State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2011

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PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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2011 FOREWORD

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 at www.state.il.us/agency/ptab or www.ptabil.com 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. Additional Property Tax Appeal Board decisions may also be accessed at: www.state.il.us/agency/ptab/Pub/SearchAdditionalPTABDocuments.htm.

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.

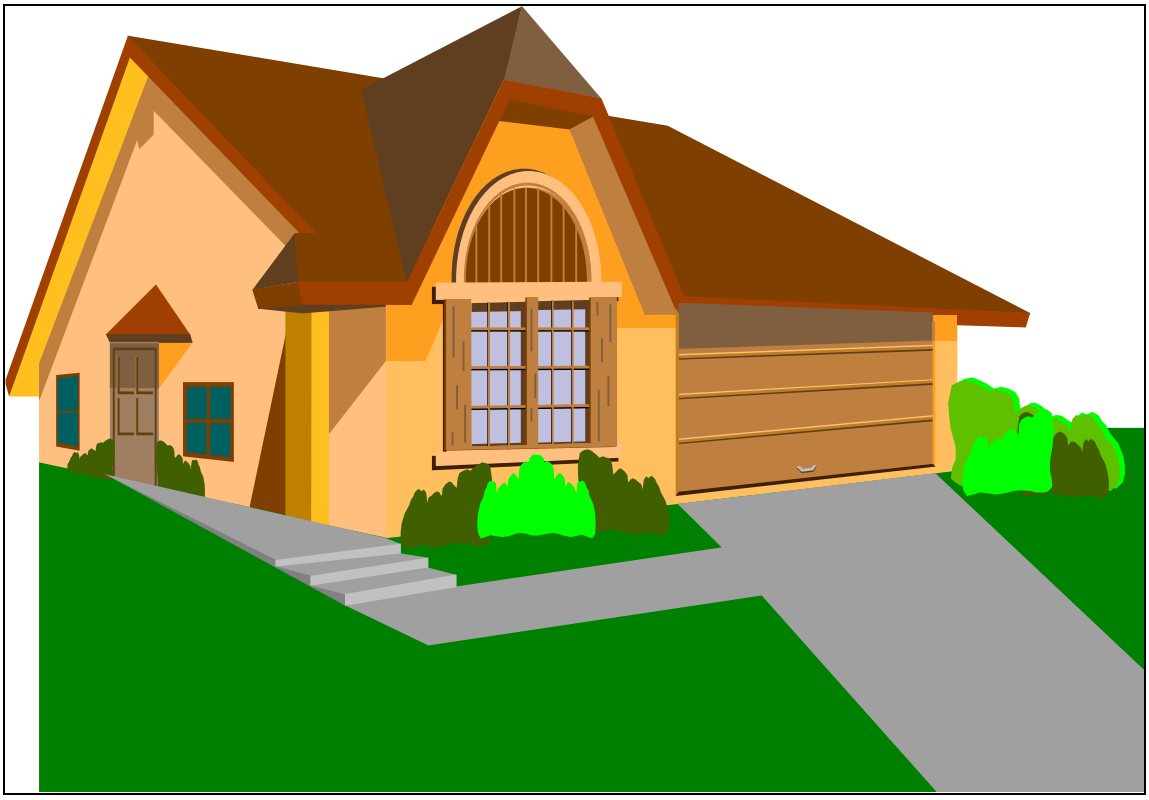
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial 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 2011 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

2011 RESIDENTIAL DECISIONS



PROPERTY TAX APPEAL BOARD
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2011 RESIDENTIAL CHAPTER

Table of Contents

APPELLANT:	**Carl Cesarone**
DOCKET NUMBER:	**08-03311.001-R-1**
DATE DECIDED:	**November, 2011**
COUNTY:	**Kane**
RESULT:	**No Change**

The subject property consists of a 9,148 square foot parcel improved with a one-story frame single-family frame dwelling on a concrete foundation. The property is located in the Del Webb Sun City community, Huntley, Rutland Township, Kane County.

The appellant appeared before the Property Tax Appeal Board contending unequal treatment in the assessment process as to the subject's land only. No dispute was raised concerning the improvement assessment. In support of the land inequity argument, the appellant presented a brief along with a grid analysis of four improved properties located on Hickory Court which the appellant contends are similar to the subject property located on Cold Springs Drive. The appellant contends that the treatment of the subject property as compared to these comparables is unfair.

The comparables were located within a block of the subject. The parcels ranged in size from 9,689 to 9,996 square feet of land area. Each comparable was classified as a Premier lot, like the subject. Each of the comparables has a land assessment of $19,703 whereas the subject has a land assessment of $23,640. Based on additional designations made by the assessing officials, the comparables were designated as "base" lots while the subject was designated as a "standard" lot. Base lots are "used for homes on streets with high traffic counts" according to the appellant's brief. In support of this contention, the appellant included a document entitled "Sun City Land Value Chart - 2008 Revalue" which stated adjustments for location/view included "base - inferior location; primarily backing to a busy street." The designation for the subject according to the chart defined "standard - typical lot that has another home located behind it."

The comparables presented by the appellant back up to Del Webb Boulevard and were afforded the 'base' designation. The appellant contends the subject should also be designated as a "base" lot. Since the appellant purchased the subject property, a commercial development known as Regency Square has been created and opened a street known as Farm Hill Drive that now connects to Cold Springs Drive. This connection has caused a substantial increase in vehicular traffic in the subject's residential neighborhood. (See two maps submitted depicting development and the subject property). The traffic includes cars, trucks, some high school buses and construction vehicles. Furthermore, the commercial development is expected to expand with the addition of a WalMart and other stores in the future.

As a consequence of the increased traffic, the local village has undertaken traffic studies by Civiltech Engineering (Exhibits 1 and 2 (page 1) - September 29, 2005 study). In his brief, the appellant reported that two years later the traffic study reflected a 1,000 vehicle increase (Exhibit 2, page 2). While the subject does not back to a busy street, the appellant argued the subject faces a busy street and, of greater consequence, must back out of the subject's driveway onto this

busy/dangerous street. Thus, based on the foregoing evidence, the appellant requested a land assessment reduction to $19,703 as if the subject were designated a base lot.

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of $80,443 for the subject property was disclosed consisting of a land assessment of $23,640 and an improvement assessment of $56,803. In support of the subject's land assessment, the board of review presented a copy of the land revaluation chart previously presented by the appellant along with a spreadsheet of sales data and a spreadsheet of 24 equity comparables.

At hearing, Janet Siers, the township assessor, testified that a land revaluation for the Del Webb Sun City community was instituted in 2008. The classifications were the same ones originally instituted by the developer, Del Webb, for single-family residential parcels of Classic, Premier, Estate or Reserve along with a few others for multi-family parcels. As shown on the revaluation chart, besides the lot classifications, designations for location/view of Base, Standard or Open were implemented. The chart reflects that area single-family residential parcels were assessed from $15,296 to $36,255 per parcel.

Siers further opined that as the development grew and was built out, there has been increased traffic in Sun City. Cold Springs Drive runs from the north down to the south through the middle of the development, connecting with Del Webb Boulevard both on the north and the south ends of the development. Meanwhile, Del Webb Boulevard runs along the western perimeter of the development and on out to Route 47. Siers further testified that while Farm Hill Drive did not originally extend into the development, she stated there were always plans for Farm Hill Drive to connect to the subdivision.

The Rutland Township Assessor's office did a traffic study on Cold Springs Drive by sending field staff out for a two week period in the summer of 2009. From their data, the Rutland Township Assessor's Office concluded that the increase in traffic was basically due to some construction in the village of Huntley to the north of the development which caused a lot of the school traffic, including school buses that utilize Cold Springs Drive as a shortcut through the subdivision. Siers also testified that in 2009 the township assessor's office made a 2% adjustment to the parcels on Cold Springs Drive located north of Farm Hill Drive. According to Siers, the subject parcel which sides along Cold Springs Drive and is north of Farm Hill Drive was afforded the same 2% land assessment reduction in 2009.

The equity spreadsheet reflects subdivision parcels classified as Premier with lot designations of standard that range in size from .18 to .29-acres. Each of the 24 comparable has a land assessment of $23,640.

Based on its data, the board of review asserted the land assessment of the subject was uniform and equitable. Therefore, the board of review requested confirmation of the subject's land assessment.

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 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. After an analysis of the assessment data, the Board finds that the appellant has failed to overcome this burden.

The evidence of land assessments presented by both parties reflects uniformity of such assessments in the subject's subdivision regardless of size. The revaluation chart identifies the applicable land assessments for the Sun City development in 2008. The Board has given less weight to the appellant's three comparables which were designated as "base" lots because they backed to a busy street. In contrast, the board of review's spreadsheet establishes that Premier classified lots like the subject with the "standard" lot designation are uniformly assessed at $23,640 per parcel for 2008. Thus, the appellant has not met the burden to establish assessment inequity by clear and convincing evidence. Further, the Board finds the market data presented by the board of review did not reflect any negative impact on value due to the subject's location that would justify a reduction in the subject's land 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 taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence.

For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, 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:	**Distinctive Construction Co.**
DOCKET NUMBER:	**08-00297.001-R-2 thru 08-00297.003-R-2**
DATE DECIDED:	**April, 2011**
COUNTY:	**Will**
RESULT:	**Reduction**

The subject property consists of three parcels located in Butternut Ridge subdivision, Manhattan, Manhattan Township, Will County. The parcels were improved in 2007 with single-family residences that were granted model home "exemption(s)" by removing any improvement assessment.

The appellant's appeal, as presented through legal counsel, argued a contention of law with a brief and attached documents. The sole issue raised is whether the land should be assessed at $64 per parcel as it had been when it was vacant or based on its market value after the construction of the dwellings as asserted by the board of review.

In support of the legal contention, appellant reported the subject vacant parcels were assessed at $64 each under Section 10-30 of the Property Tax Code. (35 ILCS 200/10-30) (Copies of 2007 assessment notices were provided reflecting $64 land assessments). The appellant further asserts that timely applications were made for the Model Home Assessment with copies of those applications attached to the brief which were dated April 15, 2008. The appellant contests the board of review's determination to assess each parcel after construction of the improvement(s) at market value in light of the provisions of Section 10-25 of the Property Tax Code (35 ILCS 200/10-25).

Based on the foregoing evidence and argument, appellant's counsel argued that the subject's land assessments should be reduced to $64 each as they had been prior to the construction of the dwellings.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessments of $32,000, $32,000 and $37,000, respectively, were disclosed. In support of the subject's land assessments, the board of review presented a memorandum prepared by the Manhattan Township Assessor who reported, in pertinent part, as to land assessments under Section 10-30 of the Property Tax Code:

> . . . once a [sic] the completion of a habitable structure this section no longer applys [sic].

The assessor further reported his practice in the township to fully assess the land and building of any model home; thereafter, for that assessment year the Will County Supervisor of Assessments Office may remove the building assessment at the board of review phase of the assessment cycle.

Also included were property record cards for the three parcels at issue, each of which indicated that the dwelling thereon was "year erected: 2007." Moreover, building permits for a "house"

were issued on December 15, 2006 and reported to be complete December 31, 2007. Those property record cards also reflect 2007 land assessments for the parcels of $64 each.

Based on the foregoing evidence, the board of review requested confirmation of the subject's land assessments of $32,000, $32,000 and $37,000, respectively.

In rebuttal, counsel agreed with the assessor's assertion that once a habitable structure was constructed on each parcel, Section 10-30 of the Property Tax Code was no longer applicable (35 ILCS 200/10-30). Counsel for appellant further asserted that use of the current full value land assessment for 2008 does not comply with the terms of Section 10-25 of the Property Tax Code (35 ILCS 200/10-25). Counsel argued the purpose was to keep the undeveloped assessed value in place until development is completed; counsel argued that the pre-existing land assessment remains in place until occupancy or sale.

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 parties presented no objection to a decision in this matter being rendered on the evidence submitted in the record. Therefore, the decision of the Property Tax Appeal Board contained herein shall be based upon the evidence contained in and made a part of this record.

There is only one issue involved in this appeal: whether the preferential treatment or assessment available under Section 10-25 of the Property Tax Code (35 ILCS 200/10-25) applies to the subject parcels. The Board finds that reductions in the land assessments of the subject parcels are warranted based on the Property Tax Code and the evidence contained in the record.

Section 10-25 of the Property Tax Code provides in pertinent part:

> If the construction of a single family dwelling is completed after December 29, 1986 . . . and that dwelling, townhome, or condominium unit **is not occupied as a dwelling but is used as a display or demonstration model home**, . . ., **the assessed value of the property on which the dwelling**, . . . **was constructed shall be the same as the assessed value of the property prior to construction and prior to any change in the zoning classification of the property prior to construction of the dwelling**, townhome or condominium unit. The application of this Section shall not be affected if the display or demonstration model home, townhome or condominium unit contains home furnishings, appliances, offices, and office equipment to further sales activities. This Section shall not be applicable if the dwelling, townhome, or condominium unit is occupied as a dwelling or the property on which the dwelling, townhome, or condominium unit is situated is sold or leased for use other than as a display or demonstration model home, townhome, or condominium unit. No property shall be eligible for calculation of its assessed value under this Section for more than a 10-year period. If the dwelling, townhome, or condominium unit becomes ineligible for the alternate valuation, the owner shall within 60 days file with the chief county assessment officer a certificate giving notice of such ineligibility.
>
> For the purposes of this Section, no corporation, individual, sole proprietor or

> partnership may have more than a total of 3 model homes, townhomes, or condominium units at the same time within a 3 mile radius. The center point of each radius shall be the display or demonstration model that has been used as such for the longest period of time. The person liable for taxes on property eligible for assessment as provided in this Section shall file a verified application with the chief county assessment officer on or before (i) April 30 of each assessment year for which that assessment is desired in counties with a population of 3,000,000 or more and (ii) December 31 of each assessment year for which that assessment is desired in all other counties. Failure to make a timely filing in any assessment year constitutes a waiver of the right to benefit for that assessment year.

(35 ILCS 200/10-25) [Emphasis added].

In light of the facts and the foregoing statutory provision, the Property Tax Appeal Board finds the board of review incorrectly denied the subject parcel's preferential assessment provided by Section 10-25 of the Property Tax Code (35 ILCS 200/10-25) for the assessment year at issue.

Specifically, there was no evidence presented by the board of review to challenge the applicability of Section 10-25 with regard to the following: (1) that the parcels should not be "eligible for calculation of its assessed value under this Section for more than a 10-year period"; (2) that the dwelling(s) had become "ineligible for the alternate valuation . . ."; (3) that the company had "more than a total of 3 model homes . . . at the same time within a 3 mile radius"; or (4) any waiver of the right to benefit for that assessment year because the person liable for taxes did not "file a verified application with the chief county assessment officer on or before December 31 of each assessment year for which the assessment was desired."

The evidence further reveals that prior to this 2008 reassessment of the land, these parcels had 2007 vacant land assessments of $64. Therefore, the Property Tax Appeal Board finds that the preferential "model home exemption" assessment for the land portion of the subject property should be applied for the 2008 assessment year. On the assessment date at issue, the subject land should have been assessed in accordance with the preferential treatment allowed by the procedures contained within Section 10-25 of the Property Tax Code. Based on these facts, the Property Tax Appeal Board finds the board of review erred in assessing the subject parcels at 33 1/3 percent of their market value as of January 1, 2008.

APPELLANT:	**Richard & Debra Freeman**
DOCKET NUMBER:	**08-00221.001-R-1**
DATE DECIDED:	**March, 2011**
COUNTY:	**Will**
RESULT:	**Reduction**

The subject property consists of a two–story brick and cedar dwelling containing 3,041 square feet of living area that was built in 1994. Amenities include a partial unfinished basement, central air conditioning, a fireplace, and a 770 square foot attached garage. The subject dwelling is situated on a 17,500 square foot lot. The subject property is located in Homer Glen, Homer Township, Will County.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of the overvaluation argument, the appellants submitted information for three suggested comparables located in close proximity to the subject. The comparables consist of two–story brick and cedar dwellings that were built from 1993 to 1999. The comparables have full or partial unfinished basements, central air conditioning, one or two fireplaces and garages that contain from 571 to 816 square feet. The dwellings range in size from 2,507 to 3,074 square feet of living area. Comparable 1, which is located two doors away from the subject, sold in July 2008 for $390,000 or $126.87 per square foot of living area including land. Comparables 2 and 3 were listed for sale in the open market during 2008 for offing prices of $379,900 and $424,000, respectively.

The appellants also submitted market evidence documenting the general decline in real estate values in Homer Glen, Illinois from 2007 to 2008. Based on the evidence submitted, 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 final assessment of $147,953 was disclosed. The subject's assessment reflects an estimated market value of $445,105 or $146.37 per square foot of living area including land using Will County's 2008 three-year median level of assessment of 33.24%.

In support of the subject's assessment, the board of review submitted a letter addressing the appeal prepared by the township assessor, property record cards, photographs, a location map and sales information on four suggested comparable properties.

With respect to the evidence submitted by the appellant regarding the general decline in real estate values in Homer Glen, Illinois from 2007 to 2008, the assessor indicates assessments are not based on unconfirmed data from Ziprealty and the Chicago Tribune. Assessments were based on arm-length sales. Since the assessor cannot verify any of the data used in the publications, the assessor "feels" they should be given less weight. However, the assessor did not refute the general proposition that real estate values have declined in Homer Glen from 2007 to 2008. The assessor's letter further indicates that 2008 assessments are based on sales that occurred from 2005 through 2007; "we do not base them upon 2008 sales." Since the appellants' market value evidence was from 2008, the assessor "feels" they should be given no weight.

In support of the subject's assessment, the assessor submitted four suggested comparable sales. They consist of two–story frame and masonry dwellings that were built from 1992 to 2003. The comparables have unfinished basements, one to three fireplaces, central air conditioning and garages that contain from 675 to 793 square feet. Comparables 2 and 4 have walkout basements. The dwellings range in size from 2,970 to 3,822 square feet of living area. The comparables sold from March 2006 to April 2007 for prices ranging from $440,000 to $557,000 or from $137.11 to $171.72 per square of living area including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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

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

The assessor's letter submitted by the board of review indicates that 2008 assessments are based on sales that occurred from 2005 through 2007; "we do not base them (assessments) upon 2008 sales." Since the appellants' market value evidence was from 2008, the assessor "feels" they should be given no weight. The Board gives this response little merit and finds the assessor's reliance on this assessment methodology to be misplaced in the appeal process.

The Board finds the valuation date at issue in this appeal is January 1, 2008. Section 9-155 of the Property Tax Code provides in part:

> On or before **June 1** in each general assessment year in all counties with less than 3,000,000 inhabitants, . . . 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**, or as provided by Section 9-180, and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140. . . (35 ILCS 200/9-155).

The Board finds the legislature clearly contemplated subsequent events in the assessment process by inserting the language "On or before **June 1** . . . 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, or in accordance with Sections 10-110 through 10-140**.**"

The Property Tax Appeal Board finds assessment officials are statutorily bound to determine a given property's fair cash value as near as practicable **as of** the date of January 1 of a given assessment year. The Board finds January 1 is the statutorily defined date to determine the correct classification or assessment for any real property in Illinois. Illinois courts recognized that 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. (See Application of Rosewell, 120 Ill. App. 3d 369 (1st Dist. 1983)).

With respect to the comparables sales submitted by both parties, the board gave less weight to the comparables submitted by the board of review. Comparable 1 is newer in age than the subject and comparables' 2 through 4 sale dates are less indicative of the subject's fair cash value as of the January 1, 2008 assessment date at issue in this appeal. This finding is supported by the more similar comparable sale contained in this record that sold more proximate to the subject's January 1, 2008 assessment date. Additionally, comparables 2 and 4 have walkout basements, unlike the subject.

The Board finds the appellants' argument that there was a general decline in the real estate market in Homer Glen is supported by evidence contained in this record. Moreover, the Board finds the township assessor offered no credible market evidence to refute this argument. The Property Tax Appeal Board finds comparable sale 1 submitted by the appellants is most similar to the subject in location age, size, style, features, and date of sale. This comparable is located just two doors away, along the subject's street. It sold in July 2008 for $390,000 or $126.87 per square of living area including land. The subject's assessment reflects an estimated market value of $445,105 or $146.37 per square foot of living area including land, which is higher than the most similar comparable sale in this record. The Board further finds the comparable listings submitted by the appellants lend further support that the subject property is overvalued. Accepted real estate valuation theory provides that a bona fide listing price of real property sets the upper limit of value. The two listings had offering prices of $379,900 and $424,000, which are lower than the subject's estimated market value as reflected by its assessment. After considering adjustments to the comparables for any differences when compared to the subject, the Property Tax Appeal Board finds the subject's estimated market value as reflected by its assessment is excessive and a reduction is warranted.

APPELLANT:	**Keith & Mary Granda**
DOCKET NUMBER:	**08-05953.001-R-1**
DATE DECIDED:	**September, 2011**
COUNTY:	**Washington**
RESULT:	**Reduction**

The subject property consists of a mobile home measuring twenty-seven by sixty-seven feet containing approximately 1,809 square feet square feet of living area. The home was manufactured in 1999 and features air conditioning. There is also a 506 square foot attached garage and two decks of 198 and 400 square feet, respectively. The property is located on a 3.66-acre parcel in Addieville, Plum Hill Township, Washington County.

The appellants filed an appeal with the Property Tax Appeal Board contesting the assessment on the mobile home. The appellants argued in a brief that 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).

In support of this contention, the appellants reported the mobile home does not rest on a permanent foundation, but sits on cinder blocks with wood shims and tie downs as shown in color photographs included with the appeal. A photograph depicts a beam resting on stacked concrete blocks that are not mortared with wooden shims. These concrete blocks are placed under the steel frame of the home. Wooden shims were placed between the top of the concrete blocks and the home's frame to level the dwelling. The dwelling is not attached to the blocks but simply rests on the blocks by its own weight. There is also a tie-down strap in the photograph that is under the home anchoring the dwelling in place.

Another photograph depicts a mortared concrete block formation around the outside perimeter of the home, but as shown the home is not attached to the perimeter formation; there is a gap between the top of the perimeter formation and the bottom of the home with human fingers in the gap. The photograph also appears to depict that the home's siding extends below the top of the concrete perimeter formation.

Photographs show the home was delivered in two sections or pieces using semi-truck tractors with wheels beneath the mobile home sections. Also attached to the appeal was a copy of an invoice for the purchase of the mobile home from Scott-Banzai Mobile Homes. The purchase price was approximately $84,500.

Based on this evidence the appellants contend the home is not resting in whole on a permanent foundation and should not be classified and assessed as real estate for *ad valorem* taxation purposes.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment of the subject of $31,634 consisting of a $4,380 land assessment and a $27,254 improvement assessment. In support of the subject's assessment and classification, the board of review submitted a letter and a grid analysis of three comparable properties with both assessment

and sales data along with applicable property record cards and Illinois Real Estate Transfer Declaration (PTAX-203) forms.

In the letter, the board of review reported that it has been the practice in Washington County "to assess mobile homes as real estate going back prior to 1979. The intent of this home is to be a permanent residence and we feel it passes the intention test." The board of review further contended that an attached garage "is definitely part of the real estate anchoring this [mobile home] to the land as well."

In the grid analysis, the board of review presented "sales in the county where a mobile home has been included in the sale as part of the real estate." The three comparables were located in Lively Grove, Nashville and Okawville Townships respectively. Each parcel was less than an acre and contained a mobile home built between 1995 and 2002. The mobile homes ranged in size from 1,792 to 1,863 square feet of living area; one was said to have central air conditioning. Each had a garage ranging in size from 576 to 1,080 square feet of building area. The properties had improvement assessments ranging from $22,652 to $33,591 or from $12.26 to $18.03 per square foot of living area. The property record cards for the comparables reflect land and improvement assessments occurring on these properties no earlier than 1993 (see property record card for comparable #1). The properties sold between August 2007 and July 2008 for prices ranging from $82,000 to $117,000 or from $44.37 to $62.80 per square foot of living area including land.

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

In rebuttal, the appellants reiterated that the subject mobile home was delivered in two pieces and has no permanent foundation as shown in the photographs originally submitted. Lastly, the appellants reported "garage, attached, removable in 2 pieces, as delivered, no permanent foundation." None of the photographs submitted in this matter by the appellants depicted the garage.

In surrebuttal, the board of review reiterated that the subject property should continue to be assessed as real estate and further pointed out Public Act 096-1477 "takes effect January 1, 2011 making any mobile home outside of a mobile park assessed as real estate unless it has been assessed under the Mobile Home Services Tax Act." Based on the foregoing legislation effective January 1, 2011, the board of review contended its position in this 2008 assessment appeal was correct and the property should be assessed as real estate.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellants argued the subject property was incorrectly classified and assessed as real property. The Board finds the record supports this claim.

Initially, the board of review's citation to Public Act 096-1477 as support for its position shall be addressed. The Property Tax Appeal Board gives no weight to this argument of the board of review. By its own terms, Public Act 096-1477 "takes effect January 1, 2011." Nothing in the terms of Public Act 096-1477 sets forth any retroactive application and therefore, this new

legislation is not applicable to the classification and/or assessment of the subject property as of January 1, 2008.[1]

The appellants argued that the mobile home on the subject property was improperly classified and assessed as real estate. The board of review argued 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 (hereinafter the Code) as mobile homes in Washington County have been taxed as real estate "going back prior to 1979" and, therefore, should be classified and assessed as real property. (35 ILCS 200/24-5)

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. . . 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**. . . . [Emphasis added]. (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.

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. [Emphasis added.] (35 ILCS 515/1).

Finally, Section 870.10 of the Manufactured Home Installation Code provides:

[1] Moreover, Public Act 96-1477 provides in pertinent part that mobile homes located outside of mobile home parks that are taxed under the Mobile Home Local Services Tax Act shall continue to be so taxed until the home is sold or transferred or relocated, at which time it shall be classified, assessed and taxed as real property. [Emphasis added.] (35 ILCS 200/1-130(b))

> "Manufactured home" is synonymous with "mobile home" and means a structure that is factory-assembled, completely integrated structure designed for permanent habitation, with a permanent chassis 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, at which it is placed on a support system for use as permanent habitation, and designed and situated so as to permit its occupancy as a dwelling place for one or more persons; provided, that any such structure **resting wholly on a permanent foundation**, as defined in this Part, shall not be construed as a mobile home or manufactured home. The term "manufactured home" includes manufactured homes constructed after June 30, 1976 in accordance with the federal National Manufactured Housing Construction and Safety Standards Act of 1974 and does not include an immobilized mobile home as defined in Section 2.10 of the Mobile Home Park Act. [Emphasis added.] [430 ILCS 117/10] (77 Ill.Admin.Code 870.10).

The Property Tax Appeal Board finds both the Property Tax Code and the Mobile Home Local Services Tax Act require that a factory assembled structure, vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, and constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, at which it is intended to be a permanent habitation, 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 by 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 identify 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, 368 Ill.App.3d 792 (5th Dist. 2006).

The Illinois Manufactured Housing and Mobile Home Safety Act contains a definition of "permanent foundation." 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)). [Emphasis added].

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). [Emphasis added].

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. [Emphasis added].

The Manufactured Home Installation Code (77 Ill. Admin. 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. Admin. Code 870.10). [Emphasis added].

The Manufactured Home Community Code (77 Ill. Admin. Code 860.150) addresses the issue of immobilization of a mobile home, which appears to be analogous to having a permanent foundation. A manufactured home is considered immobilized when the following conditions are met:

a) The home shall be provided with individual utilities as defined in Section 2.8 of this Act.

b) The wheels, tongue, and hitch shall be removed and the home shall be supported by a continuous perimeter foundation of material such as concrete, mortared concrete block, or mortared brick which **extends below the established frost depth**. The home shall be secured to the continuous perimeter foundation with ½ inch foundation bolts spaced every 6 feet and within one foot of the corners. The bolts shall be imbedded at least 7 inches into concrete foundations or 15 inches into block foundations. (77 Ill. Admin. Code 860.150). [Emphasis added].

The Board finds that each of these statutory and regulatory 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. The evidence disclosed the subject has a concrete block outside perimeter formation that does not support or anchor the home. Photographs disclosed that the home is not attached to this perimeter formation. Photographs also depicted stacked, non-mortared concrete blocks under the home actually support the mobile home. Wood shims are placed between these non-mortared blocks and the under-side frame of the mobile home to support and level the dwelling. The mobile home was not attached to the concrete blocks but was held in place by its own weight and with straps that go through the frame of the home.

The Property Tax Appeal Board further finds the board of review's purported practice of classifying mobile homes as real estate prior to 1979 does not "freeze" the assessments under section 24-5 of the Property Tax Code. Section 24-5 of the Property Tax Code, commonly known as the "Freeze Act" provides in part that "[n]o 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) Classification of property as real or personal is frozen by the Freeze Act only if it was lawfully made. Oregon Community Unit School District No. 220 v. Property Tax Appeal Board, 285 Ill.App.3d 170, 177-178 (2nd Dist 1996). The board of review provided no evidence of this pre-1979 policy; the property record cards provided in this appeal reveal assessments of improvements no earlier than 1993. Moreover, the Revenue Act of 1939, as amended, (Ill.Rev.Stat. ch. 120, ¶482) and the Mobile Home Local Services Tax Act, (Ill.Rev. Stat.1973, ch.120, ¶1201) with an effective date of August, 28, 1973, both provided that a mobile home could only be classified as real estate if it was resting in whole on a permanent foundation. Thus the board of review's purported policy of classifying mobile homes as real estate, without reference to the type of foundation, appears to be unlawful. For the foregoing reasons the Property Tax Appeal Board finds the Washington County Board of Review's purported pre-1979 assessment practices do not "freeze the assessments" of the mobile homes.

While the subject property has real property improvements of an 'attached' garage of 506 square feet of building area, a deck of 198 square feet and a second deck of 400 square feet, the Board finds that the cost ladder data on the subject property record card is undated and cannot be deciphered so as to ascertain the correct assessments of these items. For instance, the purported full value of the subject property is $17,930 as shown on the property record card. However, the subject's final improvement assessment is $27,254 which does not comport with the purported full value figure. Therefore, the Property Tax Appeal Board finds that the record evidence presented by the board of review is insufficient to establish the correct assessment of the garage and two decks.

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. Moreover, due to insufficient evidence, the Board finds the board of review failed to sufficiently establish the correct improvement assessments for the garage and two decks. As such, the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted in accordance with the appellants' request.

APPELLANT:	**Michael & Carie Greer**
DOCKET NUMBER:	**08-05347.001-R-1**
DATE DECIDED:	**February, 2011**
COUNTY:	**Madison**
RESULT:	**No Change**

The subject property consists of a one-story frame and masonry dwelling containing 1,768 square feet of living area that was built in 1994. Amenities include an unfinished basement, central air conditioning, a fireplace, and a 506 square foot attached garage. The dwelling is situated on a 12,900 square foot land parcel.

The appellants submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellants submitted a value estimate for the subject property from the internet website Zillow.com. The website estimated the subject property had a market value of $162,000 as of November 30, 2009. To support the value estimate, the website identified 10 suggested comparable sales. The dwellings are reported to contain 2 or 3 bedrooms and 1, 1.5 or 2 bathrooms. The dwellings are reported to range in size from 1,064 to 2,330 square feet of living area. No other descriptive information was provided, such as age, design, exterior construction, features or land area. The comparables sold from February 2009 to October 2009 for prices ranging from $123,000 to $175,000 or from $64.37 to $140.88 per square foot of living area including land. 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 final equalized assessment of $64,660 was disclosed. The subject's assessment reflects an estimated market value of $196,058 or $110.89 per square foot of living area including land using Madison County's 2008 three-year median level of assessments of 32.98%.

In support of the subject's assessment, the board of review submitted three comparable sales located from .09 to .62 of a mile from the subject. They consist of one-story frame and brick dwellings that were built from 1992 to 1999. One comparable has an unfinished basement and two comparables have finished basements. Other amenities include central air conditioning, one fireplace and garages that contain from 380 to 630 square feet. The dwellings range in size from 1,444 to 1,599 square feet of above grade living area and are situated on lots that range in size from 5,952 to 11,948 square feet of land area. The comparables sold in June or July 2008 for prices ranging from $195,000 to $231,000 or from $124.68 to $144.47 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellants argued the comparable sales used by the board of review are from the summer of 2008 when market values were at their maximum. The appellants argued that since 2008, values have dropped 20%. The appellants also argued comparables 1 and 2 submitted by the board of review contain 2,179 and 3,000 square feet of living area (including finished basement area), respectively. The appellants also attempted to submit three additional comparable sales that occurred in 2010 from the subject's neighborhood. Notwithstanding that

the purported comparable sales occurred in 2010 when this appeal involves the subject's January 1, 2008 effective valuation date, the Board finds it cannot consider this new evidence. Section 1910.66(c) of the Rules of the Property Tax Appeal Board provides:

> 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 guise of rebuttal evidence. (86 Ill.Adm.Code §1910.66(c)).

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 these appeals. The Board further finds no reduction in the subject's assessment is warranted.

The appellants argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Board finds the appellants have not met this burden of proof.

The appellants submitted a value estimate for the subject property of $162,000 as of November 30, 2009 using Zillow.com internet website. The value estimate was based on 10 suggested comparable sales. The Board gave the value estimate little weight. The Board finds the value estimate date is November 30, 2009, almost two years subsequent to the subject's January 1, 2008 assessment date at issue in this appeal. Notwithstanding the lack of pertinent descriptive information of the comparables for comparison to the subject, the Board finds the suggested comparable sales submitted by the appellant that were identified in the Zillow.com website value estimate sold in 2009, which are less reliable indicators of market value as of the subject's January 1, 2008 assessment date.

The Property Tax Appeal Board finds the board of review submitted three comparable sales with detailed descriptive information showing their varying degrees of similarity when compared to the subject. The Board gave more weight to these comparable sales. The Board recognized the comparables are slightly smaller in size than the subject and comparables 1 and 2 have finished basements, superior to the subject. The subject has more land area than the comparables. The board of review's comparables sold more proximate to the subject's January 1, 2008 assessment date than the suggested comparables submitted by the appellants. The comparables sold in June or July 2008 for prices ranging from $195,000 to $231,000 or from $124.68 to $144.47 per square foot of living area including land. The subject's assessment reflects an estimated market value of $196,058 or $110.89 per square foot of living area including land, which is less that the most similar comparables on a per square foot basis. After considering adjustments to the most similar comparables for any 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 and no reduction is warranted.

In conclusion, the Property Tax Appeal Board finds the appellant failed to establish that the subject was overvalued by a preponderance of the evidence. Therefore, the Board finds the subject's assessment as established by the board of review is correct and no reduction is warranted.

APPELLANT:	**Jose Leyva**
DOCKET NUMBER:	**08-02251.001-R-1**
DATE DECIDED:	**July, 2011**
COUNTY:	**DuPage**
RESULT:	**Dismissed**

The subject property consists of a residential property located in Bloomingdale Township, DuPage County, Illinois.

The appellant in this appeal timely filed an assessment complaint through legal counsel before the Property Tax Appeal Board. The appellant claimed the subject property was inequitably assessed and overvalued as the bases of the appeal. In support of these claims, the appellant submitted three suggested assessment comparables and an appraisal of the subject property. In the appeal petition(s) and accompanying letter(s), appellant's counsel requested an oral hearing on this matter.

In response to the appeal, the board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $81,210 was disclosed. In its response, the board of review indicated it would not stipulate in this appeal and the board of review requested a hearing be held in this case. In addressing the arguments raised by the appellant, the board of review submitted assessment equity and market value evidence to support its assessment of the subject property.

On March 4, 2011, the Property Tax Appeal Board set the subject matter of this appeal for hearing based upon its merits for April 12, 2011 at 9:45 A.M. The hearing location was the DuPage Center, 421 N. County Farm Road, Wheaton, Illinois. The hearing notice states in pertinent part:

> This case cannot be postponed without good reason submitted in writing. **Failure of the appellant to appear shall be cause for dismissal of the appeal**. **(Emphasis Added).** Failure of the county or any intervenor to appear shall be grounds for default of that party.

On April 11, 2011 at 4:06 P.M., via facsimile to the Property Tax Appeal Board's Chief Hearing Officer, the appellant's counsel respectively requested that the assessment complaint filed for tax year 2008 for the above-referenced (subject) parcel be decided on the evidence submitted. Counsel acknowledged the hearing for the above-referenced (subject) parcel is scheduled for Tuesday, April 12, 2011 at 9:45 A.M.

On April 12, 2011, the Property Tax Appeal Board's Hearing Officer and the DuPage County Board of Review with its witness convened at the DuPage Center, 421 N. County Farm Road, Wheaton, at 9:45 A.M. for the scheduled hearing that was to be conducted on its merits pursuant to both parties' request. The appellant failed to appear before the Property Tax Appeal Board at the scheduled hearing date and time.

On April 12, 2011, the DuPage County Board of Review filed a written motion with the Board's Hearing Officer to dismiss this appeal because the appellant failed to appear. The motion states:

> We had a hearing scheduled in the DuPage County Complex at 9:45 a.m. today. We were prepared and expected to go to hearing at that time.
>
> I understand that Mr. Liston sent a faxed request to NOT attend the hearing and that the case should be decided on the evidence submitted.
>
> Mr. Liston, in his original appeal to the state asked for an oral hearing. The Board of Review was prepared to go forward, given no advance notice that we would be denied the opportunity to cross-examine the appellant's witness.
>
> The DuPage County Board of Review is asking that Mr. Liston's request for a change in the hearing procedure be denied and that the appeal be dismissed by the Property Tax Appeal Board.

On May 2, 2011, via certified mail, the appellant responded to the dismissal request filed by the DuPage County Board of Review.
In summary, legal counsel argued the appellant's request to proceed without a hearing (thereby not presenting the appraiser as a witness) was made solely to avoid the expenditures of witness preparation and testimony, which would be uneconomical in view of the relatively small size of the claim, and not made to deprive the DuPage County Board of Review ("Board of Review") the opportunity to cross-examine any potential witness. On April 11, 2011, we requested that the decision of the Property Tax Appeal Board be based upon the evidence in the record pursuant to 86 Ill.Amin.Code §1910.67(c), and provided notice of the same to the Board of Review by facsimile transmission. Pursuant to our request, appellant respectively requests that the Property Tax Appeal Board proceed with deciding this matter on the evidence in the record and grant a reduction in this property's 2008 assessment reducing said assessment to $61,660.

After reviewing the record and considering the request to dismiss by the board of review and the response filed by the appellant's legal counsel, the Property Tax Appeal Board hereby dismisses this appeal. The Board finds the appellant failed to appear before the Property Tax Appeal Board at the scheduled hearing date and time.

Section 16-170 of the Property Tax Code provides in pertinent part:

> Hearings. A hearing shall be granted if any party to the appeal so requests, and upon motion of any party to the appeal or by direction of the Property Tax Appeal Board, any appeal may be set down for hearing, with proper notice to the interested parties. (35 ILCS 200-16-170)

Section 1910.67 (b) and (c) of the Official Rules of the Property Tax Appeal Board provide in pertinent part:

> The Board shall hold a hearing at the request of any party in writing. (86 Ill.Amin.Code §1910.67(b)).

> A party may request a decision of the Property Tax Appeal Board based upon the evidence in the record by filing a written request with the Board. Any such request shall not be binding in the Board. (86 Ill.Amin.Code §1910.67(c)).

Additionally, section 1910.69 (a) and (b) of the Official Rules of the Property Tax Appeal Board provide:

> Failure of any party to comply fully with all rules and/or specific requests of the Property Tax Appeal Board as provided in Sections 1910.33, 1910.40, 1910.60, 1910.65, 1910.67, 1910.68 and 1910.73 of this Part shall result in the default of that party. (86 Ill.Amin.Code §1910.69(a)).

> **When a hearing as provided in Section 1910.67 of this Part,** or a pre-hearing conference as provided in Section 1910.73 of this Part, **is ordered by the Property Tax Appeal Board, all parties shall appear for the hearing or pre-hearing on the appeal on the date and time set by the Property Tax Appeal Board**. **(Emphasis Added).** Failure to appear on the date and time set by the Property Tax Appeal Board shall be sufficient cause to default that party. (86 Ill.Amin.Code §1910.69(b)).

The Property Tax Appeal Board finds this record is clear that both the appellant and the DuPage County Board of Review requested an oral hearing based on the merits of the appeal. The oral hearing was set for April 12, 2011 at 9:45 A.M.. The appellant did not appear before the Board at the designated place and time after proper notification. Rather, via facsimile at 4:06 P.M. on the eve of the hearing, the appellant requested the Property Tax Appeal Board render a decision based on the evidence contained in the record pursuant to section 1910.67(c) of the Rules of the Property Tax Appeal Board. (86 Ill.Amin.Code §1910.67(c)). The Board finds this request was not timely. The request did not allow the board of review an opportunity to respond to the motion nor for the Property Tax Appeal Board to rule on the request. Additionally, the Property Tax Appeal finds regardless that appellant's counsel requested the Board to issue a decision based on the record the night before the hearing date, the fact remains that the DuPage County Board of Review requested an oral hearing on this matter. Section 16-170 of the Property Tax Code provides in pertinent part:

> Hearings. **A hearing shall be granted if any party to the appeal so requests (Emphasis Added)**, and upon motion of any party to the appeal or by direction of the Property Tax Appeal Board, any appeal may be set down for hearing, with proper notice to the interested parties. (35 ILCS 200-16-170)

Section 1910.67 (b) and (c) of the Official Rules of the Property Tax Appeal Board provide in pertinent part:

> The Board **shall hold a hearing at the request of any party in writing**. **(Emphasis Added).** (86 Ill.Amin.Code §1910.67(b)).

> A party may request a decision of the Property Tax Appeal Board based upon the evidence in the record by filing a written request with the Board. **Any such request shall not be binding in the Board**. **(Emphasis Added).** (86 Ill.Amin.Code §1910.67(c)).

The Board finds the appellant's request to have the decision issued based on the evidence in the record, regardless of the amount of assessment relief requested, does not overcome the requirement to appear at the hearing because the board of review also requested a hearing in this matter. As a result, the Property Tax Appeal Board hereby dismisses this appeal for failure of the appellant to appear at the designated hearing time and date.

APPELLANT:	**Edward Lin**
DOCKET NUMBER:	**06-26460.001-R-1**
DATE DECIDED:	**October, 2011**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a six-unit apartment building with 8,640 square feet of building area. The building is of masonry construction and is approximately 93 years old. The subject building has a full basement and a 5,136 square foot site. The property is located in Chicago, Hyde Park Township, Cook County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a "Restricted Limited Appraisal Report" estimating the subject property had a market value of $408,000 as of January 1, 2004. The appraisal was prepared by John J. Moody, a state certified general real estate appraiser. The appraiser developed only the sales comparison approach based on a prior agreement with the client to not use either the cost or income approaches to value. Due to the fact the appraisal was a restricted report, the appraiser stated within the appraisal that the appraisal contains no discussion of the data, reasoning and analyses that were used in the appraisal process to develop the appraiser's opinion of value. (Appraisal page 1.)

The sales comparison approach to value was set forth on page 5 of the appraisal and consisted of a chart identifying five comparable sales listing the amount of building area per unit, the land to building ratio, number of units, age in years, sale date and price per unit. The chart indicated the comparables ranged in unit size from 883 to 1,580 square feet and had either 6 or 7 units. The buildings ranged in age from 82 to 96 years old. The sales were reported to have occurred from April 2002 to July 2004 for prices ranging from $66,428 to $75,000 per unit. Using these sales the appraiser estimated the subject had a market value of $68,000 per unit or $408,000 as of January 1, 2004. Based on this evidence the appellant requested the subject's assessment be reduced to $65,280.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $89,393 was disclosed. In support of the assessment the board of review submitted descriptions and assessment information on four comparables improved with three-story, masonry constructed apartment buildings that ranged in size from 8,808 to 9,300 square feet of building area. Each comparable has six apartments and a full or partial unfinished basement. The buildings ranged in age from 92 to 96 years old and had the same neighborhood code as the subject. The comparables had total assessments ranging from $97,754 to $100,009 and improvement assessments ranging from $86,072 to $89,157 or from $9.40 to $9.80 per square foot of building area. The subject has an improvement assessment of $77,683 or $8.99 per square foot of building area.

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

The appellant contends the market value of the subject property was not accurately reflected in the subject's appraised value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant has not met this burden of proof and a reduction in the subject's assessment is not warranted.

In support of the overvaluation argument the appellant submitted a restricted limited appraisal report prepared by real estate appraiser John J. Moody. The Board gives the estimate of value contained in the appraisal no weight. First, as provided in the Uniform Standards of Professional Appraisal Practice, a restricted use appraisal report is for client use only. (See Advisory Opinion 11 (AO-11), *Uniform Standards of Professional Appraisal Practice, 2002 Edition*, The Appraisal Foundation, p. 146; *Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition*, The Appraisal Foundation, p. 137. See also Standard Rule 2-2(c), *Uniform Standards of Professional Appraisal Practice, 2002 Edition*, The Appraisal Foundation, p. 27; and *Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition*, The Appraisal Foundation, p. 28, explaining that a Restricted Use Appraisal is for client use only.) This type of report is not intended to be used by parties other than the client. In this instance the client was identified as Edward Lin, the appellant. Second, the Board finds the appraisal had an effective date of January 1, 2004, two years prior to the assessment date at issue. Third, the sales utilized in the appraisal occurred from approximately 17 to 44 months prior to the assessment data at issue. Furthermore, there was limited description regarding the physical characteristics of the comparables such as style, construction, building size and features. Based on these considerations the Property Tax Appeal Board finds the appellant did not submit sufficient credible evidence to challenge the correctness of the assessment for tax year 2006.

The Board further finds the board of review submitted sufficient evidence indicating the subject property was being equitably assessed.

Based on this record the Board finds a reduction in the subject's assessment is not justified.

APPELLANT:	**Charles J. Macaluso**
DOCKET NUMBER:	**07-30367.001-R-1**
DATE DECIDED:	**September, 2011**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property is improved with a split-level single-family frame and masonry dwelling that is 42 years old. Features of the home include a partial basement which is partially finished, central air conditioning, a fireplace, and a two-car garage. The home is mis-classified as a Class 2-78, two-story residence, under the Cook County Real Property Assessment Classification Ordinance. The property is located in Arlington Heights, Wheeling Township, Cook County.

The appellant's appeal is based on unequal treatment in the assessment process as to the improvement only. No dispute was raised concerning the land assessment. In support of the inequity argument, the appellant included a brief contending that the comparables are identical to the subject. The comparables were built by the same builder, "from the same model," at the same time, using the same materials, in the same subdivision and were close in proximity. Appellant included photographs of the subject and four comparables, each of which is a split-level dwelling with living area over the integral garage.

In a grid analysis, appellant presented information that the four comparable properties were classified as Class 2-34 residences under the Cook County Real Property Assessment Classification Ordinance. As such, these dwellings are said to be split level residences with a lower level below grade (ground level). The appellant reported the homes were of frame and masonry exterior construction and were 43 or 44 years old. Each comparable has central air conditioning and a two-car garage. Two comparables have a fireplace. The comparables have improvement assessments ranging from $31,844 to $35,477. The subject's improvement assessment is $36,120 per square foot of living area. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment to $31,844, an improvement assessment identical to appellant's comparable #1 located four houses to the east of the subject.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $43,901 was disclosed. The board of review presented descriptions and assessment information on four comparable properties consisting of Class 2-78, two-story frame and masonry dwellings that were 36 or 37 years old. Features include partial unfinished basement, central air conditioning, a fireplace, and a two-car garage. Photographs of the comparables depict a part one-story and part two-story dwelling and three two-story dwellings with integral garages. These properties have improvement assessments ranging from $36,460 to $41,257. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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

The appellant contends unequal treatment in the subject's improvement assessment 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 (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 met this burden.

The Board finds the subject property is incorrectly classified as a Class 2-78, two-story dwelling, when in fact it is a Class 2-34, split-level dwelling. The Board finds based on the photographic evidence, the subject property is more correctly described and classified as a Class 2-34 split-level residence.

The parties submitted eight equity comparables to support their respective positions before the Board. The Board has given less weight to the four comparables presented by the board of review as these two-story, Class 2-78, dwellings are dissimilar to the subject's Class 2-34, split-level design. The Board finds the comparables submitted by the appellant were most similar to the subject in location, style, exterior construction, features and/or age. Due to their similarities to the subject, these comparables received the most weight in the Board's analysis. These comparables had improvement assessments that ranged from $31,844 to $35,477. The subject's improvement assessment of $36,120 is above the range established by the most similar comparables. After considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's improvement assessment is not equitable and a reduction in the subject's assessment is warranted.

APPELLANT:	**Andrew Merek**
DOCKET NUMBER:	**07-06569.001-R-1**
DATE DECIDED:	**January, 2011**
COUNTY:	**Putnam**
RESULT:	**Reduction**

The subject property consists of a 13,795 square foot residential lot located in Senachwine Township, Putnam County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's land is being inequitably assessed. In support of this claim, the appellant submitted three comparables located from 1/10 of a mile to 3 miles from the subject. The lots range in size from 14,700 to 18,000 square feet of land area. They have land assessments ranging from $27,000 to $27,833 or from $1.55 to $1.87 per square foot of land area. The subject property has a land assessment of $50,000 or $3.63 per square foot of land area. Based on this evidence, the appellant requested a reduction in the subject's land assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final land assessment of $50,000 was disclosed. In response to the appeal, the board of review indicated it "will not stipulate on this docket." The board of review submitted an appraisal procured and used by the appellant at the local board of review appeal process. The appraisal estimated a fair market value for the subject lot of $150,000 as of December 31, 2007. The board of review argued it lowered the subject's assessment to reflect the appraised value. The board of review did not submit any assessment comparables to address the inequity argument raised by the appellant that would demonstrate the subject lot was being uniformly assessed. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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

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 l (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. The Board finds the appellant has met this burden of proof.

The Board gave no weight to the appraisal submitted by the board of review. The Property Tax Appeal Board finds the appraisal report fails to address the lack of uniformity argument raised by the appellant.

The appellant submitted three land comparables to demonstrate the subject property was inequitably assessed. The comparables range in size from 14,700 to 18,000 square feet of land area. They have land assessments ranging from $27,000 to $27,833 or from $1.55 to $1.87 per square foot of land area. The subject property has a land assessment of $50,000 or $3.63 per

square foot of land area, which falls well above the range established by the land comparables in the record. Therefore, a reduction in the subject's land assessment is warranted.

APPELLANT:	**Patricia Oakley**
DOCKET NUMBER:	**08-02684.001-R-1**
DATE DECIDED:	**November, 2011**
COUNTY:	**Kane**
RESULT:	**No Change**

The subject property consists of a 10,071 square foot parcel improved with a one-story frame single-family dwelling on a concrete foundation. The property is located in the Del Webb Sun City community, Huntley, Rutland Township, Kane County.

The appellant appeared before the Property Tax Appeal Board contending unequal treatment in the assessment process as to the subject's land only. No dispute was raised concerning the improvement assessment. In support of the land inequity argument, the appellant presented a brief, photographs, a map along with property characteristic sheets detailing six comparables located on Farm Hill Drive which appellant contends are superior to the subject property because, even though they have an "open" lot designation, like the subject, they have a view of the golf course, which the subject does not. The subject has a neighborhood code "SC Estates," a land assessment of $32,608 and a lot type classification of "open."

The comparables were located approximately 1,000 feet from the subject and overlook a golf course. The subject has a view of an open field. The comparable parcels range in size from 7,281 to 8,421 square feet of land area and each was classified as "open". Three comparables were classified as "SC Estates" lots, like the subject. The other three lots were classified as "SC Premiers." The "SC Estates" lots each had a land assessment of $32,608 with the "SC Premiers" each having a land assessment of $27,575. Based on additional designations made by the assessing officials, the subject and each comparable was designated as "Open" or lots with an unobstructed view such as common area, wet land, park, golf course view, or water.

The appellant argued that lots with an open land view do not have the same resale value as lots with a golf course view. The appellant did not submit substantive documentary market value evidence to support this argument. Based on the foregoing evidence, the appellant requested a land assessment reduction to $28,111 as if the subject were designated a standard lot.

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of $125,444 for the subject property was disclosed consisting of a land assessment of $32,608 and an improvement assessment of $92,836. In support of the subject's land assessment, the board of review presented the subject's property record card, a 2008 Sun City land value chart, and maps, along with a spreadsheet of Sun City properties with a "SC Estates" designation.

At hearing, Janet Siers, the Rutland Township assessor, testified that a land revaluation was instituted in 2008. The classifications were the same ones originally instituted by the developer, Del Webb, in 1999 for single-family residential parcels of Classic, Premier, Estate or Reserve along with a few others for multi-family parcels. As shown on the revaluation chart, besides the lot classifications, designations for location/view of Base, Standard or Open were implemented. The chart reflects that area single-family residential parcels were assessed from $15,296 to

$36,255 per parcel. Based on its data, the board of review asserted the land assessment of the subject was uniform and equitable. Therefore, the board of review requested confirmation of the subject's land assessment.

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 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. After an analysis of the assessment data, the Board finds that the appellant has not met this burden.

The evidence of land assessments presented by both parties reflects uniformity of such assessments in the subject's subdivision regardless of size. The revaluation chart identifies the applicable land assessments for the Sun City development in 2008. The data depicts "Open" lots are defined as lots with an unobstructed view such as common area, wet land, park, golf course view and/or water. The data depicts that all "Premier" open classified lots have a land assessment of $27,575 and all "Estate" open lots have a land assessment of $32,608. The board of review's evidence establishes that "SC Estate" classified lots like the subject with the "open" lot designation are uniformly assessed at $32,608 per parcel for 2008. Thus, the appellant has failed to meet the burden of establishing assessment inequity by clear and convincing evidence.

The appellant argued that the resale value of golf course view lots were superior to open land view lots, however, the appellant did not submit market value evidence to substantiate this claim. In contrast, the only market value evidence submitted into the record was the "open" lot designation spreadsheet, presented by the board of review. The spreadsheet depicts five "open" lots that sold from July 2005 to June 2008 for prices ranging from $400,000 to $515,000. The subject's assessment reflects a market value of approximately $363,532 using the 2008 three-year median level of assessments for Kane County of 33.27% as determined by the Illinois Department of Revenue. The subject's assessment reflects a market value that is less than the established range of improved lots with an "open" designation.

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 taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence. For the foregoing reasons, the Board finds that the appellant has not proven by clear and convincing evidence that the subject property is inequitably assessed. Therefore, 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:	**David Parisi**
DOCKET NUMBER:	**08-03310.001-R-1**
DATE DECIDED:	**July, 2011**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a one and one-half story frame and masonry dwelling containing 1,913 square feet of living area that is approximately 71 years old. Features include a partial unfinished basement, a fireplace and a two-car detached garage. The dwelling is situated on a 7,362 square foot lot.

The appellant appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of the overvaluation argument, the appellant submitted an appraisal report estimating a fair market value for the subject property of $495,000 as of January 1, 2008, using only the sales comparison approach to value. The appraiser utilized seven suggested comparable sales with varying degrees of similarity when compared to the subject. The comparables sold from January 2007 to October 2007 for sale prices ranging from $407,500 to $515,000 or from $241.84 to $340.16 per square foot of living area including land. After adjusting the comparables for differences when compared to the subject, the appraiser calculated that the comparables had adjusted sales prices ranging from $416,800 to $516,000 or from $247.36 to $340.82 per square foot of living area including land. Based on these adjusted sale prices, the appraiser concluded the subject property had an estimated market value of $495,000 or $258.76 per square foot of living area including land as of January 1, 2008.

In the report, the appraiser acknowledged the subject property sold in March 2007 for $495,000 or $258.76 per square foot of living area including land. The appraisal addendum indicates the subject property was listed for sale in then open market at $499,000 prior to its purchase. Page 2 of the appellant's appeal petition also disclosed the subject property sold in March 2007 for $495,000. Based on this evidence, the appellant requested a reduction in the subject's total assessment to reflect its sale price and appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $179,530 was disclosed. The subject's assessment reflects an estimated market value of $539,615 or $282.08 per square foot of living area including land using DuPage County's three-year median level of assessments of 33.27%.

In support of the subject's assessment, the board of review submitted a memorandum addressing the appeal prepared Julie Patterson, Deputy Assessor for York Township. In addition Patterson prepared a market analysis of three suggested comparable sales to support the subject's assessed value.

Patterson initially testified that the subject's assessment was reduced for the 2007 assessment year to $165,000 in order to reflect its March 2007 sale price of $495,000. She testified no changes have been made to the subject's 2008 assessment except for the application of the 2008

York Township equalization factor of 1.088% as applied by the Supervisor of Assessments (Chief County Assessment Officer).

The suggested comparables consist of one and one-half story dwellings that are located in the subject's assessment neighborhood as defined by the local assessor. The dwellings are of masonry exterior construction; range in size from 1,553 to 1,779; and were built from 1929 to 1952. Lots ranged in size from 7,163 to 10,063 square feet of land area. The comparables have unfinished basements and one or two-car attached or detached garages. The comparables sold from May 2006 to September 2007 for prices ranging from $410,000 to $510,000 or from $230.47 to $320.35 per square foot of living area including land. Based on this evidence, the board of review requested confirmation of the subject property's assessment.

The deputy assessor was questioned why sales that occurred from 2006 and 2007 were utilized to support the subject's 2008 assessed valuation when the subject property also sold in 2007. The assessor reiterated she did consider the subject's sale price in making an assessment reduction for the 2007 assessment year. Again, she testified the only change in the subject's 2008 assessment was application of the 1.088% equalization factor applied to all assessments in York Township by the supervisor of assessments, which increased the subject's assessment from $165,000 to $179,530 for the 2008 assessment year.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds a reduction in the subject property's assessment 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 this appeal, the appellant submitted an appraisal report estimating a fair market value for the subject property of $495,000 or $258.76 per square foot of living area including land as of January 1, 2008. In addition, the evidence presented by both parties indicates the subject property sold in March 2007 for $495,000 or $258.76 per square foot of living area including land, just nine months prior to the subject's January 1, 2008 assessment date.

The Board finds the board of review offered no credible evidence refuting the value conclusion contained in the appraisal report submitted by the appellant. Furthermore, there was no evidence contained in the record or presented at the hearing suggesting the subject's March 2007 sale was not an arm-length transaction. The subject's assessment reflects an estimated market value of $539,615 or $282.08 per square foot of living area including land, which is considerably higher than the appraisal submitted by the appellant and the subject's property's March 2007 sale price.

The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428, (1970). A contemporaneous sale of property between parties dealing at arm's-length **is a relevant factor in determining the correctness of**

an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. (Emphasis Added). Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc, 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). The Board finds there is no evidence contained in this record suggesting the subject property's market value increased from $495,000 in March 2007 to $539,615 as of January 1, 2008. Based on this analysis, the Property Tax Appeal Board finds a reduction in the subject's assessment is warranted based on the preponderance of the credible market value evidence submitted by the appellant.

The Board gave little weight to the comparable sales 2 and 3 submitted by the board of review. These suggested comparables sold in 2006, which are less indicative of market value as of the subject's January 1, 2008 assessment date. The Board further finds the one remaining comparable sale submitted by the board of review further demonstrates the subject's final 2008 assessment, subsequent to equalization, is not reflective of its fair market value. It sold in September 2007 for $410,000 or $230.47 per square foot of living area including land. The subject's assessment reflects an estimated market value of $539,615 or $282.08 per square foot of living area including land, considerably higher than the one credible comparable sale submitted by the board of review.

Based on this analysis, the Property Tax Appeal Board finds the appellant has demonstrated the subject property is overvalued by a preponderance of the evidence. Therefore, the Board finds the subject's assessment as established by the board of review is incorrect and a reduction is warranted. Since fair market value has been established, the three-year median level of assessment for DuPage County of 33.27% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**Elia Pierotti**
DOCKET NUMBER:	**08-00500.001-R-1**
DATE DECIDED:	**January, 2011**
COUNTY:	**Tazewell**
RESULT:	**Reduction**

The subject property consists of a condominium unit located in Washington, Tazewell County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellant submitted a settlement statement indicating the subject property was purchased for $129,000 on November 30, 2007. The appellant's appeal petition indicates the parties to the transaction were unrelated; the subject property sold through a Realtor; and the subject property was exposed to the open market for 9 months through the Multiple Listing Service, local newspaper, internet website, street sign and an open house. Based on this evidence, the appellant requested a reduction in the subject's assessment to $43,000, which reflects an estimated market value of $129,000 using the statutory level of assessments of 33.33%.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of $44,830 was disclosed. The subject's assessment reflects an estimated market value of $134,262 using Tazewell County's 2008 three-year median level of assessments of 33.39%.

In response to the appeal, the board of review acknowledged the appellant purchased the subject property for $129,000 on November 30, 2007 for $129,000 and verified the sale by reviewing its Real Estate Transfer Declaration (PTAX-203). However, the board of review argued that since this appeal involves the 2008 assessment year, the 2008 township equalization factor of 1.0425% was applied to the subject's sale price in order to determine its January 1, 2008 market value. ($129,000 x 1.0425 = $134,490[1], rounded) Based on these arguments, the board of review requested confirmation of the subject's assessment.

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

The appellant submitted a settlement statement indicating the subject property was purchased for $129,000 on November 30, 2007, just 31 days prior to the subject's January 1, 2008, assessment date at issue in this appeal. The Illinois Supreme Court has defined fair cash value as what the

[1] The board of review rounded up to the 10th dollar (129,000 x 1.0425 = $134,483)

property would bring at a voluntary sale where the seller is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc., 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

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)

The Board finds the best evidence of the subject's fair market value is the subject's November 30, 2007 sale price of $129,000, which occurred only 31 days prior to the subject's January 1, 2008 assessment date. The subject's assessment reflects an estimated market value of $134,262, which is higher than its sale price. The Property Tax Appeal Board finds there is no evidence contained in this record showing the subject sale was not an arm's-length transaction. Therefore, a reduction in the subject's assessment is warranted.

The Board finds the board of review did not submit any market evidence that would demonstrate the subject's market value increased by approximately $5,490 or by $177.10 per day from its date of sale to the January 1, 2008 assessment date. Furthermore, the Board finds the board of review cited no legal authority that provides for the application of the 2008 township equalization factor to the subject's sale or any property's sale price upon appeal, which increased the subject's assessed valuation above its fair market value as demonstrated by its sale price.

Based on this analysis, the Board finds the appellant demonstrated the subject's 2008 assessment, as determined by the Tazewell County Board of Review, was not reflective of its fair market value by a preponderance of the evidence. Since fair market value has been established, Tazewell County's 2008 three-year median level of assessments of 33.39% shall apply. (See 86 Ill.Adm.Code §1910.50(c)(1)).

APPELLANT:	**John Romanelli Benf Forest Park Natl Bk Tr. 021338**
DOCKET NUMBER:	**09-04967.001-R-1**
DATE DECIDED:	**September, 2011**
COUNTY:	**DuPage**
RESULT:	**Dismissed**

The subject property is described as consisting of a 1,679 square foot single story residential condominium of brick construction.

The appellant filed the appeal contending overvaluation based on comparable sales. In support of this argument the appellant submitted information on four comparables sales. On the petition the appellant identified the subject property as having a property index number (PIN) of 06-36-409-005.[2] The appellant also submitted a copy of the Notice of Final Decision issued by the board of review for PIN 06-36-409-005.

The board of review was notified of the appeal and filed a request to dismiss stating the appellant filed on the wrong PIN. The board of review stated the appellant should have filed on PIN 06-36-409-021. The board of review acknowledged the appellant filed on the wrong parcel with the board of review and this was not noticed until checking the Property Tax Appeal Board appeal. The board of review stated that in researching information through the recorder of deeds office, nowhere is it shown that the appellant or his trust is affiliated with PIN 06-36-409-005.

In response the appellant submitted a copy of the residential appeal form filed with the DuPage County Board of Review disclosing he filed the complaint on PIN 06-36-409-005. The property address on the board of review complaint is for the property the appellant owns. The appellant acknowledged that the correct PIN on the property he owns is 06-36-409-021. The appellant requested the Property Tax Appeal Board accept the appeal despite the typo.

After reviewing the record and considering the arguments of the parties, the Property Tax Appeal Board finds it does not have jurisdiction over the subject property and hereby dismisses the appeal.

Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) provides in part that:

> In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property, and for 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 (emphasis

[2] Section 1-120 of the Property Tax Code (35 ILCS 200/1-120) defines Property Index Number; PIN as:

> A number used to identify a parcel of property for assessment and taxation purposes. The index number shall constitute a sufficient description of the property to which it has been assigned, wherever a description is required by this Code.

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

Additionally, section 1910.10(c) of the rules of the Property Tax Appeal Board provides in part that:

> Only a taxpayer or owner of property dissatisfied with the decision of a board of review as such decision pertains to the assessment of **his property** (emphasis added) for taxation purposes . . . may file an appeal with the [Property Tax Appeal] Board.

86 Ill.Admin.Code §1910.10(c). The evidence in this record disclosed the appellant filed the appeal with the Property Tax Appeal Board on PIN 06-36-409-005, a parcel he does not own. The record disclosed that the appellant does own PIN 06-36-409-021, however, the DuPage County Board of Review did not issue a decision pertaining to PIN 06-36-409-021, which would arguably have conferred jurisdiction on the Property Tax Appeal Board.

For these reasons the Property Tax Appeal Board finds it does not have jurisdiction over the property on which the appeal was filed and grants the DuPage County Board of Review's request to dismiss the appeal.

APPELLANT:	**George E. Sang**
DOCKET NUMBER:	**06-25076.001-R-1**
DATE DECIDED:	**May, 2011**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a 12,312 square foot parcel of land improved with a 45-year old, frame and masonry, single-family dwelling containing 3,459 square feet of living area, three baths, air conditioning, a fireplace, and a partial, finished basement. The appellant argued unequal treatment in the assessment process as the basis of this appeal.

The appellant, via counsel, submitted multi-filings of various documents and comparables.

In totality, the appellant's evidence first asserts that the subject property is misclassified as a two-story rather than a multi-level residence. In support of this, the appellant has submitted: a copy of an affidavit from the appellant stating the property is a multi-level residence; a copy of an affidavit from a paralegal stating she researched the classifications and believes the subject to be a multi-level residence as defined by the ordinance; a copy of an affidavit from a realtor stating she cannot market the subject as a two-story residence because it is a multi-level residence; copies of blue prints showing the subject's layout and elevation; copies of black and white photographs of the interior and exterior of the subject; copies of assessor website printouts showing the subject was classified as a multi-level residence in 2004 and as a two-story in 2005; photographs and assessment data on other properties that are classified as multi-level.

In support of the equity argument, the appellant submitted descriptions and assessment information on a total of 12 properties suggested as comparable and located within the subject's neighborhood with seven on the same Sidwell block as the subject. The properties are described as multi-level, frame and masonry, single-family dwellings with two, two and one-half or three baths, a partial, finished basement, air conditioning for 10 properties, and, for eight properties, one or two fireplaces. The properties range: in age from 44 to 52; in size from 1,710 to 3,150 square feet of living area; and in improvement assessments from $11.86 to $19.19 per square foot of living area. 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 improvement assessment of $53,417 or $15.44 per square foot of living area was disclosed. In support of the subject's assessment, the board of review presented descriptions and assessment information on a total of three properties suggested as comparable and located within the subject's neighborhood. The properties are described as two-story, frame and masonry, single-family dwellings with three, three and one-half or four and one-half baths, air conditioning, a fireplace, and, for two properties, a full basement with one finished. The properties range: in age from 41 to 53 years; in size from 3,336 to 3,488 square feet of living area; and in improvement assessments from $15.51 to $16.69 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant submitted a letter asserting that the board of review's comparables are not similar to the subject. In addition, the appellant submitted a copy of the board of review decision for the 2007 assessment year which reduced the subject's total assessment to $97,494. The appellant argues this reduction was based on a class change and comparable multi-level properties; to support this, the appellant included an affidavit from an individual who copied the notes at the board of review level hearing.

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

The appellant contends unequal treatment in the subject's improvement assessment 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 (1989).

As to the appellant's classification argument, the PTAB finds the appellant submitted sufficient evidence to show that the subject property is a multi-level residence as opposed to a two-story dwelling.

The parties presented a total of 15 properties suggested as comparable to the subject. The PTAB finds the appellant's comparables most similar to the subject in size, design, construction age, amenities and location. Due to their similarities to the subject, these comparables received the most weight in the PTAB's analysis. The properties are frame and masonry, multi-level, single-family dwellings located within the subject's neighborhood with seven on the same Sidwell block as the subject. The properties range: in age from 44 to 52; in size from 1,710 to 3,150 square feet of living area; and in improvement assessments from $11.86 to $19.19 per square foot of living area. In comparison, the subject's improvement assessment of $15.44 per square foot of living area is within the range of these comparables. The remaining comparables were given less weight due to disparities in design. The PTAB finds the subject's per square foot improvement assessment is supported and a reduction in the subject's assessment is not warranted.

The PTAB finds the appellant's argument that the 2007 reduction establishes the need for a reduction in the 2006 assessment year unpersuasive. An affidavit that includes the notes taken at the board of review level hearing does not explain why the reduction was granted nor was there any evidence as to what comparables the board of review relied upon. Moreover, the PTAB hearing is a De Novo proceeding and shall not presume the actions of the board of review are correct. 35 ILCS 200/16-180. Therefore, the PTAB finds that no reduction is warranted.

APPELLANT:	**Luke Trifilio**
DOCKET NUMBER:	**08-02913.001-R-1**
DATE DECIDED:	**July, 2011**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a part one-story and part two-story single-family dwelling that was constructed in 1987. The home contains 1,628 square feet of living area and features a concrete slab foundation, central air conditioning, a fireplace, and an attached two-car garage. The property is located in Carol Stream, Wayne Township, DuPage County.

The appellant submitted a residential appeal contending overvaluation based on a recent sale of the subject property. In support of this argument, the appellant indicated on the appeal form that the subject property was purchased in July 2008 for a price of $210,000. The appellant indicated the subject property was sold by American General Financial, the property was advertised on the open market through the Multiple Listing Service for 171 days and the sale involved Realtor Victor Ponto of Island Real Estate. Furthermore, the parties to the transaction were not related. The appellant also submitted a copy of the Multiple Listing Service (MLS) sheet with an original listing price of $266,900, a lower listing price of $239,500 and a closing statement dated July 25, 2008 disclosing a sales price of $210,000 or $128.99 per square foot of living area including land. The remarks on the MLS sheet regarding the subject were "Beautiful property. Sold in as-is condition. Pre-qual with all offers. Show and sell. Make offer."

Based on this evidence the appellant requested the subject's assessment be reduced to $70,000 or a market value of approximately $210,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $91,640 was disclosed. The subject's assessment reflects a market value of approximately $275,443 or $169.19 per square foot of living area including land when applying the 2008 three year median level of assessments for DuPage County of 33.27%.

The board of review submitted a two-page letter from Michael E. Musson, the Wayne Township Assessor, along with two spreadsheets. In the letter, the township assessor outlined two reasons to reject the subject's sale price as reflective of market value: (1) the sale occurred in July 2008 and thus was not included in the sales ratio study to determine 2008 assessments; using such sales "would have a detrimental impact on assessment uniformity" and (2) the sale was not an arm's-length transaction as it was due to a foreclosure, the grantor was American General Financial Services, Inc., the MLS sheet indicated it was sold "as is" and "this sale is excluded from state and county sales ratio studies for determining assessment changes for 2009 and subsequent years."[3] A copy of the Illinois Real Estate Transfer Declaration was also submitted

[3] The Board recognizes that Public Act 96-1083 amended the Property Tax Code adding sections 1-23 and 16-183 (35 ILCS 200/1-23 & 16-183), effective July 16, 2010.

Section 1-23 of the Property Tax Code provides:

where it was noted a real estate agent was involved in the sale and the transfer occurred through a "Special Warranty" deed.

One spreadsheet set forth eight sales of the subject's same model located in the subject's assigned neighborhood code. The sales occurred between October 2005 and July 2007 for prices ranging from $272,000 to $300,000 or from $167.08 and $184.28 per square foot of living area including land. The homes were built between 1987 and 1989. Each contains 1,628 square feet of living area, has no basement, and features central air conditioning and a two-car attached garage. Five comparables have a fireplace.

The second spreadsheet consists of 37 similar models in the subject's subdivision for uniformity of improvement assessments. The township assessor argued that granting a reduction in the subject's improvement assessment would "undermine the strong uniformity that exists in this neighborhood." The Property Tax Appeal Board finds that submission of equity comparables in response to the appellant's market value argument is not responsive and the board of review's additional equity comparables will not be further addressed herein.

Based on the foregoing data, the board of review requested confirmation of the subject's estimated market value as reflected by its assessment.

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

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). 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. *Official Rules of the Property Tax Appeal Board*, 86 Ill. Admin. Code Sec. 1910.65(c). The Board finds the appellant has met this burden.

> Compulsory sale. "Compulsory sale" means (i) the sale of real estate for less than the amount owed to the mortgage lender or mortgagor, if the lender or mortgagor has agreed to the sale, commonly referred to as a "short sale" and (ii) the first sale of real estate owned by a financial institution as a result of a judgment of foreclosure, transfer pursuant to a deed in lieu of foreclosure, or consent judgment, occurring after the foreclosure proceeding is complete.

Section 16-183 provides:

> Compulsory sales. The Property Tax Appeal Board shall consider compulsory sales of comparable properties for the purpose of revising and correcting assessments, including those compulsory sales of comparable properties submitted by the taxpayer.

The Board finds the effective date of these statutes is subsequent to assessment date at issue, January 1, 2008. The Board finds there is no language within either provision evidencing a clear expression of legislative intent to give these amendments retroactive effect. Therefore, the Board finds neither statute specifically applies to the appellant's 2008 assessment.

The appellant contends the subject's assessment should be reduced based on the sale of the subject as set forth in the record. The evidence disclosed that the subject sold in July 2008 for a price of $210,000. The information provided by the appellant indicated the sale occurred only seven months after the assessment date at issue of January 1, 2008. The board of review's responsive evidence contested the consideration of a sale after January 1, 2008 and the arm's-length nature of the sale of the subject property as it was sold by "American General Financial" and was transferred through a "Special Warranty" deed.

Ordinarily, property is valued based on its fair cash value (also referred to as fair market value), "meaning the amount the property would bring at a voluntary sale where the owner is ready, willing, and able to sell; the buyer is ready, willing, and able to buy; and neither is under a compulsion to do so." Illini Country Club, 263 Ill. App. 3d at 418, 635 N.E.2d at 1353; see also 35 ILCS 200/9-145(a). The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill. 2d 158, 161, 226 N.E.2d 265, 267 (1967). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill. App. 3d 369 (1st Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc., 45 Ill. 2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill. 2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). Based on the foregoing, even though the sale occurred after January 1, 2008, the Board finds the July sale price may still be the best evidence of the subject's market value as of several months prior.

The Property Tax Appeal Board also finds the best evidence of the subject's fair market value in the record is the July 2008 sale for $210,000. The Property Tax Appeal Board finds the sale was not a transfer between family or related parties; the property was advertised for sale in the Multiple Listing Service and involved a Realtor. Furthermore, the Board finds there is no evidence in the record that the sale price was not reflective of the subject's market value. The original listing price of $266,900 is also less than the subject's estimated market value as reflected by its assessment.

The subject's Real Estate Transfer Declaration and the appellant's appeal petition clearly establish that the subject property was advertised for sale. Thus, the general public did have the same opportunity to purchase the subject property at any negotiated sale price. Other recognized sources further demonstrate the fact a property must be advertised or exposed in the open market to be considered an arm's-length transaction that is reflective of fair market value. Black's Law Dictionary (referencing Bourjois, Inc. v. McGowan and Lovejoy v. Michels (citation omitted)), states:

> . . . the price a property would command **in the market**" (Emphasis added). This language suggests a property must be publicly offered for sale in the market to be considered indicative of fair market value.

The Board finds there are other credible sources that specify a property must be advertised for sale in the open market to be considered an arm's-length transaction. The Dictionary of Real

Estate Appraisal [American Institute of Real Estate Appraisers, *The Appraisal of Real Estate*, 8th ed. (Chicago American Institute of Real Estate Appraisers, 1983), provides in pertinent part:

> The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell **in a competitive market** under all conditions requisite to fair sale; The property is **exposed for a reasonable time on the open market**.

Additionally, the Property Assessment Valuation, 2nd edition, states: Market value is the most probable price, expressed in terms of money, that a property would bring if **exposed for sale in the open market** (Emphasis added) in an arm's-length transaction between a willing seller and a willing buyer; a reasonable time is allowed for **exposure to the open market.** (Emphasis added). (International Association of Assessing Officers, Property Assessment Valuation, 2nd edition, Pgs. 18, 35, (1996)). The board of review did not provide specific substantive evidence to refute the arm's length nature of the sale transaction. Of the eight sales presented by the board of review, Sale #6, which included two transactions, was the most similar property to the subject. Sales #6 sold in November 2005 for $147.42 per square foot of living area including land and then resold in January 2006 for $176.90 per square foot of living area including land. The subject's July 2008 sale price was $128.99 per square foot of living area including land. Since the appellant presented evidence showing the subject property was advertised for sale and exposed to the open market through the MLS in an arm's-length transaction, the Property Tax Appeal Board finds the subject's July 2008 sale price of $210,000 was reflective of its market value.

Based on the foregoing analysis, the Property Tax Appeal Board finds the subject property had a market value of $210,000 on January 1, 2008. The subject's assessment reflects an estimated market value of approximately $275,443 or $169.19 per square foot of living area including land, which is substantially higher than its July 2008 sale price. Therefore a reduction is warranted. Since the fair market value of the subject has been established, the Board finds that the 2008 three-year median level of assessments for DuPage County of 33.27% shall apply.

APPELLANT:	**Brad Waldron**
DOCKET NUMBER:	**09-05410.001-R-1**
DATE DECIDED:	**November, 2011**
COUNTY:	**LaSalle**
RESULT:	**No Change**

The subject property consists of a one and one-half story frame and brick dwelling containing 2,482 square feet of living area that was built in 2008. Amenities include an unfinished basement, central air conditioning, a fireplace, an 806 square foot pole building and a 506 square foot attached garage.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's assessment is not reflective of its fair market value based upon its propensity to flood. The appellant's evidence indicates the subject's 2.2 acre site was purchased in September 2005 for $50,000. Additionally, the appellant submitted a notarized sworn statement detailing the costs to construct the subject dwelling for $242,588, which included a $25,000 contractor fee for profit and overhead. The appellant's evidence indicated non-compensated labor was performed for landscaping, planting trees, "spreading of driveway", deck construction and lawn seeding. Neither the costs of these materials nor the estimated value of non-compensated labor performed was disclosed. As a result, the land acquisition cost and the dwelling's construction cost totaled $292,588, excluding the value for non-compensated labor and materials.
The main thrust of the appellant's appeal was based on the fact that the subject property has a propensity to flood at various times throughout the year due to shallow drainage ditches and the lack of a culvert under the roadway. The appellant submitted photographs dated August 24, 2007, July 12, 2008 and December 29, 2008 12, depicting a significant amount of flooding on the subject parcel. The appellant argues it would cost thousands of dollars to try and fix the flooding problem, but even then will still have to deal with the water problem. Based on this evidence, the appellants requested a reduction in the subject's assessment to $42,000, which reflects an estimated market value of approximately of $126,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $80,000 was disclosed. The subject's assessment reflects an estimated market value of $240,385 using LaSalle County's 2009 three-year median level of assessments of 33.28%.

The board of review pointed out that the subject's 2009 assessment was lowered from $95,526 to $80,000 based on the flooding issue. The board of review argued the subject's reduced assessment reflects an estimated market value less than the construction costs reported by the appellant. The board of review argued the only evidence submitted by the appellant was the subject's construction costs and photographs of the flooding. The board of review argued the subject property has not been on the market nor was there an appraisal to establish market value of $126,000 as requested by the appellants

The board of review also submitted three suggested comparable properties that have higher assessments than the subject property.

In summary, the board of review argued the subject's assessment reflects an estimated market value less than its reported construction costs; the subject is assessed lower that other comparable properties; and the board of review has compensated for the flooding issue by lowering the subject's assessment to $80,000. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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

The appellant argued the subject's assessment was not reflective of its fair market value due to its propensity to flood. As a result, the appellant requested the subject's assessment be reduced to reflect a market value of approximately $126,000. 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 an analysis of the evidence, the Board finds the appellant has not met this burden of proof. The Property Tax Appeal Board finds this record does not contain any credible market evidence to support the appellant's assessment request.

The Property Tax Appeal Board finds the best and only evidence of the subject property's market value is the documented construction costs and land acquisition price submitted by the appellants totaling $292,588. However, the Board finds the reported costs do not include the value for non-compensated labor performed for landscaping, planting trees, "spreading of driveway", deck construction and lawn seeding. In addition, the value of the materials associated with the non-compensated labor was not disclosed. The subject's assessment reflects an estimated market value of $240,385. The Board finds the subject's estimated market value is considerably less than the actual reported construction costs and land acquisition price submitted by the appellant, notwithstanding the additional value attributed to any non-compensated labor and associated materials. Therefore, no reduction in the subject's assessed valuation is justified.

The Property Tax Appeal Board fully recognized the appellant's argument and premise that the subject property may suffer a diminished valuation due to its propensity to flood. However, the board finds the board of review adjusted the subject's assessment to account for the flooding problem. More importantly, the appellant failed to provide any direct credible valuation evidence, such as an appraisal that specifically addresses the subject's flooding issue problem using a paired sales analysis, which would demonstrate the subject's assessment is not reflective of its fair market value.

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 credible market evidence that satisfies this rule in establishing the subject's market value based on its propensity to flood. Therefore, a preponderance of the market value evidence contained in this record does not support a reduction in the subject's assessment.

APPELLANT:	**Ozcan Yabukoglu**
DOCKET NUMBER:	**08-02908.001-R-1**
DATE DECIDED:	**July, 2011**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a two-story brick single-family dwelling that was constructed in 1991. The home contains 5,611 square feet of living area and features a full unfinished basement, central air conditioning, a fireplace, and an attached 980 square foot garage. The property is located in Bensenville, Addison Township, DuPage County.

The appellant submitted a residential appeal contending overvaluation based on a recent sale of the subject property. In support of this argument, the appellant indicated on the appeal form that the subject property was purchased in May 2008 for a price of $640,000. The appellant indicated the subject property was sold by Compass Properties through use of Realtor Melody McCracken of Century 21 Castles by King and the property was advertised on the open market through the Multiple Listing Service for 108 days. Furthermore, the parties to the transaction were not related. The appellant also submitted a copy of the Multiple Listing Service sheet displaying an original asking price of $800,000 and a closing statement dated May 28, 2008 disclosing a sales price of $640,000 or $114.06 per square foot of living area including land.

Based on this evidence the appellant requested the subject's assessment be reduced to $213,333 or a market value of approximately $640,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $306,370 was disclosed. The subject's assessment reflects a market value of approximately $920,860 or $164.12 per square foot of living area including land when applying the 2008 three-year median level of assessments for DuPage County of 33.27%.

The board of review submitted a memorandum from the township assessor who acknowledged that the subject property was purchased "5 months after the January 1 assessment date." The assessor further reported:

> The property had a sheriffs deed recorded on it dated December, 2007. The loan servicer then sold the property to the appellant. The subject had a sale prior to the foreclosure on 10/2006 for $1,000,000. The policy of this office has been not to reduce to sale price if the property was bought in Foreclosure or then sold as a "bank owned" property.

The board of review also submitted a copy of the subject's Multiple Listing Service sheet displaying an asking price of $800,000. Based on the foregoing evidence, the board of review requested confirmation of the subject's estimated market value as reflected by its assessment.

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

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends the subject's assessment should be reduced based on the sale of the subject as set forth in the record. The evidence disclosed that the subject sold in May 2008 for a price of $640,000. The information provided by the appellant indicated the sale had the elements of an arm's length transaction and the sale occurred only five months after the assessment date at issue of January 1, 2008. The board of review's responsive evidence contested the arm's-length nature of the sale of the subject property as it was sold by a "loan servicer." The board of review presented no substantive evidence to support the implication that the sale was under duress or in some manner a compulsory sale due to the sale by a loan servicer. Moreover, the board of review provided no market value evidence to otherwise support the subject's estimated market value as reflected by its assessment.

Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Illinois Supreme Court 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). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code Sec. 1910.65(c)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

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 if reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). Our supreme court has at least indicated that a sale of property during the tax year in question is a "relevant factor" in considering the validity of an assessment. [citations omitted]. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 375 (1st Dist. 1983).

The Property Tax Appeal Board finds the best evidence of the subject's fair market value in the record is the May 2008 sale for $640,000. The Property Tax Appeal Board finds the sale was not a transfer between family or related parties; the property was advertised for sale in the Multiple Listing Service and involved a Realtor. Furthermore, the Board finds there is no evidence in the record that the sale price was not reflective of the subject's market value. The original listing price of $800,000 is also less than the subject's estimated market value as reflected by its assessment. The Board further finds that the board of review did not adequately contest the

arm's-length nature of the subject's sale. Thus, based on the foregoing facts, the Property Tax Appeal Board finds the subject's May 2008 sale price of $640,000 was reflective of market value.

Based on the foregoing analysis, the Property Tax Appeal Board finds the subject property had a market value of $640,000 on January 1, 2008. The subject's assessment reflects an estimated market value of approximately $920,860, which is substantially higher than its May 2008 sale price. Therefore a reduction is warranted. Since the fair market value of the subject has been established, the Board finds that the 2008 three-year median level of assessments for DuPage County of 33.27% shall apply.

2011 RESIDENTIAL CHAPTER

Index

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

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2011 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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2011 FARM CHAPTER

Table of Contents

APPELLANT:	**Harry Deatherage**
DOCKET NUMBER:	**08-00049.001-F-1 thru 08-00049.002-F-1**
DATE DECIDED:	**July, 2011**
COUNTY:	**Madison**
RESULT:	**Reduction**

The subject property consists of two tracts of vacant land. The tract identified as Parcel No. 18-1-14-22-00-000-003 (hereinafter PIN 003) consists of 24.20 acres. PIN 003 is described as having 12.95 acres of cropland and 11.25 acres as other farmland. The tract identified as Parcel No. 18-1-14-15-00-000-032 (hereinafter PIN 032) consists of 5.01 acres. PIN 032 is described as having 3.69 acres of cropland and 1.32 acres of other farmland. The property is located in Chouteau Township, Madison County.

The appellant appeared before the Property Tax Appeal Board contesting the farmland assessments on each parcel. At the hearing the appellant asserted that each parcel is a borrow pit and should be assessed at $0 based on recommendations from the Illinois Department of Revenue (IDOR). The appellant testified the parcels have been farmed but the previous year (2009) no crops were harvested. In support of his argument the appellant submitted a copy of a letter dated April 28, 1997, purportedly from Walter Greathouse, Sr., President of the Board of Commissioners of the Metro East Sanitary District. According to the letter the East Side Levee and Sanitary District acquired the lands in 1915 for the purpose of constructing a levee and for use as borrow pits to obtain the needed material to construct the levee. The levee was constructed and served as flood protection for at least four decades. The letter explained the federal government constructed a new levee around 1950, which eliminated the need for the early levee. In approximately 1960 the earlier constructed levy was degraded and the material from the levee was used to raise a railroad embankment. In 1965 the Ease Side Levee and Sanitary District sold the land at issue to Edward Burton.

The letter went on to state that the usage indicates that the soil material at the surface of these lands is likely to be mainly those soil materials that were originally subsoil materials. The letter also stated that the borrow pit left the west half of the land lower than the original surface rendering the western half unsuitable for farming. The correspondence further stated the eastern half of the land is farmed when possible.

The appellant also submitted a letter dated October 30, 1997, from Jerry Berning, Resource Soil Scientist with the Natural Resources Conservation Service. He stated in the letter that a revised soil map was made. The letter further indicates that the author had viewed aerial photographs taken in 1941 and 1955 showing remnants of a levee. The author of the letter also stated that an area he had designated 1071 has had 2½ feet of the original surface removed leaving this area lower and wetter than surrounding soils.

The appellant also submitted photographs of the subject properties, which depicted areas of timber, brush and row crop stubble. The appellant also submitted copies of soil survey maps of the parcels and aerial photographs of each parcel depicting areas of timber and areas used to grow crops. As a final submission the appellant provided three pages of Publication 122,

Farmland Implementation Guidelines from the Illinois Department of Revenue, January 2006. The appellant had highlighted a sentence on page 2 of Publication 122 stating "When wasteland has no contributory value, a zero assessment is recommended."

At the hearing the appellant identified the photographs of PIN 003 and agreed that one photograph depicted the area where crops were grown. He also identified a drain pipe on PIN 003 that is used to drain areas improved with warehouses. With respect to the photographs of PIN 032 the appellant was of the opinion one of the photographs depicts the subject as being fallow. At the hearing the appellant also questioned the classification of the soils as depicted on the soil maps. The appellant also testified the subject had a crop on the tracts in 2010.

Based on this evidence the appellant requested the land assessment on each parcel be reduced to $0.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessments for PIN 003 of $1,890 and PIN 032 of $200 were disclosed. The board of review indicated that PIN 003 was assessed as having 12.95 acres of cropland and 11.25 acres of other farmland. PIN 032 was described as having 3.69 acres of cropland and 1.32 acres of other farmland.

Appearing before the Property Tax Appeal Board on behalf of the board of review was its chairman, Kerry Miller. The board of review indicated that the farmland in Madison County was assessed in accordance with statutory guidelines, Bulletin 810, Average Crop, Pasture, and Forestry Productivity Ratings for Illinois Soils, published by the University of Illinois College of Agricultural, Consumer and Environmental Sciences, Office of Research (Bulletin 810) and Publication 122 published by IDOR. Miller testified that if the property is a borrow pit actually used as a borrow pit the property is assessed at $0, however, if the property is used as cropland it is assessed as cropland.

The board of review submitted copies of the 2009 Soil Calculation Reports for the parcels under appeal but which depicted the total farmland assessments for 2008. The board of review also provided aerial photographs of each parcel which identified the cropland and other farmland on the respective tracts. Also submitted by the board of review was a copy of Publication 122.

Miller testified when the crews inspected the subject property cropland was observed, therefore, the land was assessed as cropland. Miller also testified that Madison County obtained new soil maps with Bulletin 810. He testified the soil maps differ from those that were in existence in 1997.

After hearing the testimony and considering the evidence the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds a change in the assessment is warranted.

The appellant appeared before the Property Tax Appeal Board contending the subject parcels are borrow pits that should have $0 assessments even though they may have a crop on the respective tracts. The board of review contends the subject parcels are being assessed in accordance with statutory guidelines, Bulletin 810 and Publication 122.

Section 10-110 of the Property Tax Code (PTC) provides in part that, "[t]he equalized assessed value of a farm . . . shall be determined as described in Sections 10-115 through 10-140. . . ." 35 ILCS 200/10-110.

Section 10-115 of the PTC provides in part that:

> The Department [of Revenue] shall issue guidelines and recommendations for the valuation of farmland to achieve equitable assessment within and between counties. . . . 35 ILCS 200/10-115.

Furthermore, section 10-115 of the PTC sets forth the various components that the Department of Revenue is to certify to each chief county assessment officer on a per acre basis by soil productivity index for harvested cropland such as: gross income, production costs, net return to the land, a proposed agricultural economic value, the equalized assessed value per acre of farmland for each soil productivity index, a proposed average equalized assessed value per acre of cropland for each individual county, and a proposed average equalized assessed value per acre for all farmland in each county.

Section 10-125 of the PTC (35 ILCS 200/10-125) provides for the assessment level of farmland by type and states in part that:

> (a) Cropland shall be assessed in accordance with the equalized assessed value of its soil productivity index as certified by the Department [of Revenue] and shall be debased to take into account factors including, but not limited to, slope, drainage, ponding, flooding and field size and shape.
> (b) . . .
> (c) Other farmland shall be assessed at 1/6 of its debased productivity index equalized assessed value as cropland.
> (d) Wasteland shall be assessed on its contributory value to the farmland parcel.

In accordance with the Section 10-115 of the PTC, the Department of Revenue issued Publication 122, Farmland Implementation Guidelines. The guideline reads in part as follows:

> **Cropland** includes all land from which crops were harvested or hay was cut. . . land on which crops failed, land in cultivated summer fallow; and idle cropland.
>
> **Other farmland** includes woodland pasture; woodland, including woodlots, timber tracts, cutover, and deforested land; and farm building lots other than homesites.
>
> **Wasteland** is that portion of a qualified farm tract that is not put into cropland, permanent pasture, or other farmland as the result of soil limitations and not as the result of a management decision.

Illinois Department of Revenue, Publication 122, Farmland Implementation Guidelines, January 2006, p. 1. The Board finds the evidence and testimony demonstrated that a portion of each

parcel was used as cropland. PIN 003 had 12.95 acres of cropland and PIN 032 had 3.69 acres of cropland. The Board finds that this acreage on the respective tracts was properly classified and assessed as cropland.

The record disclosed the 11.25 acres on PIN 003 were classified and assessed as "other farmland" and 1.32 acres on PIN 032 were classified as "other farmland." The Board finds this acreage was incorrectly classified as "other farmland" but should be classified as "wasteland" due to soil limitations caused by the parcels being used as borrow pits. Photographs of these tracts submitted by the appellant depict parcels that could not be considered cropland, permanent pasture or other farmland.

Publication 122 provides in part that:

> **Wasteland** is assessed according to its contributory value to the farm parcel. In many instances, wasteland contributes to the productivity of the other types of farmland. Some land may be more productive because wasteland provides a path for water to run off or a place for water to collect. Wasteland that has a contributory value should be assessed at one-sixth of the EAV per acre of cropland of the lowest PI certified by the department. When wasteland has no contributory value, a zero assessment is recommended.

Illinois Department of Revenue, Publication 122, Farmland Implementation Guidelines, January 2006, p. 2. As an additional guideline, Publication 122 goes on to state that:

> **Ponds and Borrow Pits.** Assess ponds and borrow pits used for agricultural purposes as contributory wasteland. If a pond or borrow pit is used as part of the homesite, assess it with the homesite at 33 1/3 percent of market value.

Illinois Department of Revenue, Publication 122, Farmland Implementation Guidelines, January 2006, p. 3. In this appeal the Board finds 11.25 acres on PIN 003 and 1.32 acres on PIN 032 are wasteland which contribute to the productivity of the cropland on each tract and should be assessed at one-sixth of the EAV per acre of cropland of the lowest PI certified by the department.

At the hearing the appellant also challenged the soil classifications on each tract based on a comments in a letter dated October 30, 1997 by Jerry Berning. The testimony and evidence provided by the Madison County Board of Review disclosed that in 2008 it was following the farmland assessment guidelines provided by the Illinois Department of Revenue in assessing farmland through the implementation of Bulletin 810 and new soil surveys that were developed after 1997. Miller testified the soil maps associated with the implementation of Bulleting 810 differed from those that were in existence in 1997. Based on this record the Board finds the appellant did not submit any evidence to challenge the correctness of the soil types on either parcel as of the assessment year at issue.

In conclusion, the Property Tax Appeal Board finds that the acreage on the parcels that were described as "other farmland" should be considered "wasteland" and assessed at one-sixth of the EAV per acre of cropland of the lowest PI certified by the IDOR. The Board requests the

Madison County Board of Review compute and submit the revised farmland assessments within 21 days of the date of this decision.

APPELLANT:	**Raymond Doyle**
DOCKET NUMBER:	**07-01107.001-F-1**
DATE DECIDED:	**June, 2011**
COUNTY:	**Ogle**
RESULT:	**Reduction**

The subject property consists of a vacant ten acre tract located in the Village of Mt. Morris (hereinafter Village), Mt. Morris Township, Ogle County.

The appellant and his attorney appeared before the Property Tax Appeal Board contending the subject property should be classified and assessed as farmland. Mr. Raymond Doyle was called as a witness. The appellant testified he is the owner of the subject property. He purchased the subject property in December 2003 from Larry K. Wilson, who had produced hay on the subject tract. The appellant stated that at the time of the purchase there were no buildings on the parcel and he has not constructed any buildings on the subject land. The appellant further testified he has continued to use the subject parcel since 2003 as had the previous owner for the production of hay. The appellant testified he has tenant farmers who grow and cut the hay on the subject tract. The appellant testified that Tim Wilfang and Don Yocum have farmed the subject parcel. The appellant submitted Petitioner's Exhibit #2 and Petitioner's Exhibit #3, statements from Yocum and Wilfang stating they rented and harvested hay from the 10 acre tract in 2006 and 2007, respectively.

The appellant also identified Petitioner's Exhibit #4 as containing aerial photographs depicting the subject parcel. The appellant identified Mud Creek Road that runs east and west adjacent to the northern boundary of the subject property. He also identified condominiums located adjacent and to the east of the subject tract.

The appellant testified that normally three cuttings of hay are harvested from the subject tract each year. The cuttings typically occur in June, August and September. Doyle initially testified the rent paid by Yocum and Wilfang to the appellant was $100 per year based on an oral lease.

The appellant also identified Petitioner's Exhibit #5 as a series of photographs of the subject property he took during approximately February 2008. The appellant also identified Petitioner's Exhibits #8 through #14 as photographs he took of the subject property during 2008. He testified these photographs depict the nature of the property from 2005 through 2007. The appellant also identified Petitioner's Exhibits #15 through #17 as depicting the subject property on August 25, 2010. These three photographs depict the subject tract as being mowed with round hay bales scattered on the parcel. The appellant testified these three photographs fairly and accurately represented the condition and use of the property during 2005, 2006 and 2007. The appellant testified the subject always had round hay bales and that the farmers always used a round hay-baler during those years. He further testified the subject had been receiving a farm classification in prior years.

Using Petitioner's Exhibit #1, the appellant identified the class codes on his tax bills for 2003 through 2006 as 0021 (farmland) while the class code on the 2007 tax bill changed to 0030.

Based on this evidence and use for the production of hay, the appellant requested the subject property receive an agricultural classification and assessment.

Under cross-examination Doyle testified the tenant farmers have not tilled the subject property and have not planted any alfalfa or clover. The appellant explained that during 2005 through 2007 the subject was not tilled. The appellant testified the grass on the subject had been mowed and baled during those years.

The appellant testified the subject is currently on the market for sale but does not have an actual price, he was accepting offers.

The witness also explained he is paid either $100 or $200 per year by the tenant farmer who then takes the hay. The appellant does not use the hay but the tenants use the hay as feed.

The witness also testified he is prevented from tilling the soil due to a Village ordinance. The appellant testified he was denied a variance or special use permit to plant beans or any other crop on the subject parcel by the Village Planning Commission. He testified that he has had no issue with the Village as to the current use of the subject for mowing and baling hay. The appellant asserted that the subject property is within the city limits.

The next witness called on behalf of the appellant was Brent Doyle, the appellant's son. The witness testified he was present in Illinois in 2005, 2006 and 2007. He further testified he was familiar with the subject tract. During 2005 through 2007 he observed the subject parcel. He testified the tract was used for the cutting and baling of hay.

The final witness called on behalf of the appellant was Larry Wisnosky, the appellant's nephew who resides in Mt. Morris. He testified he was familiar with the subject tract. During 2005 through 2007 he observed the subject parcel. He testified the tract was used for the cutting and baling of hay.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $38,400 was disclosed. Appearing before the Property Tax Appeal Board on behalf of the board of review was the Ogle County Chief County Assessment Officer and Clerk of the Board of Review, James Harrison and the Mt. Morris Township Assessor Paul Peterson.

With the "Board of Review Notes on Appeal" the board of review had submitted an aerial photograph depicting the subject property and the surrounding area. At the hearing the board of review presented Board of Review Exhibit A, which was another copy of the aerial photograph of the subject property containing notations concerning the uses of other parcels surrounding the subject tract and noting the city limit runs along Mud Creek Road. The land to the north of the subject across Mud Creek Road outside the city limits is classified as farm. The land south of Mud Creek Road within the city limits is classified as non-farm property.

Paul Peterson was called as a witness. Peterson explained the change in the subject's classification and assessment from farmland to non-farm assessments was based on the fact that

a person name Diana Hoffman, who had property in the area, had planted some corn on a parcel and was taken to court by the Village to stop her from farming the land. He testified the Village was successful in its lawsuit. He was of the opinion this suit established the precedent that prevented farming in the Village. The board of review had submitted a copy of a letter from the Village of Mt. Morris to Dr. Diana Hoffman dated May 4, 2004, stating that plowing of the acreage "is a nonconformity of the Village Code to farm land inside the Village limits." Therefore, the assessor made a change in the assessments of numerous properties, including the subject.

Peterson testified he heard the testimony of the appellant. The witness testified he had observed the subject property being baled but could not recall the dates. The witness further testified if the subject property was located outside the city limits and being used in the manner as testified to by the appellant, the property would receive a farmland classification and assessment. He explained that a primary reason the subject's classification was changed was due to a Village ordinance that prohibits farming within the limits of the Village and the fact that the ordinance was being enforced.

Using Board of Review Exhibit A, Peterson testified the tract identified by property index number (PIN) 08-26-426-011, was going to be planted in corn but the city stopped them from doing so. This tract is currently in grass. Peterson testified PIN 08-26-426-002 is kept in grass similar to a lawn. Peterson testified PIN 08-26-426-001 is an improved parcel with a house, however, he did not know what was being done in the rear (back) portion of the parcel. Peterson testified PIN 08-26-401-015 and PIN 08-26-401-014 are a little rougher and wetter and not being baled. Peterson confirmed these tracts are receiving non-farm assessments.

In rebuttal the appellant testified that hay was taken from PIN 08-26-426-011 one week prior to the subject hearing. He further testified this was the tract that the city prevented from being planted in corn.

Following the hearing both the board of review and the appellant submitted provisions of the Village of Mt. Morris zoning ordinances.

After hearing the testimony and considering the evidence the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The issue before the Property Tax Appeal Board is whether or not the subject property is entitled to a farmland classification and assessment. Section 1-60 of the Property Tax Code defines farm in part as follows:

> Farm. When used in connection with valuing land and buildings for an agricultural use, any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to, **hay** (emphasis added), 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. Furthermore, section 10-110 or the Property Tax Code (35 ILCS 200/10-110) provides that in order to qualify as farmland, the acreage at issue must be used as a farm the two preceding years.

In order for real property to receive a farmland classification it must be used as a farm during the assessment year at issue and the two preceding years. Oakridge Development Co. v. Property Tax Appeal Board, 405 Ill.App.3d 1011, 938 N.E.2d 533, 345 Ill.Dec. 94 (2nd Dist. 2010). As stated in Oakridge Development Co., the courts have repeatedly held that "present use" controls the classification of farmland under the Property Tax Code. Oakridge Development Co., 405 Ill.App.3d at 1020.

In this appeal the appellant presented testimony and evidence that was not refuted or contradicted demonstrating the subject property was vacant and had been used for the production of hay during 2005, 2006 and 2007. The Board finds this use qualifies the subject for a farmland assessment.

The board of review contends that the subject is not entitled to a farmland assessment primarily due to a perceived violation of the Village zoning laws. The jurisdiction of the Property Tax Appeal Board is limited to determining the correct assessment of real property that is the subject matter of the appeal. (35 ILCS 200/16-180). The Property Tax Appeal Board has no authority to make a determination as to whether or not the use of real property is in violation of zoning ordinances. In this appeal the evidence clearly demonstrated the subject property was being used as a farm in accordance with the relevant provisions of the Property Tax Code regardless of whether or not this use violated provisions of the Village's zoning ordinance.

Based on this record, the Board hereby orders the Ogle County Board of Review to compute and certify the farmland assessment in accordance with the findings herein and submit the revised assessment to the Property Tax Appeal Board **within 21 days** of the date of this decision so that a final decision with the corrected assessment can be issued.

APPELLANT:	**Lee & Judith Gori**
DOCKET NUMBER:	**07-00050.001-F-1**
DATE DECIDED:	**March, 2011 (Amended – April, 2011)**
COUNTY:	**Madison**
RESULT:	**No Change**

The subject property consists of a 5.6 acre tract improved with a 360 square foot metal clad shed. The property is located in Edwardsville, Hamel Township, Madison County.

The appellants contend the subject property is entitled to a farmland classification and an agricultural assessment. The appellants' counsel, Christopher Byron, appeared before the Property Tax Appeal Board on behalf of the appellants. The appellants did not appear to provide testimony or to be cross-examined. In support of their argument the appellants' counsel submitted a legal brief and an affidavit signed by Lee Gori. In the affidavit Gori asserts that the property was purchased in February 2005 and was used for crop production and had no improvements. The affiant further averred in 2005 they began planting an orchard, which occupied .5 acres as of January 1, 2007. The affidavit also provides that in 2005 they began a vegetable garden that began producing vegetables in 2006. The area encompassing the vegetable garden was approximately .2 acres. The affiant stated the remainder of the area consists of wooded and grassy areas. Gori stated that the grassy areas are dedicated to soil improvement and conservation for future expansion of the fruit and vegetable production. The statement also acknowledged the construction of the storage shed in 2006, which is purportedly used to store agricultural equipment and supplies. In 2007 Gori stated a swing-set and slide were placed on the subject property for the use of grandchildren.

The appellants also submitted a copy of the subject's data sheet, an aerial photograph of the subject, a schematic diagram of the subject, and various photographs.

Counsel also submitted a brief asserting the appellants' use of the subject property qualifies the property for a farmland assessment as cropland and other farmland.

There was no evidence as to the number of trees planted although a photograph submitted by the appellants depicts six or seven small trees planted next to some woodland. Counsel asserted the trees are apple or cherry trees. The record also contained a photograph of the subject depicting a large area of mowed open area. The record also has a photograph of the metal clad shed and the swing-set. There were no photographs depicting any area of the subject devoted to a garden. The record also contained photographs of a field in corn stalks but counsel stated that was not the subject property but a neighboring property.

Based on this evidence the appellants requested the subject's assessment be reduced to $1,565.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $29,440 was disclosed. The board of review chairman testified the subject property was purchased by the appellants on February 14, 2005 for a price of $124,000. At the time of purchase the subject was vacant unimproved rural ground and had been

receiving a farmland assessment prior to 2007. In 2007 Hamel Township underwent a quadrennial reassessment and the township assessor's office reclassified the parcel after inspection to vacant residential unimproved. The board of review representative stated that there were no visible crops on the parcel at the time of the field inspection.

The chairman of the board of review testified the county was relying on Illinois Department of Revenue Publication 122, Farmland Implementation Guidelines, for the conclusion that the subject property, as of January 1, 2007, had not met the primary use requirements to qualify for a farmland assessment. The witness indicated that two years after the appellants had planted some trees for an orchard that could be a qualifying use as farmland. The board of review submitted a series of photographs dated January 18, 2007 and August 7, 2007, depicting the subject property. The photographs were taken by the field crews as part of the inspection for the quadrennial reassessment. The photographs depict primarily an open grass area with no crops being visible, the swing-set and the metal clad shed.

The chairman of the board of review further testified the assessment reflects a market value of approximately $86,790, which is less than the purchase price.

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 the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellants contend the subject should be classified and assessed as farmland. After reviewing the record and considering the evidence, the Board finds the evidence presented by the appellants was not credible in establishing the subject property was being used as a farm entitling it to a farmland classification and a farmland assessment.

Section 1-60 of the Property Tax Code defines farm in part as:

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

35 ILCS 200/1-60. Additionally, in order to qualify for a farmland assessment the property must be used as a farm for the two preceding years. 35 ILCS 200/10-110.

Initially, the Board finds that neither of the appellants was present at the hearing to be examined about the extent and nature of the use of the subject property. There was no opportunity to question the appellants to determine whether or not the subject property was being systematically managed as an orchard or to produce vegetable crops. The record contained a photograph purportedly showing six or seven small fruit trees occupying a very minor portion of the subject

parcel. The photograph alone does not establish the subject is being used or managed as an orchard. At the hearing, appellants' counsel attempted to establish that the subject was being used as a farm through an affidavit. In Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill.2d 367, 400-01, (1992), which involved administrative review, the Supreme Court of Illinois stated that "affidavits offered to establish the truth of a matter at issue in the agency or on review should not be considered unless subject to some sort of adversarial examination." The court went on to state that it would be a "miscarriage of justice" and "a violation of basic due process protections to allow the parties to append to the trial record" an "unexamined affidavit to establish the proof of a matter asserted." Balmoral Racing Club, Inc., 151 Ill.2d at 401. The Board finds it can give no weight to the appellants' affidavit in establishing the purported use of the property; therefore, there is nothing in this record from the appellants to prove the subject property was used as a farm in 2007.

Furthermore, the record contains photographs submitted by appellants and the board of review depicting the subject in January and August 2007 during the quadrennial reassessment. The photographs submitted by both parties depict primarily idle/vacant land with a metal clad shed and a swing-set in place. Viewing these photographs, the Property Tax Appeal Board finds it is simply not credible to conclude the subject property was being used as farmland during 2007.

The record further disclosed the subject property was purchased in February 14, 2005 for a price of $124,000. The subject's total assessment of $29,440 reflects a market value of approximately $88,320, which is less than the purchase price. The Board finds this evidence demonstrates the subject's assessment is not excessive in relation to the property's fair cash value as reflected by the purchase price. Based on this record the Board finds the assessment of the subject property as established by the board of review is correct and no reduction is warranted.

APPELLANT:	**James Kyle**
DOCKET NUMBER:	**08-01444.001-F-1**
DATE DECIDED:	**January, 2011; certified assessments June, 2011**
COUNTY:	**Fulton**
RESULT:	**Reduction**

The subject property consists of a 55.29-acre tract of land located in Fulton County, Illinois. The subject parcel has a 5.5 acre pond; 26.18 acres of crop land used to cultivate hay; 15.69 acres of pasture ground used to raise cattle; and 7.92 acres of other farmland.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's 5.5 acre pond is incorrectly classified and assessed as home site/recreational land. In support of this argument, the appellant submitted a letter prepared by counsel addressing the appeal, photographs of the subject parcel, an aerial photograph of the subject parcel, a 2007 Schedule F (profit and loss from farming statement) as filed with the Internal Revenue Service; and the subject's property record card.

The appellant explained the subject's 5.5 acre pond was previously assessed as "other farmland." The appellant argued the entire subject parcel, including the 5.5 acre pond, is used for farm purposes by cropping hay and raising cattle. The pond is used for watering the livestock. The appellant argued the subject parcel is not used for recreational purposes.

Based on this evidence, the appellant requested the Property Tax Appeal Board restore the farmland classification and assessment for the 5.5 acre pond.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's land assessment of $1,290 was disclosed. In support of the subject's assessment, the board of review submitted a letter in response to the appeal, various aerial photographs, a list of parcels from the subject's township that have recreational assessments, sale information for five suggested comparables with an accompanying plat map showing their proximity in relation to the subject.

The letter explains Fulton County, at one time, was a prominent coal mining area, which left behind many areas of lakes that have become popular among hunters, fisherman, and outdoorsman of all types. The board of review explained the demand for this type of land remains high and the price being paid has been steady. (See Exhibit C). In the 1980's county assessment officials recognized the trend and began assessing lakes and ponds as "Home-Site Recreational land." This designation has since been shortened (changed) to just "recreational."

Exhibit B consists of a list of all parcels in Putnam Township that are being classified and assessed as farmland, but also have ponds or lakes that are assessed as recreational land at $200 per acre. The board of review indicated 49.79 acres of the subject parcel is classified and assessed as farmland at $170 and the 5.5 acre pond is classified as recreational at $1,120 or $203.64 per acre of water area.

In summary, the Fulton County Board of Review believed the information provided in the evidence shows that the subject property is being assessed fair, consistent and equitable manner and that the assessed value per acre is well below the market value for this type of land (water). Therefore, the board of review requested confirmation of the subject property's land classification and assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the subject's 5.5 acre pond is entitled to a farmland classification and assessment.

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

> any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. (35 ILCS 200/1-60)

Section 10-115 of the Property Tax Code provides that the Illinois Department of Revenue shall issued guidelines and recommendations for the valuation of farmland to achieve equitable assessment within and between counties. (35 ILCS 200/10-115) Section 10-125 of the Property Tax Code (35 ILCS 200/10-125) indentifies four types of farmland: (a) Cropland; (b) Permanent pasture; (c) Other farmland; and (d) Wasteland. Publication 122, Instructions for Farmland Assessments, issued by the Illinois Department of Revenue provides further guidance in this instant appeal. Page 2 of Publication 122 has a category labeled Wasteland, which provides in pertinent part:

> Wasteland is assessed according to its contributory value to the farm parcel. In many instances, wasteland contributes to productivity of other types of farmland. Some land may be more productive because wasteland provides a path for water to run off or a place for water to collect. (Publication 122, P. 2, 2006)

Page 3 of Publication 122 has a category labeled pond and borrow pits, which provides in pertinent part:

> Assess ponds and borrow pits used for agricultural purposes as contributory wasteland. (Publication 122, P.3, 2006).

The Property Tax Appeal Board finds the subject's 5.5 acre pond is used in conjunction with raising cattle and clearly meets the definition of farmland as contained in the Property Tax Code. Furthermore, the subject's pond is contiguous and is encompassed by cropland, pasture ground and other farmland, which further supports an agricultural assessment as provided by the Property Tax Code and Publication 122.

The board of review did not dispute the appellant's agricultural use for 49.79 acres of the subject property for hay cropping and pasture ground for cattle, but claimed the subject's 5.5 acre pond should assessed recreational land. The board of review contends ponds and lakes like the subject are uniformly classified and under-assessed. The Property Tax Appeal Board gave little merit to the response submitted by the board of review.

Notwithstanding the fact that the board of review failed to present any credible evidence showing that the use of the subject's 5.5 acre pond is for recreational purposes, the Board finds property that is used for agricultural purposes and should be assessed as farmland even if the farmland is part of the parcel that has other incidental uses, such as recreation. In Santa Fe Land Improvement Co. v. Property Tax Appeal Board, 113 Ill.App.3d 872, (3rd Dist. 1983), the court held "it is the use of real property which determines whether it is to be a assessed at an agricultural valuation" and that "the present use of land determines whether it receives an agricultural or nonagricultural valuation." The Board finds the "present use" controls the classification of farmland under the Property Tax Code and has been codified several times under Illinois case law. See Oakridge Development Co. v. Property Tax Appeal Board, 2010 WL 3667120 (Ill. App. 2nd Dist.); Senachwine Club v. Putnam County Board of Review, 362 Ill.App.3d 556, 568 (2005); Bond County Board of Review v. Property Tax Appeal Board, 343 Ill.App3d 289, 292 (5th Dist. 2003); Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999); Du Page Bank & Trust Co. v. Property Tax Appeal Board, 151 Ill.App.3d 624, 627 (2nd Dist. (1986).

Additionally, the Board finds that Illinois Courts have granted the Property Tax Appeal Board substantial deference in its interpretation of Section 1-60 of the Property Tax Code. In McLean County Board of Review v. the Property Tax Appeal Board, 286 Ill.App.3d 1076, 1081 (4th Dist. 1997), the court held that the definition of "farm" in section 1-60 of the Code is very broad. Furthermore, in McLean, the Appellate Court did not overturn the lower court's finding that **the recreational use of the property is incidental and insignificant,** and the property can be farmed and managed simultaneously as a conservation area, without losing its [farmland] assessment.

In summary, the Board finds the subject's pond is entitled to a farmland classification and assessment for three reasons. First, the subject is used in conjunction with the keeping, raising and feeding of cattle. Second, the pond contributes to productivity of other types of contiguous farmland because it provides a path for water to run off or a place for water to collect. Third, since the subject pond is contiguous to the previously classified farmland and has not been shown to be used for any other use incidental and insignificant to its primary use as farmland the subject's pond is entitled to a farmland classification and assessment as provided by Publication 122 issued by the Illinois Department of Revenue.

The Property Tax Appeal Board gave little merit to the response submitted by the Fulton County Board of Review. Although the evidence disclosed the board of review uniformly assessed rural ponds based on market transactions as recreational land, the Board finds the board of review failed to address farmland classification of the subject's pond based on its use in conjunction with the overall farming operation conducted on the subject parcel.

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 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.

APPELLANT:	**Joseph Pallardy**
DOCKET NUMBER:	**07-05117.001-R-1**
DATE DECIDED:	**January, 2011**
COUNTY:	**Jo Daviess**
RESULT:	**No Change**

(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 41.35-acres of vacant land in Stockton Township, Jo Daviess County. There are 15.31-acres of cropland and the balance of the acreage has been assessed at market value because it is said to be laying idle.

The appellant based the instant appeal on a contention of law. In support of this claim, the appellant presented a letter arguing that the subject is being wrongly assessed with a "lack of uniformity (numerous like properties assessed as farmland)." However, the appellant did not provide any comparable properties or their assessments to establish lack of uniformity in treatment of the subject property.

Next appellant argued that a change in law has resulted in a change in the treatment of the subject property. "My contention is I need time to come into compliance with new law before they can increase my taxes by over 5 times in a year time frame." Appellant further argued that placing the acreage needed into farmland would have disturbed the nesting season of various wildlife (first tentative notice was dated May 16, 2008). Appellant concluded that he was requesting that the taxes remain the same for 2007 because "as soon as the next planting season comes I will be in compliance with having ½ of acreage in farming or CRP."

Based on this argument, the appellant requested a 2007 farmland assessment for the entire subject property.

The board of review submitted its "Board of Review Notes on Appeal", wherein the subject parcel's respective 2007 farmland assessment of $280 plus homesite (or non-farmland) assessment of $26,040 were disclosed. In support of the subject's total assessment of $26,320, the board of review submitted a memorandum outlining the attached evidence identified as Exhibits A through E.

The subject's property record card marked as Exhibit A reflects 15.31-acres of farmland and 26.04-acres of homesite for 2007. A handwritten notation for 2007 states "per township assessor north field in grain; mixed use; reclass 011 & revalue." The memorandum reports that 15.31-acres are assessed as farmland due to CRP land and crops, but the balance of the property is assessed at market value because it is lying idle. The board of review's memorandum next notes the statutory definition for "farm" from the Property Tax Code (Exhibit B) and provides portions of a Department of Revenue Guideline on assessing idle land that is larger than the farmed portion (Exhibit C). The board of review asserts that pursuant to the guidelines, if the idle

portion is larger than the smaller farmed portion, then the larger idle portion should be assessed at market value.

In Exhibit D, the board of review presented documentation of five sales of vacant rural property in Stockton Township, including the appellant's purchase of the subject property in December 2006 for $199,000 or $4,812 per acre, to establish the correctness of the non-farmland assessment of the subject property based on market data. The four comparable sales ranged in size from 12.89 to 80-acres. The sales occurred from March 2006 to December 2007 for prices ranging from $100,000 to $309,396 or from $3,723 to $7,757 per acre of land.

In Exhibit E, the board of review presented aerial photographs and property record cards for five properties in Stockton Township. The board of review contended these parcels have no farming or have a mix of farming and idle land and have been treated like the subject property. Because several of the property record cards lacked detail and/or did not have 2007 assessment information, no further substantive details could be gleaned from the submission of Exhibit E.

Based on this evidence, the board of review requested confirmation of the subject's farmland and homesite assessments.

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 finds the subject property is not entirely entitled to a farmland classification for 2007.

The Board finds Section 10-110 of the Property Tax Code (35 ILCS 200/10-110) provides that:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, except tracts subject to assessment under Section 10-145, shall be determined as described in Sections 10-115 through 10-140.

The Board finds in order for a property to receive a preferential farmland assessment the property must first meet the statutory definition of a "farm" as defined in Section 1-60 of the Property Tax Code. Based on the evidence in this record, the Board finds that the subject property is not entirely entitled to a farmland classification and a reduction in the subject's 2007 assessment is not warranted. Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in 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; 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 parcel is used solely for agricultural purposes as required by Section 1-60 of the Property Tax Code. 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. It is the present use of the land that determines whether the land receives an agricultural assessment or a non-agricultural valuation. See Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill. App. 3d 799 (3rd Dist. 1999) and Santa Fe Land Improvement Co. v. Property Tax Appeal Board, 113 Ill. App. 3d 872 (3rd Dist. 1983). To qualify for an agricultural assessment, the land must be farmed at least two years preceding the date of assessment. (35 ILCS 200/10-110).

The appellant's brief specifically asserted that appellant needed "time to come into compliance with new law" and "to put the acreage needed into farmland would have disturbed the nesting season of various wildlife." These assertions by the appellant indicate that the land at issue was not being used for agricultural purposes, but could be used for such purposes given sufficient time to comply. Moreover, there was no evidence to reveal the use of the acreage in 2007 or in the two years prior thereto. DuPage Bank and Trust Co. v. Property Tax Appeal Board, 151 Ill. App. 3d 624, 502 N.E.2d 1250 (2nd Dist. 1986), *appeal denied* 115 Ill. 2d 540, 511 N.E.2d 427, *cert. denied* 484 U.S. 1004, 98 L.Ed.2d 646. Appellant has failed to establish that the subject property has been improperly classified.

Parcels used primarily for any purpose other than as a "farm" as defined in Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) are not entitled to an agricultural assessment. 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). In this matter, no evidence was offered to support the conclusion that the disputed 26.04-acres of the subject property was "farmed" and/or allowed to lie fallow as a farming practice. DuPage Bank & Trust Co. v. Property Tax Appeal Board, 151 Ill. App. 3d 624 (2nd Dist. 1986). In other words, the "use" of the property was never presented by the appellant so as to establish the assertion that the land at issue qualified under the definition of "farm" as provided in the Property Tax Code. Thus, the Board finds that in the absence of testimony to establish use, the appellant has failed to establish that the disputed land was not properly classified.

As to the assessment equity arguments in this matter, appellant argued unequal treatment in the subject's assessment as a basis of the appeal. Having determined, however, that the alleged improper classification of the subject property has not been adequately established by the appellant, the Property Tax Appeal Board need not further address the uniformity of assessments argument in this matter. Furthermore, appellant failed to submit evidence of purportedly comparable properties that were receiving farmland assessments. Appellant's entire argument questioned first the classification and secondly the uniformity of farmland assessments. Having failed in the first argument, there is nothing more as to uniformity of assessments to be considered.

In conclusion, as to the classification issue, the Property Tax Appeal Board finds that the disputed 26.04-acres 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. Therefore, the Property Tax Appeal Board finds the subject property's assessment as established by the board of review is correct and no reduction in assessment or change in classification is warranted.

2011 FARM CHAPTER

Index

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

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2011 COMMERCIAL DECISIONS

PROPERTY TAX APPEAL BOARD
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2011 COMMERCIAL CHAPTER

Table of Contents

APPELLANT:	**Mark Glazer**
DOCKET NUMBER:	**05-27628.001-C-2**
DATE DECIDED:	**February, 2011**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of 107,997 square feet of land improved with a 32-year old, one-story, masonry, commercial building. The building is a single-tenant, retail building used as a furniture store with 28,905 square feet of building area.

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

As to the overvaluation argument, the appellant submitted a complete, summary appraisal report reflecting an effective date of January 1, 2005 estimating a market value for the subject property of $2,170,000 as of the assessment date at issue. The appellant chose not to call its appraisers as witnesses in these proceedings.

The appraisal was undertaken by two appraisers: Harry Fishman, a Certified Real Estate Appraiser licensed in Illinois, and Mitchell Perlow, a Certified General Real Estate Appraiser in Illinois who also is accorded the designation of Member of the Appraisal Institute (hereinafter MAI). The appraisal states that the subject property was inspected on January 13, 2006. The appellant's appraisal addresses the three traditional approaches to value. The cost approach reflected a value of $2,200,000, rounded; the income approach reflected a value of $2,170,000, rounded; while the sales comparison approach indicated a value of $2,170,000, rounded. In reconciling these approaches to value, the appraisers placed main reliance on the sales comparison approach to reflect a final value of $2,170,000 for the subject.

The appraisal stated that the subject property consisted of a 32-year old, one-story, 28,905 square foot, furniture store with masonry exterior construction and a land-to-building ratio of 3.74:1. The appraisers indicated that the subject's site contains a highly irregular-shape of 107,997 square feet. The appraisers indicated that the building was of average condition with fair functional utility. The appraisal stated that the subject's building has minimal partitioning adding to the difficulty of leasing to multiple tenants.

In addition, the appraisal indicated that the subject was purchased by the current owner in May, 2003, for $3,500,000, but the appraisers indicated that the property had never been exposed to the open market resulting in an inflated acquisition price; and therefore, the appraisers' opined that this transaction did not meet the definition of market value.

In developing a highest and best use, the appraisal stated that as vacant, the subject's highest and best use would be for a commercial-type facility in conformance with applicable zoning and building codes as well as consistent with surrounding land uses. As to the subject's highest and best use as improved, the appraisal stated this would be the continued use of the subject as a commercial building as remedied of all short-lived physical deterioration. In addition, the

appraisal indicated that the appraisers estimated that the subject's effective age was 25 years with a remaining economic life of 25 years.

The first approach to value developed by the appraisers was the cost approach wherein six land sales were used located within the subject's neighborhood. These sales occurred from August, 2001, through February, 2005, for prices that ranged from $7.38 to $11.86 per square foot of land area. The land sizes ranged from 42,480 to 292,244 square feet. The appraisers considered an estimated value of $10.50 per square foot reasonable and supportable for the subject reflecting a land value of $1,135,000, rounded. Using the Marshall Valuation Service and considering the subject a Class C Retail Building, a replacement cost new was developed indicating an $80.00 per square foot value or $2,312,400. The appraisers estimated 50% physical depreciation and 5% functional and external obsolescence reflecting a total depreciation of $1,271,820. Adding the on-site improvement value of $25,000 indicated a total depreciated value of the improvements and land of $2,200,000, rounded.

The appraisal indicated that the income approach to value is based upon the principle of anticipation. The appraisers indicated that the subject property is currently leased at an annual rent of $289,280 or $10.00 per square foot with the lease initiated in June, 2000. However, the appraisal noted that in order to obtain a tenant, the landlord was required to put a new façade on the building and provide a rent credit of $136,807 over the first four years of the lease in order to reimburse the tenant for tenant improvements. Therefore, the appraisal stated that $176,807 was required to obtain the rental rate, while amortizing this amount over the lease term resulted in an effective annual rent of $277,493 or $9.60 per square foot.

For the income approach to value five rental properties were reviewed. They ranged in size from 12,361 to 34,302 square feet of building area and in unadjusted rental rates from $7.91 to $10.00 per square foot. After amortizing the subject's current lease, the appraisers opined that the current lease is basically at market and therefore, the appraisers used that rate of $9.60 in their analysis reflecting a potential rental income of $277,493. Less a 10% vacancy and collection loss of $27,749 resulted in an effective gross income of $249,744. Total projected expenses were estimated at $54,236 including $20,233 designated as the owner's share of expense while vacant. Projected net operating income was estimated at $195,508. Applying a 9.0% capitalization rate reflected a value estimate under the income approach of $2,170,000, rounded.

Under the sales comparison approach to value, the appellant's appraisers utilized seven suggested comparables of commercial properties in the subject's immediate area. The properties sold from May, 2002, through February, 2004, for prices that ranged from $885,000 to $5,725,000 or from $51.63 to $76.68 per square foot before adjustments. The improvements ranged in size from 12,900 to 79,000 square feet and in age from seven to 40 years. In addition, the properties ranged in land-to-building ratios from 1.54:1 to 6.63:1. The improvements were all a one-story, masonry buildings, while sale #2 included two such buildings. Sales #2 and #7 involved single-tenant occupancy, while the remaining sales related to multi-tenant buildings. Sale #3 involved a sale with a leaseback option. After making adjustments, the appraisers considered a unit value of $75.00 per square foot to be appropriate for the subject resulting in an estimated market value of $2,170,000, rounded.

In reconciling the three approaches to value, the appraisers accorded the least weight to the cost approach to value. The appraisal stated that the income approach is weighed more heavily when a property is purchased for its income producing attributes. Since the subject property is a single-user commercial building, the appraisers accorded this approach secondary weight. The appraisal stated that the sales comparison approach also considered the income potential of the property; and therefore, was given most weight in determining the final value estimate. Therefore, the appraisers opined that the market value of the subject was $2,170,000 as of January 1, 2005.

The board of review timely submitted "Board of Review Notes on Appeal" wherein the subject's final assessment of $934,799 was disclosed. This assessment indicates a market value of $2,459,997 or $85.11 per square foot applying the ordinance level of assessment at 38% for class 5a property as designated by Cook County Real Property Assessment Classification Ordinance.

In addition, the board of review submitted a market analysis prepared by Ralph DiFebo relating to the subject property. However, he was not presented to testify regarding either his qualifications or the methodology used in his report. The report indicated that the subject was improved with a one-story building constructed in 1973 with 28,905 square feet of building area. The subject's land area comprises 107,997 square feet.

Further, the board of review submitted copies of CoStar printouts for four sale properties; however, it was noted that sale #2 was the subject property. Therefore, the raw sales data on the three properties indicated that they sold from February, 2002 to October, 2004, for prices from $1,550,000 to $3,375,000 or from $77.50 to $124.97 per square foot. The properties range in improvement size from 20,000 to 35,655 square feet of building area. The printouts further indicate that sale #1 contained no real estate brokers while containing a single-tenant; while sale #3 identified the buyer as the owner-user of the property. As to sale #4, the printouts indicated that the building contained multiple tenants therein.

At hearing, the state's attorney argued that the subject's sale in 2003 was relevant to the market value of the subject property even though the appellant's appraisers stated that the sale transaction did not meet the definition of market value. Therefore, the state's attorney argued that the subject's current assessment and market value be sustained.

Intervenors' attorney submitted a brief as well as copies of CoStar printouts for four sale properties even though a grid analysis only dealt with three properties. The brief indicated that the subject contained a multi-tenant, strip retail center with 28,905 square feet of building area sited on a 107,997 square foot parcel of land.

As to the sale properties, the raw sales data indicated that the properties sold from January, 2002 to July, 2004, for prices from $1,793,000 to $4,425,000 or from $93.39 to $138.13 per square foot. The properties range in improvement size from 19,200 to 36,894 square feet of building area and were built from 1971 to 1988. The printouts indicate that all four properties were multi-tenant, retail strip centers. As to sale #1, the printouts disclosed 14 tenants within this retail strip center, while sale #3 contained nine tenants therein. At hearing, the intervenors' attorney argued that the subject's assessment be maintained.

In rebuttal at hearing, the appellant's attorney argued that the board of review and the two intervenors had failed to proffer sufficient evidence regarding the suggested sale properties to meet the burden of supporting the subject property's assessment and market value because the evidence submissions consist solely of raw data.

After hearing the testimony and/or arguments as well as 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 the basis of the appeal, the value of the property must be proved by a preponderance of the evidence. *86 Ill.Admin.Code 1910.63(e).* Proof of market value may consist of an appraisal, 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, with a focus on the comparable sales, the PTAB finds that a reduction is warranted.

In determining the fair market value of the subject property for tax year 2005, the PTAB closely examined the parties' evidence submissions.

The PTAB accorded diminished weight to the intervenors' evidence due to the fact that the evidence submitted consisted of raw data regarding four sales of retail strip centers in contrast to the subject property's highest and best use as a single-tenant commercial building.

As to the appellant's appraisal, the PTAB accorded this appraisal diminished weight due to unanswered questions regarding the development of two approaches to value; the subject's inspection; the subject's site description; the classification of the subject as a class C retail building in the cost approach; actual rental data from the subject; absence of detailed rental data for the rental comparables; expense deductions taken in the income approach to value; and details relating to the subject's sale.

Further, the board of review and the intervenors asserted that the subject's sale could be probative regarding the subject's fair market value; however, the PTAB finds that all three of these parties failed to proffer any documentation reflecting that the subject's sale in 2003 was an arm's length transaction. This is in contrast to the appellant's appraisal wherein the appraisers indicated that the property had never been exposed to the open market resulting in an inflated acquisition price; and therefore, the appraisers' opined that this transaction did not meet the definition of market value.

The courts have stated that where there is credible evidence of comparables sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989). Therefore, the PTAB will give primary weight to the parties' sale comparables submitted into evidence.

In totality, the appellant and the board of review submitted a total of 10 suggested sale comparables. 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.

The PTAB accorded little weight to the board of review's properties #1 and #4 due to: the contradiction in highest and best use; lack of real estate brokers involved in the property's sale; and/or a disparity in the property's size or age. Therefore, the PTAB accorded most weight to the appellant's sales #1 through #7 as well as the board of review's sale #3. These comparables established an unadjusted market value range from $51.63 to $77.50 per square foot of building area. After making adjustments to these comparables, the PTAB determined that the subject property has an estimated market value of $2,240,138 or $77.50 per square foot of building area.

Based on this analysis, the PTAB finds that the subject's assessment and market value for tax year 2005 is not supported by the sale comparables in this record and that a reduction was warranted. Since fair market value has been established, the ordinance level of assessment for Cook County as reflected in the Cook County Real Property Assessment Classification Ordinance for class 5a property of 38% shall apply.

APPELLANT:	**Hansen Builders**
DOCKET NUMBER:	**06-02751.001-C-1**
DATE DECIDED:	**March, 2011**
COUNTY:	**Jersey**
RESULT:	**No Change**

The subject property consists of an 11,000 square foot parcel improved with a six bay car wash with 2,800 square feet of building area. The car wash was constructed in 1987 and is approximately 19 years old as of the January 1, 2006 assessment date at issue. The car wash is of masonry construction with a concrete slab. The subject facility has five self service bays and one automatic service bay. The subject property also has a concrete paved parking lot. The property is located in Jerseyville, Jersey Township, Jersey County.

The appellant appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal of the subject property prepared by Robert Lowerance, an Illinois Certified General Real Estate Appraiser. Lowerance was called as a witness on behalf of the appellant. Lowerance identified Appellant Ex. #2 as the appraisal he prepared of the subject property estimating the property had a market value of $98,000 as of January 1, 2006.

Lowerance testified his primary business area is in Madison County but he does perform work in all counties surrounding Madison County. The witness testified he has previously appraised 10 or 12 car wash properties. The appraisal of the subject is the second car wash he had appraised that was located in Jersey County.

In his analysis the appraiser was of the opinion the highest and best use of the subject as vacant is to be developed for commercial/business use. The appraiser concluded the highest and best use as improved is not consistent with the subject's use as a car wash. The appraiser indicated the highest and best use as improved is for the subject to be converted to an alternative commercial/business use based upon a review of the accountant's compilation of income and expenses for income tax years 2005 and 2006. The appraiser indicated within his report that the subject's current use as a car wash does not produce enough income to effectively cover the value of the raw land coupled with the contribution of the existing improvements. (Appellant Ex. #2, pp. 13-14.) As a result the appellant's appraiser valued the subject based on an alternative use. The appraiser indicated within his report that, "alternative uses included but were not limited to conversion to a commercial garage, commercial retail or distribution center, storage units among other uses. (Appellant Ex. #2, p. 18.)

The witness testified he did not include in the appraisal the four criteria used to evaluate the determination of highest and best use because he prepared a summary narrative. In addition, the appraiser testified the report does not contain any estimate of land value.

In estimating the market value of the subject property the appraiser did not use the cost approach or the income capitalization approach although he indicated that car washes are purchased by investors based on their income potential.

The appraiser developed only the sales comparison approach outlined on two pages of the report using three sales. (Appellant Ex. #2, pp. 30-31.) Comparable sale #1 is composed of a six year old pole frame building on a slab that contains 2,304 square feet of building area. The comparable has a 22,651 square foot lot and is located in Jerseyville. This property sold in April 2006 for a price of $115,000 or $49.91 per square foot of building area, including land. Comparable sale #2 is a one-story metal sided pole building with 2,160 square feet built on a concrete slab. This building is seventeen years old. This property has a 19,602 square foot lot and is located in Godfrey. The property was used as an auto maintenance shop and sold in September 2006 for a price of $162,500 or $75.23 per square foot of building area, including land. Comparable sale #3 consists of a 2,500 square foot parcel improved with an older two-story concrete block building with 4,840 square feet with a partial basement. This property is located in Jerseyville and sold in May 2006 for a price of $70,000 or $28.93 per square foot of building area, including land.

Based on these sales the appraiser estimated the subject had an indicated value of $50.00 per square foot subject to conversion or $35.00 per square foot of building area when considering the estimated cost to convert the subject at $10.00 to $20.00 per square foot. As a result the appraiser estimated the subject had a market value of $98,000 (2,800 square feet at $35.00 per square foot) as of January 1, 2006.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $63,800 was disclosed. The subject's assessment reflects a market value of $191,304 or $68.32 per square foot of building area, land included, using the 2006 three year average median level of assessments for Jersey County of 33.35%. The assessment also equates to a unit value of $31,884 per bay.

In support of the assessment the board of review submitted a copy of the subject's property record card as well as information on four comparable sales. The comparables were improved with car wash facilities located in Jerseyville, Grafton, Valmeyer and Smithton. Sale #1, located in Jerseyville, was the oldest date of sale occurring in October 1999. This property consisted of a 2,366 square foot car wash with five bays composed of three self serve and two automatic bays. The car wash was constructed in 1999. This comparable had approximately 22,500 square feet of land and sold for a price of $368,500 or for $155.75 per square foot of building area or $73,700 per bay, including land. Comparable sale #2 was composed of a 1,040 square foot, two bay masonry car wash located on a 13,500 square foot site in Grafton. The building was constructed in 1999. This property sold in March 2006 and again in May 2008 for $145,000 or $139.42 per square foot of building area or $72,500 per bay, including land. Sale #3, located in Valmeyer, was composed of a 1.55 acre site improved with a 1,664 square foot, three bay, masonry constructed car wash that was approximately five years old. This property sold in December 2007 for a price of $200,000 or $120.19 per square foot of building area or $66,667 per bay, including land. Comparable sale #4, located in Smithton, consisted of a 13,625 square foot site improved with a 1,701 square foot masonry car wash with three enclosed bays and one exterior bay. The car wash was constructed in 1979. The property sold in February 2005 for a price of $102,000 or for $59.96 per square foot of building area or $34,000 per bay, including land. The Jersey County Chief County Assessment Officer testified that he viewed each of the sales.

In summary, the comparable sales sold for prices ranging from $59.96 to $155.75 per square foot of building area or for $34,000 to $73,700 per bay, including land. Based on these sales the Jersey County Chief County Assessment Officer was of the opinion the subject had a value of $73.00 per square foot of building area or a total value of $204,400, which equates to $34,067 per bay, including land. The board of review requested the subject's assessment be revised to $68,133.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports the assessment of the subject property.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). Proof of market value may consist of an appraisal or comparable sales. (86 Ill.Admin.Code §1910.50(c)(1) & (4).) 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 comparable sales submitted by the board of review demonstrate a change in the subject's assessment is not warranted.

The Board finds the most probative evidence establishing the market value of the subject property were the four comparable sales provided by the board of review. In Chrysler Corp. v. Property Tax Appeal Board, 69 Ill.App.3d 207, 214, 387 N.E.2d 351, 25 Ill.Dec. 695 (2nd Dist. 1979) the court held that where there is sufficient credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. The comparable sales presented by the board of review were improved with car wash facilities that offered varying degrees of similarity to the subject property. Although one sale occurred in 1999, the three remaining sales occurred from February 2005 to May 2008, with sale #2 selling twice. The board of review comparable sales sold for prices ranging from $102,000 to $368,500 which equate to $59.96 to $155.75 per square foot of building area or from $34,000 to $73,700 per bay, including land. The subject's assessment totaling $63,800 reflects a market value of $191,304 or $68.32 per square foot of building area or $31,884 per bay, land included, using the 2006 three year average median level of assessments for Jersey County of 33.35%. The Board finds the subject's assessment reflects a market value within the unadjusted range of these similar comparables on a per square foot basis and below the range on a per bay basis. Based on these sales the Board finds the subject's assessment is reflective of the property's market value and no change is justified.

The Board gives no weight to the appellant's appraisal finding that the appraisal was not particularly credible. The appellant's appraiser valued the subject property based on an alternative highest and best use. The Board finds this determination that the subject had a different highest and best use as improved was not supported in this record and was speculative. First, the appraisal did not contain an analysis of the highest and best use using the four criteria typically found in appraisals. Once highest and best use is determined the use must meet the following four criteria:

(1) Physically possible
(2) Legally permissible
(3) Financially feasible
(4) Maximally productive

In addition to these criteria other considerations include demand for the use; the highest and best use must be a complementary use rather than a competitive use; and the highest and best use must be the most profitable for the entire property. This type of analysis was not contained in the appellant's appraisal which undermines the conclusion.

Second, typically appraisal theory provides that as long as the value of the property as improved is greater than the value of the land as though vacant, the highest and best use is the current use of the property as improved. Construction of a new improvement should not be assumed unless the return from the alternative new use more than covers the demolition and construction costs. In this appeal the appellant's appraiser did not estimate the value of subject site as vacant or as currently improved to demonstrate the improvements did not contribute to the overall value of the subject property. Under the highest and best use analysis the appellant's appraiser presented no analysis of the cost to demolish the existing improvements, there was no analysis with respect to the cost to redevelop the subject land to the alternative use and no analysis with respect to the present worth of the future income stream based on the new use to demonstrate the financial feasibility of the alternative highest and best use. Furthermore, the improved sales used by the appraiser were not similar to the subject in any respect. For these reasons the Board gave no weight to the estimate of value articulated by the appellant's appraiser.

APPELLANT:	**Lawrence Magdovitz**
DOCKET NUMBER:	**08-00105.001-C-1**
DATE DECIDED:	**March, 2011**
COUNTY:	**Champaign**
RESULT:	**Reduction**

The subject property consists of a one-story brick commercial building that contains 1,012 square feet. The property is located in Sidney, Sidney Township, Champaign County.

The appellant claims overvaluation as the basis of the appeal. In support of this argument, the appellant submitted a cover letter along with data on the April 2007 purchase price of the subject property for $50,000. The appellant argued that the assessment reflects a market value nearly $15,000 more than its two-year-old purchase price. As stated on the appeal form in Section IV, the property was reportedly not advertised prior to sale. However, the parties to the transaction were not related. Appellant also submitted a copy of the Illinois Real Estate Transfer Declaration (PTAX-203) reflecting the sale price of $50,000. The evidence further revealed that the appellant filed this appeal directly to the Property Tax Appeal Board following receipt of the notice of a township equalization factor issued by the board of review.[1]

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. Thus, the Champaign County Board of Review was found to be in default on February 8, 2011, pursuant to section 1910.69(a) of the Official Rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a))

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 by the appellant, the Property Tax Appeal Board finds that a reduction in the subject's assessment is supported, but the Board may not issue the reduction suggested by the appellant in this matter to a total assessment of $16,665.

It is clear that the appellant 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))

[1] The notice dated February 6, 2009 indicated that a 1.0260 factor was applied to every non-farm parcel in Sidney Township raising the subject's total assessment from $21,070 to $21,620.

[Emphasis added.] 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.

[Emphasis added.] 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:	**Miller Parking Company, LLC**
DOCKET NUMBER:	**08-26251.001-C-2 thru 08-26251.003-C-2**
DATE DECIDED:	**June, 2011**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of three parcels of land totaling 28,420 square feet classified as a commercial property with minor improvements that is being used as a parking lot. The appellant, via counsel, argued that there was unequal treatment in the assessment process of the land as the basis of this appeal.

In support of the inequity argument, the appellant submitted assessment data and descriptions on a total of 15 properties suggested as comparable to the subject and located within two blocks of the subject. The data in its entirety reflects that the properties are classified similar to the subject as commercial with minor improvements and at least 14 properties are being used as parking lots. The properties range in size from 2,300 to 8,700 square feet and have land assessments of $6.46 per square foot. The appellant also included a copy of the Sidwell map showing the location of the subject and the suggested comparables.
The appellant also submitted a copy of income statements for the subject property for 2004 through 2006 and argued that this supported the equity argument. Based on this evidence, the appellant requested a reduction in the subject's assessment

At hearing, the appellant's attorney asserted the primary focus of the appellant's request was the equity argument. The attorney argued that the suggested comparables, all located within one block of the subject and used similarly, have land assessments lower than the subject property.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's land assessment was $464,382 or $16.34 per square foot. The board also submitted copies of the property record cards for the subject and raw sales data on six properties. The sales occurred between February 2001 and December 2006 for prices ranging from $301,092 to $9,250,000 or from $23.99 to $386.09 per square foot. Based on this evidence, the board of review requested confirmation of the subject's assessment.

The board of review's attorney argued that the appellant has not met the burden of proof for inequity. The attorney argued that the PTAB's own website indicates the evidence needed to meet the burdens of proof. He asserted to meet the uniformity burden, the appellant needs to address how the values of the suggested comparables were arrived at in the first place. The attorney argued these values were based on market value and that the subject has a higher market value then these properties. He argued that the subject is not similar to the suggested comparables because the subject is a fee generating parking lot where many of the suggested comparables are not. The attorney addressed the income analysis in the appellant's brief. The board's attorney noted the sales submitted by the board to substantiate this argument.

In rebuttal, the appellant's attorney argued that the appeal was based on equity and not market value. He reiterated the characteristics of the suggested comparables and asserted that they are

similar to the subject and classified the same. He argued that whether the properties are used for commercial purposes or not, they are similar in the characteristics and should be assessed similarly.

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.

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

The appellant presented assessment data on a total of 15 equity comparables. The PTAB finds these comparables similar to the subject. The properties are located within one block of the subject and are all classified the same as the subject. The photographs of these properties show that at least 14 of them are being used similarly to the subject, as a parking lot. The properties range in size from 2,300 to 8,700 square feet and have land assessments of $6.46 per square foot. In comparison, the subject's land assessment of $16.34 per square foot is above the range of comparables.

The PTAB gives little weight to the board of review's evidence as it does not contain any assessment information.

After considering adjustments and the differences in both parties' comparables when compared to the subject, the PTAB finds the subject's per square foot improvement assessment is not supported and a reduction in the subject's assessment is warranted.

APPELLANT:	**Loreto Piansay**
DOCKET NUMBER:	**07-04083.001-C-1**
DATE DECIDED:	**May, 2011**
COUNTY:	**Lake**
RESULT:	**No Change**

The subject property consists of a 63,792 square foot vacant corner lot located in Benton Township, Beach Park, Illinois.

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 argument, the appellant submitted a map and grid analysis of eight suggested comparable properties located in close proximity to the subject. The lots are zoned residential. The comparables consist of six vacant lots and two improved lots. The lots range in size from 12,500 to 24,900 square feet of land area and have land assessments ranging from $6,424 to $23,126 or from $0.51 to $1.03 per square foot of land area. The subject has a land assessment of $95,362 or $1.50 per square foot of land area.[1] During the hearing the appellant argued that the subject's size as depicted by the Benton Township Assessor's Office was incorrect. The appellant argued the subject contained 61,855 based on a plat map submitted into the record. Based on this evidence, the appellant requested a reduction in the subject's assessment to $63,577 or $1.00 per square foot of land area.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $95,362 was disclosed. In support of the subject's assessment, the board of review submitted a summary argument, a map, property record cards and a grid analysis of four comparable properties located in the subject's neighborhood. The comparables consist of four commercially zoned lots. Three of the comparables are located on the same intersection as the subject with the other being located two lots south of the subject. The lots are improved with various commercial enterprises ranging from a Walgreens to a Marathon gas station. The comparables range in size from 51,401 to 136,655 square feet of land area and have land assessments ranging from $79,245 to $316,711 or from $1.54 to $3.60 per square foot of land area. Gary Allen, Deputy Assessor of Benton Township, testified that the subject contained 64,431.86 square feet of land area, as shown on the subject's property record card. Allen testified that he verified this calculation utilizing GIS mapping.[2] The GIS mapping measurement for the subject depicts the subject containing 63,791.68 square feet of land area. The board of review argued that their comparables were more similar to the subject because they were commercially zoned like the subject and three of the four comparables were located on the same intersection as the subject and were corner lots like the subject. Based on this evidence, the board of review requested confirmation of the subject's assessment.

[1] Based on the subject containing 63,792 square feet of land area.
[2] A copy of the GIS measurements was ordered to be produced by the board of review and was made a part of this record.

During rebuttal, the appellant argued that other properties located in close proximity to the subject received reductions on their assessments while the subject did not receive a reduction matching these other properties.

After hearing the testimony and reviewing 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 met this burden.

The Board initially finds the best evidence in this record of the subject's size is the GIS measurements produced by the board of review. The GIS measurements depict the subject contains approximately 63,792 square feet of land area. The Benton Township Assessor testified that he verified the subject's size as shown on the subject's property record card; however, the subject's measurement size as shown on the property record card differs from that depicted by the GIS measurements by approximately 640 square feet of land area. However, the Board finds that this difference does not affect the Board's final analysis herein.

The Board gave little merit to the appellant's argument regarding assessment reductions to neighboring properties as compared to the subject. The appellant attempted to demonstrate the subject's assessment was inequitable and not reflective of market value because of the percentage of decrease in its assessment as compared to neighboring properties. The Board finds these types of analyses are not an accurate measurement or a persuasive indicator to demonstrate an assessment inequity by clear and convincing evidence. 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. Actual assessments of properties together with their salient characteristics 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 assessments.

The Board finds the parties submitted twelve comparables for its consideration. The Board finds the appellant's comparables were dissimilar to the subject because they were non-corner lots with residential zoning. In addition, the Board finds the board of review's comparable #4 was also a non-corner lot. Therefore, these comparables were given less weight in the Board's analysis. The Board finds the most similar comparables contained in this record are the three comparables located at the same intersection as the subject which are similarly zoned like the subject. These properties had land assessments ranging from $1.54 to $3.60 per square foot of land area. The subject has a land assessment of $1.50 per square foot of land area based on the subject

containing 63,792 square feet of land area. The subject's assessment is less than the most similar comparables contained in this record.

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's assessment as established by the board of review is correct.

APPELLANT:	**David Rinaldi, 1st Natl. Bk. of Spfld. TR 6203**
DOCKET NUMBER:	**08-01405.001-C-1**
DATE DECIDED:	**August, 2011**
COUNTY:	**Madison**
RESULT:	**No Change**

The subject property consists of a one-story commercial building of brick construction that contains 3,378 square feet of building area. The building was constructed in 1998. Features of the building include a full basement used for storage, central air conditioning and a sprinkler system. The property is located in Edwardsville, Edwardsville Township, Madison County.

The appellant appeared before the Property Tax Appeal Board contending assessment inequity as the basis of the appeal. In support of this argument the appellant provided descriptions and assessment information on three comparables.[1] The comparables were improved with one-story commercial buildings ranging in size from 2,258 to 8,910 square feet of building area and were constructed from 1975 to 1990. The appellant testified each building was used as an office, each had a brick exterior and all had central air conditioning. Testimony at the hearing also disclosed appellant's comparable #1 had no basement, the property record card for appellant's comparable #2 did not indicate this building had a basement and appellant's comparable #3 had a full finished basement. The comparables had sites ranging in size from 14,645 to 39,900 square feet of land area. The appellant further testified that these comparables had superior locations on Troy Road, which is Route 159. The appellant asserted the subject property has an inferior location when contrasted with the comparables, which impacts the assessed value. The appellant's comparables had equalized improvement assessments ranging from $87,960 to $150,710 or from $16.91 to $43.78 per square foot of building area. The comparables also had equalized land assessments ranging from $18,800 to $56,150 or from $1.27 to $3.55 per square foot of land area. Based on this evidence the appellant requested the subject's land assessment be reduced to $15,523 and the improvement assessment be reduced to $108,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's equalized assessment was disclosed. The subject has an equalized land assessment of $31,210 or $2.21 per square foot of land area and an equalized improvement assessment of $118,780 or $35.16 per square foot of building area. To demonstrate the subject was being equitably assessed the board of review provided information on three comparables. The comparables were improved with one-story commercial buildings that ranged in size from 1,692 to 3,228 square feet of building area. The buildings were built from 1985 to 1999 and had brick exterior construction. Each comparable had a basement and central air conditioning. These comparables had sites that ranged in size from 7,500 to 28,860 square feet of land area. The board of review representative indicated comparable #1 was used as an orthodontist office, comparable #2 was a former bank building used for retail space and comparable #3 was a multi-tenant office building. The witness was also of the opinion comparable #2, located on Troy Road, had a better location

[1] At the hearing it was disclosed that the assessment information provided for the appellant's comparables and the board of review comparables were prior to the application of the township equalization factor of 1.0322. The board of review provided the equalized assessments for the comparables which were marked as Appellant's Exhibit A and BOR Exhibit A. The equalized assessments will be used by the Property Tax Appeal Board.

but was an inferior building. The comparables had equalized improvement assessments ranging from $54,220 to $116,300 or from $32.04 to $38.86 per square foot of building area and land assessments that ranged from $13,470 to $91,400 or from $.61 to $3.17 per square foot of land area.

Under questioning the board of review representative testified that land along Troy Road was assessed on a front foot basis. However, the data provided by the parties did not provide the front footage so as to be able to determine the unit value.

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

The basis of the appellant's appeal was assessment inequity. 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.

The parties provided information on six comparables to support their respective positions. The Board finds the best comparables in the record include appellant's comparable #3 and board of review comparables #2 and #3. These comparables were improved with commercial buildings most similar to the subject in features. These comparables had buildings that ranged in size from 2,258 to 3,228 square feet of building area and were built from 1987 to 1999. Each comparable had central air conditioning and a basement. These properties had equalized improvement assessments ranging from $93,720 to $116,300 or from $36.03 to $43.78 per square foot of building area. The subject has an equalized improvement assessment of $118,780 or $35.16 per square foot of building area, which is below the range on a square foot basis. The Board finds this evidence demonstrates the subject building is being equitably assessed.

The Board gave less weight to appellant's comparables #1 and board of review comparable #1 due to differences in size and age. The Board also gave less weight to appellant's comparables #1 and #2 due to the fact neither had a basement.

With respect to the land, the comparables submitted by the parties had parcels that ranged in size from 7,500 to 39,900 square feet of land area with equalized land assessments ranging from $10,790 to $91,400 or from $.61 to $3.55 per square foot of land area. The subject has 14,112 square feet of land area with an equalized land assessment of $31,210 or $2.21 per square foot of land area. The subject has a land assessment within the range established by the comparables. The Board finds this evidence demonstrates the subject land is being equitably assessed.

Although testimony disclosed that land located along Troy Road was assessed on a front foot basis, the record was void of any information concerning the front footages for the respective comparables or the assessments per front foot. As a result, the Property Tax Appeal Board finds that the only unit of comparison it could develop on this record was a square foot analysis.

In conclusion the Board finds the appellant did not demonstrate assessment inequity by clear and convincing evidence and a reduction is not warranted.

APPELLANT:	**Sears, Roebuck & Company**
DOCKET NUMBER:	**07-30101.001-C-3 thru 07-30101.002-C-3**
DATE DECIDED:	**May, 2011**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of two parcels of land improved with a part one-story and part two-story, single-tenant anchor department store of masonry construction attached to a regional shopping mall as well as a detached, stand-alone, auto service center. The land comprises 1,069,790 square feet of area. The retail store contains approximately 306,250 square feet building area. This store was constructed in 1966 with a second floor expansion in 1972. The auto service center contains a part one-story and part two-story building. The auto service center contains approximately 52,576 square feet of building area and was constructed in 1966. The entire property contains approximately 362,056 square feet of building area.

The appellant, through counsel, appeared before the Property Tax Appeal Board arguing that the fair market value of the subject is not accurately reflected in its assessed value. In support of this argument, the appellant submitted two complete summary appraisal reports. The first appraisal has a valuation date of January 1, 2005. The appellant presented the testimony of the appraisal's author, Joseph M. Ryan of LaSalle Appraisal Group, Inc., Chicago. The parties stipulated to Mr. Ryan's credentials and his expertise as an appraiser. Therefore, the PTAB accepted Mr. Ryan as an expert witness.

Ryan testified he inspected the subject on several occasions, but for the current appraisal on January 17, 2006. Ryan testified that he allocated 28,082 square feet to the auto center because, although the improvement has a second floor, this area is used for storage. He opined that it was a "basement" on top of the building and did not include it in the gross leasable area.

The witness described the subject property and its environs. Ryan opined that the largest highlight of the retail overview was that the subject property dropped out as a top ten core market in the Chicago Metropolitan Statistical Area and was in 14th overall in 2004. He testified that the improvement is very large and in good condition for its age.

Ryan testified that the subject's highest and best use as vacant would be for commercial use and that continuation of its use as a department store and auto center is its highest and best use as improved.

To estimate a total market value for the subject's department store of $8,600,000 and the auto center of $1,400,000 as of January 1, 2005, Ryan employed two of the three approaches to value: the income capitalization approach and the sales comparison approach to value.

Under the income approach, for the department store, Ryan testified he analyzed eight comparables located in Illinois, Indiana, and Michigan. Ryan testified the comparables range in size from 79,247 to 297,000 square feet. The commencement dates on the leases range from 1997 to 2003, with lease terms ranging from five to 40 years. The rents range from $3.25 to

$7.25 per square foot, triple net, with two comparables using rent based on 1% or 2.5% of sales. Ryan testified after consideration of the data and adjustments for age, condition, utility and location, he estimated rent of $3.50 net per square foot for the department store.

In addition, Ryan testified he reviewed *Dollars & Cents of Shopping Centers, 2004* to estimate a lease for the subject at 2% to 3% of gross sales. He testified he also reviewed the actual sales of the subject and opined the sales of the subject were much lower than the regional data because of the large size of the subject as compared to typical department stores.

The appraisal estimated the potential gross income (PGI) of $1,069,926. Ryan testified he estimated vacancy and collection loss (V&C) of 10.0% to reflect the size, age and, that if vacant, this store would have a hard time leasing due to its size and age. The deduction of the V&C resulted in an effective gross income (EGI) of $962,933 for the subject. Ryan testified he allocated expenses at $.16 per square foot, or $48,911. The estimated expenses were deducted from the EGI resulting in a net operating income (NOI) of $914,022 for the subject.

To estimate the capitalization rate, Ryan testified he reviewed *Korpacz Investor Survey* for malls which had an estimate of 6.75% to 9.5%. He opined that the subject would be at the high end of the range due to the fact that there is a greater supply of buyers for malls than department stores. The appraisal also indicated the band of investment technique was also reviewed. Ryan testified he estimate a capitalization rate of 9.5%. The appraiser calculated an effective tax rate of 1.24%, which was added to establish a total capitalization rate of 10.74%. Dividing the NOI by the appraiser's total capitalization rate resulted in an indicated value for the subject department store of $8,510,000, rounded.

To estimate a value for the subject through the sales comparison approach, the appraiser first analyzed sales for the department store. Ryan testified he analyzed nine sales of similar properties located in the Midwest area. The properties are located in Illinois, Michigan and Ohio. The properties consist of department store buildings in regional malls. Ryan testified that he used sales within the Midwest because, after discussions with representatives in the department store field, there are three markets for department stores: the East Coast, the West Coast, and between the Appalachians and the Rocky Mountains. He opined it was easier to make adjustments between department stores because they have similar characteristics than different types of stores in closer proximity to the subject. Ryan stated it was easier to make one adjustment for location than multiple adjustments for the varying characteristics.

The comparables range in building size from 94,341 to 254,720 square feet of building area and in land size from 56,192 to 755,330 square feet. The comparables have land to building ratios ranging from 0.27:1 to 3.65:1 and range in age from five to 30 years old. The comparables sold from January 2000 to April 2005 for prices ranging from $2,750,000 to $10,215,000, or from $20.09 to $50.07 per square foot of building area, including land. Ryan described each sale. He testified that, although sales #3 and #4 were bankruptcy sales, he spoke to the parties involved with the sale and determined them to be at market.

Ryan testified, after adjustments, he arrived at an adjusted price range of $25.00 to $35.00 per square foot of building area, including land and reconciled the subject department store at $30.00

per square foot of building area, including land which reflects an estimated market value for the department store of $9,170,000, rounded.

As to the auto center, Ryan testified he valued this improvement separately. He examined three sales of auto-related facilities. These properties range in size from 11,608 to 28,800 square feet of building area and sold between June 2002 and July 2004 for prices ranging from $625,000 to $1,385,000, or from $44.64 to $62.89 per square foot of building area, including land. After adjustments, Ryan testified he concluded a value for the auto center of $50.00 per square foot, including land. He applied this value to 28,082 square feet of leasable area to arrive at a total estimated value for the auto center of $1,400,000, rounded.

Ryan further testified that sale #9 under the department store comparables, assigned a value to their auto center of $1,000,000 because it was leased to a tire center for $100,000. He opined that this analysis adequately supported his estimate of value for the auto center.

When reconciling the two approaches to value, Ryan testified he accorded primary weight to the sales comparison approach to value as the subject is owner occupied and has no rental history. The appraiser testified he gave some weight to the income capitalization approach to value. As to the department store, Ryan testified he analyzed both approaches and concluded a final estimate of value at $8,600,000. The only approach utilized for the auto center was the sales comparison approach which concluded a final estimate of value at $1,400,000. These conclusions reflect a final indication of value of $10,000,000 for the subject property as of January 1, 2005.

Ryan testified that there was no significant change in value for the subject between January 1, 2005 and January 1, 2007.

Under cross-examination by the intervenors, Ryan acknowledged that the department store comparables used under the sales comparison approach were all located outside Cook County and in a different state for several sales. He testified he has inspected all the sales comparables on multiple occasions and that he verified the sales with representatives of the buyer or seller of these properties.

Ryan testified he made downward adjustments to the department store sales comparables for a lack of an auto center, but then established a separate value for the auto center.

As to the rental comparables, Ryan testified he verified the information with a representative of the lessee or leasor and that he inspected all the properties. He also acknowledged that these comparables are not located in the Chicago Metropolitan Area or Cook County.

Ryan acknowledged that one of the rental comparables was an asking price; that four of the comparables had commencement dates for the leases in 1997 or 1998; that they were all less than 100,000 square feet in building area; and two rents were based on percentage of sales.

Under cross-examination by the board of review, Ryan acknowledged that a second individual also worked on the appraisal report. He testified that Mr. Grogan's work was all done under his supervision.

Ryan testified he did not perform a cost approach to value within the appraisal because there were no local pad sites to use in valuing the land and due to the subject's age, condition, size and obsolescence. He further opined that buyers and sellers of department stores do not rely on the cost approach for their investment decisions.

As to the capitalization rate used in the income approach, Ryan testified he used a capitalization rate at the high end of the range for malls based on the Korpacz survey.

Ryan testified he valued the department store and the auto center separately because most of the department store sales and rentals lacked an auto center and opined it was clearer to value them separately.

As to the department store sales, Ryan testified he considered sales #1 through #7 to be superior to the subject and received an overall downward unit adjustment while comparables #8 and #9 were considered to be overall inferior and received an upward adjustment. He stated that he researched CoStar Comps and had discussions with people within the department store industry to find department store sales within the defined market area. Ryan testified he has compiled data on department store sales going back to 1989. He stated that when he values a department store he uses his database of sales and does not re-verify the information if he has already done so. Ryan acknowledged that these department store sales were utilized in other department store appraisals he has conducted and further testified that other Sear Store appraisals have these exact same sales comparables within their appraisals.

Ryan acknowledged that when he appraised three other Sears stores with auto centers included he did not value each building separately. He did testify that, for one of those properties, the auto center is built into the store. When questioned regarding his opinion as to which of the Sears stores he has appraised has the highest value, Ryan testified the subject would have the highest value. He testified he did not apply the same unit value to any of these properties when appraising them.

On redirect, Ryan testified that the demographics of the sales comparables were equal to or superior to the subject. He also testified that he was not aware of any anchor department store sales in Cook County within the three years prior to the date of value.

The appellant also submitted a complete, self-contained appraisal of the subject with an effective date of January 1, 2005 prepared by Terrence P. McCormick with an estimated market value of $11,000,000. Mr. McCormick was called as the appellant's second witness. The parties stipulated as to Mr. McCormick's qualifications as an expert in the field of property valuation and, therefore, was accepted as such by PTAB.

The appraisal reflects that a personal inspection of the subject property was undertaken on August 28, 2006. McCormick testified that he conducted a complete interior and exterior inspection of the property. McCormick further testified that there were no significant changes in the value of the property from 2005 to 2007. The appraisal identifies and fully describes the subject property's improvements.

McCormick testified that the subject property is located at the northeast section of River Oaks Mall. He stated the subject is one of four anchor stores in the mall with approximately 362,000 square feet of building area which includes the 35,000 square foot auto center. McCormick opined a condition of average for the department store and testified that the auto center has not been used since 2001 and would need to be renovated for further retail use. He testified the mall was built around the subject property as an "open air mall" which was enclosed in the 1970s.

The appraisal indicated that the highest and best use of the subject, as vacant, was for commercial development and that as improved, it's highest and best use would be its current use as a department store and auto center. McCormick testified he estimated an effective age of 20 years for the subject with a remaining economic life of 10 years.

McCormick developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of $10,950,000, rounded, while the income approach indicated a value of $11,550,000, rounded. The sales comparison approach indicated a value of $11,000,000, rounded. The appraiser concluded a market value of $11,000,000 for the subject property as of January 1, 2005.

The initial step under the cost approach was to estimate the value of the site at $6,420,000, or $6.00 per square foot. In doing so, McCormick testified he considered five land sales.

Using the Automated Marshall Valuation Service, and a survey of local cost indexes, the appraiser estimated the reproduction cost new to be $30,119,977. In establishing a rate of depreciation, McCormick testified he analyzed six sales of properties included in the sales comparison approach. The appraisal indicates an annual rate of depreciation between 1.9% and 7.6%. McCormick established a range of total depreciation between 84% and 92.1%. He testified he estimated the subject property's depreciation at 85% which is an average annual rate of depreciation of 2.2% to arrive at the depreciated value of the improvements at $4,517,997. Adding the land value resulted in a final value estimate of $10,950,000, rounded, under the cost approach.

Under the income approach, the appraiser reviewed the leases of two department stores and four retail property comparables. McCormick testified he also examined industry data for percentage rents. He testified that the subject's retail sales have been declining since reaching its peak in 1995. McCormick stated he placed the most weight on the rental comparables and estimated the market rent to be $4.00 per square foot of building area. McCormick testified the subject property was owner occupied. This resulted in a potential net income (GPI) of $1,448,224. Vacancy and collection loss was estimated at 10% of GPI and reserves for replacement and management fees were estimated at 2% each. Therefore, the net effective net income (ENI) was estimated at $1,297,610.

In determining the appropriate capitalization (CAP) rate, McCormick testified he utilized the band of investment technique as well as analyzed the six sales used in the sales comparison approach. He testified these sales indicated an overall range from 10.6% to 13.3%. McCormick testified he applied an overall CAP rate of 11.25% to the ENI to estimate the market value for the subject under this approach at $11,550,000, rounded.

The final method developed was the sales comparison approach. McCormick testified that it was difficult to find sale comparables due to the limited number of transactions in the marketplace. He examined a total of six sales, two of which were department stores, two were warehouse showroom furniture stores, one was a home improvement center, and one was a smaller retail anchor store with shops. The properties range in building size from 46,000 to 188,000 square feet and sold from May 2002 to April 2005 for prices ranging from $1,374,500 to $9,200,000, or from $13.00 to $48.94 per square foot of building area, including land. The properties ranged in age from 12 to 32 years and in land to building ratio from 1.80:1 to 5.33:1. McCormick opined that one of the most difficult things about the subject is the combination of its age and size and that this combination has not been typically found in the market for the last 25 years. He testified he estimated a value for the subject property based on this unit of comparison of $32.00 per square foot of building area, including land. This yields a value for the subject property under the sales comparison approach of $11,000,000, rounded.

McCormick testified that he also established a unit of comparison based on price per square foot of building area, excluding land.
A range of $4.78 to $27.34 per square foot of building area, excluding land was established and, McCormick testified, he estimated a unit value under the basis of comparison at $12.00 per square foot, excluding land. This yields a value for the subject excluding land at $4,344,672. Once the land is added, the value is $10,763,412. McCormick testified that he reconciled these two amounts to arrive at a value for the subject property under the sales comparison approach at $11,000,000, rounded.

In reconciling the various approaches, McCormick testified he gave the most weight to the sales comparison approach, secondary weight was given to the income approach and the least amount of consideration to the cost approach. After reconciliation, the appraisal estimated the value for the subject property as of January 1, 2005 to be $11,000,000.

Under cross-examination by the intervenors, McCormick testified he gathered the rental comparables data in the income approach from his files because he appraised the property or from a party to the transaction. He also testified he personally inspected these properties. McCormick did acknowledge that rental comparables #1, #4, and #5 are asking rental rates. For comparable #4, McCormick testified the lease was on a portion of the space. He confirmed that two of the rental comparables were department stores.

As to the sales comparables, McCormick testified he did a site inspection on all these properties and that he verified the sales information with a party to the transaction. He confirmed for the intervenors that sales #1, #3, #4 and #6 were not department stores and that, of the department stores, sale #1 was not within a regional mall. McCormick acknowledged that the sales were much smaller in size than the subject.

McCormick testified that extracting the land value in the sales comparison approach is a method taught in the advanced appraisal classes and that those appraisers who have taken the course are aware of the method.

McCormick was then cross-examined by the board of review. McCormick reiterated that even though he used the cost approach in valuing the subject property he finds this approach to be

unreliable and gave it the least amount of consideration. He further testified he did not consider leaving the cost approach out of the appraisal because he did not find it difficult to do, but that if an appraiser does not do an approach, they would have to explain why they chose not to use it.

McCormick again described the property as an anchor-type department store in a super regional mall and testified that he has appraised approximately 50 of these types of properties. He testified that he has extracted the land value in the sales comparison approach for approximately half of these appraisals. He acknowledged that the land value extracted from each comparable sale is an estimate he determined based upon his estimate of land values. McCormick opined that location was an important factor in determining comparability for retail properties and that extracting the land value is based upon location. He testified that this does not create a double adjustment for location, but pulls out the land so that all that is compared is the building. He opined that there is still some influence on a positive or negative side based upon location.

As to the sales comparables, McCormick testified he first looked to find comparable anchor-type department stores, but that the market is relatively limited. He opined that the other comparables are as close as he could find to large retail sales that occurred based on the date of valuation. McCormick acknowledged that the sales he chose were all located in the south suburban Chicago market and opined that they were adequate for him to estimate the subject property. McCormick stated his parameters for starting his search of comparable properties included size and location in Illinois.

On redirect, McCormick testified he was not aware of any other fee simple anchor department store sales within the greater Chicagoland area that occurred prior to the date of value; he stated the other sales were not arm's length. He then opined that it is typical for rental rates to be lower than asking rates.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $7,681,274 was disclosed. This assessment reflects a fair market value of $20,369,428 or $56.26 per square foot of building area land included, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5A commercial property is applied. In support of this market value, the board included a copy of the property characteristic cards, a grid listing raw sales information on seven properties suggested as comparable to the subject. These properties range in size from 94,915 to 260,000 square feet of building area. They sold between April 2004 and July 2007 for prices ranging from $10,861,297 to $18,620,000 or from $69.76 to $133.94 per square foot of building area, including land. The second half of the grid also included assessment information on eight properties. These properties had assessed values that reflected market values from $43.62 to $101.18 per square foot.

Also included was a memo referencing the 2005 appeal and raw sales information on five properties suggested as comparable to the subject. These properties range in size from 109,441 to 193,000 square feet of building area. They sold between August 2003 and October 2004 for prices ranging from $5,750,000 to $10,500,000 or from $48.94 to $94.95 per square foot of building area, including land.

At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. As a result of its analysis, the board requested confirmation of the subject's assessments.

In support of the intervenors' position, the intervenors submitted a complete, summary appraisal of the subject prepared by Joseph T. Thouvenell with PRS Consulting, Ltd. with an effective date of January 1, 2006 and an estimated market value of $14,000,000. Mr. Thouvenell was the intervenors' only witness in this appeal. The parties stipulated to Mr. Thouvenell's credentials and his expertise as an appraiser. Therefore, the PTAB accepted Mr. Thouvenell as an expert witness.

Thouvenell testified to the typographical errors in the report and verbally made changes to correct those errors. He testified he performed an inspection of the subject on June 11, 2008. Thouvenell described the subject and its neighborhood characteristics. He opined that the highest and best use of the subject as improved would be its existing use. In addition, Thouvenell developed two of the traditional approaches to value in estimating the subject's market value.

Under the income approach, Thouvenell testified he searched for department stores in regional malls for comparables and examined four rental comparables. The appraisal estimated rent for the subject at $4.00 per square foot of building area for a potential gross income of $1,335,100.

The appraiser did not estimate any vacancy and collection, but listed expenses at 5% or $66,755 for a net operating income (NOI) of $1,268,345. Thouvenell testified he capitalized the NOI to arrive at a final value.

In determining the appropriate capitalization rate (CAP rate), Thouvenell testified he reviewed the extraction method, but only one comparable had this extracted rate and it was below market. He testified he then reviewed Korpacz Real Estate Survey, which had a range of about 9%. Thouvenell testified that he applied a band of investment analysis. He testified he concluded a CAP rate of 9%. NOI was then capitalized by this rate to reflect a market value estimate under the income approach of $14,100,000, rounded, for the subject.

The next method developed was the sales comparison approach. Under this approach, Thouvenell utilized four sale comparables. These buildings are described as two-story, department stores with two having auto centers. He testified one sold with the auto center and one sold without. Thouvenell described each sale. They range in size from 147,896 to 254,720 square feet of building area and sold from July 2001 to April 2006 for prices ranging from $4,200,000 to $9,000,000 or from $28.40 to $43.69 per square foot of building area, including land.

Thouvenell testified he made adjustments for various factors of comparison. He testified he considered the auto center as part of the whole when estimating his value because it adds contributory value to the property. Thouvenell determined a value for the subject of $42.00 per square foot of building area which yields an estimate of value for the subject under the sales comparison approach of $14,000,000, rounded.

In reconciling the various approaches, Thouvenell testified he gave most weight to the sales comparison approach. Thouvenell estimated a value for the subject property as of January 1, 2006 at $14,000,000.

Under cross-examination by the appellant, Thouvenell testified he utilized a square footage for the building and land given to him by the intervenors. Thouvenell opined that the subject property is not worth $21,000,000. He testified he saw the auto center as a one-story building. He believed it was physically a two-story, but that the second story is used for storage.

As to sale comparable #1, Thouvenell testified he did not make any adjustments because they were leased at the time of sale. He opined that because the rent was at market or below, he believed it to be the same as fee simple.

For sale #2, Thouvenell testified that he was unable to get any lease information for this sale and, because of this, was not able to make any adjustments. He testified he considered it fee simple because it was mostly vacant. Thouvenell also acknowledged this comparable was not a single-tenant building at the time of sale. He reiterated that the sales comparables included only the real estate and not any other business value.

Thouvenell opined the cost approach was not appropriate for the subject property because it was part of a larger development and the age and difficulty in determining depreciation.

Thouvenell acknowledged that the sales comparables are all smaller and newer than the subject. He acknowledged that the only department store properties that were selling were approximately 150,000 square feet in building size, but could not determine if that meant that was the preferred size. He was unaware of any anchor department store being built within Illinois that are 300,000 square feet in building size.

Thouvenell agreed that two of the sale comparables sold within the $20.00 per square foot range, one sold in the $30.00 per square foot range, and one sold in the $40.00 per square foot range. He testified that the subject's estimated value of $42.00 per square foot of building area was based on the fact that the sales in the $20.00 range occurred in 2001 and 2003 and there was appreciation in value through 2007. However, Thouvenell could not point to any department store sales to substantiate this claim.

As to the rental comparables, Thouvenell testified that comparable #1 is not located in a regional mall, but in a large neighborhood mall. He described the building as two-story and approximately one-third of the size of the subject.

Rental comparable #2, Thouvenell testified, is located within a lifestyle center and is about half the size of the subject. He opined that he did not take a vacancy and collection loss within the income approach because a department store property would have an A tenant on a long-term lease. He testified he applied the vacancy in the CAP rate by using a rate above what was determined by the band of investment method.

On cross-examination by the county, Thouvenell testified that if he increased or decreased his CAP rate by 1%, the value, under the income approach, would increase or decrease by almost $1,300,000.

On redirect, Thouvenell testified that the typographical errors within the appraisal did not have any effect on the determination of value for the subject.

In rebuttal, the appellant called Mr. Gary Battuello. At the beginning of the hearing, the parties stipulated to the qualification of the witnesses as experts in the field of appraisal practice. Therefore, the PTAB admitted Mr. Battuello as an expert in the field of property valuation.

Battuello testified he has read appraisals for and walked through the subject property as well as inspected the anchor stores in the neighborhood. He testified he performed a desk review of the valuation report prepared by Thouvenell of PRS Consulting, Ltd.

Battuello opined that the testimony of Thouvenell supplemented the appraisal report when he made corrections to the typographical errors, discussed further the CAP rate, and discussed the property rights adjustments for the JC Penney store in Bloomington (sales comparable #1).

After a desk review, Battuello testified, he concluded that using only the two approaches to value for the subject property was an acceptable procedure due to the type of property and its age.

As to the rental comparables in the income approach, Battuello testified that the comparables are all much smaller and newer than the subject. He opined that size would be a factor for estimating a market rent. He also stated that comparable #1's lease included a significant amount of buildout, $6,000,000, and no adjustment was made to the face rental rate for that buildout. Battuello testified that comparable #2 at the lifestyle center was a build to suit lease that may not be indicative of an arm's length transaction.

Battuello opined it was unusual to utilize no vacancy and collection loss in estimating a net operating income. He opined this was appropriate for a leased fee appraisal, but not for a fee simple appraisal. In addition, he asserts the appraisal used only a built-up rate which doesn't have market input, but that it was supplemented in Thouvenell's testimony with information on the market extraction method and *Korpacz*.

Battuello also opined that the income approach lacked an analysis of the retail sales volumes at the stores. He asserted this data was relied upon by buyers and sellers of anchor department stores.

As to the sales comparison approach, Battuello testified that the comparables were all smaller and newer than the subject. Battuello stated these sales averaged $34.00 per square foot of building area and opined that the subject should not have a conclusion of value greater than that since it is much larger and older than these comparables.

As to the adjustments made, Battuello testified that the appraisal indicates the elements of comparison or elements of disparity, but some of these elements are not included in the comparables' summaries. He asserts there is no adjustment to comparable #1 for the property

rights. Battuello indicated Thouvenell's testimony explained why, but that the appraisal does not include this information. Battuello also testified that there was no adjustment made for size to this comparable even though the property is significantly smaller than the subject. Battuello testified there was no adjustment for size to any of the comparables and no adjustment for age for comparables #3 and #4.

Battuello concluded by opining that the appraisal was not reasonable and reliable.

On cross-examination by the county, Battuello testified he had provided testimony on desk reviews 30 to 40 times in the past.

On cross-examination by the intervenors, Battuello testified he has never performed an appraisal on the subject property. He testified he as reviewed appraisals on the subject property prepared for previous triennial years. He acknowledged he felt those appraisals were insufficient in varying degrees. Battuello admitted an appraisal is just an opinion of value.

Battuello testified that he has appraised or reviewed an appraisal for two anchor department stores within Cook County that are as large as the subject with the exception of the subject. He agreed that it would not be unusual for an appraiser to use smaller buildings in the appraisal for the subject. Battuello opined that this data shows the subject property is overly large.

Battuello stated that because the subject is so large and to some extent older it is odd, based on the data set used in the appraisal, that the subject was valued on a price per square foot greater than the average demonstrated by those sales. He further opined that with the data set smaller and new, all other things being equal, the subject, being older and larger, should have a lower unit price.

As to vacancy and collection, Battuello testified that in all the appraisals of anchor department stores that he has authored, reviewed, or in some way came into contact with all fee simple assignments had some estimate of vacancy. He asserted that there would be some amount, whether nominal or not, of vacancy for a fee simple assignment.

In response to questions by the PTAB, Battuello testified the subject property was located in a super-regional mall. He opined that the best comparables for the subject would be another enclosed regional or super-regional shopping center. He further testified that a freestanding, big box store, are far more flexible to a user and appeal to a broader number of people, therefore, he opined, they have a different position in the market than a regional or super-regional center. Battuello opined that a lifestyle center was a different type of 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 overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. (*86 Ill.Admin.Code §1910.63(a)).* 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 appellant has satisfied this burden and that a reduction is warranted.

In determining the fair market value of the subject property for tax year 2007, the PTAB examined the parties' three appraisal reports and testimony, the board of review's submission, and the appellant's rebuttal documentation and testimony. The PTAB finds that the appraisals submitted by all the parties estimate market values less than the market value reflected by the assessment. Moreover, the intervenors' witness, Thouvenell, testified that the subject did not have a market value of $21,000,000.

The PTAB finds the board of review's witness was not present or called to testify about their qualifications, identify their work, testify about the contents of the evidence, the conclusions or be cross-examined by the appellant, intervenors and the Property Tax Appeal Board. Without the ability to observe the demeanor of this individual during the course of testimony, the Property Tax Appeal Board gives the evidence from the board of review no weight.

The PTAB finds that all the appraisers placed most weight on the sales comparison approach to value. Therefore, the PTAB gives this approach the most weight. Additionally, 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 Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2nd Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989).

The PTAB gives diminished weight to Ryan's sales comparison approach for the auto center. Ryan failed to correctly describe the auto center's square footage. The appraisal assigns 28,082 square feet of building area to the auto center when the actual size is approximately 52,200 square feet of building area. He testified that he chose not to include the second story of the auto center in considering the size of the auto center because it is used as storage by the appellant. The PTAB finds that, although the appellant does not use this space, the second story exists and contributes value to the property. Because the Ryan appraisal does not include the additional second floor square footage, the comparables used in the Ryan appraisal were adjusted based on an inaccurate size for the subject.

The PTAB finds that the McCormick appraisal more accurately described the subject property as having a total of approximately 362,000 square feet of building area. However, the PTAB finds that not all the sales comparables utilized by McCormick are anchor department stores. The PTAB finds the testimony of Battuello persuasive in establishing that the best comparables for the subject would be anchor department stores. This is supported by Ryan's testimony that it is easier to make adjustments between department stores because they have similar characteristics.

In regards to Thouvenell's sales comparison approach, the PTAB finds the testimony of Battuello persuasive in stating that Thouvenell failed to make adequate downward adjustments to the sales comparables for the large size and older age of the subject property. Of Thouvenell's four sales comparables, only one comparable had an unadjusted unit sale price higher than the subject and the appraisal indicates no adjustments were made based on size or age. However, these properties are all significantly smaller and newer than the subject. In addition, two properties

were leased at the time of purchase, but no adjustments were made based on this condition of sale.

The PTAB finds McCormick's adjustments to the comparable sales to arrive at a unit value per square foot of building area, excluding land, was not well supported.

The PTAB examined the raw sales data contained in the respective appraisals. In totality, the parties' experts submitted 19 suggested sales comparables for the department store and three suggested sales for the auto center. The PTAB gives diminished weight to the auto center sales submitted by Ryan as the adjustments were made for the subject auto center's inaccurate size as well as the fact that multiple department store sales included in the appraisals involve the sale of the auto center with the department store. In addition, Ryan's sale #5 and McCormick's sales #3, #4, and #6 were accorded little weight because these properties are not department stores.

The remaining sales were given significant weight by the PTAB and have a sales range of $20.09 to $50.07 per square foot of building area, including land. The subject property's 2007 assessed value equates to a market value of $61.03 per square foot of building area, including land. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments necessary, the PTAB finds that the subject's 2007 assessment is not supported by the comparable sales 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 overvalued and that a reduction in the subject's assessment is warranted.

APPELLANT:	**Douglas Sindle**
DOCKET NUMBER:	**09-00914.001-C-1**
DATE DECIDED:	**December, 2011**
COUNTY:	**Tazewell**
RESULT:	**Reduction**

The subject property consists of a 6,000 square foot metal clad pole frame building that was constructed in 1999. The property is located in Pekin, Pekin Township, Tazewell County.

The appellant contends both overvaluation and assessment inequity as the bases of the appeal. In support of this argument the appellant indicated on the appeal form he purchased the subject property in September 2007 for a price of $125,000. The appellant also provided information on three comparables improved with one-story buildings that ranged in size from 8,630 to 14,000 square feet of building area and ranged in age from 6 to 42 years old. One comparable was located across the street from the subject while two were located approximately 15 miles from the subject. The appellant indicated these comparables had improvement assessments that ranged from $15,820 to $103,010 or from $1.83 to $7.36 per square foot of building area. The appellant further asserted that comparables #2 and #3 sold in February 2010 of prices of $49,500 and $68,750 or for $5.74 and $4.91 per square foot of building area, including land. Based on this evidence the appellant requested the subject's assessment be reduced to $30,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $36,270 was disclosed. The subject's assessment reflects a market value of $109,544 or $18.26 per square foot of building area, including land, using the 2009 three year average median level of assessments for Tazewell County of 33.11%. The subject has an improvement assessment of $33,000 or $5.50 per square foot of building area.

In rebuttal the board of review asserted that appellant's comparables #2 and #3 did not sell. It indicated the comparables were offered for sale at an auction and the owner refused to accept the bids. Additionally, the board indicated there is no record regarding the transfer of ownership of these properties and these properties are located in a different township than the subject with different market influences.

In support of the assessment the board of review noted the subject property was purchased in August 2007 for a price of $125,000. The board of review also provided information on three comparables improved with one-story metal clad pole buildings each containing 6,000 square feet of building area. The comparables ranged in age from 8 to 10 years old and were located on the same street and within the same block as the subject. These comparables had improvement assessments of $30,880 and $31,890 or $5.15 and $5.32 per square foot of building area. The evidence also indicated that the comparables sold from November 2002 to March 2010 for prices ranging from $100,000 to $204,000 or from $16.67 to $34.00 per square foot of building area, including land.

The record in this appeal also contains a "proposed assessment" for the subject property submitted by the board of review wherein it indicated its willingness to stipulate to the current

assessment. The appellant was notified of this suggested "agreement" and given thirty (30) days to respond if the offer was not acceptable. The appellant did not respond to the Property Tax Appeal Board by the established deadline.

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 the evidence in the record supports a reduction in the subject's assessment.

The appellant argued in part overvaluation as the basis of the appeal. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33⅓% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). 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).

When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the evidence in this record does not support a reduction in the subject's assessment based on overvaluation.

The record disclosed the subject property was purchased in August 2007 for a price of $125,000. The record further disclosed the subject's total assessment of $36,270 reflects a market value of $109,544 or $18.26 per square foot of building area, including land, using the 2009 three year average median level of assessments for Tazewell County of 33.11%. The subject's assessment reflects a market value below the purchase price demonstrating the subject is not overvalued for assessment purposes.

The Board gives no weight to the appellant's two comparable sales due to the fact that the evidence in the record indicated the owner did not accept the bids at the auction and the properties did not transfer. Additionally, these comparables were not similar to the subject in age or location.

The appellant also argued 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 warranted.

The Board finds the record contains four comparables similar to the subject in location, age and size including appellant's comparable #1 and the board of review comparables. These comparables were improved with one-story metal clad pole buildings that had either 6,000 or 8,640 square feet of building area. The appellant's comparable had an improvement assessment of $1.83 per square foot of building area. The board of review comparables are practically identical to the subject with improvement assessments of $5.15 and $5.32 per square foot of building area. The subject has an improvement assessment of $5.50 per square foot of building area, which is above the range established by the best comparables in the record. Based on this evidence the Property Tax Appeal Board finds a reduction in the improvement assessment is warranted.

APPELLANT:	**Reza Toulabi**
DOCKET NUMBER:	**06-26658.001-C-1 thru 06-26658.002-C-1**
DATE DECIDED:	**September, 2011**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a two-story commercial building of brick exterior construction that contains 12,500 square feet of building area. The subject has a partial basement, four bathrooms and a locker room for both women and men. The subject has a 12,135 square foot site. The property is classified as a class 5-92 property under the Cook County Real Property Assessment Classification Ordinance. The property is located in Chicago, Lakeview Township, Cook County.

The appellant contends that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal. In support of the market value argument, the appellant submitted an appraisal estimating the subject property had a market value of $640,000 as of January 1, 2006. In estimating the market value the appraiser developed the sales comparison approach using four comparable sales. The comparables were described as being improved with two-story buildings that range in size from 10,200 to 14,700 square feet of building area. The buildings were constructed from 1899 to 1952. The appraiser stated in the report that the subject building was constructed in 1983 according to the assessor. The comparables sold from January 2002 to June 2003 for prices ranging from $415,000 to $685,000 or from $38.43 to $52.69 per square foot of building area, including land. After making adjustments to the comparables for sale date, building size and land to building ratio the appraiser indicated the comparables had adjusted prices ranging from $43.04 to $56.10 per square foot of building area including land. The appraiser indicated the mean sales price of the comparables was $49.61 per square foot of building area and the median sales price was $49.64 per square foot of building area. Based on these sales the appraiser estimated the subject had a market value of $51.00 per square foot of building area, land included, or $640,000, rounded. Based on this evidence the appellant requested the subject's assessment be reduced to $243,600.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $261,249 was disclosed. The subject's assessment reflects a market value of $687,497 or $55.00 per square foot of building area, including land, using the 38% level of assessment for Cook County class 5-92 commercial property as provided by the Cook County Real Property Assessment Classification Ordinance. In support of the assessment the board of review submitted information on five comparable sales improved with two-story buildings that ranged in size from 11,000 to 13,000 square feet of building area. The buildings were built from 1919 to 1960. The comparables sold from April 1997 to July 2006 for prices ranging from $549,900 to $2,100,000 or from $49.99 to $175.00 per square foot of building area, including land. Board of review comparable #2 was the same sale as appellant's sale #1. The board of review indicated the subject was constructed in 1919 and submitted a copy of the subject's property record card indicating the subject was 87 years old. Based on this evidence, the board of review 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. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends overvaluation as the basis of the appeal. 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 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 Property Tax Appeal Board finds that the evidence indicates a reduction is warranted.

In determining the fair market value of the subject property, the Property Tax Appeal Board finds the appellant submitted an appraisal estimating the subject had a market value of $640,000 or approximately $51.00 per square foot of building area, including land, as of January 1, 2006. The board of review submitted information on five comparable sales, which included one sale used by the appellant's appraiser that sold for a unit price of $52.69 per square foot of building area. The subject's assessment reflects a market value of $687,497 or $55.00 per square foot of building area, including land, using the 38% level of assessment for Cook County class 5-92 commercial property as provided by the Cook County Real Property Assessment Classification Ordinance, which is greater than the appraised value and above the price of the comparable sale common to both parties. Based on this record the Board finds the appellant's appraisal demonstrates the subject property is being incorrectly assessed and a reduction in the assessment is justified.

2010 COMMERCIAL CHAPTER

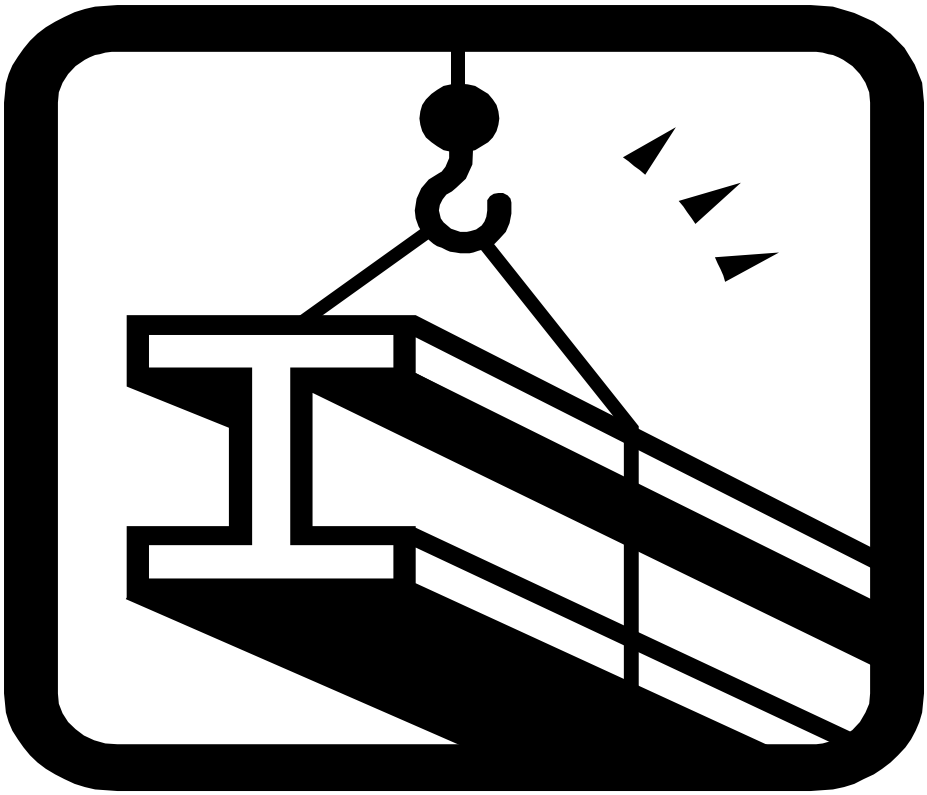
Index

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

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2011 INDUSTRIAL 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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2011 INDUSTRIAL CHAPTER

Table of Contents

APPELLANT:	**Donald Andriacchi**
DOCKET NUMBER:	**07-28775.001-I-1 thru 07-28775.006-I-1**
DATE DECIDED:	**May, 2011**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of 30,875 square foot site improved with a one-story brick building with 5,527 square feet of building area. The building is approximately 60 years old. The subject is classified as an industrial property under the Cook County Real Property Assessment Classification Ordinance and is located in Chicago, West Chicago Township, Cook County.

The appellant submitted evidence before the Property Tax Appeal Board contending overvaluation. In support of this argument the appellant provided information on five comparable sales improved with industrial buildings that ranged in size from 15,982 to 38,672 square feet of building area. Four of the buildings were described as ranging in age from 19 to 111 years old while the age of one comparable was not disclosed. The sales occurred from March 2006 to October 2007 for prices ranging from $590,000 to $1,201,750 or from $16.03 to $36.72 per square foot of building area, including land. Based on these sales the appellant requested the subject's assessment be reduced to $62,000 to reflect a market value of $172,221 or $31.16 per square foot of building area, including land.

In further support of the overvaluation argument the appellant's counsel developed an income approach to value purportedly using the subject's actual income from 2005 through 2007. The appellant submitted an affidavit indicating the attached Schedule E's for 2005 and 2006 and a 2007 Income Statement were for the subject property. These statements indicated an annual gross rent each year of $30,000. Counsel then deducted expenses of $7,536, $7,162 and $6,205 for each of the years, respectively. Counsel calculated the net operating income for each year at $22,464, $22,838 and $23,795, respectively. He then asserted the average net operating income for 2005 through 2007 was $23,032. Counsel then capitalized the average net operating income with a capitalization rate of 14.613% composed of an overall capitalization range of 9.5% and an effective tax rate of 5.113% to arrive at a market value of $157,613. Based on this market value estimate the appellant's attorney requested the assessment be reduced to $56,962.

The appellant submitted a copy of the final decision issued by the board or review where the subject's total assessment of $83,033 was disclosed. The subject's assessment reflects a market value of $230,647 or $41.73 per square foot of building area, including land, when applying the 36% level of assessments for class 5B industrial property under the Cook County Real Property Assessment Classification Ordinance.

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.

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

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

The appellant submitted information on five comparable sales in support of the contention that the subject property was overvalued. The comparables were industrial buildings that were larger than the subject building. These properties sold from March 2006 to October 2007 for prices ranging from $590,000 to $1,201,750 or from $16.03 to $36.72 per square foot of building area. The subject's assessment reflects a market value of $230,647 or $41.73 per square foot of building area, including land, which is above the range established by the comparables on a square foot basis. The board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by Section 1910.40(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.40(a)). The Board has examined the information submitted by the appellant and finds that it supports a reduction in the assessed valuation of the subject property based on overvaluation.

The Board further finds the appellant's argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses unconvincing and not supported by credible evidence in the record. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

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

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

Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate through any evidence 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 argument no weight.

The Board further finds problematic the fact that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. The Board finds that an

attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion testimony of value for that client's property.

APPELLANT:	**Board of Education, Joliet Township High School #204**
DOCKET NUMBER:	**09-01281.001-I-3**
DATE DECIDED:	**October, 2011**
COUNTY:	**Will**
RESULT:	**Dismissal**

The subject property is located in New Lenox, New Lenox Township, Will County.

The appellant taxing district claims lack of assessment uniformity as the basis of the appeal and thereby seeks an increase in the assessment of the subject property to $8,234,367.

The record further reveals that the appellant taxing district filed the appeal through counsel directly to the Property Tax Appeal Board following receipt of a Notice of Final Decision issued by the Will County Board of Review reducing the assessment from $8,234,367 to $5,600,739. The Notice of Final Decision was dated January 20, 2010. The Property Tax Appeal Board received the Industrial Appeal form from the appellant's legal counsel complaining of the under-assessment and correspondence seeking an extension of time to file evidence in support of the appeal on March 2, 2010 in an envelope postmarked February 26, 2010.

Furthermore, the Property Tax Appeal Board by correspondence dated January 19, 2011 granted a 90 day extension of time to the appellant to submit evidence in support of the appeal. Such extension expired on April 19, 2011. The appellant failed to file evidence in support of the under-valuation argument or a request for a further extension of time.

After reviewing the record, the Property Tax Appeal Board finds that it does not have jurisdiction over the parties and the subject matter of this appeal.

Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) provides in part that:

> In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property, and for 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. . . or **any taxing body** that has an interest in the decision of the board of review or board of appeals on an assessment made by any local assessment officers, 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. . . . [Emphasis added.]

Additionally, Section 1910.30(a) of the rules of the Property Tax Appeal Board provides in part that:

> In counties with less than 3,000,000 inhabitants, petitions for appeal shall be filed within 30 days after the postmark date or personal service date of the written notice of the decision of the board of review. . . .

86 Ill.Admin.Code §1910.30(a). Furthermore, Section 1910.25(b) of the rules of the Property Tax Appeal Board provides in part that:

> Petitions, evidence, motions, and all other written correspondence sent by United States Mail to the Property Tax Appeal Board shall be considered filed as of the postmark date in accordance with Section 1.25 of the Statute on Statutes [5 ILCS 70/1.25]. . . .

86 Ill.Admin.Code §1910.25(b). The record discloses that the date of the board of review Notice of Final Decision was January 20, 2010. Thus, the appellant had until Friday, February 19, 2010 to file an appeal. The Property Tax Appeal Board finds that the appeal postmarked on Friday, February 26, 2010 was seven days late. As a consequence, the Property Tax Appeal Board finds the appeal was not initiated within the 30-day period from the date of the board of review decision which precludes the Property Tax Appeal Board from asserting jurisdiction over the appeal.

The Board further finds, despite the untimely filing of the appeal, the appellant's request for an extension of time to submit evidence was granted on January 19, 2011. In accordance with that letter, the appellant taxing district was given until April 19, 2011 to submit all evidence in support of the appeal petition or, if further time was needed, to submit a written request for a further extension of time with good cause shown by that date. Said letter further advised that if all information required to fully complete the filing of the appeal was not postmarked by April 19, 2011, the appeal may be dismissed. As of the issuance of this decision, the Board has not received the appellant's evidence in support of this under-assessment petition or an extension request. Therefore, the appeal should also be dismissed in accordance with the Board's rules. (86 Ill.Admin.Code §1910.69(a).

APPELLANT:	**Chicago Hardware & Fixture Company**
DOCKET NUMBER:	**08-01825.001-I-2 thru 08-01825.002-I-2**
DATE DECIDED:	**April, 2011**
COUNTY:	**Kane**
RESULT:	**Reduction**

The subject property is improved with a brick and insulated metal sided one-story industrial manufacturing facility containing approximately 23,750 square feet of building area. The building was built in 1967. The improvement is situated on an interior lot containing 3.06-acres and is located adjacent to a vacant parcel of land containing 3.24-acres. The subject property is located in Batavia, Geneva Township, Kane County.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. In support of this overvaluation argument, the appellant submitted an appraisal estimating the subject parcels combined had a market value of $1,300,000 as of January 1, 2008. The appraiser specified that the vacant parcel was valued as excess land. The appellant also submitted copies of the final decision issued by the Kane County Board of Review establishing a total assessment for the subject of $548,971, which reflects a market value of approximately $1,650,048 using the 2008 three-year median level of assessments for Kane County of 33.27%. Based on this evidence the appellant requested the subject's total assessments be reduced to $433,334 or a market value of approximately $1,300,000.

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 parcels.

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 supports a reduction in the subject's assessment.

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

The Board finds the best evidence of market value in the record is the appraisal submitted by the appellant estimating the subject property had a market value of $1,300,000 as of January 1, 2008. The Board finds the subject's assessment reflects a market value greater than the appraised value presented by the appellant. Furthermore, the Board finds that the board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by section 1910.40(a) of the rules of the Property Tax Appeal Board and is found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board.

Based on this record, the Property Tax Appeal Board finds the subject property had a market value of $1,300,000 as of January 1, 2008. Since market value has been established, the three-

year median level of assessments for Kane County for 2008 of 33.27% shall be applied. 86 Ill.Admin.Code 1910.50(c)(1).

APPELLANT:	**Mark Clausius**
DOCKET NUMBER:	**07-26829.001-I-1**
DATE DECIDED:	**September, 2011**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a one-story masonry constructed industrial building with 38,143 square feet of building area. The subject has a slab foundation, brick walls, office space, a mezzanine area used as industrial work space and six overhead dock doors. The building was constructed in 1965. The subject has a 69,692 square foot site resulting in a land to building ratio of 1.83:1. The property is classified as a class 5-93 industrial building under the Cook County Real Property Assessment Classification Ordinance (Ordinance) and is to be assessed at 36% of market value. The property is located in Chicago, Lake Township, Cook County.

The appellant contends overvaluation as the basis of the appeal. In support of the market value argument the appellant submitted a summary appraisal report prepared by James A. Matthews, a Certified General Real Estate Appraiser, and Jennifer C. Soto a licensed real estate appraiser. The appellant's appraisers estimated the subject property had a market value of $380,000 as of January 1, 2006.

The appraisers explained the property rights appraised were the fee simple title ownership assuming no liens or encumbrances. The appraisers also determined the highest and best use of the site as vacant would be to develop for commercial use while the highest and best use as improved was determined to be to maintain the current improvements.

In estimating the market value of the subject property the appraisers developed the sales comparison approach using five comparable sales. The comparables were composed of industrial buildings ranging in size from 23,900 to 53,000 square feet of building area. The buildings were constructed from 1914 to 1958 and had land to building ratios ranging from .64:1 to 1.34:1. The sales occurred from February 2001 to April 2005 for prices ranging from $205,000 to $475,000 or from $6.78 to $10.37 per square foot of building area, including land. The appraisal states that no adjustments were made for financing; all sales were adjusted upward for time; sales #1, #4 and #5 were adjusted for size; and all sales were adjusted for land to building ratio. The grid analysis on page 24 of the appellant's appraisal outlining the sales did not indicate a dollar amount or the qualitative adjustments (positive or negative), other than for time, made by the appraisers for these factors or the resulting adjusted values attributed to each comparable. The report summarily stated that after the adjustments the data indicates a range of $10.00 to $11.00 per square foot. The appraisers selected $10.00 per square foot of building area and estimated the subject property had a market value of $380,000, rounded.

Based on this record the appellant requested the subject's assessment be reduced to $136,800 to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $156,416 was disclosed. The subject's assessment reflects a

market value of $434,489 or $11.39 per square foot of building area, including land, when applying the Ordinance level of assessment for industrial property of 36%.

In support of the assessment the board of review provided information on seven comparable sales improved with industrial buildings that ranged in size from 30,038 to 44,600 square feet of building area. The information indicated the comparables were constructed from 1925 to 1964. Comparable #1 was described as a three-story building. The remaining comparables were one-story buildings that had ceiling heights ranging from 14 to 27 feet and office space ranging from 7% to 10% of building area. These properties had sites ranging in size from 14,375 to 93,693 square feet of land area resulting in land to building ratios ranging from .41:1 to 2.77:1. The sales occurred from April 2003 to September 2008 for prices ranging from $268,000 to $2,100,000 or from $7.72 to $55.03 per square foot of building area, including land. The information provided by the board of review disclosed that comparable #1 was damaged by fire and the sale was not at fair market value because the price was discounted due to the fire damage. Sale #3 was reported to have had improvements in bad condition and the buyer had plans to raze the buildings to construct a gas station on the site. The record also disclosed that there was a previous sale of comparable #4 in September 2005 for a price of $1,280,000 or $36.57 per square foot of building area. Additionally, comparable sales #5 and #6 were the same property that had sold in May 2005 and November 2007, respectively. This same property was reported to have also sold in April 2004 for a price of $2,200,000 or $57.65 per square foot of building area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the sales data in the record does not support a reduction in the subject's assessment.

Initially, the Board finds the subject's assessment of $156,416 reflects a market value of $434,489 or $11.39 per square foot of building area, including land, when applying the Ordinance level of assessment for industrial property of 36%. A review of the appellant's appraisal disclosed the appraisers' adjusted sales data indicated a range of $10.00 to $11.00 per square foot, which is fairly close to the square foot value reflected by the assessment. Second, the Property Tax Appeal Board finds the board of review submitted raw sales data on seven comparables. The Board gives no weight to board of review comparable sale #1 due to its three-story design and the fact it was damaged by fire and the price was discounted to account for the damage. The Board also gives no weight to board of review comparable sale #3 because it was reported to have been bad condition and the buyer was reported to have plans to raze the buildings to construct a gas station. The remaining comparables were relatively similar to the subject in size, age and land to building ratio. These sales occurred more proximate in time to

the assessment date at issue than four of the five sales used by the appellant's appraisers. The five remaining board of review comparable properties (#2 and #4 through #7) sold for unit prices ranging from $25.15 to $55.03 per square foot of building area, including land. Additionally, the record disclosed comparable #4 had a previous sale in September 2005 for a price of $36.57 per square foot of building area and comparables #5 and #6 (which are the same property) had sold in April 2004 for a price of $57.65 per square foot of building area. Each of these reported sales prices is above the subject's square foot fair cash value as reflected by the assessment. Based on this record, after considering the appellant's appraisal and the sales data provided by the board of review, the Property Tax Appeal Board finds the subject's assessment is reflective of the property's market value and a reduction in the assessment is not justified.

APPELLANT:	**Nick Gutu**
DOCKET NUMBER:	**06-26314.001-I-1 thru 06-26314.005-I-1**
DATE DECIDED:	**September, 2011**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of five parcels of land totaling 27,626 square feet and improved with an 18-year old, one-story, mixed commercial and industrial building. The appellant argued both the market value of the subject property is not accurately reflected in the property's assessed valuation and that there was unequal treatment in the assessment process of the improvement as the bases of this appeal.

The appellants' brief asserts the improvement contains 7,830 square feet of building area. The appellant did not submit any other documentation to support this.

In support of the market value argument, the appellant submitted copies of income and expense statements for the subject property for 2003 through 2005 and an income capitalization analysis.

In support of the inequity argument, the appellant submitted assessment data and descriptions on a total of three properties suggested as comparable to the subject and located within one block of the subject. The data in its entirety reflects that the properties are improved with masonry, one-story, industrial buildings. The properties range: in age from 47 to 49 years; in size from 2,400 to 19,626 square feet of building area; and in improvement assessments from $5.62 to $12.25 per square foot of building area. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's improvement assessment was $141,990. The board also lists the subject as having 9,330 square feet of building area. The subject's final assessment reflects a fair market value of $379,617 when the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5a, 36% for Class 5b, and 22% for Class 1 properties are applied. The board also submitted copies of the property characteristic printouts for the subject as well as raw sales data on five properties. The sales occurred between February 2001 and March 2005 for prices ranging from $410,000 to $1,025,000 or from $28.50 to $93.18 per square foot of building area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

At hearing, the appellant's attorney asserted that the subject property should receive a reduction based on an analysis of the subject's income. The appellant further argued the subject should receive a reduction based on a review of the assessments of comparable properties.

As to the size of the improvement, the appellant's attorney indicated that the subject contained 9,330 square feet of building area contradicting the previously filed brief.

The board of review's representative, Lena Henderson, argued that an income review would show that the subject is properly assessed. She then rested on the evidence previously submitted.

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.

As to the improvement's size, the PTAB finds the appellant acknowledged that the county has the correct size listed for the subject property. Therefore, the PTAB finds the improvement contains 9,330 square feet of building area. This reflects an improvement assessment of $12.70 per square foot of building area.

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, 331Ill.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 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 based on market value is not warranted.

The appellant submitted documentation showing the 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's attorney 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 based on market value is not warranted.

Appellants who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1, 544 N.E.2d 762 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. Proof of assessment inequity should include assessment data and documentation establishing the physical, locational, and jurisdictional similarities of the

suggested comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). Mathematical equality in the assessment process is not required. A practical uniformity, rather than an absolute one is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395, 169 N.E.2d 769 (1960). Having considered the evidence presented, the PTAB concludes that the appellant has not met this burden and that a reduction is not warranted.

The appellant presented assessment data on a total of three equity comparables. The PTAB finds these comparables similar to the subject in characteristics, but with a different level of assessment. The comparables are assessed solely at a 36% level of assessment applicable to industrial properties while the subject has a portion of the improvement assessed at 36% and a portion assessed at 38% applicable to commercial properties. The comparable properties are improved with one-story, masonry, industrial buildings. The properties range: in age from 47 to 49 years; in size from 2,400 to 19,626 square feet of building area; and in improvement assessments from $5.62 to $12.25 per square foot of building area. In comparison, the subject's improvement assessment of $12.70 per square foot of building area is above the range of comparables. However, the PTAB finds that a portion of the subject's assessment is at a higher level of assessment, 38%, than the comparables. This variation from the subject's level of assessment as compared to the other properties would account for this small increase above the range. The PTAB gives little weight to the board of review's evidence as the data is merely raw sales data.

After considering adjustments and the differences in the comparables when compared to the subject, the PTAB finds the subject's per square foot improvement assessment is supported and a reduction in the subject's assessment is not warranted.

APPELLANT:	**Merisant Company**
DOCKET NUMBER:	**06-00283.001-I-3**
DATE DECIDED:	**April, 2011**
COUNTY:	**Kankakee**
RESULT:	**Reduction**

The subject property consists of a 17.30 acre site improved with a one-story industrial building with approximately 112,000 square feet of building area. The majority of the building was built in 1989 with additions in 1995, 1996 and 1997. The subject improvement is a steel framed building over poured concrete footings with six to eight inch concrete floors. The exterior walls are insulated steel sandwich panels and painted concrete block and brick on the office section. The manufacturing area contains approximately 83,644 square feet of building area, the warehouse contains approximately 10,000 square feet of building area and there are approximately 17,493 square feet of office space. The subject has 16 to 20 feet of clear ceiling height and 12 dock doors with levelers. The property has a land to building ratio of 6.69:1 and is located in Manteno, Manteno Township, Kankakee County.

Initially, the Kankakee County Board of Review made a motion that the Property Tax Appeal Board take notice of a decision it issued the prior assessment year (2005) under Docket No. 05-00808.001-I-3 in which it determined the correct assessment of the subject property to be $1,666,500. That decision was issued by the Property Tax Appeal Board on March 20, 2009. Pursuant to section 1910.90(i) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.90(i)) the Board takes notice of the aforementioned decision.

The appellant appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by J. Edward Salisbury of Salisbury & Associates, Inc., Taylorville, Illinois, estimating the subject property had a market value of $2,400,000 as of January 1, 2004.

Salisbury was called as a witness on behalf of the appellant. Salisbury is an Illinois Certified General Real Estate Appraiser and has the Certified Assessment Evaluator (CAE) designation issued by the International Association of Assessing Officers (IAAO). Salisbury identified Appellant's Exhibit #1 as his appraisal of the subject property.

The appellant's appraiser testified the subject property is located in an industrial park in Manteno and is used to make sweeteners. The witness testified the subject has 15.5% of the building as office space which he considered on the higher side for an industrial building. He also testified the subject has interior walls that were put in place to compartmentalize the appellant's production process. Salisbury was of the opinion that in most manufacturing processes the building is kept as open as possible, therefore, these walls could potentially be a nuisance to another user.

Salisbury testified to corrections in his report as follows:

> Page 23, all references to the last addition being built in 1998 is incorrect in that it should be 1997.

Page 33, land sale #3 the price is $35,207 per acre.

Page 33, land sale #6 the parcel number is incorrect and the sale was actually part of land sale #7 with a price of $1,800,000.

Page 35, land sale #3 the price was $440,990 and the price per acre was $35,207.

Page 35, land sale #7 the price was $1,800,000.

Page 42, replacement cost new price should read $5,429,807.

Page 46, listing #4 the actual age is 22 years.

Page 63, the price represents 50% of the property, the price for the whole property is $17.12 per square foot of building area.

Page 69, the age of the property is 10 years old when it sold.

Page 75, comparable sale #4, the price should be $17.12 per square foot.

Page 75, comparable sale #5, the price should be $10.87 per square foot.

Page 75, comparable sale #7, the age should be 10 years.

Page 77, the last sentence in the section titled Market Conditions is incorrect.

In estimating the market value of the subject property, Salisbury developed the three approaches to value. The first approach to value developed by the appellant's appraiser was the cost approach. Salisbury first estimated the value of the land using nine land sales and four listings. The nine land sales were located in Bourbonnais, Manteno and Manteno Township and ranged in size from 6.74 to 117.61 acres. The sales occurred from January 1999 to October 2002 for prices ranging from $167,000 to $1,800,000 or from $15,305 to $43,956 per acre. The four listings were located in Kankakee, Momence and Manteno. These properties ranged in size from 4.62 to 160 acres. These properties had list prices ranging from $184,800 to $4,400,000 of from $25,000 to $40,000 per acre. Based on these sales and listings the appraiser estimated the subject property had a land value of $30,000 per acre or $520,000, rounded.

Salisbury next estimated the replacement cost new of the improvements using the Marshall Valuation Service. He classified the subject as a light manufacturing class C building with a base cost of $28.47 per square foot. He estimated the subject would have a replacement cost new of $44.10 per square foot of building area or $5,429,807. Depreciation was calculated using comparable sales #2, #6, #7, and #8 from the sales comparison approach. In calculating depreciation Salisbury deducted the land value from the respective sales prices to arrive at a residual building value. Salisbury then estimated the replacement cost new of the buildings and then deducted the residual building values to arrive at the accrued depreciation. Salisbury then divided the accrued depreciation by the replacement cost new to arrive at the percent of

depreciation for the respective comparables. He then divided the percentage by the age of the building to arrive at annual rates of depreciation for the respective buildings. Salisbury calculated total depreciation for the comparable sales as ranging from 62.5% to 72.6% or from 2.25% to 8.23% per year. Salisbury estimated the subject suffered from an annual rate of depreciation of 5.5%. Applying the annual rate to the subject's weighted age of 12 years resulted in total depreciation of 66% of replacement cost new, which equates to $3,583,672. Deducting depreciation from the cost new of the improvements results in a depreciated improvement value of $1,846,135. Adding the land value of $520,000 to the depreciated improvement value resulted in an estimated value under the cost approach of $2,400,000.

The appraiser next estimated the value of the subject property using the income approach to value. The first step in this approach was to estimate the market rent using four rentals and five rental listings. The comparable rentals were located in Freeport and Danville. The comparables ranged in size from 64,000 to 211,200 square feet of building area and in age from 10 to 20 years old. These comparables were manufacturing and/or warehouse buildings with ceiling heights ranging from 18 to 32 feet. The comparables had sites that ranged from 11.20 to 15.92 acres and office space ranging from .05% to 24% of building area. These properties had leases ranging from $1.56 to $2.55 per square foot of building area. The five listings are located in Kankakee, Bradley, Loves Park, Machesney Park and Rockford. These properties were improved with industrial manufacturing and/or warehouse distribution buildings that ranged in size from 67,520 to 175,500 square feet of building area. The buildings ranged in age from 8 to 27 years old with ceiling heights ranging from 10 to 30.8 feet. The comparables had office space ranging from .74% to 50% of building area. These properties had asking rents ranging from $2.50 to $3.00 per square foot of building area. Based on this data Salisbury estimated the subject had a net market rent of $3.00 per square foot of building area resulting in a potential gross income of $337,878. From this amount Salisbury deducted 10% for vacancy and credit loss to arrive at an effective gross income of $304,090. From this Salisbury deducted 10% for expenses to arrive at a net operating income of $273,681.

Salisbury next estimated the overall capitalization rate using eleven comparables that had either sold, were leased or were offered for sale or lease. The rates are developed by dividing the net operating income of the comparable properties by their respective selling prices. Using this data the appraiser had overall capitalization rates ranging from 9.8% to 21.6%. Based on this analysis Salisbury estimated a capitalization rate of 11%. Capitalizing the net income resulted in an estimated value under the income approach of $2,500,000, rounded.

The final approach to value developed by Salisbury was the sales comparison approach. Under this approach the appraiser used eight sales located in Manteno, Kankakee, Bourbonnais, Machesney Park, Loves Park and Rockford. The comparables are improved with one-story or part one-story and part two-story industrial buildings that range in size from 91,355 to 273,336 square feet of building area. The comparables ranged in age from 8 to 32 years old, ceiling heights ranged from 10 feet to 42 feet, office areas ranged from none to 50% of building area and the land to building ratios ranged from 2.24:1 to 7.90:1. The sales occurred from November 1999 to April 2005 for prices ranging from $1,200,000 to $3,600,000 or from $7.95 to $23.12 per square foot of building area. Comparable sale #1 was a company buyout. Comparable sale #4 was for a 50% interest in the property which would then reflect a price of $2,465,000 for the full interest in the property. This property had 50% of its building area devoted to office space

and 50% of the area is warehouse space. The seller of comparable sale #5 was in bankruptcy at the time of sale. This property had been listed for 8 months prior to the transaction. Salisbury testified comparable sale #8 was acquired by Alpine Bank through foreclosure. Alpine Bank then offered the property on the market through Whitehead Realtors. The property was listed for 12 months prior to the sale. Comparable sales #4, #6, #7 and #8 were available for lease for rentals of $2.90, $3.00, $2.50 and $3.00 per square foot of building area, respectively. Salisbury testified each sale was confirmed with the buyer, seller or broker that was involved in the transaction with the exception that comparable sale #9 was confirmed with Peter Wolfley of the Rockford Township Assessor's Office as well as with the real estate transfer declaration which indicated the property had been on the market for five months prior to the sale. Based on these sales the appraiser estimated the subject had a market value of $21.00 per square foot of building area or $2,400,000, rounded.

Salisbury testified that he selected comparable sales located outside Kankakee because with industrial sales the market is either regional or national in scope. He testified that as long as other conditions of the sales are similar it is appropriate to use sales outside of the community or the county.

Salisbury also testified he had information on a sale located at 1340 Sycamore, Manteno.[1] The witness testified this building was built to suit for the tenant, Chiquita Banana, and they were obligated under a lease through 2014. He further testified this building was used mainly for refrigeration, with nine separate areas, where the zones had temperatures between 35 and 40 degrees. Due to the building being refrigerated and under a lease until 2014, Salisbury chose not to use this comparable. He considered the transfer of this property a leased fee.

Salisbury also testified that generally there was a slight increase in the market from 2004 to 2006. He testified that manufacturing properties were starting to go down in value while distribution warehouses were either stable or going up in value.

In reconciling the three approaches to value Salisbury gave some weight to the cost and income approaches to value and considerable weight to the sales comparison approach. Salisbury ultimately estimated the subject property had a market value of $2,400,000 as of January 1, 2004. Based on this evidence the appellant requested the subject's assessment be reduced to $800,000.

Under cross-examination Salisbury denied that his fee for performing an appraisal is contingent upon his valuing a property within a range of values that he gives his client. Salisbury agreed that prior to preparing an appraisal he provides his client a broad range of values for a property to be appraised. The witness explained that when contacted to do an appraisal he reviews the information provided by the potential client to determine if he can help. If the appraisal is for tax purposes he indicates to the client in writing that he believes the market value of the property falls within a particular range. He also tells his clients that if his value falls outside this range he will inform them and tell them he thinks the value is going to be either higher or lower than the

[1] This property was comparable sale #2 and rental comparable #2 contained in the Brorsen appraisal, Intervenor Exhibit A-1.

range and give them the option of having him complete the appraisal report. If he does not complete the report, he does not get paid for any of the work.[2]

Salisbury testified that Property Tax Services, Inc. was his client that retained him to prepare the appraisal. He did not know if the fee for Property Tax Services, Inc. was contingent on a reduction in the assessment. Salisbury did not disclose within his report that Property Tax Services, Inc. was his client and agreed that the letter of transmittal was addressed to Merisant US, Incorporated.

Salisbury explained that his statement on page 16 of his appraisal about the lack of 911 services in Manteno was based on information received from the State of Illinois. Salisbury also agreed that his statement on page 17 of the appraisal regarding Community Facilities in Manteno was incorrect.

Under the cost approach Salisbury agreed that the construction of the manufacturing area differed from the construction of the office area. Salisbury also agreed that his most recent land sale was in October 2002. Salisbury further explained with respect to land Sale #6 on page 33 of the appraisal, there was a sale composed of 75 acres for a price of $1,188,000 but stated the property index number (PIN) was incorrect. The correct PIN is 02-23-400-001.

Salisbury was shown Intervenor's Exhibits H-1 and H-2, copies of the Illinois Real Estate Transfer Declarations, associated with land sale #7. Salisbury agreed that the second PIN listed in his report for this sale was incorrect. Salisbury also agreed within his report land sale #5 and land sale #6 have the same PIN listed for each sale, which is an error. Salisbury agreed that Intervenor's Exhibit H-3 was the Illinois Real Estate Transfer Declaration for land sale #5. Salisbury also agreed that his land listing #4 on the chart on page 35 of his report was actually land listing #5.

Salisbury agreed that in the replacement cost he classified the subject as having an exterior wall of metal even though the office portion is painted concrete block and brick. Salisbury also agreed that he used Marshall Valuation Service with the subject classified as a Class C and of average quality to determine replacement cost new. Salisbury identified Intervenor's Exhibit G as a page from the 2/2004 Marshall and Swift manual that listed the cost of Class C average of $34.11 per square foot, which differed from Salisbury's base cost estimate of $28.47 per square foot.

In extracting depreciation from the market, Salisbury used comparable sales #2, #6, #7 and #8 which were 31, 22, 10 and 8, years old, respectively. Salisbury agreed that he had to estimate the value of the land in each of these sales to extract depreciation. The land values attributed to the comparables ranged from $15,000 to $76,230 per acre.

With respect to the income approach, Salisbury agreed that the lease for rental comparable #1 had expired prior to the January 1, 2006 valuation date. The three remaining leases are located

[2] At the hearing the intervenor submitted Intervenor's Exhibit F, a portion of a transcript from a hearing before the Property Tax Appeal Board from another appeal, to impeach Salisbury's testimony regarding whether his fee is contingent on valuing a property within a particular range. The Board finds the testimony in both matters is consistent.

in Danville, Illinois. Salisbury considered Danville to be inferior to the subject's location as evidenced by the positive adjustments on page 47 of his report. Salisbury testified that the option was exercised for rental comparable #2 for the same rate, $2.00 per square foot triple net. This lease was still active as of January 1, 2006. Salisbury agreed that his rental comparable #2 was the same as his capitalization rate comparable #11. Rental comparable #2 also has 20,000 square feet of office space leased for $2.75 per square foot. Salisbury also testified that his rental listing #1 is the same as his comparable sale #4. Salisbury also agreed that his rental listing #4 is the same as his comparable sale #6. Salisbury also agreed that his rental listing #5 is the same as his comparable sale #8.

Salisbury agreed that his capitalization rate was developed using five comparables with actual leases and sales and the remaining were rental listings with asking prices. The witness acknowledged that capitalization rate comparable #4 was located in Washington, Missouri.

With respect to the sales comparison approach, Salisbury's sale #2 which occurred in September 2000, is 31 years old and has 273,336 square feet with a land to building ratio of 17.30:1. Sale #3 took place more than six years prior to the assessment date at issue. Sale #4 was for a 50 percent interest. Salisbury was aware that this comparable sold again in August 2006 for a price of $3,250,000, which equates to $22.57 per square foot of building area, land included. The witness testified that if he could have verified this was an arm's length sale he would have used it if doing an appraisal as of January 1, 2006. Salisbury agreed his sale #5 was in bankruptcy but had been on the market for 8 months. Salisbury was shown Intervenor's Exhibit B, which was a copy of the Illinois Real Estate Transfer Declaration for comparable sale #5 wherein the document indicated the transaction was a sale in lieu of foreclosure. Salisbury testified he was aware that the buyer of this property leased it just prior to the sale. He also agreed this comparable was used in estimating depreciation. The witness was unaware of any tax abatements associated with this comparable. With respect to sale #8, Salisbury was not aware that Alpine Bank acquired the property through foreclosure and received a Sheriff's Deed reciting a purchase price of $1,500,000 paid in August 2002. This property was also used as Salisbury's rental listing comparable #5 and rental capitalization rate comparable #8. Salisbury did not know for a fact that his comparable sale #9 was not advertised for sale. Intervenor's Exhibit E, PTAX-203, Illinois Real Estate Transfer Declaration, question #7 indicated the property was not advertised for sale or sold using a real estate agent. Salisbury also agreed he did not prepare an appraisal of the subject estimating a market value as of January 1, 2006.

Under further cross examination by the Property Tax Appeal Board hearing officer, Salisbury testified he determined the subject's highest and best use to be an industrial property. He testified the subject was not high tech even though it has air conditioning throughout the building and suspended ceilings in big parts which are unusual for industrial property. Salisbury also was of the opinion his comparable sale #1 was not an arm's length transaction because it was part of a company buyout and an allocation was made. He testified this property was not listed for sale. The witness testified he included the sale because the property was located in Manteno. Salisbury explained this comparable was a refrigerated warehouse used as a food distribution warehouse. With respect to Salisbury's comparable sale #5, his report indicated that there was $410,000 in personal property. The transfer declaration associated with this sale was marked as Intervenor's Exhibit B, which disclosed a total consideration of $1,200,000 and personal property of $410,000 resulting in a net consideration for the real property of $790,000, which equates to

approximately $7.16 per square foot of building area, including land. Salisbury used the total purchase price of $1,200,000 in his report. Salisbury also testified his comparable sales #6, #7 and #8 were vacant at the time of sale. Salisbury gave most weight to the sales comparison approach to value.

Under redirect examination Salisbury testified that for property tax purposes, all appraisers he has talked to find a value range when they're giving bids for work. Salisbury testified he utilizes listings in his report to provide the upper limit of value for a particular type of property. In referring to Intervenor's Exhibit E, regarding Salisbury's sale #9, PTAX-203-A, question #3 indicates the property was for sale on the market for 5 months.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $1,666,500 was disclosed. The subject's assessment reflects a market value of $4,974,627 or $44.17 per square foot of building area, land included, using the 2006 three year median level of assessments for Kankakee County of 33.50%. The board of review deferred to the intervening taxing district to present evidence in support of the assessment.

The intervenor called as its witness real estate appraiser Andrew Brorsen. Brorsen has the Member of the Appraisal Institute (MAI) designation and is an Illinois Certified General Real Estate Appraiser. The witness is the owner of Brorsen Appraisal Service located in Kankakee.

Brorsen prepared a restricted use appraisal of the subject property with an effective date of January 1, 2006, which was marked as Intervenor's Exhibit A-1.[3] (Transcript pages 136-137, Intervenor's Exhibit A-1, p. 3). Brorsen identified Intervenor's Exhibit A-2 as a self-contained report of the subject property prepared in 2003. Brorsen testified that the 2006 appraisal can be read independently of the 2003 report. However, the witness also stated the 2006 appraisal could be misinterpreted if you do not have reference to the 2003 report. Brorsen then agreed that the letter of transmittal contained in the 2006 restricted use appraisal report stated the 2006 report should not be read independently of the 2003 appraisal.

Brorsen testified he appraised the subject property in 2003, 2004, 2005 and 2006. He personally inspected the exterior and interior of the subject property on June 8th 2005. Intervenor's Exhibit A-1 at page 6 further indicated Brorsen inspected the property on December 14, 2006 and observed the property on January 9, 2008.

The witness testified that between 2003 and 2006 the total inventory of industrial space in Kankakee County increased by approximately 300,000 square feet. He further testified that the absorption rate has fluctuated during this time period. He testified that vacancy rates declined from 4.2% in 2003 to 3.1% in 2004 and increased to 3.9% in 2006. (Intervenor's Exhibit A-1, p.

[3] A Restricted Use Appraisal Report is for client use only. Advisory Opinion 11 (AO-11), *Uniform Standards of Professional Appraisal Practice, 2002 Edition*, The Appraisal Foundation, p. 146; *Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition*, The Appraisal Foundation, p. 137. See also Standard Rule 2-2(c), *Uniform Standards of Professional Appraisal Practice, 2002 Edition*, The Appraisal Foundation, p. 27; and *Uniform Standards of Professional Appraisal Practice and Advisory Opinions, 2006 Edition*, The Appraisal Foundation, p. 28, explaining that a Restricted Use Appraisal is for client use only.

14). The witness disagreed with Salisbury's appraisal (Appellant's Exhibit #1, p. 29) that states demand for manufacturing space in Manteno has decreased.

The witness testified the subject is located in an industrial park, the third addition of the Illinois Diversatech Campus (IDC). Brorsen was of the opinion the location in an industrial park enhances the market value due to possible tax incentives and amenities that are available.

Brorsen testified the appellant manufactures NutraSweet at the facility. The witness described the property and indicated it has approximately 15% to 16% of the space is office area. He was of the opinion this was a common ratio for manufacturing. The witness testified the subject is fully sprinklered and has 18 feet to 20 feet above grade for the manufacturing section. The witness testified the subject building is climate controlled.

In the 2003 appraisal Brorsen indicated the industrial section of the building improvement is rated as a high-tech manufacturing facility. (Intervenor's Exhibit A-2, p. 20). He picked up this term from the original construction information from the developer and because the subject was built for food processing. Due to food manufacturing Brorsen explained there are additional construction features so as to have sealed rooms to prevent contamination of the food as well as an independent ventilation system. He testified that the additional amenities would tend to attract other food product producers. He also agreed this would bring in higher rentals and increase the cost to build.

Brorsen estimated the subject had a weighted age of 14 years as of January 1, 2006. He described the subject as being in good condition. He appraised the fee simple property rights and was of the opinion the highest and best use as vacant was for an industrial use and as improved was for manufacturing.

Brorsen developed the three traditional approaches to value. In the 2006 report the appraiser used eight land sales that occurred from March 2002 to September 2005 and ranged in size from 3.94 to 27.42 acres. The comparables sold for prices ranging from $125,000 to $1,233,900 or from $17,171 to $45,000 per acre. Four of the sales occurred from August 2004 to September 2005 for prices ranging from $24,950 to $45,000 per acre. The witness estimated the subject land had a value of $46,000 per acre or $795,800.

In estimating the cost new of the improvements Brorsen testified he relied on the Marshall Valuation Service. The witness explained that in his 2003 appraisal he had data with respect to the original cost to construct a portion of the subject in 1989. The 2003 appraisal indicated the cost of 61,376 square feet of building area was $6,020,000 or $98.08 per square foot of building area. The 2003 report also indicated there was $865,000 allocated to the land resulting in a residual improvement cost of $5,155,000 or $83.99 per square foot of gross building area. (Intervenor's Exhibit A-2, p. 28).

Brorsen testified he used sections 14 and 15 of the Marshall Valuation Service. He classified the manufacturing/warehouse section of the subject as a Class S structure because of its steel framing and steel clad exterior and the office section as Class C because of the masonry exterior walls. He testified a Class C light manufacturing building would be a masonry frame structure, not metal. In estimating the cost new, the appraiser also added a component for entrepreneurial

profit. Brorsen testified the replacement cost new of the improvements was estimated to be $6,525,745. He testified that upon inspection he did not observe any deferred maintenance. He also found no functional obsolescence and no economic obsolescence. He testified he used the age life method with the subject having an effective age of 14 years and a total life of 40 years to arrive at depreciation of 35% or $2,284,011. He also included in his appraisal depreciation using market extraction using five sales from the sales comparison approach. The appraiser calculated annual rates of depreciation ranging from 1.83% to 4.28%. The intervenor's appraiser gave this method no weight because of the wide range of indications that were developed from these properties. Deducting depreciation from the replacement cost new resulted in a depreciated building value of $4,241,700. To this the appraiser added $399,600 for the depreciated site improvements and $795,800 land value to arrive at an indicated value under the cost approach of $5,440,000.

The next approach to value developed by Brorsen was the income capitalization approach. The first step was to estimate the market rent of the subject using eight comparable rentals. The rental comparables were located in Peotone, Manteno and Kankakee and ranged in size from 19,380 to 99,358 square feet of building area. Two comparables were reported to have gross rentals of $3.80 and $4.00 per square foot of building area and six comparables had triple net rentals ranging from $3.00 to $5.52 per square foot of building area. The appraiser testified rentals #2 and #3 were located in ICD. These comparables had 98,560 and 57,600 square feet of building area and net rentals of $4.35 and $5.52 per square foot of building area, respectively. Rental comparable #2 was the same property as comparable sale #2 and rental comparable #3 was the same property as comparable sale #4 in Brorsen's 2006 appraisal. The witness also acknowledged that within his report the lessee and/or lessor was listed as "Confidential" for rental comparables #1, #2, and #8. Brorsen also agreed that he did not have the adjustment process within the report. The witness testified he gave most emphasis to rental comparable #2, a 98,560 square foot building that had a ten-year lease that commenced in 2004 for a rental of $4.35 per square foot of building area, and rental comparable #3, a 57,600 square foot building that had a 5-year lease at $5.52 per square foot that commenced in 1998 and expired in 2003. Based on this data the appraiser estimated the subject had a market rent of $5.50 per square foot of building area resulting in a potential gross income of $610,500. From this amount the appraiser deducted 10% for vacancy loss, the same as used by Salisbury, to arrive at an effective gross income (EGI) of $549,450. The appraiser then deducted 10% of EGI for expenses, which was the same percentage as used by Salisbury, allocated as follows; 4% of EGI for management expenses, 1% of EGI for miscellaneous expenses and 5% of EGI for reserves for replacement, to arrive at a net income of $494,505.

The intervenor's appraiser next estimated the capitalization rate using the mortgage/equity technique with support from national survey data and market extraction. Under the mortgage/equity technique, the appraiser estimated a capitalization rate of 8.8%. Brorsen indicated national surveys for industrial property had rates ranging from 5.50% to 9.00% with an average of 7.50%. Brorsen testified and indicated in the report that comparable sale #2 (rental comparable #2) was leased at the time of sale for $4.35 per square foot of building areas resulting in an annual rental of $428,736. Dividing the annual rental of $428,736 by the

purchase price of $4,950,000 results in a capitalization rate of 8.66%.[4] Based on this data the appraiser estimated an overall capitalization rate of 8.8%. Capitalizing the subject's estimated net income of $494,505 by 8.8% results in an estimated value under the income approach of $5,569,000.

The final method developed by Brorsen was the sales comparison approach wherein he used five industrial sales located in Kankakee and Manteno. The comparables ranged in size from 24,375 to 155,933 square feet of building area. The buildings were constructed from 1981 to 1988, with comparables #4 and #5 having additions in 1989 and 1990. These comparables had office spaces ranging from 2.5% to 19.0% and land to building ratios ranging from 2.23:1 to 18.12:1. These properties sold from September 2002 to August 2006 for prices ranging from $600,000 to $4,950,000 or for unit prices of $22.57, $50.22, $24.62, $36.46 and $23.09 per square foot of building area, land included, respectively.[5] Comparable sales #2 and #4 were described as being climate controlled which Brorsen testified meant the buildings are maintained at a consistent temperature throughout the year. Both of these sales were located in IDC. The witness testified comparable sale #2 was equipped to have food product stored within the building and the appraisal indicated that the comparable had 39,000 square feet of climate controlled area and 25,230 square feet of cooler space. After considering differences from the subject, the witness was of the opinion these comparables had adjusted sales prices ranging from $34 to $62 per square foot. Based on these sales, the appraiser estimated the subject had an estimated value under the sales comparison approach of $50 per square foot of building area or $5,550,000.

In reconciling the three approaches to value, the appraiser gave most emphasis to the sales comparison approach and estimated the subject had a market value of $5,500,000 as of January 1, 2006.

Based on this evidence the intervening taxing district requested the subject's assessment be increased to reflect a market value of $5,500,000.

Under cross-examination the appraiser explained the subject property was appraised as though free and clear of mortgages, liens, encumbrances, long-term leases and servitudes because that is defining fee simple interest. Brorsen did not think the sale price of his comparable #2 at $50.22 per square foot of building area was an outlier compared to his other sales that had unit prices of $22.57, $24.62, $36.46 and $23.09 per square foot of building area, respectively. He agreed his comparable sale #2 was leased at the time of its August 2005 sale. The witness also agreed that the subject does not have any cooler space as does comparable sale #2.

[4] Comparable sale #4 (rental comparable #3, one of the two he gave most emphasis to in establishing market rent) consisted of a 57,600 square foot building that had an annual rent of $5.52 per square foot of building area or $318,528 that expired in 2003. The property sold in November 2003 for a price of $2,100,000, which would indicate a capitalization rate of 15.14%.

[5] Brorsen comparable sale #1 was also the same property as Salisbury's comparable sale #4 that previously sold in April 2005 for a price of $17.12 per square foot of building area, including land. Brorsen comparable sale #5 was the same property as Salisbury comparable sale #1. Both appraisers reported a total sales price of $3,600,000; however, Brorsen estimated a unit value of $23.09 per square foot of building area based on a building size of 155,933 square feet while Salisbury estimated a unit value of $23.12 per square foot of building area based on a building size of 155,669 square feet.

Brorsen agreed that he placed most emphasis on comparable sale #2, which had a ten year lease in place at the time of sale. He assumed that is why the property sold because the investor was looking for something that was leased. (Transcript p. 207.) Brorsen testified the lessee was Nestle Corporation and Chiquita was one of their products. (Transcript pp. 226, 227).

In extracting depreciation, on page 21 of his 2006 appraisal, Brorsen had indicated comparable sale #2 had a total life expectancy of 55 years and an average annual rate of depreciation of 1.83%. He did not think this was an outlier but a better building. The intervenor's witness was shown a copy of his 2005 appraisal of the subject property, marked as Intervenor's Exhibit C, which had been submitted by the board of review. At page 18 of the report, Brorsen had determined the very same comparable sale had a total life expectancy of 35 years and an average annual rate of deprecation of 2.84%. In extracting depreciation in the 2006 appraisal Brorsen had indicated comparable sale #2 had a replacement cost new of $6,406,000. In extracting depreciation in the 2005 appraisal, Brorsen had indicated the same property had a replacement cost new of $9,757,000.

With respect to Brorsen's comparable sale #1, which was the same property as Salisbury's sale #4, the intervenor's appraiser disagreed with Salisbury's description the comparable had 50% office space. The witness explained this property was used as a coupon redemption facility. He was of the opinion a portion of the building was not office space but climate controlled.

The witness agreed that a portion of his rental comparable #3 was built to suit.

Brorsen stated the property rights appraised were a fee simple interest, meaning absolute ownership, unencumbered by other interest or estate. Brorsen testified that a mortgage or a long term lease situation would be examples of an encumbrance. The witness testified that if the property was being marketed as an investment property, the lease terms may be an advantage to market the property. If the property was being marketed as an owner-user property, a long term lease would probably impact the value of the property because the owner would have to wait until the lease expired before it could use the property. (Transcript p. 216).

The appraiser was also of the opinion the subject did not suffer from functional obsolescence even though the building was constructed in stages. The witness also testified that the processing site at the subject is high-tech, which related to the machinery and equipment. He thought another potential purchaser of the subject would be a food processing company. He testified, however, that removing the food processing partition would not take much because the subject is a freestanding steel structure. The witness indicated the subject could be readily converted to a general manufacturing facility.

With respect to the land sales the appraiser made a statement in his report about matched pairings indicating an upward trend in unit prices over the time frame associated with the land sales used in the appraisal. (Intervenor's Exhbit A-1, p. 8). Brorsen indicated the matched paired sales that he used were not in the appraisal because it was a restricted use report. The witness also indicated the matched paired analysis was not in the 2003 appraisal. However, in the 2003 appraisal of the subject the appraiser estimated the subject property had a land value of $46,000 per acre (Intervenor's Exhibit A-2, p. 27) which is the same estimated value per acre in the 2006

appraisal (Intervenor's Exhibit A-1, p. 18). The appraiser agreed that none of the land sales he used exceeded $46,000 per acre.

With respect to depreciation, the witness testified the expected total life for the subject of 40 years was based on market observation. He did not use market observation to derive the total life expectancy of the comparable sales used in estimating depreciation through market extraction.

The appraiser also agreed the highest rental he had was for rental comparable #3 at $5.52 per square foot, but the lease expired in 2003. This property sold in 2003 for a price of $2,100,000. At the time of sale the property was not under lease. Brorsen agreed that you could use the lease to calculate a capitalization rate, which was calculated to be approximately 15.1%. He indicated the lease at $5.52 per square foot and capitalization rate indicated a built-to-suit situation.

Brorsen also agreed the adjustments to the sales on page 29 of his 2006 appraisal were qualitative. The appraiser agreed the adjusted prices for the comparable sales ranged from $34 to $62 per square foot. The appraiser agreed, however, in reviewing his report one could not discern which property had an adjusted unit value of $34 per square foot or $62 per square foot.

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 issue before the Property Tax Appeal Board is the determination of the correct assessment of the subject property as of January 1, 2006. Both the appellant and intervenor contend the market value as reflected by the assessment is incorrect. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). Proof of market value may consist of an appraisal of the subject property as of the assessment date at issue. (86 Ill.Admin.Code. §1910.65(c)(1)). 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 appellant asserts the subject property has a market value of $2,400,000 based on an appraisal prepared by Salisbury (Appellant's Exhibit #1) with an effective date of January 1, 2004. The intervening school district contends the subject property has a market value of $5,500,000 based on a summary appraisal prepared by Brorsen with an effective date of January 1, 2003 (Intervenor's Exhibit A-2) and a restricted use appraisal prepared by Brorsen with an effective date of January 1, 2006 (Intervenor's Exhibit A-1). The subject property had a total assessment of $1,666,500 which reflects a market value of $4,974,627 using the 2006 three year median level of assessments for Kankakee County of 33.50%.

Initially, the Board finds Brorsen's appraisal with an effective date of January 1, 2003 and Salisbury's appraisal with an effective date of January 1, 2004 reflect estimates of values that are 3 and 2 years prior to the assessment date at issue, respectively. Second, the Board finds that Brorsen's report with an effective date of January 1, 2006, is a restricted use report that, according to the relevant provisions of the Uniform Standards of Professional Appraisal Practice, is to only be used by the client.[6] Page 6 of Intervenor's Exhibit A-1 provides that the appraiser's clients are Manteno Community School District No. 5 and Manteno Township. Despite the fact the appraisals are somewhat dated and one appraisal is a restricted use report, the Property Tax Appeal Board considered the testimony of the witnesses and reviewed the relevant data in the respective reports in determining the correct assessment of the subject property.

Each appraiser utilized the three approaches to value in estimating the market value of the subject property. Beginning with the cost approach each appraiser initially estimated a land value. Salisbury estimated a land value of $30,000 per acre while Brorsen estimated a land value of $46,000 per acre. In reviewing Appellant's Exhibit #1 and Intervenor's Exibhit A-1 both Salisbury and Brorsen used two land sales in IDC that sold in March and October 2002 for unit prices of $17,171 and $24,777, respectively, per acre. Although located in the same industrial park as the subject, these sales are somewhat dated but do provide some indication of land value within the subject's industrial park as of the assessment date at issue. The remaining sales used by Salisbury are considered dated by the Property Tax Appeal Board occurring from January 1999 to January 2001. Brorsen has four land sales that occurred from August 2004 to September 2005 for prices of $45,000, $24,950, $36,393 and $30,000 per acre. The two sales that occurred most proximate in time to the assessment date had prices of $30,000 and $36,393 per acre. Salisbury also had five land listings in his report with unit prices ranging from $25,000 to $40,000 per acre. The Board finds only one sale in the record approached Brorsen's estimate of land value of $46,000 per acre. As a result, the Board finds Brorsen's estimated land value is excessive. In reviewing this data the Board finds Salisbury's estimate of land value of $30,000 per acre is best supported in the record resulting in a land value estimate of $520,000, rounded.

In reviewing the replacement cost new of the improvements the Board finds Brorsen's calculation better represents the subject building improvements. In estimating the value of the subject building Brorsen segregated the office area from the industrial warehouse area in estimating their respective costs. Additionally the Board finds his classification of the subject improvements better represented the structure than did Salisbury's classification. Brorsen classified the manufacturing/warehouse section of the subject as a Class S structure because of its steel framing and steel clad exterior and the office section as Class C because of the masonry exterior walls. Brorsen calculated the replacement cost new of the building improvements to be $6,525,745.

Salisbury estimated depreciation of 66% while Brorsen estimated depreciation of 35% was applicable to the subject. Both reports had market extracted depreciation, although Brorsen did not place any weight on his data. The Board finds, however, that market derived depreciation is to be given weight in that it considers all three elements of depreciation, physical, functional and economic. The Board finds that Salisbury's use of the comparable sale #6 located in Machesney Park as well as Brorsen's sales with the exception of his sale #2 had a relatively tight range of

[6] See footnote #3.

market extracted annual rates of depreciation from 3.04% to 4.38%. Based on this data and considering the testimony of the two witnesses, the Board finds an appropriate annual rate of depreciation for the subject is 3.35% resulting in total depreciation of 47%, rounded, using a weighted age of 14 years. Deducting depreciation results in a depreciated building value of $3,458,645. Adding Brorsen's estimated depreciated site improvements of $399,551 and the land value of $520,000 results in an estimated value under the cost approach of $4,380,000, rounded.

The next approach developed by the two appraisers was the income approach to value. Under this approach Salisbury estimated the subject had a market rent of $3.00 per square foot while Brorsen estimated the subject had a market rent of $5.50 per square foot. The Board finds only one comparable in the record approached the market rent estimate used by Brorsen, which was his rental comparable #3 with a rental of $5.52 per square foot of building area. Testimony disclosed that a portion of this property was built-to-suit and the rent was based on a lease entered in 1998 that expired in 2003 for a building approximately ½ the size of the subject property. Brorsen's 2006 report listed two rental comparables, #1 and #2, located in Peotone and Manteno, that were similar to the subject in size with lease terms that commenced in 2002 and 2004 for rentals of $3.80 and $4.35 per square foot of building area, respectively. The first lease was on a gross basis while the second lease was triple net. The property leased for $4.35 per square foot of building area had climate control and cooler space. Salisbury's report had two rental listings located in Kankakee and Bradley for rentals of $2.95 and $2.75 per square foot of building area, respectively. Based on this data the Board finds the subject had a market rent of $3.80 per square foot, triple net resulting in a gross potential income of $425,600. Both Salisbury and Brorsen deducted 10% for vacancy, which results in an EGI of $383,040. Both appraisers also deducted 10% of EGI for expenses which results in net income of $344,736. The Board finds Brorsen's estimate of the capitalization rate of 8.8% is best supported as of January 1, 2006. Capitalizing the net income of $344,736 by a capitalization rate of 8.8%, results in an estimated value under the income approach of $3,920,000, rounded.

The final approach to value developed by the two appraisers was the sales comparison approach. Salisbury estimated the subject had a unit value under the sales comparison approach of $21.00 per square foot of gross building area. Brorsen estimated the subject property had a unit value under the sales comparison approach of $50.00 per square foot of gross building area. The Board finds Salisbury and Brorsen used a common sale located at 3 Stuart Drive in Kankakee that sold in April 2005 for a unit price of $17.12 per square foot of building area and again in August 2006 for a price of $22.57 per square foot of building area. This building was larger with 144,000 square feet of building area and older at 24 years old than the subject building. Salisbury and Brorsen also had a common sale located at 1260 Sycamore Road in Manteno that sold in September 2002 for a price of $3,600,000 or approximately $23.09 per square foot of building area when using Brorsen's reported size of 155,933 square feet. This building was larger but similar to the subject in age. Brorsen's report also had three additional sales located in Manteno that had unit prices of $24.62, $36.46 and $50.22 per square foot of building area. The property at the high end of the range was located at 1340 Sycamore Road in Manteno. Salisbury testified he was aware of the sale but he chose not to use the transaction because he understood this building was built-to-suit for Chiquita Banana and was under a lease through 2014. He further testified this building was used mainly for refrigeration, with nine separate areas where the zones had temperatures between 35 and 40 degrees. Salisbury considered the transfer of this

property a leased fee. Salisbury's testimony about this sale was corroborated by the data outlined in Brorsen's report and Brorsen's testimony regarding this sale. Brorsen assumed the property located at 1340 Sycamore Road in Manteno sold because the investor was looking for something that was leased. (Transcript p. 207). Brorsen testified the lessee was Nestle Corporation and Chiquita was one of their products. (Transcript pp. 226, 227). Due to these factors the Board gives little weight to this sale because of the leased fee nature of the transaction and its construction with zoned cooler and refrigeration space.[7] After considering these sales, the Board finds the subject had an indicated value under the sales comparison approach of $36.00 per square foot of building area or $4,030,000 rounded.

After considering the evidence and testimony as outlined herein, the Property Tax Appeal Board finds the subject property had a market value of $4,000,000 as of January 1, 2006. Since market value has been determined the 2006 three year average median level of assessment for Kankakee County of 33.50% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)). The Board finds the correct assessment of the subject property as of January 1, 2006 is $1,340,000.

[7] In reviewing Brorsen's appraisal submitted in connection with the 2005 appeal, which was submitted by the board of review and marked as Intervenor's Exhibit C, there was no reference to the fact that the comparable located at 1340 Sycamore Road, Manteno, which was comparable sale #1 in the 2005 appraisal, was subject to a long term lease at the time of sale. In fact Brorsen indicated in the 2005 appraisal that this sale was a fee simple property when in fact it was leased at the time of sale. (Intervenor's Exhibit C, page 24). The fact that this comparable was subject to a long term lease brought to light in the 2006 appeal is the reason the Property Tax Appeal Board gives this transaction little weight in determining the subject's assessment as of January 1, 2006. The reason the Property Tax Appeal Board has arrived at a different assessment in the 2006 appeal than in the 2005 appeal is due in part to the fact that little weight was given this sale.

APPELLANT:	**Preston Industries, Inc.**
DOCKET NUMBER:	**07-25659.001-I-2 thru 07-25659.003-I-2**
DATE DECIDED:	**March, 2011**
COUNTY:	**Cook**
RESULT:	**Reduction**

The appellant was originally represented by attorney David Albee of Galena, Illinois. On May 14, 2009, the taxing districts were notified of this pending appeal in accordance with Section 16-180 of the Property Tax Code. (35 ILCS 200/16-180) On or about May 18, 2009, Attorney Albee and the Cook County Board of Review entered into a signed agreement regarding the correct assessment of the subject property which was received by the Property Tax Appeal Board on June 24, 2009.

The above-referenced taxing districts filed as intervenors on August 10, 2009 and sought additional time to file evidence. The intervenors thereafter timely filed evidence in this proceeding and on March 31, 2010, the intervenors were notified by the Property Tax Appeal Board that a signed stipulation was pending in this matter. By letter dated April 28, 2010, the intervenors accepted the signed stipulation.

On March 24, 2010, attorney Mitchell Klein substituted as appellant's counsel for attorney David Albee. In May 2010, attorney Klein was specifically advised of the existence of the signed stipulation by attorney Albee and thereafter, by letter dated June 15, 2010 and as attorney of record for the appellant, attorney Klein rejected the "proposed stipulation" in this matter and requested the matter be set for hearing.

By letter dated June 18, 2010, the Property Tax Appeal Board set a briefing schedule on the legal issue presented as to whether substitute counsel can reject a written agreement executed by previous counsel. Despite the schedule allowing for all parties to address the issue, only the intervening taxing districts timely filed a response.

By a letter dated July 7, 2010, the intervening taxing districts argued that the effort to withdraw the stipulation by newly retained counsel is too late and intervenors also argued the substitution of appellant's counsel was not accomplished since attorney Albee never formally withdrew as counsel.

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 agreement of the parties is proper and cannot be rejected by substitute counsel.

The Property Tax Appeal Board accepted attorney Klein's letter of March 24, 2010 as sufficient to comply with the Board's Rules regarding substitution of counsel as the same was copied to attorney Albee and all other parties of record. (86 Ill.Admin.Code Sec. 1910.77). Thus, the Board finds no merit in the intervenor's argument that attorney Klein is not properly counsel of record for appellant nor that attorney Albee is not properly withdrawn as counsel of record for appellant. (See also Tobias v. King, 84 Ill.App.3d 998 (1st Dist. 1980)).

As to stipulations, the rules of the Property Tax Appeal Board provide in pertinent part as follows:

> A stipulation or agreement shall be treated, to the extent of its terms, as a conclusive admission by the parties to the facts or issues stipulated or agreed to.

(86 Ill.Admin.Code Sec. 1910.55(d)). Courts have previously noted that parties are bound by their stipulations unless such stipulations are shown to be unreasonable, the result of fraud or violative of public policy. (Citing Filko v. Filko, 127 Ill.App.2d 10 (1st Dist. 1970); In re Estate of Moss, 109 Ill.App.2d 185 (4th Dist. 1969); Kazubowski v. Kazubowski, 93 Ill.App.2d 126 (1968), *cert. denied*, 393 U.S. 1117 (1969)).

In Fitzpatrick v. Human Rights Commission, 267 Ill.App.3d 386 (4th Dist. 1994), the court stated:

> In Illinois, courts look favorably upon stipulations which promote disposition of cases and simplification of issues. [citation omitted] Stipulations by parties or their attorneys will be enforced unless there is a proper showing the stipulation is unreasonable, violative of public policy, or the result of fraud. [citation omitted] Importantly, Fitzpatrick does not allege the stipulation is unreasonable, violative of public policy, or the result of fraud. Absent allegation or evidence of these grounds, there is no basis to support setting aside the stipulation.

Id. at 490. Like in the Fitzpatrick case, herein the appellant through attorney Klein has provided no evidence of unreasonableness, violation of public policy, or fraud to overturn or reject the stipulation entered into by attorney Albee with the Cook County Board of Review and then later adopted or accepted by the intervenors. (See also Opper v. Brotz, 277 Ill.App.3d 1024 (3rd Dist. 1996)).

Therefore, the Board finds no basis upon which attorney Klein may now "reject" the stipulation previously executed by attorney Albee on behalf of the appellant.

APPELLANT:	**Sundance Holdings, LLC**
DOCKET NUMBER:	**08-05300.001-I-3 thru 08-05300.003-I-3**
DATE DECIDED:	**June, 2011**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property contains 257,439 square feet of land area (approximately 5.91 acres). It is improved with a masonry industrial building being utilized as an automotive service garage facility. The building was originally constructed in 1973 and expanded in 1982. The building contains 63,380 square feet of building area which is comprised of 52,478 square feet of service garage floor area, 4,260 square feet of mezzanine and a 2-story office area of 6,642 square feet. The subject is located in Elmhurst, Addison Township, DuPage County.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's assessment is not reflective of fair market value. In support of the overvaluation argument, the appellant submitted an appraisal of the subject property. The appraiser developed the cost approach, income approach and sales comparison approach in estimating the fair market value for the subject property of $2,850,000 as of January 1, 2008. The appellant also submitted the final decision issued by the DuPage County Board of Review wherein the subject's final assessment of $1,423,510 was disclosed (parcel 03-26-406-023: $134,090; parcel 03-26-406-024: $252,460; parcel 03-26-406-025: $1,036,960). The subject's total assessment of $1,423,510 reflects an estimated market value of $4,278,660 using DuPage County's 2008 three-year median level of assessments of 33.27% as determined by the Illinois Department of Revenue.

Based on this evidence, the appellant requested a reduction in the subject's assessed valuation.

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 as required by Section 1910.40(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code 1910.40(a)). Therefore, the DuPage County board of review was found to be in default.

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 a reduction in the subjects' assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of the market value of the subject property may consist of an appraisal of the subject property as of the assessment date at issue. (86 Ill.Admin.Code 1910.65(c)(1)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The appellant in this appeal submitted an appraisal estimating the subject property has a fair market value of $2,850,000 as of January 1, 2008. 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 rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.40(a)) and was found to be in default. The Board finds the best and only evidence of the subject property's fair market value is the appraisal submitted by the appellant estimating a fair market value of $2,850,000. The subject parcel's total assessment of $1,423,510 reflects an estimated market value of $4,278,660, which is considerably higher than the appraisal submitted by the appellant. Therefore a reduction in the subject's assessment commensurate with the appellant's request is warranted.

APPELLANT:	**TRG II LLC**
DOCKET NUMBER:	**06-00997.001-I-3**
DATE DECIDED:	**August, 2011**
COUNTY:	**Kankakee**
RESULT:	**No Change**

The subject property is improved with a one-story distribution warehouse that contains approximately 566,973 square feet of building area.[1] The building was constructed in 1999 and is approximately 7 years old. The building is steel frame construction over poured concrete floors with exterior walls composed of concrete tilt-up panels. The subject has a clear ceiling height of approximately 41 feet and has 84 dock doors at bed level. The interior of the building is divided into sections by metal clad walls. The warehouse area is divided into three sections with Section 1 and Section 2 containing 122,726 square feet and 248,196 square feet, respectively, having a constant temperature of 70 degrees. Section 3 has 187,048 square feet and is maintained at a temperature of 40 degrees. The subject has approximately 12,180 square feet of office area. The entire facility is air conditioned and has a wet sprinkler system. Site improvements included asphalt drives, asphalt parking, concrete for trailer parking and loading docks, sidewalks, curbs, exterior lighting and a chain link fence around the perimeter of the property. The subject has a 50.11 acre (2,182,791 square foot) site resulting in a land to building ratio of approximately 3.82:1. The property is located in Manteno, Manteno Township, Kankakee County.

The appellant, through counsel, appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal prepared by J. Edward Salisbury of Salisbury & Associates, Inc., Taylorville, Illinois, estimating the subject property had a market value of $17,100,000 as of January 1, 2006. The appraisal was marked as Appellant's Exhibit No. 1. The parties stipulated to Salisbury's qualifications to give opinion testimony.

Salisbury was called as a witness and initially testified that the narrative appraisal contained the following errors:

> Page 13 - the fifth bullet point where the scope states the purpose is to value an asset as part of a trust.
>
> Page 31 - second paragraph stating the subject is improved with a manufacturing facility.
>
> Page 37 - third line stating rental listing has 100 square feet of refrigerated space, where it should read 100,000 square feet.
>
> Page 38 - under Location the last sentence should end by reading "negative adjustment."

[1] Salisbury, the appellant's appraiser, estimated the subject had 570,979 square feet of building area while Brorsen, the board of review and intervenor's appraiser, estimated the subject had 566,973 square feet of building area. The Board finds Brorsen's testimony with respect to establishing the total size of the subject building was more persuasive than the evidence provided by the appellant.

Page 51 - the office area for comparable sale #3 should read "8.07%" not "12.39%".

Page 68 - the next to last column should reflect an office area for comparable sale #3 of 8.07%.

Page 75 - item number 8 should read that "some" of the interior and exterior of the comparable properties were personally inspected.

Salisbury testified the owner of the subject property is TRG. TRG entered a contract with Mars Chocolate (Mars) to build a distribution center based on Mars' own plan and design. TRG then built the subject building and entered one agreement to lease the land, building and racking systems in the warehouse to Mars. TRG also entered a second agreement with Mars to provide Mars with TRG's own personnel to do the warehousing inside the property.

Salisbury testified he valued the fee simple estate meaning the property is not encumbered with any extraordinary circumstances or leases that would impact the value of the property. In estimating the market value of the subject property the appellant's appraiser did not utilize the cost approach to value because of the inability to find sales of buildings similar to the subject in age with refrigerator or cooler space which would have allowed him to abstract depreciation from the market. He explained the industrial properties depreciate rapidly in the early years of their life. Because he could not properly calculate depreciation he did not develop the cost approach. Salisbury's appraisal further indicated the cost approach was not developed due to few land sales in the area.

The first approach to value developed by Salisbury was the income approach to value. He testified the subject is a combination of cooled and refrigerated warehouse space; therefore, it was important to him to locate properties that were similarly used. As a result Salisbury did a nation-wide search for income comparables and comparable sales of distribution warehouses that either had refrigeration, freezer or cooler space. Salisbury testified he performed an Internet search and contacted other appraisers that he trades information with to identify comparable properties. The rentals he used contained freezer or cooler space.

Salisbury identified one comparable rental and seven rental listings. The comparables were located in Hazelwood, Missouri; Manteno, Illinois; Superior, Wisconsin; East Peoria, Illinois; Madison, Illinois; Charlotte, North Carolina; Beaumont, Texas; and Montoursville, Pennsylvania. The buildings ranged in size from 76,390 to 371,363 square feet of building area and in age from 15 to 40 years old. The appraisal indicated the comparables had refrigerated, cooler or freezer space ranging from 29,225 to approximately 150,000 square feet. Rental #1 had a five year lease that began in March 2002 for $2.72 per square foot, net. The remaining comparables had asking rentals ranging from $1.50 to $4.25 per square foot. The appraisal indicated that Salisbury made qualitative adjustments to the rental comparables for location, age, size, office area and terms. Salisbury estimated the subject would have a market rent of $3.50 per square foot resulting in a potential gross income of $1,998,427.

Salisbury next estimated the subject would experience a 10% vacancy and credit loss resulting in an effective gross income of $1,798,584. The appellant's appraiser also estimated the owner

would incur expenses of 10% of the effective gross income to keep the property occupied resulting in a net operating income of $1,618,726.

The witness testified he developed an overall capitalization rate from market abstraction using 11 comparables. The appraisal indicated the comparables had overall rates ranging from 9.8% to 21.9%. Salisbury also testified he has normal national market abstracted rates in his office from the Appraisal Institute, Korpacz, and Realty Rates. The data from these publications were not included within the appraisal. Salisbury estimated the overall capitalization rate to be 10%. Capitalizing the net income by 10% resulted in an estimated value under the income approach of $16,200,000.

The final approach developed by Salisbury was the sales comparison approach wherein he used eleven comparable sales located in Manteno, Illinois; Memphis, Tennessee; East Peoria, Illinois; Urbandale, Iowa; Lincoln, Nebraska; Northfield, Minnesota; New Hampton, Iowa; La Crosse, Wisconsin; Minneapolis, Minnesota; Charlotte, North Carolina; and Superior, Wisconsin. The buildings ranged in size from 155,699 to 1,093,776 square feet of building area and in actual or weighted ages from 14 to 35 years old. The comparables had ceiling heights ranging from 17.5 to 45 feet and office space ranging from 1.31% to 9.00% of building area. The land to building ratios ranged from 1.78:1 to 10.23:1. The comparables had refrigerated/cooler/freezer space ranging in size from approximately 55,516 to 400,555 square feet of building area. The sales occurred from August 2000 to May 2006 for prices ranging from $3,000,000 to $24,500,000 or from $9.19 to $23.12 per square foot of building area. Salisbury testified these sales were used because they had some refrigerator and/or freezer space in them. He further testified there were distribution warehouses in Edwardsville that he could have used but they were strictly distribution warehouses and did not have refrigerated space. Salisbury also testified there are other distribution warehouses located along I-55 at Joliet going into Cook County; he was of the opinion these had a superior location plus he did not know if any had refrigerated space.

Salisbury's report indicated he made qualitative adjustments to the sales to account for sale date, location, size, land to building ratio, age, clear ceiling height and office space. Salisbury estimated the subject had an indicated value under the sales comparison approach of $30.00 per square foot of gross building area or $17,100,000, rounded.

The witness testified that at the time of the report a later sale of the subject property was not available.[2] He testified if the sale was available he would have addressed it in the report. He did not consider the sale of the subject to be arm's length because with the sale went the lease to Mars. He testified that the subject was built to suit and would have had to have a long-term lease, although he didn't have the numbers for the term of the lease.

In reconciling the two approaches Salisbury stated within the report some weight was given the income approach and considerable weight was given the sales comparison approach. Salisbury's final estimate of value was $17,100,000 as of January 1, 2006.

Under cross-examination Salisbury testified he was not a designated member of the Appraisal Institute. Salisbury testified Property Tax Services of Illinois, Inc. was his client. He further

[2] Evidence subsequently presented by the intervenor disclosed the subject sold in August 2008.

testified that his fee was not conditioned upon the taxpayer receiving a reduction in their assessment. He testified that when he first does an initial review before he is retained as an appraiser he normally gives the client a broad range of value for the subject property. He explained he provides a potential client with a fee quote, which is a bid letter, stating what the fee would be to do an appraisal and a value range based on the information and the data banks within his office. The witness testified that in the alternative he would send a letter explaining that based on the value range it would be of no use for the client to hire him and, therefore, he could not do the appraisal.[3]

Salisbury was questioned about the definition of market value in the letter of transmittal dated May 21, 2007 that is attributed to the Uniform Standards of Professional Appraisal Practice. He was shown a copy of page 4 from the Uniform Standards of Professional Appraisal Practice and Advisor Opinions 2006 Edition, marked as Intervenor's Exhibit D, and agreed it did not have such a definition of market value. Salisbury did not know whether his citation to the Code of Federal Regulation on page 12 of his report was incorrect.

Salisbury testified that the map on page 7 of his report did not depict the proper location of the subject property. Salisbury also explained that the data on pages 19 through 22 of his appraisal regarding area and city analysis was from a State of Illinois agency. This section of the appraisal contained numerous misstatements about Manteno. Salisbury also agreed page 30, third paragraph, last sentence describing the subject as a manufacturing plant was an error.

Salisbury agreed that his only actual rental was constructed in 1966, is half the size of the subject and was located in Hazelwood, Missouri. Only three rental listings were located in Illinois with two being located approximately 100 and 250 miles from the subject. Salisbury's rental listing #2 was the same property as his comparable sale #11. On page 38 of his report Salisbury determined rental listing #2 had an overall adjustment of equal; however, on page 69 of his report he gave a positive adjustment to sale #11. Salisbury also agreed his statement on page 38 that the rentals were leased fee estates was in error because only one was rented.

With respect to the vacancy rate of 10%, Salisbury testified he did not prepare a study for the subject's area. Salisbury testified that he developed the capitalization rate using market extraction. He further agreed that the sales used to extract the capitalization rate and the wording in the instant appraisal was the same as used in two other appraisals even though the buildings differed in size, use and the effective dates of the appraisals were not the same. The witness also agreed that in extracting the capitalization rate only five comparables had actual leases and actual sales prices with the remaining properties being rental listings, asking prices or a combination of both. Salisbury also testified that the sales prices and rentals of properties on the I-55 corridor north of Joliet are higher than in the Kankakee area. With respect to Salisbury's capitalization rate comparable #8, testimony disclosed that Alpine Bank obtained a Sheriff's Deed in September 2002 for a price of $1,500,000 and sold the property in November 2003 for a price of $1,650,000.

[3] At the hearing the intervenor submitted Intervenor's Exhibit B, a portion of a transcript from a hearing before the Property Tax Appeal Board from another appeal, to impeach Salisbury's testimony regarding whether his fee is contingent on valuing a property within a particular range. The Board finds the testimony in both matters is consistent.

With respect to the comparable sales approach Salisbury testified he could make adjustments for freezer space, refrigerator space and other types of climate control space but he could not make those adjustments with respect to those facilities located along the I-55 corridor north of Joliet. Salisbury agreed that his comparable sale #1 was located in Manteno and had freezer space. This property sold most per square foot but he did not rely upon the sale. Sale #2 was located in Memphis, Tennessee, with a freezer building that was built in 1966. Salisbury stated in his report the refrigerated space was removed and converted to conventional warehouse space after the sale. Salisbury agreed sale #3 occurred six years before the assessment date. Salisbury agreed sale #4 was located in a suburb of Des Moines, Iowa. Sale number 6 was located in Lincoln, Nebraska, and was reported to have sold in December 2002 for a price of $3,675,000. Salisbury was not aware of any purported sale of this property that allegedly occurred in August 2006 for a price of $5,850,000 as referenced in Intervenor's Exhibit M. Salisbury testified that sale #7 was located approximately 347 miles from the subject property. The witness testified sale #8 was located approximately 327 miles from the subject property. Salisbury agreed sale #9 was significantly older than the subject building. Salisbury testified sale #10 was located approximately 740 miles from the subject property and was in excess of 1,000,000 square feet of building area. Sale #11 was located 512 miles from the subject property. Salisbury agreed that he had not seen most of the sales used in the report.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $8,928,099 was disclosed. The subject's assessment reflects a market value of $26,651,042 using the 2006 three year median level of assessments for Kankakee County of 33.50%. Kankakee County Assistant State's Attorney Teresa Kubalanza stated that the board of review had submitted an appraisal prepared by Andrew Brorsen in support of its contention of the correct assessment. She stated the intervenor submitted the same appraisal and the board of review was deferring to the intervenor to present the appraisal.

Manteno Community Unit School District No. 5, intervenor, submitted a narrative appraisal prepared by Andrew Brorsen of Brorsen Appraisal Service, P.C., Kankakee, Illinois in support of its contention of the correct assessment of the subject property. Brorsen estimated the subject property had a market value of $28,000,000 as of January 1, 2006. Based on the appraised value the school district requested the subject's assessment be increased to $9,332,400 to reflect the appraised value.

The school district called Brorsen as its witness. Brorsen has been an appraiser for 37 years and has the Member of the Appraisal Institute (MAI) designation and is a State of Illinois Certified General Real Estate Appraiser. Brorsen is a certified instructor for the Uniform Standards of Professional Appraisal Practice (USPAP). Brorsen testified he has appraised one or two distribution warehouses in the same market area as the subject property. He further testified he has appraised over 100 industrial properties.

Brorsen testified USPAP did not have a definition of market value on January 1, 2004 and January 1, 2006.

The school district's appraiser identified Intervenor's Exhibit No. 1 as the appraisal report he prepared on the subject property. The witness testified he personally inspected the subject property on April 17, 2008. He was provided a tour of the facility in which measurements were

taken and he was shown building or architectural plans. He also obtained information from the Manteno Township Assessor's Office, the Kankakee County Assessor's Office, the Recorder's Office and GIS information on-line.

Brorsen was of the opinion the subject property competes with properties throughout Kankakee County and the adjacent counties of Will and Cook. The witness explained the subject property is located outside the city limits of the Village of Manteno. The witness explained the subject is located adjacent to the Illinois Diversatech Campus (IDC), which is an industrial park. He was of the opinion that this has a positive impact because the subject enjoys all the benefits of being in an industrial park even though it is adjacent to the park.

The witness testified the subject is used as a distribution warehouse for Mars Candies. He was of the opinion the subject had 50.11 acres of land and approximately 567,000 square feet of building area. He calculated the subject had approximately 12,180 square feet of office space, which was adequate for a distribution warehouse. He further testified the subject has locker rooms, a sprinkler system, a security system, perimeter fencing and rail service. The appraiser testified the subject has a ceiling height of 41 feet and about 80 truck dock doors. Brorsen also indicated the subject is climate controlled with two main bays maintained at 70 degrees and one section of cooler space maintained at 40 degrees. Brorsen was of the opinion the climate control features enhance the value of the subject. He further stated the subject was approximately seven years old and was in good condition.

Brorsen testified he appraised the fee simple interest and the highest and best use of the subject as improved was its present use as a distribution warehouse. Brorsen testified he estimated the subject had a market value of $28,000,000 as of January 1, 2006. Subsequent to completion of the appraisal Brorsen became aware the subject sold in August 2008 for a price of $33,450,000. He identified Intervenor's Exhibit No. 2 as the Illinois Real Estate Transfer Declaration (PTAX-203) associated with the sale. The witness stated the transfer declaration did not indicate there was any personal property included in the purchase price.

Brorsen developed the three approaches to value in estimating the market value of the subject property. The first approach to value developed by the appraiser was the cost approach. The witness was of the opinion the subject improvement was relatively new and the cost approach was appropriate. The initial step was to estimate the value of the land using 8 comparable land sales that ranged in size from 3.94 to 27.42 acres. The comparables sold from March 2002 to September 2005 for prices ranging from $125,000 to $1,233,900 or from $17,171 to $45,000 per acre. The report indicated the comparables had adjusted prices ranging from $31,562 to $52,655 per acre. The appraiser estimated the subject land had a market value of $40,000 per acre or $2,004,400.

The appraiser estimated the replacement cost new of the improvements using the Marshall Valuation Service. The witness testified the base cost was selected from Section 14 for a Class C building with average to low quality. He added components for heating and cooling, the sprinkler system, a story height multiplier, a floor area-perimeter multiplier, a current cost multiplier, a local multiplier and an entrepreneurial profit to arrive at a final cost estimate of $56.54 per square foot of building area and a total building cost new of $32,058,326. To this amount the appraiser added $4,833 for lump sums to arrive at a total replacement cost new of

$32,063,159. Adding the site improvements resulted in a replacement cost new estimate of $33,909,141. The witness was of the opinion the subject suffered from no functional and no economic obsolescence. He calculated physical depreciation for the building improvements using the age/life method using an age of seven years and a total life of 40 years resulting in 17.5% depreciation or $5,611,053. The appraiser also calculated depreciation for the site improvements of $431,026. After deducting depreciation and adding the land value resulted in an estimated value under the cost approach of $29,872,000, rounded.

The next approach to value developed by the appraiser was the income approach to value. The appraiser estimated the market rent using eight rental comparables located in Romeoville, Bolingbrook and Manteno, Illinois. The report described six comparables as distribution warehouses and two comparables as light manufacturing climate controlled buildings. The comparables were located in buildings with rentable areas ranging from 57,600 to 541,123 square feet. The comparables were from 37.5% to 100% leased with rental rates ranging from $3.40 to $5.52 per square foot of building area. The report indicated that the distribution warehouses located in Will County were not reported to have climate control space and were adjusted upward. The report indicated most emphasis was given to rentals 7 and 8, located in Kankakee, which exhibit similar features to the subject improvement. These two comparables were light manufacturing buildings with 57,600 and 98,560 square feet of building area, respectively. Based on this data the appraiser was of the opinion the subject had a market rent of $4.25 per square foot of building area resulting in a potential gross income of $2,409,635. The report further indicated that using a five year lease and estimating the subject would take six to nine months to lease, the vacancy rate would be 10% to 15%. Using a ten-year lease the subject would have a vacancy rate of 5% to 7.5%. The appraiser chose to use 5% as the subject's vacancy rate. Deducting the loss in rent due to vacancy from the potential gross income resulted in an effective gross income of $2,289,153. In estimating management expenses the school district's appraiser stated in the report that typical management expenses are between 3% and 7% of effective gross income. The appraiser used a management fee of 3%. The appraiser also deducted 1% of effective gross income for operating expenses and 2.5% of effective gross income for reserves. After making these deductions the appraisal report indicated the subject had a net income of $2,392,165, which was in error.

The school district submitted Intervenor's Exhibit 1-A, which included corrected pages 2, 34, 37, 40, 44 and 46 of Brorsen's appraisal. The exhibit also included data for Brorsen's rentals 1 through 6. During testimony the appraiser testified the corrected net income should be $2,140,358 as shown on page 34 of Intervenor's Exhibit 1-A.

The final step under the income approach was to estimate the capitalization rate used to capitalize the subject's net income. Using the mortgage equity technique the appraiser estimated a capitalization rate of 8.74%. The appraiser indicated in the report that market surveys reported overall capitalization rates during the 4th quarter of 2005 ranging from 5.50% to 9.0% with a quarterly average of 7.29%, which was similar to the 3rd quarterly average of 7.57%. Brorsen was of the opinion this supported the mortgage equity analysis. The appraiser did not utilize the market extraction method to estimate the capitalization rate. In the appraisal the school district's witness utilized a capitalization rate of 8.74% to arrive at an estimated value under the income approach of $27,383,000. During the hearing the witness explained this was in error due to the use of the incorrect net income. Using the corrected estimated net income resulted in an estimate

of value under the income approach of $24,500,000 as shown on page 37 of Intervenor's Exhibit 1-A.

The witness testified that in most cases he was not able to verify some of the terms of the rental data associated with the first six comparables. During the hearing the appraiser testified that the rental comparable sheets for rentals 1 through 6 were not included in the appraisal report marked as Intervenor's Exhibit No. 1. The appraiser selected rental comparables 7 and 8 because they were two local rentals with climate control space. Rentals 1 through 6 were distribution warehouses like the subject with rentals 1 through 3 being similar in size. The witness testified the income approach provided supportive weight to his conclusion of value.

The final approach to value developed by Brorsen was the sales comparison approach. The witness testified he located four local sales that he did not perform a comparison analysis on because of the differences in size from the subject. The appraiser then expanded his search to include adjacent Will County where he located ten comparable sales located along the I-55 corridor and I-57. The comparables were located in University Park, Joliet and Romeoville, Illinois. The comparables were described as being composed of eight distribution warehouses and two manufacturing buildings with some warehouse area. The comparables ranged in size from 405,844 to 541,123 square feet of building area and in age from one to nine years old. The comparables had sites ranging in size from 18.28 to 37.47 acres with land to building ratios ranging from 1.95:1 to 3.28:1. The comparables had office space ranging from 1.0% to 3.0% of building area and wall heights ranging from 24 to 32 feet. The sales occurred from July 2004 to December 2006 for prices ranging from $13,125,000 to $63,600,000 or from $31.87 to $122.81 per square foot of building area, including land. Excluding comparable #1, the sales prices ranged from $13,125,000 to $24,250,000 or from $31.87 to $57.00 per square foot of building area, land included. Using these sales the appraiser estimated the subject had a market value of $50.00 per square foot of building area, including land.

During the hearing the appraiser testified the table on page 40 of Intervenor's Exhibit No. 1 misstated ages of comparables #6 and #7. The corrected ages were 3 and 2 years, respectively.

The witness further testified his comparable sale #1 was reported to include $16,000,000 in personal property. If this is deducted the price of the building was reduced to $91.00 per square foot of building area, land included. The witness testified comparable sale #1 was climate controlled. Brorsen further testified the seller reported this sale had a capitalization rate of 7½%. Brorsen was not able to verify the net rent or the rental terms but working backwards from the sale price and capitalization rate he calculated a rent of $9.21 per square foot. The witness testified comparable sale #1 was located in University Park, which is the next to anindustrial market north of the subject along I-57, approximately 10 miles from the subject.

The witness testified he viewed all the comparables and the comparables located in Joliet and Romeoville/Bolingbrook are located from approximately 30 to 35 miles from the subject property. The witness further testified he placed most emphasis on sales #5 and #9, which sold in November 2005 and August 2004 for unit prices of $48.48 and $43.15 per square foot of building area, including land.

In reconciling the three approaches to value, Brorsen stated the cost approach sets the upper level of value indications, the income approach was given supportive weight and the sales comparison approach was given most emphasis. Brorsen estimated the subject property had a market value of $28,000,000 as of January 1, 2006.

Under cross-examination Brorsen testified the supply/demand analysis on page 17 of his report was from Chris Curtis, a local industrial broker. His report indicated the vacancy level considers only that space that is being offered by brokers. The witness agreed there may be some space not offered by brokers not accounted for in the survey.

Under the land sales data on page 22 of his appraisal the witness agreed only three were located in Manteno with the last sale occurring in March 2003. Using these three sales Brorsen agreed there was a size-to-price regression.

With respect to the rental data contained in Intervenor's Exhibit 1-A, Brorsen indicated the Lessee was stated to be "confidential" for rental comparables 1 through 6. For each of these rental comparables Brorsen also indicated as "unknown" the commencement, expiration, length of term and options. Brorsen also agreed that only portions of rentals 1, 4 and 5 were leased. Brorsen also agreed that his report stated most emphasis was given rental comparables 7 and 8. The witness agreed that rental comparable 7 was built to suit and the lease expired in 2003. This building contained 57,600 square feet compared to the subject's estimated size of 567,000 square feet. Brorsen's rental comparable 8 has 98,560 square feet. On page 38 of his appraisal, Brorsen listed rental comparables 7 and 8 as sales in Kankakee that he chose not to use because of the amount of adjustments he would have to apply.

With respect to the comparable sales used in the appraisal, Brorsen agreed that nine of the ten comparables were leased at the time of sale. The report indicated that comparable sales 1, 5, 6, 7, 8, 9 and 10 were 100% leased or occupied at the time of sale. The report further indicated that comparable sales 3 and 4 were 43.4% and 50% leased for $2.95 and $3.85 per square foot of building area, respectively; the appraiser had no information on the remaining space in these comparables. Brorsen agreed that a purchaser may be purchasing an income stream on these properties.

Brorsen testified that there was insufficient evidence to support a reliable adjustment between the I-57 and I-55 sub-markets of Will County and Manteno. The witness also testified that sale #2 sold in June 2003 and again in November 2006 indicating an 8.6% annual increase. He testified he did not examine whether there had been changes to the property between the sale dates. The appraiser relied on CoStar Comps for the data used on the comparable sales and he did not personally verify with any of the parties or their agents the terms of the sales.

The appraiser agreed that he valued the subject as fee simple unencumbered. He further agreed that a property is encumbered with a lease at the time of sale if a lease is in place. Brorsen further stated based on the information he was able to confirm leases were in place at the time nine out of ten of his comparable sales sold. He stated the sales were investment type properties. Attributing the rental reported for the portions of comparable sales #3 and #4 that were leased at the time of sale, Brorsen calculated capitalization rates of 9.17% and 11.0%, respectively.

Brorsen assumed the subject was built to suit and that there was a relationship between the company that operates it and Mars Candy Company. With respect to the 2008 sale of the subject reflected on Intervenor's Exhibit #2, Brorsen indicated he had not talked to the buyers or sellers associated with the sale. He further testified that the property was still occupied in the same manner as it was prior to the sale.

With respect to the land sales on page 22 of his report and the adjusted prices quoted on page 23 of the report, Brorsen agreed the report does not contain the adjustment process, the mean, median and mode of the sales.

Brorsen testified he used the age/life method to determine depreciation which is straight line depreciation. He testified his experience was that industrial properties depreciate on a straight line basis. He also stated that if nothing is done to the property its useful life would be done at the end of 40 years.

The witness further indicated he inspected the exterior of his comparable sales. The witness also agreed that the largest rental comparables, with 541,123 and 453,568 square feet, that were 100% leased had rentals of $3.45 and $3.40 per square foot of building area, respectively.

After hearing the testimony and considering the evidence the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports the assessment of the subject property.

The appellant argued overvaluation as the basis of the appeal. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33⅓% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to 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). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds that the appraisal submitted on behalf of the Kankakee County Board of Review and Manteno Community Unit School District No. 5 is supportive of the market value reflected by the assessment of the subject property and no change is justified.

On this record the Board finds the appraisal prepared by Brorsen and submitted by the Kankakee County Board of Review and Manteno Community Unit School District No. 5 is superior to that prepared by Salisbury that was submitted on behalf of the appellant. The Board finds the data used by Brorsen was superior to that used by Salisbury. Additionally, the Board finds Salisbury's appraisal had errors which tended to undermine the credibility of the report.

Initially, the Board finds the subject building was approximately seven years old as of the assessment date. Of the two appraisers, only Brorsen developed the cost approach to value. Under the facts of this appeal, particularly the age of the subject building, the Board finds the inclusion of the cost approach adds some credence to Brorsen's conclusion of value, even though he stated this approach sets the upper limit of value. In reviewing Brorsen's cost approach to value the Board finds he appears to have overstated the land value at $40,000 per acre. There were three land sales located in Manteno that sold for unit prices ranging from $17,171 to $32,614 per acre. Although these were older sales and the parcels were significantly smaller than the subject site, the Board finds that these were indicative of land values in the subject's immediate area. The two sales that sold most proximate in time to the assessment date were located in Kankakee and were smaller than the subject with 6.75 and 7.18 acres. The sales occurred in June 2005 and September 2005 for prices of $36,393 and $30,000 per acre, respectively. The Board finds these two sales also indicate Brorsen's estimated land value of $40,000 per acre was excessive. In conclusion the Board finds Brorsen's inclusion of the cost approach to value gives some credibility to his conclusion of value.

With respect to the income approach to value the Board finds Brorsen's use of comparable rentals located in closer proximity to the subject than those used by Salisbury were superior in estimating market rent. Ultimately Brorsen estimated the subject had a market value under the income approach of $24,500,000, which is approximately $2,151,000 below the market value reflected by the subject's assessment.

With respect to the sales comparison approach the Board again finds Brorsen's use of sales located within 35 miles of the subject property were superior to the comparable sales selected by Salisbury that were located throughout the United States. Eight of the comparable sales selected by Brorsen were described as distribution warehouses. Additionally, the comparables were relatively similar to the subject in age, size, percent of office area, ceiling height and land to building ratio. Excluding sale #1, which seems to be an outlier, the comparables had a relatively tight price range from $31.87 to $57.00 per square foot of building area, including land. The Board finds, however, that nine of the ten comparables selected by Brorsen were leased at the time of sale. The fact that the comparables were leased at the time of sale would indicate the purchase prices may be reflective of more than just the real property and negative adjustments would be needed. Nevertheless, the Board finds the sales contained in Brorsen's appraisal support the subject's assessment which reflects a market value of approximately $26,651,042 or $47.00 per square foot of building area, including land, using the 2006 three year median level of assessments for Kankakee County of 33.50%.

The record contained evidence that the subject sold in August, 2008. However, the Board gave this evidence no weight in determining the subject's assessment as of January 1, 2006. The purported sale of the subject occurred approximately 32 months after the assessment date at issue. Additionally, Salisbury testified that the subject was built to suit and with the sale went a long term lease to Mars, which calls into question the arm's length nature of the transaction or whether the price was indicative of the market value of the real estate. Based on this record the Board gave no weight to the August 2008 sale of the subject in arriving at its conclusion of the correct assessment as of January 1, 2006.

In conclusion, after considering the respective estimates of value developed by Brorsen using the cost approach, income approach and the sales comparison approach, the Board finds the assessment of the subject property as established by the Kankakee County Board of Review is correct and no change is justified.

2011 INDUSTRIAL CHAPTER
Index

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