the witness' opinion, REITs overpay for properties because of the high motivation to pay a return to shareholders. As the appellant is part of a REIT, it is the appraiser's opinion that the appellant over-paid for the subject land because of the mandate to invest and return. The witness testified that his client, the appellant, paid the advertised asking price for the land which is unusual. The witness' client indicated its motivation was to acquire the property, build a hotel and generate a return on the investment.

The intervenor's attorney deferred his cross-examination privilege to attorney Ares Dalianis. The Board allowed Mr. Dalianis to conduct the Mr. Ryan's cross-examination. The appellant offered no objection.

During cross-examination, Mr. Ryan was questioned extensively regarding the subject's project costs versus his estimate of the subject's market value. Mr. Ryan agreed that while the purchase of a property for the asking price was not typical it was also not unique. He also agreed that during the time period from 2000 to 2002 REITs were the buyers in the market for properties such as the subject.

Next, the witness was questioned in detail regarding the sales utilized, his sources, and adjustments made to the sales. He answered the inquiries exhibiting knowledge and understanding of the hotel market.

Mr. Ryan also was cross-examined regarding the extent of his reliance and understanding of the *Korpacz Investor Survey*. The witness acknowledged that based on his experience some information from the *Korpacz* report was modified to comply with the requirements of the subject property. Mr. Ryan was thoroughly cross-examined about each line-item in his stabilized operating statement for the subject; and the methodologies utilized to determine a final estimated value through the income approach. Mr. Ryan responded to the questions with confidence and an awareness of the financial complexities of properties such as the subject.

The board of review submitted the "Board of Review Notes on Appeal" wherein the subject's final assessment of $3,997,554 was disclosed. This assessment reflects a fair market value of $10,519,879 when the Cook County Real Property Assessment Ordinance level of assessments of 38% for Class 5a property, such as the subject, is applied.

In support of its assessment, the board offered an appraisal report prepared by Hugh MacKinnon of the Cook County Assessor's Office (Board of Review Exhibit No 1.) The report indicates Mr. MacKinnon is a Certified Illinois Assessing Officer (CIAO.) Mr. MacKinnon was not present at the hearing to testify regarding his credentials, appraisal methodologies, and the validity of the data contained in the appraisal. The appraiser indicated in the report he inspected the subject, no dates were noted, and it was appraised as a fee simple estate. The description of the subject's history indicated the subject began operating in November 1999. Mr. MacKinnon cites the appellant's appraisal as the source for the information that the subject's building costs were $8,903,916 and public records as the source for the subject's land cost of $3,300,000. Mr. MacKinnon's opinion of the subject's highest and best use as vacant and improved agrees with the appellant's appraiser's opinion.

To estimate a value for the subject of $11,000,000 as of January 1, 2001, Mr. MacKinnon employed the income approach and the sales comparison approach to value. The author did not develop a cost approach or an estimate of value for the subject's land.

The initial approach utilized by the appraiser was the income approach to value. The appraiser reported that after reviewing the market the subject should command $110.00 per night with an average occupancy rate of 65.00%, or $4,175,600. Income from guest services was estimated at $167,024 and other income at $41,756, resulting in an estimated gross income (EGI) of $4,384,380. To ascertain a NOI the appraiser deducted $1,972,971 for operating expenses; $131,531 for management fees; $175,375 for franchise fees; $136,000 for return of personalty; and $78,200 for return on personalty, resulting in a NOI of $1,890,303. The next step in this process was the determination of a capitalization rate. Using the mortgage-equity method, the appraiser determined 10.38% as a capitalization rate. The appraiser then added 6.93% as an effective tax rate, resulting in total capitalization rate of 17.31%. After application of the capitalization rate to the NOI, the appraiser's opinion of value through the income approach was $10,900,000, rounded, as of January 1, 2001.

When developing the sales comparison approach to value, the author used four sales located in Chicago, Schaumburg and Elk Grove Village. The sales comparables contain from 108 to 255 rooms and range from one to thirty-one years old. The report does not disclose whether these sales comparables are in the same extended-stay market as the subject. These sales took place from September 1997 to April 2000 for prices ranging from $9,460,000 to $21,630,000, or from $60,098 to $89,380 per guest room. From the foregoing sales data, the appraiser estimated a market value for the subject of $70,000 per guest room, or $11,200,000, rounded, as of January 1, 2001.

After reconciliation Mr. MacKinnon's final estimate of value for the subject is $11,000,000 as of January 1, 2001. Based on the foregoing, counsel for the board of review requested confirmation of the current assessment.

Appearing before the Property Tax Appeal Board on behalf of the intervenor was its attorney arguing the fair market value of the subject is reflected by the current assessment. The intervenor adopted the Cook County Board of Review's evidence as its own.

Appellant's counsel concluded by arguing that the appellant has borne its burden of proof showing that the subject is over-valued. Additionally, that based on Mr. Ryan's appraisal and testimony the subject's value should not exceed $3,800,000 as of January 1, 2001.

In summation, the board of review's counsel argued the purchase price of the subject parcel is a fact placed in evidence. Further, he argued that the roughly $8.9 million cost to build the subject improvement is also a fact placed in evidence during this proceeding. He argued that these facts are the only credible evidence of the subject's fair market value as of the date at issue. Counsel requested that the current assessment as of January 1, 2001 be confirmed by the Property Tax Appeal Board.

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 as of January 1, 2001 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)).* Having considered the evidence and testimony presented, the Board concludes that the appellant has satisfied this burden.

Initially, the Property Tax Appeal Board finds that the evidence and testimony in this appeal established that the subject's recorded land sale price in June 1998 was $3,300,000 or $37.36 per square foot of land area. According to testimony the land purchase was at the asking price due to the appellant's desire to build a hotel on that particular parcel in order to have a presence in the market. Ryan's testimony indicated that a purchase at an asking price is not typical but when questioned further the appraiser admitted while not typical this type of purchase is not unusual. The Board finds that the subject's land purchase was not under any unusual duress thus appears to fulfill the conditions of an arm's length sale. Therefore, the Property Tax Appeal Board finds that the subject's land sale for a price of $3,300,000 is the best indicator of fair market value as of January 1, 2001 in the record.

The board of review's counsel argued that the roughly $8.9 million cost to build the subject improvement is the preeminent fact placed in evidence during this proceeding. The Board finds this argument inaccurate and unconvincing. The board of review presented no substantive evidence to support counsel's argument. However, the Board does find it problematic that neither of the appraisers developed a cost approach for a structure that was completed and opened in November 1999, just fourteen months prior to the date at issue. Mr. Ryan's testimony and appraisal indicate that ownership supplied him with the building cost; however Mr. Ryan did not give any details of how the building costs were determined. Further, the Board finds that the record indicates that Mr. McKinnon simply restated that figure without verification. In fact, there is no evidence in this record that Mr. Ryan or Mr. McKinnon independently verified what comprised the subject's building cost or whether the figure provided by ownership was true and correct.

Next, the Board finds the content of the board of review's and intervenor's presentation unpersuasive. Neither the board of review nor the intervenor presented a witness to testify regarding credentials, appraisal methodologies, and the validity of the data contained in the report. Further, the appraiser was not present at the hearing to undergo meaningful cross-examination. Rather, the board of review simply presented an appraisal report to stand as its evidence and the intervenor adopted it. The Board, therefore, places diminished weight on the board of review's and the intervenor's evidence.

The Property Tax Appeal Board places the most weight on the appellant's appraisal, with supporting testimony from Joseph Ryan. The appellant's appraisal was a thorough report giving details and foundation for the estimates of value for the subject. Under scrupulous cross-examination Mr. Ryan credibly explained the sources and the methodologies employed to estimate a value for the subject and his answers to all questions were succinct. Therefore, after considering all the evidence and testimony the appellant has met the burden of proving the fair market value of the subject by a preponderance of the evidence and the Board finds that the subject had a fair market value of $3,800,000 as of January 1, 2001. Further, the Property Tax Appeal Board finds that the Cook County Real Property Classification Ordinance level of assessments of 38% for Class 5A property such as the subject shall apply to the fair market value as found within and a reduction is warranted.

APPELLANT:	**Gregg & Kristine DeVries**
DOCKET NUMBER:	**03-02491.001-C-1**
DATE DECIDED:	**May, 2007**
COUNTY:	**Carroll**
RESULT:	**Reduction**

The subject property consists of a 3.91-acre parcel improved with a mini-storage facility consisting of two buildings of metal exterior construction totaling 15,120 square feet of building area. The first building was constructed in 1998 and the second in 2002.

The appellants appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellants submitted an appraisal of the subject property with an effective date of May 4, 2004. The appraiser, who was not present at the hearing to provide testimony as to how he prepared the report or be cross-examined, used all three traditional approaches in estimating the subject's value at $166,000.

In the cost approach, the appraiser valued the subject's land at $19,550, based on his assumption of the current value of farmland. To value the improvements, the appraiser claimed to use the Marshall & Swift Cost Estimator unit cost of $11.00 per square foot for a base cost of $166,320. The appraiser estimated physical deterioration at 10% or $16,632, which he subtracted from the base cost to arrive at a depreciated value of the improvements of $149,688. The land value of $19,550 was added to this figure, resulting in an estimated value by the cost approach of $169,000, rounded.

In the sales comparison approach, the appraiser examined three comparable sales located approximately 4 miles to 25.5 miles from the subject. These mini-storage facility comparables consist of sites ranging from 22,800 to 42,159 square feet and are improved with steel-framed or pole-framed metal buildings that range in size from 11,220 to 13,925 square feet of building area. The comparables sold between March 2000 and April 2004 for prices ranging from $100,000 to $185,000 or from $8.84 to $13.29 per square foot of building area including land. The appraiser made adjustments to the comparables for financing and excess land, and then for such things as location, quality/appeal, width of units and condition, resulting in adjusted prices ranging from $10.83 to $11.56 per square foot. Based on this analysis, the appraiser estimated a value for the subject by the sales comparison approach of $11.00 per square foot, or $166,000.

In the income approach, the appraiser estimated gross rent based on the subject's actual rents of $30,180. The appraiser claimed in the report that he inspected rental comparables 1 and 3 and obtained rental data from the owner as to rate and vacancy count. Expenses for property taxes, insurance, management, snow removal and maintenance were estimated at $12,273, resulting in net operating income of $15,644. The appraiser capitalized this income with a capitalization rate of 9.5%, resulting in an estimated value for the subject by the income approach of $165,000.

In his reconciliation, the appraiser apparently placed most weight on the sales comparison approach in concluding a final value estimate for the subject of $166,000. Based on this evidence, the appellant requested a reduction in the subject's total assessment to $46,830.

At the hearing, one of the appellants testified the subject has no electrical service and that one building has a gravel floor, while the other has a concrete floor. The appellant testified the subject typically experiences 10% to 15% vacancy, even though the appraiser figured a vacancy rate for the subject of only 5%.

In cross examination, the board of review raised a number of questions about the appellants' appraisal which could not be answered because the appraiser was not present at the hearing. The board of review's representative questioned the management fee used in the appraisal. The appellants could not explain how that fee was derived. The representative asked why an effective date for the appraisal of May 2004 was used when the subject's assessment date was January 1, 2003. The appellants requested the subject's total assessment be reduced to $46,830.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $67,506 was disclosed. The subject has an estimated market value of $204,564 or $13.53 per square foot of building area including land, as reflected by its assessment and Carroll County's 2003 three-year median level of assessments of 33.00%.

In support of the subject's assessment, the board of review's representative pointed out the appellants' appraiser used the subject's actual rents, not market rents for similar properties in his income approach. The representative also noted the appraiser figured only 5% vacancy for the subject and that on page 4 of the appraisal, the appraiser used a rent figure of $3.09 per square foot, which would indicate more income than the $29,919 claimed for the subject from the appellants' tax return. The representative noted property taxes are normally included in an effective tax rate component of an overall capitalization rate, not expensed as was done by the appraiser. The representative also noted the appraiser used the same depreciation rate for both of the subject buildings, even though the first building was older than the second one, which was built in 2002.

The board of review's representative called the supervisor of assessments as a witness to testify about the board's evidence. The witness discussed the board of review's submitted copy of the Marshall and Swift calculator pages for mini-warehouses for 2004. This indicates a cost of $12.16 per square foot for cheap steel framed and sided buildings, not $11.00 per square foot as used by the appellants' appraiser.

The board of review submitted evidence of two comparable sales of mini-storage facilities. Sale #1, located in Milledgeville in Carroll County, is a 1.5-acre facility comprised of three metal-sided mini-storage buildings totaling 5,840 square feet of building area. The comparable sold in July 1999 for $97,500 or $16.70 per square foot. Sale #2 is a 1.05-acre facility in Dixon, Illinois that comprises three mini-storage buildings containing 10,800 square feet of steel-sided building area. The property sold in July 1997 for $155,000, or $14.35 per square foot. The witness testified no adjustments were made to these sales in comparison to the subject.

The supervisor of assessments then discussed a sketch of the subject facility. The witness testified that, using rent figures obtained in a telephone conversation with the appellants, she estimated gross income of $36,156 per year, based on the number and sizes of units in the two buildings.

Finally, the board of review's representative opined the appellants' appraisal had many errors which could not be explained because the appraiser was not present at the hearing. Based on this evidence the board of review requested the subject's total assessment be confirmed.

During cross-examination, one of the appellants asked the witness if the comparables submitted by the board of review had concrete floors or gravel floors like one of the subject buildings. The witness answered that she did not know the composition of the comparables' floors.

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 a reduction in the subject property's assessment is warranted. 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 Board finds the appellants submitted an appraisal of the subject property with an estimated market value of $166,000. The board of review submitted no appraisal, but attacked the credibility of the appellants' appraisal. The board of review also submitted several comparable sales of mini-storage facilities. The Board gave no weight to the final value conclusion in the appellants' appraisal because the appraiser was not present at the hearing to provide testimony and be cross-examined as to the methodology employed in preparing the report. The Board will therefore consider the raw sales data in the appraisal's sales comparison approach and the comparables submitted by the board of review.

The Board finds the appellants' appraisal contained sales of three comparable mini-storage facilities in its sales comparison approach that were located in small towns like the subject's location. These comparables sold for prices ranging from $8.84 to $13.29 per square foot of building area including land. By contrast, the board of review submitted sales of two mini-storage facilities that occurred in 1997 and 1999. Therefore, due to the age of their sales, the Board gave less weight to the comparables submitted by the board of review. The Board finds the subject's assessment of $13.53 per square foot of building area including land falls above the most representative comparables in the record.

Based on the foregoing analysis and after considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's estimated market value as reflected by its assessment is excessive and a reduction is warranted.

APPELLANT: Draper & Kramer Apartment Complex
DOCKET NUMBER: 01-26104.001-C-3 thru 01-26104.002-C-3
DATE DECIDED: December, 2007
COUNTY: Cook
RESULT: Reduction

The subject property consists of an irregularly shaped 60,137 square foot parcel improved with a 43-story of reinforced brick/block constructed apartment building containing 590,754 square feet of building area with four passenger elevators and two freight elevators. The subject parcel is also improved with a three-level parking garage containing 78,000 square feet. The apartment building contains 656 living units and 14,050 square feet of commercial space; the garage contains parking for 330 vehicles. The living units consist of 82 studio apartments containing 430 square feet; 492 one-bedroom apartments containing 741 square feet; and 82 two-bedroom apartments containing 1,150 square feet. Each unit has a smoke detector and each floor has fire extinguishers and stand pipes. The kitchens are equipped with a stainless steel sink, a refrigerator, an electric range with oven, metal cabinets and tiled floors. The units are carpeted as are the hallways and lobby. The apartment building is heated/cooled throughout by a two-pipe hot and cold water system with fans. The site improvements include two sun decks, an outdoor pool and some landscaping. The improvement was constructed in 1967 and is located in South Chicago Township, Cook County.

The appellant, through counsel, 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 the market value argument, the appellant submitted a summary report of a complete appraisal with a valuation date of January 1, 2001 (Appellant's Exhibit No. 1) and the testimony of one of its authors, Charlie Hynes of Urban Real Estate Research, Inc., Chicago. The witness testified he has been a State of Illinois certified general real estate appraiser for about 16 years and acquired a Member of the Appraisal Institute (MAI) designation in 2003. After an examination of Mr. Hynes's appraisal experience, he was tendered and accepted as an expert witness.

Mr. Hynes testified he completed a full interior and exterior inspection of the subject on March 2, 2002. After correction of several scriber errors, the witness testified the subject was appraised as a fee simple estate; appears to conform to current zoning laws; has an effective age of 35 years; and an economic life of 50 years. The witness described the subject as a class 'C' type apartment building because of age and condition. He explained the subject building was in average condition considering its age; the out-of-date metal cabinetry in the units; the building's single pane windows; and the outmoded heating and cooling system. It was the appraiser's testimony, the subject's highest and best use as vacant would be multi-family residential with retail on the first floor and as improved its current use as multi-family residential with first floor retail.

In estimating a total market value of $23,000,000 for the subject, the appraiser employed the three approaches to value; the cost, the sales comparison, and the income approach.

As the first step in the cost approach Mr. Hynes prepared an estimate of the subject's land value through an examination of the sales of six vacant properties located in the south loop area or the subject's general area. The parcels range in size from 16,824 to 63,374 square feet of land area. The land comparables sold from May 1999 to October 2001 for prices ranging from $740,000 to $2,900,000, or from $26.64 to $73.54 per square foot of land area. After adjustments to the comparables for market conditions, location, size, utility/zoning, time of sale, and other pertinent items, Mr. Hynes estimated $35.00 per square foot as a unit of value for the subject land, resulting in an estimated land value of $2,100,000 rounded.

The witness testified he estimated replacement cost new for the subject. Utilizing *Marshall Valuation Service* and building characteristics reflecting those of an average quality class 'C' apartment building, the appraiser developed a unit cost for the apartment building of $104.15 per square foot of building area and $36.18 per square foot for the parking garage, or $64,330,322. After the addition of soft costs and entrepreneurial profit, the appraiser concluded $69,573,244 as the total cost new. Total depreciation of 70%, or $48,701,271, was deducted along with a deduction for site improvements of $33,000. The appraiser's estimated depreciation was based the age/life method utilizing a total economic age of 50 years, an effective age of 34 years and which resulted in a remaining economic life of 16 years. The land value of $2,100,000 was then added. The appraiser's estimated value through the cost approach was $23,000,000, rounded.

In the income approach to value, the witness testified he relied on five rental comparables. Selection of the five comparable buildings was based on several criteria such as location and environs; the ease of access to shopping, restaurants and nightlife. The buildings contain between 345 and 1,765 living units with rentals ranging from $359 to $650 for studio apartments, from $440 to $850 for one-bedroom apartments, from $623 to $1,003 for two-bedroom apartments, and from $731 to $1,503 for three-bedroom apartments. The witness testified adjustments were made to the comparables for age, condition, amenities and other applicable items which resulted in estimated stabilized per month market rents for the subject of $800 per studio unit, $1,000 per one-bedroom unit and $1,900 per two-bedroom unit, or a stabilized total apartment rental income of $8,560,800. Mr. Hynes added that the estimated market rents compared favorably with the subject's actual income from the past three years. When considering vacancy loss, the witness looked at the comparables as well as the Institute of Real Estate Management (IREM) noting that both sources indicated vacancy rates from 4% to 8%, he selected 8% and then added 2% for collection loss. The witness testified as of the date at issue, the management was offering rent concessions because of historically high vacancy rates. In addition, the appraiser testified he estimated $500,000, or $1,515.15 per space, as income for the 330 parking spaces, $60,000, or $4.27 per square foot, for the commercial space and $110,000 for laundry facility income. These computations resulted in a total stabilized effective gross income (EGI) of $8,374,720.

The witness testified when estimating expenses, he examined the subject's historical expenses, data from IREM and from five rent comparables located on the north and near north side of Chicago. Expenses of the comparables ranged from 38.08% to 62.94% of their respective EGIs. From his sources, the appraiser developed stabilized expenses totaling 53.37% of the stabilized EGI, or $4,469,660. Subtraction of the stabilized expenses from the subject's estimated EGI resulted in $3,905,060 as the estimated net operating income for the subject.

Mr. Hynes used both the market extraction and the band of investment techniques to develop a capitalization rate for the subject. He utilized sources such as the American Council of Life Insurance's *Investment Bulletin, Korpacz Real Estate Investor Study, Real Estate Research* and an analysis of market activity from the sales of apartment buildings in Chicago. The *Investment Bulletin* reported average overall rates of 8.9% for the first quarter of 2001; *Korpacz* reported a range from 7.0% to 10.0% with an average of 8.58%; Real Estate Research reported capitalization rates from 8.0% to 10.5%; and the local market sales indicated a range from 8.71% to 11.4%. After analysis and giving weight to the age and condition of the subject, the witness testified he concluded 11.52% as an overall capitalization rate for the subject. Next, Mr. Hynes calculated an effective tax rate of 5.8%, which he added to the overall capitalization rate. The total capitalization rate of 17.0% was then applied to the subject's NOI. The appraiser's estimate of value for the subject using the income approach was $23,000,000, rounded, as of January 1, 2001.

When developing the sales comparison approach, Mr. Hynes testified he used the sales of five apartment buildings located on the near north or north side of Chicago built from 1927 to 1972. The buildings contain from 94 to 1,075 living units and have from 0 to 450 parking spaces available. The improvements range from 12 to 35 years old and are sited on parcels ranging in size from 8,085 to 103,332 square feet of land area. These sales occurred from November 1997 to September 2001 for prices ranging from $3,950,000 to $70,100,000, or from $28,932 to $88,829 per living unit including land and the ancillary improvements. The appraiser adjusted the sales comparables for conditions of sale, market conditions, location, age, condition, occupancy and services offered along with other unique characteristics individual to the comparables.

The appraisal reported that although the appraisers were aware there were other sales in the area above and below the range of sales selected, many of sales of apartment buildings in Chicago were above fee simple market value. The appraisers contend these above market sales do not make sense if a building is kept as rental apartments and the sales are transacted using normal market rate financing. The report indicated the appraisers based their opinion of value not only on the improved sales but more-so on the actual economies of the subject property. The appraiser opined a market value for the subject of $35,000 per unit or $23,000,000 through the sales comparison approach.

In reconciliation, Mr. Hynes testified the most weight was placed on the income approach with support from the sales comparison approach. The cost approach was given the least consideration. His final opinion of value for the subject was $23,000,000, as of January 1, 2001.

Mr. Hynes was cross-examined by counsel for Chicago Board of Education, counsel for the City of Chicago, and counsel for the board of review.

During cross-examination, the witness was questioned regarding the views of the city and the lake from the subject and the eventuality of new construction blocking the views. The witness confirmed the subject has unobstructed views of the city and Lake Michigan and will probably have in perpetuity. In addition, he verified the subject's achieved per square foot rental income of $16.51 is above the metropolitan average of $14.22 per square foot of building area. Further, he agreed that his stabilized rental income is less than the subject's historical rental income.

Furthermore, Mr. Hynes confirmed the stabilized expenses attributed to the subject are higher than the subject's historical expenses.

The witness was questioned in detail regarding the sales data reflected in the appraisal and indicated the subject's per square foot estimated value of $45.26 is low when compared to the metropolitan average. He confirmed the circumstances of each sale utilized, his sources, and adjustments made to the sales.

In re-direct, Mr. Hynes verified that frequently when confirming or investigating reported sales there are differences from one reporting agency to another. He also testified that even contact and discussion with the parties does not always clarify the cause of the disparities.

At the conclusion of Hynes testimony, counsel for the board of review presented additional exhibits as follows:

> <u>Exhibit No. 2</u>: Copy PTAX-203 4/1998, 61 East Goethe PINs 17-03-110-002 & 17-03-110-009. (Transcript P. 91-92)
> <u>Exhibit No. 3</u>: Transfer Declaration, 10/2000, 61 East Goethe PINs 17-03-110-002, 17-03-110-009, 17-03-110-004 and 17-03-110-010. (Transcript P. 91-92)
> <u>Exhibit No. 4:</u> Special Warranty Deed 10/2000, 61 East Goethe PINs 17-03-110-002, 17-03-110-009, 17-03-110-004 and 17-03-110-010. (Transcript P. 91-92)
> <u>Exhibit No. 5</u>: Copy PTAX 203 and PTAX 203A 12/2000, 1036 N. Dearborn PIN 17-04-423-008. (Transcript P. 92-93)
> <u>Exhibit No. 6</u>: Trustee's Deed Dearborn I, LLC 12/2000, 1036 N. Dearborn PIN 17-04-423-008. (Transcript P. 92-93)
> <u>Exhibit No. 7</u>: Trustee's Deed 4/1998, 61 East Goethe PINs 17-03-110-0002 and 17-03-110-009. (Transcript P. 92-93)

The board of review submitted the "Board of Review Notes on Appeal" wherein the subject's final assessment of $9,113,389 was disclosed. This assessment reflects a fair market value of $27,616,148 when the Cook County Real Property Assessment Ordinance level of assessments of 33% for Class 3 property, such as the subject, is applied.

In support of its assessment, the board offered an appraisal report prepared by Jeffrey M. Hortsch of the Cook County Assessor's Office (Board of Review Exhibit No 1.) The report indicates Mr. Hortsch is a State of Illinois certified general real estate appraiser. Mr. Hortsch was not present at the hearing to testify or to undergo meaningful cross-examination regarding his credentials, appraisal methodologies, and the validity of the data contained in the appraisal.

To estimate a value for the subject of $53,000,000 as of January 1, 2001, Mr. Hortsch employed the income approach and the sales comparison approach to value. The author did not develop a cost approach or an estimate of value for the subject's land.

After reconciliation Mr. Hortsch's final estimate of value for the subject is $53,000,000 as of January 1, 2001. Based on this evidence counsel for the board of review requested an increase of the subject's assessment reflective of the board of review's appraisal evidence.

Counsel for the appellant objected to the submission of the board of review's Exhibits No. 2, 3 and 4.

> Exhibit No. 2: Copy PTAX-203 4/1998, 61 East Goethe PINs 17-03-110-002 & 17-03-110-009. (Transcript P. 91-92)
> Exhibit No. 3: Transfer Declaration, 10/2000, 61 East Goethe PINs 17-03-110-002, 17-03-110-009, 17-03-110-004 and 17-03-110-010. (Transcript P. 91-92)
> Exhibit No. 4: Special Warranty Deed 10/2000, 61 East Goethe PINs 17-03-110-002, 17-03-110-009, 17-03-110-004
> and 17-03-110-010. (Transcript P. 91-92)

Counsel argued that while the documents reflect the same address the PINs differ and without a witness explain the discrepancy the submission is meaningless. The Property Tax Appeal Board overrules the appellant's objection. Counsel's arguments go to the weight and credibility of the exhibits not their admissibility.

Appearing before the Property Tax Appeal Board on behalf of the intervenors, was counsel for the City of Chicago arguing the fair market value of the subject is not reflected by the current assessment or the appellant's appraisal. It is the intervenors' contention that the subject is under-assessed and the correct market value is $55,500,000. In support the intervenors submitted a summary appraisal report (Intervenors – Exhibit #1) and the testimony of one of its authors, Toby J. Sorensen of Renzi & Associates, Chicago. Mr. Sorensen testified that he has been a State of Illinois certified appraiser since 2002 and is in the process of obtaining a MAI designation. As of the transmittal date of the appraisal, Mr. Sorensen had been a certified appraiser for approximately one year. After a brief discussion of his credentials, Mr. Sorensen was tendered and accepted as an expert witness.

The witness testified that he performed a limited physical inspection of the subject property on April 2, 2003. At that time, he observed the subject's exterior, interior, common areas, several apartment units, commercial space and garage. The appraiser's description of the subject, which he considered in good condition, generally agreed with the appellant's appraiser. An exception being Mr. Sorensen described subject's windows as double pane glass. The appraiser also noticed the views of the lakefront and the city while inspecting the building. The appraiser's opinion of highest and best use for the subject concurs with the other appraisals in the record. Mr. Sorensen testified his opinion of value for the subject as fee simple estate was $55,500,000 as of January 1, 2001.

To estimate a fair market value for the subject the appraiser testified he used the cost, the sales comparison and the income approaches to value.

The first approach addressed in testimony by Mr. Sorensen was the income approach. Five rental comparables located in the same general area as the subject were analyzed. The comparables are masonry construction and were built from 1915 to 1985. The appraisal report indicates the apartment sizes of the comparables are studio units from 500 to 650 square feet, one-bedroom units ranging from 653 to 850 square feet and two-bedroom units from 990 to 1,422 square feet. The appraiser indicated the studio units rented in a range from $759 to $1,020 per month; one-bedroom units from $859 to $1,175; and two-bedroom units from $1,231 to

$1,815. The intervenors' comparable number five was also utilized by the appellant. At the time of the appraisal, the witness testified, the only rent information for the subject available was as of July 2003. The survey dates of the comparables ranged from January 1, 2000 to June 2003. So, when considering the subject's contract rent the witness indicated slightly less emphasis was placed on the contract rent than that of the comparables. The appraiser testified his analysis available information led to estimated potential gross monthly rents for the subject's studio units of $950 per month; one-bedroom units of $1,300 per month; and two-bedroom units of $1,850 per month. Carried out to a yearly figure, the appraiser estimated the subject's potential gross income to be $10,430,400 (PGI) from the living units.

The first adjustment to PGI was vacancy and collection loss (V&C) of 5.0%, or $521,520, which resulted in an EGI of $9,908,880. The V&C was based on a review of competing properties and discussions with area property owners/mangers.

Parking revenue was stabilized at $693,000. Income from the subject's commercial space was stabilized at $281,000, less 42,150 (15%) V&C or a stabilized EGI of $240,000. Miscellaneous income was stabilized at $229,600. The appraiser reported that these figures were based on a survey of competitors and discussions with area property owners/managers. The total EGI was estimated to be $11,071,480.

Both the subject's historical expense record and the expense levels reported by the IREM were employed to estimate expenses. Estimated stabilized expenses were as follows:

> Management expense, $440,000, based on 4.0% of EGI;
> Administration expense, $289,000 based on historical data;
> Operations, $656,000, based on historical data;
> Utilities, $492,000, based on IREM data and historical data;
> Insurance, $115,000, based on IREM data and historical data;
> Wages, $1,050,000, based on historical data;
> Reserves for Replacement, $230,000, consistent with standards for similar for apartment structures;
> Return on and of personalty, $262,400, based on $1,312,000 depreciated value of personalty.

The deduction of these items resulted in a stabilized NOI of $7,537,080.

The next step in the process was the development of a capitalization rate. Utilizing the comparables from the appraiser's sales comparison approach revealed a range of reported over-all capitalization rates from 6.13% to 11.06%. The *Korpacz Real Estate Investor Survey – First Quarter 2001* indicated rates ranging from 7.25% to 10.10%, with an average for the reported period of 8.57%. The band of investment technique suggested 8.0% after consideration of the subject's condition and location. The appraiser indicated that the final selected capitalization rate of 8.0% from the band of investment technique was supported by the market extraction method and *Korpacz.* An effective tax rate of 5.86% was developed and added to the indicated capitalization rate resulting in a total rate of 13.86%. The final step in the process, applying the total capitalization rate to the stabilized NOI, resulted in an estimated market value of $54,400,000, rounded, through the income approach to value.

When the sales comparison approach to value was addressed, Mr. Sorensen testified he relied on seven comparable properties. These properties were selected based on similarities to the subject in location, physical attributes and market conditions. These were all apartment properties built from 1962 to 1988 containing from 94 to 1,075 living units. The properties sold from July 1999 to October 2001 for prices ranging from $8,350,000 to $70,100,000 or from $63,667 to $117,800 per living unit. The comparables are elevator serviced buildings; have on-site parking; and are masonry and/or steel and glass construction; additionally two have retail space. Five are located near-north of the city center while the sixth is located near south-west of the city center. Two of the comparables were purchased for condominium conversion. After adjustments to the comparables for varying degrees of similarity and difference when compared to the subject, the appraiser opined the subject's per unit falls within the range of the comparables at $85,000 per apartment. The appraiser testified that his opinion of value for the subject, through the sales comparison approach, was $55,750,000 as of January 1, 2001.

The final approach to value discussed by Mr. Sorenson was the cost approach to value. The witness testified six land comparables located south of the city center were utilized to develop an estimate of the subject's land value. The comparables ranged in size from 11,675 to 74,052 square feet of land area. One is zoned for business; three have commercial zoning; and two have residential/business planned development type zoning. Three of the properties were subsequently developed in to retail/condominium properties. The sales occurred from January 1999 to August 2001 for prices from $1,250,000 to $10,135,000 or from $75.62 to $155.11 per square foot of land area. After adjustments for size, location, sale date, zoning and other unique characteristics, the witness testified the estimated value for the subject would be on the high end of the range, or $150.00 per square foot of land area. The appraiser total estimated market value for the subject's land is $8,980,000, rounded.

An estimated replacement cost new for the subject improvement of was generated relying *Marshall & Swift's Valuation Cost Manual*. The appraiser testified *Marshall & Swift's* class 'A' high-rise apartment classification was used as a basis for the subject's estimated cost. The base cost of $98.15 per square foot of floor area was adjusted for story height, perimeters, current costs and local costs to determine an indicated unit cost new of $134.00 per square foot of floor area, or $79,136,916. Using the same methods and sources, the appraiser estimated the subject's garage's cost new at $38.47 per square foot, or $3,000,000. Physical depreciation for the subject of 42% was estimated using the age/life method; 60 years as the estimated life and 25 years effective age. The next modification was a deduction of 5% for functional obsolescence to account a lack of a sprinkler system. No external obsolescence was considered present. Including depreciated site improvements, the appraiser estimated a depreciated cost new of $48,186,207. To the depreciated cost new the appraiser added the land value which resulted in an estimated market value for the subject of $57,150,000, rounded, through the cost approach.

In his reconciliation, Mr. Sorensen placed primary weight on the sales comparison approach with support from the income approach. The cost approach to value was considered general support for the other two approaches to value. The witness' final opinion of fair market value of the subject as of January 1, 2001 was $55,500,000.

During cross-examination, Mr. Sorensen testified that, although Neil Renzi functioned as supervising appraiser for the project, he accepted full responsibility for the appraisal as presented. Cross-examination revealed that including the subject the witness' experience appraising high-rise apartment buildings was limited to three. Further, as of the date of the appraisal, the witness testified three of the six appraisal courses he had taken involved appraising income-producing properties. Those courses were *Appraisal Principles*, *Appraisal Procedures*, and *Basic Income Capitalization*. Moreover, the witness divulged he has no experience or education specifically relating to appraising property for *ad valorem* assessment purposes and his primary instruction in this area has been from two associates.

During questioning the witness testified net operating incomes for the sales comparables were confirmed with a principal of the transaction. Moreover, he testified, he was unable to compare the sales comparables operating expenses to the subject's stabilized operating expenses and deductions for operating expenses are property-specific. He indicated an 85% occupancy rate is typical for commercial properties in the subject's area. Sorenson again described the subject's windows as double-pane metal casement. The witness agreed that single-pane windows would be less efficient than double pane and would typically increase heating and cooling costs.

As cross-examination continued, Sorensen testified he was unaware specifically of what surveys classify apartment buildings into classes A, B and C. The witness was cross-examined thoroughly regarding the sales comparables and the conditions of the sales conceding that sale number one was a leased fee transaction; that at least two of the sales were involved in tax-deferred property exchanges; and at least one of the sales was not on the open market. Generally, he agreed that six of sales comparables which are located on the north side of the city center usually command higher rents than near south side rents.

On re-direct, Mr. Sorenson testified that two of the seven sales comparables were purchased for ultimate conversion to condominiums.

Further, Mr. Sorenson was cross-examined about the income approach in the appraisal. He was questioned in detail on the subject of the rental comparables and their similarities and dissimilarities to the subject. In the course of cross-examination each facet of the witness' income approach to value was addressed. In particular the witness was questioned concerning his conclusion of a capitalization rate for the subject. The witness testified the band of investment and the market extraction methods were given the most emphasis with the published sources given less emphasis.

Anthony Uzemack was called as a rebuttal witness by the appellant. Mr. Uzemack testified he has a Member of the Appraisal Institute (MAI) designation and has been employed as an appraiser for almost 30 years, primarily working in the commercial, industrial and retail fields. Mr. Uzemack was and accepted as an expert witness in appraisal theory and practice. The witness testified he prepared a technical review of the appraisal submitted by Toby J. Sorensen of Renzi & Associates for the appellant. As the board of review did not bring forth a witness, Mr. Uzemack was not questioned regarding this report.

With regard to the appraisal, Mr. Uzemack testified his assignment was to check accuracy, cohesiveness, relevancy of the comparable data, completeness and consistency of report from beginning to end. When completing the review, the witness testified he familiarized himself with the subject property and its market area. He checked accuracy and appropriateness of both the sales and the rental comparables through the brokers and/or other involved parties.

In Uzemack's opinion, the report was well-written, articulate but had inconsistencies detracting from the final opinion of value. Areas of concern cited by the witness were the report's inaccurate description of the subject; and the classification as a Class A property. As directly observed, the witness testified the subject is a Class B property constructed of brick with concrete block back, concrete floors and single pane metal frame windows.

When reviewing the cost approach, Mr. Uzemack's testimony suggested that utilizing reproduction cost rather than replacement cost new would have been more accurate. Further the witness indicated depreciation allowances were inadequate particularly the 5% allocated for functional obsolescence noting that the building is 34 years old, still with original equipment.

Mr. Uzemack opined that the income approach to value contained the most inconsistencies. First, after examining the comparables' range of rents, the appraiser concluded the subject's stabilized rents were above the 2001 contemporaneous market. As to the expenses, the witness indicated the expenses appeared to be stabilized at the 1998/1999 level rather than the 2001 level. The result of these inconsistencies, in Mr. Uzemack's opinion, is an overstatement of the subject's net income. It was also Mr. Uzemack's opinion sufficient information was available from the market analysis to determine a market based capitalization rate rather than building a rate through the band of investment technique. The witness suggested that the intervenors' appraiser reported that the most desirable apartment facilities, those of larger unit size, superior construction quality and with ample and superior amenities, are the facilities typically transacting in the 7% to 8% overall rate range. This, the witness believes, does not describe the subject. Therefore, in Uzemack's opinion, the resulting income approach estimate of value lacks validity and credibility.

Finally, in the sales comparison approach, Mr. Uzemack testified that of the sales mentioned in the appellant's report; two were property exchanges not open market sales; one was on the south-west side of the city, which enjoys its own competitive market; another was an intricate leasehold purchase with a partial interest in the underlying land; and finally, one apparently did not involve a broker or exposure to the open market. Overall the witness' testimony indicated the market areas for the sales in the Sorensen report were very different than the subject's market area.

In rebuttal, the intervenors, introduced Michael MaRous as its witness. Mr. MaRous is a State of Illinois certified general appraiser, holds a MAI designation and has been appraising real estate for approximately 27 years. Mr. MaRous testified he is familiar with the appellant's appraisal and the scope of his assignment in the current matter was to provide an appraisal review of the appellant's appraisal report. The witness testified he read the appellant's report, checked certain backup information, reviewed the sales, examined the *Korpacz* studies, and looked over the subject's website. Some of the witness' concerns were that in the report there was no mention of views from the subject and there was minimal information regarding trends of development in the subject's area. In addition, the witness was questioned extensively regarding the views from the subject, concurring the views are atypical of the usual apartment views in Chicago.

Mr. MaRous also expressed the opinion that the land value estimated in the Urban report was exceptionally low indicating the sales used were not similar in location or zoning. The witness testified that under existing zoning all of the appellant's land comparables have inferior floor area ratios when compared to the subject and in his opinion were not comparable to the subject.

In the appellant's income approach MaRous' testimony suggested the income estimate was less than the subject's performance the prior year and the projected expenses were higher. In the witness' view comparables north of the city center would have been more appropriate. He also opined the appellant's selection of an 11% capitalization rate was high. In general, Mr. MaRous believed the appellant's income approach unreliable.

The appellant's appraiser's sales comparison approach was the next concern of the witness. While recognizing there are questions about the subject's windows as well as the age of the kitchens and baths, overall he opined the appellant's per unit estimate was low. Mr. MaRous was questioned about the sales in the Urban report. In the witness' opinion on the whole the properties were dissimilar due to size, age, time of sale and/or location.

During cross-examination, Mr. MaRous testified he would rather own an apartment building north of the city center than south; a building with double pane windows is more efficient to heat and cool; and that a quality management company such as the appellant offers rent concessions to be competitive in a competitive market.

Appellant's counsel concluded by arguing that the appellant has borne its burden of proof showing that the subject is over-valued. Additionally, he argued that based on the Urban appraisal and Mr. Hynes testimony the subject's value should not exceed $23,000,000 as of January 1, 2001.

In summation, the attorney for the Chicago Board of Education argued the appellant's appraisal is not a reliable indicator of the subject's fair market value. The board of review's counsel argued the appellant did not meet its burden of the preponderance of evidence and the Renzi/Sorensen appraisal and testimony concluded a more credible market value for the subject than the Urban/Hynes report. The City of Chicago's attorney argued the only reliable indicator of the subject's fair market value is the Renzi/Sorensen appraisal.

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 as of January 1, 2001 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)).* Having considered the evidence and testimony presented, the Board finds that a reduction in the assessment of the subject property is warranted.

The Board finds the board of review's appraisal evidence unpersuasive. The board of review did not present its appraisal witness to testify regarding credentials, appraisal methodologies, and the validity of the data contained in the report. Further, the appraiser was not present at the hearing to undergo meaningful cross-examination. Rather, the board of review simply presented an appraisal report to stand as its evidence. The Board, therefore, places no weight on the board of review's appraisal evidence and exhibits.

The Property Tax Appeal Board finds that the appellant's appraiser, Mr. Hynes, has much more appraisal experience than Mr. Sorensen. Hynes has been a state certified appraiser for 16 years, has a MAI designation and has appraised in excess of 100 apartment buildings. On the other hand, Sorensen's experience is limited to approximately one year as a certified appraiser and has only prepared appraisals for three apartment buildings, including the subject. These facts tend to demonstrate that the appellant's appraiser has significantly more experience and thus the Board gives the ultimate conclusion of value in his report more weight.

The Property Tax Appeal Board finds that the parties submitted 12 land sales as comparables ranging in size from 11,675 to 74,052 square feet of land area. These properties were sold from January 1999 to October 2001 for prices ranging from $740,000 to $10,135,000, or from $26.64 to $155.11 per square foot of land area. The Board finds that seven of the comparables are substantially smaller in size when compared to the subject and are zoned for dissimilar development. Further, the Board finds that five of the comparables contain land square footages within a reasonable range of the subject's size. These five properties range in size from 41,060 to 74,052 square feet of land area. In its comparative analysis of these five comparables and the subject; the Board finds that one is located a dissimilar manufacturing zone and two are located in a dissimilar residential/business planned development zones. Regarding the two remaining comparables, the Board finds that they are located in areas with zoning somewhat similar to the subject. In addition, the Board finds that the locations of these two properties appear to be a reasonable distance from the subject. The two remaining properties contain 63,274 and 41,060 square feet of land area; were sold in March 2000 and October 2001 for prices of $46.34 and $63.57 per square foot of land area. When the when the Cook County Real Property Assessment Ordinance level of assessments of 33% for Class 3 property is applied, the subject's current land assessment of $1,048,469 reflects a fair market value of $3,177,179, or $52.83 per square foot of land area which is within the range established by these two properties. Therefore, the Board finds that the subject's land fair market value as reflected in its assessment is reflective of its market value and no change in the subject's land assessment is appropriate.

Both appraisers prepared a cost approach to value based on *Marshall & Swift* cost estimators. One of the chief differences between the two estimates is the selection of the building's classification; the appellant utilized costs of an average quality Class 'C' apartment building, while the intervenors utilized costs of a good quality Class 'A' apartment building. After an examination of the subject's description by both appraisers, the Property Tax Appeal Board finds that the subject's descriptions present a picture of a more average type Class 'B' or 'C' building rather than a luxury type Class 'A' apartment building.

Taken as a whole, without the land value added, the Board finds the Urban/Hynes cost approach more credible than the Renzi/Sorensen cost approach to value and the subject improvements had an indicated value under the cost approach of $20,904,973. Adding the value of the land herein and the value of the improvements as determined by Hynes, the Property Tax Appeal Board finds that the subject had a total indicated value by means of the cost approach to value of $24,000,000, rounded.

In the sales comparison approach ten sales were presented by the appraisal witnesses. The Board finds that testimony revealed two properties were exchanges of property and not exposed to the open market. In addition, one of these two sales is in a market area substantially dissimilar to the subject's area. The Board finds that one of the comparables was a leased fee purchase with other considerations and one was not exposed to the open market. Therefore, the Board accords the sales of these six properties minimal weight. The remaining four properties containing from 98 to 401 living units sold from April 1998 to July 2001 for prices ranging from $28,832 to $117,800 per unit. Regarding these four remaining properties, the Board finds all four are located north of the city center. The Board also finds the testimony from the four appraisers suggested that a north side location, particularly in the areas these properties are located, is considerably more desirable than the subject's location. The Board also finds that the appraisers' testimony indicated that these four sales were of buildings with superior amenities when compared to the subject. The Board finds that three of the four remaining sales were included in the appellant's appraisal and one was included in the intervenors' appraisal. Therefore, the Board places more weight on the appellant's sales comparison approach to value and finds the value conclusion more reasonable than the intervenors' sales comparison approach. The Property Tax Appeal Board finds that the subject had an indicated value through the sales comparison approach of $23,000,000, rounded.

Turning to the income approach to value, Sorenson employed five rental comparables while Hynes utilized four, one of which was also utilized by Sorenson. Mr. Hynes' description of the comparables contained their ages, number of units in the buildings, type of units and monthly rents. On the other hand, Mr. Sorenson analysis did not include the number of units contained in his comparables. For their comparables, the intervenors' appraiser provided average rental and sizes of units while Hynes presented actual rental and sizes of the units. Mr. Hynes' rental survey data is as of the assessment date, while four of Mr. Sorenson's comparables were surveyed as of January 1, 2000 and one was surveyed as of January 1, 2003. Both appraisers utilized one comparable located in the subject's immediate market area. The Urban/Hynes report indicated that this comparable was most like the subject and placed substantial emphasis on it. Along with this comparable, the Renzi/Sorensen report indicated substantial emphasis was placed on a comparable slightly north and west of the subject. From the descriptions of these two comparables and the testimony of the appraisers, the Board finds it clear that these two comparables while similar in some aspects and fairly close in proximity to the subject, command higher rents than the subject due to superior amenities. After his analysis, Mr. Sorenson stabilized the subject's rental income for studio units at $950; the one-bedrooms at $1,300; and the two-bedrooms at $1,850 per month. After his analysis, Mr. Hynes stabilized the subject's rental income for studio units at $800; the one-bedroom units at $1,000; and the two-bedrooms at $1,900 per month. The Board finds that overall the intervenors' total stabilized rent income from apartment rental is higher than the market data provided as of the assessment date. In contrast, the Board finds that the income derived from rent in the appellant's stabilized rent analysis is more reflective of the market as of the assessment date and the subject's history. In addition, overall the Urban/Hynes report developed stabilized other income and expenses better founded in the market and the subject's history than the intervenors' report.

As to the capitalization rates estimated by the two appraisers, Mr. Sorenson selection of an overall rate is more representative of a lower-risk, higher-end property than the subject. This is demonstrated by the wide ranges developed in the market extraction method, from 6.13% to 11.06% utilized by the appraiser. The appraiser's selected overall rate of 8.0% is on the low end of both the market extraction method and the published reports. On the other hand, Mr. Hynes' selection of 11.52% as an overall capitalization rate is better supported by documentation of the yield rates and mortgage returns from the published sources. Both appraisers developed similar effective tax rates to add to the overall tax rate. After an analysis of the development of the capitalization rate by both appraisers, the Board finds that the total capitalization rate developed by Hynes more reliable and better supported in the testimony and documentation. Thus, the Property Tax Appeal Board finds that the subject had an indicated value under the income approach of $23,000,000, rounded.

In conclusion, after considering the three approaches to value as discussed herein, the Property Tax Appeal Board finds that subject had a market value of $23,000,000 as of January 1, 2001. Further, the Property Tax Appeal Board finds that the Cook County Real Property Classification Ordinance level of assessments of 33% for Class 3 property such as the subject shall apply to the fair market value as found within and a reduction is warranted.

APPELLANT: **Fund 601 LLC**
DOCKET NUMBER: **04-01430.001-C-2 and 04-01434.001-C-1**
DATE DECIDED: **March, 2007**
COUNTY: **Champaign**
RESULT: **No Change**

The subject property consists of two commercial parcels located in Princeton, Bureau County. Parcel 1, identified as parcel number 16-04-300-048, is a 5.56-acre lot improved with a 12 year-old former Eagle grocery store containing 39,139 square feet of building area. Parcel 2, identified as parcel number 16-04-300-075, is a 1.67-acre vacant lot adjacent to parcel 1.

The appellant appeared 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 June 17, 2004. The appraiser used all three approaches to value in estimating a market value for both parcels of the subject property of $1,150,000. In the cost approach, the appraiser valued the subject site comprising 242,194 square feet at $2.50 per square foot for a site value of $605,000. The appraiser estimated the replacement cost new of the 39,139 square foot improvement at $40.00 per square foot, resulting in an estimated cost new of $1,565,560. Physical deterioration was estimated at 50% and amounted to $782,780. The appraiser also determined external obsolescence of 25%, or $195,695, was appropriate because there was a limited market for the subject. The appraiser provided no explanation for how he derived this figure. To the depreciated value of the improvements of $587,085, the appraiser added $100,000 for exterior concrete, asphalt paving and lighting. Finally, the site value of $605,000 was added, resulting in an estimated value for the subject by the cost approach of $1,292,085, or $1,300,000 rounded.

In the sales comparison approach, the appraiser examined sales of four comparable properties located in the greater Peoria area. The comparables are situated on lots ranging in size from 43,000 to 848,113 square feet of land area and are improved with one-story masonry constructed buildings that range in size from 12,840 to 110,776 square feet of building area and range in age from 12 to 56 years. The comparables sold between November 1998 and June 2004 for prices ranging from $275,000 to $7,300,000. The appraiser made adjustments to the comparables for size, location, condition, interior partitioning and finish. Based on this analysis the appraiser concluded a unit value of $28.00 per square foot was appropriate, resulting in an estimated value for the subject by the sales comparison approach of $1,100,000 rounded.

In the income approach, the appraiser examined six rental properties located in Peru, Ottawa, Freeport and the greater Peoria area. The comparables rented on a triple net lease basis, wherein the lessor is responsible only for structural and exterior repairs and maintenance. The comparables rented for amounts ranging from $1.98 to $4.00 per square foot. The appraiser estimated a market rent of $3.00 per square foot for the subject was appropriate, resulting in a potential gross income of $117,417. Expenses of 12%, or $14,090, were subtracted, resulting in an estimated net annual income of $103,327. An overall capitalization rate of 9.5% was utilized to capitalize this income, resulting in an estimated value for the subject by the income approach of $1,090,000.

In his final value correlation, the appraiser placed most weight on the sales comparison and income approaches in estimating a market value for the subject of $1,100,000. The appraiser valued parcel 2, the unimproved lot adjacent to the improved parcel, at $50,000. No detail as to how this value was derived was provided.

During cross examination, the board of review's representative questioned the appellant specifically about various parts of the appraisal. The representative asked the appraiser how he derived the $40.00 per square foot for the subject building in his cost approach. The appraiser replied he used the Marshall and Swift Cost Manual. The representative asked the appraiser why he used sales in the Peoria area, rather than sales in smaller rural communities like Princeton. The appraiser replied he considered the market area of the subject included a 70 mile radius around Princeton, allowing for the consideration of sales in the Peoria area. The representative then questioned the appraiser about the basis for the $3.00 per square foot rental cost in the income approach. The appraiser replied because of confidentiality, he did not specify the sources used to derive the $3.00 per square foot figure in the report, which was in summary appraisal format. The representative then wondered why the witness failed to bring his notes and supporting data to the hearing when he must have known he would be questioned about such matters, as the board of review had raised issues in its evidentiary response to the appellant's appeal. The Hearing Officer ordered the appraiser to provide as much detail as possible on the sources used to formulate the price within 15 days of the hearing without violating the confidentiality he felt he must maintain to satisfy his information sources. The appraiser complied with this order by submitting a letter providing some detail on the six rental comparables used in the income approach.

The next witness to testify on behalf of the appellant was Scott Sullivan, president of Fund 601 and of Sullivan's Food Stores. Sullivan testified he purchased the above-described personal property in the subject grocery store from the seller, Sunset Partners, long before an agreement to purchase the real estate was considered. He had intended to distribute some of the equipment to other stores operated by Sullivan's Foods and to scrap the remainder. But an important consideration in purchasing the subject property was also to keep a competitor from buying the store with equipment in place. The appellant testified when he attempted to gain access to the personal property and equipment he had purchased a year prior to the sale, seller Sunset Partners denied him permission to enter the premises, citing plans to rent the subject with equipment intact to a potential third party purchaser. For this reason, the appellant testified the subject would be more valuable to him than it would be to such an outside third party purchaser. Sullivan testified the equipment was probably worth less than the $100,000 he paid for it in the first place. When it became obvious he could not access the equipment, the appellant considered closing the grocery store he operated at the time, known as Sullivan's Foods, and moving into the vacant Eagle store. The appellant opined it would be cheaper to purchase and operate the subject Eagle Store as a newer Sullivan's Foods than to remodel the existing Sullivan's Store located nearby in Princeton. The appellant testified it would cost approximately $2,000,000 to modify and upgrade Sullivan's current facility. It was from this perspective that the appellant engaged the appraiser to determine a market value upon which to base a potential purchase price. The appellant was also in negotiations to purchase several other former Eagle stores in various locations at the time this avenue was pursued. The appellant testified when the closing date arrived, he was unable to attend and sent his father to sign the agreement. The appellant claimed his father was not fully aware of various aspects of the transaction and "signed some documents at the closing that are inconsistent with the testimony" the appellant gave at the hearing.

The subject sold in what was characterized in the appellant's written evidence as an arm's-length transaction in October 2004 for $2,345,000. The appellant reported the subject was advertised for sale for approximately one year. The appellant contends the sale price included personal property such as shelving, food display cases with coolers, various equipment used in the deli, baker and meat areas and other items associated with grocery store operation. The appraiser had included only five walk-in type coolers and freezers as real property in the appraisal. All the remaining equipment had been purchased by the appellant for $100,000 approximately one year prior to the sale. The subject property had been vacant since Eagle Foods closed for business.

The witness also discussed a cost segregation study prepared by an RSM McGladrey, an outside consulting firm. This study itemized the replacement cost new, depreciated replacement cost and allocated purchase prices of all the real and tangible personal property located at the subject site. The study assigned a value of $300,000 for the land, $695,999 for the building shell and $531,144 for the real and personal fixtures and equipment and $322,857 for site improvements, totaling $1,850,000. The appellant contends the sale price thus included personal property not subject to property tax.

The appellant testified the aforementioned cost segregation study was relied upon to value the real estate and equipment as detailed in the study and was consistent with filings submitted to the Internal Revenue Service. To support this assertion, the appellant submitted a document entitled "Sullivan Food Store Acquisition Income Tax and Financial Accounting Entries" during his testimony. The appellant testified this document relies on the cost segregation study prepared by RMS McGladrey. The appellant testified he had a good idea, based on his experience and his then current dealings involving the prospective purchase of five or six other properties, what the subject real estate was worth in the instant appeal. Ultimately, the appellant considered the equipment which should properly be classified as personal property was a far more significant component of the subject purchase price than the $100,000 he paid for it initially. The appellant testified, recalling the McGladrey study, that the equipment accounted for $1,137,152 of the $2,345,000 purchase price reported on the appeal form. Finally, the appellant testified he had been "hoodwinked" by, in essence, paying the seller for the personal property twice – once, a year prior to the sale, and a second time, in the sale price.

On cross-examination, the board of review's representative questioned Sullivan regarding the breakdown of the subject's purchase price of $2,345,000 reported on the appeal form. The representative asked Sullivan to account for the $495,000 difference between that purchase price and the $1,850,000 reported on the Real Estate Transfer Declaration. Sullivan replied that $300,000 was for the adjacent vacant lot, parcel 2, and the remainder was new signs and other work done to the property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $716,810 was disclosed. The subject has an estimated market value of $2,144,853, as reflected by its assessment and Bureau County's 2004 three-year median level of assessments of 33.42%. In support of the subject's estimated market value, the board of review submitted copies of the Real Estate Transfer Declarations for both subject parcels, claiming the sale was an arm's-length transaction and properly represented the market value of the subject property. The board of review also submitted a letter prepared by the supervisor of assessments, detailing the board's position and questioning several areas of the appellant's appraisal.

The board of review found it puzzling that the appellant would pay $300,000 for parcel 2 when the appraiser valued it at only $50,000. The board claimed the cost segregation study and financial reporting data attested to and submitted by the appellant may reflect income tax reporting classifications but have no bearing on market value for property tax purposes. The appellant's appraiser claimed he used a building replacement cost new rate of $40.00 per square foot in the cost approach, but the board's perusal of 1992 Marshall and Swift building yielded the cost for a "good class C" building of $50.56 per square foot. The board challenged the appraiser's use of a 20 year effective age for the subject, when it was just 12 years old and had "no items of deferred maintenance", per the appraisal. The board also claimed the appraiser ignored two commercial sales within sight of the subject Princeton in his cost approach site value analysis. One property sold for $2.71 per square foot and the other sold for $4.63 per square foot, yet the appraiser relied on sales in the Peoria area, ultimately using a price of $2.50 per square foot to value the subject's land.

Regarding the sales comparison approach in the appellant's appraisal, the board of review claimed the Peoria area was vastly different than the Princeton market. The board claimed several of the sales used by the appraiser were "from an urban area with numerous vacancies in widely disparate neighborhoods". The board opined that nothing in the appraisal validly disputed the sale price of the subject.

Regarding the income approach, the board of review claimed nearly 100% of commercial properties in the Princeton Enterprise Zone were owner-occupied and there is little vacancy.

Finally, the board of review noted that no personal property was indicated on the Real Estate Transfer Declarations documenting such property as being a component of the sale prices of the subject parcels. In fact, a notation on the declaration for parcel 1 specifically excluded "all equipment and fixtures in place", as they had been purchased approximately one year prior to the sale, according to the appellant's evidence and testimony. The board of review thus contends the sales prices indicated on the transfer declarations must therefore represent the value of only the real estate in arms-length transactions. Hence, the board of review contends no reduction in the subject's estimated market value was warranted.

In its closing argument, the appellant claimed the only evidence of market value other than the Real Estate Transfer Declarations in the record is the appellant's appraisal. The appellant claimed the transfer declarations are neither controlling nor reliable in this case. The appellant also claimed income tax law and real estate law view real estate similarly and that the cost segregation study of the subject is relevant.

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 no reduction in the subject property's assessment is warranted.

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.2d 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 appellant submitted an appraisal of the subject property, while the board of review submitted copies of Real Estate Transfer Declarations documenting the sale of the subject parcels in October 2004 for $2,150,000. The appraisal estimated a market value for parcel 1 of $1,100,000 and a value for parcel 2 of $50,000. The appellant claimed the transfer declarations do not validly represent the subject's market value because of the questionable value of personal property. However, the appellant reported the subject's sale price on the appeal form as $2,345,000, accounting for the difference by claiming new signs and parking lot work. The Board finds the appellant acknowledged in a letter prepared by appellant's counsel accompanying the appeal form that the appeal "is based upon a and (sic) arm's length sale of the premises, which occurred in October 2004."

The Board gave reduced weight to the value for the subject represented in the appellant's appraisal because of unconvincing testimony by the appraiser. The appraiser testified he had not expected to discuss the sale of parcel 2 at the hearing, so he had not brought his notes which might have explained why he relied primarily on land sales in the Peoria area. The appraiser also gave unsubstantiated responses to several questions from the board of review regarding his determination that the subject building was 50% depreciated, based on a 20-year effective age and a 20-year remaining life. The Board finds the subject was actually 12 years old as of the appraisal's effective date and the appraiser reported the subject had "no items of deferred maintenance." The Board also finds the appraiser had ample notice of the hearing and should have been better prepared to explain his pricing model for the subject.

The Board finds unconvincing the appellant's reliance on its segregated cost study and various income tax-related documents detailing a value for the disputed personal property significantly greater than the $100,000 the appellant claimed to have paid for the equipment a year prior to the October 2004 sale. The Board finds it not credible that the appellant would pay $2,150,000 for property its own appraiser had valued at only $1,150,000. The Board finds unpersuasive the appellant's testimony in which he attempted to explain the difference between the prices paid for the parcels as documented on the transfer declarations and the values in the appraisal. The Board finds the transfer declaration detailing the sale of the improved parcel specifically stated "Buyer purchased all equipment and fixtures in place approx. 1 yr ago (sic)." No subtraction for personal property was indicated in the calculation of the transfer tax section of the transfer declaration for improved parcel 1. Regarding the unimproved parcel the appraiser valued at $50,000, the Board finds that value estimate is not credible in light of the purchase price of $300,000 paid for the parcel. The Board finds Sullivan testified the subject property was more valuable to the appellant than it would be to a third party because of the business advantage of keeping out a competitor. The Board finds similarly unpersuasive Sullivan's testimony that his father signed the transfer documents while being unaware of factors involved in the sale with which the latter was unfamiliar.

The Property Tax Appeal Board finds the best evidence of the subject's fair market value is its sale price of $2,150,000. From a review of the evidence, the Board finds the subject's sale appears to be of an arm's-length nature, and indeed, was characterized as such in the appellant's pleading. The evidence in the record disclosed at least subject parcel 2 was advertised for sale on the open market, the buyer and seller were not related parties, nor were they under duress to complete the 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 is 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).

Furthermore, section 1-50 of the Property Tax Code defines fair cash value as:

> The amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller. (35 ILCS 200/1-50)

Based on this analysis, the Board finds the appellant has failed to prove overvaluation by a preponderance of the evidence and the subject's assessment is correct and no reduction is warranted.

APPELLANT: **Cameel Halim**
DOCKET NUMBER: **03-24877.001-C-1**
DATE DECIDED: **November, 2007**
COUNTY: **Cook**
RESULT: **No Change**

The subject property is improved with a three-story walk-up apartment building that contains 30,708 square feet of building area. The building is approximately 87 years old and has 37 apartments composed of 6 one-bedroom apartments and 31 two-bedroom apartments. The building has a brick exterior and is located on an 18,135 square foot parcel in Chicago, Lake View Township, Cook County.

The appellant contends assessment inequity and overvaluation as the bases of the appeal. In support of the unequal treatment argument the appellant submitted assessment information and descriptions on three comparable properties. The comparables were described as being improved with a three story apartment building, a four story apartment building and an eight story apartment building. Each of the comparables had a brick exterior construction. The buildings ranged in size from 13,086 to 47,168 square feet of building area and the comparables had from 13 to 76 apartments. These comparables had improvement assessments ranging from $92,060 to $310,575 or from $6.35 to $7.03 per square foot of building area and $3,499 to $7,082 per apartment. The appellant's evidence disclosed the subject had an improvement assessment of $165,470 or $5.39 per square foot of building area and $4,472 per apartment. These same comparables had land assessments ranging from $31,710 to $38,686 resulting in unit assessments of $4.23 per square foot of land area. The subject has a land assessment of $76,674 or $4.23 per square foot of land area.

In support of the overvaluation argument the appellant submitted a vacancy affidavit as well as income and expense data for the subject property from 2000 through 2003. Using this data the appellant asserted the subject had a net income in 2003 of $91,982. The appellant then used a capitalization rate of 15.50% to capitalize the net income into an estimate of market value of $593,432.

Based on this data the appellant requested the subject's total assessment be reduced to $178,030.

The board of review did not submit its "Board of Review Notes on Appeal" nor any evidence in support of its assessed valuation of the subject property.

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 argued in part 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 reduction is not warranted.

In support of the unequal treatment claim the appellant submitted assessment information and descriptions on three comparable properties improved with a three story apartment building, a four story apartment building and an eight story apartment building. Each of the comparables had a brick exterior construction and ranged in size from 13,086 to 47,168 square feet of building area containing from 13 to 76 apartments. These comparables had improvement assessments ranging from $92,060 to $310,575 or from $6.35 to $7.03 per square foot of building area and $3,499 to $7,082 per apartment. The appellant's evidence disclosed the subject had an improvement assessment of $165,470 or $5.39 per square foot of building area and $4,472 per apartment. The Board finds the subject's improvement assessment is below the range of the comparables on a per square foot basis and within the range on a per apartment basis. The Board finds this evidence demonstrates the subject building is being equitably assessed.

These same comparables had land assessments ranging from $31,710 to $38,686 resulting in unit assessments of $4.23 per square foot of land area. The subject has a land assessment of $76,674 or $4.23 per square foot of land area. This evidence also demonstrates the subject's land is being equitably assessed.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. 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. Therefore, the Board finds the appellant has failed to establish by clear and convincing evidence that the subject is being inequitably assessed.

The appellant also submitted evidence challenging the subject's market value as reflected by its 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). The Board finds the appellant has not met this burden of proof and a reduction in the subject's assessment is not warranted on this basis.

In deriving an estimate of market value the appellant utilized the subject's actual income and expenses and a capitalization rate of 15.50%. The Board finds the appellant's witness' estimate of value using the income capitalization approach in this appeal based on the subject's actual income and expenses unconvincing and not supported by market derived data that is contained 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 they are reflective of the market. The appellant did not demonstrate through a qualified expert appraisal witness 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 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 aspect of the appellant's argument no weight.

In conclusion the Board has examined the information submitted by the appellant and finds that it does not support a reduction in the assessed valuation of the subject property.

APPELLANT: **One Gregory Place, LLC**
DOCKET NUMBER: **05-00101.001-C-3**
DATE DECIDED: **December, 2007**
COUNTY: **Champaign**
RESULT: **Reduction**

The subject property is improved with a four-story mixed-use apartment/retail building containing 70,400 square feet of above-grade building area. The building has 19,400 square feet of first floor retail space and three floors each containing 17,000 square feet of multi-family apartment units. There are a total of 9 commercial units and 96 rentable apartments. There were 45 one-bedroom units that range in size from 361 to 534 square feet and 51 two-bedroom units that contained 500 square feet. The below grade area consists of 24,332 square feet of parking space. The building is of brick veneer and dryvit exterior and was built in 2004. The improvements are constructed on a 30,550 square foot parcel leased from the University of Illinois. The property is located in Urbana, Cunningham Township, Champaign County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal prepared by Joseph M. Ryan of LaSalle Appraisal Group, Inc. Ryan estimated the subject property had a fee simple market value of $8,000,000 as of January 1, 2005, and a leasehold value of $5,555,000 as of January 1, 2005. In his opening statement the appellant's attorney explained the subject property includes improvements constructed on leased land from the University of Illinois and is to be valued as a leasehold interest pursuant to statute and case law.

The appellant called as its witness real estate appraiser Joseph M. Ryan. Ryan has had the Member of the Appraisal Institute (MAI) designation since 1990 and is also a State Certified General Real Estate Appraiser with the State of Illinois. Ryan began his appraisal career with the Cook County Assessor's office in 1980. He also served as a hearing officer for the Cook County Board of Review. Ryan testified that he has experience with the Cook County Assessor's office valuing leaseholds at O'Hare and Midway Airports as well as the Port Authority. Ryan also testified that he is familiar with the statute that describes leasehold valuation and has read the American Airlines case (Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568, (1968)). He testified that he has also read Department of Revenue guidelines for establishing values on leaseholds. Ryan has conducted 20 to 25 leasehold valuations while in private practice using the formula outlined in American Airlines. He was accepted as an expert in the field of valuation of leasehold estates.

Ryan testified he was familiar with the terms of the subject's land lease which was marked as Exhibit B. The lease identified the landlord as The Board of Trustees of the University of Illinois and the tenant as Gregory Place, LLC. The lease provided for a term of fifty years commencing on June 1, 2003 and ending at midnight on May 31, 2053. Pursuant to the lease the tenant was to prepay rent for the term in the sum of $700,000 in three installments with the final installment due 30 days following the date that the City of Urbana issued the "Final Certificate of Occupancy". The lease set forth the use that the tenant could put the property which included retail and service oriented use on the first floor, residential apartments on the third and fourth floors, and residential apartments and/or offices on the second floor. The lease provides that the tenant, at its own expense, shall construct the improvements on the premises pursuant to plans and specifications approved by the Landlord. The lease also states that at the expiration or other termination of the lease the tenant shall peaceably and quietly quit and surrender to the landlord the premises (including all improvements) in good order and condition.

Ryan stated that on page 9 of his appraisal he set forth the land lease prepayments in the amount of $700,000 and the construction cost of the improvements of $7,400,000 that were completed in 2004. The improvement costs were provided to Ryan by the owner. Ryan testified that he invoked an "extraordinary assumption" when valuing the leasehold interest in the subject property pursuant to the dictates of the Supreme Court of Illinois in Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568, (1968)). He explained that in valuing the leasehold interest he discounted the market rent of the subject property over the remaining term of the lease. The report indicated that the market rent was derived by valuing the fee simple estate to determine what a third party would pay to lease the subject property as a whole. He noted in the report that the lease expires on May 31, 2053, thus there would be 581 monthly rental payments from the valuation date of January 1, 2005 to the lease termination date. Therefore, the leasehold value of the subject property for assessment purposes would be determined by discounting the market rent over a 581 month term.

Ryan testified that the report was not an appraisal of the fee simple interest or an appraisal of a leased fee. The purpose of the appraisal as stated on page 6 of the report was to estimate the market value of the fee simple estate as of January 1, 2005, and to also determine the leasehold value per the precedent established by American Airlines.

The report indicated the highest and best use of the property as improved was its continued use as an apartment/retail building. In estimating the leasehold value Ryan testified he first estimated the fee simple value of the property. To that value he used an acceptable rate of return, which was the overall capitalization rate, and discounted the monthly rent over the remaining 581 months remaining on the lease.

The three traditional approaches to value were employed to estimate the fee simple value of the property. The first approach developed by Ryan was the cost approach with the initial step being to estimate the value of the land as if vacant. In estimating the land value Ryan used four land sales located in Champaign. The comparables ranged in size from 9,620 to 19,454 square feet of land area. The sales occurred from July 2001 to December 2004 for prices ranging from $305,000 to $700,000 or from $25.10 to $47.41 per square foot of land area. Based on these sales Ryan estimated the subject parcel had a land value of $27.50 per square foot of land area or $840,000.

Ryan utilized replacement cost new using the Marshall and Swift Cost Manual to estimate the cost new of the improvements. He classified the subject as a Class D good quality apartment building with a base cost of $85.07 per square foot. To this base cost he added $1.50 per square foot for the sprinkler system to arrive at an adjusted base cost of $86.57 per square foot. The appraiser also included $7.50 per square foot to account for the garage to arrive at a base cost of $94.07 per square foot of above grade building area. The appraiser also included various multipliers totaling 1.0268 resulting in an adjusted base cost of $96.59 per square foot. Ryan indicated within his report that the retail portion of the subject would have a similar cost per square foot. To this the appraiser added 5.0% for entrepreneurial profit and 2.5% for indirect costs. The total replacement cost new was estimated to be $7,309,931. Ryan noted in the appraisal and his testimony that the reported cost new of the improvements were $7,400,000.

In estimating depreciation the appraiser was of the opinion the subject had an effective age of 1 year and economic life of 50 years resulting in 2.0% physical incurable deterioration or $146,199. Deducting depreciation resulted in a depreciated cost new of $7,163,732. Ryan determined the subject suffered from no external or functional obsolescence. The site improvements were estimated to have a depreciated cost of $25,000. Adding the depreciated cost new of the improvements, site improvements and land value resulted in an estimated value under the cost approach of $8,025,000.

The next approach developed by the appraiser was the sales comparison approach. Under this approach the appraiser used four sales located in Champaign and Urbana. Three comparables were improved exclusively with apartment buildings while one comparable had both apartments and commercial units. Two of the comparables had two buildings while two were improved with one building. The buildings were multi-story and two were of wood frame construction. The comparables ranged in size from 9,662 to 19,281 square feet and contained from 10 to 25 units. These buildings were constructed from 1965 to 1999 and located on parcels that ranged in size from 8,712 to 17,680 square feet. The sales occurred from March 2003 to January 2005 for prices ranging from $950,000 to $2,125,000 or from $75.39 to $151.83 per square foot or from $52,778 to $146,700 per unit. Based on these sales the appellant's appraiser estimated the subject had a value of $75,000 per unit or $7,875,000 and $115.00 per square foot of building area or $8,096,000. Ryan ultimately estimated the subject had an indicated value under the sales comparison approach of $8,000,000.

The final approach to value developed by Ryan was the income approach. In the appraisal Ryan noted the subject property had rental rates for the one-bedroom apartments ranging from $475 to $600 per month or from $1.11 to $1.34 per square foot while the two-bedroom apartments had rentals ranging from $820 to $840 per month or from $1.44 to $1.47 per square foot. In estimating the market rent for the apartments the appraiser utilized five comparable rentals located in Urbana and Champaign. The comparables were constructed from 1980 to 2001 and contained 24 to 96 units. The occupancy rates for the comparables exceeded 95%. The one-bedroom units had rental rates ranging from $1.04 to $1.75 per square foot while the two-bedroom units rental rates ranged from $1.02 to $1.47 per square foot. Using this data the appraiser stabilized rents for the one-bedroom units at $1.33 per square foot with the larger units at $1.12 per square foot. The subject's two-bedroom units were stabilized at $1.46 per square foot.

In estimating the market rent for the subject's retail space the appraiser used four comparables located in Champaign. The comparables had rents ranging from $13.00 to $28.61 per square foot of building area. The appraiser also reported the subject had three retail tenants with rents ranging from $20.00 to $24.74 per square foot of building area. Based on this data the appraiser estimated the subject's perimeter retail space had a market rent of $20.00 per square foot and the interior space of $14.00 per square foot. The appraiser also noted the subject property's 56 parking spaces leased for $800 per year or $66.67 per month. Based on this data the appraiser estimated the subject had a gross potential income of $1,191,592.

The appraiser estimated the subject apartments and garage would have a vacancy and collection loss of 2.5%. The vacancy and collection loss for the retail area was estimated to be 10%. The subject had an estimated effective gross income of $1,134,327. Operating expenses and reserves for replacements were estimated to be 31.60% or $358,295 resulting in a net operating income of $776,032.

The next step was to estimate the capitalization rate for the subject. Using actual and imputed rents for the comparable sales contained in the report had overall rates ranging from 6.3% to 7.5%. The appraiser indicated that Korpacz Real Estate Survey for the first quarter of 2005 had rates ranging from 5.25% to 10.50%. Based on this data the appraiser was of the opinion the appropriate capitalization rate for the subject was 7%. Using the band of investment technique the appraiser estimated a capitalization rate of 7.30%. Correlating these methods the appraiser estimated the appropriate capitalization rate of 7%. To this the appraiser added 2.8% for the effective tax rate resulting in a loaded capitalization rate of 9.8%. Capitalizing the estimated net income resulted in an indicated value using the income approach of $7,925,000.

Correlating the three estimates of value resulted in an estimated value for the subject's fee simple interest of $8,000,000. The appraiser was of the opinion that the $8,000,000 market value would indicate that the owner would expect a 7% return or $560,000 on a triple net basis or $46,667 per month if rented to a third party. Using the Peter J. Korpacz & Associates investor report the appraiser estimated that an institutional investor would require a 10% rate of return. Using a 10% discount rate and 581 monthly rental payments the appraiser determined the present value factor would be 119.03. Multiplying the monthly rental of $46,667 by the discount factor resulted in an estimated value for the leasehold of $5,555,000.

Ryan was of the opinion that when valuing a leasehold the relevant rent to consider is paid at the level of the lease with the exempt entity. He was of the opinion this comported with Illinois Department of Revenue (DOR) guidelines relative to valuing leaseholds. The appraiser referred to Exhibit D, example number 3 as a of the DOR guidelines as support for his technique. In that example in calculating the leasehold value the lease to the operator was examined, not the operator's income derived from the use of the property.

In conclusion Ryan estimated the market value of the subject property in a leasehold estate was $5,555,000 as of January 1, 2005. The appraiser was of the opinion that the disparity between the subject's fee simple market value and the leasehold value is normal due to the partial interest in the property that is being appraised.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $3,254,380 was disclosed. The subject's assessment reflects a market value of approximately $9,799,400 using the 2005 three year median level of assessments for Champaign County of 33.21%. The board of review presented no evidence in support of its assessment of the subject property.

In support of its position the intervenor, Cunningham Township, submitted an appraisal prepared by real estate appraiser Stephen D. Whitsitt estimating the subject property had market value of $9,700,000 as of January 1, 2005. The appraisal was marked as Intervenor's Exhibit No. 1.

The intervenor called as its witness Stephen D. Whitsitt. Whittsitt is an Illinois Certified General Appraiser with the MAI designation. The witness testified he has been an appraiser for 30 years and also teaches appraisal courses at Parkland College.

Under voir dire Whitsitt testified he had limited knowledge with respect to the property tax provisions as they relate to the assessment of leasehold estates. Whitsitt was provided with information from Joanne Chester, Cunningham Township Assessor, that summarized some of the assessment techniques but he did not understand it. He had previously not performed any valuations relative to the statutory prescriptions for leasehold estates. The witness was questioned about a two-page document captioned "State Method of Leasehold Analysis". Whitsitt testified the document came out of his appraisal report; however, the pages could not be located within his appraisal. The document stated the subject property had a value of $9,525,000. Whitsitt acknowledged that his conclusion did not follow the state method to value leaseholds.

In tendering Whitsitt as an expert in real estate appraisal, the intervernor's attorney acknowledged that Mr. Whitsitt did not follow the dictates of American Airlines in valuing the leasehold. Whitsitt was accepted as an expert in real estate appraisal.

Whitsitt stated within his report that the property rights being appraised are the leased fee estate. Intervenor's Exhibit No. 1, page 1. In the appraisal "leased fee estate" is defined as, "An ownership interest held by a landlord with the rights of use and occupancy conveyed by the lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained with the lease." Intervenor's Exhibit No. 1, page 4. Leasehold estate is defined as, "The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions. Intervenor's Exhibit No. 1, page 4. Whitsitt was of the opinion the highest and best use of the subject is its current us as improved.

In estimating the market value of the subject property the intervenor's appraiser developed the three traditional approaches to value. The first approach to value was the cost approach with the initial step being to estimate the value of the land as if vacant using four land sales. The land comparables consisted of the same properties used by Ryan. These properties were located in Champaign and sold for prices ranging from $25.10 to $47.41 per square foot of land area. Based on these sales Whitsitt estimated the subject parcel had a unit value of $38.00 per square foot or $1,160,000.

Whitsitt utilized the calculator method from the Marshall Valuation service to estimate the reproduction cost new of the improvements to be $9,747,344. From this appraiser deducted $496,000 in physical depreciation to arrive at a depreciated improvement value of $9,251,344. To this amount he added $400,000 for the leasehold value to arrive at a value of $9,650,000. The $400,000 leasehold value was calculated by deducting $760,000 leased fee value of the land from the estimated land value of $1,160,000.

In the sales comparison approach Whitsitt used four comparable sales of apartment buildings, with the first comparable being a combination of apartments and office suites, located in Champaign and Urbana that ranged in size from 9,662 to 19,286 square feet with 10 to 25 apartments or office suites. The comparables ranged in age from 4 to 40 years old. The sales occurred from March 2003 to January 2005 for prices ranging from $950,000 to $2,125,000 or from $75.39 to $151.83 per square foot of building area. The appraiser made adjustments for parking, age, quality, and amenities resulting in adjusted prices ranging from $96.78 to $188.27 per square foot or from $78,111 to $181,908 per unit. The appraiser also noted the comparable sales had gross income multipliers ranging from 8.00 to 8.95. Based on these sales the appraiser estimated the subject property had a value of $165.00 per square foot of $11,600,000 or $100,000 per unit or $13,500,000. Based on these estimates the appraiser determined the subject property had an indicated value of $12,000,000. The appraiser then deducted the site value of $1,160,000 and added a leasehold land value of $400,000 to arrive at an indicated value of $11,240,000.

The final estimate of value used by the intervenor's appraiser was the income approach to value. In developing the subject's market rent the appraiser used a combination of commercial comparables and apartment comparables located in Champaign. Based on the commercial property comparables the appraiser estimate the subject's 19,400 square feet of retail space had a market rent of $20.00 per square foot resulting in a potential gross income of $388,000. Whittsitt estimated the subject apartments would have market rents ranging from $650 to $850 per month resulting in a potential gross income for the apartments of $874,600. To this the appraiser added ancillary income for 37 parking spaces of $22,200 using a rental of $50.00 per month. Based on these estimates the appraiser determined the subject had a potential gross income of $1,285,000. Because the retail space in the subject was partially occupied, the appraiser opted to use the discounted cash flow technique and estimated the subject had a value of $8,950,000. The appraiser using the comparable sales estimated the subject would have a gross income multiplier of 8.6 resulting in an estimated value of $11,050,000. Using these two estimates the appraiser was of the opinion the subject had an indicated value by the income approach of $9,700,000.

Whittsitt's appraisal also contained a leased fee value analysis reviewing the fifty year land lease for the subject parcel. He concluded that the leased fee value of the land lease and reversion over a 48 year period of time was $760,000.

Under direct examination Whittsitt testified that developers typically want a ten percent return or higher to recognize their contribution to the property and risk.

Under cross-examination the appraiser acknowledged that at page 1 of his report it states, "The property rights being appraised are the leased fee estate." However, the witness asserted the leasehold value was the property rights appraised.

The witness also testified that in an investment of the size of the subject potential investors would prefer using the discounted cash flow analysis rather than a gross income multiplier technique. He acknowledged that he arrived at an estimate of value using the discounted cash flow analysis of $8,950,000 but opted to estimate the subject had an indicated value under the income approach of $9,700,000. The intervernor's appraiser also acknowledged that he estimated a reproduction cost new for the improvements of $9,747,344. He also recalled Ryan's testimony that the owner's costs were reported to be $7.4 million. Whittsitt testified he met with the owners who were not willing to share most of the information on the building but could not recall if cost was one of the questions he asked. The appraiser also acknowledged his estimate of cost new included the contributory value of the personal property such as appliances and furniture. The total for the appliances and furniture in the cost summary was $290,100. The witness agreed that he did not have an opinion of value of the leasehold estate as set forth under Illinois law. (Transcript pages 67-68.)

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 evidence in the record supports a reduction in the subject's assessed valuation.

The appellant contends the subject's assessment is not reflective of its market value. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Additionally, the Property Tax Code provides that each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145(b)). 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 there was no dispute that the subject property should be assessed as a leasehold. Section 9-195 of the Property Tax Code provides in part that:

> (a) Except as provided in Section 15-35, 15-55, 15-100, and 15-103, when property is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and appurtenances shall be listed as the property of the lessee, thereof, or his or her assignee. . . .

35 ILCS 200/9-195. Furthermore, the Property Tax Code provides that each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145(b)).

The fair cash value of a leasehold is its rental value in the market, the amount a willing lessee will pay a willing lessor, in a voluntary transaction, for the right to use and occupy the premises. Korzen v. American Airlines, Inc., 39 Ill.2d.11, 18, 233 N.E.2d 568, 572 (1968). The Supreme Court of Illinois in American Airlines set forth the mathematical formula to be used in calculating the value of a leasehold for real estate assessment purposes by stating that:

> The present value of the current market rental payable in the future, which is the fair cash value of the leasehold, can be determined by multiplying the current market rental of a leasehold by the present value of an annual payment of one dollar for the unexpired term of the lease.

American Airlines, 39 Ill.2d at 19, 233 N.E.2d at 573. In comparing the two appraisals submitted in this appeal, the Property Tax Appeal Board finds the method used by the appellant's appraiser more closely followed the dictates or American Airlines in calculating the leasehold value for assessment purposes. In summary the appellant's appraiser estimated the subject's market rent by valuing the fee simple estate to determine what a third party would pay to lease the subject property as a whole. The appraiser determined the subject's lease expires on May 31, 2053, thus there are 581 monthly rental payments from the valuation date of January 1, 2005 to the lease termination date. The appraiser then calculated the leasehold value of the subject property for assessment purposes by discounting the market rent over the 581 month term. Ryan ultimately estimated the subject had a leasehold value as of January 1, 2005 of $5,555,000.

By contrast Whittsitt testified he did not follow the prescribed method to value leaseholds for assessment purposes. Furthermore, the intervernor's attorney admitted that Mr. Whitsitt did not follow the dictates of American Airlines in valuing the leasehold. (Transcript page 49.) For these reasons the Property Tax Appeal Board gives no weight to the conclusion of value contained in Whittsitt's appraisal.

In conclusion, the Property Tax Appeal Board finds the subject property had a leasehold value of $5,555,000 as of January 1, 2005. Since the market value of the leasehold has been determined the 2005 three year median level of assessments for Champaign County of 33.21% shall apply.

APPELLANT:	**Pullman Wheelworks Association I**
DOCKET NUMBER:	**00-24226.001-C-3 and 01-24623.001-C-3**
DATE DECIDED:	**September, 2007**
COUNTY:	**Cook**
RESULT:	**Reduction**

At hearing, the parties requested that the PTAB consolidate both appeals for years 2000 and 2001. Originally, there existed another appeal for tax year 2002; however, the parties agreed to withdraw the 2002 appeal. The PTAB allowed the withdrawal of the 2002 appeal and the consolidation of the 2000 and 2001 appeals. The intervenor is not a party to the 2000 appeal, and, accordingly, will not be allowed to participate in those matters pertaining to the 2000 appeal. Any intervenor arguments will only be considered by the PTAB as applicable for assessment year 2001.

The subject property consists of a three-story, masonry constructed, flat-roofed, L-shaped, 210-unit residential apartment complex, with an additional 14 units for commercial/storage. The subject is situated on a 445,202 square foot, irregularly shaped, corner land parcel. Of the 210 residential units, all of the leases exist under the Housing and Urban Development's (HUD) Section 8 subsidized housing for low income residents. The subject property was originally constructed in the late 19th century, in approximately the 1890's, and was converted to multi-family in 1981. Prior to 1981 the subject property was used as an industrial facility with a loft style design. The gross building area of the subject property is 294,325 square feet. The subject's 210 units comprise 165,644 square feet net rentable area, and the 14 units comprise 18,460 square feet. Only two of the 14 commercial/storage units are occupied.

The subject is located in the Pullman area of Chicago and has a common address of 901 East 104th Street, Chicago. The subject is located in Hyde Park Township, Cook County, and is zoned R.B.P.D. No. 198. This zoning allows for a maximum of 450 dwelling units, and a minimum 500 parking spaces. The Cook County Assessor classifies the subject as a class 3 multi-family property and the subject is assessed at 33% of its market value. For tax year 2000, the assessor placed an assessed value of $1,079,098 on the subject and for tax year 2001 the assessor similarly placed the same assessed value of $1,079,098 on the subject property.

As a 100% HUD development, the subject property's residential units were operated under HUD's 221(d)(3) program, also referred to as the Housing Assistance Program (HAP) and was then converted to a Mark-to-Market (M2M) program. HAP relies upon rents which are "over market." This program's viability was based upon rents that were not market rents but were based upon cost less an amount for operating expenses with an expected 6% return. During the time in question, the subject was in the process of going from a HAP program to a M2M program, wherein the property would be funded by market rents. Market rents were selected in order to provide a debt coverage ratio for the subject's original loan, along with other loans taken out to fund the building's repairs. The rents under the M2M program were lower than the rents available under the HAP program.

The HAP program expired on 132 units on April 1, 2001. The remaining 78 units under the HAP program expired on December 23, 2001. After that time, all units existed on the M2M program. According to the terms of the agreement, once this program conversion takes place any excess cash flow must be used for property repairs and will not be made available to the owners. At the time of the conversion, the subject's mortgage indebtedness on its first mortgage was $6,738,315. This amount, along with a another mortgage of $1,498,147, total $8,236,462, was written down by HUD to a 1.00% simple interest rate amortized over 32 years. Another mortgage of $2,500,000, earmarked for necessary repairs, was provided at a 7.32% rate over a period of 32 years. This final mortgage is what is commonly termed a "take-out" mortgage. Total debt service on the subject was $10,736,462.

The parties stipulated to the appellant's appraiser's market value findings of $3,400,000 for 2000 and $3,900,000 for 2001 prior to any deductions for deferred maintenance. The sole issue on appeal is whether or not the taxpayer's appraiser properly deducted "deferred maintenance" from the subject's estimated market value in order to reach a final fee simple value for the subject.

The taxpayer's appraiser opined a value for the subject, prior to deductions, of $3,400,000 for tax year 2000, and a value for the subject, prior to deductions, of $3,900,000 for tax year 2001. These figures were reached primarily via the income approach to value estimating the net operating income (NOI) under the M2M program. This HUD program changed "above market" rents from the previous program to "market rents." Once this figure of value is determined it is then discounted to reach the value as of the dates at issue. The taxpayer's appraiser invoked a jurisdictional exception to his appraisals in order to estimate the final fee simple market values for the subject property. The appraiser claims this exception is in keeping with the Illinois Supreme Court's holding in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d. 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989). In that case, the court held that the positive and negative effects of a governmental subsidy must be considered to estimate the subject's fee simple market value.

The appellant's attorney, in his opening statement, described how the property operated under the HUD 221(d)(3) program until the year 2001. This program operates under a funding method that met HUD specifications in order to provide a minimal return of 6% after taking into consideration the subject's costs. However, the conditions for the new M2M program include an inspection by HUD and then the property is rehabbed to meet HUD specifications. Then "market rents" are applied to determine the proper contract rents for the subject property.

Attorney Riley went on to state that in light of the Illinois Supreme Court's decision in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989), it was appropriate to value the subject using the new rents approved by HUD, in accordance with the M2M program, which presumed rehabbing the subject. Therefore, the appraiser deducted the costs of renovation to be done sometime in the future, which were not yet necessarily performed for the valuation dates in question.

The Cook County Board of Review waived its opening statement. Intervenor's Attorney Atkinson, in his opening, speaking on behalf of the CBOE for tax year 2001, stated that this case created a "moral outrage" since the appellants had "driven the property into the ground" in an effort to get a reduction in the property's assessment from the PTAB. The first issue to be decided, the attorney opined, is to define "deferred maintenance", and he specifically referred to the definition from the Dictionary of Real Estate Appraisal and the Appraisal of Real Estate. Atkinson stated that in order for an item to qualify as deferred maintenance that item must be in need of immediate repair. Also, he opined, such an item cannot be deducted in multiple years. Here, in each year, the appellant's appraiser deducted approximately $2.4 million for deferred maintenance. That is improper, the intervenor claimed, and, further, the taxpayer is not entitled to any reduction in the assessed value. At this point, opening statements were concluded.

The taxpayer began its case-in-chief by calling its witness appraiser, Joseph Ryan, owner of the LaSalle Appraisal Group, Inc. Mr. Ryan is a member of the Appraisal Institute (MAI) and was accepted by the PTAB as an expert in the field of real estate appraisal. Mr. Ryan completed two appraisal reports on the subject property, one for 2000 and one for 2001. The appellant's evidence contained both appraisals, which were entered as Appellant's Exhibits A and B. One, for year 2000, has an opinion of market value of $3,400,000, prior to deductions; and the other, for year 2001, has an opinion of market value of $3,900,000, prior to deductions.

Mr. Ryan testified that he had lectured on the assessment of subsidized housing projects and that during his tenure at the Cook County Assessor's Office he was responsible for the valuation of many such properties. He also testified that he was quite familiar with the various HUD programs going back to year 1981. Ryan further testified that he had reviewed all the Cook County properties that were subject to the 221(d)(3) program. Ryan testified that this program was not viable because the properties provided a limited return and that the cost did not equal the value of these types of properties. Rather, most of the rent went to cover the mortgage debt service.

Regarding the M2M program, Ryan testified that this was introduced by HUD to insure that the rents would cover the debt service on the properties. However, in the case of the subject property, the rents were not able to cover the debt service on the mortgages. Moreover, the M2M rents were below those of the HAP program.

Next, turning to the Ryan appraisals' addendums, the appellant focused on a printout of code violations. According to the appraisal, these code violations, totaling $766,250, are in immediate need to be corrected to avoid the City of Chicago from closing the property. Ryan viewed these costs to correct code violations as deferred maintenance.

Ryan went on to testify that in order for cases such as the subject property to participate in the HUD program, HUD would hire an agent administrator, also known as a Participating Administrative Entity (PAE). In this case that was a company known as Chicago Investment Corporation (CIC). Anita Bundze of CIC had a number of meetings with Ryan and provided him with what he described as "a voluminous number of documents they had assembled on this property."

In the M2M program the PAE does the examinations of the property and makes recommendations to HUD regarding what is required to get the property into the program. HUD would require the owners deal with the administrator in all aspects and implementation of the program. Moreover, HUD required a rehab of the property in order to get it into the M2M program. As a part of this procedure, HUD requires a physical inspection and a Property

Condition Assessment (PCA) as outlined in the appellant's appraiser's Architectural Report. At this point, after the condition assessment report was concluded, decisions were made as to the needs of the property. First and foremost, as noted above, there existed immediate needs of some $766,250 to fix code violations.

In addition to the code violations, the witness testified there also existed short-term needs in the amount of $1,581,390. Among those needs that encompassed this amount were appliances, cabinets, countertops, and plumbing. These items in need of repair were confirmed by the Lender's Architectural report which was incorporated in with the appraisal. Ryan also considered these items of deferred maintenance.

The appraiser testified that in order to value the subject he used income and expenses that came from the HUD's administrator, which were part of the HUD contract. Renovation of the subject property was a condition of the contract. After the income figure was obtained, subsequent to the rehab, that figure was capitalized into a value as of January 1, 2002. This was required, the witness testified, to comply with the Illinois Supreme Court in the case Kankakee County Board of Review v. Property Tax Appeal Board, supra, and that figure serves as a basis for the income that the subject property would realize in year 2002 as part of the M2M program. The capitalization rate for 2000 was 18.85% and for 2001 was 17.79%. After capitalizing the income figure, the subject's market value, prior to deductions for deferred maintenance, was determined to be $4,069,194 for 2000 and $4,311,652 for 2001.

This figure reflects the market value of the subject after rehabilitation in the future, in accordance with the adjusted rents prepared by the HUD administrator. These figures were then discounted to a net present value. Therefore, after deductions for deferred maintenance of $2,347,640 ($766,250 + $1,581,390), the appraiser added back the figures for mortgage cash flows which were still part of the HAP program during the two years in question. For year 2000 there was $534,256 in cash flows; for year 2001 there was $-0-. Thus, after deductions, the appraiser reconciled the final value estimates as follows: $1,590,000 for year 2000 and $1,550,000 for year 2001.

Cross-examination was performed by CBOE's Attorney Ares Dalianis for tax year 2001. The following points were elicited on cross-examination. First, the appraiser, Mr. Ryan, did not make an interior inspection of the property; rather, his associate Thomas Grogan, State of Illinois General Real Estate Appraiser, made the interior inspection. Both Grogan and Ryan signed the appraisals. Second, a definition of deferred maintenance from the Dictionary of Real Estate Appraisal, Fourth Edition, was entered into evidence as Intervenor Exhibit A. That definition is stated as follows:

> "deferred maintenance. Curable, physical deterioration that should be corrected immediately, although work has not commenced; denotes the need for immediate expenditures, but does not necessarily suggest inadequate maintenance in the past." The Dictionary of Real Estate Appraisal, Fourth Edition, by the Appraisal Institute.

Third, the witness was led through those items of recommended expenditures as listed by the Lender's Architectural report, which is part of the taxpayer's appraisal for both years. A cumulative total of the first five years from the 2001 report lists a cost to cure of $1,581,390. Generally, that amount includes all kitchen and bathroom fixtures and appliances. However, many of these items were recommended as not needing replacement for as long as 15-20 years into the future although such replacements would begin in year one. In summation, the witness testified that of the 13 items recommended for total replacement that only two, kitchen cabinets and kitchen counters, require total replacement in the first five years.

The board's attorney conducted a limited cross-examination of the witness for both tax years 2000 and 2001. The only questions asked by the board elicited that the witness did not personally inspect the subject property. The board's attorney adopted, for tax year 2000, all the questions asked by the intervenor's attorney for year 2001. As noted previously, Intervenor CBOE is not a party for tax year 2000.

On re-direct examination, Ryan testified that the HUD agent, CIC, had determined that a number of items were in need of repair in order to bring the property into compliance with HUD and achieve market rents. Specifically, those were items that the appraiser included in his deductions for deferred maintenance in the amount of $1,581,390 for each year. At this point, and after re-direct examination, the witness was excused.

The appellant's evidence also included financial statements for the subject property titled "Financial Statements HUD Project No. 071-35369 Pullman Wheelworks Associates I." The document was dated December 31, 2002. The document outlined balance sheets, including profit and loss statements, statements of cash flows, changes in partners' equity (deficit), and reports on compliance with the HUD program. The Certified Public Accountant, Kenneth W. Bryant, found the project to be in compliance with all applicable standards for such a property. Noticeable in the report were the following items: Net Fixed Assets, including real estate: $4,919,759; Current Liabilities $432,360; Long-Term Liabilities $11,576,989; and a current Partners' Deficit <$4,379,578>. This final amount was up from a Partners' Deficit of <$4,042,424> at the beginning of year 2002.

Following Mr. Ryan's testimony, the CBOE presented its witness, Mr. Neil Renzi, MAI. Mr. Renzi was accepted by the PTAB as an expert in the field of real estate appraisal. This witness was introduced as a rebuttal witness presented to testify to the appraisal methodology utilized in Mr. Ryan's deferred maintenance deduction. Mr. Renzi testified that deferred maintenance, unless repaired, prevents the property from operating under normal conditions and needs to be repaired immediately due to either disrepair or is a functional problem with the real estate. In the event that such maintenance is not undertaken that does not mean that it is not deferred maintenance, but rather may be indicative of poor management, the witness testified. Deferred maintenance costs should be deducted from the final opinion of value, Renzi testified. However, once an item is cured it should not be taken as a subsequent deduction in future years. Items should not be considered ongoing expenses after the repairs are performed, the witness testified.

On cross-examination, attorney Reilly asked the witness if deferred items not taken in one year can be used in a second year as a deduction from valuation. The witness responded affirmatively.

However, the witness further testified that it is inappropriate to use the same items in both years, since that would be double-counting. The witness also testified that deferred maintenance not cured in year one may be more costly in year two and a further deduction may be required from the property's value if the same items existed in year two and were not cured in year one. However, it would still be a deduction from the stabilized value, as long as the deferred maintenance had not been performed, the witness testified. A hypothetical was presented to the witness. The witness testified that at multiple points in time if an item of deferred maintenance was not cured it is still a deduction from the stabilized value for each point in time.

Still, the witness testified that if such maintenance was not cured in year one and was still present in year two, if might be evidence of poor management. Yet, when presented with another similar hypothetical, the witness testified that if part of the deferred maintenance was done in one year and half in the second year that amount of deferred maintenance which was remedied in the first year would not be deductible it from the final value for year two.

After Mr. Renzi's testimony, the intervenors submitted a number of documents to the PTAB. First, the case previously referenced as Kankakee County Board of Review v. Property Tax Appeal Board, supra, was submitted, along with the case Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428, 256 N.E.2d 428 (1970). The intervenor also submitted cases that referenced deferred maintenance from the jurisdictions of Minnesota and Oregon, since, the intervenor elaborated, the courts of Illinois are silent on this issue of deferred maintenance.

The board of review presented its "Board of Review Notes on Appeal." The board of review's assessed value for the subject is $1,079,098, which translates into a market value of $3,269,993 using the Cook County Real Property Assessment Classification Ordinance level of 33% for class 3 property, such as the subject, for the years 2000 and 2001. Also, the board submitted a review report of the appellant's appraisal supporting the current assessment for the subject of $1,079,098 for both years. The review report attached seven suggested comparable sales to support its conclusion.

The board submitted the Cook County Real Property Assessment Classification Ordinance. Said ordinance provides an assessment level of 33% for Class 3 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.

Connelly, an Illinois State Certified General Real Estate Appraiser, authored the review report submitted by the board of review. The report was dated March 28, 2002. The author of the board of review's report was not tendered as a witness to provide testimony and be cross-examined about his report. The board did not present any other witness.

In closing, the taxpayer's attorney argued that the Property Tax Code and the Illinois Supreme Court require that subsidized housing properties must be valued per the contract in place on the subject after the implementation of the subject's current M2M program. Accordingly, Mr. Ryan used proper methodology to value the subject under the terms of the M2M program. Moreover, Mr. Ryan used proper methodology to value the property as a post-rehab property using the rents in place that HUD required post-rehab. Therefore, it is only appropriate to deduct the costs of rehab prior to the years it was done as items of deferred maintenance. This, the taxpayer argued, is in keeping with the Illinois Supreme Court mandate in Kankakee County Board of Review, supra.

In closing CBOE argued that this case is an "outrage" because the property owners have "driven the property into the ground." Now, they argued, the property owners come to the PTAB to obtain a refund for their mismanagement. The tenants that occupy this type of property are representative of society's most needy citizens, the intervenor argued, and, based upon the condition of the property, the owners have not provided proper care for society's most vulnerable citizens.

CBOE elaborated on the repairs which were a part of the $766,250. These items included demolition of a health club that was in complete disrepair, replacing fire doors, entry doors where the security doors did not work, installation of smoke detectors, installation of fire extinguishers, repair balconies, ceilings, and decking, upgrade lighting, and provide window and shade replacement. These are items that should have been repaired in the ordinary course of business, the intervenor argued, and cannot be classified as deferred maintenance.

Kankakee County Board of Review, supra, the CBOE argued, is misinterpreted by the taxpayer. The case stands for the proposition that by looking at the subsidies that are available for these types of properties and, after considering the rents available in the market, it is then necessary to apply those market findings to the subsidy. CBOE argues that the taxpayer's appraiser should not have taken a deduction for items of deferred maintenance.

CBOE went on to argue that the $2.4 million figure used by the taxpayer's appraiser is not deferred maintenance, as defined. Rather, such a figure can only refer to items in need of immediate repair. Examples include broken windows or HVAC units that are broken or items that are totally physically worn out. These are items that need immediate repair for the building to function properly. CBOE argues that the items used by Ryan as deferred maintenance, and those items that Ryan is claiming as required by the HUD contract, were items that were not required to be repaired immediately, but rather were repaired in some instances by up to 20 years from the date at issue.

Mr. Renzi's testimony of deferred maintenance, CBOE argues, are items that must be repaired immediately. If one waits to repair such items that is indicative of incompetent management. CBOE goes onto argue that in this case you may have something worse than incompetent management, rather, you may have negligent management. According to CBOE, the taxpayer should not be rewarded for its mismanagement of the subject property.

Lastly, in closing, the county's attorney argued for confirmation of the current assessments for both years 2000 and 2001 based upon the following: that the taxpayer's appraisal does not properly present the true meaning of deferred maintenance; that the items referenced by the taxpayer's appraisal can take up to 20 years to cure and are not deferred maintenance; that it is to the benefit of the taxpayer not to conduct any repairs since the costs of the repairs can continually be deducted from the value of the subject; that to continually take this deduction from the property's value would achieve an absurd result. Based upon this argument, the county requested that the appellant not be given any assessment relief and that the assessment values remain as currently established by the board of review.

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 taxpayer argues that the subject property's market value is not accurately reflected in its assessed valuation. When market value is the basis of an appeal to the PTAB, 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, 1042, 780 N. E. 2d 691, 695, 269 Ill.Dec.219, 223 (3rd Dist. 2002). 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.

As previously stated, the issue on appeal is whether or not the taxpayer's appraiser utilized proper methodology when he employed a deduction for deferred maintenance, and if so, was the proper amount deducted. The fee simple market value for the subject, prior to deduction, was stipulated to by the parties. Those figures are $3,400,000 for tax year 2000 and $3,900,000 for tax year 2001.

The PTAB finds that the only evidence of the property's market value is the appraisal reports authored by Mr. Ryan. The board of review's evidence in support of the current assessment consists of several comparable properties and seven lines on a memo which appear to be an "analysis." It is certainly not an appraisal document. Moreover, the board did not produce any witnesses at the time of the hearing to support either this report's findings or to testify in support of the current assessment. The intervernor, CBOE, similarly, did not produce any independent valuation witnesses or any evidence in the form of an appraisal. Rather, the CBOE included in its submissions a "brief and evidence in support of intervention" wherein the intervenor adopts the board of review's comparable sales data and "other evidence." While the intervenor did produce a witness that witness was presented in rebuttal solely to determine if the taxpayer's appraisal methodology was sound when considering deferred maintenance.

Real property must be valued at its fair cash value and the Property Tax Code defines fair cash value as "the amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." 35 ILCS 200/1-150.

Furthermore, the Cook County Classification Ordinance further defines market value as the value a property would bring at a voluntary sale. That definition is in keeping with the holding of the Illinois Supreme Court as follows: "fair cash value is synonymous with fair market value and is defined as the price a willing buyer would pay a willing seller for the subject property, there being no collusion and neither party being under any compulsion." Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970).

Similarly, that defines the issue in this case. That is to say the issue is: What would a willing buyer pay for Pullman Wheelworks Associates I, a 210-unit apartment complex under contract for subsidized housing with the HUD, as of January 1, 2000 and, similarly, as of January 1, 2001?

In keeping with Springfield Marine Bank, supra, and as is the case here, market value must be determined. Market value is defined in Ryan's appraisal as follows:

> "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> 1. Buyer and seller are typically motivated;
> 2. Both parties are well informed or well advised, and acting in what they considered their best interests;
> 3. A reasonable time is allowed for exposure in the open market;
> 4. Payment is made in terms of cash in U.S dollars or in terms of financial arrangements comparable thereto; and
> 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale."
>
> Uniform Standards of Professional Practice, 2003 edition.

Regarding condition number 5, above, the taxpayer's appraiser employed a jurisdictional exception from customary appraisal practice and used the following case for guidance when valuing the subject property: <u>Kankakee County Board of Review v. Property Tax Appeal Board</u>, 131 Ill.2d. 1 (1989) wherein the Illinois Supreme Court held that: "(1) subsidies were to be considered in valuing property; (2) considering subsidies in assessing fair market value did not violate constitutional guarantee of uniformity of taxation; and (3) considering subsidies would not result in double taxation." <u>Kankakee County Board of Review</u>, *supra* at 1. The court goes on to state:

> "Factors such as the transferability of the subsidy contract, the remaining term of the contract and restrictions on the amount of return on capital investment would certainly affect the value of the property. A valuation approach which considers the subsidy income, but does not consider the negative aspects of a subsidy

> agreement upon the earning capacity of subsidized property, would be inappropriate." Id. at 16-17.

The taxpayer's appraiser determined that in order to properly value the subject as of the dates at issue one must determine the fee simple stabilized value, less deferred maintenance, plus the after mortgage cash flows, by utilizing facts with the M2M program completely in place and then further discount that figure to the lien date for the years 2000 and 2001. The PTAB finds that reasoning applicable to the present case and in keeping with the Illinois Supreme Court's holding in Kankakee County Board of Review, supra. The PTAB finds that Ryan properly employed this valuation approach in his methodology.

Deferred maintenance are repairs and similar improvements that normally would have been made to a property but were not made to the property in question, thus increasing the amount of its depreciation. Glossary for Property Appraisal and Assessment, International Association of Assessing Officers, 1977, p. 40. Curable physical deterioration, also known as deferred maintenance, applies to items in need of immediate repair on the effective date of the appraisal. Examples include broken windows, a broken or inoperable HVAC system, carpet needing immediate replacement, a hole in an interior partion, or a cracked lavatory. The item must be replaced or repaired for the building to function as it should. Deferred maintenance is measured as the cost to cure the item or to restore it to new or reasonably new condition. The Appraisal of Real Estate, 12th Ed., The Appraisal Institute, 2001, p. 398.

In the present case, a number of items needed to be considered. First, there exists an expenditure of $766,250 in order to bring the property into compliance with the City of Chicago's zoning ordinances. That figure includes the demolition of a health club in need of complete removal. Other items that were addressed in this amount were several health, security and safety concerns. Since this amount covers mandatory items of compliance with the municipality, and items of health and safety, in spite of its classification as an immediate expenditure, the PTAB finds this amount is not deductible as deferred maintenance.

Next, the remaining items as outlined in the Physical Needs Over the Term of the taxpayer's appraisal report, Exhibit "D" attached and made a part of both appraisals, outline the costs over a five-year period beginning with year 1. This amount results in a figure of $1,581,390, as outlined in taxpayer's appraisal. The intervenor produced an exhibit for tax year 2001 that showed a number of these items were not even begun to be repaired during the years in question. However, the intervenor's exhibit is not dispositive of whether or not the item can be classified as "deferred maintenance."

For example, a taxpayer might not be able to afford the cash output at the present time. Here, the taxpayers took out a separate $2.5 million mortgage for the sole purpose of dealing with the subject's deferred maintenance. Additionally, the subject property is running $10 million in debt service. The mere fact that certain items are not repaired immediately does not necessarily mean that such items cannot be classified as deferred maintenance, as the board of review and the intervenor would suggest.

Moreover, such items that need repair and/or replacement would most certainly result in a reduction of the sales price that a willing buyer would pay a willing seller, as outlined in those definitions intrinsic to a property's market value, as discussed herein in this decision. To think otherwise would be to simply ignore the obvious. Furthermore, even the intervenor's witness, Neil Renzi, MAI, suggested that items not repaired in one year may be compounded and cost more to repair in following years. Therefore, understandably, the deductions for deferred maintenance may actually increase from one year to the next.

Under the current HUD program the owners cannot use the excess cash flow. Rather, they must apply any excess cash flow to repairs. Additionally, they must continue payments on the outstanding mortgages of $10 million. These limitations seem to account for the fact that the items of deferred maintenance cannot be immediately repaired.

Still, in keeping with the requirements of the HUD M2M program, the property must be rehabbed by the owners. This added expense must be undertaken by the taxpayer as required by HUD's contract with the property owner. To further exacerbate the situation the rents do not cover the debt service, including operating expenses and the deferred maintenance to bring the subject up to HUD standards.

There exists, as suggested by the taxpayer's appraiser during testimony, that in a number of these types of HUD programs the owners eventually choose not to put any more money into these HUD projects and, subsequently, said properties are foreclosed upon wherein the HUD loses its entire investment. The appraiser for the taxpayers had previously testified to his extensive knowledge of such HUD programs and their viability. In this case, that viability appears to be a major concern for HUD.

In reaching its conclusion, the PTAB reviewed the record and the testimony before it. For tax year 2000, only the taxpayer submitted an appraisal. The valuation as provide by the taxpayer was stipulated to by the parties. For tax year 2000, the board of review did not supply any evidence or testimony to rebut the findings of the appraisal report. Rather, the board of review supplied a limited report with no analysis. Furthermore, since no witness was presented by the board, its evidence is given little weight.

For the year 2001, the PTAB once again reviewed the testimony and the record before it. Again, only the taxpayers submitted evidence in support of valuation. For tax year 2001, the evidence of the board of review remained the same as in 2000 in that no evidence or testimony was presented to rebut the taxpayer's findings. As such, the findings of the board are given little weight.

For tax year 2001, in which the intervenor, CBOE, was a party the intervenor's evidence included the testimony of appraiser Neil Renzi, a brief and evidence in support of intervention, exhibits, and case law submissions. Both the interveners' brief in support of intervention and case law submissions have been discussed in detail, herein, and support the appraiser's findings. The case law from other jurisdictions in inapplicable to the present case, as the PTAB finds more than adequate guidance in order to determine the value the subject property based upon opinions from the courts of Illinois and the definitions provided within this decision.

While Neil Renzi, in his testimony, and in response to a number of questions testified that to utilize the same deductions in one year to the next is double-counting that answer must be taken in the context of his testimony. At the time of examination and cross-examination, the witness was given a number of hypothetical situations during which he requested clarification to properly determine the question posed. As the examinations continued and based upon the witness' responses, the following conclusions can be made. The PTAB finds that if the repairs are done in one year that same deduction cannot be taken in the next. This is the only explanation that can be arrived at as consistent with Renzi's "double-counting" theory and the testimony given.

However, if repairs are not made in year one a deduction may be taken the following year. Moreover, that deduction may be more than the amount taken in the year prior due to compounding. The lack of repairs to the items of deferred maintenance would likely cause to costs to cure be increased. This conclusion is based upon Renzi's testimony that if one were to take a point in time in which items of maintenance were not repaired and another point in time in which the same items were not yet repaired, a deduction may be allowed for each point in time, even possibly allowing for a larger reduction in the subsequent year. Such a matter may be evidence of poor management, but it does not preclude it from being deferred maintenance, by any definition given. Renzi's testimony is in keeping with the findings of the Ryan report.

In order to reach a determination of value, in keeping with the definitions of valuation for such a property as outlined herein, and using the Illinois Supreme Court's guidance in such matters, the PTAB must determine what a willing buyer would pay a willing seller for the subject property as of January 1, 2000 and as of January 1, 2001. Such valuation must take into account the condition of the property at the time of the sale. As previously determined, the items of maintenance not performed as of either date in question are properly deducted from the amount that a willing buyer would pay a willing seller. As suggested in the exhibit submitted by the intervenor from The Dictionary of Real Estate Appraisal, it is recommended that items should be corrected immediately; it is not a moral imperative. In accordance with such a determination, the PTAB finds that those items not yet repaired are items of deferred maintenance.

Therefore, the PTAB finds that the items of repair as outlined in the taxpayer's appraisal report's Exhibit D are deductible as items of deferred maintenance from the fair market value of the subject property as presented below.

Therefore, for tax year 2000, the PTAB finds as follows:

1. That the fee simple value prior to deductions, as stipulated by the parties, is $3,400,000;
2. That the amount of $766,500 for remedial repairs relative to municipal code violations, health and safety issues are not deductible from the fee simple valuation stipulated to in #1;
3. That the amount of $1,581,390, properly itemized for items of deferred maintenance, is deductible from the fee simple value of the subject property, as stipulated in #1;
4. That the after mortgage cash flow of $534,256 is properly added to the fee simple valuation prior to deduction; and,
5. That the PTAB finds the subject property's market value as of January 1, 2000 is $2,352,866. Using the Cook County Classification Ordinance and applying the

proper percentage of 33% for class 3 property such as the subject yields an assessment of $776,446 for the subject property as of January 1, 2000.

For the tax year 2001, the PTAB finds as follows:

1. That the fee simple value prior to deductions, as stipulated by the parties, is $3,900,000;
2. That the amount of $766,250 for remedial repairs relative to municipal code violations, health and safety issues are not deductible from the fee simple valuation in number #1;
3. That the amount of $1,581,390 properly itemized as items of deferred maintenance, is deductible from the fee simple value of the subject property as stipulated in #1.
4. That there exists no after mortgage cash flow for the year 2001; and,
5. That the PTAB finds the subject property's fee simple market value as of January 1, 2001 is $2,318,610. Using the Cook County Classification Ordinance and applying the proper percentage of 33% for class 3 property such as the subject yields an assessment of $765,141 for the subject property as of January 1, 2001.

Therefore, considering the evidence and the testimony presented, the PTAB finds that the appellant has met its burden of proof by a preponderance of the evidence that the subject property is over assessed for both years at issue.

The assessment for year 2000 is $1,079,098 which yields a market value of $3,269,993. The PTAB finds that the subject's correct market value as of January 1, 2000 is $2,352,866. Applying the Cook County Real Property Classification Ordinance level of 33% of the subject's market value, the PTAB further finds the subject's correct assessment is $776,446. Therefore, a reduction in the subject's assessment for year 2000 is proper.

Similarly, the assessment for year 2001 is $1,079,089 which yields a market value of $3,269,993 applying the ordinance level of assessment. The PTAB finds that the subject's correct market value as of January 1, 2001 is $2,318,610. Applying the Cook County Real Property Classification Ordinance level of 33% to the subject's market value, the PTAB further finds the subject's correct assessment is $765,141. Therefore, a reduction in the subject's assessment for year 2001 is proper. Accordingly, a reduction in the subject property's assessed values for both years 2000 and 2001 is warranted.

APPELLANT:	**Saks, Inc.**
DOCKET NUMBER:	**99-25136.001-C-3 and 00-21178.001-C-3**
DATE DECIDED:	**September, 2007**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a three-level, masonry, commercial retail facility with one level below grade used as a single-tenant, anchor store in the Old Orchard Mall. The building contains 104,553 square feet of gross floor area constructed in 1978.

Additionally, the appellant requested an amendment to the initial pleadings withdrawing the median level of assessment issue and proceeding solely on the issue of valuation. Therefore, the appellant's requested assessment would be the same for both appeal years at issue. There being no objection from the intervenors, the PTAB granted appellant's request.

As to the merits of this appeal, the appellant argued that the fair market value of the subject is not accurately reflected in its assessed value as the basis for this appeal.

As to this argument, the appellant's pleadings included a copy of a full, narrative appraisal. The appraiser, John Mundie, testified that he holds the designations of Member of the Appraisal Institute (hereinafter MAI) since 1979 and Certified General Real Estate Appraiser in the State of Illinois. He further testified that he has been an appraiser for 31 years and has completed over 100 appraisals of properties similar to the subject.

He was offered as an expert in appraisal theory and practice without any objection from the intervenors and was accepted as such at hearing. The Mundie appraisal addressed the three traditional approaches to value, while espousing an estimated market value of $4,750,000 for both tax years at issue.

He testified that he undertook an interior and exterior inspection of the subject. As to the land size, Mundie indicated that the subject's actual land size or pad size was 45,303 square feet of area, while its assumed size with parking area was 315,000 square feet. He testified that a typical purchaser of this type of property would be interested in the ancillary, long-term parking around the store; therefore, in this appraiser's opinion the purchaser would pay the same amount as they would for a property with a typical land-to-building ratio. Therefore, he used a more standard land-to-building ratio of 3.0:1 applicable to anchor tenants in estimating an assumed land size for this subject of 315,000 square feet. He further stated that in his experience this land-to-building ratio was expected for an anchor department store.

He described the subject property as improved with a three-level, masonry, commercial retail facility with one level below grade that was constructed in 1978. The structure was used as a single-tenant, anchor department store in a super-regional shopping mall. The subject contains a total gross floor area of 104,553 square feet. He stated that the building had an effective age of 17 years due to upgrades over the years.

As to the highest and best use analysis, Mundie testified that the property's highest and best use as if vacant was its present use as a commercial, retail structure, while its best use as improved was its current use as an anchor-type, commercial retail facility. Moreover, he stated that his highest and best use analysis would not vary when applied to the subject's pad site.
The Mundie appraisal addressed the three traditional approaches to value in developing the subject's market value estimate. The cost approach reflected a value of $4,890,000, rounded; the income approach reflected a value of $4,750,000, rounded; and the sales comparison approach indicated a value of $4,705,000, rounded. In reconciling these approaches to value, Mundie placed main reliance on both the income and sales comparison approaches to reflect his final value of $4,750,000 for the subject.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site. Mundie used four suggested land sales that ranged in size from six acres to 11.56 acres and in price from $5.15 to $8.01 per square foot. After adjustments, he estimated the land value at $8.50 per square foot and applied that to the subject's "assumed" land size indicating a land value of $2,680,000.

Using the Marshall Swift Valuation Service, Mundie estimated a reproduction cost new of a Category class C building of $8,686,263, or $83.00 per square foot. He testified that he chose a reproduction cost over a replacement cost because by using the replacement cost you assume that there is no functional deficiencies. With an economic life of 45 years, physical depreciation was at 40% with economic obsolescence at 10%. Functional obsolescence was estimated at 25% due to the subject's large size, a below grade floor level, and a floor plan spanning three levels that is atypical of an anchor store in the national marketplace. The appraiser testified that the below grade level was merely glorified storage space that was enclosed without a distinct entrance. He also stated that he is unaware of any anchor stores currently being built with enclosed, below grade square footage. Mundie concluded that 75% depreciation was appropriate for the subject, resulting in a depreciated value for the improvements of $2,209,066. Adding the land value resulted in a final value estimate under this approach of $4,889,066.

The next developed approach was the income approach. Mundie analyzed four leases structured on a percentage of gross sales incorporated into the rent clauses. These properties ranged: in age from 7 to 39 years; in size from 102,564 to 155,500 square feet; and in rental rates from $2.03 to $4.90 per square foot.

In stabilizing the subject's gross sales he used data from 1995 through 1998 indicating a range from $157.98 to $218.27 per square foot. For the subject, Mundie chose $210.00 per square foot while applying that to the gross floor area of 104,533 square feet to indicate a gross sales projection of $21,955,000, rounded. In support of this estimate, he also referred to the Urban Land Institute's 1997 "Dollars & Cents of Shopping Centers" publication; specifically the analytical table entitled U.S. Super Regional Shopping Centers: Summary of Information on Department Stores. Super-regional Centers are generally classified as those which contain at least three major anchor tenants each having a gross floor area in excess of 100,000 square feet with a total mall area of approximately 1,000,000 square feet. Mundie stated that the subject's mall meets this criteria and contains five anchor tenants with 1,600,000 square feet of area. The data reflected a median of $164 in sales per square foot for national chain stores. Reviewing the data in totality, the appraiser chose 2.25% of gross sales as a derivation of rental income for the subject. Potential gross income was estimated at $493,988 or $4.75 per square foot less a vacancy and collection loss of 3% to indicate an effective net annual income of $479,168. Subtracting expenses including management expenses at 2.5% as well as reserves for replacement resulted in a stabilized net annual income of $451,506. Mundie used two methods to estimate a capitalization rate for the subject of 9.5%. Capitalizing the subject's annual income produced a value estimate under the income approach of $4,750,000, rounded.

Under the sales comparison approach, Mundie utilized five suggested comparables that are anchor tenants from national retailers located in super-regional malls, all of which were unencumbered with any type of lease agreement. The properties sold from January, 1993, through July, 1998, for prices that ranged from $1,500,000 to $6,000,000, or from $12.27 to $33.90 per square foot before adjustments. The improvements ranged: in lot size from 266,761 to 639,025 square feet; in building size from 76,069 to 209,355; and in age from 2 to 25 years. The appraiser testified that none of the properties were pad sites and that typically, anchor tenants are not located on a pad site. He also testified that the sale data was confirmed by public records as well as in speaking to one of the parties involved in each sale.

Mundie further testified that minimal weight was accorded to sale #1 due to the recent nature of the sale, but stated that this was a negotiated sale representative of market value. As to sale #2, he stated that he had personally been in the store prior to its sale and that the building was in good condition. As to sale #3 and #5, he testified that both buildings had been vacant for a significant number of years prior to each sale. However, he stated that just because a property is vacant does not mean that a sale is under duress. Moreover, he testified that the buildings in sale #1 through #4 contain 2-story structures that are easily accessible to the public; therefore, adjustments were made to account for the fact that the subject's improvement contained three floors with one floor located below grade without access from above.

After making qualitative adjustments for age, sale time, location, size and condition, Mundie considered a unit value of $45.00 per square foot to be appropriate for the subject indicating a value estimate of $4,705,000, rounded.

In reconciling the three approaches to value, Mundie accorded minimal weight to the cost approach due to the subject's age. In contrast, considerable weight was accorded the income and sales comparison approaches. Therefore, he testified that his market value estimate for the subject of $4,750,000 is applicable to both the 1999 and 2000 tax years at issue for the market for this type of property had not changed during that time period.

The board of review timely submitted "Board of Review Notes on Appeal" wherein the subject's final assessment of $2,558,607 was disclosed indicating a market value of $6,733,176. The evidence includes a cover memorandum and market analysis prepared by Nancy McLinden submitted with an effective date of January 1, 1998 and a market value of $6,800,000. The analysis provided limited data and explanation while addressing two of the three traditional approaches to value. Moreover, Ms. McLinden was not presented to testify regarding the methodology used therein.

McLinden's report described the subject site as improved with a 20-year old, average, three-story, retail building containing 104,553 square feet. In the income approach, she used four improved rental properties all improved with either one-story or two-story, commercial retail buildings. They ranged: in age from 6 to 16 years; in building size from 100,600 to 153,368 square feet; and in rental range from $4.72 to $5.40 per square foot. McLinden further indicated that the typical percentage rental of gross sales is 3%. She estimated a rental value for the subject of $7.00 per square foot for a potential gross income of $731,871. Less a vacancy and collection loss of 2% resulted in an effective gross income of $717,233. A 2% miscellaneous charge to cover expenses during a vacancy as well as an additional expense of $0.10 per square foot were deducted indicating a net operating income of $706,778. A capitalization rate of 9.7% was applied to develop a value of $7,285,000, rounded.

McLinden used four suggested sale comparables built from 1968 to 1995. They sold from July, 1992, through October, 1995, for prices ranging from $6,000,000 to $15,000,000, or from $28.66 to $81.15 per square foot. They ranged in size from 127,086 to 209,325 square feet and in land-to-building ratio from 2.81:1 to 4.65:1. In estimating the subject's value, she chose $65.00 per square foot or $6,795,945 as of the assessment date.

The intervenors, Niles Township High School District #217 and Skokie School District #68, submitted a brief argument, copies of the Gloudemans and Dornfest report relating to sales ratio studies, as well as portions of a Byrnes appraisal with an effective date of January 1, 1998. Lastly, the intervenors submitted a full, narrative appraisal prepared by Kevin Byrnes with an effective date of January 1, 1999. In testifying solely with regards to the 1999 report, Byrnes stated that he is accorded the designation of associate member of the Appraisal Institute as well as that of a Certified General Real Estate Appraiser. He stated that he has been an appraiser for 15 years and has appraised approximately 12 anchor department stores. Byrnes was offered as an expert in appraisal theory and practice without any objection from the appellant and was accepted as such at hearing.
He testified that he undertook a personal inspection of the interior and exterior of the subject as well as other anchor properties in the subject's mall. He stated that he researched the market data, some of which had been completed for other projects, which was then applied to the subject's appraisal.

As to the land size, Byrnes indicated that the subject's actual land size or pad size was 45,303 square feet of area and that the subject's improvement contained 104,553 square feet of building area. He described the subject property as improved with a two-story, masonry, retail facility with a basement that was constructed in 1978. The structure is used as a single-tenant, anchor department store in a super-regional shopping mall. The Byrnes appraisal indicated that an adjusted land size of 261,383 square feet be applicable to the subject. The appraisal stated that the subject's current land size was basically a pad site that was significantly below the land-to-building ratios of similar anchor stores as well as the improved comparable sales that ranged from 2.81:1 to 3.76:1.

Moreover, Byrnes testified that two other anchor stores located in the subject's mall contain a land-to-building ratio of either 2.36:1 or 2.53:1. Therefore, he stated that in order to compare the subject property with similarly improved sales of anchor department stores; it was his opinion that an appropriate land-to-building ratio for the subject was 2.50:1. Byrnes indicated that this opinion was further supported by the fact that the subject's owner through various arrangements with the mall owner, was accorded additional land so that the developer's parcel was available to the subject. He explained that the owner of the pad site actually had additional utility that was off-site in the parking and access areas of the developer's parcel.

Furthermore, Byrnes testified that in estimating a value under the cost approach, he utilized that actual real estate in existence of 45,303 square feet, rather than taking into consideration all the rights of use that the ownership of the subject's parcel had within its shopping mall. He stated that for the purposes of undertaking the sales comparison approach in his report, he then considered a larger land-to-building ratio of 261,000 square feet for purposes of comparison with other improved properties.

As to the highest and best use analysis, Byrnes testified that the property's highest and best use as if vacant was its present use as a commercial, retail structure, while its best use as improved was its current use as an anchor-type, commercial retail location. He also indicated that he considered the adjusted square footage of approximately 261,383 in considering the subject's highest and best use. He stated that the building had an effective age of 16 years.

The Byrnes appraisal addressed the three traditional approaches to value in developing the subject's market value estimate. The cost approach reflected a value of $7,320,000, rounded; the income approach reflected a value of $6,840,000, rounded; while the sales comparison approach indicated a value of $6,800,000, rounded. In reconciling these approaches to value, Byrnes placed main reliance on both the income and sales comparison approaches to reflect his final value of $6,800,000 for the subject.

The first method developed was the cost approach. The initial step under the cost approach was to estimate the value of the site. Byrnes used five suggested land sales that ranged in size from 102,000 to 980,971 square feet and in price from $7.00 to $16.67 per square foot. After adjustments, Byrnes estimated the subject's land value at $15 per square foot and applied that to the subject's pad size of 45,303 square feet to indicate a land value of $680,000.

Under examination, Byrnes stated that if he had utilized the assumed land size for the subject that he applied in his highest and best use analysis as well as in the sales comparison approach, he believes that he would have adjusted downward the land comparables; thereby, altering his estimate of value.

Using the Marshall Swift Valuation Service, Byrnes estimated a replacement cost new of a Category Class C building of good quality at $10,245,000, or $98.00 per square foot. With an economic life of 40 years, total depreciation was estimated at 40%, while an entrepreneurial profit at 8% or $819,600 was added to reflect an estimated value of the building improvements at $6,638,760. Adding the land value resulted in a final value estimate under this approach of $7,318,760. Byrnes testified that entrepreneurial profit is a cost-related factor that says that if you are looking at the motivation for an investor to develop a property to its own use or to sell to another, that there is going to be some level of profit for that entrepreneur.

The next developed approach was the income approach. Byrnes analyzed four leases of one-story or two-story, anchor department stores located in regional malls with triple net rental rates from $4.90 to $7.38 per square foot of building area. These properties ranged in age from eight to 11 years and in size from 83,354 to 118,526 square feet. Byrnes testified that rental #1 and #2 were both located in the same, enclosed mall. He also stated that these two rentals were the only anchors located in this mall; that they were both new structures; that the mall location was inferior to the subject; that the lease rates began in 1989 prior to the real estate crash in the early 1990's; that rental #1 was larger than the subject; and that construction costs for these new stores could have been added to the lease if they were over market costs. However, Byrnes indicated that he did not verify these costs with a party to the leases. Furthermore, he testified that he relied on these two rentals most heavily in determining the rental rate for the subject. As to rental #3, he testified: that this location was inferior to the subject's; that the store was newer and smaller than the subject; and the rental was only a one-story structure, while he stated that rental #4 was in a less densely populated and unestablished area than the subject property.

In support of this analysis, he also referred to the Urban Land Institute's 1997 "Dollars & Cents of Shopping Centers" publication, specifically the analytical table for Super-regional Centers that reflected a median rental rate of $2.84 per square foot with the top 10% indicating rates of $5.05 and $8.38. He stated that the subject's shopping mall is considered a high-end shopping center; and therefore, a rental rate of $6.75 per square foot or $705,733 was estimated as the subject's potential gross income. A vacancy and collection loss of 2% was used as well as management fees at 3% and reserves for replacement at $0.30 per square foot, resulting in a net operating income of $649,958.

Byrnes used several methods to estimate a capitalization rate for the subject, including reference to the Korpacz Real Estate Survey for institutional grade national regional shopping center properties with overall rates from 7% to 10.50% as well as using improved sales comparables #1 and #2 that reflected overall rates from 8.18% to 10.60%. Based upon his analysis, Byrnes selected an overall rate for the subject of 9.5%. Capitalizing the subject's annual income produced a value estimate under the income approach of $6,842,105. Under examination, Byrnes testified that he considered the gross sales of the subject, but did not include this data within the parameters of his report.

Under the sales comparison approach, Byrnes utilized five suggested comparables that are anchor tenants. The properties sold from July, 1992, through August, 1998, for prices that ranged from $4,000,000 to $88,000,000, or from $28.66 to $89.53 per square foot before adjustments. The improvements ranged: in land-to-building ratio from 2.81:1 to 3.76:1; in building size from 103,043 to 982,964; and in age from 11 to 25 years.

Specifically as to sale #1, the appraisal indicated that this was a purchase in 1997 by the current tenant with a pre-determined price included within the 1989 lease agreement. Moreover, Byrnes testified that pursuant to a conversation with a member of the Carson Pirie Scott real estate department, this lease agreement identified an escalating, exercise price for the property's sale for each year of the lease. However, he stated that the sale was not negotiated on the open market. Furthermore, he testified that in verifying a sale, he would ordinarily speak with the parties involved in the sale as well as review transfer declarations, warranty deeds, or other recorded instruments.

Under examination, Byrnes was shown the real estate transfer declaration for sale #1, identified for the record as Hearing Exhibit #1, but could not recall reviewing the document when verifying and analyzing this sale.

As to sale #2, the appraisal reflected that this was a bulk sale of six stores located in Illinois and Indiana that were leased before and after said sale. Byrnes testified that this sale was a leased fee sale with the total package valued at $88,000,000 in contrast to a fee simple valuation applicable to the subject. He also indicated that he was personally familiar with the property types and locations, while indicating that the subject's location was superior to these six locations. He stated that the six properties were all larger than the subject and located in regional malls that were older than the subject's mall; however, he testified that he did not make comparisons on an individual basis to the subject property. He stated that he considered the overall transaction in comparison to the subject, rather than utilizing each individual sale's characteristics.

As to sale #3, a sale that is also utilized by the appellant's appraiser, Byrnes testified that he spoke with the regional real estate representatives for the seller shortly after this sale occurred in 1996. The seller's representative had indicated that this location was the oldest and least profitable location in the Chicago area and that the property was considered excess real estate when sold. However, Byrnes testified that this sale was a negotiated purchase and an arm's length transaction. Byrnes indicated that he believed that this sale was inferior to the subject because of the disclosed motivation of the seller as well as the inferior location.

As to sale #4 which is used by all three parties to this appeal, Byrnes testified that this location had been vacant for several years prior to its sales and that thereafter, the buyer gutted the store and renovated that entire building. He stated that he believed the renovation was so extensive as to have an affect on the sale price. Nevertheless, Byrnes testified that this sale was also an arm's length transaction. As to sale #5 which is also utilized by the board of review, Byrnes stated that this property was located in a large, regional shopping center, but that the building was younger and larger than the subject property. He stated that this property sold in 1988 for approximately $38.00 per square foot, while it sold again in 1992 for approximately $5.00 per square foot. He also stated that the later time period was not a good time period for commercial real estate sales. He also indicated that he made no adjustment for this store being a two-story structure, while the subject is a three-story structure.

After making adjustments, Byrnes considered improved sale #1 and #5 to be most similar to the subject reflecting a range from $45.00 to $75.00 per square foot. He estimated a unit value of $65.00 per square foot to be appropriate for the subject indicating a value estimate of $6,800,000, rounded.

Under examination, Byrnes stated that he had made no adjustments to the properties on the basis of the number of stories present in each structure even though the improved comparables contained two-story buildings. He asserted that he did not believe there was functional obsolescence by virtue of containing three floors. However, he could only recall one anchor department store being built containing three stories.

In reconciling the three approaches to value, Byrnes also accorded minimal weight to the cost approach due to the subject's age. In contrast, primary weight was accorded the income and sales comparison approaches. Therefore, he testified that his market value estimate for the subject of $6,800,000 is applicable to both the 1999 and 2000 tax years at issue. Moreover, he testified that there was no variation in market value for the subject from 1998 to 1999, as well.

In the appellant's rebuttal, Mr. Mundie was recalled as a witness. Mundie testified that in his cost approach he did not apply entrepreneurial profit because this profit is expected by an entrepreneur when compiling a real estate venture. However, in the subject's case, he stated that most anchor department stores are owner occupied as in the subject's case; and therefore, these properties are not going to reflect any profit of this type because they are specifically built for the user who then occupies the building. Moreover, he stated that such a profit would not be garnered until the property was sold.

As to the issue of functional obsolescence, Mundie further testified that the anchor store market prefers a two-story floor plan for it allows retailers greater flexibility in terms of presenting their specific product. When a third level is added, it requires rearranging a different section of the property which becomes an added issue when the third level is below grade. He referred to Mr. Byrnes testimony regarding a Nordstrom store in Oak Brook that contained three-levels. Mundie testified that the distinguishing characteristics in this store is that all three levels are above grade with the lowest level opening onto a grade on one side and opening onto parking decks on two other sides. Whereas, he stated that this is not the case with the subject property with a lower level, below grade and no outside access.

As to the improved sales utilized in the Byrnes appraisal specifically sale #1, Mundie testified that he is personally familiar with that sale having spoken to the same individual as Byrnes as well as a review of this property's deed and real estate transfer declaration. Mundie stated that Mr. Ruby indicated that the sale was strictly a business decision to exercise a right to acquire the property through a lease option. Mundie further indicated that his review of the transfer declaration reflected that the acquisition price was neither based upon market value nor appraised value of the property, both of which were confirmed during his conversation with Mr. Ruby. He testified further that these reasons formed the rationale for Mundie not using this sale in his appraisal report.

In support of this testimony, Mundie referred to Hearing Exhibit #1 in identifying that this was the document that he previously reviewed in his verification process to obtain improved sales comparables. He indicated that the document stated that the above consideration or sale price of $7,750,000 was not derived from a market value or appraisal value for the property.
As to Byrnes sale #2, Mundie testified that he was personally familiar with this sale having spoken with representatives to the transaction and that this was a bulk transaction involving six properties sold for investment purposes. In Mundie's opinion, this was not an arm's length transaction. Moreover, he testified that he has personally appraised some of these stores prior to this bulk sale. Lastly, Mundie testified that in his opinion as an MAI, the appropriate method to determine the market rental of an anchor department store like the subject property is based upon gross sale projections of the related subject.

Mundie was further examined using Intervenor's Hearing Exhibit #2 which is a two-page document from The Appraisal of Real Estate, 12th Edition. Lengthy examination arose regarding Mundie's application of the age-life method in determining depreciation for his cost approach to value. As to this exhibit, Mundie credibly testified that his application was not contradictory for there are subsequent pages, specifically the sections on the cost approach, which he adhered to in completing his valuation of the subject's functional obsolescence. Mundie also reiterated his prior testimony regarding functional obsolescence and its application to this subject property.

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 market value is the basis of an appeal to the PTAB, 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, 1042, 780 N.E.2d 691, 695, 269 Ill.Dec.219, 223 (3rd Dist. 2002). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparables properties, or recent construction costs of the subject property. *86 Ill. Admin. Code 1910.65(c).* Having considered the evidence and testimony presented, the PTAB concludes that the appellant has met this burden and that a reduction is warranted.

In determining the fair market value of the subject property for tax years 1999 and 2000 representing one triennial assessment period, the PTAB closely examined the parties' three appraisal reports.

The PTAB accords little weight to the board of review's evidence for the report lacked the preparer's testimony to explain the methodology used therein. Moreover, the PTAB found: missing analytical components, limited property data, limited analysis, and usage of inferior properties.

That having been said, the PTAB then looks to the remaining evidence that comprises the Mundie appraisal and testimony submitted by the appellant as well as the Byrnes appraisal and testimony submitted by the two intervenors. The PTAB finds that the best evidence of market value was the appraisal and supporting testimony submitted by the appellant estimating the subject's market value at $4,750,000. The PTAB accorded less weight to the intervenors' appraisal due to a disparity: in the appraiser's experience relating to anchor department stores; in the inconsistent application of subject's land size; in the absence of adjustments for and/or obsolescence to the subject's unusual configuration; of the lack of development of the subject's gross sales; as well as the usage of weaker rental comparables and improved sales comparables.

The PTAB finds that there was some commonality in the experts' treatment of the subject property. Both parties' experts testified that there was no variation in the subject's market value between tax years 1999 and 2000, the two years at issue in this appeal. Furthermore, both experts considered the subject property as an anchor department store to be rightfully accorded an assumed land size due to accepted industry standards rather than analysis of a pad size. However, application of this assumed size was utilized consistently by the appellant's expert, while the intervenors' expert varied this application within his report. The intervenors' appraiser utilized the subject's assumed land size in his highest and best use analysis and sales comparison approach to value, while in contrast he used the subject's pad size in the cost and income approaches. This inconsistent application lessens its credibility.

Moreover, both experts: accorded less weight to the cost approach to value due to the subject's age; accorded a similar effective age to the subject; and utilized the same capitalization rate in the income approach to value. Therefore, the distinction lies in the rental and improved sales comparables.

As to the income approach, the appellant's appraisal reflects the usage of both rental comparables from the marketplace, but also the stabilized gross sales projection for the subject. Moreover, the appellant's rental comparables were not pad sites, but included contractual rents with a percentage of gross sales, and were properties of similar age, tenant size, and location in super-regional malls. In contrast, the intervenors' expert testified even though such a projection was appropriate for owner-occupied, anchor department stores, that he considered the subject's sales without developing such a gross sales projection or making reference to such in his appraisal. Moreover, the intervenors' rental comparables were weaker due to: inclusion in enclosed malls and/or regional malls, newer construction, larger size, and/or style referencing a one-story or two-story construction.

As to the sales comparison approaches to value, several improved sales were used by either two or three of the parties in this appeal. These sales were arm's length transactions with purchase prices reflective of the market, whereas the improved sale #1 and #2 solely used by the intervenors were not reflective of negotiated purchase prices for the aforementioned reasons listed herein. Of the five improved sales used by the appellant's expert, two of those properties were also utilized by the intervenors' expert with one also employed in the board of review's evidence.

On the basis of this analysis, the PTAB further finds that the subject had a fair market value of $4,750,000 as of the 1999 and 2000 assessment dates at issue. Since fair market value has been established, the Cook County Real Property Assessment Classification Ordinance level for class 5a of 38% for commercial properties shall be applied. (86 Ill.Adm. Code 1910.50(c)(3).

APPELLANT:	**Sears Store #2840**[1]
DOCKET NUMBER:	**04-00644.001-C-3**
DATE DECIDED:	**April, 2007**
COUNTY:	**McLean**
RESULT:	**Reduction**

The subject property consists of a one-story anchor department store containing approximately 117,234 square feet of building area that is located in Bloomington, Illinois. The building is situated on a 9.19-acre or 400,316 square foot site. The building was originally built in 1966 of reinforced concrete and steel construction. Ceiling heights ranged from 12 to 16 feet. The interior is mostly open with minor partitioning for restrooms, fitting rooms, offices, and customer service. The building contains heating and cooling systems with sprinkler fire protection. The subject property also contains an auto service center that has a basement used for storage. A parking lot surrounds the building. Other site improvements include landscaping and exterior security lighting. The subject has a land to building ratio of 3.41:1.

The appellant appeared before the Property Tax Appeal Board arguing that the fair market value of the subject property is not accurately reflected in its assessed valuation. In support of this claim, the appellant submitted an appraisal prepared by J. Edward Salisbury. Salisbury was called as the appellant's expert valuation witness. Salisbury is a state licensed appraiser and has been appraising real estate for approximately 30 years. Salisbury is also a Certified Illinois Assessing Officer from the Illinois Property Assessment Institute and a Certified Assessment Evaluator awarded by the Illinois Association of Assessing Officers. Salisbury testified he has appraised 15 retail shopping centers and 10 to 12 anchor department stores contained within regional shopping malls. Salisbury was accepted as an expert valuation witness to provide opinion testimony before the Board without objection.

Using two of the three traditional approaches to value, Salisbury estimated a fair market value for the subject property of $3,800,000 as of January 1, 2004. The appraisal was marked as Appellant's Exhibit 1.

The appraiser first provided testimony in connection with the appraisal methodology and technique. Salisbury testified he prepared a limited appraisal and invoked departure provisions that are allowed by the Uniform Standards of Professional Appraisal Practice. Per an agreement with the client, the appraiser did not perform the cost approach to value. Therefore, Standard Rules 1-4b, 1, 2, and 3 were departed from as required by the Uniform Standards of Professional Appraisal Practice. Salisbury opined it was not necessary to develop a cost approach in order to achieve a credible opinion of the subject's fair market value. Salisbury testified regarding the difficulty in calculating depreciation under the cost approach. In addition, Salisbury testified case law in Illinois indicates that if there are adequate sales, the sales are to be given significant weight in determining fair market value. In support of this proposition, the appraiser and report cited Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989).

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[1] Affirmed on appeal, Bloomington Public Schools, Dist. No. 87 et al. v. Illinois Property Tax Appeal Board et al., 379 Ill.App.3d 387, 886 N.E.2d 362 (4th Dist. 2008).

After completing the appraisal report, Salisbury issued corrections to pages 13, 38, 39, and 40 of the report. (Appellant's Exhibit 1-A). The corrections were made because at the time the report was prepared, the appraiser thought Sears owned the property. However, he determined Sears was actually a tenant of the property. Salisbury testified he read a newspaper article indicating Eastland Mall, in which the subject is situated, might be sold and the Sears property was part of the potential sale. As a result, Salisbury procured information regarding the original contract regarding the leases and amendments to the lease that existed. Salisbury testified the subject's lease was re-written in 1996 because Sears wanted to update and expand the structure. The expansion and updating was completed in 1996. The new lease commenced in 1996 and continues through 2011, with provisions for three, five-year extensions. After reviewing the new lease, Salisbury concluded the new lease supported the value and market rent that he determined under the income approach.

Salisbury next testified he appraised the property in fee simple interest. He completed an interior and exterior inspection of the property on March 29, 2005. The demographic analysis of the subject area was also discussed. The make-up of the mall was also discussed. Salisbury testified the Eastland Mall has five anchor stores, including a new Famous-Barr that is independently owned. Salisbury testified he contacted May Department Stores and Federated Department Stores and spoke with some employees. The intervenor objected to Salisbury's testimony as hearsay. The Board hereby overrules the objection as hearsay.

Salisbury next testified the subject property is in average to good condition. The subject property's highest and best use as vacant and as improved was next discussed. As vacant, Salisbury concluded the subject's highest and best use was its current use as an anchor store for a regional shopping mall. As improved he also concluded the subject's highest and best use was its current use as an anchor store for a regional shopping mall. Factors Salisbury considered were the demographics of the subject area and neighborhood, the location of the site, and its proximity, being the location of the mall itself. Salisbury next gave testimony regarding the subject's as-is use of an anchor store and its relationship with the entire mall, particularly the symbiotic relationship with the in-line (interior) smaller stores.

Salisbury next testified as to his interpretation regarding "transitional use" as it applies to appraisal practice. Salisbury testified, for example, some farmland may have the potential to have a higher and better use where it could be developed into residential or commercial property. He further explained a transitional use applies to a property that is either at the end of its economic life or is close to the end of its economic life; therefore, the property would have a different highest and best use.

He further explained there are many factors that would contribute to the conclusion that a particular property is in a transitional use, predominately if the surrounding uses are changing. For example, if an industrial property is surrounded by commercial properties, it may be in a transitional use because at some point the industrial property may be no longer viable and would change to a commercial use. He did not consider the subject to be in a transitional use.

Salisbury next testified that subsequent to the date of the appraisal, he became aware the subject transferred ownership in 2005. His research concluded the entire mall, including the subject, along with other multiple parcels, which included vacant land parcels and secondary buildings associated with the mall were sold to an investment group. These parcels either adjoin or are separated by a street from the mall. His research also indicated the transaction involved three separate shopping malls located throughout the United States. He also testified the transfer occurred with multiple leases in place. Salisbury called the arm's-length nature of the transfer "questionable", primarily because it involved the sale of three separate shopping malls and there was some form of allocation. Salisbury testified he could not obtain enough information to conclude the (subject's) allocated sale price was proper. Salisbury concluded the 2005 transfer was not indicative of the subject's value as of January 1, 2004 because the sale was for the entire mall, not just the subject Sears property.

Salisbury also testified the income produced or potential income is what drives sales, even in the sales comparison approach. He further indicated the in-line (interior) smaller stores generate the majority of the rental income for the entire mall. To support his testimony, Salisbury testified the subject property is leased for approximately $3.50 per square foot of building area, similar to most anchor stores in the country, whereas in-line (interior) stores are typically leased for prices ranging from $15 to $30 per square foot of building area. As a result, Salisbury concluded when analyzing a sale of an entire mall, a value cannot be allocated to a single property or anchor store. Salisbury was not aware of any plans to transfer or market the subject property for redevelopment.

As to the scope of the appraisal, Salisbury testified he considered all three traditional approaches to value. However, he decided not to perform the cost approach because it would not be probative of the subject's market value primarily due to estimating depreciation. Furthermore, as noted earlier per an agreement with the client, Salisbury did not perform the cost approach to value.

Under the income approach to value, the appraiser testified he obtained as many leases as he could find of anchor stores for shopping malls. He identified eight suggested rental comparables. The rental comparables are located in the Illinois cities of Alton, Normal, Moline, and St. Charles. In addition, two comparables are located in the Indiana communities of Anderson and Greenwood while one comparable is located in Lansing, Michigan. Four of the rental comparables are Sears stores while the other rental comparables are operated as Hobby Lobby, Carson Pirie Scott, Famous Barr, or Younkers department stores. These properties have 15 to 20 year leases in place that commenced from 1990 to 2003. The leased areas range in size from 79,216 to 161,630 square feet of building area and were constructed from 1965 to 1997. Lease or rental rates range from $3.06 to $4.33 per square foot of building area on a net basis. The appraiser also testified the subject property was leased for prices ranging from $3.38 to $3.52 per square foot of building area from 2002 to 2004 on a net basis. The escalation of the subject's rental rate was based on the subject's gross sales for that particular year.

In comparison to market rents outside the Bloomington market, Salisbury consulted Dollars and Cents of Shopping Centers, 2004 edition, a nationally recognized publication that provides typical income and expense data for shopping mall properties. The appraisal indicated the subject property had gross sales from 2000 to 2004 ranging from $16,642,849 to $18,579,438 or from $141.96 to $158.48 per square foot of building area, with the last three-year and five-year average gross sales of $17,248,938 and $17,692,597 or $147.13 and $150.92 per square foot of building area, respectively. In comparison, the national average of gross sales for Sears' anchor stores from 2000 to 2004 ranged from $168.00 to $194.00 per square foot of building area, with last three-year and five-year average gross sales of $172.00 and $179.20 per square foot of building area, respectively. The median size of national chain anchor stores in the United States Super Regional Shopping Centers was reported to be 115,793 square feet of building. The median sales volume on a per square foot basis was $153.15 for the United States and $146.08 per square foot of building area for the Midwestern United States. Median market rent was $2.85 per square foot of building area for the United States and $2.45 per square foot of building area for the Midwestern United States.

Based on the aforementioned analysis, Salisbury concluded the subject property's gross sales fall below Sears store's national average and the median volume of gross sales for national chain anchor stores. He also concluded both median rental rates of $2.45 and $2.85 per square foot of building area are below the lease rates established by the rental comparables, which ranged from $3.06 to $4.33 per square foot of building area. Based on the national average, the appraiser concluded the subject should be leased for $2.94 per square foot of building area. However, Salisbury noted the Bloomington-Normal area provides a strong economic climate for the retail industry. Based on the income data, the appraiser concluded the subject property has a market rent rate of $3.50 per square foot of building area on a net basis. Therefore, Salisbury calculated the subject property has a potential gross annual income of $410,319.

Based on rental surveys and conversations with leasing agents, vacancy allowance was estimated to be 5% or $20,516, resulting in an effective gross income of $389,803. Expenses (management and reserves for replacements) were estimated to be 10% or $19,490, resulting in a net operating income of $370,313. The appraiser considered various sources to determine an overall capitalization rate to be applied to the subject's net operating income. In the First Quarter, 2004 edition of Valuation Insights and Perspectives, national market indictors for the fourth quarter of 2003 indicated capitalization rates for shopping malls from 6.5% to 9.5% with an average of 8.11%. The discount rate for the fourth quarter provided an internal rate of return ranging from 8.5% to 12%, with an average of 10.46%. Thus, Salisbury concluded a proper capitalization rate was 9.75%. As a further check of the capitalization rate, the appraiser employed the Band of Investments technique of capitalization, resulting in overall capitalization rates ranging from 9.68% to 9.8%. Capitalizing the subject’s net operating income of $370,313 by a rate of 9.75%, the appraiser concluded the subject property has a fair market value under the income approach of $3,800,000, rounded.

The appraiser next discussed the sales comparison approach to value. The appraiser testified he tried to identify as many sales of anchor stores on a regional and national basis as possible. The comparables selected by the appraiser consist of five suggested sales and one sale offering. Two sales are located in Springfield and Lombard, Illinois; two sales are located in Lansing and Dearborn, Michigan; one sale is located in Columbus, Ohio; and the sale offering was located in Matteson, Illinois. The comparables consist of part one and part two-story or two-story masonry retail buildings that were used as anchor department stores. The buildings were constructed from 1952 to 1989. Comparable 1 was renovated after its sales and comparable listing 1 was renovated in 1998. The second level of comparable 2 was leased at the time of the sale to a furniture store. The buildings range in size from 94,341 to 254,720 square feet of building area situated on sites ranging in size from 1.3 to 17.34 acres. The appraisal indicates the buildings are in average to good condition. Land to building ratios ranged from .28:1 to 3.64:1. Five comparables sold for prices ranging from $2,750,000 to $9,000,000 or from $25.45 to $35.22 per square foot of building area including land. The transactions occurred between January 2000 and September 2003. One comparable was listed for sale at $4,000,000 or $22.99 per square foot of building area including land. Salisbury testified he verified the terms and conditions of the sales through either buyers, sellers, mall owners, and/or a developer.

The appraiser performed qualitative (+, -, or =) adjustments to the comparables for differences when compared to the subject. Elements considered in judging the overall similarity and making adjustments for differences to the subject are property rights conveyed, financing terms, condition of sale, market conditions, location, and physical characteristics. Based on the aforementioned adjustment factors, four of the five sales (2 through 5) received overall upward adjustments while comparable 1 received an overall equal adjustment. Listing comparable 1 received an overall upward adjustment. Based on these adjustments, the appraiser concluded the subject property has a market value including land of $32.00 per square foot of building area or $3,750,000, rounded.

In reconciling the valuation methods, the appraiser placed most weight and emphasis on the sales comparison approach to value and some weight on the income approach to value. As a result, the appraiser concluded the subject property has a fair market value of $3,800,000 as of January 1, 2004.

Finally, Salisbury testified he reviewed and analyzed land assessments for properties within Eastland Mall, where the subject is located. He testified the land assessments for the individual properties seemed consistent depending on size.

Under cross-examination, the appraiser testified the value of an anchor store is less on a per square foot basis than smaller in-line stores. For example, Salisbury agreed that if the smaller in-line stores were theoretically located within the Sears structure, the value would be higher. However, Salisbury testified that the higher value may not necessarily be achieved because the value would be driven by the rental rates. Salisbury agreed he placed most weight on the sales comparison approach. Salisbury agreed that the value of the entire mall is comprised of the anchor stores and the in-line stores based on their income generating capacity; mall owners are willing and usually give discounted rents to anchor stores to get them into the mall; and if the mall property did not have enough available land space to attract an anchor store, it (the mall) would not be able to bring in the anchor store. Salisbury testified mall owners are very cognizant of the number of anchor and in-line stores and their relationship to one another. In this context, Salisbury agreed the owner of a mall might pay more for an entire parcel than someone would be willing to buy just an anchor store.

Salisbury testified on several occasions he did not prepare a cost approach to value or a land value analysis of the subject. As detailed in the report, Salisbury testified he considered and analyzed the cost approach, but found it contributed no meaningful conclusion in determining fair market value. Salisbury next discussed the reasoning for not performing the cost approach to value in the context of the subject's highest and best use as both vacant and improved: (1) there were adequate comparable sales of anchor stores to determine the subject's fair market value; (2) the difficulty to calculate depreciation for older buildings; (3) the land value as vacant is not as probative in value of improved properties like anchor stores nationwide that are available for sale.

Salisbury also testified Eastland Mall is a super-regional mall that services a large area. The subject's direct neighborhood along Veterans Parkway was also discussed. The appraiser agreed there is relatively no vacancy along Veterans Parkway. Salisbury reiterated the subject's highest and best use is a retail anchor store for the mall. Salisbury also agreed Eastland Mall is the only regional mall in McLean County. The witness also agreed that there have been some commercial buildings torn down and redeveloped for alternative commercial uses along Veterans Parkway. He did not consider the subject's neighborhood to be in transition because it is almost fully developed as commercial property and will continue to be used as commercial property. The appraiser did not consider a hotel property that was redeveloped into a retail use to be transitional. Salisbury also testified the use of the word "multi-family" in his report was a typographical error. Salisbury agreed it is possible from time to time that property along the Veterans Parkway neighborhood or in any other neighborhood could be redeveloped for a variety of uses.

Salisbury testified owners' decisions over time dictate whether a neighborhood will change in terms of location, expansion and use. He agreed it is possible that from time to time various properties will be redeveloped along Veterans Parkway for a variety of uses. Salisbury was aware State Farm Insurance Company has its national headquarters located approximately one mile from the subject and a hospital is located to the south of the subject. Salisbury testified there are a number of "big box" stores in the area, but they are not mall type anchor stores. The appraiser cited the names of numerous large chain stores that are located in close proximity to the subject as well as the Central Illinois Regional Airport. Highway and interstate access as well as high traffic counts for the subject were discussed in detail. Salisbury testified the subject building is in good condition and the appraisal report indicates the subject building compares well to newer commercial buildings in the neighborhood as development continues. The other anchor stores within the mall were next discussed as well as the surrounding business uses.

Salisbury agreed his report did not analyze retail sales in the Bloomington-Normal area. He noted retail sales information is closely guarded and this information is not readily available. Salisbury testified he did not have the information to compare retail sales within anchor stores of Eastland Mall to anchor stores in other malls. He reiterated it would be meaningless to compare retail sales of properties in Bloomington-Normal that are not mall type anchor stores. He agreed there is little vacancy along Veterans Parkway and no vacant big box stores in the subject's neighborhood. Salisbury was also aware Sears renovated the subject building in 1996 for approximately $1,000,000.

Salisbury was questioned on numerous occasions regarding the subject's highest and best use as vacant and improved. Salisbury testified it was not necessary to value the subject's land as vacant to determine its highest and best use as vacant. Salisbury testified determining highest and best use requires the review of several criteria, including the potential use and current use. Salisbury agreed nowhere in the report did he compare the use of Sears to other types of uses. Salisbury also testified he used four tests to determine the subject's highest and best use as vacant and improved which are: legally permissible; physically possible; financially feasible; and whether it is maximum productive. Salisbury agreed pages 31 and 32 of his report indicate the subject's site as vacant is legally permissible; physically possible; financially feasible; but did not address whether the subject site as vacant meets maximum productivity. Salisbury testified he was not sure whether there could be some other uses of the subject's site and improvement.

Regardless, Salisbury opined the highest and best use of the site would be for a commercial retail use. Salisbury further testified it is highly doubtful the subject could be redeveloped with different properties and uses. He explained anchor stores in shopping malls require a specific amount of parking, and if redeveloped would eliminate parking. Salisbury agreed Famous-Barr and Kohl's were added to the mall over previous parking spaces. Salisbury also agreed it could be physically possible to redevelop the subject's structure into smaller multiple stores or a different anchor store or raze the super-structure and redevelop the entire nine acre parcel.

Using the appellant's appraiser's final value conclusion of $3,800,000 would result in a $9.49 per square foot land value for the subject's nine acre site, as if vacant. Salisbury testified he was aware that land sales along Veterans Parkway sold for more than $9.49 per square foot of land area. However, he was not familiar with the actual per square foot sale prices for vacant land. On page 33 of the appraisal, Salisbury concluded the value of the subject property as currently improved exceeds the value of the land if it were vacant. He explained that anchor stores in shopping malls, when they do sell, are sold to provide larger anchor stores to the mall. A viable anchor store is more valuable than the land as vacant. When anchor stores do sell, they are more valuable, not only to the parcel, but to the mall itself. With respect to redevelopment, Salisbury testified considerations must be taken in terms of the cost of demolition, the cost to repair the mall itself, and the cost to get agreements with all the other tenants to allow the construction of a new building.

With respect to the sales comparison approach, Salisbury testified the use of comparable sales outside Illinois were sufficient enough to disregard the cost approach. The Bloomington-Normal demographics were next discussed, specifically the employment information, which was sourced from the Illinois Department of Commerce and Community Affairs. It was undisputed that the Bloomington-Normal area has a strong economy with a growing retail industry. Salisbury agreed his report did not contain retail sales in the Bloomington-Normal area. The appraiser testified that in order to value the subject, comparable anchor stores should be utilized rather than dissimilar retail stores within the area.

Sale 1, a vacant Montgomery Ward anchor store, was purchased by May Company and then sold it back to the owners of White Oaks Mall in Springfield, Illinois. Salisbury further explained any anchor store, looking at a potential sale, would be assumed to be vacated so the new buyer could occupy the building. Salisbury agreed comparable sale 2 was a former Montgomery Ward store in Lombard, Illinois. Salisbury was not sure if the property was vacant at the time of sale, but a portion was leased to a furniture store, which subsequently failed in that location. Salisbury did not know if the structure was razed, but was informed this suggested comparable was redeveloped in some fashion. Salisbury also agreed Montgomery Ward was in bankruptcy at the time of sale. Salisbury testified he inspected comparable sale 3, but did not inspect comparable sale 4. Salisbury testified he thought comparable sale 4 was vacant at the time of sale. Salisbury opined comparable sale 5 was an arm's-length transaction although the township assessor did not consider this transaction to be of an arm's-length nature. One comparable had been vacant for at least two years prior to its sale. He also acknowledged this property (mall) had a considerable amount of vacancy at the time of sale, but the structure was similar to the subject and it was an anchor store.

The appraiser was cross-examined about the adjustments of the comparables. Salisbury testified he considered adjustments for location, but he did not specifically make location adjustments. He explained location becomes more difficult when dealing with regional malls, because most regional malls are located in metropolitan areas with higher population densities. He also agreed location could be a factor why some properties are vacant. He testified the comparable sales are located outside of McLean County and five of the six sales are larger in size than the subject.

Salisbury was cross-examined regarding his estimates for the subject's base rent, vacancy and collection loss, reserves for replacements, and the capitalization rate. Counsel pointed out three of the rental comparables were leased for more than Salisbury's final rental rate of $3.50 per square foot of building area. However, Salisbury testified he took into consideration numerous factors such as location and age in arriving at the subject's estimated market rent. Salisbury disagreed that a vacancy rate of 5% was high considering the subject is 100% occupied. Salisbury also acknowledged it was an error in the appraisal (page 45) indicating sufficient sales data was available to extract a capitalization rate. Salisbury again reiterated he did not believe the subject's land as vacant could be worth more than the $3,800,000 conclusion under the income approach.

The appraiser was next questioned about the sale of the entire Eastland Mall. Salisbury opined the sale was a leased fee transaction with other considerations rather than a fee simple transaction since the mall was occupied with multiple tenants with leases at the time of sale. Thus, the appraiser testified he would not be surprised if the entire mall sold for $155.83 per square foot of building area including land. He explained the Eastland Mall transaction was not just for a single anchor store. When comparing $15.00 to $30.00 per square foot market rents to $3.50 per square foot market rents, obviously any investor would pay more due to the higher rental rates.

Under redirect examination, the appraiser testified there is a natural balance that successful regional malls have between in-line stores and department stores (anchor stores). Salisbury opined the Sears store could not be redeveloped because Sears negotiated a long term lease in 1996 that continues through 2011. Additionally, the mall owners have no future plans for any type of redevelopment for Sears or the mall itself. Salisbury also testified any other use of the subject other than the continued use of an anchor store would be highly speculative.

Under questioning from the Hearing Officer, Salisbury testified a typical leased fee transaction involves purchasing the real estate and the lease that is in place, which is generally not considered an arm's-length transaction. He further explained leased fee transactions could be higher or lower than a fee simple transaction depending on the lease in place. For example, a property with high rents or above market rents with a long term lease in place would probably sell for higher than a fee simple transaction. In contrast, a property with lower lease rates or rental rates below market rental would most likely sell for less than a fee simple transaction. In addition, the creditworthiness of the lessee must be considered. Salisbury further testified it is not financially feasible for Sears to demolish and redevelop the site because they do not own the property. The owner could possibly redevelop, but the owner would probably have to pay a substantial amount of monetary compensation to Sears to buy out the long term lease.

The record reflects the subject property's final assessment as established by the McLean County Board of Review was $1,980,262, which reflects an estimated market value of $5,946,733 or $50.73 per square foot of building area including land using McLean County's 2004 three-year median level of assessments of 33.30%.

The board of review did not submit its "Board of Review Notes on Appeal" or any 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. Therefore, the board of review was previously found to be in default pursuant to Section 1910.69(a) of the Official Rules of the Property Tax Appeal Board.

The intervenor, Bloomington Public School District 87, offered an appraisal performed by Brian A. Finch, who holds a Member of the Appraisal Institute designation and is also a state licensed appraiser. Finch testified his appraisal practice is limited to non-residential property, focusing on investment grade property, medical office space, vacant land studies, and commercial and industrial properties. Finch testified he has appraised shopping malls and anchor stores in the past. Finch testified he prepared his report understanding its intended use was for a property tax assessment appeal that would likely go before the Illinois Property Tax Appeal Board. He further testified regarding his familiarity with the subject property and the Bloomington-Normal real estate market.

Finch testified he has appeared before the Property Tax Appeal Board previously in Peoria County. Finch does not have any experience as an assessor, board of review member or administrative hearing officer for ad valorem tax assessments. Finch has no law degree or legal training. In addition, he has not studied, is not familiar with, and has not even seen the provisions of the Property Tax Code regarding the procedures for valuing property for ad valorem tax purposes. Finch testified he did not know the definition of market value contained within the Property Tax Code. Finch also did not know the requirements of the Official Rules of the Property Tax Appeal Board. He has not been advised by the intervenor's counsel or any other attorney regarding Illinois courts' holdings with respect to the requirements for uniformity of assessments. Finch was also questioned regarding the status of the subject property for valuation purposes, status meaning date of value, ownership, vacant, occupied and leased. Finch testified he valued the subject property as an unencumbered fee simple interest as of January 1, 2004. After voir dire examination, appellant's counsel had no objection concerning Finch being tendered as an expert witness to provide valuation testimony in connection with the subject property. Using one of the three traditional approaches to value, the appraiser estimated a fair market value for the subject property of $5,700,000 or $48.62 per square foot of building area including land as of January 1, 2004, which is less than the value determined by the board of review.

The appraiser first provided testimony regarding the appraisal methodology. The appraiser described the subject area concerning nearby businesses such as office space, motels, restaurants, the Central Illinois Regional Airport, hospital, and highway access. Finch also discussed State Farm Insurance Company's worldwide headquarters' proximity in relation to the subject. During direct examination, the parties stipulated that the subject property is located in an excellent location along Veterans Parkway. The appraiser also testified regarding the excellent economic outlook and population growth in the Bloomington-Normal area. Finch further testified that there are a limited number of small vacant sites located along Veterans Parkway. He testified there are no large vacant buildings along Veterans Parkway.

Finch discussed his analysis of the subject's highest and best use (appraisal pages 19 to 22) as vacant and improved, which is central to the valuation process. Finch opined land valuation is directly related to the highest and best use analysis. Therefore, Finch researched the Bloomington-Normal market for sales of comparable land to determine an estimate of value. Finch reiterated the necessity to prepare a land value analysis because it is the only way to properly determine highest and best use. Finch agreed if the subject's land was worth more vacant than its current use, it would alter his opinion of value.

The appraiser identified seven suggested land sales to estimate the subject's land value as vacant. The comparables are located in Bloomington and Normal, Illinois. A map contained in the appraisal depicted the proximate location of the suggested comparables in relation to the subject. Three comparables are located along Veterans Parkway. Four comparables have B-3 zoning, two comparables have C-1 zoning, and one comparable has C-3 zoning like the subject. The comparable land sales range in size from 50,825 to 404,672 square feet of land area and sold from January 2002 to July 2005 for prices ranging from $498,863 to $4,249,807 or from $7.99 to $20.80 per square foot of land area.

The appraiser testified in connection with the adjustment process regarding the suggested land sales. Finch considered land sale 1, which is located one-half mile south of the subject, to be a benchmark transaction because one of the most sophisticated corporations in the world (State Farm Insurance) was the seller. Finch indicated this site has similar visibility as the subject and benefits from Eastland Mall traffic. The sale was verified by a real estate transfer declaration. The appraiser also opined this property is inferior to the subject because it is not part of the mall. He considered the transaction to be of an arm's-length nature. Finch testified the property was formerly improved with a budget class motel and restaurant that were converted for State Farm's use; however, State Farm demolished the structures in order to market the vacant land. Finch placed most weight on this sale.

Land sales 2 and 3 were portions of land sale 1. The buyer of land sale 1 subdivided that tract into four separate parcels. Land sale 3 was subsequently improved with a Krispy Kreme restaurant. Land sale 4 was located a few miles from the subject on a street parallel with good visibility from Veterans Parkway. This site was formerly improved with a Menard's store, which was demolished and redeveloped into a power center. The site is now improved with a Dick's Sporting Goods, Borders Books, World Market and a Sprint store. Land sale 4 was considered inferior to the subject. Thus, land sale 4 was adjusted upward for date of sale and its interior location from Veterans Parkway. Land sale 5 was located approximately one mile north of the subject and had no exposure to Veterans Parkway. The appraiser testified this parcel was smaller than the subject and had poor topography. This property was considered inferior to the subject in location, access and visibility. Land sales 6 and 7 were described as out-parcels acquired to expand Eastland Mall. They were located southwest and adjacent to Eastland Mall. Finch opined these properties are not comparable to the subject due to their smaller size, inferior visibility, and poor accessibility. Finch did not place much weight on either sale.

After considering the aforementioned adjustments to the comparables for differences to the subject, the appraiser estimated the subject's land value to be $14.00 per square foot of land area or $5,604,000, rounded.

Next, Finch concluded it was necessary to consider what the subject property might be worth in its present configuration as improved to determine whether the property as improved exceeded its underlying land value. Finch testified he relied on preliminary research and office files for sales of anchor stores or big box stores and a limited amount of rental data. He performed a very limited sales comparison and income approach as improved to get a rough indicator of value in comparison to his estimated land value as vacant. This limited analysis was contained in the addendum to the appraisal report. The limited income approach was contained in the highest and best use analysis (appraisal page 22). The appraiser did not testify regarding this information. Based on this analysis, Finch concluded the subject property as improved is worth considerably less than the land is worth as vacant. Finch opined the majority of value is attributed to the subject's land with minimal value attributed to the superstructure and other related improvements. In part of the highest and best use analysis, the economic life of the building was analyzed. Based on the sales and income data, Finch determined the subject building was at the end of its useful life.

Next, Finch prepared the cost approach to value. He testified he prepared the cost approach because it is typically demanded in matters relating to (real estate) assessment. The reproduction cost new of the improvements was estimated to be $10,192,861 utilizing the Marshall & Swift Valuation Service. Physical depreciation was estimated to be 77.30% or $7,879,351 based on the age/life or straight-line method of depreciation. Finch concluded the subject's superstructure has an actual age of 38 years with an economic life of 50 years resulting in a remaining economic life of 12 years. The service garage was estimated to have an economic life of 40 years. Functional obsolescence was estimated to be 18.91% or $1,927,925, resulting in accrued depreciation of 96.22% or $9,807,276. Thus, the subject's improvements were estimated to have a depreciated reproduction cost new of $385,585. Site improvements for parking, lighting, landscaping, sidewalks, curbing and signage were estimated to be $100,000, resulting in a depreciated reproduction cost new of $485,585. Adding the estimated land value of $5,604,000 resulted in a final value conclusion under the cost approach of $6,090,000, rounded.

In reconciliation, the appraiser concluded the subject property has a fair market value of $5,700,000. He testified the cost approach is somewhat useful in that it takes a look at accrued depreciation. The appraiser indicated there is some value to portions of the superstructure and perhaps related site improvements, but the cost approach lends credibility to the highest and best use analysis because of the depreciation estimate it provides, with most of the value attributed to land. Finch reiterated the highest and best use analysis is a very practical method and key foundation of valuing any property.

Finch also testified properties are redeveloped frequently, even anchor stores. He noted several areas of the mall that were redeveloped such as a former movie theatre, bank branch and car wash into retail businesses. The history of the mall's expansion and updating from 1999 to the present was also discussed. The appraiser testified the mall received approximately $28,000,000 in updating in 1999. The appraiser also discussed other examples of redevelopment along Veterans Parkway. Therefore, the appraiser agreed the mall was periodically changing in use. The appraiser also testified the entire mall, including the leased Sears building, sold subsequent to the completion of his report. Assuming the mall sold for $155.83 per square foot of building area including land, the appraiser testified the sale price supports an optimistic view of this site as being very valuable to the mall and valuable in general.

The limited sales comparison approach contained in the addendum of the Finch appraisal, for which little testimony was provided, is comprised of four sales of anchor stores. The sales were located in Lombard, Orland Park, Peoria, and Pekin, Illinois. Three sales were former Montgomery Ward stores and one sale was a Shopko. The buildings were constructed from 1968 to 1991; range in size from 88,970 to 254,720 square feet of building area; and were situated on sites containing from 11.50 to 21.84 acres of land. They sold from August 1999 to August 2004 for prices ranging from $2,100,000 to $9,000,000 or from $23.60 to $35.33 per square foot of building area including land. On page 21 of the appraisal report (highest and best use section), the appraiser recognized similar anchor store properties typically sell for prices from $25.00 to $35.00 per square foot of building area including land, suggesting a property value for the subject as improved in the range of $2,900,000 to $4,100,000. The appraiser indicated anchor stores sell for weaker prices due to vacancy and their availability to be put to the highest and best use; the stigmatization that must be overcome by new buyers due to the "branding" of the prior occupants by design features of the real estate; or the perception of obsolescence resulting from age and sometimes failure associated with a particular facility. The economic life of a big retail store is relatively short. The appraiser also opined it is difficult to attract a new user of an older building.

The limited income approach contained on page 22 of the appraisal report (highest and best use section) indicates Sears has a lease on the subject property through February 2011, and pays a fixed rent of $2.00 per square foot of building area or $245,916 annually on a triple net basis. The appraisal indicates the rent is not sufficient to cover the yield requirements of the land alone (8% of the land value is $448,320 annually, far more than the property is currently yielding, which lends more support that the current use is not the highest and best use). Based on a variety of rental data (not contained in the appraisal report), Finch opined it is unlikely the subject property would be rented for more than $4.00 per square foot of building area or $448,320 annually on a triple net basis. Deducting for a management fee and minor expenses of 5%, resulted in an annual estimated income of $471,916. Using a capitalization rate of 10.5%, the appraiser calculated a rough suggested value of $4,494,438 under the income approach. The capitalization rate was sourced by Real Estate Research Corporation Investment Survey, 4th quarter 2003.

Within the report, the appraiser stated both the income and sales comparison approaches indicated values well below the value of the land if vacant, which suggests that the highest and best use of the subject property is not its current use. The current use is a transitional use and will continue until such time as the improvements are either demolished or extensively re-built. The land value analysis indicates a much higher value for the (subject's) land as if vacant, which means that the present use, as improved, is no longer the highest and best use.

Under cross-examination, Finch agreed that in his summary of facts and conclusions in the appraisal, the subject is described as commercial vacant land, but the subject is comprised of more than land. The appraiser agreed the subject property is an improved anchor store and not a vacant retail development site. Finch also testified he performed a limited inspection of the subject property. The appraiser had no opinion if the subject's assessment was correct, but agreed his final value conclusion differed from the township assessor. Finch also testified he did a preliminary investigation regarding comparable sales and rentals within the limited scope of the appraisal. The scope of Finch's report did not check uniformity of assessments for surrounding properties and he had no opinion whether the subject property was uniformly assessed.

Finch next gave an opinion regarding prospective buyers of the subject. He opined a typical buyer for the subject property would be an owner occupier or an investor with an interest of redevelopment in some manner. Finch agreed the subject property has been in existence since 1966 with a 25,000 square foot addition built in 1997, with several renovations over the years. The appraiser also agreed Eastland Mall is one of the best, if not the best retail location in Bloomington due to factors such as good access and visibility. Finch agreed the subject's location is a good location for a Sears anchor store and the Bloomington-Normal community has a strong economy with steady population growth. Finch agreed the 1997 exterior facelift partially overcame the subject's dated appearance as detailed on page 16 of the appraisal. Finch also testified the 20% functional obsolescence amount within the cost approach was due to its unusual floor plan.

In contradiction to his appraisal report, Finch testified he had no knowledge that Sears signed a new lease in 1997; therefore that aspect of the appraisal process was disregarded. He testified someone, who he could not remember, informed him that Sears had a long term lease in place through 2011. Finch agreed his highest and best use determination is just opinion and not a provable fact, but is a fundamental premise on which he based his value conclusion. Even if the subject were to be redeveloped, Finch agreed the subject property would still be used for some type of retail business. The appraiser next went through several scenarios to support his determination that the subject's highest and best use is for redevelopment. His first choice would be to procure another anchor store to take its place. If unsuccessful in attracting a new anchor, it is possible a new occupant would use the footprint of the structure, but would likely modify and salvage as much of the structure as possible. However, Finch emphasized there would be a fair amount of demolition and perhaps some additions to the existing structure. The costs of demolition or additions were not considered within his report. Finch also agreed there is an impediment to redevelop the subject into something other than an anchor store primarily because the mall owner would be reluctant to eliminate a major anchor tenant and because of the difficulty to attract a new user of an old building.

The witness was next questioned if he would assume that a new anchor store, such as the Famous-Barr that was added to the mall in 1999, would pay what the land was worth. Finch testified that an anchor might not pay what the land was worth, but an investor would pay what the land was worth to build an anchor store or maybe another anchor store acquiring the property, both being real possibilities. However, the appraiser noted the first criterion an informed buyer analyzes is what the land is worth because that is the safety net from an investment standpoint. Finch also agreed his limited market analysis indicated anchor stores associated with malls sell for prices ranging from $25.00 to $35.00 per square foot of building area including land. However, the appraiser argued that when looking at sales as part of the highest and best use analysis, a value for the property as improved is only one aspect of value. He further testified land values are local in nature and sales of empty anchor stores located in other states and markets should not be relied upon. If valuing the subject property in its current configuration, Finch agreed the estimate of value would range from $2,900,000 to $4,100,000 on the basis of value as part of the highest and best use analysis.

Finch agreed he determined the current use of the subject will continue to be transitional use until such time as the improvements are either demolished or extensively rebuilt. The appraiser was next asked if the subject property could be demolished, extensively rebuilt and redeveloped when Sears leases the property through 2011. The appraiser responded by again indicating the lease was disregarded in his appraisal. He also stated he has not seen nor has any firsthand knowledge regarding the lease. After objection regarding the line of questioning by the intervenor, counsel for the appellant argued the purpose of his questioning was that any student of appraisal knows the possible use and legal use of a property is one of the steps in determining highest and best use. If private or public restrictions do not allow the property to be used for a particular use, it cannot be its highest and best use. The objection was overruled. Finch again testified he has not seen and has no first hand knowledge of the lease agreement.

Finch testified he has no knowledge of any immediate future plans the owners of Eastland Mall may have with respect to the subject property in terms of reconfiguration or redevelopment. Finch also conceded it is a judgment call in determining whether the subject property would be redeveloped in an evaluation of its highest and best use.

Comparable land sale 1 had its prior improvements demolished and redeveloped. Finch had no knowledge of the demolition cost to remove the debris from comparable sale 1. This sale was also divided into four parcels, which also comprised land sales 2 and 3 in the report. Land sale 2 was purchased for the development of a multi-tenant strip shopping center anchored by two food service establishments. Part of the development was speculative due to the fact no tenants for all of the rental units were procured. The appraiser testified this 1.5 acre site was useful as a comparable with proper adjustment although the subject site is over nine acres in size. Land sale 3 was improved with a donut shop subsequent to its sale. The owner of original land sale 1 retained the other two parcels, which were developed into a three building, multi-tenant retail shopping center known as Shops of Corporate Commons. These new buildings contained approximately 46,000 square feet of building area. A bank also purchased a portion of the southwest corner of this tract to construct a banking facility. Land sale 4 was about the same size as the subject site, but was also improved with an 118,000 square foot retail building that was built in 1991. As improved, comparable 4 sold for $3,700,000 or $31.34 per square foot of building area including land. The appraiser testified the buyer demolished the existing improvements sometime after its sale. Land sale 5, which contains 3.2 acres, was purchased to construct a multi-tenant shopping center that sold for $10.00 per square foot of land area. Land sales 6 and 7 contained 1.4 and 1.6 acres, respectively, but were purchased by the owners of Eastland Mall for expansion. They sold for $7.99 and $11.01 per square foot of land area. The appraiser also conceded land sale 7 had a building situated on the parcel at the time of sale. Finch agreed land sales 4 through 7 sold for prices ranging from $7.99 to $11.01 per square foot of land area.

Finch testified he performed limited sales comparison and income approaches for the subject property as improved as part of the highest and best use analysis. The general value conclusion under these approaches ranged from $2,900,000 to $4,494,438 at most. With respect to the income approach, the appraiser agreed he did not know how much Sears was paying in rent. He also testified the 10.5% capitalization rate used was a "ballpark" estimate. The appraiser also agreed in completing the appraisal he relied on many reasonable assumptions which were not warranted as being absolute or totally factual as well as less than perfect and incomplete. The appraiser also agreed he could make no guarantees about the future (of the subject) nor make determinations of future events which could impact value. The appraiser disagreed the assumptions relied upon in the appraisal were speculative. He testified the assumptions were consistent with market behavior. He argued land value and investment in real estate are forward looking, which is consistent with his value analysis and the mind-set of typical investors in the market. The appraiser also discussed some reconfiguration of the mall such as the cinema and car wash. He also agreed it is the normal operation of a large shopping mall to have various businesses moving in and out.

With respect to the cost approach, the appraiser agreed the value conclusion is unreliable, but should not be disregarded. He testified "you might not give a lot of weight to the conclusion because of the estimate of accrued depreciation. However, the majority of the cost approach is supported by very strong market evidence within the neighborhood, within the community. The bulk of the value of this property is in the land. The bulk of the value used in the cost approach is land value."

The next witness called on behalf of the intervenor was Mike Ireland, the Township Assessor for the City of Bloomington. The appellant's legal counsel stipulated to Ireland's qualifications to provide testimony for this appeal. At the intervenor's request, the township assessor analyzed the transaction regarding the transfer of ownership of the subject property in 2005. (Intervenor Exhibit 2). The analysis includes a list of several parcels including the subject and a Real Estate Transfer Declaration (PTAX-203) with attachments that was recorded on November 23, 2005. Line 1 of the declaration lists the subject parcel (21-02-126-002) as one of eight parcels involved in the transaction. Line 5 of the document lists the type of deed/trust document as controlling interest in a real estate entity. Line 7 indicates the subject property was advertised for sale or sold using a real estate agent. Lines 10b and 10c of the document were not marked, disclosing whether the transaction involved a sale between related individuals or corporate affiliates or a transfer of less than 100 percent interest. Line 11 did not list any amount for consideration in the transaction. As a result, the assessor testified a reader would believe the transaction was not between related individuals or corporations.

Page 2 of the document was signed by the sellers' representative or agent, but not the buyer. The seller's address was listed as Leawood, Kansas. The seller's signature was Jack N. Fingersh, Representative. The buyer's address and tax bill was to be mailed to Eastland Mall, LLC, Chattanooga, Tennessee. The name of the buyers and sellers were listed on the attachments. Page 3, PTAX-203-B identified the subject parcel's transaction as a controlling interest in a real estate entity. Line 11a listed the full actual consideration (in the transaction) of $79,030,000. Line 15 listed an outstanding mortgage amount to which the transferred property remains subject of $59,400,000. Page 4 was an attachment to PTAX-203-B and listed the legal descriptions for the eight parcels involved in the transaction, including the subject.

Page 5 is also an attachment to PTAX-203-B and is labeled Transfers of Controlling Interest in Eastland Mall, LLC. The property owner is listed as Eastland Mall, LLC, a Delaware limited liability company.

Interest in Property Owner prior to transfers of beneficial interest:

Sole Member: Eastland Member, LLC, an Illinois limited liability company.

Members of Eastland Member, LLC:

(1)	Eastland Holding I, LLC Members of Eastland Holding I, LLC: BFIP Associates, L.P. East Fing, L.L.C. Tolesa, LLC	68.4044%
(2)	CWB Associates, Inc., a Kansas corporation	0.4086%
(3)	FFC, Inc. a Kansas corporation	0.2615%
(4)	Blitt Management, Inc., a Kansas corporation	0.3716%
(5)	WF Partners, L.P., a Georgia limited partnership	1.1025%
(6)	Gerald M. White, not individually, but as Trustee U/I/T of Gerald M. White dated November 4, 1991	2.0625%
(7)	Linda White, not individually, but as Trustee of Linda White Revocable Trust U/I/T dated July 14, 1993	6.5751%
(8)	Sandra H. Fried, not individually, but as Trustee of Sandra H. Fried Trust U/I/T dated July 25, 1996	6.5751%
(9)	CFT Associates, L.L.C., a Missouri limited Liability company	4.6647%
(10)	James Copaken	2.4296%
(11)	Keith Copaken	2.4296%
(12)	Jon Copaken, not individually, but as Trustee U/I/T of Jon Copaken dated December 7, 2001	2.4296%
(13)	Nancy S. Wayne	.8692%
(14)	Orange County Community Foundation, a California not-for-profit corporation	.2898%
(15)	Tom Shapiro.2898%	
(16)	Elaine Flora .2898%	
(17)	Elaine Flora, not individually, but as Trustee of the Anne Koralchik Declaration of Trust dated August 24, 1990, as amended	0.5466%

Interest in Property Owner after transfers of beneficial interest:

Sole Member: Eastland Member, LLC, an Illinois limited liability company.

Members of Eastland Member, LLC:

(1)	Eastland Holding I, LLC Members of Eastland Holding I, LLC: CBL & Associates Management, Inc. CBL & Associates Limited Partnership	68.4044%
(2)–(17)	Eastland Holding II, LLC CBL & Associates Management, Inc. CBL & Associates Limited Partnership	31.5956%

Page 6 was identical to Page 3. Page 7 is titled Signature Page for PTAX-203-B, Eastland Mall. This document lists Transferees Receiving Controlling Interest:

CBL & Associates Limited Partnership, a Delaware limited partnership; by CBL Holdings I, Inc., its sole general partner. This part was signed by John N. Foy, Vice Chairman of the Board and Chief Financial Officer.

Eastland Holding II, LLC, an Illinois limited liability company; by: CBL & Associates Limited Partnership, its chief manager; by CBL Holdings I, Inc., its sole general partner. This part was also signed by John N. Foy, Vice Chairman of the Board and Chief Financial Officer.

Page 8 was another Real Estate Transfer Declaration (PTAX-203) with attachments that was simultaneously recorded on November 23, 2005. Lines 1 and 3 of the declaration list two parcels as parking lots. Line 5 lists the type of deed/trust document as "other" with an assignment of a ground lease. Line 7 indicates the parcels were not advertised for sale or sold using a real estate agent. Line 10p of the document indicates this transaction was a restructure of owner entity with the beneficial ownership remaining the same. Page 9 (Page 2 of second PTAX-203) lists the seller information as B-M-J Development, Limited Partnership of Leawood, Kansas; by FFC, Inc., General Partner and was signed by Jack N. Fingersh, President. The buyer information was listed as Eastland Mall, LLC, of Leawood, Kansas. The buyer's signature was also Jack N. Fingersh, Manager. Preparer information was listed as B-M-J Development, Limited Partnership of Leawood, Kansas; by FFC, Inc., General Partner and was again signed by Jack N. Fingersh, President.

With respect to Exhibit 2, the township assessor explained this analysis used the $79,030,000 transfer amount listed on the PTAX-203-B form and identified the occupants of the eight parcels transferred, inclusive of the subject. Although it was not clear if the two other parcels were included in this transaction, Ireland's analysis included the two additional parcels in his analysis of the transaction. These two parcels comprised a ground lease for parcel 21-02-103-012 and a Kohls store under parcel 21-02-103-013. As a result, Ireland's analysis included ten parcels and their assessed values on a per square foot basis for the 2005 assessment year compared to the $79,030,000 transfer price on a per square foot basis.

Two parcels were described as parking lots, one parcel was encumbered by a ground lease, and one property was simply described as "Medical Hills." They were reported to have 2005 assessments ranging from $47,865 to $569,836 for a total of $1,223,350. The six improved properties were identified as the subject Sears, Applebee's, the larger superstructure of the entire mall, Bergners, Talbots, and Kohls. These properties range in size from 4,570 to 191,000 square feet of building area, for a total of 507,143 square feet of building area. They have 2005 total assessments ranging from $395,957 to $9,536,176, for a total of $15,440,256. On a per square foot basis, the improved properties have 2005 assessments ranging from $13.03 to $72.83, which reflect fair market values ranging from approximately $39.00 to $218.00 per square foot of building area including land.

All ten parcels have 2005 assessments totaling $16,663,876 or $32.86 per square foot of building area. The total assessment reflects an estimated market value of $49,991,628 or $98.58 per square foot of building area including land. The subject property has a 2005 total assessment of $2,039,670 or $18.76 per square foot of building area, which reflects an estimated market value of $6,119,010 or approximately $56.00 per square foot of building area including land. Using a sale price of $79,030,000, as detailed on the transfer declaration, the assessor calculated the ten parcels transferred ownership for $155.83 per square foot of building area including land. Using the $155.83 per square value, the assessor calculated an estimated market value for the subject of $16,943,240. In comparison, the subject's 2005 assessment of $2,039,670 reflects an estimated market value of $6,119,010.

The assessor testified he contacted the new owners requesting specific information regarding the mall transaction. His requests were unsuccessful. Discounting the subject's sale price by 50% reflects a value of $8,400,000, which is considerably higher than the subject's assessed value. The assessor also discussed the subject's prime location and exposure to Veterans Parkway and Illinois Route 9. He also opined the $79,030,000 sale price does not show the subject property is under-assessed and supports its assessed value. Ireland also agreed with the circular relationship between anchor stores and the smaller in-line stores, benefiting one another, as described by Salisbury. He also agreed that if the subject property were comprised of smaller retail stores instead of an anchor store, the value would be different.

Under cross-examination, the assessor was questioned regarding the arm's-length nature of the subject's transaction. Ireland again testified he contacted the current owner, CBL Properties, and talked to Charles Willet, vice president of real estate finance. Willet indicated the subject's transaction was part of a portfolio sale involving three mall properties located in Overland Park, Kansas; Decatur, Illinois; and the subject in Bloomington-Normal, Illinois. The transfer price was reportedly 516.9 million dollars. Willet did not know how the price was determined for the three properties. Willet also indicated he did not positively know how the allocation of the transfer price took place, but the allocation was done by company attorneys. Ireland did not personally examine the sales agreement under which the transaction took place because the documentation was not made available by the owner. However, Ireland was of the opinion the subject's sale was an open market transaction.

When questioned about newspaper articles and press releases regarding the financing of the transaction, Ireland was aware the buyers used $94.25 million in cash; assumed a $59,400,000 long term, fixed rate, non-recourse mortgage debt; and the issuance of $55.4 million in special common units of the company's operating partnership. Ireland also testified the owners were paid operating partnership units which could be later converted to common stock shares. Ireland opined the financing was for income tax purposes. Ireland also testified the owners did not provide an allocation or breakdown of the sale price for each mall in press releases or newspaper articles.

With regard to the subject's transaction, Ireland agreed the buyer or seller did not provide a breakdown of the $79,030,000 into the various parcels of the mall. He also testified the entire mall did not sell because Kohl's and Famous-Barr were not included in the transaction. Ireland opined Famous-Barr owns their building and has a long term ground lease.

With regard to the transfer declaration (PTAX-203 and PTAX-203-B), Ireland was next questioned regarding his interpretation of the transfer of controlling interest in a real estate entity. Ireland testified the buyer, CBL, will have the controlling interest, but they are a publicly traded company, so they (CBL) will be trying to sell additional stocks. However, CBL will still be the controlling company operating and managing the mall. Ireland indicated CBL was the entity that purchased most of the mall.

Regarding the attachment to PTAX-203-B (Page 5), Ireland was asked if the document depicts the owner as Eastland Mall, LLC. Ireland testified the document indicates interest and property ownership prior to transfer of the beneficial interest. He agreed the top of the page indicates Eastland Mall, LLC, a Delaware limited liability company, is the property owner. Eastland Holding I, LLC, and its members actually own 68.4044% of the controlling interest of the mall. Ireland was next asked who owned the mall property after the transaction, given the sole member of Eastland Mall, LLC, was Eastland Member, LLC. After the transaction, the sole member is also Eastland Member, LLC. Ireland agreed the document depicts the ownership interest was reconfigured with Eastland Holding I, LLC, still owning 68.4044% interest before and after the transfer. When asked if the document revealed all the other prior owners were consolidated into Eastland Holding II, LLC, Ireland testified Eastland Holding I, LLC, its members are also CBL Associates and CBL Limited Partnership, which Ireland opined is where the beneficial interest changed. Ireland agreed Eastland Holding I, LLC, owned 68.4044% of controlling interest before and after the transaction. Ireland opined this was done for tax purposes, but believed the mall had new owners. Ireland thought there was an actual transfer of title involved in the transaction, but he has not seen any documents to support this claim. In summary, Eastland Member, LLC owned the mall before and after the transfer, according to the transfer declaration with attachments.

With respect to the analysis of the mall's transfer of ownership transaction, Ireland agreed he used 2005 assessment figures in his analysis, but the assessments were slightly different in 2004 due to the application of a 1.0406 equalization factor in 2005. In addition, Ireland agreed his analysis did not show the breakdown for land and improvements for the properties, including the subject. The assessor also testified the mall property land was valued on a per square foot basis with some minor variations for size and "those kinds of things". The Sears property has a land assessment of $3.91 per square foot of land area. Ireland did not dispute other mall properties with larger land areas, namely the mall itself as well as Famous-Barr and Bergner's have land assessments ranging from $3.20 to $3.60 per square foot of land area. Uniformity of land assessments was also discussed, but the assessor testified the Sears store is assessed higher because of its exposure to Veterans Parkway and Illinois Route 9.

Under redirect examination, Ireland agreed that if ownership of an entity changes, a real estate transfer declaration must be filed regardless if there is a new deed. Ireland also testified the beneficial owners of Eastland Mall, LLC, definitely appear to be different prior to the sale. Ireland opined those individuals listed are either part of some holding company or individually involved in investing in the mall but apparently are different than current members after the sale who appear to be CBL and Associates, Management, Inc., and CBL and Associates Limited Partnership. The mortgage assumed for the entire mall in the amount of $59,400,000 represents $117.13 per square foot of building area including land using the ten parcels identified in Ireland's analysis.

Under questioning from the Board's hearing officer, the assessor agreed the subject property was a functioning Sears store as of January 1, 2004. The witness was familiarized with section 9-155 of the Property Tax Code (35 ILCS 20/9-155), which provides in part:

> The assessor, in person or by deputy, shall actually view and determine as near as practicable, the value of each property listed for taxation as of January 1 of that year, . . . and assess the property at 33 1/3% of its fair cash value. . .The assessor or deputy assessor shall set down, in the books furnished for that purpose the assessed valuation of properties in one column, the assessed value of improvements in another column, and the total valuation in a separate column. (35 ILCS 200/9-155).

The assessor testified he valued the subject in accordance with this statute at a market value of approximately $5,849,913, which is slightly more than the intervenor's final appraised value of $5,700,000. He agreed the Finch appraisal supports a reduction in the subject's assessed value. Ireland also testified he wondered why assessors are required to set down the assessed valuation of properties in one column, the assessed value of improvements in another column, and the total valuation in a separate column because no other appraiser has to do that.

The assessor also testified that the Illinois Constitution requires uniformity on assessments for property taxation, the case of Showplace Theater v. Property Tax Appeal Board (citation omitted) wherein the court ruled that the land value shall be set down separately, but it is the total value that is important. He further stated market value is market value; and the way the market value is allocated is getting to the total value first. The assessor testified that his office does not value land and improvements separately. The assessor also agreed if the land value conclusion found in the Finch appraisal were applied to the subject's land assessment it may result in a lack of uniformity in the subject's land assessment. However, it would not disrupt uniformity of assessments in its total assessment.

Near the conclusion of the hearing, the appellant's counsel requested the Board to mark its rebuttal evidence, consisting of a land uniformity analysis, as Appellant's Exhibit 2, without objection. Counsel also presented a legal memorandum to coincide with closing arguments summarizing the main points of the appeal, the differences in the parties' evidence, and various Illinois Appellate Court and Supreme Court holdings regarding the status of real property for taxation, future or converted uses of property along with an anticipated value, and the nature of making speculative and future valuations for real property based on provable facts. (State of

Illinois v. Illinois Central Railroad, 27 Ill. 64 (1861); People ex rel. Carr v. Stewart et al., 315 Ill. 25, 145 N.E. 600 (1924); Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill. App. 3d 369, 458 N.E.2d 121 (1983)).

The Board allowed intervenor's counsel 20 days to review the appellant's legal memorandum and to submit a closing brief to address or refute the arguments outlined by the appellant and to summarize its case in chief. Intervenor's counsel cited an Illinois Supreme Court and an Appellate Court holding in support of its position. (Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428 (1970) and Showplace Theatre Company v. Property Tax Appeal Board, 145 Ill. App. 3d. 774, 776 (2nd Dist. 1986)).

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 assessment of the subject property is warranted.

The appellant 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 appellant has overcome this burden. In support of the overvaluation claim, the appellant submitted an appraisal and testimony from the appraiser estimating the subject property has a fair market value of $3,800,000 as of January 1, 2004, using the sales comparison and income approaches to value. The intervenor submitted a limited appraisal and testimony from an appraiser estimating the subject property has a fair market value of $5,700,000 as of January 1, 2004. The intervenor's appraiser developed the cost approach to value. However, he placed most emphasis on the land value conclusions using land sales within the cost approach in arriving at his final value conclusion in the context of the highest and best use theory. The appraiser also developed the sales and income approaches to value within the highest and best use analysis, but these approaches to value were neither considered nor relied upon in arriving at the final value conclusion. In addition, the intervenor submitted an analysis of the transfer of beneficial ownership interest for a large portion of the Eastland Mall in support the board of review's assessment of the subject property. The subject property was part of the transaction, which occurred in November 2005. The subject property's final assessment of $1,980,262 reflects an estimated market value of $5,946,733 or $50.73 per square foot of building area including land using McLean County's 2004 three-year median level of assessments of 33.30%. Thus, the Property Tax Appeal Board finds both appraisers' value conclusions support a reduction in the subject's assessed valuation.

The Board finds the best evidence of the subject's fair market value is the appraisal submitted by the appellant. The Board finds the appellant's appraiser provided competent, professional, and logical testimony in support of his appraisal methodology, data used within the two of the three traditional approaches to value, the adjustment process, and final value conclusion. Although there were some minor errors and misspellings within the appraisal as pointed out by the intervenor, these minor deficiencies do not overcome or void the appraiser's final value conclusion.

The Board further finds this instant appeal hinges on the underpinnings of the highest and best use concept as determined by both appraisers. The Board finds multiple basic principles of value form the foundation for the concepts of value and highest and best use. These principles include but are not limited to anticipation, balance, change, competition, conformity, consistent use, contribution, increasing and decreasing return, progression and regression, substitution, supply and demand and surplus productivity. (Property Assessment Valuation, 2nd edition 1996, International Association of Assessing Officials). Highest and best use is the reasonable and probable use that supports the highest present value as of the date of the appraisal. For improved properties, the highest and best use is determined for the site, both as if vacant and as if improved. The latter analysis (as improved) assumes that the existing improvement will not be replaced, even though it may not be the best use of the site. Indeed, construction of a new improvement should not be assumed unless the return from the new use more than covers demolition and construction costs. (Property Assessment Valuation, 2nd edition 1996, International Association of Assessing Officials, pages 19 through 25, 32). Once a highest and best use has been determined, the use must meet four criteria:

1. Physically possible
2. Legally permissible
3. Financially feasible
4. Most productive

The Board finds the intervenor's appraiser determined the subject's highest and best use as vacant is for retail development. As improved, the appraiser concluded the subject's current use as a mall anchor store is not its highest and best use. The appraisal report and testimony of the intervenor's appraiser conclude the subject's improvements are at or very near the end of their useful economic life. In the report and through testimony, the appraiser raised two hypothetical scenarios outlining alternative uses for the subject property.

Scenario 1 was explained as given the difficulty of demolition, a more typical occupant would undertake a massive reconfiguration, where some structural elements are re-used, but extensive removal of existing building components takes place. A new occupant(s) typically wants to rebuild the store in a way to overcome the identification (branding) of the previous occupant and for modernization. The appraiser agreed mall owners are reluctant to eliminate an anchor store, but a make-over for a replacement anchor is the preference. The appraiser noted Eastland Mall is a strong regional mall, but is simply aging and the Sears store has the most outdated appearance of all the anchor stores. The appraiser opined it is inconceivable that another anchor would be attracted to the subject store "as is." In situations like this, the buyers tend to pay what the land is worth.

Scenario 2 relies on examples of recent redevelopment near the subject that have occurred through demolition of existing structures. The appraiser cited several examples of properties along Veterans Parkway, even within the mall itself, that were redeveloped for a variety of uses, but continued commercial retail uses. Thus, the appraiser concluded Sears is a prime site in a prime location that would have very strong redevelopment appeal.

The Property Tax Appeal Board finds the appraisal report offered by the intervenor to be flawed regarding the subject's highest and best use. The Board finds the appraiser's conclusions of highest and best use determination to be unpersuasive and not supported by the factual information contained within his report and this record in three specific tests. In reviewing the school district's appraisal report, the Board finds the four tests were only performed as if the property were vacant; therefore, the Property Tax Appeal Board finds the school district's appraiser failed to fully analyze and perform the four tests necessary to clearly define the subject's highest and best use as improved. In fact, the Board finds the appraiser appears to have ignored some of his own data contained within the appraisal report that may have pointed to another conclusion with respect to the subject's highest and best use and ultimate value conclusion.

The Board first finds it was not legally permissible to reconfigure, demolish or redevelop the subject parcel for any alternative use(s) because of private restrictions as of the January 1, 2004, assessment date at issue in this appeal. The record is clear and un-refuted that the subject property is encumbered by a long term lease that continues through 2011 with an additional 15 year option. The Board finds the Finch appraisal report did not consider the impact of the subject's long term lease in his valuation analysis. Appraisal practice and theory suggests the subject's long term lease should have been at least considered throughout the appraisal process. Additionally, a potential buyer or tenant would need authorization from the mall owners(s) in order to redevelop the subject property in some other fashion, which Finch agreed would be met with great reluctance from the mall owners.

Absent the land value analysis, the Board finds Finch did not perform an in-depth cost effective analysis to demonstrate it would be financially feasible to reconfigure or demolish and redevelop the subject parcel. No where in the appraisal report does the appraiser consider the cost to acquire the long term lease held by Sears; the cost to reconfigure the subject building for multiple tenants; or the cost of demolition, debris removal, and construction of some type of new structure. The Board finds these considerations must be accounted, as any potential buyer of the subject for any kind of future redevelopment and use would heavily weigh these factors.

The Board further finds the appraiser's conclusion that the subject's structure is at or near the end of its economic life to be unsupported. The Property Tax Appeal Board finds the appraiser, under the cost approach to account for physical depreciation, determined the subject property had an effective age of 38 years with an economic life of 50 years, with a remaining economic life of 12 years. Furthermore, under various stages of examination, the appraiser agreed the Sears store had been renovated and/or expanded on several occasions since its construction in 1966, which partially overcame the dated appearance of the store. In either 1997 or 1999 (the record is unclear), Eastland Mall underwent $28,000,000 of updating including repaving of parking areas, construction of a Famous Barr, expansion of the Sears and Kohl's stores, new interior lighting and mall floor covering, and the addition of several smaller stores.

Notwithstanding the appraiser's conclusion that the subject is at the end of its economic life, the Board finds the appraiser's determination that the subject has an effective and actual age of 38 years and a remaining economic life of 12 years to be unpersuasive. The Board finds the appraiser failed to consider the subject's 24,753 square foot addition and updating that occurred in 1997 or 1999, only seven years prior to the subject's January 1, 2004, assessment date. By properly considering actual age, condition, additions and updating, the Board finds the appraiser failed to properly adjust the subject's effective age and economic life, which would alter the remaining economic life. This information calls into question the reliability and validity of the appraiser's opinion that the subject property is at or near the end of its useful life, which further detracts from the highest and best use conclusion.

The subject's most productive use requires the determination of use, from among all uses that are physically possible, legally permissible, and financially feasible, which will produce the highest rate of return or value to the property being appraised. The Board finds the intervenor's appraiser's highest and best use conclusion to be flawed with respect to the legally permissible and financially feasible criterion; therefore, the Board finds the test of maximum productive to be unsupported.

The Board finds the valuation date at issue in this appeal is January 1, 2004. Section 9-155 of the Property Tax Code provides in part:

> [T]he assessor, in person or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year. . . (35 ILCS 200/9-155).

Section 9-175 of the Property Tax Code provides in part:

> The owner of property on January 1 in any year shall be liable for the taxes of that year . . . (35 ILCS 200/9-17).

As of January 1, 2004, the Property Tax Appeal Board finds the subject property is an anchor store for Eastland Mall that was leased to Sears for their retail operations. Thus, the Board finds the subject property should be valued as such. The way a property is used plays an essential role in its value. The Illinois Supreme Court's holding in State of Illinois v. Illinois Central Railroad, 27 Ill. 64 (1861), provides in valuation taxation cases, the inquiry should be, what is property worth to be used for the purposes for which it is constructed, and not for any other purpose to which it may be applied or converted, or for which it might be used. Furthermore, the United States Supreme Court held the value of property results from the use to which it is put and varies with profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. (Cleveland C.C. and St. Louis Ry. Co. v. Backus, 154 U.S. 445 (1894).

The Property Tax Appeal Board further finds Application of Rosewell, 120 Ill. App. 3d 369 (1st Dist. 1983), provides further guidance regarding a particular property's highest and best use. In that case, residential apartment buildings were assessed on the basis of use for conversion to condominiums even though no conversion had taken place as of the assessment date. It was agreed a purchaser planning to convert the apartment to condominiums would pay more than a purchaser who planned to continue the apartment use. Notwithstanding the fact that the property was subsequently sold and converted, the taxpayer contended that since the property was used for apartments on the assessment date, it was an error to value the property based upon its value for condominium conversion. The court acknowledged that not every potential use could be the proper basis for assessment. The court held "values which are future in character may not be taken into consideration. . . where they are so elusive and difficult to ascertain that they have not affected the present market value of the property." The court found, however, unlike this instant appeal, that the potential use as condominiums was not speculative because the apartments were "both available for use as condominiums and adaptable for that use as of the lien date." Application of Rosewell, 120 Ill. App. 3d 369 (1st Dist. 1983). The court further recognized assessing officials are not barred, as a matter of law, from considering events which occurred after the lien date in assessing properties and subsequent events assessing officials may consider in any individual case will depend on the nature of the event and the weight to be given the event will depend upon its reliability in tending to show value as of January 1. The Board finds the subject property was neither available due to lease restrictions nor adaptable for any other use other than an anchor store based on its zoning as of the January 1, 2004, assessment date at issue in this appeal.

The Board finds any highest and best use analysis which varies from the present use should detail the facts which demonstrate that there is a current economic demand for the proposed use and that demand has affected the value of the property on the appraisal date. Highest and best use must be reasonable, probable, and proximate (likely to occur soon, if not immediate). The Board finds if an assessor or appraiser determined that a proposed use is reasonable, probable, and proximate, the requirements enumerated by case law have been met. The Board finds the Finch appraisal report did not meet these standards. The Board finds the Finch appraisal and his own testimony reveal that neither Eastland Mall nor Sears had any reasonable, probable nor proximate future plans to reconfigure, demolish or redevelop the subject property. Based on this analysis, the Board finds the highest and best use analysis contained in the school district's appraisal to be highly suspect, speculative and not supported by factual information.

The Board further finds the limited, but actual market data contained in the school district's appraisal supports the appellant's appraiser's final value conclusion and further contradicts Finch's value conclusion and the subject's highest and best use determination. The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill. App. 3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. The Finch appraisal addendum contains sales of four anchor stores located in Lombard, Orland Park, Peoria, and Pekin, Illinois. Three sales were former Montgomery Ward stores and one sale was a Shopko. The buildings were constructed from 1968 to 1991; ranged in size from 88,970 to 254,720 square feet of building area; and were situated on sites containing from 11.50 to 21.84 acres of land. They sold from August 1999 to August 2004 for prices ranging from $2,100,000 to $9,000,000 or from $23.60 to $35.33 per square foot of building area including land. On page 21 of the Finch appraisal report (highest and best use section), the intervenor's appraiser recognized similar anchor store properties typically sell for prices from $25.00 to $35.00 per square foot of building area including land, suggesting a property value for the subject as improved in the range of $2,900,000 to $4,100,000.

The limited income approach contained on page 22 of the Finch appraisal report (highest and best use section) indicates Sears has a lease on the subject property through February 2011, and pays a fixed rent of $2.00 per square foot of building area or $245,916 annually on a triple net basis. However, the appraiser concluded the actual rent is not sufficient to cover the yield requirements of the estimated land alone, which lends support that the current use is not the highest and best use. Based on a variety of rental data (not contained in the appraisal report), Finch opined it is unlikely the subject property would be leased for more than $4.00 per square foot of building area or $448,320 annually on a triple net basis. Deducting for a management fee and minor expenses of 5%, results in an annual income of $471,916. Using a capitalization rate of 10.5%, the appraiser calculated a rough suggested value of $4,494,438 under the income approach. Again, this rough estimate is supportive of Salisbury's conclusion of value. As a final point, the Board finds the appraiser testified on multiple occasions that he did not consider the subject's actual lease in the appraisal process, which is clearly not true in this appeal.

With respect to Finch's market analysis regarding the subject's land value, the Board gave less weight to the value conclusion of $5,604,000 or $14.00 per square foot of land area. The appraiser identified seven suggested land sales to estimate the subject's land value as vacant. Land sales 1 and 4 were improved with structures at the time of purchase, but were razed thereafter. Land sale 1 had a 118,000 square foot retail building that was built in 1991, which sold for $3,700,000 or $31.34 per square foot of building area including land. Three comparables are located along Veterans Parkway. The appraiser explained land sale 2, which contained approximately 1.5 acres, was useful as a comparable with proper adjustment although the subject site is over nine acres in size. Four comparables have B-3 zoning, two comparables have C-1 zoning, and one comparable has C-3 zoning like the subject. The comparable land sales range in size from 50,825 to 404,672 square feet of land area and sold from January 2002 to July 2005 for prices ranging from $498,863 to $4,249,807 or from $7.99 to $20.80 per square foot of land area. Finch considered land sale 1 to be a benchmark transaction because one of the most sophisticated corporations in the world (State Farm Insurance) was the seller. Finch placed most weight on land sale 1. Land sales 2 and 3 were subdivided lots of land sale 1.

Land sale 4 was considered inferior to the subject due its interior location. Land sale 4 was also adjusted upward for date of sale, although it sold only five months prior to the valuation date at issue in this appeal. Land sale 5 is located approximately one mile north of the subject and has no exposure to Veterans Parkway. The appraiser testified this parcel is smaller than the subject and had poor topography. This property was considered inferior to the subject in location, access and visibility. Land sales 6 and 7 were described as out-parcels acquired to expand Eastland Mall. They are located southwest and adjacent to Eastland Mall. Finch opined these properties are not comparable to the subject due to their smaller size, inferior visibility, and poor accessibility. Although these properties were acquired by Eastland Mall for expansion, Finch did not place much weight on either sale. They sold for $7.99 and $11.01 per square foot of land area.

The Property Tax Appeal Board finds four of the seven sales used in Finch's analysis sold for prices ranging from $7.99 to $11.01 per square foot of land area, considerably less than his final value conclusion of $14.00 per square foot of land area, regardless of size. The Board further recognized the appraiser made an effort to search for land sales similar in size as the subject, but ultimately used five comparables considerably smaller than the subject. However, the Board finds the school district's appraiser failed to place much weight on the two smaller land sales that were actually acquired by Eastland Mall for expansion. The Board finds these two land sales have more probative evidentiary value than the five smaller land sales used by Finch. The Board further finds land sale 6 and 7, which sold for $7.99 and $11.01 per square foot of land area, respectively, show the manner the owners of Eastland Mall react to the surrounding market, choosing to purchase adjacent property for less than other land parcels located along Veterans Parkway.

The Property Tax Appeal Board further finds land sales 1 through 4 used by Finch were all zoned B-1, dissimilar than the subject's C-3 zoning. Thus, these land sales were given less weight in the Board's analysis. Land sales 5 through 7 were given most weight due to their more similar zoning when compared to the subject, which have zoning of either C-1 or C-3. They sold for prices ranging from $7.99 to $11.01 per square foot of land area, considerably less than the intervenor's appraiser's final value conclusion of $14.00 per square foot of land area. Furthermore, accepted real estate valuation theory provides, all factors being equal, as the size of a property increases, the per unit value decreases. With the exception of land sale 4, which sold for $9.14 per square foot of land area, all the sales used in Finch's land value analysis are considerably smaller in size when compared to the subject.

With regard to the purported sale price of the entire Eastland Mall and the value of the transaction attributed to the subject based on the analysis prepared by the assessor, the Board gave this evidence no weight. 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). After reviewing the record and considering the evidence, the Board finds the Eastland Mall transaction does not appear to meet the elements of an arm's-length sale and provides little evidentiary value in establishing the subject's correct assessment. The Board finds the evidence shows the transaction appears to be some type of ownership restructuring rather than a market sale. Furthermore, the record indicates the actual beneficial interest of ownership of the mall may not have changed. Notwithstanding these deficiencies, the purported sale of the three mall properties was most likely a leased fee transaction rather than an arm's-length fee simple transaction.

Eastland Mall had an allocated sale price of $79,030,000 as depicted on the PTAX-203-B form, which was part of a portfolio sale involving three mall properties located in Overland Park, Kansas; Decatur, Illinois; and the subject in Bloomington-Normal, Illinois for a total price of reportedly 516.9 million dollars. The Board finds the record is void of any substantive evidence detailing the manner in which the total price of the portfolio sale or allocated value of Eastland Mall was determined. Even the township assessor testified he did not positively know how the allocation of the transfer (price) took place, only that the allocation was done by attorneys. The township assessor also agreed the buyer or seller did not provide a breakdown of the $79,000,000 into the various parcels of the mall that were transferred. Moreover, some parts of the mall were not involved in the transaction.

Furthermore, the evidence and testimony revealed the buyers used $94.25 million in cash; assumed a $59,400,000 long term, fixed rate, non-recourse mortgage debt; and the issuance of $55.4 million in special common units of the company's operating partnership. The owners were paid these operating partnership units which could be later converted to common stock shares. The township assessor opined the financing was for income tax purposes. The Board finds the portfolio sale of the three shopping malls as well as the allocated value of Eastland Mall to be a highly complicated transaction with little fair market value consideration. In Township of Cunningham v. Property Tax Appeal Board, 225 Ill. App. 3d 760 (4th Dist. 1992), the court rejected the notion that an assessed valuation can be in any way dependant upon the microeconomics of the financing arrangements of the parties to the sale of the property or of a particular occupant of a property. The tax effects of such transactions are complicated, but are necessary corporate considerations. These considerations have little to do with the fair market value of, and the reasonable rental return from, real estate investments.

The Board further finds the transfer of Eastland Mall, in which Sears is a tenant, appears to be a transaction involving the controlling interest in a real estate entity rather than an arm's-length fee simple real estate transaction. The attachment to PTAX-203-B depicts the owner of Eastland Mall to be Eastland Mall, LLC, a Delaware limited liability company. The document indicates interest in property ownership prior to transfer of the beneficial interest: sole member: Eastland Member LLC, an Illinois limited liability company was (1) Eastland Holding I, LLC, and its members, who own 68.4044% of the controlling interest of Eastland Mall.

Interest in property ownership after transfer of the beneficial interest: sole member: Eastland Member LLC, an Illinois limited liability company was (1) Eastland Holding I, LLC, and its members (CBL & Associates Management Inc. and CBL & Associates Limited Partnership) who own 68.4044% of the controlling interest of Eastland Mall and (2)-(17) Eastland Holding II, LLC, and its members (CBL & Associates Management Inc. and CBL & Associates Limited Partnership) who own 31.5956% of the controlling interest of Eastland Mall. The Board finds Eastland Holding I, LLC, owned 68.4044% of controlling interest of Eastland Mall before and after the transaction. However, CBL & Associates Management Inc. and CBL & Associates Limited Partnership were added as members of the ownership interest. In summary, the Board finds the owner of Eastland Mall is Eastland Mall, LLC, a Delaware limited liability company, with its sole member Eastland Member LLC, an Illinois limited liability company before and after the transaction.

The Board further finds the signatures listed for the buyers and sellers involved in the Eastland Mall transaction to be highly suspicious and calls into question the relationship of the parties to the transaction. The intervenor's Exhibits list the sellers address as 8900 State Line Road, Suite 333, Leawood, Kansas. The seller's signature was Jack N. Fingersh, Representative. The buyers address and tax bill were to be mailed to Eastland Mall, LLC, Chattanooga, Tennessee. The signature page lists CBL & Associates Limited Partnership, a Delaware limited partnership; by CBL Holdings I, Inc., its sole general partner that was signed by John N. Foy, Vice Chairman of the Board and Chief Financial Officer. Eastland Holding II, LLC, an Illinois limited liability company; by: CBL & Associates Limited Partnership, its chief manager; by CBL Holdings I, Inc., its sole general partner that was also signed by John N. Foy, Vice Chairman of the Board and Chief Financial Officer.

The second Real Estate Transfer Declaration (PTAX-203) with attachments, which was simultaneously recorded on November 23, 2005, listing two parcels as parking lots. Line 7 indicates the parcels were not advertised for sale or sold using a real estate agent. Line 10p of the document indicates this transaction was a restructure of owner entity with the beneficial ownership remaining the same. The documentation lists the seller information as B-M-J Development, Limited Partnership, 8900 State Line Road, Suite 333, Leawood, Kansas; by FFC, Inc., General Partner that was signed by Jack N. Fingersh, President. The buyer information was listed as Eastland Mall, LLC, 8900 State Line Road, Suite 333, Leawood, Kansas, which was also signed by Jack N. Fingersh, Manager. Preparer information was listed as B-M-J Development, Limited Partnership, 8900 State Line Road, Suite 333, Leawood, Kansas; by FFC, Inc., General Partner and was again signed by Jack N. Fingersh, President. The Property Tax Appeal Board finds the documents relating to the subject's transaction challenge the relationship of the buyers and sellers. Thus, the Property Tax Appeal board finds the Eastland Mall transaction was not arm's-length reflecting fair market value.

After hearing the testimony and observing the demeanor of the two appraisers, the Board finds the appellant's appraisal to be more credible and a better indicator of the subject’s fair market value. The Board finds the appellant's appraiser provided competent, professional, and logical testimony in support of his appraisal methodology, the data used in the approaches to value, the adjustment process, and final value conclusion using two of three traditional approaches to value. In contrast, the Board finds the intevenor's appraisal prepared a sales comparison approach regarding only the subject's vacant land value within a limited cost approach. The intervenor's value conclusion was based on an alternative use based on a flawed highest and best use finding. Thus, the intervenor's final value conclusion was given little weight in the Board's analysis.

Salisbury developed an income approach to estimate the subject’s fair market value. He concluded an estimated market value of $3,800,000 using comparable rental information of anchor stores, including three Sears stores located in the State of Illinois. Salisbury used this data, as well as nationally recognized industry sources and sales performance data to determine a potential gross annual income and whether Sears was operating at its earning income capacity, which is consistent with case law. It is the capacity for earning income, rather than income actually derived, which reflects "fair cash value" for taxation purposes. <u>Springfield Marine Bank v. Property Tax Appeal Board</u>, 44 Ill. 2d 428, 431 (1970). The appellant's appraiser demonstrated the subject's actual income was reflective of the market and its capacity to earn income. The appellant's appraiser also provided competent testimony and utilized a nationally recognized source to determine a proper capitalization rate that was checked using the band of investments technique.

With regard to the sales comparison approach, the Board finds the value conclusion detailed by Salisbury to be a persuasive indicator of the subject’s fair market value. Although some of the sales used were properties located outside of Illinois, the appraiser performed logical adjustments to the comparable anchor sales for differences to the subject in arriving at the final value conclusion of $3,750,000. The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. <u>Chrysler Corporation v. Property Tax Appeal Board</u>, 69 Ill. App. 3d 207 (2nd Dist. 1979) and <u>Willow Hill Grain, Inc. v. Property Tax Appeal Board</u>, 187 Ill.App.3d 9 (5th Dist. 1989). The Board finds the comparable sales of anchor stores used in Salisbury's appraisal report are credible evidence in arriving at his final value conclusion for the subject property.

In conclusion, the Property Tax Appeal Board finds the best evidence of the subject's fair market value presented in this appeal is the appraisal submitted by the appellant estimating a market value of $3,800,000 as of January 1, 2004. Therefore, the Board finds the subject's assessment as established by the board of review to be incorrect. Since fair market value has been established, the 2004 three-year median level of assessments for McLean County of 33.30% shall apply.

APPELLANT: **Gregory and Leslie Sgro**
DOCKET NUMBER: **05-01602.001-C-1**
DATE DECIDED: **September, 2007**
COUNTY: **Sangamon**
RESULT: **Reduction**

The subject property consists of a 9,120 square foot vacant lot with a residential zoning classification. The subject matter of this appeal was set for a consolidated hearing based upon the merits along with Docket Numbers 05-01603.001-C-1 (Peter M. Sgro) and 05-01604.001-C-1 (Gregory and Leslie Sgro) on February 22, 2007, pursuant to a setting by the Property Tax Appeal Board.

The appellants, through counsel, appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellants submitted a purchase contract revealing the subject property sold for $10,129 or $1.11 per square foot of land area on June 30, 2004 through a public auction. The seller was the County of Sangamon. Counsel argued the sale was an arm's-length transaction because the property was advertised for sale and sold through competitive offering by three bidders. Counsel testified he hoped to purchase the lot for substantially less than the final sale price of $10,129. Based on this evidence, the appellants requested a reduction in the subject's assessment.

Under cross-examination, counsel was questioned regarding the method the subject was advertised for sale by auction. Counsel indicated the auction time and date were advertised in a local newspaper as well as a "book" of properties (maintained by the county) at the assessor and treasurer offices of tax forfeiture properties.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $15,811 was disclosed. The subject's assessment reflects an estimated market value of $47,452 or $5.20 per square foot of land area using Sangamon County's 2005 three-year median level of assessments of 33.32%.

In support of the subject's assessment, the board of review offered testimony from Capital Township Assessor John Venturini. As background, the assessor testified the subject property was purchased in 1984 for $98,000 when it was improved with two structures, a seven unit apartment building and a duplex. In 1992, the structures were significantly damaged by fire and demolished in 1993. Several liens were placed on the property by the City of Springfield for demolition costs and debris removal totaling $12,830 as of January 27, 1994. Additionally, in 1993 the prior owner stopped paying the property taxes and abandoned the subject property. Subsequently, the City of Springfield filed additional liens against the subject property for weed removal. As a result of the existing liens, the assessor opined the subject property was not pursued by the tax buyers for a tax deed at the normal delinquent property tax sale. Rather, the property taxes and liens remained unpaid, and the subject property was forfeited. Therefore, ownership was transferred to Sangamon County (as Trustee) through a judicial tax deed in July 2004. The transfer of ownership to Sangamon County caused the delinquent and forfeited taxes to be rescinded and expunged in the amount of approximately $42,000. The County of

Sangamon also acquired a release of all liens against the subject by the city in order to offer the property for sale at a "surplus tax auction." The assessor argued all the aforementioned circumstances clearly indicate the surplus tax sale auction price does not in any way reflect the definition of an arm's-length transaction in order to establish the subject's fair market value.

In support of the subject's assessed valuation, the board of review submitted 10 vacant land sales considered similar to the subject. Comparable 3 sold twice. Nine of the suggested comparables are located less than ½ mile from the subject and eight comparables have identical zoning as the subject. The comparables range in size from 2,750 to 36,616 square fee of land area and sold from July 1997 to April 2006 for prices ranging from $16,000 to $375,000 or from $2.06 to $10.91 per square foot of land area. Two sales included demolition costs of $2,000 and $4,500, respectively. The assessor noted comparable sale 3b was purchased by Sgro Development Corporation, who was assumed is the appellant in this appeal. The assessor argued the comparables sales demonstrate the subject's sale price of $10,129 or $1.11 per square foot of land area was not an arm's-length transaction reflective of fair market value.

After reviewing its comparable land sales, the board of review was of the opinion and offered to reduce the subject's land value to $3.50 per square foot of land area or an estimated fair market value of $31,920. The appellants rejected the proposed stipulation.

Under cross-examination, the assessor was questioned about advertising the auction to sell properties with delinquent taxes. The assessor testified delinquent tax sale properties were not individually marketed by the county, but signs are posted on each property subject to a tax delinquency sale. The assessor acknowledged two comparable land sales are located in close proximity along the subject's street. They contain 5,626 and 12,160 square feet of land area and sold in April and November of 2004 for prices of $16,000 and $25,000 or $2.06 and $2.84 per square foot of land area, respectively, which is considerably less than the subject's assessed valuation. However, the assessor testified two individual sales "do not make the market" and the other sales were considered in proposing the $3.50 per square foot value for the subject. He did not know if a local attorney purchased land sale 4, who also owns and has an office on an adjacent property. The assessor also agreed land sale 5 is located just two doors from the subject.

The assessor agreed land sales 6, 7, and 8, which range in size from 3,992 to 20,440 square feet of land area, are located adjacent to Springfield Clinic. They were purchased by Springfield Clinic from October 2005 to October 2006 for prices ranging from $21,700 to $155,000 or from $5.44 to $9.27 per square foot of land area. The assessor also acknowledged Springfield Clinic is using these lots for expansion of its medical facility. The assessor further agreed Springfield Clinic has great influence regarding land values in the immediate area. He also agreed the nearest Springfield Clinic property is located approximately two blocks from the subject, but the assessor considered these properties to be in the same market area as the subject. The assessor did not know if comparable land sales 1 and 2 were purchased by adjacent property owners for $4.50 and $5.31 per square foot of land area, respectively. He agreed if a particular property owner purchased an adjacent or contiguous property, that factor should be a consideration in determining the value of the subject. He did not know if land sale 2 backed-up to an adjacent property, also owned by the purchaser of land comparable 2.

In their rebuttal submission, the appellants argued they have no interest in, nor any control over Sgro Development Corporation, who owns four nearby vacant lots that are not contiguous to the subject as depicted on a street map. Furthermore as a legal proposition, the appellants claimed it would be inappropriate to consider the value of the subject because of its adjacency to other properties, particularly those properties owned by other persons or entities. The appellants argued the subject property should be valued individually. The appellants also pointed out the parcels owned by Sgro Development Corporation make-up a corner lot. The appellants accepted the proposition that the entire property, were it marketed as a whole, may well be worth $6.00 per square foot, but the corner parcels carry the vast majority of the value, and the "satellite" parcels, of which the subject is one, would carry a lesser value. The appellant also argued the board of review's evidence amounts to an admission that taxes were unpaid and the appellants purchase price proves the property was not even worth the value of the unpaid taxes.

Under questioning from the hearing officer, Venturini agreed some of the comparable sales are dissimilar in size when compared to the subject. When asked if the county was compelled or under duress to sell the subject property, Venturini testified it is a matter of policy that forfeited tax properties must be sold at the surplus tax auction in order to generate tax revenue for the county in the interest of all county residents. The assessor also noted the subject parcel backs up, but is separated by a public alley, to another property owned by the appellants that has frontage on 5th Street. Due to common ownership and accessibility, the assessor opined these parcels could be used in conjunction with one another in some kind of commercial enterprise.

The appellant testified Sgro Development Corporation is owned by his father. His father has owned the property at the corner of 5th Street and Lawrence Avenue for at least 45 years. At the time of hearing (February 22, 2007), the appellant testified "we have now, in the last six weeks, listed it (the subject) for sale". Sgro testified the listing price was approximately $240,000 for "all of our property". He did not know the allocated listing value for the subject lot. For clarification, the Sgro Development Corporation properties (four parcels), in addition to subject parcel in this appeal, as well as two other parcels (under Property Tax Appeal Board Docket Numbers 05-01603.001-C-1 (owners Peter M. Sgro and Gregory Sgro) and 05-01604.001-C-1 (owners Gregory and Leslie Sgro) were all included in the listing price of $240,000. Thus, in total there were seven parcels offered for sale at approximately $240,000 at the time of hearing, inclusive of the subject. Counsel argued the listing price does not reflect the per square foot value of the three satellite parcels, again arguing the corner lots carry more value. No evidence to support this claim was submitted.

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 appellants argued the subject property's assessment was not reflective of its fair market value. 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 evidence in this record overcomes this burden.

The Property Tax Appeal Board finds the arm's-length nature of the subject's transaction and sale price to be questionable and highly suspect at best. 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). The evidence disclosed the subject's property was somewhat advertised for sale on the open market with multiple other properties through a local newspaper, in accordance with the law, and sold by auction. In addition, the parties of the transaction were not related. However, the Board finds the County of Sangamon was compelled not only by law, but to the benefit of all county residents, to sell the property to the highest bidder through auction, regardless if the selling price was reflective of its fair market value. Based on this analysis, the Board finds the subject's 2004 sale price of $10,129 or $1.11 per square foot of land area was not an arm's-length transaction with little creditability as to its fair market value. The Board notes this finding is further supported by the most similar comparable land sales offered by the board of review.

The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979) and Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989). Since there are credible market sales contained in the record, the Board placed more weight on this evidence. The board of review submitted 10 suggested land sales in support of the subject's assessed value. The Property Tax Appeal Board placed diminished weight on five of the suggested comparables land sales offered by the board of review due to their smaller or larger lot sizes when compared to the subject. Notwithstanding their dissimilar size, the record and testimony is un-refuted that land sales 6, 7, and 8 were purchased by Springfield Clinic for expansion of its medical facilities. In reviewing the market evidence, the Property Tax Appeal Board finds Springfield Clinic may have paid a premium price to acquire these three lots. The Board further finds comparable 3, which sold twice, is less indicative of the subject's fair market value. These sales occurred in 1997 and 2002, far removed from the subject's January 1, 2005 assessment date at issue in this appeal.

The Property Tax Appeal Board finds comparable land sales 1, 2, 4, 5, and 9 offered by the board of review to be most representative of the subject in size, location, and zoning. These properties range in size from 5,625 to 12,160 square feet of land area and sold from July 2003 to July 2005 for prices ranging from $2.06 to $5.31 per square foot of land area. The subject's land assessment of $15,811 reflects an estimated market value of $47,452 or $5.20 per square foot of land area, which falls at the high end of the range established by the most similar comparable sales. After considering adjustments to these most similar comparables for differences when compared to the subject, the Property Tax Appeal Board finds the market value of the subject property proposed by the board of review of $31,920 or $3.50 per square foot of land area is well support by the most credible market evidence contained in this record. Therefore, the Property Tax Appeal Board finds a reduction in the subject' land assessment is warranted.

Finally, the Property Tax Appeal Board finds the appellants made various ancillary arguments regarding the subject's fair market value and evidence offered by the board review. These arguments include comparable land sales 1, 2, and 4 were purchased by adjacent property owners affecting their final sale prices; corner lots carry or are more valuable than "satellite" or interior lots; and the subject lot should be valued individually with no regard to the parcels owned by

Sgro Development Corporation, which is owned by the appellant's and counsel's father, or a parcel owned by counsel and his brother Peter M. Sgro, who is also a business partner. In rebuttal, the appellants argued they have no interest in, nor any control over Sgro Development Corporation, who owns four nearby vacant lots. Furthermore, as a legal proposition, the appellants claimed it would be inappropriate to consider the value of the subject because of its adjacency to other properties, particularly those properties owned by other persons or entities. The Board gave these arguments no merit.

The Board finds the appellants submitted no substantive evidence indicating land sales 1, 2, and 4 were purchased by adjacent land or business owners, which may or may not have had an impact on their final sales prices. Furthermore, the Board further finds the appellant's submitted no substantive evidence indicating the recorded sale prices were inflated or were not arm's-length transactions. Within this context of adjacent property owners purchasing the comparables, which the appellant argued should be a factor to consider and disregarded for valuation purposes, the appellants argued the subject lot should be valued individually, with no regard to the parcels owned by Sgro Development Corporation or Peter M. Sgro. The Board finds the subject property in this appeal is adjacent or contiguous to six other parcels, which are owned by legal counsel and/or his brother and counsel's father (Sgro Development Corporation). Counsel's brother is also a business partner. The evidence in this record is clear that the subject parcel in this appeal is currently marketed for sale along with the other six aforementioned parcels as package for $240,000. This undisputed fact shows there is not only a family relationship in name, but also a business relationship between these parties and entities. Additionally, the Board finds the listing price for the package of seven parcels further supports the proposed assessed value of the subject property offered by the board of review of $31,920. Furthermore, the Board finds the appellants presented no evidence or independent expert witness showing corner lots carry higher market values than interior lots in the subject's neighborhood. Thus, these aspects of the appellants claim were given no weight.

In conclusion, the Board finds the evidence in this record demonstrates the subject property is overvalued by a preponderance of the evidence, but not to the extent as argued by the appellants. Therefore, the Board finds the subject property’s assessment as established by the board of review is incorrect and a reduction is warranted.

APPELLANT	**Shields Auto Center, Inc.**
DOCKET NO:	**05-00083.001-C-1 and 05-00084.001-C-1**
DATE DECIDED:	**September, 2007**
COUNTY:	**Champaign**
RESULT:	**No Change**

The subject property is comprised of two parcels that are improved with an automobile dealership. The parcels total 110,900 square feet of land area and are improved with three structures. The 4,480 square foot frame and metal office and showroom were built in approximately 1986. The 10,800 square foot concrete block and metal service area and parts room was built in approximately 1944. This building is in poor condition. There is also a 6,000 square foot metal building that is approximately 50 years of age.

The appellant, through counsel, appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellant submitted a contract for the sale of the subject's real estate between G.W. Manley and Rantoul Motor Sales, Inc., the seller, and Shields Auto Center, Inc., the buyer. The contract price was $325,000. Closing occurred on or about November 1, 2004. The contract language provides that at the closing, the buyer shall pay $25,000 to the seller with the balance of the purchase price together with interest of 5% per annum shall be paid by the buyer executing its note in the form attached hereto as Exhibit A [not attached or included or included as part of the Exhibit]. The note shall be secured by a first mortgage in favor of the seller. The appellant's appeal petition indicates the transaction was not between related parties or related corporations; the property sold by owner through a seller financed installment contract; and the subject property was not advertised for sale.

The first witness called on behalf of the appellant was G. Warren Manley, former owner and financier of the subject's property installment contract. Manley owned and operated an auto dealership for 36 years. The witness was directed to a document submitted in rebuttal that was titled "Automobile Dealership Purchase Agreement" dated September 23, 1992, of which only pages 1, 8, 9, and 13 were provided. The agreement was between Rantoul Motor Sales, Inc. (the seller); G. W. Manley, the sole shareholder of Seller; and F. Duane Shields personally, but as Agent for a corporation to be formed (buyer). The agreement was for the purchase of certain assets associated with the dealership, including but not limited to all rights permits and authorization for the operation of the dealership; all trade fixtures and furnishings of the dealership except those items listed on Exhibit "A"; all machinery, equipment and tools used in conjunction with the dealership together with replacements thereof and additions thereto; all of seller's inventory of new, untitled and undamaged 1992 and 1993 vehicles and all the Seller's demonstrator vehicles; and all inventory of parts, supplies, accessories, oil and grease of the dealership together with replacements. The real estate component was not part of this transaction, but was subject to a real estate lease. The lease continued for 10 years after the "Automobile Dealership Purchase Agreement" and then continued on a month to month basis for three years at a lesser rental rate.

During the month-to month-lease time period, Manley testified he attempted to sell the subject parcels exclusively to the appellant. Manley testified he reduced the subject's lease rate because he had heard rumors the appellant was going to build a new automobile dealership near the interstate and Wal-Mart. Manley testified the appellant owns a large portion of land in that particular area. Manley also provided testimony regarding the negative economic impact resulting from the closure of Chanute Air Force Base in 1993. He testified the base closure caused a loss of approximately $500,000 due to declining real estate values and a loss of one-half of the business from Chanute Air Force Base personnel.

Manley testified the only use of the structures on the property is for an automobile dealership. For clarification, counsel asked Manley if the highest and best use of the subject property is an automobile dealership. In response, Manley testified he did not try to sell the subject property to anyone else and he did not need a real estate agent to sell the subject property. Manley also testified that while negotiating the subject's sale price, there were no other factors or deals with respect to the parties' existing relationship that affected the final sale price. Manley reiterated the transaction proceeded based on the terms of the signed contract including 5% interest for the unpaid balance, which he considered "in the area but maybe low" of typical commercial loan interest rates. Manley testified he would "wake up in the middle of the night worrying about whether he (the appellant) would move out near the interstate or buy my property." Manley noted there is still empty real estate throughout Rantoul due to the base closure.

The witness also discussed the condition and utility of the structures situated on the subject parcels. Apart from the appellant, Manley opined "nobody" could possibly be a buyer for the subject. In his mind, there was no pool of potential buyers for the subject and automobile dealership sales in various communities throughout Illinois would not be a good indicator of the subject's value. Manley also testified there was one automobile dealership in Rantoul that closed operations. This property was never sold for use as an automobile dealership, but used for storage. When Manley was asked if he attempted to sell the subject property for the highest possible price, the witness testified the buildings are of cheap construction. He also testified he was not under any financial pressure to sell the subject property, but he "was paying the property taxes", which he thought "were probably assessed about right, but less than what you could turn around and sell his property for."

Under questioning from the hearing officer, the subject's highest and best use as an automobile dealership was discussed. The witness is not an expert in the field of real estate valuation. The witness testified when Chanute Air Force Base was still in operation they had a $200,000,000 payroll, which accounted for 50% of the subject's business. The witness testified he offered to sell the subject property to only the appellant, which sold after three years of negotiations. He testified he did not even consider selling the subject property to anyone but the appellant. Additionally, Manley testified he did not offer the subject for sale in the open market using a "for sale" sign or real estate agency. The witness testified he "had been a real jerk for 10 years because the appellant paid him big money" during the term of the lease. The witness reluctantly acknowledged he had a 10 to 13 year business relationship with the appellant in leasing the property prior to its sale. He agreed he may have been under duress to sell the subject property due to his worries that the appellant may move and build another auto dealership near the interstate and Wal-Mart.

Under redirect examination, the appellant testified the only other possible use of the subject maybe as an auto body repair shop. He also discussed his familiarity with other commercial properties within Rantoul. Franchise branding, the number of automobile dealerships, and competition with automobile dealerships in Rantoul was discussed, focusing on one dealership that had gone out of business in 1981.

Counsel next presented an affidavit of Frederick D. Shields that was submitted as rebuttal for the record. Frederick D. Shields was not present at the hearing. The document states in summarized part:

1. Frederick D. Shields is an officer of Shields Auto Center, Inc.
2. In or around 1992, two separate "Automobile Dealership Purchase Agreements" were entered into which the assets of two car dealerships were sold to F. Duane Shields, a shareholder of the appellant. Said agreements, which conditioned the obligations of the parties to close the "Dealership Purchase Agreements" on closing of lease of the real estate, which is now subject of this appeal.
3. The lease, which included the real estate that is subject to this appeal, and other real estate, expired in April 2003 and was continued on a month-to-month basis thereafter.
4. The subject property has been used as an automobile dealership in excess of 40 years, and because of the nature of the buildings and improvements, the highest and best use for the property would be an automobile dealership.
5. The then owner, Mr. Manley and his related entity, and the appellant negotiated for a period of one and one-half years in an effort to reach an agreement for the sales of the real estate that is the subject of this appeal.
6. During the negotiations and continuing to the present, there was absolutely no relationship between G.W. Manley and Rantoul Motor Sales, Inc. on one hand, and the appellant on the other. . . Nor is there any other ongoing business relationship between the parties that would have affected the terms of the sale.
7. The board of review claims that the sale was not arm's-length because the property was not listed for sale with a broker and the seller financed $300,000 of the purchase price at 5% per annum. Obviously 5% per annum is a modest rate of interest. Comparable loans that would have been provided by commercial banks are closer to 7%. If the buyer would have been required to go to a bank to finance the purchase, they would have paid more in carrying charges and thus would have been willing to pay less for the property. Thus, the price paid may be somewhat artificially high as a result of the lower interest rate.
8. Mr. Manley obtained an appraisal of the real estate that was higher than the ultimate price agreed to by the parties only serves to prove that appraisals are an opinion of value and not the ultimate indication of what properties are worth.

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 parcels' final equalized assessments totaling $154,430 was disclosed. The total assessment reflects an estimated market value of $465,010 using Champaign County's 2005 three-year median level of assessments of 33.21%.

Based on the circumstances surrounding the subject's sale, the board of review argued the subject's transaction was not arm's-length. The board of review argued the evidence submitted and Manley's testimony indicates the property was not advertised for sale; there was a certain element of duress by the seller with the possibility of the appellant moving the automobile dealership to a different location; and there was a pre-existing relationship between the buyer and seller because the subject property was being leased for over ten years by the seller to the buyer for "some pretty big money," which was certainly taken into account when arriving at the final purchase price.

In support of the subject's assessed valuation, the board of review submitted an appraisal report estimating the subject' fair market value of $475,000 as of January 1, 2004, using all three traditional approaches to value. The appraisal was prepared for Duane Shields of Shields Auto Center. The appraiser was not present at the hearing for direct or cross-examination regarding the appraisal methodology and final value conclusion. The board of review argued the appraisal was prepared by a reputable local appraiser nine years after the closure of Chanute Air Force Base.

The board of review next explained the subject parcels under this appeal were created by combining eight parcels. Parcel Number 20-09-03-204-029 (Docket Number 05-00084.001-C-1) was created by combining five parcels. Parcel 20-09-03-228-016 (Docket Number 05-00083.001-C-1) was created by combining three parcels. (Exhibit C) The appellant's purchase price of $325,000 encompassed all eight parcels as verified by the Illinois Real Estate Transfer Declaration. (Exhibit A) However, the board of review explained the aforementioned appraisal only valued seven of the eight parcels. Former parcel number 20-09-03-228-015 was not included in the appraised value. The board of review indicated this parcel had an assessment of $25,000 or an estimated market value of $75,000 prior to its combination with two other parcels to create parcel number 20-09-03-228-016. The evidence also revealed the appellant used the appraisal in a 2004 assessment complaint before the Champaign County Board of Review, in which assessment relief was granted. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Rick Shields was next called as a rebuttal witness. Shields testified neither he nor his father commissioned the appraiser to estimate a value for the subject property. Shields testified Manley had the appraisal prepared from an outside source in an attempt to procure the highest possible sale price for the subject property. The hearing officer noted the appraisal indicated the report was prepared for Duane Shields of Shields Auto Center to be used for a tax appeal. Shields next testified the appraisal was used purely because it was the only evidence at the time to refute the value assigned to the subject property by the county assessment officials that was between $750,000 and $800,000, which he opined to be ridiculous. Shields testified the best evidence of the subject's value was its $325,000 sale price. Shields also opined any other potential buyer of the subject, other than Shields Auto Center, would bulldoze the structures, which would require disposal fees. Shields also testified new construction in Rantoul is occurring near the interstate.

At the hearing, the appellant attempted to submit a new appraisal that was procured by Manley. An objection was raised by the board of review. The objection was sustained. The Property Tax Appeal Board finds it cannot consider this new evidence. Section 1910.66(c) of the Official Rules of the Property Tax Appeal Board states:

> Rebuttal evidence shall not consist of **new evidence such as an appraisal** [emphasis added] 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(c)).

During closing, appellant's counsel argued there was an automobile dealership in Rantoul with newer buildings than the subject that closed in 1981. This property has never been sold for anything other than storage. Counsel argued that Manley has been in business and has seen what happens to commercial property if you lose the business of an automobile dealership. Counsel noted the highest and best of the subject contained in the appraisal submitted by the board of review is its continued use as an automobile dealership. Counsel argued that if the subject was not sold as an automobile dealership, its value cannot be realized based on its highest and best use. Counsel argued there was uncontroverted testimony that one dealership had already closed operations. In essence, counsel argued there is no market for a third automobile dealership in Rantoul. Counsel argued the only potential buyer of the subject was Shields Auto Center, who had been leasing the property.

With respect to the income approach to value contained within the appraisal report, counsel noted the appraiser used a $4,000 per month rental rate based on a lease offering rate that was being negotiated. Counsel argued the subject was actually leased for $2,666 per month during the three-year period when negotiations for the sale were ongoing. With respect to land sales, counsel argued the appraiser ignored the fact that Manley purchased land sale 12 for $1.21 per square foot of land area, yet the appraiser valued the subject parcels at $1.40 and $2.00 per square foot of land to area, respectively. Counsel also argued automobile dealership sales that occurred in the Illinois communities of Effingham, Champaign, Marshall, Hoopeston, Ashmore, and Mattoon between 1999 and 2003 have absolutely nothing to do with commercial real estate values in Rantoul, Champaign County. None of these communities underwent a military base closure. Counsel argued the two entities were dealing at an arm's-length nature. Counsel conceded Manley may have been put at a competitive disadvantage during negotiations because the only potential buyer on the horizon was the occupant, Shields Auto Center, who may have other options. Counsel argues this fact may have affected the value of the subject. In conclusion, counsel argued the buyer and seller were willing participants to the transaction.

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 no reduction in the subject property's assessment is warranted.

Before turning to the facts, the Property Tax Appeal Board finds it must be noted that no objection as to the admissibility of the Shields affidavit was raised at the hearing. This affidavit, however, has not been viewed as a suitable substitute for in person testimony and its contents were summarized merely for a better understanding of the purported relationships between the parties. No substitute or relevant evidence for purposes of deciding this matter have been drawn from the affidavit.

The appellant argued the subject property's assessment was not reflective of its fair market value. 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 failed to overcome this burden.

The Property Tax Appeal Board finds the arm's-length nature of the subject's transaction and sale price to be questionable and highly suspect at best. 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). The evidence and testimony in this record clearly shows the subject property was not advertised for sale on the open market for a competitive open bidding process. The Property Tax Appeal Board finds without marketing the subject, at least on a regional basis, leads to an unknown factor as to the highest possible sale price for the subject and further calls into question the $325,000 transaction price. Furthermore, the Board finds it is not typical in real estate transactions for the seller to finance the unpaid balance of the purchase price, regardless of the interest rate. In addition, the Board finds the parties of the transaction had an ongoing pre-existing business relationship based on a ten year lease that extended on a month-to-month basis for an additional three years at a reduced rental rate. As a result of this analysis, the Board finds the circumstances surrounding the subject's sale is not demonstrative of an arm's-length transaction.

The appellant's counsel also argued the comparable sales contained in the appraisal offered by the board of review are located in varying communities in Illinois and have absolutely no relevance with commercial real estate values in Rantoul, Champaign County. The Board finds this claim has no legal merit. The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979) and Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989). The Board finds there are credible market sales contained in the record, specifically in the appraisal offered by the board of review. The Board further finds the appraisal is probative evidence regarding the subject's fair market value. In fact, the Board finds the appellant used said appraisal to receive an assessment reduction the prior year from the Champaign County Board of Review. The Board finds it to be disingenuous of the appellant to now argue the appraisal value is not relevant or reflective of the subject's value just one year later. The Board finds the appraisal report contains raw sales data for six automobile dealerships with varying degrees of similarity when compared to the subject. They sold between 1999 and 2003 for prices ranging from $375,000 to $1,350,000. Three of the sales occurred from June to September 2003 for prices ranging from $375,000 to $600,000. The subject's assessment reflects an estimated market value of $465,010. After considering adjustments to these comparables for differences when compared to the subject, the Property Tax Appeal Board finds the subject's estimated market value as reflected by its assessment is supported. Therefore, no reduction is warranted.

The appellant also made ancillary arguments regarding the income approach to value contained within the appraisal offered by the board of review. Specifically, the appellant argued the appraiser used a lease offering rate of $4,000 per month rather than the actual lease rate of $2,666 per month. The Board gave this argument little weight. Although rental income may be a relevant factor in determining the value of a property from an investor's standpoint, it is the capacity for earning income, rather than income actually derived, which reflects "fair cash value" for taxation purposes. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428, 431 (1970). After reviewing the income approach within the appraisal, the Property Tax Appeal Board finds the report cites market rental rates of similar types of property to establish the subject's rental rate, which supports the $4,000 per month rental rate utilized by the appraiser.

In conclusion, the Board finds the evidence in this record does not demonstrate the subject property is overvalued 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.

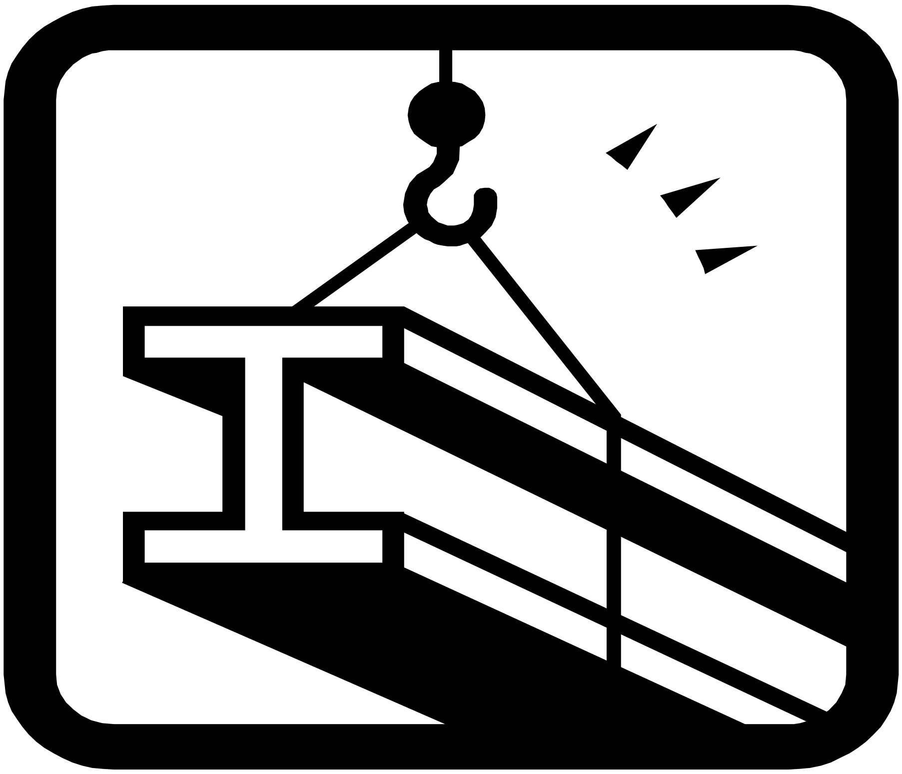
2007 COMMERCIAL CHAPTER
Index

[Items Contained in Brackets Indicate
Arguments or Evidence in Opposition to the Appellant's claim]

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2007 INDUSTRIAL DECISIONS



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2007 INDUSTRIAL CHAPTER
Table of Contents

APPELLANT: **Cherokee Properties, Inc.**
DOCKET NUMBER: **04-00691.001-I-3 thru 04-00691.004-I-3**
DATE DECIDED: **September, 2007**
COUNTY: **Madison**
RESULT: **Reduction**

Initially, the Property Tax Appeal Board finds Southwestern Illinois College District No. 522 did not appear at the scheduled hearing. Section 1910.69(b) of the rules of the Property Tax Appeal Board provides that:

> 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.Admin.Code 1910.69(b).

Pursuant to section 1910.69(b) of the rules of the Property Tax Appeal Board the Board finds Southwestern Illinois College District No. 522 to be in default and hereby dismisses the school district from the appeal.

The subject property consists of a 77.64 acre site improved with an older manufacturing plant containing a total of 1,386,443 square feet of building area in multiple interconnected building segments. The subject property also includes 16 overhead cranes as follows: 1 – 5 ton crane; 3 – 10 ton cranes; 2 – 15 ton cranes; 6 – 25 ton cranes; 1 – 40 ton crane; 2 - 50 ton cranes; and 1 – 75 ton crane. The property is located in Madison, Venice Township, Madison County.

At the beginning of the hearing the parties stipulated as to the size of the improvements and the land under appeal. The parties also agreed that the appraisals submitted by each party valued the land and buildings under appeal at approximately $2,400,000. The parties disagree with respect to the inclusion of the overhead cranes located on the subject property as part of the assessable real estate. The parties also disagree with respect to the value associated with the overhead cranes.

The appellant contends the assessment of the subject property is excessive. More particularly, the appellant argued that the overhead cranes located on the subject have been incorrectly classified and assessed as real estate by the Madison County Board of Review. The appellant contends the overhead cranes should properly be classified as personal property and not assessed for ad valorem real estate taxation purposes. Alternatively the appellant contends the overhead cranes should not be included as part of the real estate assessment because the appellant does not own the cranes. Third, even if the cranes are considered as part of the property owned by the appellant, the overhead cranes are not worth anything.

The appellant initially contends that the overhead cranes were classified and assessed as personal property prior to January 1, 1979. Due to this classification and assessment prior to January 1, 1979, the appellant contends these cranes cannot be reclassified and assessed as real estate pursuant to section 24-5 of the Property Tax Code. In support of this aspect of its argument the appellant submitted various exhibits to demonstrate the overhead cranes were classified and assessed as personal property prior to January 1, 1979.

Appellant's Exhibit 8 is an appraisal of the subject property dated December 6, 1973, with an effective date of November 19, 1973, prepared on behalf of the Venice Township Assessor. The owner of the subject property at the time of the appraisal was Consolidated Aluminum Corporation. The first paragraph of page 19 of the appraisal under the heading "Description of Improvements" stated in part that:

> It is a further premise of this appraisal that only the real estate, namely the land, buildings, and land and site improvements, are included. Machinery, equipment, personal property, piping, power wiring, cranes, craneways, and other similar items are not included. . . .

The appellant's counsel noted that the function of the appraisal as stated on page 1 of the report "is to provide an estimate of market value to determine the basis of assessment for real estate tax purposes." Thus the appellant's attorney argued the cranes were not considered part of the real estate prior to January 1, 1979.

Appellant's counsel next made reference to Exhibits 3 through 5 contending these relate to the assessments of both personal and real property during the years 1977 through 1979. Exhibit 5 was Consolidated Aluminum Corporation's personal property tax return filed in 1978. The personal property tax return reflects machinery and equipment valued at $1,812,394. Exhibit 3 disclosed that the Madison County Board of Review and the then owner/taxpayer of the subject property agreed to settle pending assessment appeals by agreeing that the 1978 personal property assessment on machinery and equipment be increased to $2,346,410 and an assessment on the real estate of $935,740. Exhibit 4 disclosed that the 1979 assessment on the real estate was increased to $1,015,920 as the result of a multiplier being placed on the previous year's real estate assessment.

To demonstrate that cranes were considered as machinery and equipment by Consolidated Aluminum the appellant's attorney made referenced to Exhibit 6 which was Consolidated Aluminum Corporation's fixed asset depreciation policy dated December 31, 1981. On page 5 of the exhibit cranes were classified as machinery and equipment under the depreciation schedule.

The appellant's attorney also explained that the subject property was purchased from Consolidated Aluminum Corporation by Spectrulite Consortium Inc. in September 1986. To document the sale the appellant submitted Exhibit 2, the Real Estate Transfer declaration associated with the sale. The transfer declaration disclosed a total purchase price of $11,750,000 with $10,094,000 allocated to personal property resulting in a net consideration for the real estate of $1,656,000. The attorney asserted that Spectrulite Consortium, Inc. continued to treat the cranes as machinery and equipment.

The appellant's attorney then explained that when Spectrulite Consortium, Inc. (Spectrulite) sold the subject property to Cherokee Properties, Inc. (Cherokee), the appellant herein, in 1989 the cranes were not included as an asset in the sale. The appellant submitted Exhibit 1, an affidavit completed by Chris A. Barnes, president of Cherokee Properties, Inc. The affiant asserted that Cherokee purchased the property from Spectrulite in September 1989 for the sum of $3,000,000. He further stated that Cherokee did not purchase the cranes from Spectrulite. The cranes remained on the property because Spectrulite retained possession of the property pursuant to a lease agreement. The affiant stated that the lease terminated in 2003, after Spectrulite filed bankruptcy and ceased operations. During the course of Spectrulite's bankruptcy case Magnesium Elektron, Inc. purchased seven cranes from the bankruptcy estate (crane numbers 1, 7, 8, 9, 10, 11 and 25). (Exhibit D attached to the affidavit was a copy of the Asset Purchase Agreement between Spectrulite and Magnesium Elektron, Inc. The exhibit contained no specific dollar amount allocated to the cranes.) These cranes remained on the property pursuant to a lease agreement between Cherokee and Magnesium Elektron, Inc. The affidavit also stated that during the course of Spectrulite's bankruptcy case Universal Press Acquisition Corporation (UPAC) purchased two cranes from the bankruptcy estate (crane numbers 5 and 24). On April 1, 2004, UPAC gave these cranes to Cherokee on the condition that Cherokee would not require UPAC to remove them from the property. (Exhibit E attached to the affidavit was a copy a letter dated April 1, 2004, from UPAC to Cherokee containing the terms of the transfer of the cranes to Cherokee.) Barnes further asserted that the Spectrulite bankruptcy estate abandoned the remaining cranes (crane numbers 2, 4, 12, 18, 19 and 23). He further stated that none of these cranes have been used since Spectrulite ceased operations with the exception of crane number 12, which is being used by Custom Steel Processing Company who leases a portion of the property.

The appellant's attorney argued that if you consider these documents together, especially the 1973 appraisal of the subject property prepared on behalf of the township assessor, the conclusion is that the cranes located on the subject were classified and taxed as personal property prior to 1978. The appellant's attorney argued that based on this classification the cranes should not be considered real estate for assessment purposes.

Alternatively, the appellant's attorney argued that the cranes were installed in the facility more than 40 years ago when the property was being operated as an armament facility during World War II. He argued that Spectrulite did not pass title to the cranes to Cherokee when it sold the property and that Spectrulite retained title to the cranes. He further noted that during bankruptcy Spectrulite sold seven of these cranes to Magnesium Elektron, Inc. and two cranes to UPAC. UPAC then left two of the cranes at the facility per agreement with Cherokee in return for Cherokee not requiring UPAC to remove the cranes. Additionally, six cranes owned by Spectrulite have been abandoned. Based on these factors the appellant's attorney argued these cranes have no value.

The appellant also submitted an appraisal of the subject property prepared by Robert Lowrance, an Illinois Certified General Real Estate Appraiser. Lowrance identified Appellant's Exhibit No. 9 as the appraisal he prepared wherein he estimated the subject property had a market value of $2,400,000 as of January 1, 2004. He testified the cranes were not valued within his appraisal based on conversations with Mr. Barnes that the appellant did not own the cranes. He concluded that the cranes had no value or weren't owned so they were not included in his report.

Bill Barnes was present at the hearing and was questioned about the activities of Cherokee Properties, Inc. He testified that Cherokee owns the real estate and leases parts to various tenants. Cherokee is not a manufacturer that uses the property for manufacturing purposes. He identified one tenant as being involved with heavy industrial manufacturing that uses the cranes. He also agreed that the other cranes located at the site would potentially be available to tenants.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $1,130,690 was disclosed. The subject's assessment reflects a market value of $3,395,465 using the 2004 three year median level of assessments for Madison County of 33.30%.

Kerry Miller, Chairman of the Madison County Board of Review, testified that he became a member of the board of review in 1985 and was informed that Madison County always "picked up" overhead cranes as real estate at other industrial properties throughout the County. He testified that overhead cranes were picked up and classified as real estate prior to January 1, 1979. He further testified that it is the policy of the board of review and Madison County assessment officials to value overhead cranes as part of the real estate. He agreed, however, the board of review submitted no documents in the instant appeal as support for this proposition. Mr. Miller asserted that it is difficult to obtain documentation because so much time had passed. He did reference a 1988 Pre-Coat Metals case wherein the assessment included the value of overhead cranes but the balance of the machinery and equipment was not included in the real estate assessment. However, a copy of that decision or reference to any docket number was not provided. He also testified that that property was in a different township and he could not testify what individual township assessors did prior to 1979.

The next witness called on behalf of the board of review was appraiser Barry Loman. Loman is a State Certified General Real Estate Appraiser and is employed as a valuation specialist for the Office of the Madison County Supervisor of Assessments. Loman identified Board of Review Exhibit No. 1 as the appraisal he prepared for the subject property. He testified that he estimated the value of the improvements and the land to be $2,400,000 and the contributory value of the cranes to be $777,590 resulting in a total value for the property of $3,178,000, rounded.

Loman testified the contributory value of the cranes was calculated in the cost approach to value. Pages 21 and 22 of his appraisal contained his valuation calculations for the cranes. The board of review's appraiser testified he included the cranes because he assumed they were owned by the appellant. In estimating the cost new for the cranes he inspected the cranes to gather information. He then used both the Illinois Real Property Appraisal Manual and the Marshall Valuation Service to arrive at replacement cost new of $3,509,850 and $3,110,358, respectively. He estimated the effective age of the cranes based on his observation to arrive at an average age of 9 years old. The Marshall and Swift life expectancy guidelines for the cranes ranged from 9.5 to 14.5 years so he estimated a life expectancy of 12 years. Using these estimates the appraiser calculated depreciation to be 75%. Using the estimate of replacement cost new from the Marshall Valuation Service and deducting 75% for depreciation resulted in a depreciated value for the cranes of $777,590.

Under cross-examination Loman agreed that the validity of the cost approach depends in part on the functional utility of the item being valued. He was not able to find much information about the cranes. At the time of his inspection he did not observe any of the cranes being used and did not know the last time they were used. He also explained that in estimating depreciation instead of using actual age he used effective age based on his observations. Loman agreed that he had no evidence that the cranes are used or useful.

Loman also testified that if the cranes were not owned by the appellant they would not be included in the appraisal report.

Loman testified that in preparing the appraisal he talked to individuals in the commercial department to find out how data was entered on the Computer Assisted Mass Appraisal system with respect to cranes. He determined that cranes are currently assessed as part of the real estate. He did no research to determine how overhead cranes were classified prior to 1979.

Loman also included with his report copies of the property record cards associated with the subject property. Card 002/005 for parcel number 22-1-19-26-00-000-013 had an entry for overhead cranes at a value of $898,200.

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 appellant initially contends the assessment of the subject property is excessive due to the fact that the overhead cranes have been improperly classified and assessed as real estate. The appellant contends that since the cranes were classified as personal property prior to January 1, 1979, they should have retained that classification pursuant to the section 24-5 of the Property Tax Code. (35 ILCS 200/24-5).

The Board finds that both the appellant's appraiser, Robert Lowrance, and the board of review's appraiser, Barry Loman, were in agreement that the subject land, site improvements and buildings had a market value of $2,400,000 as of January 1, 2004. The parties differ on whether the overhead cranes should be included as part of the real estate for assessment purposes. Therefore, the Board finds that the primary issue in this appeal is whether or not the 16 overhead cranes located on the subject property should be classified and assessed as real estate or determined to be personal property exempt from real estate taxation.

Illinois' system of taxing real property is founded on the Property Tax Code. (35 ILCS 200/1-1 et seq.) Section 1-130 of the Property Tax Code (hereinafter the Code) defines "real property" in pertinent part as:

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . . (35 ILCS 200/1-130).

As a general proposition, except in counties with more than 200,000 inhabitants that classify property for taxation purposes, each tract or lot of property is to be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145.

Of further relevance to this appeal is the following passage from the Illinois Constitution, which states:

> On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. . . . Ill.Const. 1970, art.IX, §5(c).

As mandated by the above excerpt from the Constitution of 1970 the General Assembly enacted the Illinois Replacement Tax Act (Ill.Rev.Stat.1979, ch.120, ¶499.1, now codified at 35 ILCS 200/24-5) to replace the revenues lost by the abolition of the personal property tax. Also known as the "Freeze Act", the statute was amended in 1983 to add a prohibition against the reclassification of property of like kind acquired or placed in use after January 1, 1979. Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855, 863-864 (3rd Dist. 1983). Section 24-5 of the Code now provides in part that:

> Ad valorem personal property taxes shall not be levied on any personal property having tax situs in this State. . . No property lawfully assessed and taxed as personal property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as real property subject to assessment and taxation. No property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property.

The legislature's intent in passing this provision of the Replacement Tax Act was to "freeze" classifications of property to their pre-January 1, 1979, classifications. Property that was lawfully classified as real property or personal property before January 1, 1979, cannot be reclassified as personal property or real property after that date. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855 (3rd Dist. 1983). Thus, the classification of property as either real or personal prior to January 1, 1979, controls the status of property after January 1, 1979. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981).

The taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and, thus, proving that such property was lawfully assessed and taxed as personal property prior to January 1, 1979. Trahraeg Holding Corp. v. Property Tax Appeal Board, 204 Ill.App.3d 41, 43 (2nd Dist. 1990). However, if the taxpayer meets this burden, the property must be classified as personal property without resorting to any other method of classification. Trahraeg Holding Corp. 204 Ill.App.3d at 43; Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996).

The court in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3rd Dist. 1995) considered the criteria used by the Property Tax Appeal Board in determining whether certain items of machinery and equipment put into service after 1979 was "of like kind" to pre-1979 personal property. The court stated "any common sense construction of the term like kind would require substantial similarities between pre-1979 and post-1979 equipment." County of Whiteside 276 Ill.App.3d at 186. The court concluded the factors relied upon by the Property Tax Appeal Board were sufficient to establish a like kind relationship. The factors relied upon included: (1) performance of the same function; (2) production of the same product; (3) similar portability and manner of attachment; and (4) that the new equipment replaced the existing equipment. Id.

The court in Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170 (3rd Dist. 1996), further discussed the workings of the Freeze Act. The court noted the Freeze Act also provides that the classification is frozen only if it was lawfully made. The court further stated that it is unlawful for an assessor to exempt one kind of property while classifying the same kind of property in the same district as nonexempt. The court further recognized that Article IX, section 4(a) of the Illinois Constitution states that, "taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." The court further noted the supreme court has explained that:

> The principle of uniformity of taxation requires equality in the burden of taxation. [Citation.] This court has held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation. [Citation.] The uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. [Citation omitted.]

The court in Oregon concluded that an assessment of taxes on property is not lawful if it creates a "substantial disparity between similar properties or classes of taxpayers." Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170, 178 (3rd Dist. 1996); Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309 (3rd Dist. 1973).

The court in Oregon found that the Freeze Act contains no language indicating that the like kind comparison of machinery and equipment is limited to property located at one plant or at the same location. Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d at 180-181. The court also found that the legislative history of the Freeze Act indicates that the purpose of the like-kind provision was to continue the assessment practices of assessors in their respective counties. Id. The court further found that the like kind criteria used by the Property Tax Appeal Board in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3rd Dist. 1995) was not the exclusive method for determining whether the Freeze Act applies to post 1978 property. Oregon, 285 Ill.App.3d at 182-183.

Where the taxpayer cannot establish that property is exempt under the provisions of section 24-5 of the Code, case law dictates how the machinery and equipment is to be analyzed in determining whether the contested items are to be classified and assessed as real estate. Annexations made by the owner are presumed to be made with the design of their permanent enjoyment with the realty and as an accessory to it. Ayrshire Coal Co. v. Property Tax Appeal Board, 19 Ill.App.3d 41, 45 (3rd Dist. 1974). In matters relating to taxation, rules more nearly conforming to those used in determining what constitutes fixtures as between grantor and grantee, vendor and vendee, mortgagor and mortgagee should apply rather than the rule used in what constitutes removable fixtures as between landlord and tenant. Commonwealth Edison Co. v. Property Tax Appeal Board, 219 Ill.App.3d 550, 556 (2nd Dist. 1991), Cherry Bowl, Inc. v. Property Tax Appeal Board, 100 Ill.App.3d 326, 330 (2nd Dist 1981), Ayrshire Coal Co. v.

Property Tax Appeal Board, 19 Ill.App.3d 41, 46 (3rd Dist. 1974). The major difference between these doctrines is that annexations by a tenant are presumed to be for his benefit and not to enrich the freehold, while annexations made by an owner are presumed made with the intent to permanently improve the premises. Commonwealth Edison Co. v. Property Tax Appeal Board, 219 Ill.App.3d 550, 557 (2nd Dist. 1991), Cherry Bowl, Inc. v. Property Tax Appeal Board, 100 Ill.App.3d 326, 330 (2nd Dist 1981).

The court in Ayrshire Coal Co. v. Property Tax Appeal Board, 19 Ill.App.3d 41 (3rd Dist. 1974) set forth the "integrated industrial plant" doctrine as a test to determine the proper classification of property for ad valorem taxation purposes. This doctrine takes the position that any and all machinery essential to the proper functioning of a plant, mill, or similar manufacturing is a fixture or is at least so presumed to be, irrespective of the manner in which it is annexed to the realty and even though it is not attached thereto at all. Id. at 45-46.

The court in In re Application of Beeler, 106 Ill.App.3d 667 (4th Dist. 1982) recognized two different approaches to determine whether property is realty for real estate taxation purposes: the intention test and the integrated industrial plant doctrine. The court stated under the integrated industrial plant doctrine all machinery of a factory or plant necessary for its operation as a complete going concern, is considered to be part of the freehold. Id. at 671. The court stated "under the intention test three criteria are applied to evaluate whether the property is personalty or realty, or more properly, whether an item has become a fixture." Id. at 670. The criteria set forth in Beeler are:

1) The property must be annexed to the realty or to something appurtenant thereto.
2) The property must be applied to the use or purpose to which that part of the realty, with which it is connected is appropriated.
3) The party making the annexation must intend to make a permanent accession to the freehold.

Beeler, 106 Ill.App.3d at 670.

The court in Beeler stated the integrated industrial plant doctrine is just an extension of the second and third elements of the intention test. The court explained that under the industrial plant doctrine physical annexation is subordinated to the interrelationship between the disputed piece of property and the use of the real estate. The higher the degree of relationship between the contested property and the uses of the realty, the more assuredly it can be said that the property is part of the realty. In re Application of Beeler, 106 Ill.App.3d at 672.

With these assessment and classification principles as a guide, the Property Tax Appeal Board will analyze the evidence presented by the parties to determine whether the 16 overhead cranes should be classified and assessed as real estate.

The Board must first determine whether the Freeze Act precludes the machinery and equipment located on the subject property from being classified and assessed as real estate. As stated earlier, the taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and, thus, proving that such property was lawfully assessed and taxed as personal property prior to January 1, 1979. Once this burden is met, however, the property must be classified as personal property. Trahraeg Holding Corp. v. Property Tax Appeal Board, 204 Ill.App.3d 41, 43 (2nd Dist. 1990). The Board finds the taxpayer has met this burden.

The Board finds the appellant presented numerous exhibits which viewed together demonstrate that the overhead cranes at the subject property were classified and assessed as personal property prior to January 1, 1979. Appellant's Exhibit 8 is an appraisal of the subject property dated December 6, 1973, with an effective date of November 19, 1973, prepared on behalf of the Venice Township Assessor. The owner of the subject property at the time of the appraisal was Consolidated Aluminum Corporation. The first paragraph of page 19 of the appraisal under the heading "Description of Improvements" stated in part that:

> It is a further premise of this appraisal that only the real estate, namely the land, buildings, and land and site improvements, are included. Machinery, equipment, personal property, piping, power wiring, cranes, craneways, and other similar items are not included. . . .

The appellant's counsel noted that the function of the appraisal as stated on page 1 of the report "is to provide an estimate of market value to determine the basis of assessment for real estate tax purposes." Based on the disclaimers and definitions in the appraisal Kerry Miller agreed that the cranes were not included in the appraisal assignment. (Transcript page 19.)

The appellant also submitted Exhibits 3 through 5 contending these relate to the assessments of both personal and real property during the years 1977 through 1979. Exhibit 5 was Consolidated Aluminum Corporation's personal property tax return filed in 1978. The personal property tax return reflects machinery and equipment valued at $1,812,394. Exhibit 3 disclosed that the Madison County Board of Review and the then owner/taxpayer of the subject property agreed to settle pending assessment appeals by agreeing that the 1978 personal property assessment on machinery and equipment be increased to $2,346,410 and an assessment on the real estate of $935,740. Exhibit 4 disclosed that the 1979 assessment on the real estate was increased to $1,015,920 as the result of a multiplier being placed on the previous year's real estate assessment. What the Board finds significant about these returns is that personal property reflected 71.5% of the assessed value of the property in 1978. This demonstrates that a substantial proportion of the subject property was considered personal property for assessment purposes prior to January 1, 1979. Furthermore, there was no reclassification of the property from 1978 to 1979, only an increase in the real estate assessment due to the application of an equalization factor.

To further demonstrate that cranes were considered as machinery and equipment by Consolidated Aluminum the appellant made reference to Exhibit 6, Consolidated Aluminum Corporation's fixed asset depreciation policy dated December 31, 1981. On page 5 of the exhibit cranes were classified as machinery and equipment under the depreciation schedule.

Of further significance the Board finds the evidence disclosed that at the time Cherokee purchased the subject property in 1989 the seller, Spectrulite, retained ownership of the overhead cranes. In fact, the evidence disclosed Spectrulite while in bankruptcy during 2003 sold nine of the cranes to Magnesium Elektron, Inc. and UPAC. This evidence demonstrates the cranes were not considered as part of the real estate.

To counter this aspect of the appellant's argument Kerry Miller, Chairman of the Madison County Board of Review, testified that he became a member of the board of review in 1985 and was informed that Madison County always "picked up" overhead cranes as real estate at other industrial properties throughout the County. He testified that overhead cranes were picked up and classified as real estate prior to January 1, 1979. He further testified that it is the policy of the board of review and Madison County assessment officials to value overhead cranes as part of the real estate. He agreed, however, that the board of review submitted no documents in the instant appeal as support for this proposition. Mr. Miller asserted that it is difficult to obtain documentation because so much time has passed. He also stated that there are 24 townships in Madison County and he can't testify what individual township assessors did prior to 1979. (Transcript page 19.)

Based on this record the Board finds the appellant has met its burden of proof on the classification issue and demonstrated that the overhead cranes located at the subject property were classified as personal property prior to January 1, 1979. The Board finds the testimony of Mr. Miller was not sufficient to counter the documentary evidence submitted by the appellant on this issue. Mr. Miller did not become a member of the board of review until 1985 and submitted no county records to refute the documentation presented by the appellant on this issue. The Board is cognizant that as time passes it becomes more difficult for both taxpayers and assessing officials to discover and submit documentary evidence that conclusively establishes the classification of property prior to 1979 for assessment purposes. Nevertheless, where one party is able to produce documentary evidence that is probative on the issue of classification it is incumbent on the opposing party to provide documentation or persuasive credible testimony on county assessment classification practices prior to 1979 to refute the argument. Based on this record the Board finds the board of review was not able to refute the appellant's argument.

Based on this analysis, the Property Tax Appeal Board finds that the assessment of the subject property as determined by the Madison County Board of Review is incorrect. The Board finds the overhead cranes at the subject property were classified as personal property prior to January 1, 1979. The Board further finds that section 24-5 of the Property Tax Code precludes the assessment of the cranes located at the subject property as real estate. Since the Property Tax Appeal Board finds that section 24-5 of the Property Tax Code controls the determination of the correct classification and assessment of the cranes located at the subject property, it is not necessary to further analyze the classification and assessment of the overhead cranes using the common law tests.

In conclusion the Property Tax Appeal Board finds the subject property had a market value of $2,400,000 as of January 1, 2004. Since market value has been established the 2004 three year median level of assessments of 33.30% shall apply.

APPELLANT: **David Choi**
DOCKET NUMBER: **02-22885.001-I-2**
DATE DECIDED: **March, 2007**
COUNTY: **Cook**
RESULT: **No Change**

The subject property consists of a 35,234 square foot parcel of land containing a 33-year old, one-story, masonry, industrial building containing 17,464 square feet of rentable area. The appellant argued that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal.

The board of review did not submit its "Board of Review Notes on Appeal" nor evidence in support of its assessed valuation of the subject property. The PTAB issued a default letter to the board of review on August 2, 2004.

In support of the market value argument, the appellant submitted colored photographs of the subject's interior, affidavits of vacancy and expenses, the 2002 rent roll, 1999 and 2001 Income Tax Statements and an affidavit from the previous owner stating the property was vacant from January through May 22, 2002. Based upon this analysis, the appellant requested a reduction in the subject's improvement assessment.

The intervenor presented a legal brief arguing the current assessment for the subject property is correct. The subject's assessment of $311,332 reflects a market value of $864,811 or $49.52 per square foot of rentable area using the level of assessment of 36% for Class 5b property as contained in the Cook County Real Property Assessment Classification Ordinance. As evidence to establish the correctness of the subject's assessment, the intervenor submitted a CoStar Comps printout showing the sale of the subject property on May 21, 2002 for $1,100,000 or $62.99 per square foot of rentable area. In addition, the intervenor also submitted a CoStar Comps printout showing information on one comparable sale. The comparable consisted of a 25 year-old, one-story, masonry, industrial building containing 17,128 square feet of rentable area. The comparable sold in January 1997 for $607,000 or $35.44 per square foot of rentable area. As a result of its analysis, the intervenor requested confirmation of the subject's assessment.

After considering the evidence and reviewing the record, 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. National City Bank of Michigan/Illinois v. 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. *Property Tax Appeal Board Rule* 1910.65(c). Having considered the evidence presented, the PTAB concludes that the appellant has not met this burden and that a reduction is not warranted.

To support the argument that the subject's assessment is not reflective of the property's market value, the appellant submitted documentation stating the property was vacant for most the assessment year in question. The PTAB gives the appellant's argument little weight. 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 based on vacancy 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 income, 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. The appellant did not provide such evidence and, therefore, the PTAB gives this argument no little weight.

The PTAB also finds that the intervenor submitted information of sale of the subject property in May 2002 for $1,100,000. The PTAB finds this evidence supports the market value reflected in the subject's assessment and no reduction is warranted.

APPELLANT:	**Stanley Kozlowski**
DOCKET NUMBER:	**01-25923.001-I-1 thru 01-25923.003-I-1**
DATE DECIDED:	**March, 2007**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of three land parcels consisting of 50,347 square feet and containing a 24,675 square feet, one-story, masonry, industrial building. The appellant argued that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal. Prior to the hearing, the parties agreed to have the decision written based on the evidence submitted into the record.

In support of the market value argument, the appellant submitted an appraisal of the subject property with an effective date of January 1, 2001. The appraiser used all three traditional approaches to value to arrive at market value of $840,000. The appraiser determined that the highest and best use to be its current use.
In the cost approach to value, the appraiser valued the land using sold land comparables to determine a value for the land of $4.00 per square foot or $201,500. Using the *Marshall Valuation Service*, the appraiser estimated a replacement cost new for the improvement of $1,061,025. He then utilized the economic age-life method to determine a depreciation of 40% or $424,410 for the building, while he listed the depreciated value for the site improvements to be $2,500. The land was than added in for a final value under the cost approach of $840,000.

In the income approach, the appraiser reviewed the rent of five comparable properties to establish a range of $3.65 to $4.95 per square foot of net rentable area on a gross basis. After adjustments, the appraiser determined a potential gross income for the subject of $4.50 per square foot of building area or $111,038. The appraiser than applied a 7% vacancy factor for an effective gross income of $103,265. The appraiser extracted expenses to determine a net operating income of $83,119. Using the band of investment method, the appraiser applied a capitalization rate of 10% for a total value based on the income approach of $830,000, rounded.

Under the sales comparison approach to value, the appraiser utilized five suggested comparable sales located in the same market as the subject. The comparables consist of single-story, masonry, industrial buildings. The buildings range in size from 18,900 to 37,600 square feet of building area and in land to building ratios from 1.66:1 to 3.09:1. The properties sold from July 1999 to March 2001 for prices ranging from $475,000 to $1,300,000 or from $22.20 to $35.45 per square foot of building area. The appraiser made several adjustments to the comparables for land to building ratio and building size. Based on this, the appraiser determined the subject property's value using the sales comparison approach to be $840,000, rounded.

In reconciling the approaches to value, the appraiser gave primary consideration to the sales comparison approach for a final value for the subject as of January 1, 2001 of $840,000.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was $310,904. The subject's assessment reflects a market value of $863,622 or

$35.00 per square foot of building area using the level of assessment of 36% for Class 5b property as contained in the Cook County Real Property Assessment Classification Ordinance. The board also submitted a brief arguing that there is a de minimis difference in the assessed value as determined by the board of review and what the assessed value of the subject would be if using the appraisal to set the value. The board argues that there is a mere difference of opinion as to the value of the subject property that this alone should not change to assessed value. The board of review cited several cases in regards to this argument. As a result of this argument, the board requested confirmation of the subject's assessment.

After considering the evidence and reviewing the record, 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. <u>National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board</u>, 331Ill.App.3d 1038 (3rd Dist. 2002); <u>Winnebago County Board of Review v. Property Tax Appeal Board</u>, 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 presented, the PTAB concludes that the evidence indicates a reduction is warranted.

In determining the fair market value of the subject property, the PTAB finds the best evidence to be the appellant's appraisal. The appellant's appraiser utilized the traditional approaches to value in determining the subject's market value. The PTAB finds this appraisal to be persuasive for the appraiser: has experience in appraising; personally inspected the subject property and reviewed the property's history; estimated a highest and best use for the subject property; 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 that were necessary.

The PTAB gives little weight to the board of review's argument that the difference in the appellant's requested value and the current assessed value is minimal and therefore not worthy of a reduction. 35 ILCS 200/9-155. The appellant in this matter submitted an appraisal which shows, for all practical purposes, the value of the subject property.

Therefore, the PTAB finds that the subject property contained a market value of $840,000 as of the January 1, 2001 assessment date. Since the market value of the subject has been established, the Cook County Real Property Classification Ordinance level of assessments for Cook County Class 5b property of 36% will apply. In applying this level of assessment to the subject, the total assessed value is $302,400, while the subject's current total assessed value is above this amount at $310,904. Therefore, the PTAB finds that a reduction is warranted.

APPELLANT: **Newlywed Foods, Inc.**
DOCKET NUMBER: **00-24496.001-I-3 thru 00-24496.0123-I-3 and 01-21566.001-I-3 thru 01-21566.012-I-3**
DATE DECIDED: **March, 2007**
COUNTY: **Cook**
RESULT: **Reduction**

The subject property consists of an irregularly shaped 514,122 square foot parcel improved with an industrial complex consisting of six, 80 year old, masonry constructed buildings of one, two and three stories. The six buildings have a gross building area of 321,476 square feet with 15% being used as office space. The subject has a 1.55:1 land to building ratio. The improvement has 17 docks. Other improvements include 250,000 square feet of gravel or asphalt paving of which 150,000 square feet is dedicated parking area, security fencing and concrete walks. The subject is located in Jefferson Township, Cook County.

Appearing before the Property Tax Appeal Board on behalf of the appellant was its attorney arguing the fair market value of the subject is not accurately reflected in its assessed value. In support of the market value argument, the appellant submitted a complete summary appraisal report with a valuation date of January 1, 2000 (Appellant's Exhibit No. 1) and the testimony of its author, Neil J. Renzi. Mr. Renzi is a State of Illinois certified general real estate appraiser with a Member of the Appraisal Institute (MAI) designation. Mr. Renzi testified that within the past five years he has appraised approximately 100 properties similar to the subject. In addition, he has been involved with the development and construction of new properties both residential and commercial in Chicago and surrounding areas. After a brief examination of Mr. Renzi's appraisal experience, he was tendered and accepted as an expert witness.

Mr. Renzi testified he made a full interior and exterior inspection of the subject on January 5, 2001. He described the subject as being located in an area with a blend of residential, commercial and industrial properties serviced by good overall transportation accessibility and an ample labor pool. Mr. Renzi described the area surrounding the subject as a stable mixture of residential, commercial and industrial properties with primarily older improvements. The witness was of the opinion the subject appears to conform to the existing City of Chicago zoning classification of M1-1, described as restricted manufacturing districts. The appraiser testified the subject was appraised as a fee simple estate for *ad valorem* tax purposes. When describing the subject, the appraiser testified the subject's current zoning does not permit residential use. The subject has a railroad spur cutting midway through the property. After an analysis of factors influencing the site, it was the appraiser's opinion the subject's highest and best use as vacant would be development for a wide variety of uses and its highest and best use as improved is its current use.

In estimating a total market value of $2,250,000 for the subject, the appraiser employed the three traditional approaches to value. The appraiser estimated the subject's effective physical age as 35 years, its physical life at 45 years and an average weighted age as 35 years.

The first approach to value employed by the appraiser was the cost approach. To estimate a land value for the subject the appraiser examined the sales of five vacant properties. The appraiser selected parcels in areas generally similar to the subject's location. The parcels range in size from 367,358 to 695,247 square feet. The comparables sold from September 1995 to August 1998 for prices ranging from $685,000 to $2,175,646, or from $1.43 to $4.84 per square foot of land area. After adjustments for property rights conveyed, financing, time of sale, location, zoning, shape and size, access, configuration and other pertinent items, Mr. Renzi estimated $3.00 per square foot as a unit of value for the subject land, resulting in a projected land value of $1,550,000, rounded.

Replacement cost new was employed to estimate the cost new of the subject's improvements. Mr. Renzi utilized the *Marshall & Swift Valuation Service Cost Manual* to estimate a total replacement cost for the subject's improvement of $10,849,815 or $33.75 per square foot of building area. The appraiser testified when using the replacement cost technique, the subject was priced as a single complex, without super adequacies. Functional inadequacies were addressed as depreciation. The appraiser's estimate of total accrued depreciation of 93% or $10,090,328 was based on the market. A depreciated cost of $75,000 for site improvements such as the parking areas driveways and walks was added to the principal improvement's depreciated cost resulting in a total depreciated replacement cost of $834,487. Adding the land value of $1,550,000 resulted in an estimated value by the cost approach for the subject of $2,400,000 rounded, as of January 1, 2000. The appraiser testified given the subject's age he utilized the cost approach as a check against the value indicated in the other approaches to value.

In the sales comparison approach, Mr. Renzi testified he examined the sales of five industrial properties in the subject's general area. Containing from 211,552 to 450,000 square feet of building area, the buildings were built from 1922 to 1969. The comparables have ceiling heights ranging from 12 to 38 feet, and contain from 2% to 12% office space. The comparables have site coverage ratios ranging from .38:1 to .85:1, while the subject has a .51:1 site cover ratio. These sales occurred from October 1996 to November 1999 for prices ranging from $1,050,000 to $5,190,000, or from $4.16 to $11.53 per square foot of building area including land. The appraiser adjusted the comparables for factors such as market conditions, location, age, condition, financing, building size, site coverage ratios, clear ceiling heights and percentage of office space along with other unique characteristics individual to the comparables. The appraiser testified from this information he selected a unit of value for the subject of $7.00 per square foot of building area including land. Mr. Renzi's estimate of value for the subject using the sales comparison approach was $2,250,000, rounded.

The income approach to value was the next technique utilized by Mr. Renzi in the appraisal. The witness testified he analyzed three industrial properties located in areas generally similar to the subject. The comparables contain rental spaces from 142,000 to 200,000 square feet of building area. The rents utilized were asking rents ranging from $1.75 to $3.25 per square foot. Two of the offerings were net rentals, the third was gross adjusted to net. After adjusting the comparables for factors such as size, location, clear ceiling heights, market conditions, age, and land to building ratios, the appraiser estimated a potential gross income (PGI) for the subject of $401,845, or $1.25 gross per square foot of building area. When estimating a PGI unit for the subject, the appraiser indicated portions of the subject complex would be very difficult to rent. Based on an analysis of the market place, terms of the comparable's proposed leases, and the subject's weakness, the appraiser estimated vacancy and collection (V&C) loss to be 17%, or $68,314, resulting in an effective gross income (EGI) of $333,531. Estimated reserves for replacement and management fees totaling $48,825 were subtracted from the EGI resulting in an estimated net operating income (NOI) of $284,706 for the subject.

To establish an overall capitalization rate applicable to the subject's NOI, the appraiser testified he utilized the band of investment method which takes into consideration both an equity requirement and a mortgage requirement. His research indicated this method is the most reflective of the market for a property such as the subject. From this information, Mr. Renzi selected an overall capitalization rate of 11.453% to apply to the subject's NOI. He calculated a tax load or 6.916% to add to the overall capitalization rate. The appraiser considered the V&C of 17% to be an important factor in his capitalization of the subject's NOI, thus he utilized the V&C to conclude a partial tax load of 1.176%. This figure was added to the estimated overall rate resulting in a total capitalization rate of 12.629%. After capitalizing the NOI, his value estimate for the subject via the income approach was $2,250,000, rounded.

In his reconciliation of the three methods of estimating value, Mr. Renzi placed primary weight on the sales comparison approach indicating the income and cost approaches lend support to the sales comparison approach. His final opinion of value for the subject was $2,250,000, as of January 1, 2000.

Appellant's counsel questioned Mr. Renzi with regard to his opinion of value for the subject for the subsequent two years, 2001 and 2002. Mr. Renzi testified as there were no significant changes in the market subsequent to January 1, 2000 and there would be no significant difference in his estimate of market value for the subject as of January 1, 2001 and January 1, 2002.

During cross-examination, Mr. Renzi was thoroughly questioned regarding information sources and methodologies used when preparing the appraisal. In particular, Mr. Renzi was questioned in detail regarding his conclusions of the subject's highest and best use. His responses indicated an estimate of land value is one of many components of making a highest and best use determination. He testified various other factors weigh in such as a contributory value of the current improvement, estimated demolition costs, the differential between the estimated improvement value and land value, and alternative uses of the improvement. Mr. Renzi answered all inquiries regarding his rental comparables and sales comparables comprehensively.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $1,272,528 was disclosed. This assessment reflects a fair market value of $3,537,800 when the Cook County Real Property Assessment Ordinance level of assessments of 36% for Class 5b property, such as the subject, is applied. The board submitted an appraisal report prepared by Jeffrey M. Hortsch of the Cook County Assessor's office (Board of Review Exhibit #1.) Mr. Hortsch was not present at the hearing before the Property Tax Appeal Board. The appraisal indicates Mr. Hortsch is a State of Illinois licensed real estate appraiser. Although, the report indicates the physical characteristics of the subject were obtained from the appellant's appraisal, the appraiser also indicates the report is based on an exterior inspection made by the appraiser on September 18, 2001. In his report, Mr. Hortsch suggests the information in the Renzi appraisal is factual and accurate. In addition, the author indicated the report is an appraisal through desk review of the Renzi report. In Hortsch's report, the area description is a duplication of the area description contained in the Renzi report. Mr. Hortsch agreed with the appellant's appraiser's conclusion for both the highest and best use as vacant and as improved.

In estimating the market value for the subject of $3,500,000 as of January 1, 2000, Mr. Hortsch employed two of the three approaches to value; the income approach and the sales comparison approach. Although considered, the author deemed the cost approach inappropriate when valuing property that exhibits various forms of accrued depreciation.

The initial approach utilized by the appraiser was the income approach to value. Four rental comparables were utilized to estimate a gross income for the subject. One of the comparables is the same as the appellant's rental comparable three. The appraisal indicated these properties were sold from December 1998 to April 2000. The improvements ranged in size from 125,000 to 206,152 square feet of net building area with clear ceiling heights ranging from 11 feet to 18 feet. Two of the comparables have 11% and 2% of office space; were built in 1935 and 1942; and have land to building ratios of 0.46:1 and 1.14:1. This information was not provided for the remaining two comparables. It is unclear whether the net building area and the rented space of the comparables are equivalent. The net rents provided for the comparables ranged from $1.05 to $1.75 per square foot. After various adjustments, the appraiser estimated a net per square foot rent for the subject of $1.40, resulting in a potential gross income (PGI) of $450,066. Using 10% of the PGI, or $45,007, as vacancy and collection loss (V&C) the appraiser estimated $405,059 as the EGI. To ascertain a NOI the appraiser deducted expenses of $20,253 for management, legal and accounting and $32,148 for reserves for replacement resulting in a NOI of $352,658. The next step in this process was the determination of a capitalization rate. Using the direct technique and the band of investment method, the appraiser determined a 10% capitalization rate and .6234% as a tax load or a loaded capitalization rate of 10.6234%. After application of the capitalization rate to the NOI, the appraiser's opinion of value through the income approach was $3,320,000, as of January 1, 2000.

When developing the sales comparison approach to value, the board of review's appraiser used six sales, one of which was also used by the appellant's appraiser. The sales comparables range in size from 119,840 to 450,000 square feet of building area. The masonry constructed comparables were built from 1922 to 1948 and have office space ranging from 2% to 17% of building area. They have clear ceiling heights ranging from 13 feet to 38 feet and land to building ratios ranging from .70:1 to 1.53.1. These sales took place from July 1997 to December 1999 for prices ranging from $1,100,000 to $5,190,000, or from $6.12 to $14.78 per square foot of building area. From the foregoing sales data, the appraiser estimated a market value for the subject of $11.00 per square foot of building area, or $3,540,000 as of January 1, 2000.

In the reconciliation, it appears that Mr. Hortsch placed the most weight on the sales comparison approach although a complete discussion of the reconciliation process is not contained in the appraisal.

Appearing before the Property Tax Appeal Board on behalf of the intervenor was its attorney arguing the fair market value of the subject is greater than the fair market value reflected by the current assessment. In support of this argument, the intervenor adopted the board of review's evidence.

The intervenor presented Brian Aronson as its review appraisal witness. Mr. Aronson is a State of Illinois certified general appraiser, holds a MAI designation and has been appraising real estate for approximately 15 years. Mr. Aronson testified the scope of his assignment in the current matter was to provide a technical appraisal review of the appellant's appraisal report. After reviewing the report, Mr. Aronson opined the appellant's appraiser's selection of both market and rental comparables are unsuitable to compare to the subject. In addition, the witness differed with Mr. Renzi's methodology in the appellant's cost approach to value. In essence, Mr. Aronson's testimony indicated his opinions differed from all of Mr. Renzi's opinions and Mr. Renzi strayed from various techniques he would have used under the same circumstances.

In closing, the appellant's counsel requested that the Property Tax Appeal Board find the subject had a fair market value of $2,250,000 as of January 1, 2000 and January 1, 2001 and reduce its assessments to reflect this market value.

Counsel for the board of review argued the board of review's evidence demonstrates the value of the subject and its subsequent assessment are upheld by the Hortsch appraisal and the assessment should remain unchanged.

Counsel for the intervenor argued the crux of this case is the subject's highest and best use. Further counsel maintains the highest and best use is not appropriately addressed in the appellant's appraisal or Mr. Renzi's testimony. Counsel asserted the subject's land value determined by the appellant is not credible because the sales used are not appropriately comparable to the subject.

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 Board gives little weight to the board of review's value conclusion. The board of review did not present a witness to testify regarding credentials, appraisal methodologies, and the validity of the data contained in the appraisal. Further the appraiser was not present to undergo meaningful cross-examination. Rather, the board of review simply presented an appraisal report to stand as its evidence. The Board, therefore, places diminished weight on the board of review's conclusion of value.

Counsel for the intervenor argued this case turns on a determination of the subject's highest and best use. This counsel maintains is not appropriately addressed in the appellant's appraisal or Mr. Renzi's testimony. Counsel asserted because in Mr. Renzi's cost approach the estimated a land value is higher than the estimated value of the improvement the highest and best use cannot be as currently improved and the sales used are not properly comparable to the subject. The

Board finds this argument without merit. First, the intervenor presented no expert testimony of this issue to support this argument. Second, in testimony Mr. Renzi clearly stated various factors such as a contributory value of the current improvement, estimated demolition costs, the differential between the estimated improvement value and land value, and alternative uses of the improvement weigh in when determining a property's highest and use. He also made it clear given the subject's current zoning an alternate use is not currently permitted. The Board finds Mr. Renzi's conclusion that the subject's highest and best use is as currently improved logical. The Board also finds that the board of review's appraiser agreed with the appellant's conclusion of highest and best use.

The Property Tax Appeal Board finds that the best evidence to estimate the subject property's market value contained in the record is the testimony and appraisal presented by the appellant's appraiser. Mr. Renzi testified that he utilized the three traditional approaches to value. In all three approaches, Mr. Renzi's analysis and testimony was detailed and concise.

In the cost approach, the Board finds that Mr. Renzi used appropriate comparables and adjustments to estimate a land value for the subject. In addition, the Board finds that the appellant's appraisal and appraiser offered the only evidence of the subject's land value in this record. Therefore, the Property Tax Appeal Board finds that the subject has an estimated land value of $1,550,000 as of January 1, 2000.

When estimating a replacement cost new for the subject, Mr. Renzi performed a thorough examination of the subject and based his estimate of replacement cost new on a recognized cost and valuation source as well as local cost indexes. In contrast, the board of review's appraisal did not address any aspect of the cost approach.

The Board finds that the sales utilized by the appellant's appraiser to be indicative of the fair market value for the subject. The Board finds that not only are the adjustments made to the appellant's sales comparables by Mr. Renzi credible, clear and to the point under cross-examination his answers were unambiguous.

Next, the Board finds that in the income approach to value, the appellant's appraiser provided rental comparables similar to the subject. The appraiser developed a reasonable and well-documented estimate of economic rent for the subject to calculate a potential gross income based on a typical triple net basis. The deductions for vacancy and collection loss, reserves for replacement and management fees all appear to be based on representative expenses for properties such as the subject. In the development of a capitalization rate, the Board finds that Mr. Renzi's use of the band of investment technique and his conclusion well founded in his testimony and appraisal.

The Board finds that Mr. Renzi's reconciliation of the three approaches to value and his final conclusion of value logical and understandable. In conclusion, the Board finds the appellant's appraiser presented the most credible testimony, appraisal and most persuasive evidence of the subject's market value as of the date at issue.

Based on the foregoing analysis, the Property Tax Appeal Board finds the subject property had a market value of $2,250,000, as of January 1, 2000. Since the fair market value of the subject has been established, the Board finds that the Cook County Real Property Assessment Classification Ordinance level of assessments of 36% for Class 5b properties, such as the subject, shall apply and a reduction is accordingly warranted.

APPELLANT:	**Rochelle Community Consolidated School District No. 231**
DOCKET NUMBER:	**03-01139.001-I-3**
DATE DECIDED:	**July, 2007**
COUNTY:	**Ogle**
RESULT:	**No Jurisdiction**

The subject property consists of a one-story masonry and metal-clad cold storage facility that contains 451,459 square feet of building area located on a 20.21 acre site in Rochelle, Dement Township, Ogle County.

Procedurally, the appellant, filed an undervaluation complaint with the Property Tax Appeal Board contending the assessment of the subject property should be increased from $2,708,483 to $6,019,453. The petition filed on behalf of the appellant indicates that no decision was issued by the Ogle County Board of Review.

The Property Tax Appeal Board conducted pre-hearing conferences in connection with this appeal by telephone on June 14, 2006 and again on July 18, 2006. An issue raised by the Property Tax Appeal Board was whether the Board had jurisdiction in light of the fact that the record contained no decision issued by the Ogle County Board of Review. The Property Tax Appeal Board ordered the parties to submit briefs on this issue. The appellant did not submit any brief on this issue. The intervenor-taxpayer subsequently filed a Motion to Dismiss the PTAB Proceeding for Lack of Subject Matter Jurisdiction and served the other parties to the appeal pursuant to Section 1910.64 of the Rules of the Property Tax Appeal Board (86 Ill.Adm.Code 1910.64). Neither the School District nor the Ogle County Board of Review responded to TLC's Motion to Dismiss.

After reviewing the record and considering the arguments of the intervenor-taxpayer, the Property Tax Appeal Board finds that it does not have subject matter jurisdiction over this appeal initiated by the School District.

The record is absent any decision from the Ogle County Board of Review with regard to the 2003 assessment of the subject property.

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, or any taxing body that has an interest in the decision of the board of review. . . on an assessment made by any local assessment officer, 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), 1910.60(a) and 1910.60(b) of the Official Rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.30(a), 1910.60(a) & 1910.60(b)) state that the petition for appeal shall be filed within 30 days of the postmark date of the decision of the board of review.

Generally, as a prerequisite for filing an appeal with the Property Tax Appeal Board there must be a decision issued by the board of review pertaining to the assessment of the property for taxation purposes. Spiel v. Property Tax Appeal Board, 309 Ill.App.3d 373, 378, 722 N.E.2d 306, 310 (2nd Dist. 1999). Absent a decision from the board of review the Property Tax Appeal Board has no subject matter jurisdiction to consider the merits of the appeal. The record does not contain any documentation disclosing that any complaint was filed with the Ogle County Board of Review contesting the 2003 assessment of the subject property nor does the record contain any documentation disclosing that the Ogle County Board of Review issued any decision regarding the 2003 assessment of the subject property that would confer jurisdiction on this Board. For these reasons the Property Tax Appeal Board finds it does not have jurisdiction over the appeal and hereby grants TLC's Motion to Dismiss.

APPELLANT: **Larry R. and Dorothy C. Rogers**
DOCKET NUMBER: **03-02669.001-I-1**
DATE DECIDED: **April, 2007**
COUNTY: **Stephenson**
RESULT: **No Change**

The subject property is improved with a one-story, metal pole building with wooden trusses containing 11,800 square feet of building area. The building was constructed in 2000. The improvement has 100 square feet of office space, 3,480 square feet of warehouse space, and 8,220 square feet of manufacturing space. The subject has a ceiling height of 16 feet and a septic/well system. The improvement is located on a 17.53 acre parcel resulting in a land to building ratio of 64.71:1. The property is located in Freeport, Harlem Township, Illinois.

The appellants appeared before the Board contending overvaluation and unequal treatment in the assessment process as the bases of the appeal. In support of the market value claim, appellants presented recent construction costs for the subject and limited comparable sales data for three suggested comparable properties. The appellants provided no assessment data on the suggested comparable properties to support their inequity contention.

As presented by the appellants, the subject building was constructed and able to be occupied as of July 2000; it was constructed for $179,000 with the appellants acting as the general contractor for an estimated service value of an additional $2,000. While no documentation of these costs was presented with the initial appeal, on questioning at hearing by the board of review representative about such documentation the appellants offered to produce documentation of construction costs.

The three proposed sales comparables presented by appellants consist of one-story, steel sided, masonry, or masonry, frame and steel sided industrial type properties that ranged in size from 12,492 to 14,086 square feet of building area. The one comparable for which an age was presented was noted as having been constructed 40 years ago. Two of the comparables were said to have office areas of either 422 or 1,600 square feet, warehouse areas of 6,980 or 13,644 square feet, and one of these properties also was said to have a manufacturing area of 5,200 square feet. Two of the buildings were noted as having ceiling heights of 14 and 16 feet, respectively. Two of the three comparable buildings featured a loading dock; two of the properties featured city water and sewer connections. No adjustment analysis of the sales data was performed to account for differences in these properties when compared to the subject property. The appellants' evidence further stated that comparable number 2 sold in April 1997 for $184,850 or $13.13 per square foot of building area including land and comparable number 3 sold in 2004 for $29,000 or $2.32 per square foot of building area including land. Although no sales date or total sales price was noted, appellants also indicated that comparable number 1 sold for "$16.06 per square foot." No final estimate of the subject's market value was submitted other than the final assessment requested by the appellants; the appellants requested an assessment for the subject improvement of $60,000 or $5.08 per square foot of building area. The total assessment request listed on the appellants' petition of $61,770 equates to a value of $186,222 or $15.78 per square foot of building area including land using the 2003 Stephenson County three-year median level of assessments of 33.17%.

On cross-examination, appellants acknowledged that their comparable number 1 was probably constructed around 1965. Likewise, appellants acknowledged that multiple buildings of various construction types existed on comparable property number 3, some of which had been constructed as early as 1965 with subsequent additions. Appellants also acknowledged comparable number 3 was located in a flood plain.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment totaling $90,270 was disclosed. The subject improvement was valued at $88,500 or $7.50 per square foot of building area excluding land. The subject has a farmland assessment of $1,770. The subject's total assessment, including the farmland, reflects a market value of $272,144 or $23.06 per square foot of building area including land using the 2003 three-year median level of assessments for Stephenson County of 33.17%.

In support of the current assessment, the board of review presented a grid analysis of nine suggested comparable sales of commercial/industrial properties along with property record cards of the properties and an adjustment analysis. These nine comparable sales located in Stephenson County consisted of one-story, frame or steel exterior constructed buildings with wood or steel trusses; while the exterior construction of comparable numbers 8 and 9 was not stated in the record, the supervisor of assessments testified that these were both wood pole buildings with wood trusses located in a flood plain. These comparable buildings were constructed from 1971 to 1998 and contained from 4,560 to 32,878 square feet of building area. The underlying property record cards revealed that in 1993 a garage was added to board of review comparable number 7 and in 1997 another building was added to board of review comparable number 8. The comparable buildings had ceiling heights from 12 to 20 feet. The improvements were located on parcels that ranged from .21 to 10 acres resulting in land to building ratios ranging from 2.03:1 to 51.86:1. These comparable properties sold between June 1998 and November 2004 for purchase prices ranging from $133,750 to $644,500 or from $19.60 to $50.72 per square foot of building area including land. In a separate grid analysis, the board of review presented a qualitative analysis to adjust the sales data to account for differences in these properties when compared to the subject property. As a result of this analysis, the board of review 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.

The appellants 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. Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3rd Dist. 2002). As addressed more fully below, the Board finds this burden of proof has not been met and a reduction in the subject's assessment is not warranted on this basis.

Section 1910.65(c) of the Official Rules of the Property Tax Appeal Board (86 Ill. Admin. Code, Sec. 1910.65(c)) provides that proof of market value of the subject property 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 the 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 similarity, proximity and lack of distinguishing characteristics of the sales comparables to the subject property.

Appellants set forth in their appeal that $181,000 was expended to construct the subject building. As set forth in the subject's Parcel Information Report submitted by the board of review, the appellants purchased the subject parcel in April 1999 for $35,000. Thus, the evidence is that the appellants have a total of at least $216,000 invested in the subject parcel and improvement. While on cross-examination, questions were raised as to the adequacy of the construction cost figures, the crux of the analysis here would not be overcome by submission of additional documentation. As pointed out by the above-cited rule, the date of construction must be "proximate" to the assessment date. Construction costs in 2000 are too remote in time to be considered "proximate" and therefore relevant evidence of property value for a property tax appeal for a 2003 assessment date.

To support their respective positions as to whether the subject property's assessment was proper in relation to its market value, the parties also submitted a total of twelve proposed comparable sales. Appellants' comparable sale number 1 has been given no weight by the Board since there is no date of sale nor total purchase price; while the appellants asserted the sale price was $16.06 per square foot, there is no data upon which to confirm that calculation and thus the information provided is too speculative to be relied upon, particularly where no date of sale has been specified to at least suggest relevance to a 2003 property tax assessment. Appellants' comparable sale number 2 having occurred in April 1997 is too remote in time to be relevant to a 2003 property tax appeal and thus has also been given no weight by the Board in its analysis. Appellants' comparable number 3 sold in 2004 for $29,000 or $2.32 per square foot of building area including land; it is situated on a 22,660 square foot site and has 12,492 square feet of building area for a building to land ratio of 1.81:1. No data as to office space, warehouse space, or manufacturing space was provided. No data as to ceiling height was provided. While in terms of date of sale, this is a relevant transaction to consider, appellants did not submit any evidence establishing the nature of this sale transaction and whether it was an arm's-length transaction as would be reflected on the transfer declaration filed at the recorder of deeds office. Without evidence of neither the nature of this transaction in the record or the age of the improvements on the property, the Board has accorded appellants' sale comparable number 3 reduced weight in its analysis. Moreover, the appellants' raw sales data included no comparative analysis of the sales to the subject property and failed to provide a final estimate of value of the subject property by the appellants based on the data presented thus further limiting the data's usefulness.

Board of review sales comparable numbers 2, 4, 6 and 9 have been given diminished weight in this analysis by the Property Tax Appeal Board due to the age of the buildings which ranges from 1965 to 1989 as compared to the subject's July 2000 construction date. The next oldest building presented by the board of review as sales comparable number 5 according to testimony had a significant decrease in purchase price between a sale in July 2002 for $380,000 and a sale in March 2004 for $272,500 as the second sale was in actuality a bank foreclosure. However, the board of review presented no evidence to demonstrate that the transaction was not of an arm's-length nature. Thus, the Board placed more emphasis on the more recent sale. On the other hand, board of review sale comparable number 3, a wood pole building with wood trusses, also had two sales in a relatively short period of time; however, for this property there was an increase in the market value of the property from a sale in August 2001 of $133,750 to a sale in November 2004 of $160,000. Again, this more recent sale has been accepted by the Board as the property's market value for purposes of this analysis. Like the appellants, the board of review presented some sales which were too remote in time to be relevant comparables, thus board of review comparable numbers 1 and 7 have been given no weight by the Board in this analysis as these were sales occurring in 1998 and 1999.

The remaining board of review sales comparables and appellants' comparable number 3 present a range of sales for the period March 2001 to November 2004 for purchase prices ranging from $29,000 to $272,500 or from $2.32 to $36.37 per square foot of building area including land; these improvements ranged in size from 7,112 to 12,492 square feet of building area, with ceiling heights ranging from 12 to 16 feet and ranged in age from 1987 to 1992 with an additional garage constructed on board of review comparable number 8 as recently as 1997. As noted above, appellants' comparable number 3 must be accorded diminished weight in this analysis; the most similar properties to the subject therefore provide a range from $22.50 to $36.37 per square foot of building area including land. The Board finds the subject's estimated per square foot value, as reflected by its assessment, falls within the range established by these most similar comparable sales. Namely, the subject's estimated market value of $23.06 per square foot of building area including land based upon its 2003 assessed value falls within the range of values established by the board of review's most similar comparable sales. Thus, the Board finds the best evidence of the subject property's market value is the assessed value assigned by the board of review.

The Board further finds that the appellant has failed to support the contention of 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.

The appellants presented three comparable properties, however, no data as to assessed valuations for those properties was provided. The Official Rules of the Property Tax Appeal Board specify that:

> . . . 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. Admin. Code, Sec. 1910.63(b))

In this appeal, the Board finds the appellants did not submit any equity information demonstrating the assessment of the subject property as established by the board of review is not uniform with other similar properties. Since appellants carry the burden of proof, in this matter the appellants have failed to establish evidence to support their inequity of assessments claim. Thus, the Board finds that the appellants have failed to overcome this burden.

For the foregoing reasons, 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: Richard Schuster
DOCKET NUMBER: 02-27284.001-I-1
DATE DECIDED: September, 2007
COUNTY: Cook
RESULT: No Change

The appellant in this appeal submitted documentation to demonstrate that the subject property was improperly assessed. This evidence was timely filed by the appellant pursuant to the Official Rules of the Property Tax Appeal Board.

The board of review did not submit its "Board of Review Notes on Appeal" nor evidence in support of its assessed valuation of the subject property. The PTAB issued a default letter to the board of review on July 25, 2006.

In support of the market value argument, the appellant submitted colored photographs of the subject property, the 2002 rent roll and a 2002 vacancy affidavit. Based upon this analysis, the appellant requested a reduction in the subject's assessment.

After considering the evidence 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 of review did not submit any evidence in support of its assessment of the subject property as required by Section 1910.40(a) of the Official Rules of the Property Tax Appeal Board. However, the appellant still has the burden of going forward and providing substantive evidence. *Official Rules of the Property Tax Appeal Board, Section 1910.63(b).*

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. 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. *Property Tax Appeal Board Rule* 1910.65(c). Having considered the evidence presented, the PTAB concludes that the appellant has not met this burden and that a reduction is not warranted.

To support the argument that the subject's assessment is not reflective of the property's market value, the appellant submitted documentation showing the income and vacancy of the subject property. The PTAB gives the appellant's argument little weight. 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. Id. at 431.

Actual expenses and income based on vacancy can be useful when shown that they are reflective of the market. Although the appellant made this argument, 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 income, 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. The appellant did not provide such evidence and, therefore, the PTAB gives this argument no weight and finds that a reduction is not warranted.

2007 INDUSTRIAL CHAPTER

Index

[Items Contained in Brackets Indicate Arguments or Evidence in Opposition to the Appellant's claim]