State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2012

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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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State of Illinois
PROPERTY TAX APPEAL BOARD

Wm. G. Stratton Office Bldg.
401 South Spring St., Rm. 402
Springfield, Illinois 62706
(T) 217.782.6076
(F) 217.785.4425
(TTY) 217.785.4427

DONALD R. CRIST
Chairman

LOUIS G. APOSTOL
Executive Director

Suburban North Regional Office
9511 W. Harrison St., Suite LL-54
Des Plaines, Illinois 60016
(T) 847.294.4121
(F) 847.294.4799

2012 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.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.

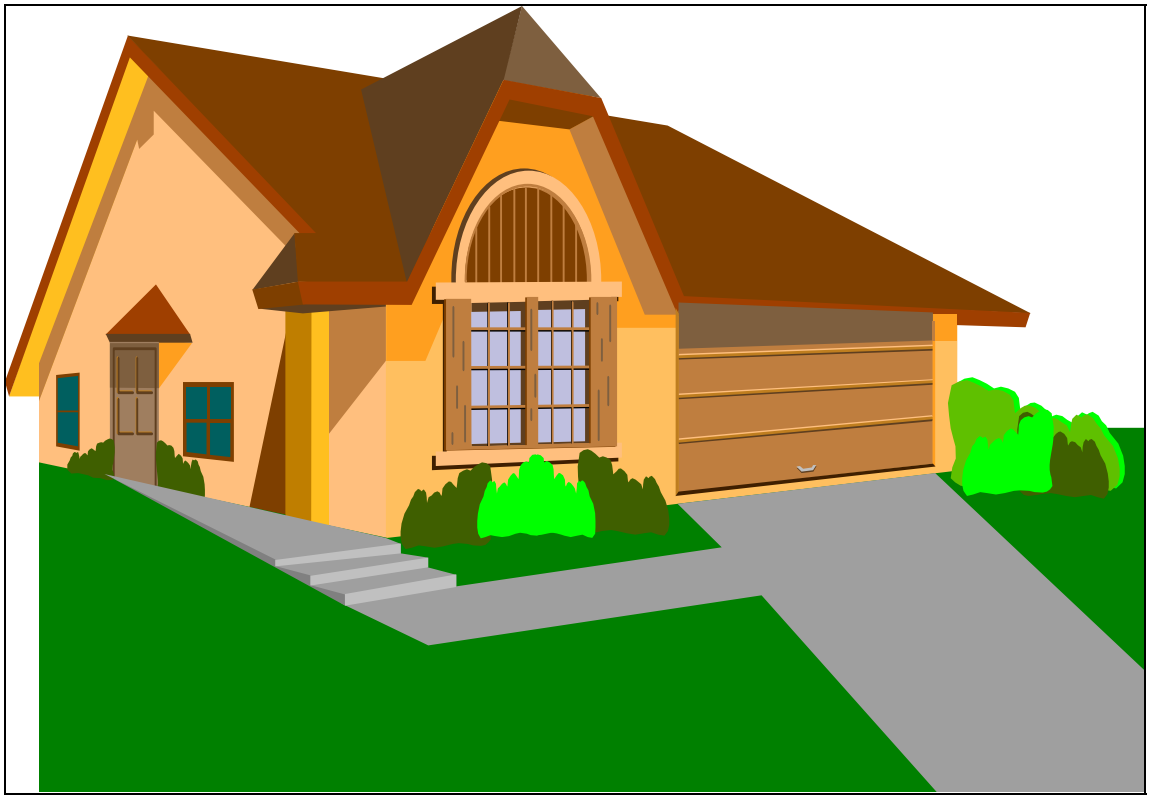
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial 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 2012 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

2012 RESIDENTIAL DECISIONS



PROPERTY TAX APPEAL BOARD
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2012 RESIDENTIAL CHAPTER

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APPELLANT:	**John Albee**
DOCKET NUMBER:	**09-00029.001-R-1**
DATE DECIDED:	**March, 2012**
COUNTY:	**McLean**
RESULT:	**Dismissed**

The subject property consists of a residential property located in Normal Township, McLean County, Illinois.

FACTS

The appellant, through legal counsel, submitted an appeal petition before the Property Tax Appeal Board. The appeal petition was received by the Board on November 20, 2009. The envelope containing the appeal petition depicts a postmark date of November 19, 2009, from the United States Post Office. The basis of the appeal was market "assessment equity." In section 2c of the appeal petition, the appellant shows the Assessor allocated a $10,840 land assessment, no improvement assessed value, but a total assessment of $60,230 for the subject property. On the appeal form, the appellant provided no assessed values for the subject's land, improvement or total assessment as established by the board of review. The appellant requested subject's land assessment be reduced to $10,000; no value was attributed to its improvement assessment; but a total assessment of $48,000 was requested.

After reviewing the documentation, the Property Tax Appeal Board determined that the information submitted for the appeal was incomplete. By letter dated January 19, 2011, appellant's counsel was advised of the incomplete appeal petition. Counsel was advised to complete those items identified on the attached incomplete checklist and that those items must be provided to complete the filing. Counsel was advised to return the completed items within 30 days of the date of the correspondence. These items include:

1. Must supply two copies of your Board of Review original decision and re-review (if applicable).
2. Assessment placed on the parcel by the Assessor and Board of Review must be provided for Land, Improvement, and Total.
3. Appellant's claim must be provided for Land, Improvement, and Total.
4. The basis of your appeal must be checked. Evidence submitted should support this claim. (See Back of this form for types of evidence). A hand written notation states: "Recent Sale NOT Assessment Equity??"

On February 22, 2011, the Property Tax Appeal Board received the completed residential appeal form for the subject property. Pursuant to the incomplete notice, appellant's counsel supplied the subject's land, improvement and total assessment by the assessor and board of review, as well as the assessment claimed by the appellant. Counsel also indicated the subject's recent sale was the basis of the appeal. Additionally, counsel provided the final decision regarding the subject property issued by the McLean County Board of Review. The decision depicts the Date of Notice of February 3, 2010. The notice indicates the subject property had an assessment prior to

board of review action of $60,230. The subject's assessment was reduced to $56,633 by the board of review based on comparable sales. The notice also states:

> **This is a final decision of the Board of Review, subject only to local and State equalization (multiplier).** You may appeal this decision to the Property Tax Appeal Board (PTAB) by filing a petition for review with the PTAB within 30 days after this notice is mailed to you or your agent, or is personally served upon your agent. You must file your petition for review with the PTAB on the appropriate form. These forms can be obtained from the BOR or PTAB at the addresses shown below or be down-loaded from the Internet at **WWW.PTABIL.COM**.

By letter dated March 30, 2011, the appellant was notified that all information necessary to complete the filing has been received. In addition, by letter dated March 30, 2011, the McLean County Board of Review was notified of the appeal and was given until June 28, 2011 to submit evidence or a written request for an extension of time to submit evidence.

On April 5, 2011, the Mclean County Board of Review filed an objection with the Property Tax Appeal Board pursuant to section 1910.40(b) of the rules of the Property Tax Appeal Board. (86 Ill.Adm.Code §1910.40(b)). The board of review argued the Property Tax Appeal Board does not have jurisdiction over the subject matter of this appeal because the taxpayer failed to file the appeal within 30 days of the postmark date of the final decision of the board of review. The board of review argued its decision was dated and mailed February 3, 2010, allowing the appellant until March 5, 2010, to file an appeal with the Property Tax Appeal Board. The board of review argued the appellant filed this appeal two months before the filing period began. In support of the objection, the board of review cited sections 1910.25(b) and 1910.30(a) of the Property Tax Appeal Board's rules. (86 Ill.Adm.Code §1910.25(b) and §1910.30(a)). The board of review argued the appeal was untimely filed. Therefore, the board of review requested the appeal be dismissed.

By letter dated September 20, 2011, appellant's counsel was notified of the board of review's request to dismiss the appeal due to the Property Tax Appeal Board's lack of jurisdiction. Counsel was given fifteen (15) days for a response.

By letter dated September 23, 2011, counsel responded to the dismissal request. Counsel argued the decision of the McLean County Board of Review occurred on October 26, 2009. Counsel attached a copy of the letter dated October 15, 2009, which scheduled the hearing before the McLean County Board of Review on October 26, 2009. Counsel claimed the decision of the McLean County Board of Review was announced at the hearing[1]. Thus, counsel claims the taxpayer then filed his complaint with the Property Tax Appeal Board within 30 days of the decision of the board of review. Counsel claimed the fact that the board of review did not publish its decision until February 3, 2010, is not controlling. Counsel argued it is unfair to a taxpayer to know what the decision is and then have the board of review then decide to officially announce the decision a second time several months later. Furthermore, counsel argued there is

[1] The Property Tax Appeal Board takes notice that in the appellant's original appeal petition, counsel did not disclose any board or review action or that the board of review lowered the subject's assessment to $56,633.

no prejudice to McLean County in this case by having the complaint filed within 30 days of the decision of the board of review. Counsel argued the complaint with the Property Tax Appeal Board was not filed before the decision of the McLean County Board of Review but rather within 30 days thereafter.

ANALYSIS

After reviewing the written documentation filed in this matter, the Property Tax Appeal Board finds that this appeal was not filed within 30 days of the written notice of the decision of the McLean County Board of Review as required by section 16-160 of the Property Tax Code (35 ILCS 200/16-160) and sections 1910.30(a) and 1910.60(a) of the Property Tax Appeal Board's rules. (86 Ill.Adm.Code §1910.30(a) & §1910.60(a)). Rather, this appeal was improperly filed on November 18, 2009, over two months prior to the official written notification date of February 3, 2010.

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

> [F]or all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, or any taxing body that has an interest in the decision of the board of review or board of appeals on an assessment made by any local assessment officer, may, (i) in counties with less than 3,000,000 inhabitants **within 30 days after the date of written notice of the decision of the board of review** (emphasis Added) . . . appeal the decision to the Property Tax Appeal Board for review. (35 ILCS 200/16-160).

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

> 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**. (Emphasis Added). (86 Ill.Adm.Code §1910.30(a).

Section 1910.60(a) of the rules of the Property Tax Appeal Board provides in part:

> Any taxpayer or owner of property dissatisfied with a decision of the board of review as such decision pertains to the assessment of his or her property **may appeal that decision by filing a petition with the Property Tax Appeal Board within 30 days after the postmark date or personal service date of written notice of the decision of the board of review or the postmark date or personal service date of the written notice of the application of final, adopted township equalization factors by the board of review.** (Emphasis Added). (86 Ill.Adm.Code §1910.60(a)

Based on this review the Property Tax Appeal Board finds this appeal was not timely filed from the written decision of the board of review so as to confer jurisdiction. The Board finds the

appellant's argument that the board of review announced its final decision at the hearing date of October 26, 2009, and that the February 3, 2010, final decision and notification date issued by the Mclean County Board of Review is not controlling to be wholly without merit. A party appealing an assessment to the Property Tax Appeal Board must comply with the aforementioned filing provisions outlined in the Property Tax Code and Illinois Administrative Code, which were not followed in this case. Therefore, the Property Tax Appeal Board hereby dismisses this appeal on the basis of not being timely filed resulting in a lack of jurisdiction.

APPELLANT:	**Richard Dickinson**
DOCKET NUMBER:	**09-04101.001-R-2**
DATE DECIDED:	**August, 2012**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property is improved with a two-story single family dwelling of frame construction that contains approximately 3,000 square feet of living area. The dwelling is approximately 4½ years old. Features of the home include a full basement, two fireplaces and a two-car attached garage. The subject has a 7,500 square foot site and is located in Elmhurst, York Township, DuPage County.

The appellant filed the appeal challenging the subject's assessment for the 2009 tax year based on a contention of law that the subject property was entitled to a model home exemption. The appellant submitted a written statement with no citations to either the Property Tax Code or case law in support of his position. In the written statement the appellant asserted that the subject property was occupied by his family from October 15, 2005 to approximately June 30, 2010. He asserted that at the end of June 2010 he and his family purchased and moved to a different home. He explained that from the middle of 2010 his construction company used the subject property as a model home with the purpose of trying to sell other new construction projects. He argued that the board of review interpreted the model home statute to preclude the preferential assessment once a property has been used as a residence. The appellant argued that if it was the intent of the statute to provide tax relief to builders, current use is more important than what the building was used for in the past. The appellant did not otherwise challenge the subject's assessment. Based on this argument the appellant requested the subject's improvement assessment be reduced to $0.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $313,810 was disclosed. The board of review submitted an Addendum to Board of Review Notes on Appeal contending that the appellant failed to provide any evidence to lower the subject's assessment. The board of review submitted a copy of an Inquiry Screen For Assessment Year 2010 printout stating the home does not qualify for the [model home] exemption due to the home being owner occupied. The board of review also indicated on the "Board of Review Notes on Appeal" form that the property sold in March 2010.

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

The basis of the appellant's appeal is a contention of law regarding the applicability of the model home exemption to the subject property. The Board finds the appellant did not cite any provision of the Property Tax Code in support of his argument. The Board takes notice that section 10-25 of the Property Tax Code (35 ILCS 200/10-25) discusses the model home assessment. Section 10-25 of the Code reads in part as follows:

> Sec. 10-25. Model homes, townhomes, and condominium units. If the construction of a single family dwelling is completed after December 29, 1986 or the construction of a single family townhome or condominium unit is completed after the effective date of this amendatory Act of 1994, and that dwelling, townhome, or condominium unit **is not occupied as a dwelling** (emphasis added) but is used as a display or demonstration model home, townhome or condominium unit for prospective buyers of the dwelling or of similar homes, townhomes, or condominium units to be built on other property, the assessed value of the property on which the dwelling, townhome, or condominium 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.** (Emphasis added.) . . .
>
> . . . 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. The appellant asserted in his written statement that he and his family occupied the subject as a dwelling from October 15, 2005 to approximately June 30, 2010. The Board finds the appellant's admission that the subject was occupied as a dwelling as of January 1, 2009 and during the entire tax year 2009 precludes the property from qualifying for the model home exemption under the provisions of section 10-25 of the Property Tax Code.

The appellant provided no other authority to support his assertion that the property qualified for the model home exemption nor did he otherwise challenge the subject's assessment.

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

APPELLANT:	**John Dimas**
DOCKET NUMBER:	**09-04319.001-R-1**
DATE DECIDED:	**October, 2012**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property is improved with a one and one-half story single family dwelling of frame exterior construction that contains 1,608 square feet of living area and was built in 1921. Features of the home include central air conditioning, a full unfinished basement and a 324 square foot detached garage. The subject has a 9,567 square foot site which is entirely in FEMA Zone A flood plain. The subject property is located in Wheaton, Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through counsel, claiming overvaluation as the basis of the appeal. The first witness called by the appellant was Edward V. Kling. Kling is a Certified General Appraiser licensed in Illinois.

Kling testified that he prepared an appraisal of the subject property. The purpose of the appraisal was to estimate the market value of the subject property as of January 1, 2009. Kling provided direct testimony regarding the appraisal methodology and final value conclusion. Kling testified that the subject property is in a poor location and is challenged from a residential standpoint. He also stated that adjacent to the subject property is an automotive repair shop with the side yard being littered with parked cars and automotive debris. In regards to the flooding issue, Kling testified that he has personally seen the subject property's yard flooded and the basement having four to six inches of water as it was being pumped out. He also stated that he suspects the basement to have mold issues. The appraiser relied on the sales comparison approach to value and indicated the subject property has an estimated fair market value of $135,000 as of January 1, 2009.

Under the sales comparison approach to value, the appraiser utilized three suggested comparable sales with varying degrees of similarity when compared to the subject. Kling reported that his three comparables were not in the flood plain. They sold from February 2008 to September 2009 for prices ranging from $168,000 to $205,000 or from $73.94 to $158.18 per square foot of living area, including land. The appraiser adjusted the comparables for differences when compared to the subject in location, size including land to building ratios, rooms including bathrooms, construction, quality, age, condition, utility and various amenities, resulting in adjusted sales prices ranging from $142,800 to $162,450. Based on the adjusted sale prices, the appraiser estimated the subject property had an estimated fair market value of $135,000 as of January 1, 2009. Based on this evidence, the appellant requested a reduction in the subject's assessment.

Under cross-examination Kling testified that the property was located in the flood plain but possibly in the flood way. Kling also stated that he did not have any documentation showing that

the property was in the flood way. Kling was also questioned about mold in the home and that no documentation was submitted to support the statement of possible mold.

The appellant called as its second witness Todd R. Barron. Barron is a tax consultant with Barron Corporate Tax Solutions. Barron submitted a letter and other documentation from the DuPage County Economic Development and Planning Department about the subject property being located in the FEMA Zone A floodplain. This documentation had been submitted to the board of review for the board of review hearing and it had no objection to its submission to the Property Tax Appeal Board. Barron testified that the property would have to meet certain requirements if it were to be improved.

Under cross-examination, Barron did not have any of the costs associated with improvements to the property, based on its location in the flood plain.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $103,630 was disclosed. The subject's total assessment reflects an estimated market value of $311,575 or $193.77 per square foot of living area, including land, when applying the 2009 three year average median level of assessments for DuPage County of 33.26%. The board of review submitted an Addendum to Board of Review Notes on Appeal. The board of review also submitted a grid analysis marked as Exhibit #1, which was prepared by the Milton Township Assessor's Office. The assessor detailed the appellant's comparables and provided six additional comparables. Also included were copies of the property record cards for all the comparables used by the parties and a map showing the location of both parties' comparables in relation to the subject property.

The board of review called as its witness Chris Fernald, Deputy Assessor of Milton Township. Fernald testified that the appraiser's comparables are not located in the subject's neighborhood assessment code as defined by the local assessor. The assessor's office submitted information on six comparable properties to demonstrate the subject's assessment was reflective of market value. Five of the six comparables are located in the subject's neighborhood assessment code. The comparables were improved with one and one-half story or two-story single family dwellings that ranged in size from 1,104 to 1,850 square feet of living area. The comparables were of frame or brick construction that were constructed from 1887 to 1948. All of the comparables have full unfinished basements and detached garages ranging from 308 to 506 square feet of building area. Comparable 3 has central air conditioning and comparable 2 has a fireplace. The comparables are situated on lots that range in size from 4,200 to 16,100 square feet of land area. These properties sold from May 2007 to November 2008 for prices ranging from $250,000 to $406,000 or from $208.33 to $261.36 per square foot of living area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination Fernald testified that adjustments were not made for size, age or flood plain. Fernald testified that she did not know if any of the comparables submitted were adjacent to any commercial businesses. Fernald testified that they accepted the sales price without any type of adjustments. Fernald also testified that she was not sure if any of the six comparables were located in the flood plain.

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 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). 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 did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

In this appeal, the appellant submitted an appraisal estimating the subject property had a market value of $135,000 as of January 1, 2009. The appellant's appraisal witness relied on three suggested sales in estimating the market value of the subject property. The board of review provided six comparable sales in support of the subject's assessment. After reviewing the data and considering the testimony, the Board finds the testimony of the valuation witness was not persuasive. The main argument in this appeal was the location of the subject property. The first argument was that adjacent to this parcel was an automotive repair shop. The appraisal contained no adjustments for this purported external obsolescence and photographs were not submitted to depict the littering of parked cars and automotive debris. The second argument was the negative impact caused by the property being located in a flood plain. However, there was no documentation showing how the flood adjustments were calculated in the appraisal or pictures of the basement that has had frequent flooding according to the testimony of the appraiser. These two unsupported important arguments undermined the value conclusion. However, the Board will further examine the raw sales data contained in this record, including the sales in the appellant's appraisal.

The Board finds nine comparables were submitted by both parties in support of their respective positions. The Board gave less weight to comparables 1, 2 and 3 submitted by the appellant and comparable 6 submitted by the board of review for being outside of the subject's neighborhood. The Board gave less weight to comparables 3 and 4 submitted by the board of review. These sales occurred in 2007 which is less indicative of fair market value as of the subject's January 1, 2009 assessment date. The Board also gave less weight to the board of review's comparable 2 which is dissimilar in size when compared to the subject. The Board finds the remaining two comparables are more similar to the subject in location, design, size, age and features. Due to these similarities the Board gave the two comparable sales more weight. These most similar properties sold in June 2008 and September 2008 for prices of $361,250 and $406,000 or $219.46 and $226.49 per square foot of living area including land. The subject's assessment reflects a market value of $311,575 or $193.77 per square foot of living area including land, which falls below the two most similar comparable sales in the record after considering adjustments.

Based on the evidence submitted, the Board finds the appellant failed to establish overvaluation by a preponderance of the evidence. 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:	**Eric Dunlop**
DOCKET NUMBER:	**09-00801.001-R-1 thru 09-00801.007-R-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**Will**
RESULT:	**No Change**

The subject property consists of a part one-story and part two-story stone and frame dwelling that contains 3,319 square feet of living area. The dwelling was constructed in 2003. Features include a full unfinished basement, central air conditioning, a fireplace and a porch. The property has 1,134 square feet of garage space that is described as "attached" or "built in". Additionally, the property has a 1,508 square foot detached garage/metal outbuilding. The improvements are situated on 34,090 square feet of land area that is made up of seven separate parcels. The subject property is located in Crete Township, Will County, Illinois.

The appellant appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted two limited appraisals of the subject property. The first appraisal was prepared by Calin Nelson, who was not present at the hearing for direct or cross-examination regarding the appraisal methodology and final value conclusion. The appraisal report conveyed an estimated market value for the subject property of $325,000 as of March 8, 2006. The two page appraisal report contained no data to support the value conclusion, such as the three traditionally accepted approaches to value.

The second limited appraisal was prepared by Gerald F. Fiskow, who was not present at the hearing for direct or cross-examination regarding the appraisal methodology and final value conclusion. The appraisal report was not signed by the appraiser. Using one of the three traditional approaches to value, the appraisal report conveyed an estimated market value for the subject property of $300,000 as of March 27, 2009.

The appraisal indentified only parcel number (improved parcel 23-15-03-204-017) as being appraised, but also listed seven lots in the legal description section. Under site comments, the report indicates:

> No adverse encroachments were observed. The subject site consists of 7 smaller lots. One (lot) functions as ingress to the other six which run north to south. A gas pipe line runs diagonally through the lot that functions as ingress to the other six and through the north 3 lots. The easement limits any use of those lots for any permanent structures. While the easement has an adverse impact on the full use of the subject's site, it should not have an adverse impact on marketability. The subject backs up to a stand of trees which should have positive market recognition.

Under the sales comparison approach to value, the appraiser utilized three suggested comparable sales and one active listing. The comparables were described as a one and one-half story dwelling, a two-story dwelling and a split-level dwelling. The dwellings are of brick and frame construction that are from 6 to 28 years old. Features have varying degrees of similarity when

compared to the subject. The dwellings are reported to range in size from 2,963 to 3,870 square feet of living area. Lot sizes ranged from 14,250 to 27,970 square feet of land area. The source of the descriptive information was not disclosed. Comparables 1 through 3 sold from May 2007 to January 2009 for prices ranging from $320,000 to $417,000 or from $82.69 to $132.42 per square foot of living area including land. Comparable 4 was listed for sale as of October 2008 for $309,900 or $104.59 per square foot of living area including land.

The appraiser made various adjustments to the comparables for differences when compared to the subject for view, room count, living area, finished basements, garage size, and ancillary features like fireplaces. Additionally, the appraiser adjusted comparables 1, 3 and 4 for date of sale or "list to sell." The appraiser also adjusted comparable 3 by -$10,800 for sale or financing concessions. The appraiser did not adjust the comparables for their smaller lots sizes or age differences when compared to the subject. The report did not contain any explanation regarding the rationale or source for the adjustment amounts. The adjustments resulted in adjusted sale or listing prices ranging from $284,602 to $340,920 or from $80.05 to $113.70 per square foot of living area including land. Based on the adjusted sale prices, the appraiser estimated the subject property had a fair market value of $300,000 or $88.26 per square foot of living area including land under the sales comparison approach.

Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect a fair market value of $285,000, which is less than both appraisal reports. The appellant explained the lower value request is based on the current economic environment and consideration for the loss in value due to the pipeline easement.

Under cross-examination, the appellant testified the existence of the pipeline "is not a major issue, but the subject parcels' land configuration may decrease its value."

At the hearing, the board of review objected to the value conclusions in both appraisal reports. The board of review argued neither appraiser was present at the hearing for cross-examination regarding the appraisal methodology and final value conclusions. The Property Tax Appeal Board reserved ruling on the objection.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject parcels' total assessment of $122,664 was disclosed. The subject's assessment reflects an estimated market value of $369,804 or $108.80 per square foot of living area including land using Will County's 2009 three-year median level of assessments of 33.17%.

In support of the subject's assessment, the board of review submitted a letter from the township assessor, property record cards, an analysis of the comparable sales used in the appellant's second appraisal report and an analysis of four additional comparable sales.

Based on property record cards, the board review pointed out the appellant's appraiser used incorrect dwelling sizes for the comparables. Comparable 3 was incorrectly described as a split level dwelling whereas its property record card and photograph depict a two-story dwelling.

The four additional comparable sales submitted by the board of review consist of one and one-half or two-story brick and frame dwellings that were built from 1991 to 2004. The comparables

have full or partial basements, one of which has 790 square feet of finished area. The comparables have central air conditioning and one or two fireplaces. Attached garages range in size from 495 to 768 square feet. The dwellings are situated on lots that range in size from 4,165 to 42,722 square feet of land area. The comparables sold from April 2006 to June 2009 for prices ranging from $180,000[1] to $420,000 or from $67.39 to $142.77 per square foot of living area including land.

The Crete Township Assessor, Sandy Drolet, was present at the hearing and provided testimony in connection with this appeal. She provided testimony regarding how the subject's assessment was calculated, dating back to 2003.

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

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

The appellant argued the subject property was overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant has not overcome this burden of proof.

The appellant submitted two appraisal reports estimating market values for the subject property of $325,000 as of March 8, 2006 and $300,000 as of March 27, 2009. The board of review submitted four suggested comparable sales to support its assessment of the subject property.

The Property Tax Appeal Board gave no weight to both appraisal value conclusions submitted by the appellant. The appellant's appraisers were not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. For example, the appraisers were not present to answer questions regarding the similarity or lack thereof of the comparables selected for comparison to the subject. The appraisers were not present to answer questions regarding the source and verification of the descriptive information for the subject and comparables. As a result, the Board hereby sustains the objection raised by the board of review at hearing.

Without the testimony of the appellant's appraisers, the Board was not able to accurately determine the credibility, reliability and validity of the value conclusions. In Novicki v. Department of Finance, 373 Ill. 342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887,

[1] Comparable 3, which sold for $180,000 or $67.39 per square foot of living area including land, had a previous sale in June 2007 for $369,900 or $138.49 per square foot of living area including land. The assessor indicated the 2009 sale was "invalid", but did not provide any further evidence that suggests the 2009 sale was not an arm's–length transaction.

450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined.

The Board, however, will further examine the raw sales data contained in this record, including the sales in the appellant's second appraisal report. The Board finds many of the comparable sales contained in the appellant's second appraisal report and the comparable sales presented by the board of review are not that particularly similar to the subject. For example, appellant's appraiser's comparables 1 and 2 are older in age than the subject. Appellant's appraiser's comparables 2, 3 and 4 have considerably less land area than the subject. Comparable listing 4 is considerably smaller in dwelling size when compared to the subject, based on the property record card submitted by the board of review. Comparables 2 and 4 submitted by the board of review sold in 2006, which are dated and not reliable indicators of market value as of the subject's January 1, 2009 assessment date. Thus, board of review comparables 2 and 4 received little weight in the Board's final analysis. Additionally, the Board finds none of the comparables submitted by the parties have a large detached garage/outbuilding like the subject. However, the Property Tax Appeal Board is statutorily bound to find the correct assessment of a property legally under appeal, regardless of the quality of the evidence.

Based on this record, the Board finds appellant's appraiser's comparable 1 sold in May 2007 for $417,000 or $132.42 per square foot of living area including land. This property is older, has a slightly smaller lot, and does not enjoy the large garage/outbuilding as the subject. This sale lends support to the subject's estimated market value of $369,804 or $108.80 per square foot of living area including land as reflected by its assessment.

Appellant's appraiser's comparable 2 sold in January 2009 for $320,000 or $82.69 per square foot of living area including land. This property is inferior to the subject. The dwelling is older; it has considerably less land area and does not enjoy the large garage/outbuilding as the subject. The Board finds this sale also lends support to the subject's estimated market value of $369,804 or $108.80 per square foot of living area including land assessment as reflected by its assessment.

Appellant's appraiser's comparable 3 sold in June 2007 for $359,912 or $119.97 per square foot of living area including land. This property is similar to the subject in age, but is slightly smaller in dwelling size. This comparable is also inferior to the subject in lot size and does not have the large garage/outbuilding as the subject. The Board finds this sale also lends support to the subject's estimated market value of $369,804 or $108.80 per square foot of living area including land as reflected by its assessment.

Board of review comparable 1 is similar to the subject in design and size, but is 10 years older, has a considerably smaller lot and does not have a large garage/outbuilding when compared to the subject. This comparable sold in November 2007 for $420,000 or $137.80 per square foot of living area including land. The Board finds this sale also lends support to the subject's estimated

market value of $369,804 or $108.80 per square foot of living area including land as reflected by its assessment.

Board of review comparable 3 is similar to the subject in design and age, but is smaller in dwelling size, has a considerably smaller lot and does not have a large garage/outbuilding when compared to the subject. This comparable sold twice. Comparable 3 sold in June 2007 for $369,900 or $138.49 per square foot of living area including land and again in June 2009 for $180,000 or $67.39 per square foot of living area including land. The subject's estimated market value of $369,804 or $108.80 per square foot of living area including land as reflected by its assessment falls between these two sale prices.

Based on this analysis, the Property Tax Appeal Board finds the appellant failed to demonstrate the subject property was overvalued by a preponderance of the evidence in this record. Therefore, no reduction in the subject's assessment is justified.

APPELLANT:	**Coventine Fidis**
DOCKET NUMBER:	**09-03158.001-R-1**
DATE DECIDED:	**August, 2012**
COUNTY:	**Lee**
RESULT:	**No Change**

The subject property consists of a vacant lot containing 1.64 acres of land area. The subject is located in Palmyra Township, Dixon, Illinois. The subject parcel was subdivided from a 6.2 acre tract of land in 1993 in accordance with the Plat Act. The appellant, also a developer and surveyor, constructed a home on an adjacent lot to the subject with the subject lot remaining vacant, and as alleged by the taxpayer, for sale. From 1993 through 2008 the subject parcel was assessed in accordance with Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). In 2009 the subject parcel was revalued and the appellant was notified by the Lee County Board of Review that the "Developer Value no longer applies."[1]

The appellant, through legal counsel, appeared before the Property Tax Appeal Board claiming the subject parcel should be classified and assessed in accordance with Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). In support of this claim, the appellant submitted a brief, a plat and a listing of lots sold or otherwise available for sale within the subject's immediate proximity. The listing (Exhibit "A") is titled "Coventine Fidis, Land Development and Management, Lots available and cost as of November 1, 2009." The subject is depicted as "Lot 1 in Twin Oaks – Part of Section 34 and 35 in Palmyra Township on Kilgore Rd."

In support of the appellant's claim, counsel argued that in accordance with Section 10-30 of the Code, the subject was 1) platted in accordance with the Plat Act; 2) the platting occurred after January 1, 1978; 3) at the time of platting the subject was in excess of 5-acres; and 4) at the time of platting the subject was vacant or used as a farm as defined in Section 1-60 of the Code (35 ILCS 200/10-30). Counsel argued that each provision of Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) had been met and the appellant continued to hold the subject property as being for sale from 1993, the date of platting, through 2009. Appellant's counsel acknowledged that no habitable structure had been built on the subject parcel and that the appellant continued to mow the subject parcel. Counsel explained that mowing the subject parcel was required by the restrictive covenants governing the subdivision which require all lots be kept free of weeds and tall growth. Counsel further argued that the appellant continued developing and subdividing over 24 lots within one-half mile of the subject with 18 of the lots having been sold. In the brief, counsel argued that the appellant had placed a "for sale" sign on or near the subject parcel, however, this was not required under Section 10-30 of the Code in order to receive the benefits and relief afforded by Section 10-30 of the Code. Based on this evidence and argument, the appellant requested the subject parcel be afforded relief pursuant to Section 10-30 of the Code.

[1] Upon request subsequent to the hearing, the board of review computed the subject's 2009 assessment depicting what the subject's assessment would have been in 2009 had the subject qualified for the "Developer's Relief" assessment afforded property in Section 10-30 of the Code.

The board of review submitted its "Board of Review Notes on Appeal" wherein a total assessment for the subject of $8,148 was disclosed. The board of review argued that the subject parcel was viewed and revalued in 2009 and it was determined that the subject parcel no longer qualified for the developer's preferential assessment. The board of review argued that during its inspection, no "for sale" sign was found, and that the appellant was using the subject parcel as an extension of his personal residence for residential purposes. Therefore, the subject is not entitled to a reduced assessment pursuant to Section 10-30, subsection (c), which states in relevant part:

> Upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose . . . (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, ...

(35 ILCS 200/10-30)

In support of this argument the board of review submitted photographs, including an aerial photograph of the subject parcel. The photographs depict a well manicured vacant lot immediately in front of the personal residence of the appellant. The aerial photograph further depicts a turn-around circle adjacent to the subject parcel. Further, the board of review argued that it could not locate a listing for the subject. Wendy Ryerson, Chief County Assessment Officer for Lee County, testified that 2009 was a general reassessment year for the subject property. Through this process, after driving through the subject's area at least four times, she never saw a "for sale" sign for the subject property. She did see "for sale" signs on a similar property owned by the developer, which is a short distance from the subject property, and which is also owned by the appellant. Ryerson further testified that based on the aerial photographs, and her personal observations, the board of review concluded that the subject property was being used for residential purposes, as an extension of the personal residence of the appellant.

Upon questioning, the board of review acknowledged that it had not tried to contact the appellant directly by written communication or by telephone regarding whether the subject parcel remained for sale even though the assessor was aware the appellant was selling other lots in the general area. Ryerson explained that the turn-around circle was a zoning requirement.

During rebuttal argument, counsel further explained that the appellant did not list all properties for sale with real estate brokers and realtors, and that the appellant had a history of offering properties for sale only upon inquiry from prospective buyers. Counsel argued that the appellant, as a developer and surveyor, has a network with other developers and builders who know he has lots for sale. These other developers and builders would inquire about a lot being for sale or direct other prospective buyers to the appellant. The list provided (Exhibit "A") included the subject parcel (Lot #1) and similar properties sold by the same method employed in attempting to sell the subject.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the subject parcel does not qualify for the developer's preferential assessment pursuant to Section 10-30 of the Code.

The Property Tax Appeal Board finds the board of review is not disputing that the subject parcel was platted in accordance with the Plat Act after 1978, is in excess of 5-acres and is vacant.[2]

The board of review argued that the subject parcel was used for residential purposes, thereby removing the subject from a preferential assessment as afforded by Section 10-30 of the Code. The Board finds credible evidence and testimony in this record from Ms. Ryerson that the subject property was being used for residential purposes, thereby removing it from the preferential assessment of Section 10-30 of the Code, which states in relevant part:

> Upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose . . . (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, ...

(35 ILCS 200/10-30) (emphasis added).

Counsel for the appellant presented arguments in support of his position that the property qualified for a preferential assessment pursuant to 10-30 of the Code, however, the Board finds these arguments were not corroborated with substantive documentary evidence or testimony sufficient to overcome Ms. Ryerson's personal observations and testimony. The Board finds the board of review has presented substantive documentary evidence and credible testimony of the subject being used for residential purposes.

Based on the testimony and evidence presented, the Board finds the subject parcel does not qualify for the preferential assessment pursuant to Section 10-30 of the Code (35 ILCS 200/10-30) and the assessment as set out by the board of review is correct.[3]

[2] Effective January 1, 2008, the 10-acre size requirement of Section 10-30(a)(3) was changed to 5-acres. The issue of whether this applied retroactively to the subject property for this 2009 appeal was not raised by the appellant or otherwise disputed by the board of review.

[3] The appellant did not challenge or present evidence that the assessed value placed on the subject property was incorrect if the preferential assessment did not apply.

APPELLANT:	**Matt & Regina Heissinger**
DOCKET NUMBER:	**08-01365.001-R-1**
DATE DECIDED:	**January, 2012**
COUNTY:	**Sangamon**
RESULT:	**Reduction**

The subject approximately 29.08-acre parcel[1] is improved with a one-story frame exterior constructed dwelling built in 1991. The dwelling contains 2,095 square feet of living area with a partial unfinished basement of 1,807 square feet of building area. Additional features of the dwelling are central air conditioning, a fireplace, and a 2.5-car garage. The subject property also features a 336 square foot screened porch and is located in Rochester, Cooper Township, Sangamon County.

The appellants appeared before the Property Tax Appeal Board contending overvaluation of the subject property, but did not contest the farmland assessment. In support of this market value argument concerning the homesite and residence, the appellants filed an appraisal prepared by Barry Taft of Taft Appraisal, Inc. in Springfield, a State Certified General Real Estate Appraiser along with a letter, photographs of the view of a hog confinement operation visible from the subject property, and information on hog farms gathered from the internet.

In the letter, the appellants report that a hog confinement operation was constructed within 800 feet to the west of the subject property in March 2009 which houses 4,800 hogs which are raised from 10 pound piglets to 400 pound hogs. The hog confinement consists primarily of a 45,000 square foot barn with a similarly sized lagoon under the pigs. Due to litigation, the plans to build the facility were known long prior to actual construction.

The appellants at hearing reiterated contentions made in their letter that breezes from the hog confinement across their property are awful. As a consequence, the existence of this structure and operation has impacted the subject's property value. In addition, the appellants contend based on the nationwide internet data attached to the appeal that the existence of this hog confinement operation near the subject will permanently impact the value of the subject property.

In terms of market value evidence, the stated purpose of the appraisal was for an *ad valorem* property tax appeal and the property rights appraised were fee simple. In describing the subject as 3.29-acres along with the one-story dwelling as set forth above, the appraiser performed the report under the hypothetical condition that the non-farm site size was 3.29-acres as opposed to the entire acreage contained in the subject parcel. On page 4 the appraiser defined the hypothetical condition.

[1] In a drawing, the appellants reported 19-acres of cropland (farmland), 18-acres of timber/flood plain and a 1.5-acre homesite which is greater than the total acreage reported both by the appellants' appraiser and by the assessing officials.

Under the site description, the appraiser noted there is an adverse site condition or external factor contiguous to the west in the form of a "Concentrated Animal Feeding Operation" (CAFO). Specifically, the appraiser wrote in the report:

> The value of the subject property and its residential use is significantly adversely affected by its close proximity to a confined animal feeding operation. These types of industrial farm animal facilities produce odor and noise from operations and there is a general stigma concerning residential uses in close proximity to them. Furthermore, the facility is located just southwest of the subject which is in line with prevailing winds in the area which further negatively effects the subject.

The dwelling was also reported to be prefabricated construction with the walls and roof constructed off-site and installed on a poured concrete foundation. The appraiser noted the dwelling to be in average condition, but specifically noted settlement and the fact that the roof was at the end of its physical life. Thus, physical depreciation based on the condition of the property was allowed.

The appraiser used the sales comparison approach to value in concluding an estimated market value of $105,000 for the subject homesite and residence as of January 23, 2010.

As set forth in the report, the appraiser analyzed five sales of comparable homes located between 2.83 and 8.11-miles from the subject property. The properties were said to be on the market from 4 days to 33 days. The parcels range in size from 1 to 1.86-acres and were improved with a two-story dwelling, a tri-level dwelling and three, one-story dwellings that ranged in age from 13 to about 50 years old. The comparables were of frame or frame and masonry exterior construction and ranged in size from 1,504 to 2,178 square feet of living area. Four comparables have basements, three of which were finished and one of which was a walk-out style. Additional features included central air conditioning and 1-car to 4-car garages plus two comparables have outbuildings. The sales occurred between August 2008 and October 2009 for prices ranging from $73,000 to $100,000 or from $33.52 to $55.52 per square foot of living area including land.

In comparing the comparable properties to the subject, the appraiser made adjustments for location, site size, design, age, condition, dwelling size, basement, basement finish and/or style, garage size and other amenities. The appraiser revealed that sales #4 and #5 had also transferred via Sheriff's Deeds at a time in close proximity to the date of sale reported in the appraisal. The appraiser reported sale #1 was deemed to be in a similar location to the subject being nearby the Springfield Sanitary District sewage treatment facility and thus suffering from the impact of odors; the other four sales were superior in location as they did not suffer from external obsolescence (i.e., CAFO). Particular differences between specific comparables and the subject were discussed in the appraisal. "The comparables are sales of similar utility properties in the same market area and they provide a reasonable indication of the subject's value." The appraiser's analysis resulted in adjusted sales prices for the comparables ranging from $84,800 to $113,050 or from $38.93 to $75.17 per square foot of living area including land. From this process, the appraiser estimated a value for the subject by the sales comparison approach of $105,000 or $50.12 per square foot of living area including land.

Based on this evidence, the appellants requested a reduction in the subject's assessment to reflect the appraised value.

On cross-examination, the appraiser was asked if hogs were present at the facility as of the date of inspection which was January 23, 2010. The appraiser testified that he could not see if hogs were at the facility as he only saw it at a distance.

On questions from the Hearing Officer, the appraiser opined that his value opinion would be similar for the subject property as of January 1, 2008 as the hog confinement was in litigation at that time and/or under construction so that any buyer of the subject property would anticipate that the hog confinement would be nearby.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's homesite and residence equalized assessments totaling $73,083 plus a farmland assessment of $867 were disclosed. The final assessment of the subject homesite and residence reflects a market value of $221,732 or $105.84 per square foot of living area including land using the 2008 three-year median level of assessments for Sangamon County of 32.96%.

In response to the appellants' appraisal, the board of review submitted a memorandum and data on the sales comparables presented in the appraisal. First, the board of review criticized the completion of the appraisal under a 'hypothetical condition' contending that this was not supported. Likewise, the board of review criticized the appraiser for applying external obsolescence and noted there was no other support in the report for the assertion.

As to the comparables presented in the appraisal, sale #1 was a residential 1.5-acre parcel "next to interstate 72" and purchased by the Springfield Sanitary District; sales #2 and #3 were also residential lots in subdivisions; and sales #4 and #5 were not in Sangamon County and involved Sheriff's Deeds. The board of review also noted the appraiser's gross adjustments to the sales comparables ranged from 49% to 83% which the board of review contends are excessive adjustments and suggest that other comparables should be been utilized.

At hearing, the board of review representative agreed that the subject homesite consists of 3.29-acres.

In conclusion, the board of review contends that the appellants' appraisal does not provide an indication of market value and the board of review requests confirmation of the subject's assessment.

In rebuttal, the appraiser addressed the criticisms raised by the board of review. In particular, he noted that in his work file he had data which he had gathered on the impact upon surrounding properties of the existence of a CAFO. Summarizing the information, he noted that different persons from different parts of the country stating that CAFOs do impact the value; "whether they do or not, the perception is that they do. That perception will have an impact on value." Given the publicity of the litigation about the CAFO, any knowledgeable and informed buyer would be aware of the impending construction next to the subject.

In this appraisal, Taft, who has 20 years of appraisal experience and an MAI designation from the Appraisal Institute, made an adjustment for location in the sales comparison approach using his best judgment. Sales #2 through #5 had downward location adjustments of either $10,000 or $15,000 each. Taft further contends that even if the location adjustment were removed, his value conclusion for the subject still falls within the range of those newly adjusted sales figures.

The appraiser also discussed the sales comparables presented in the appraisal based on the criticisms of the board of review. The appraiser discussed with the broker the terms of sale #1 and found it was a valid sale to utilize even though the Springfield Sanitary District purchased the property to avoid having neighbors complaining of odors and even though the new owner demolished the structure. Sales #4 and #5 were listed in the Multiple Listing Service and therefore the transfer by Sheriff's Deed and the sale within a 4 day period were not deemed to be problematic by Taft; sale #4 was listed for $114,900 and sold for $100,000. Taft also disputed the criticism that the percentage of adjustments to the comparables were excessive as Taft is not familiar with any treatise or principle that demands adjustments to be within a certain level other than Fannie Mae and Freddie Mac having only suggested guidelines.

In addition, both the appellants and Taft reiterated that the CAFO is 'on top' of the subject property and has a foul, raw manure, odor that is a serious problem to the outdoor enjoyment of the subject property. The appellants further contend that much of their retirement savings are tied up in the subject property which probably will not be recouped later and the appellants based on the current assessment were still paying taxes as if the value of the property had not been decreased by the presence of the CAFO. The appellants also testified to the loss of interest an individual potential buyer had for a quaint rural property about 2.5-miles from the CAFO once the buyer learned of the pending construction of the CAFO and read articles about the facility.

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.[2] The Board further finds that a reduction in the subject's assessment is warranted.

The appellants argued that the subject's homesite and residence assessments were not reflective of market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); 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. 86 Ill.Admin.Code Sec. 1910.65(c). The Board finds this burden of proof has been met and a reduction in the subject's assessment is warranted.

[2] While the appellants submitted a copy of the notice of a township multiplier as their final decision from the Sangamon County Board of Review, the board of review in its Notes on Appeal reported that the appellants "did" appear before the board of review upon proper notice. Therefore, the Property Tax Appeal Board finds that it has full jurisdiction over the correct assessment of the subject property as this is not simply a multiplier appeal which would limit the Board's jurisdiction.

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). 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 defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d 428 (1970).

The Board finds the appellants submitted an appraisal of the subject property with a final value conclusion of $105,000 as of January 23, 2010 for the subject homesite and residence, while the board of review submitted no appraisal or market value evidence, but only criticized various aspects of the appellants' appraisal. The Property Tax Appeal Board finds the criticisms presented by the board of review are either erroneous assertions or were simply criticisms of comparables selected without the presentation of sales comparables to support the subject's estimated market value of $221,732 for the homesite and residence.

The criticism of the hypothetical condition is found by the Property Tax Appeal Board to be inappropriate; since under the Property Tax Code farmland is not assessed at 33 1/3% of fair market value, the Board finds the appraiser utilized a proper method to consider the market value of only the homesite and residence for purposes of this appraisal assignment that was performed for the purpose of an *ad valorem* assessment appeal of those portions of the subject property. The Board also finds that the board of review incorrectly asserted that no explanation of the hypothetical condition was included in the appraisal as on page 4 the appraiser explained the basis for the condition.

The board of review also criticized the selection of comparable sales and the amount of adjustments made by the appraiser to those sales. However, the board of review failed to submit any data to refute those sales and/or to support the estimated market value of the subject property as reflected by its assessment.

Perhaps a most valid criticism of this appraisal would concern the date of valuation. However, the Board finds again the board of review provided no sales data to refute the appellants' market value evidence. Therefore, the Board finds that the date of the opinion of value alone is not a sufficient basis to discredit the appellants' appraisal.

While the board of review raised criticisms and/or shortcomings it perceived in the appellants' appraisal, in the end the Property Tax Appeal Board finds that as outlined above and despite those criticisms, the appraisal submitted by the appellants estimating the subject's market value of $105,000 is still the best evidence of the subject's homesite and residence market value in the record. Moreover, the appraisal's opinion of value was not substantively challenged with any market value evidence presented by the board of review.

Based upon the market value as stated above, the Property Tax Appeal Board finds that a reduction is warranted. Since market value has been established, the three-year median level of assessments for Sangamon County for 2008 of 32.96% shall be applied. (86 Ill.Admin.Code Sec. 1910.50(c)(1)).

APPELLANT:	**Robert Holmes**
DOCKET NUMBER:	**09-05574.001-R-1**
DATE DECIDED:	**February, 2012**
COUNTY:	**Saline**
RESULT:	**No Change**

The subject property consists of a single family residence under the terms of a lease agreement with the appellant herein. The appellant argues that Section 15-175 of the Property Tax Code (35 ILCS 200/15-175) provides that a lessee liable for the property taxes on a leased premises is entitled to the Homestead Exemption under the Code. The subject is located in Harrisburg Township, Saline County, Illinois.

This matter is before the Property Tax Appeal Board (hereafter "PTAB") based on Saline County Board of Review's request (hereafter "Request") that the appellant's appeal be withdrawn. The Board received the Request on May 16, 2011. The PTAB sent a copy of said Request to appellant's attorney by letter dated May 27, 2011. Appellant's counsel filed a response to the Request on or about June 10, 2011.

The PTAB finds the appellant's appeal is based on a contention of law regarding the application of a Homestead Exemption pursuant to Section 15-175 of the Code (35 ILCS 200/15-175). The PTAB further finds the board of review's Request that the appeal be withdrawn was deemed to be a motion to dismiss. In People ex rel. Graf v. Village of Lake Bluff, 206 Ill.2d 541 (2003), the Court held "[s]ubject matter jurisdiction does not depend upon the legal sufficiency of the pleadings. By letter dated May 27, 2011, the PTAB forwarded a copy of the Request to the appellant's attorney.

The PTAB's letter stated in pertinent part:

> Enclosed is a copy of the motion to dismiss the above referenced appeal filed by the Saline County board of review. The board of review is requesting the appeal be dismissed due to the Property Tax Appeal Board's lack of jurisdiction. . . .

The Saline County Board of Review argued in its Request that the PTAB "does not rule on appeals filed on the basis of exemptions." Hence, the board of review argued that the PTAB lacks subject matter jurisdiction over the appellant's claim. The appellant herein argues that the question of jurisdiction has been waived. In Currie, the Court held that "[n]either party may waive the issue of subject matter jurisdiction. Currie v. Lao, 148 Ill.2d 151, 170 Ill.Dec. 297, 592 N.E.2d 977 (1992).

Section 16-180 of the Code (35 ILCS 200/16-180) states:

> The Property Tax Appeal Board shall establish by rules an informal procedure **for the determination of the correct assessment of property** which is the subject matter of an appeal.

35 ILCS 200/16-180 (Emphasis added).

In Villegas, the Court held that "[a]n administrative agency derives its jurisdiction from the enabling legislation and lacks power to act beyond that grant." Villegas v. Board of Fire & Police Commissioners, 167 Ill.2d 108, 126, 212 Ill.Dec. 240, 656 N.E.2d 1074, 1083 (1995).

In a case directly on point with the issue in this appeal the Court in United Methodist Village Retirement Communities, Inc. v. Property Tax Appeal Bd., 321 Ill.App.3d 456. (5th Dist., 2001) held in relevant part:

> The Property Tax Code makes it clear that only the Department of Revenue has authority to determine if a property is exempt from taxation. Section 15–5 of the Property Tax Code provides that any person wishing to claim an exemption for the first time shall file an application with the county board of review. 35 ILCS 200/15–5 (West 1998). Section 16–70 of the Property Tax Code provides the following:
>
> "The board of review shall hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. However, the decision of the board shall not be final, except as to homestead exemptions. The clerk of the board in all cases other than homestead exemptions, under the direction of the board, shall make out and forward to the Department [of Revenue] a full and complete statement of all the facts in the case. The Department [of Revenue] shall determine whether the property is legally liable to taxation. It shall notify the board of review of its decision, and the board shall correct the assessment if necessary. The decision of the Department [of Revenue] is subject to review under Sections 8–35 and 8–40." 35 ILCS 200/16–70 (West 1998).
>
> Sections 8–35 and 8–40 of the Property Tax Code provide for the administrative review of a final decision of the Department of Revenue in the circuit court for the county in which the property is located. 35 ILCS 200/8–35, 8–40 (West 1998). The Property Tax Code does not provide for the [Property Tax] Appeal Board's review of decisions relating to exempt status, whether the decision was made by the county's board of review or the Department of Revenue.
>
> It is fundamental that an administrative body has only such powers as are granted in the statute creating it. Geneva Community Unit School District No. 304, 296 Ill.App.3d at 634, 231 Ill.Dec. 44, 695 N.E.2d 561. While the Property Tax Code does give the [Property Tax] Appeal Board authority to receive appeals from decisions of the boards of review, the only types of appeal provided for in the statute are those by a taxpayer dissatisfied with the assessment of property. 35 ILCS 200/16–160 (West 1998); see also Geneva Community Unit School District No. 304, 296 Ill.App.3d at 634, 231 Ill.Dec. 44, 695 N.E.2d 561. The Property Tax Code does not give the [Property Tax] Appeal Board authority to review decisions of the boards of review with respect to exemptions of property from taxation. See Mead v. Board of Review, 143 Ill.App.3d 1088, 1096, 98 Ill.Dec.

> 244, 494 N.E.2d 171 (1986); Geneva Community Unit School District No. 304, 296 Ill.App.3d at 634–35, 231 Ill.Dec. 44, 695 N.E.2d 561. This is reflected in the "Statement of Policy" of the Appeal Board, which states, "**The Property Tax Appeal Board is without jurisdiction to determine the tax rate, the amount of a tax bill, or the exemption of real property from taxation**." 86 Ill. Adm.Code § 1910.10(f) (2000).

United Methodist at 458, (Emphasis added).

Based on the above record herein, the Board grants the board of review's Request to dismiss the appeal.

APPELLANT:	**Julius & Lenuta Lucaci**
DOCKET NUMBER:	**07-23586.001-R-1**
DATE DECIDED:	**November, 2012**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a 2,801 square foot parcel of land improved with a 119-year old, frame, two-story, single-family dwelling containing 2,362 square feet of living area, two baths, and a partial, unfinished basement. The appellant argued both that the fair market value of the subject was not accurately reflected in its assessed value and that the subject property is inequitably assessed as the bases of the appeal.

In support of the market value argument, the appellant submitted a brief arguing that six properties sold from October 2003 to August 2008 for prices ranging from $585,000 to $1,820,000 and that these properties were assessed from 10.98% to 14.23% of their sale price. The appellant argues that these properties are over assessed by an average of 11.77% and that the subject is, therefore, over assessed and should be reduced. The appellant further argues that the subject's assessment has increased by almost 70% over the prior triennial assessment period.

In support of the equity argument, the appellant submitted the assessor website printout for the six equity comparables. These properties are described as two-story, frame, stucco, masonry or frame and masonry, single-family dwellings. Features include between one and one-half and three and one-half baths, between one and four fireplaces, and partial or full basements with two finished. The properties range: in age from 95 to 115 years; in size from 954 to 4,824 square feet of living area; and in improvement assessments from $24.38 to $178.26 per square foot of living area. Comparable #4, which has an improvement assessment of $178.26 per square foot of living area has one or more improvements on the parcel and not all the square footage of these improvements were included in calculating the improvement assessment 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 board disclosed the subject's final assessment of $63,296 with an improvement assessment of $56,798 or $24.05 per square foot of living area. The subject's final assessment reflects a fair market value of $630,438 when the Illinois Department of Revenue's 2007 three-year median level of assessment of 10.04% for Cook County Class 2 property is applied.

In support of the assessment, the board of review presented descriptions and assessment information on a total of four properties suggested as comparable and located within the subject's neighborhood code. The properties are described as two-story, frame, single-family dwellings. Features include two and one-half or two-half baths, a fireplace for two properties, and full, unfinished basements. The properties range: in age from 109 to 129 years; in size from 2,230 to 2,702 square feet of living area; and in improvement assessment from $25.56 to $27.60 per square foot of living area. Based on this argument, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant submitted a letter that reiterated the appellant's percentage increase and sales ratio arguments.

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.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (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 market value evidence presented, the PTAB concludes that this evidence indicates a reduction is not warranted.

As to the appellant's sales ratio study argument, the appellant provided sales information for six properties similar to the subject and located within the same sales market as the subject. The appellant argues that the sales ratio for these sales is above the ordinance or actual level of assessment used by the county. The PTAB finds this sales study insufficient and gives it little weight.

The PTAB finds the appellant did not choose random properties to analyze sales information, but instead chose only six properties located in the subject's area. The Court has stated that when comparable properties are handpicked and not random, the study cannot be viewed as representative of the county's assessments as a whole. Peacock v. Illinois Property Tax Appeal Board, 339 Ill.App.3d 1060, 1069, 792 N.E.2d 367, 374 (4th Dist. 2003).

As to the appellant's percentage increase argument, the PTAB finds this argument unpersuasive. The mere contention that the assessment changed from one year to the next at a higher rate does not demonstrate that the property is overvalued or over assessed.

The appellant submitted six sales comparables, the PTAB finds that comparables #2, #3, #5 and #6 are somewhat similar to the subject and have recent sale dates. These properties sold from June 2004 to November 2005 for prices ranging from $585,000 to $1,820,000 or from $244.16 to $401.68 per square foot of living area. In comparison, the subject's assessment reflects a market value of $630,438 or $266.91 which is within the range of the comparables. After considering adjustments and the differences in the comparables when compared to the subject, the PTAB finds the subject's market value based on the assessment is supported and a reduction in the assessment is not warranted.

The appellant also 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). After an analysis of the assessment data, the PTAB finds the appellant has not met this burden.

The parties presented a total of 10 properties suggested as comparable. The PTAB finds the board of review's comparables most similar to the subject in size, design, age and/or construction. The properties range: in age from 109 to 129 years; in size from 2,230 to 2,702 square feet of living area; and in improvement assessment from $25.56 to $27.60 per square foot of living area. In comparison, the subject's improvement assessment of $24.05 per square foot of living area is below the range of these comparables. Therefore, 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 improvement assessment is not warranted.

APPELLANT:	**K. Charles MacKay**
DOCKET NUMBER:	**09-04210.001-R-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**Kane**
RESULT:	**Reduction**

The subject property is improved with a two-story single family dwelling of frame lap siding construction that contains 2,360 square feet of living area. The dwelling is described as being an "Ashley Model" and is 18 years old. Features of the home include a full unfinished basement, central air conditioning, one fireplace and a 506 square foot attached garage. The subject has a 10,890 square foot site and is located in West Dundee, Dundee Township, Kane County.

The appellant appeared before the Property Tax Appeal Board contending both overvaluation and assessment inequity as the bases of the appeal. In support of this argument the appellant provided photographs, descriptions and assessment information on three comparables located on the same street as the subject property. The comparables were improved with two-story single family dwellings that ranged in size from 2,344 to 2,360 square feet of living area. The dwellings were of frame lap siding construction and are 18 or 19 years old. Each dwelling has a basement, central air conditioning, one fireplace and a 506 square foot attached garage. Two of the comparables are "Ashley Models" and the other comparable is a "Heritage Model". These properties had sites ranging in size from 10,000 to 13,504 square feet of land area. The comparables sold from May 2008 to November 2008 for prices ranging from $230,000 to $312,000 or from $98.12 to $132.20 per square foot of living area, including land.

These same comparables had improvement assessments ranging from $80,412 to $91,440 or from $34.31 to $38.75 per square foot of living area. The subject has an improvement assessment of $82,630 or $35.01 per square foot of living area.

During the hearing the appellant indicated the primary argument was based on overvaluation.

Based on this evidence the appellant requested the subject's assessment be reduced to $99,916.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $114,518 was disclosed. The subject's assessment reflects a market value of $343,795 or $145.68 per square foot of living area, including land, when using the 2009 three year average median level of assessments for Kane County of 33.31%.

In support of the assessment the board of review submitted the subject's property record card, a grid analysis of the appellant's comparables[1], an analysis of six comparable sales and an analysis of six equity comparables identified by the Dundee Township Assessor's Office. The six comparables sales were improved with two-story dwellings of frame construction that ranged in

[1] It was shown in the board of review's grid that the appellant's comparable 1 has a partially finished basement and the appellant's comparable 3 was purchased from a financial institution and was described as not a valid sale. There was no evidence submitted to support either claim.

size from 2,346 to 2,472 square feet of living area. Included are three "Quincy Models", two "Bedford Models" and one "Ashford Model". The dwellings were built from 1990 to 1996. Each comparable has a full basement with five being partially finished, central air conditioning, one fireplace and attached garages that range in size from 506 to 770 square feet. Each comparable was located in the subject's subdivision. These properties sold from July 2006 to May 2008 for prices ranging $349,000 to $390,000 or from $141.59 to $164.28 per square foot of living area, including land.

Also submitted were six different equity comparables. Each of these comparables was an "Ashley Model" design. The dwellings were two-story, frame construction containing 2,360 square feet of living area and were built from 1990 to 1995. Other features include central air conditioning, one fireplace and 506 square foot attached garages. These comparables have improvement assessments that range from $82,664 to $83,504 or from $35.03 to $35.38 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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

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

The Board finds the record contains nine comparable sales submitted by the parties in support of their respective positions. The Board finds the comparables most similar to the subject that sold most proximate in time to the assessment date at issue and the same "Ashley Model" designs included appellant's comparables 1 and 2. These comparables were improved with two-story dwellings that contained 2,360 square feet of living area. The comparables were similar to the subject in location, design, age, exterior construction and features. These properties sold May 2008 and July 2008 for prices of $287,500 and $312,000 or $121.82 and $132.20 per square foot of living area including land. The subject's assessment reflects a market value of $343,588 or $145.59 per square foot of living area, including land, when using the statutory level of assessments of 33.33%, which is above the best sales established in the record. Based on this record; the Board finds a reduction in the subject's assessment is warranted.

Due to the reduction granted to the subject's assessment based on the market value finding herein, the Board finds a further reduction based on assessment inequity is not justified.

APPELLANT:	**Elizabeth Majers**
DOCKET NUMBER:	**09-05566.001-R-1**
DATE DECIDED:	**December, 2012**
COUNTY:	**Jo Daviess**
RESULT:	**Reduction**

The subject property consists of a 1.6 acre or 69,696 square foot residential lot that is improved with a single family dwelling. The subject property is located in Guilford Township, Jo Daviess County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming assessment inequity with respect to the subject's land assessment as the basis of the appeal. The subject's improvement assessment was not contested. In support of the inequity claim, the appellant submitted a letter addressing the appeal and an assessment analysis of four suggested land comparables. The comparables are located from 20 to 100 yards from the subject along the same street. The lots range in size from .86 of an acre to 1.28 acres of land or from 37,462 to 55,757 square feet of land area. The comparables have land assessments ranging from $18,295 to $29,737 or from $14,520 to $23,232 per acre or from $.33 to $.53 per square foot of land area. The subject property has a land assessment of $47,626 or $29,766 per acre or $.68 per square foot of land area.

The appellant also argued the comparables had original land assessments ranging from $41,019 to $54,963 that were reduced by the board of review from $18,295 to $29,737, which represent reductions from 36% to 64% or an average land assessment reduction of 49%. The subject had an original land assessment of $58,080 that was reduced by the board of review to $47,626 or an 18% land assessment reduction. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $163,608 was disclosed.

In support of the subject's land assessment, the board of review submitted a letter addressing the appeal, property record cards, and an assessment analysis of seven suggested land comparables. Four of the comparables were also utilized by the appellant. The comparables are located along the subject's street. The comparables have lots that range in size from .83 of an acre to 1.28 acres of land or from 36,155 to 55,767 square feet of land area. The comparables have land assessments ranging from $18,295 to $42,834 or from $14,520 to $36,300 per acre or from $.33 to $.83 per square foot of land area. The subject property has a land assessment of $47,626 or $29,766 per acre or $.68 per square foot of land area.

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

Under rebuttal, the appellant submitted information regarding the subject's 2011 sale price for $305,000. The Board finds it cannot consider this new evidence and new market value argument. Section 1910.66(c) of the rules of the Property Tax Appeal Board states:

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

In addition, section 16-180 of the Property Tax Code provides in part:

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

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

The appellant argued the subject property was inequitably assessed. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. The Board finds the appellant has overcome this burden.

The Board finds the parties submitted seven suggested land comparables for consideration. The Board gave less weight to three comparables due to their smaller lot sizes when compared to the subject. The Board finds the remaining four comparables are more similar to the subject in size and location. These properties range in size from 1.13 to 1.28 acres or from 49,223 to 55,757 square feet of land area. These comparables have wide ranging land assessments from $18,295 to $42,834 or from $14,520 to $36,300 per acre or from $.33 to $.83 per square foot of land area. The subject property has a land assessment of $47,626 or $29,766 per acre or $.68 per square foot land area. The Board finds the four most similar land comparables have lower overall land assessments when compared to the subject. Additionally, the Board finds three of the four most similar land comparables have lower land assessments when compared to the subject. These three comparables have land assessments ranging from $14,520 to $23,232 per acre or from $.33 to $.53 per square foot of land area, considerably less than the subject's land assessment of $29,766 per acre or $.68 per square foot of land area. Therefore, the Board finds this evidence constitutes a clear and convincing pattern of assessment inequity and a reduction is warranted.

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

APPELLANT:	**Dorothy Mitchell**
DOCKET NUMBER:	**09-02869.001-R-1**
DATE DECIDED:	**September, 2012**
COUNTY:	**Union**
RESULT:	**No Change**

The subject property consists of a one-story brick and frame dwelling that was constructed in 2007. The dwelling contains 3,088 square feet of living area. Features include a crawl space foundation, central air conditioning, a 528 square foot attached garage and a 360 square foot detached garage with a carport. The improvements are situated on approximately one-acre of land area. The subject property is located in Union County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's assessment was not reflective of its fair market value based on its construction costs. In support of this claim, the appellant's appeal petition purports the cost to acquire the subject's land was $15,500, but submitted no evidence to support this claim. The appellant also submitted a construction proposal to build the dwelling for $251,634. The proposal states: This bid is for building a new house on your lot in Jonesboro. We will build according to the floor plan as drawn and the following specifications.[1] The house will have a crawlspace foundation under it. We will use standard or better materials and quality workmanship. The proposal, dated September 25, 2006, was signed by the contractor, but not the customer (appellant). The proposal did not itemize the building materials or their associated costs.

The appellant also submitted a copy of the application to build and use a structure in compliance with the City of Jonesboro, which was signed and dated in October 2006.

The appellant also submitted property record cards and a single Multiple Listing Service sheet of four properties. The appellant did not complete Section V of the appeal petition detailing the properties' physical characteristics and similarity when compared to the subject.

Based on the evidence submitted, the appellant requested a reduction in the subject's assessed valuation to $86,460, which reflects an estimated market value of $259,380.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $97,630 was disclosed. The subject's assessment reflects an estimated market value of $292,919 using Union County's 2009 three-year median level of assessments of 33.33%.

In support of the subject's assessment, the board of review submitted a grid analysis of the same four properties that were submitted by the appellant. Comparable 3 is located in the subject's subdivision. Comparables 1, 2 and 4 are located from 2 to 6 miles from the subject. The comparables consist of one-story frame or brick and frame dwellings that were built from 1999 to 2003. The dwellings are situated on sites that range in size from 1 to 5.6 acres of land area.

[1] The construction proposal did not contain a floor plan or any specifications.

Comparables 1 and 2 do not have basements; comparable 3 has a full unfinished basement; and comparable 4 has a partial finished basement. Other features include central air conditioning and garages that range in size from 480 to 720 square feet. Comparable 2 has 2,400 square foot pole barn. The dwellings range in size from 1,788 to 2,456 square feet of living area. The comparables sold from May 2007 to April 2010 for prices ranging from $195,000 to $310,000 or from $98.63 to $142.92 per square foot of living area including land.

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

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

The appellant argued the subject's assessment was not reflective of its fair market value based on its purported construction costs totaling $267,134, including land. The Property Tax Appeal Board gave little weight to the purported construction costs submitted by the appellant. The Board finds the construction cost proposal is unpersuasive. The proposal did not provide an itemized statement of the building materials and labor costs associated with the actual costs to construct the subject dwelling. Additionally, the appellant offered no evidence as to the value of the subject's land, which further detracts from the weight of the overvaluation claim.

The Property Tax Appeal Board also finds the record contains comparable sales information on four suggested comparables. The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. The Board finds this record contains credible sales, which are more reliable indicators of the subject's fair market value than the unsupported cost information submitted by the appellant.

The Board finds the comparables have varying degrees of similarity when compared to the subject, but are smaller and older than the subject. The comparables sold from May 2007 to April 2010 for prices ranging from $195,000 to $310,000 or from $98.63 to $142.92 per square foot of living area including land. The subject's assessment reflects an estimated market value of $292,919 or $94.86 per square foot of living area including land. The Board finds the subject's estimated market value falls within the range established by the comparable sales and below the range on a per square foot basis, although the subject is larger in size and newer in age than the comparables. After considering adjustments to the comparables for differences when compared to the subject, the Property Tax Appeal Board finds the subject's estimated market value as

reflected by its assessment is supported. Therefore, no reduction in the subject's assessment is warranted.

APPELLANT:	**Fredrick & Janet Render**
DOCKET NUMBER:	**09-00778.001-R-1**
DATE DECIDED:	**April, 2012**
COUNTY:	**McLean**
RESULT:	**Reduction**

The subject property consists of a 20 year old, one-story brick dwelling containing 3,684 square feet of living area. Features include central air conditioning, an attached 600 square foot garage, one fireplace and a 2,124 square foot basement with 1,225 square feet finished as living area. The dwelling is situated on a .67 acre lake front lot.

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 a copy of a settlement sheet in which the appellants purchased the subject property for $365,000 in January 2010. On page two of the appellants' residential appeal form, under Section IV, the appellants indicated this was a sale between family or related corporations. The appellants also submitted an appraisal report estimating the subject property had a market value of $370,000 as of December 11, 2009. The purpose of the appraisal was for "purchase transaction." The appraiser utilized the sales comparison approach to value in estimating the market value of the subject property. The appraiser utilized four suggested comparable sales and two suggested active listings located in the subject's market area. These six comparables are located from 0.04 to 1.36 miles from the subject. The comparables are improved with one-story dwellings of brick, vinyl or vinyl and brick exterior construction. The dwellings range from one to 22 years old. Amenities include central air conditioning, one or two fireplaces, full partially finished basements and two-car to four-car garages. One comparable does not have a fireplace. Lot sizes range from .50 to 5.00 acres of land area. The dwellings range in size from 1,665 to 2,500 square feet of living area. Comparables 1 through 4 sold from December 2008 to September 2009 for prices ranging from $355,000 to $399,950 or from $160.76 to $191.27 per square foot of living area including land. Comparables 5 and 6 are currently listed for $324,900 and $379,900 or $151.96 and $195.14 per square foot of living area including land. After adjusting the comparables for differences when compared to the subject in age, condition, land size, dwelling size, basement finish and other amenities, the appraiser calculated that the comparables had adjusted sales/listing prices ranging from $329,400 to $372,300 or from $147.20 to $197.83 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 $370,000 or $100.98 per square foot of living area including land as of December 11, 2009. Based on this evidence, the appellants requested a reduction in the subject's assessment to reflect the purchase price of $365,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $129,032 was disclosed. The subject's assessment reflects an estimated market value of $387,483 or $105.18 square foot living area, including land, using McLean County's 2009 three-year median level of assessments of 33.30%.

First, the board of review included a copy of the PTAX 203, Illinois Real Estate Transfer Declaration. This document indicates the subject property was not advertised for sale and that the sale was between related individuals or corporate affiliates. The board of review also submitted an analysis detailing information about the sale and the appellant's appraisal. In regards to the subject's sale, the board of review repeated that the sale was in January 2010 one year after assessment date of January 1, 2009; the sale was not arm's length; the property was not advertised; and the transaction was between related parties. The board of review also indicated that the appraisal submitted by the appellants, dated December 11, 2009, and has an effective date 11 months after the assessment date of January 1, 2009.

Based on the property record card, the board of review indicated that the subject property was a dwelling of brick exterior construction containing 3,684 square feet of living area with an attached 600 square foot garage. The last portion of the analysis contained the differences between the subject property and the comparables that were submitted by the appraiser. All of the comparables were smaller in dwelling size than the subject property. Five of the comparables have larger garages than the subject. Three comparables did not have lake frontage, unlike the subject. Four comparables were in a subdivision different from the subject. Two comparables sold from six to nine months after the January 1, 2009 assessment date. Two of the comparables that sold were considerably newer than the subject. Comparables 5 and 6 were unsold as of the date of the appraisal.

In support of the subject's assessment, the board of review submitted photographs, property record cards, parcel information sheets and a grid analysis detailing sale information for three suggested comparables. The board of review submitted a map showing the location of both the appraiser's and board of review's comparables in relation to the subject property. The comparables consist of one-story brick, brick and wood or brick and vinyl exterior construction. The comparables range in age from 16 to 25 years old. These comparables have central air conditioning, full unfinished or partially finished basements, one or two fireplaces and attached garages ranging in size from 462 to 2,054 square feet. The dwellings range in size from 1,630 to 2,098 square feet of living area. The comparables sold from November 2007 to November 2008 for sale prices ranging from $225,250 to $300,000 or from $119.81 to $147.55 per square foot 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 Property Tax Appeal Board further finds a reduction in the subject property's assessment is warranted.

The appellants argued the subject property was overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellants have met this burden of proof.

For the Board's consideration, the appellants submitted an appraisal estimating the subject property had a market value of $370,000, as of December 11, 2009. The board of review submitted three suggested comparable sales. However, all of the comparables submitted were considerably smaller in dwelling size than the subject property. In the appellant's appraisal,

market adjustments were made for the difference in land size, exterior construction type, age, living area, basement finish, garage sizes, and lake front lot when compared to the subject property. Also, the appraiser made a market adjustment to comparables 5 and 6 for being active listings. The board of review's comparables 1 and 3 did not have finished basements and the board of review's comparables 2 and 3 have different exterior construction. All three comparables provided by the board of review have different land sizes, garage sizes, living area and ages when compared to the subject. The three comparables submitted by the board of review are not lake front lots. The board of review made no market adjustments to the comparables for the difference in features when compared to the subject property. Furthermore, the board of review did not refute any of the adjustments made by the appraiser.

The Property Tax Appeal Board further finds the subject's sale does not meet two of the fundamental requirements of an arm's-length transaction. The Board finds the preponderance of the evidence clearly shows the subject property was not advertised or exposed for sale on the open market and the sale was between related parties. 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)

Similarly, Illinois courts have stated fair cash value is synonymous with fair market value and is defined as the price a willing buyer would pay a willing seller for the subject property, there being no collusion and neither party being under any compulsion. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428, 256 (1970) and Ellsworth Grain Company v Property Tax Appeal Board, 172 Ill.App.3d 552, 526 (4th Dist. 1988). The Board finds the transaction was not advertised for sale on the open market and was between related parties which is not typical of the due course of business and trade. The subject's Real Estate Transfer Declaration and the appellant's appeal petition clearly establish that the subject property was not advertised for sale and the sale was a transfer between families. Therefore, the subject's sale price was given little weight and is not considered indicative of fair market value.

The Property Tax Appeal Board finds the subject property has a final equalized assessment of $129,032, which reflects an estimated market value of $387,483 using McLean County's three-year median level of assessment of 33.30%. The Board further finds the best evidence of the subject's fair market value contained in this record is the appraisal submitted by the appellants. The appraisal estimates a fair market value of $370,000, which is less than the subject's estimated market value as reflected by its assessment. Therefore a reduction in the subject's assessment is warranted to reflect the appraised value.

APPELLANT:	**Donald & Arline Rudolph**
DOCKET NUMBER:	**08-04760.001-R-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**LaSalle**
RESULT:	**No Change**

The subject property consists of a 1.35 acre or 58,806 square foot residential lot that is improved with a single family dwelling. The subject parcel is located in Serena Township, LaSalle County, Illinois.

The appellant, Arline Rudolph, appeared before the Property Tax Appeal Board claiming a lack of uniformity regarding the subject's land assessment. The subject's improvement assessment was not contested. In support of the inequity claim, the appellant submitted property record cards and a grid analysis of three land comparables. The comparables are located from 400 to 2,000 feet from the subject property. The appellant reported the comparables contain 87,120 or 108,900 square feet of land area and have land assessments ranging from $13,254 to $14,940 or $.12 and $.17 per square foot of land area. The subject property has a land assessment of $17,212 or $.29 per square foot of land area.

The appellant testified comparables 1 and 2 are not technically located within the subject's subdivision, but are located on the corner from the subject with frontage along 40th Road in LaSalle County. The appellant testified she made an error regarding the land size and assessment of comparable 3, which actually contains 1.72 acres or 74,923 square feet of land area. It has a land assessment of $21,928 or $.29 per square foot of land area. The appellant also testified she owns the vacant residential lot located next to the subject parcel. This property is identified in board of review Exhibit 1, which has 1.34 acres or 58,370 square feet of land area with a land assessment of $14,533 or $.25 per square foot of land area. Based on this evidence, the appellant requested a reduction in the subject's land assessment to $14,533.

Under cross-examination, the appellant testified the vacant residential lot located next to the subject parcel is an un-improved vacant lot that does not have well or septic systems. The appellant agreed the subject property is located in a rural county subdivision named "Wind Ridge Subdivision." Properties located within the subject's subdivision are located with frontage along East 229th Road, which extends from 40th Road.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $70,134 was disclosed. The subject property has a land assessment of $17,212 or $12,750 per acre or $.29 per square foot of land area.

In support of the subject's assessment, the board of review submitted a letter addressing the appeal, an aerial photograph, a plat map (Exhibit 1) and an analysis (Exhibit 3) of ten improved parcels located in the subject's subdivision.

Linda Kendall, Chief County Assessment Officer, presented the evidence on behalf the board of review. Kendall explained the subject's subdivision is comprised of 15 lots, 11 of which are

improved with dwellings. Two are un-improved vacant lots and two lots receive a farmland assessment based upon their use. Kendall explained improved lots within the subject's subdivision are assessed at $12,750 per acre while vacant unimproved lots are assessed at approximately $10,845 per acre. The difference in the two per acre assessment amounts is based on a property having well and septic systems. She also explained that although appellants' comparables 1 and 2 are slightly larger than the subject, they have lower land assessments because they are located directly along 40th Road, which has more traffic. In addition, the two properties are not part of the subject's subdivision.

Kendall next referred to Exhibit 1, a plat map detailing the sizes and assessments for all 15 lots located in the subject's subdivision. Twelve of the parcels range in size from 1.22 to 1.72 acres or from 53,143 to 59,677 square feet of land area, excluding the subject and two farm parcels. These properties have land assessments ranging from $14,553 to $21,928 or from $10,623 to $12,750 per acre or from $.24 to $.29 per square foot of land area. The subject property has a land assessment of $17,212 or $12,750 per acre or $.29 per square foot of land area.

Exhibit 3 identified 10 improved properties located within the subject's subdivision. These properties range in size from 1.22 to 1.72 acres or from 53,143 to 59,242 square feet of land area and have land assessments ranging from $15,554 to $21,928 or $12,750 per acre or $.29 per square foot of land area. The subject property has a land assessment of $17,212 or $12,750 per acre or $.29 per square foot of land area.

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

In rebuttal, the appellant disputed the use for one farm parcel located in the subject's subdivision. The appellant also argued the assessment for comparables 1 and 2 located along 40th Road should be increased due to their larger size or the subject's assessment should be reduced due to its smaller size.

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

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

The Property Tax Appeal Board finds the parties submitted 16 land comparables for consideration. One comparable was common to both parties. The Board gave less weight to comparables 1 and 2 submitted by the appellant. These properties are larger in size; are not located in the subject's subdivision; and have frontage along busier 40th Road, unlike the subject. The Board gave most weight to the ten comparables located within the subject's subdivision that

are improved with well and septic systems as well as dwellings similar to the subject. These properties range in size from 1.22 to 1.72 acres or from 53,143 to 74,923 square feet of land area. They have land assessments ranging from $15,554 to $21,928 or $12,750 per acre or $.29 per square foot of land area. The subject, which contains 1.35 acres or 58,806 square feet of land area, has a land assessment of $17,212 or $12,750 per acre or $.29 per square foot of land area. The Board finds the subject's land assessment is identical to the most similar land comparables contained in this record on a per acre and per square foot basis. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Property Tax Appeal Board finds the subject's land assessment is well supported and no reduction is warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same 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:	**Joseph & Sharon Salamone**
DOCKET NUMBER:	**09-04477.001-R-3**
DATE DECIDED:	**June, 2012**
COUNTY:	**Kane**
RESULT:	**No Change**

The subject property is improved with a two-story single family dwelling of brick exterior construction that contains 6,636 square feet of living area. The dwelling was built in 2007 by Avondale Custom Builders. Features of the home include a full basement with 3,220 square feet of finish, central air conditioning, four fireplaces, a kitchenette and a 1,439 square foot attached garage. The subject is situated on a 1.491 acre site and is located in St. Charles, St. Charles Township, Kane County.

The appellants appeared before the Property Tax Appeal Board contending the subject's improvements are inequitably assessed. The subject's land assessment was not contested. In support of this argument the appellants provided photographs, general parcel information sheets with assessments and an assessment grid analysis on 16 comparable properties with the same neighborhood code as the subject property. The comparables are improved with two-story single family dwellings that were of brick; frame and stone; frame and brick or frame, brick and stone exterior construction and were built from 1990 to 2007. Other features include central air conditioning, one to nine fireplaces; garages ranging in size from 840 to 1,823 square feet of building area, seven unfinished basements and nine finished basements. Six comparables have in-ground swimming pools. One comparable has a 351 square foot carport. These properties have sites ranging in size from 1.2 to 1.504 acres of land area. The dwellings range in size from 4,779 to 9,390 square feet of living area and have improvement assessments ranging from $244,184 to $544,736 or from $43.19 to $73.95 per square foot of living area.

The appellant, Joseph Salamone, testified that comparables 3, 5, 9 and 14 were built by Avondale Custom Builders, the same builder that built the subject dwelling and are similar to his house. The appellant also testified that his home was a "spec home" and that most of the homes in his subdivision were custom built homes.

Based on this evidence the appellants requested the subject's improvement assessment be reduced to $313,970.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $732,942 was disclosed.

In support of the subject's assessment, the board of review submitted a letter addressing the appeal that was prepared by the township assessor, photographs, a grid analysis of the appellants' comparables and three additional comparables identified by the St. Charles Township Assessor's Office and property record cards for all of the comparables. Two of the comparables are located in the same neighborhood code as the subject property. The comparables are two-story brick dwellings that were built from 2005 to 2008. Other features include central air conditioning, three to seven fireplaces; one unfinished basement, two finished basements and garages ranging

in size from 1,283 to 1,485 square feet of building area. One of the comparables has a 696 square foot carport and an elevator. Two of the comparables have kitchenettes, like the subject, and one comparable has an in-ground swimming pool. Comparables 1 and 2 were built by Avondale Custom Homes. The dwellings range in size from 5,358 to 8,037 square feet of living area. These properties have sites ranging in size from 2.05 to 5.65 acres of land area. The comparables have improvement assessments ranging from $630,030 to $864,920 or from $93.13 to $117.59 per square foot of living area. The subject property has an improvement assessment of $614,354 or $92.58 per square foot of living area.

The board of review also reported in their analysis that the subject property sold in June 2008 for a price of $2,200,000 or $331.53 per square foot of living area including land. Appellants' comparable 9 sold in September 2008 for a price of $1,600,000 or $216.01 per square foot of living area including land and the board of review's comparable 1 sold in September 2008 for a price of $2,200,000 or $410.60 per square foot of living area including land.
The board of review requested the assessment be confirmed.

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 Property Tax Appeal Board further finds a reduction in the subject property's assessment is not warranted.

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

The Board finds the record contains nineteen comparables submitted by the parties in support of their respective positions. The Board gave less weight to the appellants' comparables 3, 4, 7, 8, 11, 13, 14, 15, and 16 due to their older age when compared to the subject. The Board also gave less weight to the appellants' comparable 12 due to its larger building size. The Board also gave less weight to board of review comparable 3 due to it being located outside of the subject's neighborhood. The Board finds the remaining eight comparables submitted by both parties are most similar to the subject in location, age, size, exterior construction and features. Four of these comparables had the same builder as the subject property. These comparables have improvement assessments ranging from $244,184 to $864,920 or from $48.33 to $117.59 per square foot of living area. The subject has an improvement assessment of $614,354 or $92.58 per square foot of living area, which is within the range of the best comparables in the record. The Board therefore finds the subject's improvement assessment is equitable and a reduction in the subject's assessment is not warranted.

When an appeal is based on assessment inequity, the appellant has the burden to show the subject property is inequitably assessed by clear and convincing evidence. Proof of an assessment inequity should consist of more than a simple showing of assessed values of the subject and comparables together with their physical, locational, and jurisdictional similarities.

There should also be market value considerations, if such credible evidence exists. The supreme court in Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 169 N.E.2d 769, discussed the constitutional requirement of uniformity. The court stated that "[u]niformity in taxation, as required by the constitution, implies equality in the burden of taxation." Apex Motor Fuel, 20 Ill.2d at 401. The court in Apex Motor Fuel further stated:

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

In this context, the supreme court stated in Kankakee County that the cornerstone of uniform assessments is the fair cash value of the property in question. According to the court, uniformity is achieved only when all property with similar fair cash value is assessed at a consistent level. Kankakee County Board of Review, 131 Ill.2d at 21. The Board finds two comparables submitted by both parties, appellants' comparable 9 and board of review comparable 1, sold in September 2008 for prices of $1,600,000 and $2,200,000 and have improvement assessments of $60.20 and $117.59 per square foot of living area. The subject property sold in June 2008 for $2,200,000, and has an improvement assessment of $92.58 per square foot of living area, which is within the range of these two sales. Importantly, in comparing the assessments to the sale prices, appellants' comparable 9 is assessed at 35.29% of its purchase price and board of review comparable 1 is assessed at 34.45% of its purchase price. The subject property is assessed at 33.32% of its purchase price, demonstrating the subject property is being proportionally assessed. In conclusion, the Board finds the subject's improvement assessment is equitably assessed and well justified giving consideration to the evidence contained in this record.

APPELLANT:	**Dwight & Peggy Tinney**
DOCKET NUMBER:	**08-06412.001-R-1**
DATE DECIDED:	**March, 2012**
COUNTY:	**St. Clair**
RESULT:	**No Change**

The subject property consists of a one-story brick and frame dwelling containing 1,966 square feet of living area that was built in 1986. Features include central air conditioning, an attached two-car garage, one fireplace and a full unfinished basement. The dwelling is situated on 2.18 acres of land.

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 an appraisal report estimating a fair market value for the subject property of $175,000 as of June 26, 2009. The appraiser utilized two of the three traditional approaches to value.

In the cost approach, the appraiser estimated the value of the subject's site to be $28,000. The appraiser indicated the site value estimate was based on a sales analysis of comparable lots in the neighborhood of the subject property. However, no evidence of comparable land sales were contained in the report. The appraiser next estimated the replacement cost new for the subject of $170,761 using Marshall and Swift Cost Guide. Accrued depreciation based on the age/life method was estimated to be $14,224, resulting in a depreciated cost new of $156,537. Site improvements were not included. The appraiser determined a value for the subject under the cost approach of $184,537 as of June 26, 2009.

In the sales comparison approach to value, the appraiser utilized sales of three suggested comparable properties located from 0.64 to 1.29 miles from the subject. The comparables are improved with a tri-level, a one-story and a one and one-half story dwelling of brick and siding construction. The dwellings range from eight to 18 years old. Amenities include central air conditioning, one fireplace, full basements and two-car garages. In addition, one basement is partially finished. Lot sizes range from .25 to .36 acres of land area. The dwellings range in size from 1,744 to 1,776 square feet of living area. The comparables sold from September 2008 to June 2009 for sale prices ranging from $163,000 to $171,000 or from $93.14 to $98.05 square foot of living area including land. After adjusting the comparables for differences when compared to the subject in age, land size, dwelling size, basement finish and other amenities, the appraiser calculated that the comparables had adjusted sales prices ranging from $172,280 to $178,400 or from $98.15 to $102.29 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 $175,000 or $93.18 per square foot of living area including land as of June 26, 2009. Based on the evidence provided, the appellants requested a reduction in the subject's assessment to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $67,978 was disclosed. The subject's assessment reflects an estimated market value of $203,527 or $103.52 square foot living area, including land using St. Clair

County's 2008 three-year median level of assessments of 33.40%. The board of review also argued that the supplied appraisal submitted by the appellants is not an accurate representation of the value of the subject property as of the effective date of the appraisal.

In support of the subject's assessment, the board of review submitted property record cards and an analysis of four suggested comparable properties. A map was submitted showing the proximate location of the subject property and comparables. The comparables are located from 290 to 600 feet from the subject property. The comparables have lots that contain from 16,156 to 49,089 square feet of land area. The comparables are improved with one-story or one and one-half story masonry or masonry and frame dwellings. The comparables were built from 1969 to 1993. The comparables have full basements, three of which are fully or partially finished. Other features include central air conditioning and two-car garages. The dwellings range in size from 1,344 to 1,830 square feet of living area. Three of the comparables sold from April 2008 to September 2008 for sale prices ranging from $177,000 to $250,000 or from $112.31 to $145.09 per square foot 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 Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellants argued the subject property was 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' appraisal report estimates the subject property has a fair market value of $175,000 as of June 26, 2009. The Board finds the effective valuation date of the appraisal is over 18 months subsequent to the subject's January 1, 2008, assessment date. In addition, the Board finds comparables 1 through 3 contained in the appraisal are dissimilar in age, design and/or land area when compared to the subject. Furthermore, all of the comparables contained in the appraisal are located outside the subject's subdivision. Finally, comparables 2 and 3 sold in June 2009 and are considered less indicative of the subject's fair market value as of its January 1, 2008, assessment date.

The Property Tax Appeal Board gave no weight to the board of review's comparable 1. The assessment information given did not address the appellant's argument of the subject's fair market value. Comparables 2 through 4 submitted by the board of review are most similar to the subject in location and most features. Comparables 2 and 3 are similar in design and age. However, all of the comparables have finished basements and considerably less land area than the subject property. These comparables sold from April 2008 to September 2008 for sale prices ranging from $177,000 to $250,000 or from $112.31 to $145.09 per square foot of living area including land. The subject's assessment reflects an estimated market value of $203,527 or $103.52 per square foot of living area including land, which falls below the range established by the similar comparables contained in this record on a per square foot basis. After considering adjustments to the comparable sales for differences when compared to the subject, the Board

finds the subject's estimated market value as reflected by its assessment is justified. Therefore, no reduction is warranted.

Based on this analysis, the Property Tax Appeal Board finds the appellants failed to demonstrate the subject property was overvalued by a preponderance of the evidence and no reduction is warranted.

APPELLANT:	**Leonard Wass**
DOCKET NUMBER:	**09-05045.001-R-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**LaSalle**
RESULT:	**No Change**

The subject property consists of a 15,295 square foot lake front cove lot that is improved with a single-family dwelling. The subject lot has a steep slope to the water's edge. The subject parcel is located in Northville Township, LaSalle County, Illinois.

The appellant appeared before the Property Tax Appeal Board claiming a lack of uniformity regarding the subject's land assessment. The subject's improvement assessment was not contested. In support of the land inequity claim, the appellant submitted photographs, assessment records, a location map, a grid analysis detailing five suggested land comparables and an analysis of the same five comparables prepared by a local realtor.

The photographs submitted by the appellant depict the subject lot's steep slope to the water's edge. The water frontage with boat dock is accessed by a multi-level stairway.

The five comparables submitted by the appellant as detailed in Section V of the residential appeal form are located from .65 to .7 of a mile from the subject. Comparables 1 through 4 are located in a different lake cove than the subject. Comparable 5 is located on the main body of the lake. The lots range in size from 13,818 to 17,032 square feet of land area and have land assessments ranging from $30,338 to $40,977. The subject property has a land assessment of $54,433.

The realtor analysis, prepared by Sam Hamilton of Coldwell Banker Honig-Bell, used the same five comparables that were contained in Section V of the residential appeal form. The report was titled "Independent Realtor Appraisal of Subject Land Value Assessment as Compared with Comparables' Assessments." The realtor was not present at the hearing for direct or cross-examination regarding the data and assessment conclusion contained in the report. Again, these same five comparables have land assessments ranging from $30,338 to $40,977. Based on the comparables, the analysis states the subject property should have an assessment of $40,977 or lower since 15 Holiday Drive (comparable 5) is a much more valuable lot (than the subject). The report describes lot 15 as "gently sloping and on the main part of the lake whereas yours (subject) is steep and on a cove." The realtor opinion states the subject lot has two factors which substantially reduce its attractiveness: 1. It is located in a cove; and 2. It is on an extremely steep slope making it difficult to go to and from shore and also expensive to maintain.

At the hearing, Wass produced some enlarged photographs of the subject lot depicting its steep sloping terrain. Wass argued that the subject suffers from a unique problem. He explained the original builder poured loose excavated clay on the hillside exasperating the steepness. He testified the earth is constantly moving toward the lake. The appellant testified he spent over $50,000 a few years ago to install boulders and wooden railroad ties to stop the moving earth. The appellant also testified he periodically spends thousands of dollars to repair the multi-level

stairway that tilts and shifts due to the moving earth. The appellant, based on the advice of the realtor, argued that steep lots should be assessed differently than gently sloping lots.

Based on this evidence, the appellant requested a reduction in the subject's land assessment to $40,977.

Under cross-examination, Wass testified he purchased the subject property in 1988, which was improved with a dwelling and the stairway for lake access. He could not recall the sale price. The boulders and railroad ties were installed a few years after purchase. He also installed a new boat dock when the lake was drained for dam repairs. The stairway has been repaired several times. He also installed landscaping. The appellant disagreed the repairs performed constituted deferred maintenance or land stewardship. He testified he is the only property owner located in the cove that has made these types of extensive repairs. The appellant testified neighboring hillsides are more stable and their owners have not made or needed any repairs. The appellant acknowledged neighboring properties have built some stairways for lake access.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $121,007 was disclosed. The subject property has a land assessment of $54,433.

In support of the subject's land assessment, the board of review submitted a letter addressing the appeal and a location map (Attachment a) depicting the location of the appellant's and board of review's comparables. The location map identified four coves, numbered 1 though 4. The board of review submitted photographs depicting the four numbered coves (Attachment b), including the cove where the subject is located. The board of review also submitted a limited assessment analysis (Attachment c) for 51 suggested land comparables that were segregated by cove numbers 1 through 4. The board of review also provided a Real Estate Transfer Declaration for a lot sale located in the subject's cove. Finally, the board of review submitted information regarding comparable 5 submitted by the appellant (Attachment 1).

Judie McConville, Chairman for the LaSalle County Board of Review, presented the evidence on behalf the board of review. McConville emphasized the basis of the appellant's appeal was uniformity of the subject's land assessment, not its market value. She argued the subject lot is equitably assessed with neighboring properties. McConville testified the subject lot is located in Cove 3, which is a deeper and wider cove than the other three coves identified in Attachment a. She further explained appellant's comparables 1 through 4 are located in Cove 1, which is a shallow cove near the marina. This cove is very busy in summer. McConville testified Coves 1 and 2 tend to recede during hot and dry weather.

With respect to appellant's comparable 5 (15 Holiday Drive), McConville explained this property had its assessment reduced in 2004 based on a sale and the fact the dwelling was uninhabitable due to its condition. However, McConville explained this comparable's land assessment was reduced in error. In 2008, the comparable had its improvement assessment increased to reflect fair market value, but the township assessor overlooked the land assessment at that time. Its land assessment is scheduled to be increased in 2011.

McConville next referred to Attachment c, which contained the land assessments for 51 suggested land comparables located in four different coves on Lake Holiday, including four of the comparables submitted by the appellant. The first section lists 11 land comparables located in Cove 3 like the subject. Cove 3 was described as a wide cove with deep water. McConville described Cove 3 as the nicest of the four coves researched. The comparables have land assessments ranging from $47,346 to $66,359. The immediate neighboring properties have land assessments of $54,433 or $57,258. One land comparable sold in September 2006 for $220,000. The subject property has a land assessment of $54,433.

The next section of Attachment c lists four land comparables located in Cove 4. McConville described Cove 4 as a private, very narrow cove with no depth. These properties have land assessments ranging from $44,575 to $116,768. The next section of Attachment c lists 15 land comparables located in Cove 2. McConville described Cove 2 as a private, very narrow cove with no depth like Cove 4. These properties have land assessments ranging from $45,625 to $58,384. One comparable sold in November 2006 for $164,750. The next section of Attachment c lists 21 land comparables located in Cove 1. McConville described Cove 1 as a public cove with a marina. The cove is not quiet and is very busy in the summer months because this is where boats get gasoline. The comparables located in Cove 1 have land assessments ranging from $30,338 to $58,384. The properties with lower land assessment ($30,338 to $34,318) were also utilized by the appellant. These properties are located near the end of the cove in close proximity to the marina.

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

Under cross-examination, it was explained the land assessments in Cove 1 were not changed after an island was removed because it is a high traffic area due to the proximity of the marina. The methodology of establishing assessments was also discussed, with location as the main criteria. Topography, depth and water access were considerations in assessing lots based on market transactions.

In rebuttal, the appellant submitted a letter that states in part that the board of review believes coves at Lake Holiday vary in market value depending on water depth, fish species, boat traffic and other subjective criteria particular to that cove. The appellant argued these claims are irrelevant to the market value of the subject lot. The appellant claims all lots in the subject's cove are over-assessed. The appellant claimed land values have plummeted by 30%, but submitted no credible evidence to support this claim. The appellant claims his lot is the steepest on the lake and one of the most undesirable lots. The appellant also submitted another letter from the local realtor that reiterated his opinion as to the subject's correct assessment, placing most emphasis on lot 15 (appellant's comparable 5). The appellant owns another lot on Lake Holiday near the marina, which was dredged approximately 10 years ago and has deep water. It had been listed for sale at $230,000, but was reduced to $180,000 before being withdrawn from the market due to no offers over several years. The appellant also argued the land assessments increased dramatically after the island was removed and the cove was dredged. The appellant opined Cove 1 is superior to Cove 3. The appellant also argued the township assessor was not available to address valuation issues nor was that person present at the hearing to testify.

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

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

The Property Tax Appeal Board finds the parties submitted 52 suggested land comparables for consideration. The Board gave most weight to the six comparables located in Cove 3 like the subject. Additionally, these comparables are the neighboring properties to the subject. These most similar comparables have land assessments of $54,433 or $57,258. The subject lot has a land assessment of $54,433, which is identical to five of the six most similar land comparables contained in this record. The Property Tax Appeal Board finds the subject's land assessment is well supported by the most similar land comparables contained in this record. Therefore, no reduction is warranted.

The Board further finds the manner in which the appellant's argument was posed with respect to the perceived diminished valuation of land due detrimental factors is not supported. The Board finds this type of argument mainly pertains to a market value complaint. The appellant argued in part that since the subject's lot is extremely steep, it is difficult to go to and from shore. Additionally, the appellant argued the subject lot is expensive to maintain since the land is constantly moving toward the lake. The appellant testified he has spent over $50,000 to install boulders and wooden railroad ties to stop the moving earth. The appellant also testified he periodically spends thousands of dollars to repair the multi-level stairway that tilts and shifts due to the moving earth. To further support his claim, the appellant presented an analysis prepared by a local realtor. The Board finds the realtor analysis contained no objective evidence to support the realtor's opinion as to the correct assessment of the subject lot. More importantly, the realtor was not present at the hearing for direct and cross-examination regarding his value opinion. As stated by the Supreme Court of Illinois "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki v. Department of Finance, 373 Ill.342 (1940); Grand Liquor Company, Inc. v. Dept. of Revenue, 67 Ill.2d 195 (1977).

Although this issue was referred to anecdotally in the appellant's appeal, the Board finds the appellant submitted no credible market evidence that would suggest the subject's assessment is not reflective of its fair cash value. In fact, the Board finds this record contains limited market data that supports the subjects land assessment. The board of review submitted a land sale from the subject cove, which sold in September 2006 for $220,000. The subject's 2009 land assessment reflects an estimated market value of $163,329, considerably less than this sale. Furthermore, under rebuttal the appellant presented the listing price of a steep lakefront lot, without objection. The lot was listed for sale at $189,000 for over a year and one-half with no

offers to purchase. This listing price further supports the subject's land assessment, which reflects an estimated market value of $163,329.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). Although the comparables presented by the parties disclosed that properties located in the same 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:	**Dave Wormald**
DOCKET NUMBER:	**08-06240.001-R-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**St. Clair**
RESULT:	**No Change**

The subject property consists of a one-story brick dwelling built in 2006. The dwelling contains 2,762 square feet of living area. Features include central air conditioning, a full unfinished basement and a 1,150 square foot garage. The dwelling is situated on approximately 58,414 square feet of land area.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's land and improvements are inequitably assessed. In support of these claims, the appellant submitted a letter addressing the value of the land based on amount of useable land, terrain and various underground utilities. Also included were property record cards, an aerial map and an assessment grid analysis detailing assessment and property characteristics for the subject property and three suggested comparables. The comparables are located in the subject's neighborhood assessment code as defined by the local assessor. The comparables consist of one story dwellings of brick exterior construction built from 2003 to 2006. Other features include full unfinished basements, central air conditioning and garages ranging in size from 748 to 1,040 square feet. The appellant reported the dwellings range in size from 2,012 to 2,902 square feet of living area. The suggested comparables have improvement assessments ranging from $43,398 to $85,177 or from $21.57 to $34.50 per square foot of living area. The subject property has an improvement assessment of $79,777 or $28.88 per square foot of living area.

The suggested comparables submitted by the appellant are reported to have lots that range in size from 36,503 to 44,431 square feet of land area. The comparables have land assessments ranging from $19,986 to $23,654 or from $.47 to $.57 per square foot of land area. The subject property has a land assessment of $25,894 or $.44 per square foot of land area. Based on this evidence, the appellant requested a reduction in the subject's land and improvement assessments.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $105,671 was disclosed.

In support of the subject's assessment, the board of review submitted property record cards, an aerial map and a grid analysis of four suggested comparables. Comparable 1 is common to both parties. The comparables are located from 320 to 1,010 feet from the subject property. The comparables consist of one story dwellings of brick or brick and frame exterior construction built from 2003 to 2006. Other features include full basements with three being partially finished, central air conditioning and garages ranging in size from 720 to 1,040 square feet. The appellant reported the dwellings range in size from 2,232 to 3,084 square feet of living area. The suggested comparables have improvement assessments ranging from $75,492 to $94,197 or from $30.54 to $34.54 per square foot of living area.

The comparables have lots that range in size from 28,372 to 44,900 square feet of land area and land assessments ranging from $20,854 to $26,056 or from $.47 to $.81 per square foot of land area. Based on this evidence, the board of review requested confirmation of the subject's land and improvement 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 Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

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

With respect to the subject's improvement assessment, the record contains six suggested assessment comparables for the Board's consideration. The Board finds the comparables submitted by both parties were located in close proximity to the subject. The Board gave less weight to both parties' comparable 1 and board of review comparables 3 and 4 based on partial finished basements, unlike the subject. The board also gave less weight to appellant's comparable 3 based on its considerably smaller size when compared to the subject. The Board finds comparable 2 submitted by the appellant and comparable 2 submitted by the board of review are more similar to the subject in location, design, age and features. Although the comparables are somewhat larger in dwelling size when compared to the subject property, these comparables have improvement assessments of $85,177 and $89,210 or $29.35 and $30.67 per square foot of living area, respectively, the subject property has an improvement assessment of $79,777 or $28.88 per square foot of living area, which is below the most similar comparables contained in the record on a per square foot basis. After considering adjustments to the comparables for any differences when compared to the subject, the Board finds the subject's improvement assessment is supported and no reduction is warranted.

The appellant also argued that the subject's land was not uniformly assessed. The record contains six suggested assessment comparables for the Board's consideration. The Board finds the comparables submitted by both parties were located in close proximity to the subject. The Board finds the comparables submitted by both parties are similar to the subject in location but have smaller land sizes than the subject property. These comparables have lots that range in size from 28,372 to 44,900 square feet of land area with land assessments ranging from $19,986 to $26,056 or from $.47 to $.81 per square foot of land area. The subject property has a land assessment of $25,894 or $.44 per square foot of land area, which falls below the range established by all of the comparables in the record on a square foot basis. After considering adjustments to the comparables for any differences when compared to the subject, the Board finds the subject's land assessment is supported and no reduction is warranted.

The appellant also argued that the land was not correctly assessed based on the amount of useable land, terrain and underground utilities. The Board finds that the appellant provided no

evidence with respect to the diminished valuation of the land due to these perceived detrimental factors.

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

APPELLANT:	**Yvonne Yellnick & Steve Pickett**
DOCKET NUMBER:	**09-00832.001-R-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**Will**
RESULT:	**No Change**

The subject property consists of a two–story frame and brick dwelling containing 3,557 square feet of living area that was built in 2001. Amenities include an unfinished basement, central air conditioning, two natural gas fireplaces and a 959 square foot attached garage. The subject property is located in Homer Township, Will County.

The appellants appeared before the Property Tax Appeal Board claiming unequal treatment in the assessment process as the basis of the appeal. The subject's land assessment was not contested. In support of this argument, the appellants submitted photographs, property record cards, a plat map, a location map and an assessment analysis detailing six suggested comparables. Comparables 1 through 5 are located in close proximity to the subject, but in the contiguous neighboring subdivision of Crystal Lake Estates. Comparable 6 is located approximately 1.5 miles from the subject in Rolling Glen subdivision. The subject property is located in Hunt Club Woods subdivision.

The comparables consist of two–story brick, brick and stucco or brick and stone dwellings that are from 12 to 22 years old. The comparables have full or partial basements. The appellants did not know if the basements contain finished area. Other features include central air conditioning, one or two fireplaces and attached garages that contain from 669 to 936 square feet. The dwellings range in size from 3,304 to 4,136 square feet of living area. The comparables have improvement assessments ranging from $124,464 to $165,731 or from $36.37 to $40.75 per square foot of living area including land. The appellants calculated the average improvement assessment of the comparables was approximately $37.00 per square foot of living area. The subject property has an improvement assessment of $178,819 or $50.27 per square foot of living area.

The appellant, Steve Pickett, testified he is an architect. He argued similar, but larger properties with more amenities located in neighboring Crystal Lake Estates are assessed for considerably less than the subject. The appellant argued property in Crystal Lake Estates share the same geographic market area, with comparables 4 and 5 almost adjacent to the subject. Pickett also noted the subject does not have a patio or deck like most other properties. Based on this evidence, the appellants requested a reduction in the subject's assessment.

Under questioning, the appellant agreed properties in Hunt Club Woods are governed by different home owner's association covenants than properties in Crystal Lake Estates subdivision.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $209,970 was disclosed.

In support of the subject's assessment, the board of review submitted a letter from the township assessor addressing the appeal; photographs, the subject's property record card and a plat map depicting the location of the subject property (Exhibit A); and an assessment analysis listing 59 suggested comparable properties from the subject's subdivision of Hunt Club Woods (Exhibit B); and an additional assessment analysis detailing six suggested comparables, an aerial photograph depicting the location of the subject and the six additional comparables, photographs and property record cards (Exhibit C). Deputy Township Assessor, Dale Butalla, was present at the hearing and provided testimony in connection with the evidence prepared on behalf of the board of review.

Exhibit B consists of 59 two-story dwellings located in Hunt Club Woods subdivision. The analysis did not disclose the dwellings' exterior construction type or age. The comparables have basements that range in size from 1,332 to 3,569 square feet. Garages range in size from 660 to 1,596 square feet. Other features such as fireplaces, central air conditioning, decks, porches or patios were not disclosed. The dwellings range in size from 2,970 to 5,672 square feet of living area. They have improvement assessments ranging from $158,135 to $315,987 or from $47.18 to $59.07 per square foot of living area.

Exhibit C is comprised of six additional assessment comparables to further support the subject's improvement assessment. The comparables are located in close proximity within the subject's subdivision. The comparables consist of two-story brick, brick and frame, brick and stone, or brick and stucco dwellings that were built from 2000 to 2004. The comparables have full or partial basements. Basement finish, if any, was not disclosed. One comparable has a walkout basement. The comparables have zoned heating and cooling systems, one or two fireplaces, and attached garages ranging in size from 814 to 1,258 square feet. One comparable has a swimming pool. The dwellings range in size from 3,543 to 3,590 square feet of living area. The comparables have improvement assessments ranging from $179,438 to $200,182 or from $50.43 to $55.87 per square foot of living area.

Based on this evidence, the board of review argued the subject property is equitably assessed.

Under cross-examination, the deputy assessor testified that market sales show property values in Hunt Club Woods are higher than property in Crystal Lake Estates.

In rebuttal, the appellants argued by law a homeowner is allowed to use comparables of similar residences for a distance up to one mile from a subject property, but could not cite such a law. The appellants argued the board of review takes the position the subject's subdivision is an island that nothing can be compared. Although the appeal was based on uniformity of assessment, the appellants argued there have been no houses that sold or offered for sale in the subject's subdivision, which is the reason why comparables from different subdivisions were used. The appellants argued three of their comparables are located in closer proximity to the subject than four of the six comparables submitted by the board of review. The appellants argued the subject lot is contiguous to three lots located in Crystal Lake Estates subdivision. The appellants claim a residence from Crystal Lake Estates could be transplanted to Hunt Club Woods and it would not be out of character in terms of size, building materials, appearance or amenities. The appellants argued there are superior homes in Crystal Lake Estates that are assessed for considerably less than the subject. The appellants claim all property in Hunt Club Woods are overvalued.

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

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

The parties submitted detailed descriptions and assessment information for 12 suggested comparables for the Board's consideration. The Property Tax Appeal Board gave less weight to comparables 2 and 6 submitted by the appellants. Comparable 2 is considerably larger when compared to the subject. Comparable 6 is located a considerable distance from the subject whereas the remaining comparables are located more proximate to the subject. The Board finds the remaining 10 comparables submitted by both parties are similar to the subject in location, design, age, size, and features of varying degrees. The Board recognizes four of these comparables that were submitted by the appellant are located in neighboring Crystal Lake Estates subdivision. The appellant contends these properties are similar or superior in value to the subject while the board of review contends these properties are situated in an inferior market location. The Board finds neither party submitted any credible market evidence, such as a paired sales analysis, to support either proposition.

The remaining ten comparables have improvement assessments ranging from $133,351 to $200,182 or from $39.26 to $55.87 per square foot of living area. The subject property has an improvement assessment of $178,819 or $50.27 per square foot of living area, which falls within the range established by the most similar comparables contained in this record. After considering adjustments to the most similar comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is supported and no reduction is warranted.

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

APPELLANT:	**Michael Zamis**
DOCKET NUMBER:	**09-04891.001-R-1**
DATE DECIDED:	**October, 2012**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property is improved with a two-story single family dwelling of brick and frame exterior construction that contains 2,966 square feet of living area and was built in 1991. Features of the home include central air conditioning, one fireplace, a two-car garage and a partial basement with partial finish. The subject has a 9,856 square foot site. The subject property is located in Wheaton, Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal of the subject property prepared by Caroline Dorn, a State Certified Residential Real Estate Appraiser. The appraiser was not present at the hearing to provide testimony and be cross examined regarding the appraisal methodology and the final value conclusion. Using the sales comparison approach to value, the appraiser estimated the subject property had a market value of $535,000 as of May 18, 2009.

Under the sales comparison approach the appraiser utilized four comparable sales, one sale listing and one pending sale located in Wheaton, approximately .4 of a mile to 2 miles from the subject property. The comparables have lots that range in size from 9,976 to 23,072 square feet of land area. The comparables were described as being improved with two-story single family dwellings that ranged in size from 2,722 to 3,475 square feet of living area. The dwellings were of brick and frame construction that ranged from 17 to 42 years old. Each comparable had central air conditioning, one or two fireplaces and a two-car garage. Five comparables had finished basements and one comparable had an unfinished basement. Comparables 1 through 4 sold from October 2008 to April 2009 for prices ranging from $535,000 to $639,000 or from $153.96 to $197.32 per square foot of living area, land included. Comparable 5 listed for $565,900 or $166.00 per square foot of living area, land included. Comparable 6 was a pending sale for $567,900 or $207.72 per square foot of living area, land included. After making adjustments to the comparables for differences when compared to the subject property, the appraiser concluded the comparables had adjusted prices ranging from $511,100 to $599,700. Based on these adjusted sales, the appraiser estimated the subject had an estimated value of $535,000 under the sales comparison approach to value.

At the hearing the board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Hearing Officer reserved ruling.

The appellant's attorney called no witnesses and acknowledged that the appraiser was not present at the hearing. The appellant's attorney asserted the argument was based on market value. The appellant's attorney agreed that the intended user of the appraisal was the lender/client and the intended use was for the lender/client to evaluate the property for a mortgage finance transaction.

The appellant's attorney stated that he believed his client had permission to use the appraisal for challenging the assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $224,740 was disclosed. The subject's total assessment reflects a market value of $675,707 or $227.82 per square foot of living area including land when applying the 2009 three-year average median level of assessments for DuPage County of 33.26%. The board of review submitted an Addendum to Board of Review Notes on Appeal. In support of the subject's assessment, the board of review also submitted a grid analysis marked as Exhibit #1, which was prepared by the Milton Township Assessor's Office. The assessor detailed the appellant's comparables and provided five additional comparables. Also included were copies of the property record cards for all the comparables used by the parties and a map showing the location of both parties' comparables in relation to the subject property.

The board of review called as its witness Mary Cunningham, Deputy Assessor of Milton Township. Cunningham testified that the appraiser's comparables are not located in the subject's assessment neighborhood code as defined by the local assessor. Cunningham also testified that only two of the board of review's comparables are located in the subject's neighborhood and the other three are less than one mile away from the subject. The comparables consist of two-story single family dwellings of frame or frame and brick construction that were constructed from 1978 to 1996. All of the comparables have central air and full or partial basements, with three being partially finished. The comparables have one or two fireplaces. All the comparables have garages ranging from 484 to 840 square feet of building area. The dwellings range in size from 2,436 to 3,675 square feet of living area and are situated on lots that contain from 12,920 to 48,700 square feet of land area. The comparables sold from October 2006 to September 2008 for prices ranging from $520,000 to $770,000 or from $202.45 to $235.17 per square foot of living area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under questioning by the appellant's attorney, Cunningham testified that she agreed that the sales closer to January 1, 2009 are more indicative of market value. Cunningham testified that all of the sales the appellant used are closer in date to January 1, 2009 than the sales used by the assessor with the exception of sale number 1. Cunningham also testified that if there were any comparable sales after the January 1, 2009 assessment date in the subject's neighborhood, the assessor's office would have used the sales in their analysis.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of 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). 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 did meet this burden of proof and a reduction in the subject's assessment is warranted.

In support of the overvaluation argument the appellant submitted an appraisal estimating the subject had a market value of $535,000 as of May 18, 2009. The board of review objected to the appraisal report contending the appraiser was not present to be cross-examined. The Board hereby sustains the objection. The Board finds the appellant's appraiser was not present at the hearing to provided direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined. The Board gives the conclusion of value contained in the appraisal little weight. The appraiser was not present at the hearing to be cross-examined with respect to the appraisal methodology, the selection of the comparables, the adjustment process and the ultimate conclusion of value. However, the Board may examine the raw sales data contained in this record, including the sales in the appellant's appraisal.

The Board finds the record contains 11 comparables submitted by the parties in support of their respective positions. The Board gave less weight to the appellant's comparables 2, 3, 4 and 6 due to their distant location from 1.5 to 2.0 miles from the subject. Additionally, comparable 4 is older in age than the subject. The Board also gave less weight to comparables 2, 3, 4 and 5 submitted by the board of review. These sales occurred in 2006 and 2007, which are less indicative of fair market value as of the subject's January 1, 2009 assessment date. The Board finds the remaining three comparables, two sales and one listing, are more similar to the subject in location, design, size, age and features. Due to their similarities the Board gave these three comparables more weight. These most similar properties sold or were listed, which sets the upper limit of value, from June 2008 to April 2009 for prices ranging from $565,900 to $639,900 or from $166.00 to $202.45 per square foot of living area including land. The subject's assessment reflects a market value of $675,707 or $227.82 per square foot of living area including land, which falls above the range established by the most similar comparables in this record. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's assessment is excessive and a reduction is warranted.

2012 RESIDENTIAL CHAPTER

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

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2012 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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2012 FARM CHAPTER

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APPELLANT:	**A.D. & J.K. Byers**
DOCKET NUMBER:	**07-04017.001-F-1**
DATE DECIDED:	**April, 2012 (to be certified) & June, 2012 (final assessments)**
COUNTY:	**Moultrie**
RESULT:	**Reduction**

The subject property consists of a 4.97 acre tract of land that is improved with a 1992 double wide mobile home that contains 1,456 square feet of living area. The mobile home is attached to a 728 square foot garage. The subject parcel is also improved with an 884 square foot detached garage, two decks, a concrete patio, a 672 square foot concrete flat barn, a 570 square foot shed, which were both built in 1948. The parcel also has a .75 acre pond. The property is located in Sullivan Township, Moultrie County.

Alan Byers (herein after the appellant), appeared before the Property Tax Appeal Board contending: (1) the subject dwelling should not be assessed as real estate but subject to the mobile home privilege tax under the Mobile Home Local Services Tax Act (35 ILCS 515/1 et seq.); (2) there are other mobile homes in Moultrie County with various attachments that are classified as mobile homes under Mobile Home Local Services Tax Act (35 ILCS 515/1 et seq.); and (3) that 2.25 acres of the subject parcel are entitled to a farmland classification and assessment.

CLASSIFICATION AND EQUAL TREATMENT OF SUBJECT DWELLING

APPELLANT'S CASE IN CHIEF

The appellant argued the subject dwelling should be classified and assessed as a mobile home pursuant to Illinois statute and case law. First, the appellant cited the appellate court's holding in Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App.3d 792 (5th Dist. 2006). The appellant also submitted section 2 of the statutory authority outlined in the Illinois Manufactured Housing and Mobile Home Safety Act, which provides:

> Sec. 2. Unless clearly indicated otherwise by the context, the following words and terms when used in this Act, for the purpose of this Act, shall have the following meanings:
>
> (a) "Manufactured home" means a 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, and is a movable or portable unit that is (i) 8 body feet or more in width, (ii) 40 body feet or more in length, and (iii) 320 or more square feet, constructed to be towed on its own chassis (comprised of frame and wheels) from the place of its construction to the location, or subsequent locations, at which it is installed and set up according to the manufacturer's instructions and

> connected to utilities for year round occupancy for use as a permanent habitation, and designed and situated so as to permit its occupancy as a dwelling place for one or more persons. The term shall include units containing parts that may be folded, collapsed, or telescoped when being towed and that may be expected to provide additional cubic capacity, and that are designed to be joined into one integral unit capable of being separated again into the components for repeated towing. The term excludes campers and recreational vehicles. The terms "mobile home" and "manufactured home" do not include modular homes or manufactured housing units. (430 ILCS 115/2)

The appellant testified the mobile home's steel frame is resting on pillars or piers made of un-mortared concrete blocks. Wood blocks were placed between the dwelling's steel frame and concrete piers for leveling purposes. The appellant argued the subject's foundation is not permanent. The appellant testified there is a mortared concrete block wall that surrounds the dwelling's perimeter, but the dwelling is not bolted, anchored or supported to the perimeter wall. The appellant further testified there is a gap between the home and the perimeter wall that is sealed with insulation.

With respect to the unequal treatment argument, the appellant testified he researched the assessments of neighboring properties that have mobile homes with attachments like the subject. (Property Record Cards, Exhibits 6, 7 and 8). Exhibit 6 (Rauch property) is a mobile home with an 828 square foot attached garage and an attached porch. The dwelling is classified as a mobile home subject to the privilege tax. Exhibit 7 (Tull property) is a mobile home with an attached porch with a roof. The dwelling is classified as a mobile home subject to the privilege tax. Exhibit 8 (Reynolds property) is a mobile home with an attached enclosed frame porch over an integrated roofline. The dwelling is classified as a mobile home subject to the privilege tax. The appellant noted that after he filed a complaint regarding the subject's correct classification and assessment, Moultrie County Assessment Officials changed the classification and assessments for these comparable properties to real estate for the 2008 assessment year.

Under cross-examination, the appellant testified the subject dwelling was placed on the property in 1992. The appellant received a special use permit to place the mobile home on the property and another building permit for the construction of the attached garage. The appellant testified the dwelling was trucked to its site on wheels and set in place on the concrete piers. The wheels, hitch and tongue were subsequently removed. The appellant testified he may trade-in the mobile home for a newer mobile home. He testified that there is a garage connected to the mobile home with nails and there is an interior door to access the garage. The structures are connected with roofing materials. The appellant testified there would be no damage to the garage or dwelling if the mobile home was removed. He testified the nails could be removed with a saw in order to remove the dwelling. The number of piers and manner in which the dwelling was affixed to the ground was also discussed. The appellant testified the four corners of the dwelling have tie down straps anchored to the earth. There is also a concrete slab beneath the dwelling on which the piers are stacked to support the dwelling. The appellant acknowledged the subject parcel is also improved with two decks, but they are not attached to the dwelling. Both parties reviewed photographs of the dwelling and garage during the hearing.

CLASSIFICATION AND ASSESSMENT OF LAND

The appellant also argued 2.5 acres of the subject parcel are entitled to a farmland classification and assessment. Byers explained the subject land was purchased in 1972 and he immediately planted 47 apple, nut, plum, pear and peach trees. The trees encompass approximately .75 of an acre of land area. In addition, the appellant tilled approximately three acres of the original property in order to grow corn and beans. He also plants winter rye and wheat to "turn under", which provides the soil nutrients for the next year's crop of corn or beans. For the years 2005 through 2007, the appellant testified the crops he raised consisted of tomatoes, spinach, lettuce, sweet corn, squirrel corn, turnips, beets, carrots, peppers, asparagus, and strawberries. Byers testified he alternates the area in which these crops are grown from year to year for proper soil nutrition and to protect from disease. Byers testified 1.5 acres are used for the actual farming operation and the farm buildings are situated on .75 of an acre, totaling 2.25 acres. The farm buildings are used to store a tractor, tiller, cultivator, planter, seed and fertilizer.

The appellant agreed that the pond and windbreak located on the subject parcel are not used for any farming activity. The appellant testified the pond was used for recreational purposes. For clarification regarding the size of the parcel, the chief county assessment officer testified the GIS system used by county assessment officials depict the subject parcel as containing 4.97 acres. However, .20 of an acre is a dedicated road right of way, resulting in a net land area of 4.77 acres.

Under cross-examination, the appellant was provided an aerial map of the subject parcel, marked as Exhibit 1. Two areas of the southern half of the parcel were identified as growing fruit and nut trees. The appellant identified the areas of the parcel used for the home site and faming activity. The appellant marked the letter "G" inside a box south of the dwelling and next to farm structures, demarking the location used to grow produce. Another irregular shaped area in the southwest corner of the subject parcel was marked "GT" for garden temporary and vine crops, such as squash and pumpkins. The southeast section of the parcel was marked as growing squirrel corn, winter wheat and more fruit trees. To the north of the windbreak, the northwest half of the northern section was marked as growing alternating squirrel corn and cover crop. Again, the appellant marked the areas around the dwelling as a home site along with the wind break north of the dwelling and a pond in the northeast corner of the parcel. The appellant testified crops were grown and harvested on the southern section of the parcel for years 2005, 2006 and 2007.

The appellant testified he sells squirrel corn for $3.00 per bag. The appellant testified that normally the produce, fruit and nuts are used by his family; however, excess product is sold. The appellant testified the primary purpose of the parcel is for both a residence and growing crops. He could not attest to production volume.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $36,170 was disclosed. Cynthia Kidwell, Moultrie County Chief County Assessment Officer was called as a witness. Kidwell's qualifications and duties were presented. During the hearing Kidwell calculated the improvements situated on the subject parcel, excluding the dwelling, were valued at $24,202 or an assessment $8,067, which include the garage, decks, sheds and various farm buildings.

CLASSIFICATION AND EQUAL TREATMENT OF SUBJECT DWELLING

Kidwell provided testimony in connection with the county's policy of classifying and assessing mobile homes. She testified the policy regarding the treatment of mobile homes has been in effect since 1983, before she became the Chief County Assessment Officer. She testified "if a mobile home was not on a permanent foundation, not including piers, it would be assessed as a mobile home; however . . ., if they (mobile homes) are actually resting on a permanent foundation, not on piers, they would be classed as real estate. If they (mobile homes) had any kind of addition to them, such as porches, garages, living areas additions, that if removed would cause any damage to the mobile home or addition, then we would reclassify those to real property." Since the garage, which is real estate, was attached to the mobile home, Kidwell argued the dwelling does not qualify for a mobile home classification subject to the privilege tax, regardless of its foundation type.

For clarification, Kidwell was questioned what legal authority exists that authorized the county in the implementation of this assessment policy. Kidwell testified that it was her understanding that the law has always gone by intent. She indicated there was a court case regarding mobile home owner's intent being modified, resulting in a mobile home being assessed as real property. She could not remember the name of the case and counsel for the board of review could not recall the name of the court case. With respect to ascertaining intent, Kidwell testified the rationale to ascertain intent was by the nature of the addition(s) to a mobile home making it no longer moveable. Kidwell testified she was aware of the appellate court holdings regarding the classification and assessment of mobile homes. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711 (2nd Dist 1996); Christian County Board of Review v. Property Tax Appeal Board, Ill.App3d 792 (5th Dist. 2006). Kidwell agreed the subject dwelling in this appeal is set on a temporary foundation, but is attached to real property. She also argued currently there is no definition of a permanent foundation contained in the Property Tax Code.

With respect to the inequity claim raised by the appellant and the county's policy regarding the classification treatment of mobile homes in Moultrie County, Kidwell testified she conducts an annual meeting for township assessors pursuant to section 9-15 of the Property Tax Code. (35 ILCS 200/9-15). Kidwell testified at the annual meeting she instructs township assessment officials in the uniformity of their functions, including the treatment involving the classification and assessment of mobile homes. Kidwell testified the three comparables that were submitted by the appellant that were classified as mobile homes in 2007 have various attachments assessed as real estate. Kidwell testified the classification and assessments of those properties were changed in 2008 to real estate due to the fact the appellant brought these properties to the attention of assessing officials. She also testified that at least one other property that had been classified and assessed as a mobile home was changed to real property classification and assessment. She testified that 2007 was the beginning of the new quadrennial assessment cycle for Moultrie County. In summary, Kidwell testified the classification and assessment of the three properties submitted by the appellant were changed to real estate in 2008 "to be equitably assessed with other mobile homes." She testified that in 2007, the three properties were classified as mobile homes in error.

The board of review also submitted a grid analysis to demonstrate the subject dwelling is uniformly assessed with other mobile homes that are assessed as real property.

In rebuttal, the appellant argued there are several other properties like the subject that receive a mobile home classification and assessments. The appellant did not disclose the names or addresses for these properties because he does not want the owners to be penalized.

CLASSIFICATION AND ASSESSMENT OF LAND

Kidwell was of the opinion that the primary use of the subject parcel was for residential purposes, pursuant to section 1-60 of the Property Tax Code. (35 ILCS 200/1-60). Kidwell testified the county's policy in determining farmland use and classification is a "judgment call quite frankly. If it is the primary use and it has residential as well, that's our policy." Kidwell argued the purported farming activities taking place on the southern section of the parcel are incidental to its primary residential use. Kidwell testified the board of review most often uses a questionnaire (Exhibit G) in determining whether a particular parcel is entitled to a farmland classification and assessment. Kidwell testified the scattered nature of the garden plots as well as the fruit and nut trees do not constitute a primary farm use. Kidwell testified that if the subject parcel was granted a farmland classification and assessment, it would be inequitable to not grant property owners in towns like Sullivan, Illinois a farmland assessment for a garden in their back yard. Kidwell testified she has never inspected the subject property, but argued the fruit and nut trees on the parcel is not an orchard.

The board of review also argued that the appellant did not own the northern section of the parcel until 2006. The appellant purchased this acreage in 2006. He did not plant corn or fruit trees in this section until 2006. The appellant testified that prior to 2006, this area was a farm field used to grow corn, beans and wheat. However, the land was bare when purchased in 2006. No crop was harvested during 2006. Kidwell testified this former parcel was reclassified and assessed as non-farmland in 2005 because no crop was being grown. Kidwell calculated that the northern section purchased by the appellant in 2006 contains 2.47 acres, net 2.40 acres after deduction for road right of way. As a result, the parties agreed to the calculation that the southern section of the subject parcel contains 2.5 acres, including the home site. The assessor agreed with the taxpayer to inspect the subject parcel subsequent to the hearing in order to facilitate a stipulation.[1]

Kidwell was questioned with respect to the county's policy of farmland classification and assessments, particularly the language in determining the "primary use" and "incidental use" of a parcel. She testified the definition of a farm as contained in Section 1-60 of the Property Tax Code (35 ILCS/200-1-60) uses the language of primary and incidental use, but it is a judgment of the assessor to determine the proper classification of a property for assessment purposes. In making farmland classification determinations, Kidwell testified the farm portion of a parcel does not have to be larger than the residential portion of a parcel. She agreed the southern portion of the parcel with the reported farming activity is larger than the residential portion of the

[1] Subsequent to the hearing, both parties filed briefs outlining the results regarding the inspection of the subject property. The parties did not reach an agreement as to the correct classification and assessment of the subject property. In addition, the briefs reiterate the parties' arguments as outlined at the hearing. However, the assessor's letter states the subject has a .525 acre home site, which was agreed to by the appellant.

property. Kidwell testified assessment officials were given exclusion instructions to deny farmland assessments to properties that have scattered fruit trees or gardens, but to grant farmland assessments to properties, for example, that may have two acres of fenced pasture with a horse. Kidwell testified farmland assessments are granted depending on the individual circumstances of a property, but the process is admittedly subjective. She testified the Illinois Department of Revenue Publication 122 is used as a reference. The county does not have any written established policy regarding this matter. With respect to the buildings situated on the subject parcel, except the dwelling and garage, Kidwell agreed the buildings are not used for residential purposes. Kidwell testified they may have gardening tools. She agreed a typical residential property does not have barns or a large tractor.

PROPERTY TAX APPEAL BOARD DECISION

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 reduction in the subject's assessment is warranted.

CLASSIFICATION AND EQUAL TREATMENT OF SUBJECT DWELLING

The appellant argued that the subject dwelling was improperly classified and assessed as real estate. The appellant argued the dwelling is a mobile home that should be taxed under the Mobile Home Local Services Tax Act.

As of the assessment date at issue, Section 1-130 of the Property Tax Code defines real property in part as:

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

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

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

Both the Property Tax Code and the Mobile Home Local Services Tax Act require a mobile home to be resting in whole on a permanent foundation before it can be classified and assessed as real estate. Absent a permanent foundation a mobile home is subject to the privilege tax provided 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 provide that the determining factor in classifying a mobile home as real estate as being the physical nature of the structure's foundation. Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d at 724.

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

The Manufactured Home Installation Code (77 Ill.Admin.Code 870) also contains a definition of "permanent foundation" as:

> [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).

The Board finds 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 subject dwelling is 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. The Board further finds 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 dwelling is a mobile home that is not resting on, supported by and anchored to a perimeter foundation that extends below the frost depth. The evidence disclosed the subject has a concrete block outside perimeter formation that does not support or anchor the home. Testimony and evidence provided at the hearing disclosed that the home is not attached to this perimeter formation. The Board finds stacked, non-mortared concrete blocks were placed under the home's undercarriage that actually supports the mobile home. Wood shims were placed between these non-mortared blocks and the steel 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 are screwed into the ground to anchor the dwelling.

The Board finds that even the Chief County Assessment Officer agreed that the subject dwelling has a temporary style foundation, but argued the dwelling should be assessed as real property because it is attached to a garage, which is real property. The Property Tax Appeal Board gave little weight to this argument. The Board finds the policy established by Moultrie County Assessment Officials regarding the treatment of assessing mobile homes as real property if they are attached to other real property is not supported by Illinois statutes or the case law referenced in this decision. Additionally, the Board finds the subject mobile home and garage do not share integrated foundations. The subject mobile home was placed on a temporary foundation whereas the attached garage is attached and anchored to its own permanent concrete slab foundation. The Board finds the subject mobile home and garage is not highly integrated so as to constitute real property subject to ad valorem assessment and taxation. The Board finds the evidence in this appeal demonstrates there is no objective legal standard in accordance with controlling Illinois law establishing when the connection, affixation and fastening of a mobile home to a garage or other real property is so interpreted that a mobile home is to be assessed and taxed as real estate.

The Property Tax Appeal Board further finds the appellant's inequity claim regarding the classification and assessment of a mobile home in Moultrie County has merit. The Illinois property tax scheme is founded upon Article IX, section 4(a), of the Illinois Constitution of 1970. Article IX, section 4(a), of the Illinois Constitution of 1970 provides:

> Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

Ill.Const.1970 art. IX §4(a). As explained by the Supreme Court of Illinois in Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 544 N.E.2d 762, 136 Ill.Dec. 76 (1989):

> The principle of uniformity of taxation requires equality in the burden of taxation. [Citation.] This court has held that an equal tax burden cannot exist without uniformity in both the **basis of assessment** and in the rate of taxation. [Citation.] The uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. Kankakee County, 131 Ill.2d at 20.

The parties did not dispute the fact that the subject dwelling was a mobile home situated on a temporary foundation that is attached to a garage. The parties also did not dispute the fact that other parcels identified by the appellant were improved with mobile homes with attached garages or other real property improvements that were not being classified, assessed and taxed as real estate, but were receiving the privilege tax provided by the Mobile Home Local Services Tax Act, albeit in error according to county assessment policy. Based on this evidence, the board finds the subject property is further entitled to a mobile home classification and assessment based on the principals of uniformity.

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

CLASSIFICATION AND ASSESSMENT OF LAND

The Property Tax Appeal Board finds the subject parcel contains a total of 4.97 assessable acres of land, of which 1.975 acres qualifies for a farmland classification and assessment based on the most credible evidence and testimony presented. The Board finds the appellant has made a concerted effort to farm the subject parcel using accepted farming techniques. Section 1-60 of the Property Tax Code defines "farm" in part as:

> any property **used solely for the growing and harvesting of crops**; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, **fruit**, **truck or vegetable crops**, floriculture, mushroom growing, plant or tree nurseries, **orchards**, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. . . For purposes of this Code, "farm" does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use. (35 ILCS 200/1-60)

Based on this statutory definition of a farm, the Property Tax Appeal Board finds the evidence and testimony clearly shows 1.975 acres of the subject parcel has an agricultural use in order to qualify for a farmland classification and assessment as of the 2007 assessment year. The Board finds the southern section of the subject parcel is used for a variety of agricultural purposes in accordance with Section 1-60 of the Property Tax Code. (35 ILCS 200/1-60). The Board finds the photographic evidence and credible testimony presented by the appellant show the appellant was engaged in farming activities that are enumerated in the Property Tax Code. The Board finds the appellant grows and harvests corn, winter wheat, fruit and nut trees as well as various fruit and vegetable crops, which qualifies this portion of the subject parcel for a farmland classification and assessment based on its actual use. Additionally, the evidence and testimony shows these farming the activities have been taking place for numerous years, including prior to 2005. In order 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 Board finds the 1.975 acres of the subject parcel complies with section 10-110 of the Property Tax Code. (35 ILCS 200/10-110).

The board of review did not dispute the appellant's agricultural use of 1.975 acres[2] of the subject property, but argued that use is "incidental" to the use of the property as a whole. The board of

[2] The board of review's post hearing brief describes .995 acres in the southern portion of the subject parcel to be a wooded area and the area(s) between the corn, garden, fruit and nut trees. The Property Tax Appeal Board finds

review argued the "primary use" of the subject property as a whole is residential. The Board gave this argument little weight. Section 1-60 of the Code provides in pertinent part:

> For purposes of this Code, "farm" does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use. (35 ILCS 200/1-60)

The Property Tax Appeal Board finds the record is clear that only .525 acres of land area is used as residential, which contains the subject's mobile home, garages and mowed yard. A review of the controlling statutes shows the definition of a "farm" does not require the property classification be based on the primary use as a whole. Rather, property that is used solely for the growing and harvesting of crops or the feeding, breeding and management of livestock is properly classified as farmland, **even if the farmland is part of a parcel that has other uses**. (Emphasis added). See Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d at 872, (3rd Dist.1983); Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999); and McLean County Board of Review v. Property Tax Appeal Board, 286 Ill.App.3d 1076, 1078 (4th Dist. 1997).

Based on this record, the Property Tax Appeal Board finds 1.975 acres of the subject property is entitled to a farmland classification and assessment. Therefore, the Board finds the subject's land assessment as established by the board of review is incorrect and a reduction is warranted.

The Property Tax Appeal Board further finds the 2.47 acres contained in the northern section of the subject parcel is not entitled to a farmland classification and assessment. The evidence and testimony presented at the hearing shows the appellant did not acquire this acreage until 2006, when he commenced planting fruit trees and in addition to planting some "squirrel corn and cover crop." The appellant testified at the hearing that this land was vacant and bare in 2006 when acquired. In addition, Kidwell testified the classification and assessment for this acreage was changed in 2005 in accordance with Publication 122 issued by the Department of Revenue because the acreage was no longer being farmed. This fact was not disputed by the appellant at the hearing. In addition the northern section contains a pond, which the appellant testified was not used in association with the farming operations, but is used for recreational purposes. As a result, the Board finds that as of the 2007 tax year, this acreage does not meet the requirements to qualify for a farmland classification and assessment as provided in Section 10-110 of the Property Tax Code, which provides in pertinent part:

> 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

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these areas are also entitled to a farmland classification and assessment. The land in question is contiguous and is associated to land this Board finds to be entitled to a farmland classification and assessment. (See page 1 of the Illinois Department of Revenue Publication 122, which provides in part Other Farmland includes woodland pasture; woodland, including woodlots, timber tracts, cutover, and deforested land.) In addition, Section 10-125(c) of the Property Tax Code provides that Other Farmland shall be assessed at 1/6 of its debased productivity index equalized assessed value as cropland. (35 ILCS 200/10-125(c)).

> 10-145, shall be determined as described in Sections 10-115 through 10-140. (35 ILCS 200/10-110).

This section of the Property Tax Code requires that land must be used for agricultural purposes for at least two years preceding the date of assessment, which did not occur under the facts of this case. However, some of this area may likely qualify for a farmland classification and assessment for the 2008 assessment year if the same farming activities continue to take place. Therefore, the Board finds the northern section of the subject parcel does not qualify for a farmland classification and assessment.

Based on this record, the Property Tax Appeal Board hereby orders the Moultrie County Board of Review to compute a farmland assessment for the subject property in accordance with these findings within 15 days of the date of this decision.

APPELLANT:	**KAJ Trust c/o Kenneth & Joyce Antoine**
DOCKET NUMBER:	**09-03322.001-F-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**Stephenson**
RESULT:	**No Change**

The subject property consists of 22-acres improved with a dwelling and four outbuildings. The parcel consists of approximately 21.3-acres assessed as farmland and a .70-acre homesite. The subject 43-year-old one-story frame dwelling contains 2,128 square feet of living area. Features include a partial basement which is partially finished and an attached three-car garage of 690 square feet of building area. The outbuildings include two 79-year-old structures, a 1983 shed and a three-sided steel pole building that was built in October 2008. The property is located in Ridott, Ridott Township, Stephenson County.

The appellants appeared before the Property Tax Appeal Board contending the assessments of the farmland, the residence and the outbuildings were each in error based on overvaluation and/or equity. At hearing, the appellants contended that it was the assessment of the farm buildings which was the primary issue in this appeal. In support of this appeal, the appellants presented various analyses that will be individually examined.

The appellants presented no evidence to support the requested change in the subject's farmland assessment. At the hearing, when questioned about the requested farmland assessment reduction, the appellants were unable to state why they believed the assessment was in error.

As to the assessment of the dwelling, the appellants presented two separate grid analyses of a total of six suggested comparables. The appellants provided sale information as to comparable #1, listings for three homes, and assessment data as to comparables #2 and #3. Since the appellants indicated in Section 2d of the Farm Appeal form that one of the bases of this appeal was "comparable sales" the Property Tax Appeal Board will examine the applicable data on the sale and three listings.

These four dwellings consist of two, one-story and two, two-story homes of frame exterior construction. The dwellings range in age from 9 to 110 years old and range in size from 1,050 to 2,040 square feet of living area. Three comparables have full unfinished basement and one has a crawl-space foundation. Two of the dwellings have central air conditioning and a fireplace. Each of the comparables has a garage. The parcels ranged in size from 4.08 to 19 acres of land with additional outbuildings. Comparable #1 sold in October 2007 for $230,000 or $186.69 per square foot of living area, including land. The three reported listings had asking prices ranging from $163,000 to $169,900 or from $83.28 to $155.24 per square foot of living area, including land. The subject dwelling' improvement assessment reflects a market value of approximately $134,160 or $63.05 per square foot of living area excluding land.

As to the outbuildings, the appellants presented evidence addressing primarily the recent construction of the pole building in October 2008 which was completed as of November 26, 2008. This 960 square foot building of steel construction features a gravel floor and no electrical

service. The appellants presented a grid analysis with the notation "sheds only" on the top, however, the data does not reflect either sales or assessments of only sheds. As such, this data will not be further analyzed as it fails to adequately challenge the assessment of the subject outbuilding(s) only.

The appellants also based this appeal on recent construction regarding a newly constructed steel pole building with a gravel floor and completed Section VI of the appeal form in support of the overvaluation argument. The appellants reported the building was constructed at a cost of $15,950. In support of this contention, the appellants presented photographs of the building, an Agreement for Purchase and Construction, a document summarizing the building package price of $15,950, a limited warranty document from Walters Buildings, and a copy of a building permit. At hearing, the appellants agreed this documentation accurately reflected the costs of construction for this pole building.

On cross-examination, the appellants further described a 79-year-old small barn which has been renovated including a new roof, windows, siding and insulated along with installing a skylight and a second-floor wood deck. The ground floor is simply used for storage, but the second floor area has interior finish and is used as a woodworking shop with electrical service.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment was disclosed. In support of the subject's assessments, the board of review presented a memorandum along with photographs, a grid analysis of eight comparable sales along with applicable property record cards, a chart reflecting land value adjustments, and data on 14 equity comparables.

As to the appellants' sales and listing data, in its memorandum the board of review noted that two of the suggested comparables were two-story dwellings that were more than 100 years old making them dissimilar to the subject dwelling in age and design. The third listing presented by the appellants was reportedly located in Winnebago County and furthermore differed from the subject in size as it contains only 1,050 square feet of living area as compared to the subject's 2,128 square feet of living area.

As to the farmland valuation, the board of review submitted a two-page Farmland Valuation Card reflecting the subject's 2007 farmland assessment of $2,271 which was increased in each 2008 and 2009 by 10% resulting in the 2009 farmland assessment of $2,863.

In support of the subject's estimated market value, the board of review presented sales from the subject's township and surrounding townships. In a two-page grid analysis, the board of review presented descriptions and sales data on eight comparable properties. The comparables consist of one-story or one-and-one-half-story frame dwellings that range in age from 8 to 56 years old. The dwellings range in size from 1,232 to 2,308 square feet of living area. Each comparable has a basement, three of which include finished area. Seven comparables have central air conditioning and four include a fireplace. Each comparable has a garage ranging in size from 432 to 1,082 square feet of building area. The properties are located from 1.79 to 7.96-miles from the subject and have parcels ranging in size from 2.52 to 15-acres of land area. Six of the comparables have additional outbuildings. The comparables sold between September 2007 and May 2009 for prices ranging from $178,500 to $350,000 or from $94.00 to $256.04 per square

foot of living area, including land. The board of review contends that the non-farm value of the subject property is approximately $148,560[1] or $69.81 per square foot of living area, including the .70-acre homesite. At hearing, Kane further testified regarding the land valuation adjustments for differences between the subject and the eight suggested comparable sales given differences in land size.

As to the outbuildings and their assessments, the board of review's representative and clerk Ronald A. Kane testified that in 2009 there was a general revaluation of outbuildings in the subject's township which had not been done since 1979. As part of the revaluation process, the assessing officials viewed the properties, took new photographs and revalued the outbuildings based on current values. During the hearing, the board of review supplied a property record card depicting the assigned market values of the four outbuildings reflecting the following assessments:

1983 building	$1,453
1930 barn	$ 307
1930 barn (renovated)	$3,093
2008 pole building	$2,627
TOTAL for outbuildings	$7,480

Based on the foregoing evidence, the board of review requested confirmation of the subject's assessments.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is not warranted.

The Board finds that the appellants failed to submit sufficient evidence to challenge the correctness of the farmland assessment. As a result, the Board finds that no change in the subject's farmland assessment is warranted based on this record.

The appellants contend the assessment of the subject dwelling and outbuildings are excessive and not reflective of their 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. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellants have not overcome this burden.

As to the residence, the parties submitted a total of 12 comparable sales for the Board's consideration. The Board has given less weight to the three listings provided by the appellants due to age, size and/or design as compared to the subject dwelling. Due differences in age

[1] The residence has an assessment of $44,720 and the homesite (or yard area of the dwelling) has an assessment of $4,800 for a total non-farm assessment of $49,520 which when multiplied by three reflects an estimated non-farm market value of $148,560 .

and/or dwelling size, the Board has also given less weight to board of review comparables #2, #3, and #5 through #8. The Board finds appellant's comparable #1 and board of review comparables #1 and #4 were most similar to the subject in size, design, exterior construction and/or age. Due to their similarities to the subject, these comparables received the most weight in the Board's analysis. These comparables sold in September and October 2007 for prices ranging from $178,500 to $230,000 or from $94.00 to $186.69 per square foot of living area, including land. The subject's non-farm assessment reflects a market value of approximately $148,560 or $69.81 per square foot of living area, including only homesite land. After considering the most similar comparable sales in this record, the Board finds the appellants did not demonstrate that the subject property's assessment is excessive in relation to its market value and a reduction in the subject's assessment is not warranted on this record.

As to the outbuildings, the appellants contended they were overvalued. When market value is the basis of the appeal the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds that the appellants have not overcome this burden.

The appellants testified that the newly constructed pole building cost $15,950 to construct. The assessing officials have assessed that building at an estimated market value of $7,880, or less than half of its actual cost of construction. Furthermore, the Board finds that the cost of construction evidence substantially exceeds the estimated market value placed on this building by the assessing officials. Therefore, the appellants have failed to establish overvaluation of the subject's outbuildings by a preponderance of the evidence. On the basis of the evidence and the foregoing analysis, the Property Tax Appeal Board finds that a reduction in the subject's outbuilding assessment is not warranted.

APPELLANT:	**Roger Nimtz**
DOCKET NUMBER:	**09-01022.001-F-1**
DATE DECIDED:	**February, 2012**
COUNTY:	**Boone**
RESULT:	**No Change**

The subject property consists of a 10.84-acre unimproved parcel located in Belvidere Township, Boone County.

The appellant appeared before the Property Tax Appeal Board claiming the subject parcel should be classified and assessed as farmland as the basis of the appeal. In support of this argument, the appellant submitted the subject's property record card, a letter, a copy of *Publication 122 - Instructions for Farmland Assessments*, issued by the Illinois Department of Revenue and a copy of assessment procedures published by the Lake County Chief County Assessment Office. In his letter, the appellant contends that since "A parcel or tract of land must be used solely for the purpose of agriculture in order to receive an agricultural assessment," per Publication 122, and the subject parcel has no improvements, it should be assessed as farmland. The appellant testified that while no crops were grown on the parcel in 2008, it was plowed in the fall to cut down weeds. The appellant contends he employed a technique known as "summer fallow", during which no crops are grown, to allow the soil to be replenished. The Lake County document included summer fallow and idle cropland as categories to be assessed as cropland. The appellant also submitted an affidavit signed by Gerald Hulstadt on November 28, 2009. In this affidavit, Hulstadt asserted he had farmed the land along Fairgrounds Road (the subject parcel) for several years, but that in 2008 "I cultivated this field. This farm land was left fallow during the summer of 2008. It was planted again with corn in the year 2009." The appellant argued that the cultivation constitutes farming activity even if no crops were grown and the subject has been continuously used for agricultural purposes, including 2008, when he employed summer fallow. Based on this evidence, the appellant requested the subject parcel to be classified and assessed as farmland and for its assessment to be reduced to $1,971.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $18,402 was disclosed. In support of the subject's assessment, the board of review submitted a letter, an aerial photograph and affidavits signed by John Elder, Kris Hall and Linda Treu. Elder was deputy assessor of Belvidere Township at the time the subject was assessed for 2009, a post which he held for 13 years. Hall is the present deputy assessor and Treu is the chief deputy assessor. Elder's affidavit stated that in the spring of 2008, he "observed no farming activity on parcel 05-23-326-045 (subject parcel)." Elder's affidavit further stated he "observed in the summer of 2008 the subject parcel became overgrown with weeds between waist and shoulder height." He observed that "later in the summer of 2008 the parcel was disced to control the weed population on the subject parcel." Elder was present at the hearing and testified that to his knowledge, no other farmers in Belvidere Township allowed land to lay fallow during his 13 years as deputy assessor. Hall's affidavit made statements similar to Elder's regarding her observation of the subject parcel in 2008. Hall's affidavit noted the subject is "located across the street and directly north of the Belvidere Township Assessor's Office." Her affidavit further stated "I currently live on a working farm that produces corn, soybeans and hay.

I am able to distinguish between cultivating for planting purposes or discing to knock down the weeds." Finally, Hall's affidavit stated "Summer Fallow's main goal is for moisture conservation. A crop is planted every other year to let the moisture gather in the ground. Fallow is also done mainly out west where it rains less." Hall was also present at the hearing. Both Elder and Hall's affidavits further stated no winter wheat was planted on the subject parcel.

In further support for its contention that the subject did not qualify for farmland assessment and classification in 2009, the board of review submitted an article entitled *"Summer Fallow in* Kansas," published by the Kansas State College of Agriculture and Applied Science. Summer fallow was defined as "the practice of keeping land free of all vegetation throughout one season for the purpose of storing a part of the rainfall of that period in the soil for the use of crops the following year." The article further stated:

> "A good summer fallow is one in which the soil is free of all growing plants throughout the fallow period and has a rough open surface which will permit a ready and rapid penetration of moisture. Under such a condition no water will be lost through weeds and a minimum amount will be lost by runoff, hence the maximum amount will be stored in the soil." "Summer fallow frequently fails to be effective in storing moisture because tillage is delayed until after the moisture from spring rains is used by weeds or because weeds are permitted to grow during the summer. Weeds must be eradicated when they are small if moisture is to be conserved. Cultivation for fallow should start just as soon as weeds begin to grow."

Based on this evidence, the board of review requested the subject's classification and assessment as residential vacant land be confirmed.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds the appellant's contention that the subject parcel qualifies for classification and assessment as farmland is unpersuasive.

The appellant claimed the subject parcel had been used to grow crops in past years and submitted an affidavit to that effect by Gerald Hulstadt, the farmer who grew crops on the parcel "for several years." The farmer acknowledged he cultivated the parcel in 2008 and planted corn in 2009. However, the farmer's affidavit did not state when the cultivation occurred. The appellant contends the subject parcel was left to "summer fallow," a term mentioned in several publications contained in this record. The appellant first cited Publication 122, published by the Illinois Department of Revenue. This document refers to Section 10-125 of the Property Tax Code, which lists "land in cultivated summer fallow" as a type of cropland. Any definition for land to be properly termed "cultivated summer fallow" was not provided by the appellant. Testimony by Elder and Hall disclosed that no farming activity occurred on the subject parcel in the spring or summer of 2008, but that weeds which had grown to *waist or shoulder height* were not disced until late summer of the year. The record further disclosed that the subject is located across the road and just north of the township assessor's office, suggesting that observation of the parcel's condition and use by assessment personnel was not difficult.

While the record is devoid of any statutory definition of the term "summer fallow", the board of review submitted an article entitled "Summer Fallow in Kansas", published by the Kansas State College of Agriculture and Applied Science. This publication stated:

> "A good summer fallow is one in which the soil is free of all growing plants throughout the fallow period and has a rough open surface which will permit a ready and rapid penetration of moisture. Under such a condition no water will be lost through weeds and a minimum amount will be lost by runoff, hence the maximum amount will be stored in the soil (emphasis added)."

Finally, the article states:

> "Summer fallow frequently fails to be effective in storing moisture because tillage is delayed until after the moisture from spring rains is used by weeds or because weeds are permitted to grow during the summer. Weeds must be eradicated when they are small if moisture is to be conserved. Cultivation for fallow should start just as soon as weeds begin to grow (emphasis added)."

The Property Tax Appeal Board finds the appellant did not dispute the testimony of Elder and Hall that the discing (or cultivation) of the subject parcel took place in the late summer, or that the weeds had attained waist or shoulder height. The Board finds the above excerpts from the article make clear that allowing weeds to establish a substantial presence negates the value of any effort to preserve field moisture. The Property Tax Appeal Board finds that by allowing weeds to attain significant height before finally discing them into the soil in the late summer, the appellant did not establish the subject parcel was land in cultivated summer fallow for the 2008 tax year. The Board further finds Elder testified that to his knowledge, no other farms in Belvidere Township employed the summer fallow technique during his 13-year tenure as deputy assessor. The court in Oakridge Development stated "in order to be assessed as farmland for a particular tax year, property must have been used as a farm during that year." Oakridge Development Company v. Property Tax Appeal Board, 405 Ill.App.3d 1011, 938 N.E. 2d 533 (2nd Dist. 2010).

Based on this analysis, the Board finds the subject parcel was not used for agricultural purposes for 2008 and is not entitled to farmland classification and assessment for 2009. The Board finds Section 10-110 of the Property Tax Code provides as follows:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the preceding two years, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140... (35 ILCS 200/10-110)

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

> Any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or

> tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming (35 ILCS 200/1-60).

Notwithstanding the use of the subject parcel to grow crops in prior years, no crops were grown in 2008, the proper use of the cultivated summer fallow technique to preserve soil moisture was not made and the appellant's claim of employing cultivated summer fallow[1] as a legitimate alternate use of cropland is not supported by the evidence in this record. Thus, the subject's 2009 classification and assessment as vacant residential land is correct and no reduction is warranted.

[1] The Board finds the Property Tax Code provides no definition of "cultivated summer fallow". However, the United States Department of Agriculture's Economic Research Service states that summer fallow refers to cropland in subhumid regions of the West that are cultivated for one or more seasons to control weeds and accumulate moisture before small grains are planted. This practice is optional in some areas, but it is a requirement for crop production in the drier cropland areas of the West. Other types of fallow, such as cropland planted to soil improvement crops but not harvested and cropland left idle all year, are not included in cultivated summer fallow but are included as idle cropland.

Summerfallow

Involves keeping normally cultivated land free of vegetation throughout one growing season by cultivating (plowing, discing, etc.) and/or applying chemicals to destroy weeds, insects and soil-borne diseases and allow a buildup of soil moisture reserves for the next crop year. Includes chemfallow, tillage, and/or a combination of chemical and tillage weed control on the same land. Part of the crop rotation system in Western Canada. Rarely found in Eastern Canada.

Summerfallow land

Land on which no crops will be grown during the year but on which weeds will be controlled by cultivation or application of chemicals.

APPELLANT:	**Alexander K. Phillips**
DOCKET NUMBER:	**06-02675.001-F-1 through 06-02675.002-F-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**Jo Daviess**
RESULT:	**Reduction**[1]

The subject property consists of two parcels totaling approximately 94.15 acres located in Hanover Township, Jo Daviess County. Parcel number 09-000-296-00 (hereinafter referred to as "parcel 00") consists of 80.82 acres of which 25 acres are assessed as farmland (cropland) and the remainder of which were assessed as non-agricultural timber. Parcel number 09-000-295-30 (hereinafter referred to as "parcel 30") consists of 13.33 acres of timber where the entire parcel was assessed as non-agricultural land.

The appellant appeared through counsel before the Property Tax Appeal Board for hearing claiming that the entirety of the subject tracts on appeal should be classified as "farm" under the Property Tax Code, citing to Section 1-60 (35 ILCS 200/1-60), and should receive the applicable farmland assessment. In support of this classification argument, counsel for the appellant submitted a two-page legal brief, a color aerial map of the subject parcels which also depicted an additional two contiguous parcels owned by the appellant, an affidavit and a copy of an Illinois Cash Farm Lease. In the brief, counsel noted that despite the common ownership by the appellant of four contiguous parcels of varying sizes, only acreage within the two parcels which are the subject matter of this appeal were reclassified as non-agricultural land for 2006.

In further support of the farm use of the parcels, appellant relied upon the affidavit of Warren Offenheiser, a neighbor and farmer, who purportedly leases all four contiguous parcels according to the brief. The affidavit references all four parcel numbers owned by the appellant and avers, in pertinent part, that the parcels "have been and are used for agricultural purposes" and "I have raised crops and livestock on the above-referenced parcels for many years." Offenheiser did not appear at the hearing to provide any testimony or be cross-examined. When questioned about the lack of the affiant, counsel for the appellant noted the affidavit was "un-contradicted" and the hearing could be postponed to a later date at which time the affiant could appear if the Property Tax Appeal Board so desired.[2] Also attached to the appeal was a copy of an Illinois Cash Farm Lease dated August 2003 between the appellant and Offenheiser wherein approximately 300 acres were leased "to the farmer (Warren Offenheiser) as agricultural and pasture to be determined at lessee's discretion" through August 2053. The lease further reported this consists of 37.5 acres of cropland at a cash rent of $50.00 per acre plus 262.5 acres of pasture land at $3.50 per acre.

As a further challenge to the assessment of the subject property, counsel argued that Jo Daviess County has failed, neglected and/or refused to identify, distinguish and assess the four types of

[1] Reduction issued only for parcel number 09-000-296-00.

[2] Continuances of hearing shall be granted for good cause shown in writing wherein good cause is the inability to attend the hearing at the date and time set by the Board for a cause beyond the control of the party, such as the unavoidable absence of a party, his attorney or a material witness. (86 Ill.Admin.Code §1910.67(i)). There was no assertion by counsel of good cause for the non-appearance of Offenheiser as a material witness.

farmland, cropland, permanent pasture, other farmland, and wasteland according to the statutorily prescribed method in violation of Section 10-125 of the Property Tax Code (35 ILCS 200/10-125). Appellant also claims this failure is contrary to the Farmland Implementation Guidelines issued by the Illinois Department of Revenue.

Counsel further argued the subject property was not reassessed on or before June 1, which is contrary to and in violation of Section 9-160 of the Property Tax Code (35 ILCS 200/9-160). Additionally, counsel argued in the brief that publication of the assessments was not made on or before December 31, which is in violation of Section 12-10 of the Property Tax Code (35 ILCS 200/12-10). Counsel also argued the subject's notice of assessment change was not mailed to the taxpayer in a timely manner, which is in violation of Section 12-30 of the Property Tax Code (35 ILCS 200/12-30). In conclusion, counsel argued the failure of the Jo Daviess County assessment officials to give timely publication and notification vitiates the tax resulting from the increase in assessment. As authority for this proposition, counsel cited Andrews v. Foxworthy, 71 Ill. 2d 13, 15 Ill. Dec. 648 (1978).

Based on the foregoing evidence, the appellant requested the subject parcels be afforded a farmland classification or, in the alternative, based on the legal argument, the assessments be returned to the amounts established in the previous general assessment cycle.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessments were disclosed for parcel 00 consisting of $661 for farmland and $43,133 for other land and for parcel 30 consisting of $11,108 for other land. The board of review was of the opinion that parcel 00 contained 25 acres of cropland that has been properly assessed as farmland and the balance of the acreage is timber which is assessed as non-agricultural land. As to parcel 30, the board of review was of the opinion that the entire parcel was timber and assessed as non-agricultural land as it has been assessed since 1989.

In further response to the appellant's appeal, the board of review presented several exhibits and further outlined the issues raised by the appellant's brief. Exhibit A contained copies of the property record cards for the subject parcels along with color aerial photographs dated July 9, 2008. Exhibit B is a copy of Section 26-5 of the Property Tax Code (35 ILCS 200/26-5), Savings Provisions, for the proposition that assessments completed beyond the time limit in the Code shall be legal and valid. Exhibit C was page 5 of Publication 122, Instructions for Farmland Assessments (September 2006) noting the definition of "idle land."

Exhibit E consisted of a color aerial photograph depicting the two parcels on appeal along with five neighboring parcels along with applicable property record cards. For the five identified neighboring parcels of timber, the board of review asserted these were assessed as non-agricultural land like the two parcels on appeal.

As to the appellant's purported lease agreement, the board of review noted that the agreement was not signed by the landowner suggesting that there may be some question as to the validity or the enforceability of the provisions of the lease. In addition, the board of review noted that the Offenheiser affidavit references farming the subject land "for many years," but yet the appellant has only owned the property since 2003.

Lastly, the board of review noted that implementation of Bulletin 810 (issued by the Illinois Department of Revenue) in 2006, mandated that rural property be assessed according to actual use. As 2006 was the quadrennial reassessment year for Hanover Township, changes were implemented at that time in accordance with the directive.

At hearing, the board of review representative testified that the 'majority' of parcel 00 was not being farmed and thus, only the 25 acres used as cropland was afforded a farmland assessment.

Based on the foregoing, the board of review requested confirmation of the subject's classification as non-agricultural land and confirmation of the 2006 assessments of these two parcels.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds that parcel 00 is entitled to a farmland classification and assessment, but that the record does not support a farmland classification for parcel 30.

A number of legal issues were raised by appellant's counsel in this proceeding. First, the Property Tax Appeal Board finds that nothing within the provisions of Section 10-125 of the Property Tax Code (35 ILCS 200/10-125) mandates that the types of farmland determinations be set forth on the property record cards themselves.

Additionally the Property Tax Appeal Board finds the appellant's legal arguments concerning publication and notification of real estate assessments for the 2006 quadrennial assessment year are without merit. The appellant claimed the subject property was not reassessed on or before June 1, 2006, which is in violation of Section 9-160 of the Property Tax Code. (35 ILCS 200/9-160). Counsel also argued the statutory provisions are mandatory and require strict and timely compliance. Counsel argued that failure of timely publication and notification vitiates the tax resulting from the increase in assessment. As authority for these legal claims, appellant placed reliance upon Andrews v. Foxworthy, 71 Ill. 2d 13, 15 Ill. Dec. 648 (1978). This case involved a tax objection claiming the taxes were void because no timely publication of increase in assessments had been given. Andrews involved the failure of the supervisor of assessments to timely publish assessment changes in a non-quadrennial year in accordance with Section 103 of the Revenue Act of 1939 (Ill. Rev. Stat., ch. 120, ¶527). The Property Tax Appeal Board finds that counsel has misplaced reliance on Andrews, which held that a 1972 publication of assessments was not done in a timely manner; that decision was limited to that particular case. The Board also finds there are other statutory provisions and long standing case law that negate counsel's arguments. People v. Holmstrom, 8 Ill. 2d 401 (1956); North Pier Terminal Co. v. Tully, 62 Ill. 2d 540 (1976); People ex rel. Costello v. Lerner, 53 Ill. App. 3d 245 (5th Dist. 1977); Schlenz v. Castle, 84 Ill. 2d 196 (1981). Furthermore, Section 26-5 of the Property Tax Code provides:

> Failure to complete assessment in time. An assessment completed beyond the time limits required by this Code shall be as legal and valid as if completed in the time required by law. (35 ILCS 200/26-5).

Similarly, Section 26-10 of the Property Tax Code states:

> Informality in assessments or lists. An assessment of property or charge for taxes thereon, shall not be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law. (35 ILCS 200/26-10).

Additionally, Section 26-15 of the Property Tax Code provides:

> Failure to deliver collector's books on time. Any failure to deliver the collector's books within the time required by this Code shall in no way affect the validity of the assessment and levy of taxes. In all cases of failure, the assessment and levy of taxes shall be held to be as valid and binding as if the books had been delivered at or within the time required by law. (35 ILCS 200/26-15).

In light of these statutory provisions, the Property Tax Appeal Board finds all three of these provisions afore-mentioned are controlling and cure any error in the late publication of the 2006 assessments in Jo Daviess County. Furthermore, in Golf Trust of America v. Soat, 355 Ill. App. 3d 333 (2nd Dist. 2005), the court upheld assessment of taxes despite a multitude of alleged irregularities in the assessment procedure and practice and in particular, alleged failures in the publication of assessment lists, citing with approval the savings provisions of the Property Tax Code found at Section 21-185 (35 ILCS 200/21-185).

Turning to the classification issue in this appeal, of the four contiguous parcels owned by the appellant, only the classification of a portion of parcel 00 and the classification of parcel 30 are in dispute in this proceeding.

As to the board of review's argument regarding the treatment of parcel 30 since 1989, the Property Tax Appeal Board finds that the subject's prior classification and assessment has no bearing on its classification and assessment as of January 1, 2006, the assessment year for the instant appeal.

The Board further finds in order for a property to receive a farmland assessment the property must first meet the statutory definition of a "farm" as defined in Section 1-60 of the Property Tax Code. 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 a portion of parcel 00 and/or all of parcel 30 are used solely for agricultural purposes as required by Section 1-60 of 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).

Furthermore, the Board finds that Warren Offenheiser, the purported lessee of the parcels and affiant, was not present at the hearing to be examined about the extent and nature of the use of the subject parcels. There was no opportunity to question Offenheiser to determine what crops were raised, when they were planted and harvested and/or what livestock used the parcels at issue. In addition, the record contained no ground-level photographic evidence of agricultural use of the property. Appellant's counsel sought to establish that the subject was being used as a farm only through an "un-contradicted" affidavit of Offenheiser. However, 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. Thus, contrary to the arguments made by appellant's counsel, but in accordance with directives of the Illinois Supreme Court, the Property Tax Appeal Board finds that it can give no weight to the Offenheiser affidavit in establishing the purported use of the property. In summary, there was no testimony or evidence in this matter to reveal the use of the disputed acreage in 2006 or, moreover, in the two years prior thereto or the nature of the total farm operation. 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.

However, Section 10-125 of the Property Tax Code (35 ILCS 200/10-125), as noted in Publication 122, also identifies cropland, permanent pasture, other farmland and wasteland as the four types of farmland and further prescribes the method for assessing the components. Section 10-125 further states that U.S. Census Bureau definitions are to be used to define cropland, permanent pasture, other farmland and wasteland. According to Publication 122 the following definition complies with this requirement:

> Other farmland includes woodland pasture, woodland, including woodlots, **timber tracts**, cutover, and deforested land; and farm building lots other than homesites. (*Publication 122, Instructions for Farmland Assessments*, Illinois Department of Revenue, September 2006, p.1.) [Emphasis added.]

It was undisputed on this record that 25 acres of parcel 00 were assessed as farmland as they were being used as cropland and the dispute concerning parcel 00 concerned the remaining timber acreage. In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3rd Dist. 2005), the court stated that a parcel of land may be classified as farmland provided that those portions of the property so classified are used solely for agricultural purposes, even if the farm is part of a parcel that has other uses. *Citing* Kankakee County Board of Review, 305 Ill. App. 3d 799 at 802 (3rd Dist. 1999). The board of review's assertion that the "primary" portion

of parcel 00 was not being farmed is not supported by the Property Tax Code and applicable case law that has developed as cited above. Given the treatment of the 25 acres within parcel 00, the Property Tax Appeal Board finds the remaining acreage within parcel 00 meets the definition of other farmland, a timber tract. The Board further finds this acreage should not be classified and assessed as "non-agricultural" land, but should be classified and assessed as "other farmland."

As to parcel 30, the primary issue is whether the parcel is used solely for agricultural purposes as required by Section 1-60 of the Property Tax Code. There was simply no proper evidence on this record as to the use of this 13.33 acre parcel. 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. Furthermore, there was no evidence to reveal the use of the acreage in 2006 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. In conclusion, in the absence of testimony to establish use, the appellant has failed to establish that parcel 30 has been improperly classified.

In conclusion, with respect to the classification of parcel 00, the Property Tax Appeal Board finds that the acreage in dispute is to be classified and assessed as other farmland. Furthermore, the Board finds that the appellant has failed to supply sufficient evidence to change the classification of parcel 30.

APPELLANT:	**Tad A. Williams**
DOCKET NUMBER:	**09-00111.001-F-1**
DATE DECIDED:	**October, 2012**
COUNTY:	**Macon**
RESULT:	**Reduction**

The subject property consists of a 20-acre site improved with a part two-story and part one-story single family dwelling of frame construction that contains 2,632 square feet of living area.[1] Features of the home include a crawl space foundation, central air conditioning and an attached garage with 744 square feet of building area. The dwelling was constructed in 2004. Other improvements include an in-ground swimming pool, a pole building with 2,880 square feet of building area and another pole frame building with 675 square foot of building area used to store hay. The subject site has 12 acres of tillable land, 6 acres of pasture, approximately ½-acre of wasteland, approximately ½-acre of other land and a 1.31-acre homesite. The property is located in Dalton City, Mt. Zion Township, Macon County.[2]

At the hearing the parties agreed that the assessed value of the farm buildings (pole barns) should be reduced from $9,880 to $9,203.

The appellant appeared before the Property Tax Appeal Board contending assessment inequity. In support of this argument, the appellant submitted descriptions and assessment information on six comparables described as being improved with five, 2-story dwellings and a 1.5-story dwelling that ranged in size from 1,994 to 3,080 square feet of living area. The dwellings ranged in age from 4 to 90 years old and were located from 2 to 7 miles from the subject property. Four dwellings were described as having basements with two being finished, each comparable had central air conditioning, two comparables had a fireplace and each had a garage. In his grid analysis, these comparables had improvement assessments ranging from $32,069 to $73,247 or from $13.43 to $35.83 per square foot of living area. The appellant indicated the comparables had total assessments ranging from $40,080 to $80,119 with an average total assessment of $66,546. The appellant indicated that if you take away the lowest assessment, the average total assessment is $71,839. The appellant submitted copies of the property record cards for these comparables disclosing he used the assessments for the 2008 tax year in his analysis. The subject's improvement assessment, excluding the farm buildings is $70,453 or $26.77 per square foot of living area. The subject's total assessment was $93,142. In discussing the comparables, the appellant noted comparable #1 has a sunroom, attached garage and a detached garage; comparable #2 has an asphalt drive and a shed; comparable #3 has a full basement, an attached garage and a detached garage; comparable #4 has a full basement and a concrete driveway; and comparable #5 has a partial basement and a concrete/asphalt driveway.

[1] The Board finds the best evidence of size for the subject dwelling was the schematic drawing contained on the subject's property record card provided by the board of review which showed a two-story portion with 1,160 square feet of ground area and a one-story area behind the garage with 312 square feet of living area.

[2] The Board takes notice that the subject property was the subject matter of an appeal the prior tax year (2008) under Property Tax Appeal Board Docket No. 08-0706.001-F-1. In that appeal the Property Tax Appeal Board issued a decision lowering the assessment to $76,843 based on an agreement of the parties. The Macon County Board of Review Board of Review indicated that 2009 was the general assessment year.

At the hearing the appellant explained the assessment history of the subject beginning with a stipulation entered in 2005. He submitted a history disclosing the various assessment claims he made for 2005 through 2009. The appellant testified that the board of review indicated the increase in assessments from 2008 to 2009 was 4%. He testified he then went to the 2008 stipulation and raised the amount by 4% plus he added components for the swimming pool and hay barn. This resulted in a requested assessment of $86,669.

The last point the appellant made was that the board of review in its evidence described the subject as having a full basement while the subject does not have a basement; the board of review indicated the subject has 3.5 bathrooms but the subject home has 2.5 bathrooms; and the hay barn (pole building) does not have a concrete floor.[3]

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $93,142 was disclosed. The board of review submitted a grid analysis of the comparables submitted by the appellant with corrections to show the 2009 assessments along with copies of the respective property record cards. These properties had total assessments in 2009 ranging from $46,949 to $82,587. The dwellings were also described as ranging in size from 1,736 to 2,671 square feet of living area and were built from 1919 to 2005. The improvement assessments for the comparables, excluding farm buildings, ranged from $39,669 to $74,639 or from $18.42 to $37.26 per square foot of living area. The board of review was of the opinion these comparables support the subject's non-farm improvement assessment.

The board of review representative testified the grid analysis it prepared contained an error with respect to describing the subject as having a full basement. The board's representative noted the subject's property record card showed the home as having a crawl space foundation.

At the hearing the chief county assessment officer testified that farmland in Macon County is assessed pursuant to relevant provisions of the Property Tax Code ("State Statute") based on the productivity indices assigned to the various soil types and number of acres. She indicated that the farmland assessment guidelines are followed throughout the county. The witness also testified that homesites are valued based on market 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.

Initially the Property Tax Appeal Board finds the parties are in agreement that the assessment of the farm buildings (outbuildings) should be reduced to $9,203.

The appellant also argued assessment inequity as the basis of the appeal with respect to the non-farm improvements. 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

[3] At the hearing the parties agreed that the concrete floor in the outbuilding was not at issue since they had agreed to a revised outbuilding assessment.

jurisdiction. After an analysis of the assessment data the Board finds a reduction to the non-farm improvement assessment is not warranted.

The record contains information on the same six improved comparables submitted by the appellant and the board of review. The record disclosed, however, the assessment information provided by the board of review was for tax year 2009 while the appellant used information for the 2008 tax year. Additionally, the Board finds the board of review provided more accurate descriptive information on the comparables. Therefore, the Property Tax Appeal Board finds the board of review's grid analysis is more credible. Using the board of review's information, the Property Tax Appeal Board finds the three best comparables in this record to be comparables #1, #3 and #5. These comparables were improved with a two-story dwelling and two part two-story and part one-story dwellings ranging in size from 1,994 to 2,260 square feet of living area that were constructed from 1990 to 2005. These comparables had varying degrees of similarity to the subject dwelling. Their improvement assessments, excluding farm buildings, ranged from $58,423 to $74,639 or from $28.49 to $37.26 per square foot of living area. Comparables #3 and #5 were most similar to the subject dwelling in age but were superior with basements. These two comparables had improvement assessments of $74,307 and $74,639 or $37.26 and $33.02 per square foot of living area, respectively. The subject dwelling has an improvement assessment of $70,453 or $26.77 per square foot of living area, which is below the range of the best comparables on a square foot basis. The remaining comparables were given little weight due to their ages. Based on this record the Board finds the appellant did not demonstrate the subject's non-farm improvements were being inequitably assessed by clear and convincing evidence.

The Board further finds the appellant submitted no evidence challenging the correctness of the assessments for the farmland and homesite.

Based on this record the Board finds a reduction in the subject's assessment is warranted pursuant to the agreement of the parties with respect to the farm buildings.

2012 FARM CHAPTER
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[Items Contained in Italics Indicate
Arguments or Evidence in Opposition to the Appellant's claim]

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2012 COMMERCIAL DECISIONS

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

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2012 COMMERCIAL CHAPTER

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APPELLANT:	**1100 Series Rizvi Investment Group**
DOCKET NUMBER:	**09-03308.001-C-1 thru 09-03308.002-C-1**
DATE DECIDED:	**November, 2012**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property consists of two adjacent parcels with 30,012 square feet of land area that are improved with a three-story, 12 unit apartment building with 11,862 square feet of building area. The building was constructed in 1987 and is approximately 22 years old as of the January 1, 2009 assessment date at issue. The apartment mix included 10 two-bedroom units that each contains 850 square feet of living area and 2 one-bedroom units that each contain 700 square feet of living area. The building also has 1,962 square feet of common area. The exterior walls are of masonry construction. Each side of the building contains a laundry room with one washer and one dryer. The building has no basement and has two front entrances and two rear entrances. The property also includes parking area on the north, south and west side of the building. The subject has a land to building ratio of 2.53:1. The property is located at 1110-1112 Evergreen Avenue, Glendale Heights, Milton Township, DuPage County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal, Appellant's Exhibit #1, prepared by Roxana K. Ferris and Edward V. Kling of Real Valuation Group, LLC. Both Ferris and Kling are State of Illinois Certified General Appraisers and Kling also has the MAI designation from the Appraisal Institute. Kling was called as a witness on behalf of the appellant. Kling testified that Real Valuation Group, LLC was his business and he was the review appraiser in the office. Kling stated he has been an MAI appraiser for approximately eleven years and he also has the CIAO (Certified Illinois Assessing Officer) designation. The witness further recounted experience with various DuPage County township assessors and with the Will County Supervisor of Assessment's Office. He also testified he had work experience with Kane and McHenry County assessment officials. The witness testified he had previously testified as an expert before the Property Tax Appeal Board and circuit courts in Illinois. Kling testified that he personally had prepared more than 40 appraisals of apartment buildings. The witness was accepted as an expert.

Kling identified Appellant's Exhibit #1 as the appraisal he prepared. Kling was involved in the preparation of the property by conducting an exterior inspection and reviewing the written report making corrections. The purpose of the appraisal was to estimate the market value of the property as of January 1, 2009. The property rights appraised were the fee simple estate. The appraiser concluded the highest and best use of the site, as vacant, would be multi-family residential development in conformance with zoning guidelines. The appraiser also concluded the highest and best use of the property as improved was the existing use as improved. In estimating the market value of the subject property the appraisers developed both the sales comparison approach and the income capitalization approach to value. The report indicated the cost approach to value was not used due to the older age of the improvements and their physical and functional limitations, as well as the lack of comparable land sales.

The appraisal indicated and Kling testified the subject property previously sold in March 2001 for a price of $830,000. The appraiser also explained that the sidwell map following page 14 of the appraisal depicts the two parcels under appeal and the location of the improvement on the two parcels.

Kling testified the market conditions at the end of 2008 included a banking collapse and that all real estate was starting to suffer dramatically by January 1, 2009. During the hearing Kling also testified the cost approach was not developed because it would act only as a check on the other approaches to value.

With respect to the sales comparison approach the four comparable sales used were described as being improved with three, 12 unit and one, 14 unit apartment buildings that ranged in size from 5,842 to 11,880 square feet of building area. Three of the comparables had 10 two-bedroom apartments and 2 one-bedroom units. One comparable had 2 two-bedroom units, 11 one-bedroom units and 1 studio apartment. The average unit size for comparables #1 and #3 was 850 square feet for the two-bedroom units and 700 square feet for the one bedroom units. The average unit size for comparables #2 and #4 was 450-550 square feet and 532 square feet, respectively. The buildings were constructed from 1962 to 1969. The comparables had sites ranging in size from 14,175 to 33,937 square feet of land area resulting in land to building ratios ranging from 1.78:1 to 3.36:1. These properties were located in Addison and Wheaton, Illinois. The sales occurred from March 2007 to April 2009 for prices ranging from $840,000 to $985,000 of from $70,000 to $70,833 per unit. The report indicated the subject property had the advantage of location in a stable neighborhood with good access to local and regional transportation routes. The report also stated, however, the subject has the disadvantages of older age, outdated design and small divided rooms. (Appellant Ex. #1, page 39.) The appraisal also had four supplemental sales located in Villa Park, Glen Ellyn and Westmont. Three of the comparables had 18 units and one comparable had 8 units. The sales occurred from August 2007 to June 2009 for prices ranging from $243,000 to $1,100,000 or from $30,375 to $61,111 per unit. The report stated that these comparables were not given primary consideration because data was not available with regard to unit mix, amenities, utilities and approximate income. Based on this information the appraiser estimated the subject property had a value of $64,000 per unit or $768,000, which the appraiser rounded to an indicated value under the sales comparison approach of $770,000.

The appraiser used three rental comparables in estimating the market rent of the subject property. The rental comparables were located in Wheaton with the street address of one comparable described as being confidential. The appraisal indicated rental comparable #1 was a 32 unit complex with very small one-bedroom apartments with rents that range from $635 to $731 per month. Rental comparable #2 was described as having older studio units with rents of $575 per month. Rental comparable #3 is described as having newer more modern units with asking rents of $695 per month for studio units and $795 per month for one-bedroom apartments. The appraisal also stated that in February 2010 the subject property advertised one and two-bedroom units for $725, $815 and $825 per month. The appraisal stated other two-bedroom units in Glendale Heights had offerings of $800 and $799 per month, in January 2010 and February 2010, respectively. The appraisal further stated in February 2010 apartments in surrounding communities had one-bedroom apartments for rent for $699 to $795 per month and a two-bedroom apartments for rent for $875 per month. The appraiser was of the opinion the rents

generated by the subject at approximately $750 per month for one-bedroom apartments and $850 per month for two-bedroom apartments were reflective of the market rent. Using this as the market rent the appraiser estimated the subject property had a potential gross income of $120,000. Vacancy and credit loss was estimated to be 10% of potential gross income or $12,000 resulting in an effective gross income of $108,000. A management fee of 2% of effective gross income or $2,160, taxes in the amount of $22,354, insurance in the amount of $3,199, maintenance in the amount of $9,203, utilities in the amount of $9,541 and reserves in the amount of $1,779 were deducted to arrive at an estimated net income of $59,764.

The final step in the income approach was to estimate the capitalization rate. Using the band of investment technique the appraiser estimated an overall rate of 9.15%. The appraiser also developed an overall rate from the debt coverage ratio of 8.13%. The report further indicated the market derived capitalization rates were not considered particularly relevant in this instance because three of the four sales occurred prior to the significant market downturn in the fall of 2009. Based on this analysis the appraiser estimated the capitalization rate to be 8.5%. Capitalizing the subject's net income resulted in an estimate of value of $700,000, rounded.

The appraiser used a gross income multiplier to estimate the subject's value. The report indicated the comparable sales had gross rent multipliers of 7.43, 8.08, 7.22 and 8.70, respectively for an average of 7.8575. The appraiser deducted 1.5% due to the deteriorating economic conditions throughout the fall of 2008. Thus, the appraiser estimated the subject would have a gross rent multiplier of 6.35 indicating a market value of $760,000, rounded.

Considering both these techniques the appraiser estimated the subject property had an indicated value of $730,000, rounded.

The appraiser also estimated the subject's market value using an effective tax rate. The estimated net income before real estate taxes was $82,118. The loaded capitalization rate was calculated to be 10.87% and when used to capitalize the net income resulted in an estimate of value of $755,000, rounded.

In conclusion, the appraiser estimated the subject had an indicated value under the income approach of $755,000.

In reconciling the two approaches to value, the appraiser testified he gave greater weight to the income approach to value and estimated the subject property had a market value of $760,000 as of January 1, 2009. The report itself, however, indicated the appraisers gave essentially equal primary consideration to both the income and the sales comparison approaches to value.

Under cross-examination the appraiser agreed that sale #1 occurred in April 2009, after the January 1, 2009 assessment date. This comparable was constructed in 1965 compared to the subject's date of construction in 1987. No adjustment of time was required for this comparable. Kling testified that he was not positive if sale #1 had any below grade units. With respect to sale #2 Kling testified some of the units were slightly below grade. Kling also agreed that sale #3 had some below grade units. The witness testified the subject property had all above grade units. The witness testified that based on his experience basement units that are only three or four steps down don't lack for renters or warrant significant market adjustments.

The appraiser was also questioned about his statement on page 24 of the report that, "Sales of apartment properties, however, have not suffered as much as other property sectors." Kling was also questioned about the statement on the bottom of page 25 of the report discussing rent forecast stating, "Asking rents are projected to reach $1,096 per month this year, while effective rents will average $1,010 per month, annual gains of 1.9 percent and 1.00 percent, respectively." He stated this was an overall average in the area.

The witness also testified he likes to use the gross rent multiplier as a check. He also testified sales #1 and #3 were closest to the lien date, which had gross rent multipliers of 7.43 and 7.22 with an average of 7.325. Kling testified that in applying a gross rent multiplier of 7.325 to the subject's gross income of $120,000 results in an estimate of value of $879,000.

The appraiser was also questioned about his statement on page 13 of the report that, "The subject neighborhood appears stable, with no signs of decline noted. The outlook for the area appears favorable." He testified he meant people aren't saving their cars for extra auto parts, it's a fairly well maintained area. The witness stated the subject is a class B/C apartment meaning it is a mom and pop ownership. On page 25 of the report Kling discussed solid fundamentals in the suburban Class B/C apartments and they would likely attract investors in 2009. The report further stated renter demand is projected to stay relatively healthy. The report further stated the capitalization rates will push up from the high 6 percent to low 7 percent range. Additionally, on the same page of the report he states metro wide vacancy was forecast to end 2009 at 6.7% and suburban vacancy will increase to 6.9%. The appraiser was also questioned about the gross rent multipliers and the capitalization rates he calculated for the comparable sales. The sales had a mean gross rent multiplier of 7.8575, which results in an estimated value of $945,000 when applied to the subject's gross income of $120,000.

On redirect Kling testified that they looked at the size of the building and where it was located to establish a potential gross income. He would then divide the sales price by the potential gross income to calculate the potential gross income multiplier. He testified that in using this technique you are making only one guess. He explained that this was all an estimate because he actually had no gross income information on these properties. He explained that expenses are difficult to obtain and that is why he did not rely on the capitalization rates developed from the comparable sales.

Kling testified that sales were selected based on size, meaning more than 10 units, and similar location based on demographics. Sale date was another criterion in selecting the sales meaning close to the lien date.

Based on this evidence the appellant requested the subject's assessment be reduced to reflect the appraised value of $760,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the total assessment of the subject property of $314,340 was disclosed.[1] The subject's total assessment

[1] Each parcel had a total assessment of $157,170.

reflects a market value of approximately $945,100 or $78,758 per unit when applying the 2009 three year average median level of assessments for DuPage County of 33.26%.

In support of its contention of the correct assessment the board of review submitted a report (BOR Ex. #1) prepared by Dawn Hanson, Milton Township Commercial Deputy Assessor. Hanson has been a deputy assessor at Milton Township since January 2007. From 2001 to March 2006 she served as a deputy assessor in York Township. From March 2006 to January 2007 she took a home study course for her real estate sales license. Hanson has been a Certified Illinois Assessing Official since 1994 and has been an Illinois Licensed Real Estate Salesperson since 2006. The witness further testified she gave up her State of Illinois Certified Real Estate Appraiser license in 2007. She was accepted and allowed to give opinion testimony.

In the report Hanson explained the subject property is comprised of two property index numbers (PINs) with one-half of the building (6 units) located on each PIN. Hanson stated the subject could, in essence, be two properties with two separate owners if so desired. She stated that she found such sales in Glendale Heights where six units were sold to one owner and the other six units are owned by someone else. She also indicated in the report the subject is improved with a three-story building of brick construction with 11,862 square feet of building area containing ten 2-bedroom units and two 1-bedroom units. She also noted the subject property was purchased in March 2001 for a price of $830,000 and submitted a copy of the Illinois Real Estate Transfer Declaration sheet to document the subject's sale.

In support of the assessment Hanson submitted photographs, descriptive information, multiple listing sheets and the property record cards on nine comparable sales located in Glen Ellyn, Wheaton and Glendale Heights. The comparables were improved with two and three-story apartment buildings ranging in size from 3,828 to 7,448 square feet of building area. Three of the two-story buildings had apartments in the basements. The comparables were constructed from approximately 1960 to 1989 and contained from 6 to 14 units with various apartment mixes of studio, one-bedroom, two-bedroom and three-bedroom units. Eight of the comparables were reported to have sites that ranged in size from 2,826 to 20,940 resulting in land to building ratios ranging from .70:1 to 3.8:1. The sales occurred from May 2007 to October 2009 for prices ranging from $465,000 to $985,000 or from $58,125 to $108,333 per unit. Hanson stated in the report that the comparables were adjusted for differences from the subject for such features as market conditions at time of sale, location, age/condition, number of units, land to building ratio with regard to tenant parking and average size of the apartment units. She estimated the comparables had adjusted sales prices ranging from $72,656 to $102,916. In testimony Hanson explained her sale #3 was also used by Kling as his sale #4. She also explained that #8 was similar to the subject in that this was an "attached" 6-unit building that was part of a larger building that could be broken off into separate PINs. She also testified her sale #9 was a "short sale" that occurred in December 2008 for a price of $77,500 per unit and included to show that even in a "short sale" the "value was up there" to support the subject's estimated value. Six of Hanson's sales were located in Milton Township and three sales (#6, #7 & #8) were located in Bloomingdale Township although in Glendale Heights. Based on this evidence she estimated the subject had a market value of $90,000 per unit or $1,080,000.

Hanson also developed an income approach to value in which she accepted the gross potential income of $120,000 as calculated by Kling. She further accepted the vacancy loss of 10% or

$12,000 as calculated by Kling, resulting in an effective gross income of $108,000. Hanson, however, was of the opinion the expense ratio should be 35% of effective gross income resulting in a net operating income of $70,200. The expense ratio was determined from a review of income and expense statements of similar apartments in Milton Township. Hanson also stated in the report that she was able to calculate capitalization rates for seven of the nine sales that ranged from 5.4% to 8.3%. Hanson's report contained copies of the multiple listing sheets of the sales where she obtained the net operating income to calculate the capitalization rates. She further stated the "Overall Cap Rate" for the 1st Quarter of 2009 for the National Apartment Market as reported by Price Waterhouse Coopers, LLP was 6.88%, which was submitted as Exhibit #4 in Hanson's report. Using this information Hanson used a loaded capitalization rate of 7.5% to capitalize the net income into an estimate of value of $936,000.

Hanson's report also contained a uniformity analysis which indicated to her that the subject's 2009 assessment should be increased so that it would be uniform with other apartment buildings. She testified that in 2008 the subject's assessment was decreased for vacancy and for some reason that value rolled to 2009 instead of being put back to normal. Thus in 2009 the subject property was under assessed. The eight comparables provided by Hanson each had unit values of $90,555. She indicated the subject had unit values of $78,585.

In conclusion, after giving most weight to the sales, Hanson requested each of the subject's PINs assessment be increased to $180,000 so as to be reflective of a market value of $1,080,000.

Under cross-examination Hanson agreed the report she prepared was not an appraisal. She further testified she only did an exterior inspection of the subject property. Hanson indicated the subject's current assessment reflects a market value of $943,020 or $78,585 per unit. She considered the subject to be two six unit apartment buildings even though the subject is one building. Hanson agreed that she valued the property as two-six unit buildings. She also agreed the subject was purchased as one building and operated as one building.

She also agreed that she used six unit buildings as comparables because she considered the subject to be two separate six unit buildings. She also agreed that five of her sales occurred in 2007 and the market began to turn down at the end of 2007. She also indicated that market conditions were not as strong in 2009. She further testified that her sales #6 and #8 were similar in design to the subject and each had six units sold off from the rest of the building to which they were a part.

Hanson was also questioned about the overall percentage adjustments made to the comparables on page 17 of the report. The report did not contain a table or discussion about the specific adjustments for the individual factors she considered.

She further agreed she based her opinion of value primarily on the sales comparison approach. Less consideration was given the income approach because she considered the data more circumstantial or subjective; she was not given actual data to do the calculation. She also was of the opinion that for the smaller buildings the income was not a good indication of value for the property.

In computing the capitalization rates from the sales Hanson used the annual net operating income reported on the listing sheets and divided that by the sales price. For sale #1 the income reported on the listing sheet was for 2005. For sale #3 Hanson was of the opinion the net operating income was for 2006 based on the indication that the expenses and tax year were for 2006. For sale #4 she used the total annual income, subtracted the reported total annual expenses to arrive at a net income to be divided by the sales price. She assumed the data was for 2006 due to the statement on the listing that it was for the 2006 tax year. For sale #5 the listing stated net income was for 2007. For sales #6 and #7 the net operating income was for 2005. For sale #8 the listing indicated both tax year 2007 and expense year 2008.

She did not calculate an effective tax rate but agreed that Kling calculated an effective tax rate of 2.37%. She agreed that if her rate of 7.5% included the effective tax rate then the base rate would be 5.13%. She also agreed the 6.88% capitalization rate reported by Price Waterhouse did not include a tax load factor and agreed that you would have to add the tax load factor to that rate to apply to the subject property.

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 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 evidence in the record demonstrates the subject's assessment is reflective of the property's market value.

The appellant submitted an appraisal prepared, in part, by real estate appraiser Edward V. Kling estimating the subject property had a market value of $760,000 or $63,333 per unit as of January 1, 2009. The board of review presented a report by Dawn Hanson, Milton Township Commercial Deputy Assessor, estimating the subject property had a market value of $1,080,000 or $90,000 per unit. The subject's combined total assessment of $314,340 reflects a market value of approximately $945,100 or $78,758 per unit when applying the 2009 three year average median level of assessment for DuPage County of 33.26%.

Both witnesses consider comparable sales in deriving their estimates of value. Kling submitted information on four sales while Hanson provided information on 9 sales. Both Kling and Hanson had a common sale that sold in January 2008 for a price of $985,000 or $70,357 per unit.[2] The Board finds this comparable to be inferior to the subject in age, being constructed in 1962 compared to the subject's date of construction in 1987. Furthermore, this comparable was inferior to the subject in unit mix, having only two 2-bedroom units, one studio apartment and eleven 1-bedroom apartments, and had a smaller average unit size than the subject. Additionally, this comparable was inferior to the subject in potential gross income with Kling estimating the

[2] This price is what was reported by Kling and listed on the comparable's property record card but differs from that listed on the listing sheet of $892,500.

comparable's potential gross income of $113,218 (based on his calculation the comparable had an estimated potential gross income multiplier of 8.7) as well as the multiple listing sheet indicating the comparable as having a gross rental income of $111,720 compared to the subject's estimated potential gross income of $120,000. The Board finds this comparable to be inferior to the subject and would require an upward adjustment.[3]

The Board finds the remaining sales used by Kling were inferior to the subject in age and comparable #2 was inferior in unit size. These comparables sold for prices ranging from $840,000 to $850,000 or for $70,357 to $70,833 per unit. Kling's comparable sales #1 and #3 were similar to the subject in unit mix and unit size but, based on Kling's determination of the potential gross income multipliers, inferior to the subject in potential gross income. These properties sold proximate to the assessment date in April 2009 and September 2008 for unit prices of $70,000 and $70,833 per unit, respectively. Giving more emphasis to these two sales, but also recognizing all of Kling's sales had unit prices ranging from $70,000 to $70,833 per unit, the Board finds Kling's estimate of value under the sales comparison approach of $64,000 per unit understates the market value of the subject property.

Of the remaining eight sales used by Hanson sales #2, #4, #5, and #9 were significantly older than the subject building being constructed from approximately 1960 to 1963 compared to the subject's date of construction in 1987. Additionally, sale #9 was reported to be a "short sale in lieu of foreclosure." These four comparables had six or eight units and sold from December 2007 to December 2008 for prices ranging from $58,125 to $85,500 per unit. Even though the subject is significantly newer, its assessment reflects a unit value within this range. The remaining four sales (#1, #6, #7 & #8) were more similar to the subject in age being constructed from 1973 to 1989. Significantly, the Board finds sales #6, #7 and #8 were located in Glendale Heights, the same city as the subject property. These four comparables had 6 or 9 units and sold from May 2007 to October 2009 for prices ranging from $477,450 to $835,000 or from $79,575 to $108,333 per unit. The subject's assessment reflects a market value of $78,758 per unit, below these similar properties.

The appellant argued that the comparables used by Hanson were inferior due to size. However, testimony from Hanson disclosed that two of her comparables, #6 and #8, were similar in design to the subject and each had six units sold off from the rest of the building to which they were attached. These two comparables had unit prices of $108,333 and $79,575, respectively, reflecting market values above that reflected by the subject's assessment on a per unit basis.

The appellant's appraiser also made an issue with respect to the downward trend in the market during 2008. The Board finds the record contains four sales that occurred from September 2008 to October 2009, those being Kling's sales #1 and #3 as well as Hanson's sales #8 and #9, that had unit prices ranging from $70,000 to $79,575. The subject's assessment reflects a market value of $78,758 per unit, which is within the range of those sales in the record that occurred most proximate in time to the assessment date at issue.

Both Kling and Hanson developed the income approach to value. Both witnesses were in agreement with respect to the potential gross income, vacancy loss, and effective gross income.

[3] Hanson was of the opinion this sale would require an upward adjustment.

The witnesses differed on expenses and neither provided any market data or information in support of their respective deductions, which the Board finds detracts from the weight that can be given this approach. The Board also finds the witnesses disagreed with respect to the capitalization rate to be applied to the subject's net income. Kling had estimated the comparable sales had capitalization rates ranging from 5.51% to 6.24%. Hanson had calculated the capitalization rates for seven of her sales as ranging from 5.4% to 8.3%. Hanson also provided an overall capitalization rate from Price Waterhouse Coopers LLP of 6.88%, which the Board finds appears to be reflective of an overall capitalization rate attributed to the subject considering the data provided by the valuation witnesses. Applying a capitalization rate of 6.88% to the net income calculated by Kling results in an estimate of value of $868,700, rounded, or $72,392 per unit. Using Kling's estimated net income before real estate taxes of $82,118 and an effective tax rate of 2.37% would result in a loaded capitalization rate of 9.25%. Capitalizing the subject's net income with the loaded capitalization rate results in an estimate of value of $887,800, rounded, or $73,983 per unit. The Board finds these calculations demonstrate Kling undervalued the subject under the income approach and Hanson overvalued the subject using the income approach.

Kling also utilized a gross rent multiplier to calculate an estimate of value for the subject property. His four sales had an average gross rent multiplier of 7.8575. Kling deducted 1.5 from this calculation for economic decline during the fall of 2008. The Board finds there was no market support for this deduction and gives this aspect of Kling's analysis no weight. Applying the average gross rent multiplier of 7.8575 to the subject's potential gross income of $120,000, results in an estimate of value of $942,900 or $78,575 per unit. This result is practically equivalent to the market value of the subject property reflected by the assessment of $78,758 per unit.

In conclusion, after considering both reports and giving more emphasis to the sales in this record, the Property Tax Appeal Board finds the subject's assessment is reflective of the property's market value as of January 1, 2009 and no change is justified.

APPELLANT:	**AutoZone, Inc.**
DOCKET NUMBER:	**08-02385.001-C-2 thru 08-02385.002-C-2**
DATE DECIDED:	**May, 2012**
COUNTY:	**Kane**
RESULT:	**No Change**

The subject property consists of two adjacent parcels containing a combined land area of 53,272 square feet or 1.22 acres. The property is improved with a one-story commercial building with 5,409 square feet of building area on a concrete slab foundation. The subject building is fully sprinklered, has central air conditioning and two bathrooms. The building was built in 2000 and has a brick exterior construction. The subject property is used as an automobile supply outlet. The subject property has a land to building ratio of 9.85:1. The property is located in Elgin, Elgin Township, Kane County.

The appellant appeared by counsel 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 John Stephen O'Dwyer and David Huffman of JSO Valuation Group, Ltd. The appraisers estimated the subject property had a market value of $490,000 as of January 1, 2008. The appraisal was marked as Appellant's Exhibit #1.

The appellant called as its witness John Stephen O'Dwyer. O'Dwyer is the president of JSO Valuation Group, which is an appraisal firm. The witness has the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute and the Member of the Royal Institute of Chartered Surveyors (RICS) designation from Great Britain for international appraisals he might develop. The witness also has the Certified General Appraiser license with the State of Illinois. O'Dwyer testified that he has appraised thousands of commercial buildings in general and has been in the appraisal business since 1984.

The report indicated the property rights appraised were the fee simple interest which is described as "absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat." (Appellant's Ex. #1, p. 5.) At the hearing O'Dwyer testified he estimated the market value of the fee simple interest and not the market value of the leased fee interest. The appraiser testified that custom built buildings, such as the subject constructed for Auto Zone, are built for a particular use. He explained the subject property is occupied by the owner but many are leased which tends to recapture the cost of construction plus the land value. The appraiser stated the difference between the leased fee and the fee simple is the crux of the valuation problem. As a result the expert explained that when you look at sales you need to look at sales that are not encumbered by the leases that are capturing the initial cost of construction plus land.

The appraiser described the subject building as having a very basic interior finish. On the left side of the building the subject has aisles where the customers can shop. The flooring in the shopping area is tiled and the flooring behind the counter is concrete. The walls are sheetrock and painted concrete block while the ceiling is the painted exposed underside metal deck roof. The subject also has hung fluorescent lighting. The building also has a ladies and men's

bathroom for the staff. Within the report the appraiser indicated the subject's design is a simple industrial type building. (Appellant's Exhibit #1, p. 21.)

O'Dwyer determined the highest and best use of the subject as improved is the existing use.

In estimating the market value of the subject property the appraiser did not develop the cost approach but did use the income approach to value and the sales comparison approach to value. The witness explained the cost approach was not used because the subject is a custom built building with super adequacies or deficiencies and depreciation is difficult and could not be proved.

With respect to the income approach to value the appraiser used five comparables to estimate market rent. The comparables were described as being composed of two free standing buildings, two strip centers and a shopping center. The comparables ranged in size from 6,800 to 78,000 square feet of rentable building size with space available ranging in size from 5,000 to 11,400 square feet. The appraiser further indicated within the report the unit sizes ranged in size from 2,700 to 8,450 square feet. Each of the comparables was located in Elgin. The comparables had net rents ranging from $8.00 to $12.50 per square foot of building area. The appraiser was of the opinion the comparables were superior to the subject due to the fact they are built-out for standard commercial uses, while the subject has finish that is consistent with industrial buildings in Kane County.

The appraiser made downward adjustments to the comparables for superior condition, superior building features and listing rental rates. The appraiser estimated the subject property would have a market rent of $11.00 per square foot of building area on a net basis resulting in a potential gross income of $59,499. Vacancy and collection loss was estimated to be 7.5% or $4,462 resulting in an effective gross income of $55,037. O'Dwyer estimated expenses to be $8,650 resulting in a net operating income of $46,387.

The final step under the income approach was to estimate the capitalization rate to be applied to the subject's net income. In estimating the capitalization rate the appraiser examined Valuation Insights & Perspectives published by the Appraisal Institute and Korpacz Real Estate Investor Survey by Price Waterhouse Coopers, LLP. Ultimately the band of investment was used to arrive at a capitalization rate of 9.5%. Capitalizing the net income resulted in an indicated value under the income approach of $488,279 or $490,000, rounded.

The final approach to value developed by O'Dwyer was the sales comparison approach in which he used four comparable sales located in Elgin and West Dundee. The comparables were improved with three, one-story commercial buildings and one, part one-story and part two-story commercial building. The buildings ranged in size from 1,802 to 16,200 square feet of building area. The report indicated comparable #3 was built in 1997 and comparable #4 was built in 1957. The appraiser did not disclose the ages of comparable sales #1 and #2. These properties had sites ranging in size from 5,865 to 75,359 square feet of land area resulting in land to building ratios ranging from 2.50:1 to 7.01:1. The photographs of the comparable sales contained in the appraisal depict buildings not particularly physically similar to the subject in style, construction and condition. The sales occurred from September 2007 to November 2008 for prices ranging from $144,000 to $1,315,000 or from $79.91 to $122.89 per square foot of

building area, including land. The appraiser made adjustments to the comparables for building size, age and condition, land to building ratio and for miscellaneous factors to account for odd features of the subject or the comparables. Based on these considerations the appraiser estimated the subject property had an indicated value under the sales comparison approach of $90.00 per square foot of building area or $490,000, including land, rounded. The appraiser was of the opinion these sales had a similar highest and best use as the subject.

In reconciling the income approach to value and the sales comparison approach to value, O'Dwyer gave most consideration to the sales comparison approach and estimated the subject property had a market value of $490,000 as of January 1, 2008. The appraiser indicated within the appraisal that the income approach was limited due to the fact that market information was limited.

Under cross-examination the appraiser indicated there was a significant positive adjustment for age for comparable sale #1. With respect to comparable sale #2 the appraiser was questioned about whether his associate who drove by this property noted a different use on the second floor. O'Dwyer was of the opinion that even if sale #2 was a mixed use property he would have still considered it comparable to the subject property. The witness also testified that the sales he used were "ugly." With respect to his comparable sale #4, the appraiser indicated this property was similar to the subject due to industrial type build-out. The witness was of the opinion the subject was an industrial type building once you strip away the name, the cash registers and the paraphernalia associated with selling aftermarket auto products. He testified, however, the subject does not have a loading dock and has no overhead door. O'Dwyer did not know who was the most recent occupant of comparable sale #4 and further stated he did not look at this building, his associate did.

O'Dwyer indicated under his signature on page 8 of the letter of transmittal attached to the appraisal that he inspected the subject property; however, on page 52 of the report under his signature he indicates he did not inspect the property. He testified there was a typo on page 52. O'Dwyer also testified his associate, David Huffman, was a trainee at the time the appraisal was prepared.

The witness was questioned about his statements within the appraisal describing the subject as being improved with a simple, industrial type building. He also agreed that on page 3 of the letter of transmittal he stated a major error would be to try and compare the subject to a standard retail free-standing unit. O'Dwyer agreed his rental comparables #1 and #5 are free standing retail buildings. He also agreed that on page 39 of his report he again asserted that it would be a major error to try and compare the subject property to a standard retail free-standing unit within the township.

O'Dwyer also indicated his comparable sale #1 is at least 40 years older than the subject building. He also agreed his sale #1 is a freestanding building with a retail application.

O'Dwyer was also not aware that his comparable sale #2 had a significant residential component and a restaurant or deli. The photograph of this comparable has signage that states restaurant. O'Dwyer agreed this building was freestanding and the restaurant/bakery would be akin to retail.

The witness testified a staff person inspected comparable sale #3 and agreed this is a freestanding building that is partially retail. The appraiser was not aware of another sale of this property. He agreed that CoStar service is a source that the appraisers use in the appraisal profession.

With respect to comparable sale #4, O'Dwyer did not know if this property was advertised for sale. He also testified he did not look at the transfer declaration on this property. The witness was shown Intervenor's Exhibit #3, the Illinois Real Estate Transfer Declaration, PTAX-203, associated with sale #4, which indicated the property was not advertised for sale. O'Dwyer also identified Intervenor's Exhibit #4 as the CoStar report for sale #4. This exhibit stated there was no buyer broker or listing broker on the deal. O'Dwyer also agreed this was a freestanding building that was part retail and part industrial. Intervenor's Exhibit #4 described the building as storefront retail/office.

The witness agreed that he stated within the report the subject resembles an industrial building but each of the comparable sales he used were described as freestanding commercial buildings.

On redirect examination O'Dwyer explained that what he meant by the statements within his appraisal that auto supply stores rarely sell or lease was that these are custom built aftermarket auto stores that as a general rule are built by contractors and then leased to the aftermarket auto supplier. Subsequently the lease is sold as an instrument to another company. He testified if you use these lease sales you are not appraising the fee simple interest.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $321,886 was disclosed. The subject's assessment reflects a market value of $967,496 or $178.87 per square foot of building area, including land, when applying the 2008 three year average median level of assessments for Kane County of 33.27%.

In support of the assessment the board of review submitted information on two sales. The board of review representative acknowledged one of the sales was probably leased at the time of sale. The first comparable located at 435 N. McLean Blvd., South Elgin, further identified by property index number (PIN) 06-34-129-011, was improved with a one-story commercial building with 6,889 square feet of building area. This building was built in 2006 and was occupied by Advanced Auto Parts. The property had a 1.23 acre site. This property sold in May 2007 for a price of $2,428,571 or $352.53 per square foot of building area, including land. The second comparable located at 275 N. Grove Ave., Elgin, further identified by PIN 06-14-234-011, was improved with a one-story commercial building with 2,680 square feet of building area. This building was built in 1976 and had a 13,364 square foot site. This property sold in March 2007 for a price of $650,000 or $242.54 per square foot of building area, including land. Based on this evidence the board of review requested confirmation of the subject's assessment.

The intervenor submitted information on six sales using information that was obtained from Appraisal Associates according to the intervenor's counsel. The comparables were improved with one-story commercial buildings that ranged in size from 2,505 to 11,654 square feet of building area. The comparables were located in Elgin, Schaumburg, East Dundee and St. Charles and were constructed from 1990 to 2008. These properties had land to building ratios ranging from 3.25:1 to 34.24:1. The sales occurred from May 2007 to October 2008 for prices

ranging from $1,075,000 to $3,500,000 or from $266.54 to $518.96 per square foot of building area, including land.

At the hearing the appellant objected to the intervenor's evidence contending there was no witness present to be cross-examined about the selected sales. The Board sustains the objection finding that without corroborating testimony concerning these purported sales it can give no weight to the information provided by the intervenor.

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 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 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 relied on an appraisal prepared by O'Dwyer estimating the subject property had a market value of $490,000 as of January 1, 2008. After reviewing the appraisal and considering testimony provided by O'Dwyer, the Board finds the conclusion of market value contained in the appraisal and propounded by the appraiser is not credible.

Both in the written report and during the hearing O'Dwyer asserted that the sales comparison approach was given primary consideration in arriving at the final estimate of value. The Board finds the comparable sales used by O'Dwyer as the basis for his final estimate of value were not similar to the subject in age, size, construction, condition or physical characteristics to provide a meaningful data base to support his value conclusion. Furthermore, the Board finds there was a contradiction within the report and testimony which further undermines the credibility of the witness. The appraiser asserted that the subject property had the elements of a simple industrial building and that a major error would be to try and compare the subject to a standard retail freestanding unit. Nevertheless, the comparable sales selected by the appraiser were freestanding retail/commercial buildings, which appear to be at odds with the appraiser's own statements.

The Board also finds the appellant's appraiser asserted the income approach was limited due to the fact that market information was limited. Therefore, the Board gives the value estimate derived under this approach no weight.

The Board further finds troublesome the fact the subject building is only approximately 8 years old as of the assessment date at issue. Nevertheless, the appraiser opted not to develop the cost approach to value, which would be a relevant approach considering the building's age, regardless of the fact that depreciation may be difficult to estimate.

The Board further finds the board of review provided two sales that support the subject's assessment. The comparables were improved with one-story commercial buildings with 6,889 and 2,680 square feet of building area that were constructed in 2006 and 1976, respectively. The comparables sold in May 2007 and March 2007 for prices of $2,428,571 and $650,000 or for $352.53 and $242.54 per square foot of building area, including land, respectively. The subject's assessment totaling $321,886 reflects a market value of $967,496 or $178.87 per square foot of building area, including land, when applying the 2008 three year average median level of assessments for Kane County of 33.27%. The subject's assessment reflects a value per square foot below the two sales provided by the board of review. Based on these sales the board finds the subject's assessment is not excessive in relation to the property's market value.

In conclusion, the Board finds a reduction in the subject's assessment is not supported by the evidence in this record.

APPELLANT:	**Caring First Inc.**
DOCKET NUMBER:	**09-02412.001-C-3**
DATE DECIDED:	**June, 2012**
COUNTY:	**Clinton**
RESULT:	**Reduction**

The subject property is improved with a one-story steel frame and masonry constructed skilled nursing facility containing a gross building area of 31,234 square feet on a slab foundation. The facility has 4 private rooms and 54 semi-private rooms and licensed and configured to accommodate 112 beds. The building was constructed in stages from 1968 to 1975. The property also has 63 paved parking spaces. The subject site has 4.011 acres or 174,735 square feet resulting in a land to building ratio of 5.59:1. The property is located in Breese, Breese Township, Clinton County.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal prepared by Keith McFarland of The Lauer Appraisal Company. The appraisal was marked as Appellant's Exhibit #1. McFarland estimated the value of the real property was $1,100,000 as of January 1, 2009. McFarland was called as the appellant's witness.

McFarland is the vice-president of Lauer Appraisal Company and has been appraising commercial property since 1986. He has previously served as president of the St. Louis chapter for the American Society of Appraisers and has the designation of ASA, which is a senior member of the American Society of Appraisers. McFarland is a Certified General Real Estate Appraiser with the State of Illinois and a State Certified General Real Estate Appraiser with the State of Missouri.

The witness testified he inspected the subject property on December 31, 2009. The purpose of the appraisal was to estimate the retrospective market value of the fee simple estate in the subject real property as of January 1, 2009, excluding the going concern value and furniture, fixture and equipment (FF&E) necessary in the operation of the nursing facility. (Appellant's Exhibit #1, page 12.) The witness testified the subject is used as a skilled care nursing facility. In estimating the market value of the subject property the appraiser developed the three traditional approaches to value; the cost approach, the income approach and the sales comparison approach.

The first approach developed by the appraiser was the cost approach to value. The initial step under the cost approach was to estimate the value of the land using three land sales located in Carlyle, Highland and Nashville, Illinois. The land comparables ranged in size from 2 to 3.176 acres or from 87,120 to 138,333 square feet of land area. The sales occurred from August 2007 to June 2008 for prices ranging from $98,000 to $161,000 or from $.71 to $1.46 per square foot of land area. The appraiser made a negative adjustment to the comparables for time ranging from 3% to 6%; a negative adjustment to the comparables for location ranging from 5% to 40%; a 5% negative adjustment to land sale #1 for size; a 20% negative adjustment to comparables #1 and #3 for zoning; and a 25% positive adjustment to comparable #3 for shape/utility. Based on these adjustments, which were based to a large extent on the appraiser's general experience, the

adjusted prices ranged from $.67 to $.72 per square foot of land area. McFarland estimated the subject land had an estimated value of $.70 per square foot of land area or $120,000, rounded.

The next step under the cost approach was to estimate the cost new of the improvements. The report indicated the appraiser developed the replacement cost new using construction cost figures compiled by Marshall Valuation Service. The report stated that replacement cost is the cost of constructing, at current prices, a building having utility equivalent to the building being appraised, but built with modern materials and according to current standards, design and layout. The report further stated that the use of replacement cost concept presumably eliminates all functional obsolescence, and the only depreciation to be measured is physical deterioration and economic obsolescence.

The replacement cost of the subject was based on an average quality, Class "C" Convalescent Hospital with a base cost of $118.08 per square foot of building area. The replacement cost new of the building was estimated to be $3,546,659. The appraiser estimated the replacement cost of the site improvements to be $75,200. When one adds these components the estimated replacement cost new is $3,621,859. The appraiser estimated the replacement cost new of the FF&E to be $6,000 per bed or $672,000, which he added to arrive at a replacement cost new of the FF&E, building and site improvements of $4,125,540. The appraiser then applied a time adjustment factor of .9608 to arrive at a replacement cost new of $4,125,540. To this the appraiser added 10% for entrepreneurial profit to arrive at a total replacement cost new of $4,538,094.

The appraiser next estimated the physical depreciation of the structural improvements was 40% based on the age-life method and 5% for functional obsolescence due to lack of sprinklers and inefficient heating and cooling systems. The appraiser also was of the opinion the subject suffered from $336,000 in deferred maintenance, which was a separate deduction. The appraiser also was of the opinion the physical depreciation of the FF&E was 60% resulting in a depreciated value of $284,090. Based on these calculations the appraiser estimated the building and site improvements had a depreciated value of $2,181,886. To this amount the appraiser added $284,090 for the FF&E, deducted $336,000 for deferred maintenance and added $120,000 for the land value to arrive at an indicated value of $2,250,000, rounded. The appraiser indicated within the report this included a business enterprise value and FF&E.

The next approach developed by the appraiser was the income approach to value. The appraiser stated within the report the subject has 40,880 potential patient days. He further noted the subject property has 4 private rooms, which had an occupancy rate of 62.5% on the date of inspection, December 31, 2009, and an average occupancy rate in 2008 of 61.1%. The appraisal further indicated the reported census mix as of January 1, 2009 included 28 Medicaid beds with a rate of $107.78 per patient day, 4 private room patients with rates that ranged from $130.00 to $148.00 per patient day with an average of $132.00 per patient day, 24 semi-private room patients with rates that ranged from $105.00 to $123.00 per patient day and averaged $110.25 per patient day and 8 Medicare patients with an average rate of $413.95 per patient day. The report also indicated the 2008 census mix at the subject which included 43.6% private pay, VA and other patient days; 13.0% Medicare patient days and 43.4% Medicaid patient days. The appraiser then used four skilled nursing facilities to estimate the market rent of the subject property. The comparables were located in Nashville, Carlyle, Highland and Aviston, Illinois,

and had from 97 to 230 licensed beds. The comparables had semi-private rates of $101.00 to $131.50 per patient day and private pay rates ranging from $75.00 to $148.00 per patient day.

Using this data the appraiser estimated the market rent for private, VA and other was $114.50 per patient day for a potential income of $1,872,304; the Medicare rate was estimated to be $398.00 per patient day resulting in a potential gross income of $2,115,131; and the Medicaid rate was estimated to be $107.78 per patient day resulting in a potential gross income of $2,070,842. Adding these estimates resulted in an estimated potential gross income for the subject property of $6,058,277.

The appraiser next reported that the subject had historical occupancy rates of 65.8% in 2006; 62.0% in 2007; 61.1% in 2008; and stood at 57.1% as of January 1, 2009. He further stated that the comparables had 2008 occupancy levels ranging from 44.6% to 93.3%. The appraiser estimated the subject had a stabilized occupancy of 61% resulting in vacancy and collection loss of 39% or $2,362,728. Deducting the vacancy and collection loss resulted in income of $3,695,549. The appraiser estimated ancillary income for the subject to be $398,989, which was added to arrive at an effective gross income of $4,094,538.

In estimating the expenses the appraiser used the subject's historical expenses and the expenses reported at comparable facilities, excluding real estate taxes. Using this information the appraiser estimated expenses of $3,693,391 should be deducted to arrive at an estimated net income of $401,147.

The final step was to estimate the capitalization rate to be applied to the subject's net income. Using direct capitalization the appraiser referenced seven sales of skilled nursing facilities with overall rates ranging from 11.0% to 16.92%. Using the band of investment technique the appraiser estimated a capitalization rate of 13.8%. The appraiser ultimately estimated the subject property had a capitalization rate of 13.5% to which he added 2.3% for an effective tax rate resulting in a total capitalization rate of 15.8%. Capitalizing the net income resulted in an estimated value of $2,538,905 from which the appraiser deducted $336,000 for deferred maintenance to arrive at an estimated value under the income approach of $2,200,000, rounded.

The final approach to value developed by McFarland was the sales comparison approach using five comparable sales located in Nashville, Carlinville, Swansea, O'Fallon and Lebanon, Illinois. The comparables were improved with buildings that ranged in size from 24,828 to 64,027 square feet of building area and were built from 1964 to 1975. These properties had sites ranging in size from 100,188 to 493,535 square feet of land area resulting in land to building ratios ranging from 3.34:1 to 10.24:1. These properties were licensed to have from 94 to 230 beds. The report indicated the comparables sold from August 2006 to November 2008 for prices ranging from $1,750,000 to $5,175,000 or from $17,327 to $33,621 per bed. The report indicated sale #1 sold for a price of $5,300,000, which included a $750,000, 6 year interest free promissory note from the seller. The appraiser adjusted this price to $5,175,000 to reflect the favorable financing. Sale #3 was reported to be purchased out of foreclosure with the property being marketed prior to auction. Sale #4 was reported to have closed since the time of purchase due to the ownership not being able to maintain sufficient funding levels. The appraiser made negative adjustments to comparables #2 through #5 of 4% and 6%. The appraiser made adjustments to the comparables for such factors as location, size, quality, age/condition, occupancy/economics and land to

building ratio. McFarland estimated the comparables had adjusted sales prices ranging from $22,455 to $22,800 per bed. Based on this data the appraiser estimated the subject had a market value of $22,700 per bed or $2,542,400. The appraiser next deducted $336,000 for deferred maintenance to arrive at an estimated value of $2,200,000, rounded.

In reconciling the three approaches to value the appraiser explained that the value estimates under each approach included the value of the business enterprise and FF&E. The appraiser stated within the appraisal that the income approach was given primary emphasis. The appraiser asserted the sales comparison approach supported the value derived by the income approach while the cost approach supported the values derived by both the income approach and the sales comparison approach. The appraiser estimated the subject property had a market value as a going concern, including the value of the business enterprise and FF&E of $2,200,000 as of January 1, 2009.

The appraiser then stated within the appraisal that management companies are hired to operate a property for a fee and a 15% to 25% rate of return on the management fee is typical within the market to represent a going concern value for this type of property. McFarland estimated the subject had a management fee of $163,782 which he capitalized using a 20% rate of return to arrive at a business enterprise value of the going concern of $819,000. Deducting the estimated value of the business enterprise value and the depreciated value of the FF&E of $284,090 resulted in an estimated value of the fee simple in the real property of $1,100,000 as of January 1, 2009.

McFarland testified that he used the Rushmore method of estimating the going concern value. According to the witness the Rushmore method utilizes the management people component and capitalizes that into an indication of business value.

Under cross-examination the appellant's witness testified the business value component was considered in the indirect costs of the cost approach to value. He also testified the deferred maintenance issue was outlined in the addendum of the appraisal at Exhibit E and on page 59 of his report, which included various cost estimates to repair items. The witness also indicated that he did not outline or reference the Stephen Rushmore method in the appraisal when he calculated business value.

With respect to the comparable sales, the appraiser testified he looked at the Illinois Real Estate Transfer declarations associated with the sales. He testified, however, you can't rely on those records because the allocations are based on someone's estimate.[4] The witness indicated for each of the comparable sales he used there was no allocation for goodwill, going concern value or personal property.

Based on this evidence the appellant requested the subject's assessment be reduced to $366,667 to reflect McFarland's appraised value for the real estate.

[4] Step 4 of Form PTAX-203 provides in part that, "Any person who willfully falsifies or omits any information required in this declaration shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for subsequent offenses."

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $673,240 was disclosed. The subject had a land assessment of $43,000 and an improvement assessment of $630,240. The subject's assessment reflects a market value of $2,060,738 or $18,399 per bed using the 2009 three year average median level of assessments for Clinton County of 32.67%.

In its submission the board of review submitted a copy of the subject's property record card, marked as exhibit A. Linda Mensing, the Clinton County Chief County Assessment Officer (CCAO), testified that the back of the property record card contained the cost calculations used to arrive at the assessment. She testified Marshall and Swift calculations were used to establish the value of the subject property. The property record card disclosed the depreciated value of the building improvements and the paving totaled $1,890,730, which resulted in an assessment of $630,240 when applying the statutory level of assessments. The property record card also indicated a land value of $129,000, which resulted in a land assessment of $43,000 when applying the statutory level of assessments.

The board of review also submitted an analysis of the appellant's appraisal prepared by the Illinois Department of Revenue, Office of Appraisals, which was marked as Exhibit B. No signatory of the analysis was present at the hearing to provide testimony about the purported analysis.

The board of review also submitted copies of the Illinois Real Estate Transfer Declarations (PTAX-203) for seven land sales located in Breese, Clinton County, marked as Exhibit C. The land comparables ranged in size from .65 to 18.49 acres or from 28,314 to 805,424 square feet of land area. The sales occurred from April 2004 to June 2009 for prices ranging from $35,000 to $277,989 or from $.25 to $1.66 per square foot of land area.

The board of review also submitted copies of the Illinois Real Estate Transfer Declarations (PTAX-203) for the appraiser's improved comparable sales and copies of the Illinois Real Estate Transfer Declaration Form A (PTAX-203-A) associated with appraiser's improved sales #2, #3, #4 and #5, which was marked as Exhibit D. This information indicated that appraiser's comparable sale #1 sold for a price of $5,300,000 with $1,300,000 attributed to personal property resulting in a price for the real property of $4,000,000 or $17,391 per bed. The transfer declaration for appraiser's comparable sale #2 indicated full consideration of $2,407,774 with $415,774 as personal property leaving a net consideration for real property of $1,992,000 or $21,652 per bed. The transfer declaration for appraiser's sale #3 indicated a full actual consideration of $2,125,000 with nothing allocated to personal property. The net consideration for the real property was $2,125,000 or $22,606 per bed. The transfer declaration for appraiser's comparable sale #4 indicated full consideration of $1,600,000 with $0 as personal property leaving a net consideration for real property of $1,600,000 or $11,034 per bed. The transfer declaration for appraiser's comparable sale #5 indicated full consideration of $1,815,000 with $275,000 as personal property leaving a net consideration for real property of $1,540,000 or $15,248 per bed. Item 8 on the Form PTAX-203-A associated with sales #2 through #5 in the appellant's appraisal was answered "yes" to the question, "In your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?"

Based on this information, the board of review requested confirmation of the subject's assessment.

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

The appellant contends overvaluation as the basis of the appeal. 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). 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 the record supports a reduction in the subject's assessment.

The appellant presented an appraisal estimating a market value of the real estate associated with the subject property of $1,100,000 or $9,821 per bed. The Board finds the opinion of value set forth by the appellant's expert is not credible in light of the data in the record.

First, the appraiser estimated the subject had an indicated value under the cost approach of $2,250,000, which according to the witness included a business enterprise value and the value of the FF&E. The witness asserted the business enterprise component was considered an indirect cost. The Board finds this testimony is not credible. The Board finds the cost approach to value typically estimates the market value of the real estate without any intangible assets. In the appraisal the appraiser asserted that replacement cost new was employed to estimate the value of the building components. The definition of replacement cost new within the report is void of any reference to a component for business enterprise value. In developing a cost approach an appraiser must consider direct (hard) and indirect (soft) costs. Direct costs include the costs of material and labor as well as the contractor's profit required to construct the improvement as of the effective date of the appraisal. Indirect costs are expenditures that are necessary for construction but are not typically part of the construction contract such as architectural and engineering fees; appraisal, consulting, accounting and legal fees; the cost of carrying the investment and contract payments during construction; insurance and ad valorem taxes; marketing costs; and administrative expenses of the developer.[5] The Board finds there is no component in the cost approach to value for a business enterprise value and no deduction should be made for this element.

[5] See The Appraisal of Real Estate, 12th Edition, Appraisal Institute, 358-359 (2001).

In the appraisal McFarland estimated the replacement cost new of the building and site improvements totaled $3,827,870. Deducting the physical depreciation ($1,531,148), functional obsolescence ($114,836) and deferred maintenance ($336,000) results in a replacement cost new after depreciation of $1,845,886. Adding the appraiser's estimated land value of $120,000 to the depreciated improvement value results in an estimated value under the cost approach totaling $1,965,886. This estimated value is similar to that contained on the cost approach submitted by the board of review. Board of review Exhibit A had a depreciated cost new of the building and site improvements totaling $1,890,730 to which an estimated land value of $129,000 was added to arrive at an estimated value of $2,019,830, which is 6.8% higher than the appraiser's estimated value. Both of these value estimates exclude any business enterprise value and FF&E.

Similarly, in the sales comparison approach, the Board finds there should be no adjustment to the sales data for FF&E or a business enterprise value. The record contains copies of the Illinois Real Estate Transfer Declarations (PTAX-203) for the appraiser's improved comparable sales and copies of the Illinois Real Estate Transfer Declaration Form A (PTAX-203-A) associated with appraiser's improved sales #2, #3, #4 and #5, which was marked as Board of Review Exhibit D. This information indicated that appraiser's comparable sale #1 sold for a price of $5,300,000 with $1,300,000 attributed to personal property resulting in a price for the real property of $4,000,000 or $17,391 per bed, which differs from that reported by the appellant's appraiser. The transfer declaration for appraiser's comparable sale #2 indicated full consideration of $2,407,774 with $415,774 as personal property leaving a net consideration for real property of $1,992,000 or $21,652 per bed, which differs from that used by the appellant's appraiser. The transfer declaration for appraiser's sale #3 indicated a full actual consideration of $2,125,000 with nothing allocated to personal property. The net consideration for the real property was $2,125,000 or $22,606 per bed, which is the same as that contained in the appellant's appraisal. The transfer declaration for appraiser's comparable sale #4 indicated full consideration of $1,600,000 with $0 as personal property leaving a net consideration for real property of $1,600,000 or $11,034 per bed, which differs from that contained in the appellant's appraisal. The transfer declaration for appraiser's comparable sale #5 indicated full consideration of $1,815,000 with $275,000 as personal property leaving a net consideration for real property of $1,540,000 or $15,248 per bed, which differs from the appellant's appraisal. Furthermore, item 8 on the Form PTAX-203-A associated with improved sales #2 through #5 in the appellant's appraisal was answered "yes" to the question, "In your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?" The appellant's appraiser was not called in rebuttal to explain the discrepancies from his report and the transfer declarations with respect to the reported sales prices of the comparables. Using this data the comparables had sales prices ranging from $11,034 to $21,652 per bed, exclusive of FF&E and any business enterprise value. The subject's assessment reflects a market value of $2,060,738 or $18,399 per bed using the 2009 three year average median level of assessments for Clinton County of 32.67%, which is within the range on a per bed basis.

The appraiser also developed an income approach to value resulting in an estimated value of $2,200,000, which the appraiser stated included a business enterprise value and the FF&E. The Board finds the appraiser's calculation for the business enterprise value was not credible and not supported by any objective evidence in this record. The Board finds, however, a deduction for FF&E in the amount of $284,090 is justified, resulting in an indicated value under the income approach of $1,915,910 or $17,106 per bed.

In conclusion, after considering the cost approach, the sales contained in the sales comparison approach of the appraisal and the income approach as outlined above, the Board finds the subject property had a market value of $1,950,000 as of January 1, 2009. Since market value has been determined Board finds the 2009 three year average median level of assessments for Clinton County of 32.67% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**Ettleson Cadillac**
DOCKET NUMBER:	**05-25658.001-C-3 thru 05-25658.002-C-3**
DATE DECIDED:	**April, 2012**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of two land parcels containing 235,457 square feet of area or 5.41 acres of land. This land area is improved with a 14-year-old, one-story, commercial building used as an automobile dealership with a small mezzanine area included therein. The improvement contains 48,947 square feet of building area.

As a procedural matter, the board of review and the intervenors jointly moved to exclude witnesses during opening arguments. Without any objection from the appellant, the Board granted said motion.

The appellant argued that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal.

In support of the market value argument, the appellant submitted an appraisal report of the subject property with an effective date of January 1, 2005 undertaken by John O'Dwyer, who holds the designations of State Certified General Real Estate Appraiser and Member of the Appraisal Institute. After undergoing voir dire, the appellant offered O'Dwyer as an expert in the field of commercial appraising without objection from the remaining parties and was accepted as such by the Board.

The O'Dwyer appraisal, identified for the record as Appellant's Exhibit #1, developed the three traditional approaches to value. The cost approach estimated a value of $2,475,000; the income approach estimated a value of $2,450,000; and the sales comparison approach estimated a value of $2,450,000. A reconciliation of these values concluded a final value estimate of $2,450,000.

As to the subject, the appraisal indicated that the subject is an automotive dealership complex improved with a building that contains 48,947 square feet of area. The subject's one-story structure also includes a small mezzanine used as office and storage area. The appraisal indicated that the source of the land size was the county's property record card and that the source of the building's size was measurements provided by the appellant. The appraisal stated that the subject had been personally inspected by an associate and O'Dwyer on November 14, 2005. O'Dwyer indicated that the subject reflects a land-to-building ratio of 4.81:1.

As to the subject's inspection, O'Dwyer testified that he noted some rust stains and water pooling in the service area with some of the tiles in the showroom reflecting damage. He stated that management explained that there were water leaks, but O'Dwyer stated that he thought that to be unusual for a 14-year old roof. His appraisal indicated that the subject's display room has a ceiling height of 18-feet, while the remaining office areas range in ceiling heights from 8-foot to 10-foot ceilings. The service areas were described as containing 12-foot to 16-foot ceiling heights.

As to the site improvements, the appraiser concluded that they are typical for their age and location, while the site has physical and functional characteristics to meet the needs of this type of building. The subject has average frontage and visibility, average utilities and no easements that would have a negative influence. Overall, the appraisal stated that the site was suitable for this type of development.

At hearing, O'Dwyer testified that since the subject is an auto dealership, one of the greatest issues is the ingress and egress of the property. He spoke of what he termed 'the right in and right out' component, which he opined was that the subject had no direct access from the southbound lanes of LaGrange Road. He asserted that this component was applicable to prospective purchasers as well as service customers. He also indicated that customers going eastbound or westbound encounter the same component; thereby, he opined that this component has a negative impact on the subject.

In addition, O'Dwyer testified regarding the subject's sight lines. He stated that there were adequate sight lines of the subject heading northbound with limited sight lines heading both south and east. However, he noted that there were no sight lines of the subject heading west on Joliet Road prior to the intersection of LaGrange Road.

As to the subject's history, O'Dwyer indicated that the subject underwent a 5,000 square foot addition in January, 2003 and that the service department had been reconfigured for a total cost of $718,000. He explained that this reconfiguration included not only the service area, but also the waiting area and office areas as well as furniture, fixtures, and equipment (hereinafter FF&E). He opined that an allocation of FF&E would be 25% of the total cost, but testified that he was unable to determine the actual contractor's cost of the nonrealty portion of this addition. Moreover, he stated that the subject's owner did not give him such a breakdown; and therefore, he did not investigate further.

In addition, O'Dwyer's appraisal indicated that the subject property was located within a neighborhood defined as a "group of complementary land uses". It stated that the subject was located in an automotive dealership neighborhood that had commonly associated service characteristics. Overall, O'Dwyer indicated that the subject is located within a well adjusted and stable community, which is experiencing population increases as well as an improving per capita income and housing values.

O'Dwyer indicated that the subject's highest and best use as vacant would be to hold the property on an interim basis until the market improved; thereby, it would not be feasible to develop the site if it were vacant. He stated that the highest and best use as improved was for its current use. In addition, he indicated in his appraisal that in theory, buildings with other designs could be built on the site, but that they may not produce any greater return over their useful lives than will the subject's building.

The first approach developed was the cost approach. The initial step under the cost approach was to estimate the value of the site and in doing so O'Dwyer undertook an analysis of five suggested land sales. They ranged in size from 74,485 to 235,930 square feet and in price from $5.51 to $9.89 per square foot. These properties sold from March, 2003, through October, 2004.

O'Dwyer testified that he did not believe it was relevant to disclose the grantee and grantor data for the land sales. In addition, he stated that he had neither visited any of the land sale locations nor was he aware of the surrounding environments for the land sales.
On cross-examination, he indicated that he was unaware that land sale #1 was surrounded by train tracks and a truck depot, while the property had actually been donated to the park district. In addition, as to sale #3, he testified that he was unaware that a nursing home was also located on this land parcel. He stated that this type of information may be relevant to the land sale analysis, but indicated that he did not include this data in his appraisal. In summary, O'Dwyer described how his land sales varied in location, road access, frontage, and sight visibility, while stating that he had not investigated further the nature of the land sale transactions. Therefore, after making adjustments to the comparables, he believed that the subject's land value was $7.00 per square foot or $1,650,000, rounded.

Using the Marshall Valuation Service Cost Manual, O'Dwyer opined that the subject's building would be classified as an Average Class C complete Auto dealership. He estimated a replacement cost new of the subject at showroom base cost of $65.39 per square foot and an automotive service center base cost of $59.29 per square foot for a total replacement cost new of $2,972,671. He estimated a site improvement value at $359,231 resulting in a final total replacement cost of $3,331,902 or $68.07 per square foot.

At hearing, O'Dwyer stated that the subject's showroom reflects only 7% of the building's size, while the industry standard would be closer to 25%. He also stated that this size was given to him by the owner without personal verification of either how this percentage was obtained or whether it related to the building's older section or the new addition built in 2003. Moreover, he testified that he was not qualified to measure buildings for real estate appraisals.

In estimating the amount of the subject's depreciation, the appraisal indicated a 20% deduction for curable physical deterioration present in the building and site, which in the appraiser's opinion was general deferred maintenance. Moreover, the appraisal indicated that the subject's effective physical age of 14 years and useful life of 35 years resulted in total physical deterioration of 35.71%.

Moreover, O'Dwyer stated that even though the subject contained an actual age of 14 years, that he had accorded the subject property an effective age of 12.5 years. He also stated that the subject's building appeared to be aging faster that it should have been aging. As to this statement, he added that there was deferred maintenance in the parking lot, columns that had been damaged with missing pieces of plaster that had not been replaced, and tiles in the shop and showroom areas that had been replaced. He testified that it appeared that management was doing the necessary work to keep the building up, but not doing anything special to the building to make it as contemporary as possible.

O'Dwyer testified that his appraisal's comments regarding functional obsolescence were actually the owner's statements on four factors. Specifically, the subject's owner asserted that the subject's showroom area was smaller than a modern dealership; that the showroom area contained glass walls which were allegedly difficult to heat in the winter and cool in the summer; potential customers could have a difficult ingress and egress on one of the roads surrounding the subject; and that the parts storage area contained only 8-foot ceiling heights. Nevertheless, he

also stated that in contrast to the owner's opinions, the subject contained little pieces of maintenance that have not been kept up with. In addition, he indicated that the subject's showroom comprised approximately 25% of the building's area.

O'Dwyer stated that photographs of the curable depreciation were included in his appraisal. Summarily, he stated that the subject was in average condition with little pieces of maintenance that were not being dealt with; thereby, creating a less than ideal situation. He estimated external obsolescence at 25% which he attributed to competition in the immediate area.

Based upon this analysis, he estimated the subject property's total accrued depreciation was $2,505,381. This deduction resulted in the depreciated value of the subject's improvements at $826,522 with a land value estimate at $1,650,000 resulting in a value under the cost approach of $2,475,000, rounded.

The next developed approach was the income approach, wherein O'Dwyer provided limited data on four rental properties located in Chicago. He stated that all of these rental properties were located within the same automotive dealership market area, as is the subject. These properties ranged: in size from 18,200 to 88,042 square feet; in gross rent from $5.84 to $19.00; and in net rent from $3.84 to $12.00 per square foot. Based upon this data, the appraiser estimated a net rental rate for the subject of $7.00 per square foot or $342,629. Deducting an allowance for management fees and vacancy and collection losses of 10% reflected an effective net income of $308,366. O'Dwyer's appraisal stated that the market reflected vacancy rates that ranged from 5% to 15%; he opined that the subject would be in the middle of that range because the subject is in only average condition, single-tenanted and owner-occupied. Miscellaneous costs were estimated at 3% of effective gross income. Deducting total expenses of $62,979 resulted in a net operating income of $245,387.

In developing an overall capitalization rate, O'Dwyer referred to market sources such as Valuation Insights & Perspectives published by the Appraisal Institute, Third Quarter 2005 as well as the Korpacz Real Estate Investor Survey published by PriceWaterhouseCoopers, LLP, Second Quarter 2005. Undertaking a band of investment analysis, he stated that an appropriate capitalization rate for the subject property was 10%. Applying this rate to the net operating income resulted in a value estimate under the income approach for the subject property of $2,450,000, rounded. O'Dwyer testified that typically this approach to value is less than applicable to auto dealerships which are mostly owner-occupied properties. In addition, when such a property is rented, he stated that there are significant items within the lease, such as a sale and leaseback provision or whether a dealership contains a 'flag' to operate a franchise within a particular area, which could have an impact on the lease terms.

Under the sales comparison approach to value, O'Dwyer utilized five sale comparables. His appraisal indicated that there were adequate sales of buildings which could be comparable to the subject. In addition, the appraisal stated that in its analysis O'Dwyer chose several industrial buildings that were considered to be most comparable to the subject. O'Dwyer's appraisal stated that older structures like the subject typically had varying degrees of functional obsolescence depending on the percentage of loss factor as well as some physical deterioration.

O'Dwyer's comparables sold from June, 2002, through July, 2004, for prices that ranged from $900,000 to $2,000,000, or from $31.47 to $52.31 per square foot. The properties were improved with a one-story, masonry, commercial building used as an automotive dealership with the exception of one property used as a truck depot. They ranged: in age from 25 to 60 years; in improvement size from 22,900 to 38,233 square feet of building area; and in land size from 45,262 to 213,000 square feet. Moreover, the appraisal included a map depicting the location of the subject property as well as the appraiser's sale properties.

Under examination, O'Dwyer testified that the majority of the sale comparables' characteristics were inferior to the subject, but that all of the properties were automotive dealerships ranging in condition from fair to average. As to each sale properties' on-site parking, he stated that his personal knowledge on this point was limited to the information he was supplied. After making adjustments to the suggested comparables, O'Dwyer estimated the subject's market value at $50.00 per square foot, land included, or $2,450,000, rounded.

At hearing, O'Dwyer testified regarding each sale property. He stated that his sale #1 was the best comparable because it was a recent sale which had been vacant at the time. Therefore, he asserted that there were no other facts wrapped around or involved in the sale, such as manufacturer or franchise issues, FF&E, stock or goodwill. Therefore, he opined that the rationale for this sale was solely for real estate value. Based upon his past appraisal experience, he also testified at length regarding the nature of an auto dealership having a 'flag' for a particular franchise. Moreover, he explained other layers of issues relating to evaluating prospective sale comparables, such as whether the following components were included in a sale, such as: parts or car inventory, racking, goodwill as well as FF&E.

As to sales #2 and #3, he noted that his appraisal reflected no on-site parking, which was a typographical error. He stated that each sale contained adequate on-site parking. Further, he noted that sales #2, #3 and #4 were inferior with respect to parking and that he made an adjustment for this factor in his land-to-building component in his grid analysis.

Overall, O'Dwyer testified that car dealerships need high ceiling heights in a showroom in order for people not to feel cramped inside of the small space of cars as well as the lighting and high ceilings acting as a draw to prospective customers passing by the dealership location. He also agreed that natural light is very good for selling cars, which is why 18 foot windows in the front of a dealership could not hurt car sales. Specifically, as to his color photograph of the front of the subject's improvement, he indicated that the subject has high ceilings with tinted windows surrounding the showroom which he asserted earlier would be functional obsolescence, but testified later would also attract customers.

In reconciling the three approaches to value, O'Dwyer placed maximum consideration on the sales comparison approach to value with moderate consideration to the income approach while the appraisal noted that commercial properties are often held as investments. He found that the land value analysis in the cost approach was well supported by land sales within the subject's vicinity; however, he concluded that this approach should not be relied upon as a sole indicator of value due to the subject's age. Therefore, the appraiser estimated that the subject's market value as of the 2005 assessment date was $2,450,000.

Under cross-examination by the county, O'Dwyer was asked to review Respondent's Exhibit #1, which was an aerial photograph of the subject's area. O'Dwyer testified that the photograph accurately depicted the subject property and surrounding roads as of the 2005 assessment date, while indicating that there was a small private road that provided ingress and egress to the subject. However, he also stated that he had no personal knowledge of: who owned this private road; nor had he checked with the Village of Hodgkins to determine whether the road was a public road; and knowing that there is a shopping mall adjacent to the subject property whether there is an ingress and/or egress from the shopping mall's parking area into the auto dealership's parking area. However, O'Dwyer did state that there were two entrances and exits from the private road to the subject dealership. Moreover, upon detailed questioning regarding roadways surrounding the subject property, O'Dwyer evasively stated that he assumed that there was ingress and egress through these roadways but that he was not personally sure that there was access. Furthermore, he admitted that there was neither signage prohibiting traffic from turning left into the dealership nor was the median raised to such an extent to prohibit usage of this in order to turn left into the subject's dealership from LaGrange Road.

As to the improved sales #1 through #5, O'Dwyer testified that he did not recall whether there was less commercial development surrounding these sales in comparison to the complexity of commercial development around the subject property. He further elaborated on the variances in location, building size, building age, surrounding area, and number of parking spots of his improved sales. However, in reference to the number of parking spots on each sale property, he stated that he obtained the number from each property's CoStar Comps printout without further confirmation, while admitting that the numbers could vary per sale location. On further examination, O'Dwyer indicated that the CoStar Comps service constantly updates the information reflected on sales; therefore, there could be a size variance or update posted at a later time to a particular property. As to sale #4, O'Dwyer testified that there was no auto dealership on the property, which was used as a truck depot. As to building condition, he stated that the subject's building is in better condition than his improved sales' buildings, most especially the properties located on Western Avenue or sales #2, #3, and #5 which he indicated were in much worse condition in comparison to the subject.

Furthermore, O'Dwyer testified that he did not use the sale of a car dealership directly across the street from the subject property, or board of review's sale #3 and intervenor's improved sale #5, because the property had not been advertised for sale on the open market. Moreover, he stated that the sale price reflected on the CoStar Comps service sheets reflected that the price was determined by an appraiser, however, the sheets did not explain whether the appraised value was for the realty alone or whether FF&E were included in that value estimate. Nevertheless, he stated that he did not investigate the details of this sale transaction.

On cross-examination from the intervenor, O'Dwyer testified that he had not inspected any of this rental comparables.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was $1,246,189. The subject's assessment reflects a market value of $3,279,445 or $67.00 per square foot using the Cook County Ordinance Level of Assessment for Class 5a, commercial property of 38%. This market value was based upon the board's position that the

subject's improvement contains 48,947 square feet of living area. As to the subject's size, the board submitted copies of the subject's property record cards.

In support of the subject's market value, raw sales data was submitted for five properties. The data from the CoStar Comps service sheets reflect that the research was licensed to the assessor's office, but failed to indicate that there was any verification of the information or sources of data. The properties sold from January, 2001, to March, 2006, in an unadjusted range from $1,525,000 to $12,350,000, or from $48.41 to $146.99 per square foot of building area. The properties were improved with one-story, multiple commercial buildings used as owner-occupied automobile dealerships, which ranged in land size from 111,906 to 1,035,421 square feet. The buildings ranged in age from 3 to 50 years and in size from 26,034 to 84,018 square feet of building area. The printouts reflect that: sale #1 was in average condition; sale #2 was in excellent condition; sales #3 and #4 neither included real estate brokers involved in each sale nor were the sales advertised on the open market, while sale #4 was identified as a "distressed sale"; and sale #5 was vacant at the time of sale. Moreover, the board's memorandum noted that sale #3 is sited across the street from the subject property in an auto-row location. Lastly, the board submitted an area map depicting the location of the subject and the sale properties. As a result of its analysis, the board requested confirmation of the subject's assessment.

At hearing, the assistant state's attorney argued that the board's improved sale properties were comparable to the subject property and that the weight accorded these properties due to their representation on CoStar Comps printouts should not be diminished because the appellant's appraiser testified to using this Comps service to obtain suggested comparables for his appraisal.

In support of the subject's market value, the intervenors submitted raw sales data for five properties. Intervenors' sale #5 is also the board of review's sale #3. The properties sold from March, 2002, to August, 2003, in an unadjusted range from $1,800,000 to $3,500,000, or from $81.89 to $133.59 per square foot of building area. The properties were improved with one-story or part one-story and part two-story, commercial buildings used as automobile dealerships. They ranged in land size from 95,516 to 329,480 square feet. The buildings ranged in age from 9 to 34 years and in size from 16,640 to 39,617 square feet of building area. Sales #2 through #4 ranged from 24% to 38% of showroom area, while also identified as being in average condition. The data reflected no further data regarding sales #1 or #5. Moreover, the data indicated: that sale #2 was sited within an industrial area without additional automobile facilities located nearby and was purchased by the leasor exercising a purchase option; that sale #3 was sited along a heavily traveled arterial roadway in an auto-row location, while the buyer also acquired the auto franchise and inventory at an undisclosed price; and that sale #4 was substantially remodeled subsequent to the purchase. As a result of its analysis, the intervenors requested either confirmation of the subject's assessment or an increase in the subject's assessment.

At hearing, the intervenors' attorney rested on the written evidence submitted.

After considering the parties' arguments as well as the witness's 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.

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 Board concludes that the appellant has not met this burden and that a reduction is not warranted.

In determining the fair market value of the subject property, the Board reviewed the written evidence submissions of the board of review and the intervenors as well as the appellant's appraisal with supporting testimony.

Initially, the Board accords little weight to the board of review's and intervenors' evidence submissions due to the failure of each party to present the preparer for testimony and cross-examination concerning the preparers' qualifications, the methodology used in gathering the data contained therein, and the conclusions, if any, in the evidence.

In reviewing the three traditional approaches to value developed in the O'Dwyer appraisal, he opined that the income approach was less than applicable to this subject property due to the fact that the majority of car dealerships are owner-occupied. Therefore, the Board gives little weight to this approach to value.

As to O'Dwyer's cost approach, the Board finds his development of this approach to be unpersuasive due to the appraiser's repeated contradictions in his evidence and testimony. These contradictions relate to the subject's size, actual age and effective age; aspects of the subject's addition in 2003; development of depreciation and functional obsolescence; reliance solely upon owner's or management's statements without verification of said data even though it was employed within his appraisal.

The Board finds that the appraisal indicated that the subject's land size was obtained from county records and that the subject's building size was obtained from the appellant-taxpayer. However, at hearing, he testified that he measured the property with an associate. In contrast, on cross-examination, he testified that he was not qualified to measure buildings for real estate appraisals.

In addition, the Board finds that the unrebutted evidence indicated that the subject's actual age was 14 years, while O'Dwyer accorded the subject's improvements a useful life of 35 years and an effective age of 12.5 years due to its condition. Nevertheless, this appraiser accorded 84% total depreciation to the subject's improvements in contrast to his development of an effective age. In addition, he testified that the subject's building appeared to be aging faster than it should have been aging, while indicating that it appeared that management was doing only necessary work to keep the subject's building functioning but not doing any work to make the subject's building as contemporary as possible. In support of this position, he testified that management had explained to him that there were water leaks from the roof, which he stated was unusual for a 14-year old roof like the subject's. He also stated that his appraisal's comments regarding functional obsolescence were actually the owner's statements on four factors: the showroom's size, the building's partial glass frontage, the storage area's ceiling heights, and the property's

ingress and egress. Nevertheless, his lengthy and repeated testimony indicated that the subject contained little pieces of maintenance that have not been dealt with by management creating a less than ideal situation at the subject property.

Moreover, the Board finds that O'Dwyer's statements regarding the subject's ingress and egress as well as a review of the subject's photographs were less than convincing. Furthermore, his testimony on cross-examination regarding auto dealership ceiling heights, showroom lighting, and showroom frontage discredited his earlier statements whose origins were from the subject's management. As to the subject's addition in 2003 at a cost of allegedly $718,000, he stated that this was based upon summary data provided to him by the owner without any independent verification of what expenses were applicable to the realty. The Board finds that all of these contradictions or the lack of data verification diminishes the veracity of the appraiser's development of a cost approach to value; therefore, little weight is accorded this approach to value.

As to the appraiser's sales comparison approach to value, the appraiser testified that he had not inspected or verified data regarding the improved sale comparables. O'Dwyer testified that his knowledge of a property was limited to the information that he was supplied. Furthermore, the Board finds that, at hearing, the appellant's appraiser provided testimony wherein he suffered from repeated memory lapses or evasion during cross-examination, which further inhibited the credibility of the appellant's appraisal. In consideration of all of the aforementioned factors applicable to the three developed approaches to value, the Board finds unpersuasive and unreliable the adjustments undertaken by O'Dwyer throughout his appraisal.

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. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App. 3d 207 (2nd Dist. 1979), the Court further held that significant relevance should not be placed on the cost approach or the income approach especially when there is market data available. Id. Moreover, in Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5th Dist. 1989), 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.

Therefore, the Board will also place significant weight on the sale comparables submitted into the record by all of the parties. The Board accorded little weight to appellant's sale #4; the board of review's sales #1, #2 and #4; as well as intervenors' sales #2, #3, and #4 due to a disparity in distance of sale dates to the tax year at issue, nature of property rights conveyed, inclusions of personalty or inventory in the sale price, and/or variation in highest and best use.

The remaining six sales were all auto dealerships, some of which were used by multiple parties in their respective evidence submissions. These six comparables sold from March, 2002, through July, 2004, for prices that ranged from $31.47 to $133.59 per square foot of building area including land prior to adjustments. The improvements ranged: in age from 9 to 60 years; in improvement size from 22,900 to 31,500 square feet of building area; and in land size from 45,262 to 179,768 square feet. In comparison, the board of review's 2005 market value for the subject property is $67.00 per square foot.

After making adjustments to the aforementioned six comparables, the Property Tax Appeal Board finds that the subject's fair market value for tax year 2005 is supported by the evidence in this record and that a reduction is not warranted to the subject property's assessment.

APPELLANT:	**HMH HPT Courtyard, Inc.**
DOCKET NUMBER:	**07-27837.001-C-3**
DATE DECIDED:	**December, 2012**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a 218,801 square foot parcel of land improved with a 19 year old, four-story, masonry hotel containing 79,090 square feet of building area and 152 rooms. 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 a summary appraisal report. The appraisal has a valuation date of January 1, 2007 for an estimated value of $2,700,000. The appellant presented the testimony of the appraisal's author, Joseph M. Ryan of LaSalle Appraisal Group, Inc., Chicago. Ryan testified he has been employed by LaSalle Appraisal Group as president since 1991. He stated he is an Illinois Certified General Real Estate Appraiser and holds the MAI designation from the Appraisal Institute. Ryan testified that while employed at the Cook County Assessor's Office he reviewed all the hotel assessment appeals. He testified he has appraised over 125 hotels since 2000. He testified his company prepared approximately 300 to 400 appraisals a year. The PTAB accepted Mr. Ryan as an expert witness in property valuation without any objections from the parties.

Ryan testified the appraisal of a hotel differs from other income producing properties in that a hotel has four components: land, building, furniture and equipment, and business value. He stated that when all four of these components sell it is termed going concern value and this type of sale is typical. Ryan testified he would make adjustments within the appraisal for the income attributable to the personal property when that component is not being valued. He opined that a hotel does not usually sell without the component of personalty or good will.

Ryan was presented *Appellant's Hearing Exhibit #1*, a copy of the cover and page five of *Income Property Valuation*. Ryan testified that his appraisal follows these writings in establishing a value for the business enterprise. Ryan testified that Marriott is a nationally recognized brand, has a nationwide reservation system, nationwide advertising, and a strong rewards program which, he opined, enhance the value of the Marriott franchise.

Ryan described the subject as a four-story, select service hotel with 152 rooms, a small meeting space, a small exercise room, and an indoor pool. He testified that at the date of inspection, in January 2008, the subject was in overall good condition.

Ryan testified he did not employ the cost approach to value because he was valuing a property that included both land and building and that based on research of hotel valuation publications and individuals in that field there are too many variables in employing the cost approach to develop a credible estimate of value. He opined that the difficulty with the cost approach is not in determining the replacement cost or the physical depreciation, but with determining the external obsolescence which are the economics of the property.

Ryan also testified he did not employ a sales comparison approach to value. He testified he looked at sales data, but that these sales were all for the going concern. He testified he was unable to get further information on these sales. Ryan opined that the problem with the sales comparison approach is an issue of comparability. He testified that if he is unable to determine what really sold in the transaction, he is unable to adjust the properties for the real estate value only. Ryan opined that when a hotel sells it is because of its profitability or because the buyer wants to reposition it within the market with new personality and a new franchise. But if the profitability is unknown then adjustments based on profitability cannot be made and the sale cannot be used. Ryan opined the comparable could be used if the appraiser had appraised the property prior to it selling or if the appraiser knew why the buyer bought the property. Ryan testified that *Appellant's Hearing Exhibit #2* is a copy of an article that supports his opinion.

As to the subject's highest and best use, Ryan testified that as vacant the use is for commercial purposes and continuation of a hotel is the highest and best use for the subject as improved. To estimate a total market value for the subject of $2,700,000 as of January 1, 2007, Ryan employed the income capitalization approach to value.

Under the income approach, Ryan testified that in stabilizing the subject's operating statement he analyzed the subject's historical revenue from 2006 and market data from a 2007 hotel survey publication for 2006. Ryan explained how the survey categorized the subject and that expenses were identified as percentages.

As to vacancy and collection, Ryan testified he reviewed another hotel survey, *Star Report*. Ryan described how the information is collected for this report. He stated this report is not available to the public and was obtained for a hotel operator. Ryan testified that based on the survey, the subject was out performing the competition. Ryan clarified who the competition was. He opined these properties were physically similar to the subject and located within the same market. Ryan opined that the quality of the name of the hotel, called its "flag", or its hotel affiliation effects its profitability. He further opined that the subject's competitive advantage is the result of its flag.

Ryan testified he calculated a room rate by reviewing the subject's occupancy rate for 2006 of 61% and average daily room rate of $88 a night. This was compared to the average of the competitive set with a 55% occupancy and an average room rate of $77. Ryan opined that the higher rate and occupancy was due to the subject's flag and stabilized the subject at an average room rate of $80 with an occupancy rate of 56% for an effective gross room revenue of $2,485,504. From this amount, Ryan testified he added food and beverage revenue at a stabilized amount of $180,000, or 6.59% of gross revenues. Telephone revenue of $15,000, or .55% of gross revenue and other revenue of $50,000 or 1.83% of gross revenue were added for a potential gross income of $2,730,504.

For expenses, Ryan testified department and undistributed expenses are the standard in the hotel industry. He testified he compared the subject's actual departmental expenses to a survey of national expenses on a percentage basis. Ryan testified he stabilized the room expenses at 27% of the room revenue, the food and beverage at 62.5% of the food and beverage revenue, the telephone at 1% of the gross revenue and other expenses at 1.5% of gross revenue.

Ryan testified he stabilized the undistributed expenses by comparing the actual expenses and the market survey. Ryan testified to each of these expenses. These expenses came to 32.5% of the gross revenue. Deducting all the expenses came to a net operating income of $991,241.

Ryan testified this income is generated by all four components and needs to be adjusted to reflect the income for the real estate only. He testified that the expenses for management and franchise fees were deducted so the going concern has been addressed and only the fixture, furniture, and equipment remain and need to be adjusted out.

In regards to the fixtures, furniture and equipment, Ryan testified he reviewed surveys and publications to determine the market replacement costs for full-service and mid-scale hotels. He opined the subject falls between these two categories as a select-service hotel; and therefore, stabilized the subject's personalty at $17,500 per room or $2,660,000. Ryan then depreciated this value by 50% for a value of $1,330,000. He testified that the operator is entitled to a return on the equipment because he spent that money in order to operate the business. He testified the return on the personalty is $133,000 which is based on a capitalization rate of 10%.

The fixtures, furniture and equipment also qualify for a return of the personalty, Ryan testified, because of the periodic replacement of the items. He testified he chose a seven year life for the personalty. He testified he used the cost new of $2,660,000 and calculated a seven year life for the items at $380,000. Ryan testified that the amounts of the return on and of the personalty are deducted from the net operating income to arrive at an adjusted net operating income of $464,941. He reiterated that the expenses of management and franchise fee deducted from the effective gross income account for the going concern, to a point.

In developing the capitalization rate, Ryan testified he utilized two methods, direct and the band of investment. He testified, for the direct capitalization, he reviewed Korpacz for full service and limited service hotels and chose a capitalization rate of 9.5%. For the band of investment technique, Ryan testified he reviewed track hotel mortgage rates for a rate of 8.95%. He reconciled these rates for an overall rate for the subject of 9.27% which was loaded for the tax burden for a capitalization rate of 17.74%. Dividing the adjusted net operating income by the appraiser's total capitalization rate resulted in an indicated value for the subject of $2,700,000, rounded.

On cross-examination by the intervenor, Ryan testified that if he used the 2007 tax rate, the multiplier would be different and the opinion of value may have differed. Ryan acknowledged that Illinois law calls for a sales comparison approach to value within an appraisal unless certain parameters are met. He acknowledged he has appraised hotels in Illinois prior to and subsequent to this appeal. Ryan was then shown *Intervenor's Exhibit #2* through *Intervenor's Exhibit #8*, copies of appraisals of hotels prepared by Ryan with dates of valuation from January 1, 2000 to January 1, 2009. Ryan acknowledged he worked on all these reports and that he did include a sales comparison approach in all these reports wherein the property being valued was a hotel. He testified he did not include a sales comparison approach in the subject's appraisal.

Ryan agreed that one of the reasons for not employing the sales comparison approach to value in the subject's appraisal was because he was guided by a consultant for the hotel valuation industry. Ryan testified he was unaware that this consultant was involved in a hotel valuing

system. He acknowledged this consultant wanted the sales comparison approach excluded from appraisals and agreed that the author wrote extensively on the factors to look at when employing the sales comparison approach.

Ryan acknowledged that he prepared an appraisal for the subject property in a previous Property Tax Appeal Board appeal wherein the Board did not accept his income approach to value which utilized the subject's stabilized income and market expenses. The Board was then presented with *Intervenor's Exhibit #9*, a copy of the decision from this previous Property Tax Appeal Board appeal.

Ryan testified that he used a competitive set of area hotels as part of the data review in the appraisal. He testified that he was not provided with these hotels from the subject's management. He acknowledged that the appraisal states "[t]he following hotels are considered the most competitive by management and are used in the Star Reports."

As to the subject's occupancy rate, Ryan testified the subject had an occupancy rate of 65% to 61%, but that he stabilized the subject's occupancy rate at 56%. Ryan testified he adjusted the rate to exclude the value associated with the Marriott name. Ryan testified he also stabilized the subject's average daily room rate at a low rate for the same reasons.

Ryan testified his expenses included deductions for franchise fees, administrative fees, and management fees.

Under cross-examination by the County, Ryan testified he reviewed the hotel survey *TRENDS 2007* which contained compiled information for hotels in the north central region of the United States and nationwide. He reiterated he stabilized the subject's income. Ryan testified that he used a 50% depreciation on the personalty because at any given time when new personalty is on the property it would de-value. He acknowledged he has no justification for determining 50%.

Ryan testified he utilized capitalization rate information from national sales in order to determine a local capitalization rate for the subject property. He acknowledged that over half of the net operating income was deducted for personalty.

On redirect, Ryan testified that he was unable to use the 2007 tax rate because it was not available prior to the completion of the appraisal.

Ryan testified that he did employ the sales comparison approach in the other appraisals he was questioned about by the intervenor. He testified he did not place significant weight on that approach in those appraisals.

Ryan testified that the *Star Report,* which had the compilation of the competitive set of hotels, was prepared prior to his undertaking the subject's appraisal. He further testified that he utilized industry reports because of the use of percentages in those reports which is the way the industry looks at the data.

At the end of the appellant's case-in-chief, the intervenor moved to strike the appellant's appraisal and dismiss the appeal. The Property Tax Appeal Board denied the motion to strike the

appellant's appraisal and reserved ruling on the intervenor's motion to dismiss the appeal. At this time, the Property Tax Appeal Board denies the intervenor's motion to dismiss the appeal.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $2,169,998 was disclosed. This assessment reflects a fair market value of $5,710,521 or $37,569 per room 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 "Notes" included raw sales information on eight hotel properties suggested as comparable to the subject. These properties range in size from 25,544 to 155,202 square feet of building area. They sold between September 2002 and August 2007 for prices ranging from $2,707,060 to $13,300,000 or from $21,149 to $102,211 per room. The board of review also included the warranty deed for the sale for the subject in 1996 for $8,112,090. 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 intervenor's position, the intervenor submitted a summary appraisal of the subject prepared by James A. Gibbons with Gibbons & Sidhu, Ltd. Gibbons testified he has been an appraiser for 30 years and is a Certified General Real Estate Appraiser in Illinois, Wisconsin and Indiana. He also received his MAI designation in 1987. Gibbons then described the requirements for an MAI designation. He testified he has prepared thousands of appraisals with a focus on commercial or industrial properties. Gibbons testified that in the last five years he has prepared approximately a dozen hotel/motel appraisals and opined that he prepared at least 40 such appraisals over his career. He testified he has appeared as an expert before courts and tribunals. He was accepted by PTAB as an expert in appraisal practice without objection from the remaining parties.

The appraisal utilized the sales comparison and income approaches to value to estimate the value of the subject property at $5,400,000 as of January 1, 2007.

Gibbons testified he inspected the subject for the appraisal and prior to the hearing. He testified he made an inspection of the public area accessible without booking a room within the subject property. Gibbons described the subject and its environs.

Gibbons testified that the subject’s highest and best use as vacant would be for commercial development and that continuation of its existing hotel use is its highest and best use as improved.

Under the income approach, Gibbons testified he accounted for the business value by deducting professional management from the undistributed expenses and deducting from the stabilized income working capital and almost 14% to account for the return on and of the fixtures, furniture and equipment.

Gibbons testified he reviewed the subject's historical operating income and expenses. He testified he reviewed the average daily room rate for the subject and opined it was trending upwards. He testified he compared this actual data to several market indices and stabilized the

average daily room rate at $85. Gibbons testified that the average daily occupancy was trending downward and stabilized this rate, based on a review of the market, at 63%.

Gibbons testified he stabilized the income from other sources. He testified that the actual revenue from food and beverage was approximately 5.6% of the total revenue for 2006 and a review of the HOST Report indicates 30.6% of total revenue. Gibbons clarified that the report considers hotels which serve dinner and are open full-time whereas the subject only serves breakfast. He testified he stabilized the subject's food and beverage income at 5.74% of the total revenue. He further testified that other income was stabilized at $65,000 which was similar to the actual income in 2006. Based on this data, the appraisal concludes total revenue at $3,220,954.

As to the stabilized expenses, Gibbons testified room expenses were stabilized at 27% of room revenue based on a review of the actual expenses of 27.27% and the market reported expenses. He testified he stabilized the food and beverage expense at 80% of this income which is slightly less than the actual reported for 2006, but higher than the market surveys. Other departmental expenses, Gibbons testified, were stabilized at 1.5% of other expenses. This data results in total departmental expenses of $998,472.

Gibbons testified he reviewed the historic undistributed operating expenses for the subject, compared them to the market survey, and then stabilized them. He testified the stabilized expenses were determined to be 29% of the total revenue opposed to the actual expenses of 31%. Gibbons testified that the stabilized department and undistributed expenses come to 60% of revenue or $1,932,472. He testified that the building reserves, working capital, and the return on and of the fixtures, furnishings and equipment (FF&E) then need to be deducted.

Gibbons testified he concluded building reserves at $.25 per square foot of building area. For FF&E, Gibbons testified this value has to be segregated out so that only the real estate is being valued. In addition, the return of the personalty needs to be accounted for because the items have to be periodically replaced. He testified that based on cost studies and experience, he estimated the cost new of the FF&E to be $15,000 per room or $2,280,000. A depreciation factor of 50% was applied to arrive at a depreciated amount of $1,140,000. This amount was multiplied by a rate of return of 9% for a return on the FF&E of $102,600. The return of the FF&E was calculated by dividing the cost new of $2,280,000 by the life span of eight years for a return of the FF&E of $285,000.

For the working capital, the appraisal indicates this is the amount of money for the subject that is in excess of any purchase price that the appellant must retain to meet the normal expenses of operating the business. Gibbons testified he used the stabilized income divided it by twelve and multiplied this amount by 2 to account for two months of income and applied a 7% rate to this amount for total working capital of $37,578. Deducting all the expenses from the total revenue resulted in a net operating income before taxes of $843,531.

Gibbons testified he developed a capitalization rate by reviewing investor surveys and considering the band of investment technique. He testified the overall range of capitalization rates is from 7% to 9% for the surveys and 8.6% for the band of investment. Gibbons testified he used a rate of 9% which was loaded for the tax burden to arrive at a total capitalization rate of 16.7% which resulted in an estimate of value under the income approach of $5,050,000, rounded.

Under the sales comparison approach, Gibbons testified he reviewed the sales of six hotels. He described the research utilized in finding the six sales. Gibbons opined that the sales comparison approach is an appropriate approach for estimating the value of a hotel because there are many sales in the marketplace and data available to make adjustments.

Gibbons described each sale. The properties range in age from 7 to 23 years old and in room count from 114 to 184 rooms. The properties sold from October 2005 to January 2008 for prices ranging from $2,533,028 to $12,150,000 or from $20,594 to $70,805 per room. Gibbons testified sale #2 was a leasehold sale and described the adjustments made to this property. He testified that sale #3 listed a deduction to the sale price on the PTAX-203, Illinois Real Estate Transfer Declaration for personal property and described the adjustments made to this property. Based on all the comparables and the adjustments, Gibbons testified he estimated a value for the subject under the sales comparison approach of $37,500 per room for the subject or $5,700,000.

In reconciling the two approaches to value, Gibbons testified he gave significant weight to both approaches to estimate a value for the subject of $5,400,000 as of January 1, 2007.

On cross examination by the appellant, Gibbons testified he did not apply a cost approach because the property was not new, there are no plans or blueprints for the subject property, and it would be difficult to measure depreciation. He testified he generally does not employ a cost approach for a hotel. He acknowledged the appraisal also states that investors generally don't consider the cost approach for hotel properties. He testified this is relevant because he attempted to mirror the market.

Gibbons testified he stabilized the subject's income based on the actual revenue and a review of industry standards. He opined that the more information he has, the more supported his opinion. He testified that if there is a disparity in the actual versus the industry he will look further into the property prior to making a decision on data. Gibbons acknowledged he utilized the publication *2005 HOST* and the east north central geographical region. He acknowledged this publication had data from 2004 and the other publication utilized, *TRENDS*, utilized 2008 data. He testified he used data that was available to him and opined that bracketing from two different sources, earlier and the year later, was a guideline to the reported history for the subject. Gibbons testified that having the 2007 data would have provided more contemporary data, but testified he was comfortable with data points before and after in two different sources along with the actual subject information.

The appraisal indicated that the subject was outperforming other properties in the market in terms of average daily rate, but was at market in regards to the level of occupancy. Gibbons acknowledged he estimated the subject stabilized rate at $9.00 higher than the market, but opined that the data set was very broad and that the best indication of income is the history which was given strong consideration.

Gibbons testified he deducted from the income stream management fees, the return on and of the personalty, and working capital to account for the business value for the subject. He opined he fully accounted for the business value. Gibbons testified he did not find a franchise fee within the subject's operating statement and that is why none was deducted from the income stream. He

indicated he had the subject's 2006 operating statement and he did not have direct contact with the property owner. Gibbons was shown *Appellant's Hearing Exhibit #3*, a copy of the page from HOST listing franchise fees and acknowledged that HOST has a 2004 franchise fee listing of 3.5%. He testified that if a property has a franchise fee in the operating statement he would consider a franchise fee in stabilizing the income.

Gibbons opined that the actual management fee for the subject of 5% was beyond the range of both the indices used by him and stabilized this fee at 3%.

In the sales comparison approach, Gibbons testified he adjusted for the physical differences between the comparables and the subject by making adjustments based on the subject's and the comparable's classification as an upscale hotel or economy hotel. Gibbons was questioned on his use of the terms "operation-wise", "income-producing-wise", and "inferior income-producing" and if he made adjustments based on the income-producing capacity of the comparables. He opined that the quality of the building makes a difference in terms of what it's able to command as far as its income-producing abilities.

Gibbons testified that a sale of a property that was the fulfillment of an option to purchase can still be an arm's length sale. He opined that sale would have to be negotiated current to the transaction date or an adjustment would need to be made. Gibbons testified he would consider any information he had on a sale.

As to sale comparable #1, Gibbons was shown *Appellant's Hearing Exhibit #4*, a copy of the Gibbons appraisal pages listing the details of this sale and copies of the PTAX-203, Illinois Real Estate Transfer Declaration and PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A for this sale. Gibbons testified that hotels usually sell with personal property included in the sale. When asked about the exclusion of a listing for personal property on the transfer declaration, Gibbons responded that a separate agreement regarding the personal property may have been transacted.

Gibbons was shown *Appellant's Hearing Exhibit #5*, a copy of the Gibbons appraisal pages listing the details of the sale of comparable #2 and copies of the PTAX-203, Illinois Real Estate Transfer Declaration and the PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A for this sale. Gibbons acknowledged that the transfer declaration indicates this property was not advertised or sold using a real estate agent, but opined that this information would not disqualify the sale from being used. He argued that a sale comparable does not have to have a real estate agent involved. Gibbons acknowledged the buyer exercised an option to purchase which he opined would lead him to give less credence to the sale.

Appellant's Hearing Exhibit #6 is a copy of the Gibbons appraisal pages listing the details of the sale of comparable #4 and copies of the PTAX-203, Illinois Real Estate Transfer Declaration and the PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A for this sale. Gibbons testified the PTAX-203 for sale #4 indicates that the property was not advertised for sale and the sale was between related individuals or corporate affiliates. Gibbons opined that if the sale was an exempt transaction the revenue stamps would not have been due on the sale. He testified he had information on the sale of this comparable so he considered the sale. He acknowledged the appraisal does not state the sale is between related parties.

Gibbons was shown *Appellant's Hearing Exhibit #7*, a copy of the Gibbons appraisal pages listing the details of the sale of comparable #5 and copies of the PTAX-203, Illinois Real Estate Transfer Declaration and the PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A for this sale. He acknowledged the property was not advertised for sale and the buyer was exercising an option to purchase. Gibbons testified he did not know how long ago the option to purchase was negotiated, but acknowledged that the supplemental form indicates the sale lease back arrangements are from 10 years ago. Gibbons opined that the fact the option was exercised at the time it was exercised is some indication of market activity.

Gibbons was shown *Appellant's Hearing Exhibit #8,* a copy of the Gibbons appraisal pages listing the details of the sale of comparable #6 and copies of the PTAX-203, Illinois Real Estate Transfer Declaration and the PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A for this sale. Gibbons acknowledged that the transfer declaration form indicated the sale was not advertised for sale and sold using a real estate agent and was between related individuals or corporations. He agreed the addresses of the buyer and seller were the same. Gibbons testified he used this sale because the parties did not indicate the sale was an exempt transaction. He opined it was an arm's length transaction.

On redirect, Gibbons testified he used data in the income approach from the years before and the year after because that was the data that was available to him and he opined it was enough for comparability. He reiterated that the construction type/style for a hotel can impact the income-producing capacity and he took this into consideration in the sales comparison approach.

Gibbons testified he did not include all of the information from the transfer declarations for the sales comparables within the appraisal, but that he did review the forms and reported some of the specifics regard several of the sales. He testified he considered the sales indicators of the market and were in proximate date to the valuation. He further testified that the sales comparison approach is employed to develop a range of values by looking at a number of transactions with some adjustments based on the information we have. He opined its one of the most desired approaches and, in this instance, it corroborated the income approach.

Gibbons testified the transfer declarations forms are filled out under penalty of perjury. As to sales #1, #2, #5, and #6, Gibbons testified that the signatory on each transfer declaration found the sale to be a fair reflection of the market value of the real estate.

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. 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 is warranted.

In determining the fair market value of the subject property for tax year 2007, the PTAB examined the parties' two appraisal reports and testimony, and the board of review's submission.

The PTAB finds the board of review's witness(es) were not present or called to testify about their qualifications, identify their work, testify about the contents of the evidence or report on their conclusions or be cross-examined by the appellant 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 then looks to the two appraisals from the remaining parties, the testimony, and the exhibits submitted into evidence. The PTAB finds the appellant submitted an appraisal with only the income approach to value. The court has held that "[w]here the correctness of the assessment turns on market value and there is evidence of a market for the subject property, a taxpayer's submission that excludes the sales comparison approach in assessing the market value is insufficient as a matter of law." Cook Cnty. Bd. Of Review v. Ill. Prop. Tax Appeal Bd., 384 Ill. App. 3rd 472 at 484 (1st Dist. 2008). The Illinois Appellate Court recently revisited this issue in Bd. of Educ. Of Ridgeland Sch. Dist. No. 122, Cook Cnty. V. Prop. Tax Appeal Bd., 2012 IL App. (1st) 110,461 (the "Sears" Case). In Sears, the court stated that, while the use of only one valuation method in an appraisal is not inadequate as a matter of law, the evidence must support such a practice and the appraiser must explain why the excluded valuation methods were not used in the appraisal for the Board to use such an appraisal. Id. at ¶ 29. In this case, Ryan testified he did not perform the sales comparison approach because he was unable to find sales that provided the data regarding the going concern so that adjustments could be made to value the real estate only. However, Ryan was shown seven appraisals he prepared for hotel properties both prior to and after the date of valuation for the subject. In each of these appraisals, Ryan employed the sales comparison approach. Although Ryan placed minimal weight on the sales approach in these appraisals, some weight was given this approach to corroborate the income approach to value and the final conclusion of value in these appraisals. These appraisals also indicated the difficulty in that the unadjusted sales price may contain business value, but he still employed the approach.

The appellant submitted exhibits in regards to the intervenor's sales comparables. These documents are county records, signed under penalty of perjury, that indicate if there was any additional value included in the sale, such as personal property. The parties to the transaction must indicate on the transfer declaration the value of the real estate in addition to opining if this value represents the market value for the real estate. The PTAB finds that Ryan made no mention of how the use of these official documents would be unreliable under the sales comparison approach. Therefore, the PTAB finds the reliance on the appellant's appraisal would be deficient as a matter of law, and thus, gives this evidence no weight.

The PTAB finds the best evidence of the subject's market value is the Gibbons appraisal submitted by the intervenor. Gibbons employed the income and sales comparison approaches to value to arrive at a value for the subject property as of January 1, 2007 of $5,400,000. Under the income approach, Gibbons testified he reviewed the subject's actual income and stabilized this market based on data that bracketed the assessment year at issue. He credibly testified that he did not include a franchise fee within the expense analysis because the subject's actual operating

statement does not show that the subject was encumbered by this expense. In addition, Gibbons correctly accounted for the subject's going concern by deducting for working capital, a management fee, and the return on and of the personalty.

Moreover, Gibbons employed the sales comparison approach to corroborate the estimated value developed in the income approach. Gibbons testified he reviewed the transfer declaration forms and adjusted the sales price of those comparables that included personal property within those documents. Although Gibbons included sales between related parties, the adjusted sales range of the non-related sales bracket the estimate of value as established by Gibbons.

Therefore, the PTAB finds the subject had a market value of $5,400,000 for the 2007 assessment year. Since the market value of this parcel has been established, the Cook County Real Property Classification Ordinance for Class 5a property of 38% will apply. In applying this level of assessment to the subject, the total assessed value is $2,052,000 while the subject's current total assessed value is above this amount. Therefore, the PTAB finds that a reduction is warranted.

APPELLANT:	**HSM Development Corp.**
DOCKET NUMBER:	**09-00393.001-C-2**
DATE DECIDED:	**October, 2012**
COUNTY:	**Peoria**
RESULT:	**No Change**

The subject property consists of a 319,730 square foot parcel improved with a one-story brick nursing care facility that contains 39,347 square foot of building area with 120 beds. The structure was built in 1988. The subject is located in Peoria, City of Peoria Township, Peoria County.

The Property Tax Appeal Board takes judicial notice that the subject matter of this appeal was under appeal the prior year under Docket Number 08-00945.001-C-1, in which no change in the subject's assessment was granted based on the weight and equity of the evidence. The Board further takes notice that the evidence in this 2009 appeal is virtually identical to the evidence presented in the 2008 appeal.

The appellant appeared before the Property Tax Appeal Board through legal counsel claiming assessment inequity as the basis of the appeal. In support of the inequity argument, the appellant submitted property record cards and a limited assessment analysis (Exhibit 1) of four suggested comparable properties. The comparables are located from 2.9 to 4 miles from the subject. The comparables are reported to contain from 98 to 116 beds and have improvement assessments ranging from $460,380 to $548,410 or from $4,383 to $5,350 per bed. The subject has an improvement assessment of $857,030 or $7,142 per bed. The comparative assessment analysis did not disclose the subject's or comparables' story height, number of buildings, age, size, exterior construction or features. Page 2 of the assessment analysis indicated that from 2003 through to 2008, the comparables had from $127,231 to $349,429 of maintenance/renovation costs. During this same time period, the subject had $71,066 of maintenance/renovation costs. The maintenance/renovation costs were self reported to Illinois on Medicaid Cost Reports.

Counsel called Chuck Schmitz, Chief Financial Officer for Midwest Administrative Services. Schmitz is a Certified Public Accountant. Counsel for the appellant indicated that Midwest Administrative Services, Peoria Real Estate, Inc., HSM Development and Rosewood Care Center of Peoria are all related entities and have some common ownership of the subject property. Schmitz does not have any experience or hold any professional designations or credentials in the field of real estate assessment or valuation.

Schmitz testified the primary source of the financial information for the comparables was gathered from the internet. He testified his assessment analysis is primarily based upon financial data as opposed to comparable sales or replacement cost values. Schmitz testified the income approach is a valid way of valuing real property; however, Schmitz did not prepare an income approach to value for the subject. Schmitz agreed the income producing capabilities or lack thereof of the subject and comparables was not delineated in the assessment analysis. Schmitz agreed the only information produced in the comparative assessment analysis was the number of beds in relation to their assessments. He did not consider two properties due to the amount of

dollars spent on rehabbing and renovations. Schmitz acknowledged comparables 1 through 3 have the same ownership, but are separate businesses with separate tax numbers and tax bills.

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

Under cross-examination, Schmitz agreed comparables 1 through 3 are located along the same street. Schmitz attested to some of the renovation to each of the suggested comparables. He agreed that some of the comparables that are older than the subject would require more maintenance in order to have a similar effective age as the subject. Schmitz did not know the ages or effective ages of the subject or comparables.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of $1,074,040 was disclosed. In support of the subject's assessment, the board of review submitted property record cards and an equity analysis of three comparable properties. Comparable 2 was also used by the appellant.

Kristina Clore, member of the Peoria County Board of Review was present at the hearing and provided testimony in connection with the evidence she prepared for the appeal. Klore was qualified and accepted as an expert witness by the Board.

The comparables consist of one-story brick nursing homes that are located 1.92 to 14.51 miles from the subject. The structures range in size from 27,596 to 49,815 square feet of building area and contain from 99 to 144 beds. The comparables were built between 1965 and 1973, with comparables 1 and 3 having renovations in 1986, 1997, 2001 and 2007. The properties have improvement assessments[1] ranging from $529,620 to $1,111,800 or from $19.19 to $22.89 per square foot of building area or from $5,350 to $8,752 per bed. The subject has an improvement assessment of $857,030 or $21.78 per square foot of building area or $7,142 per bed.

Based on this evidence, the board of review requested the subject's assessment be confirmed.

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

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

[1] Based on property record cards and property tax information sheets submitted by the board of review, the Board finds the board of review used the 2008 assessment amounts for the subject and comparables in its assessment analysis. The Board used the final 2009 assessments for the subject and comparables throughout this decision after reviewing the property record cards and property tax information sheets.

The Board finds the parties submitted a total of six suggested assessment comparables in support of their respective arguments. One comparable was common to both parties. The Board gave little weight to the assessment analysis submitted by the appellant. With the exception of the address, number of beds, proximate location and assessment amounts, the limited analysis lacked descriptive detail for an accurate comparative analysis. For example, the appellant's analysis lacked the subject's and comparables' age, design, exterior construction or any other features and characteristics associated with nursing homes. Section 1910.65(b) of the rules of the Property Tax Appeal Board provides:

> Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of the subject property and it is recommended that not less than three comparable properties be submitted. Documentation must be submitted **showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property**. [Emphasis added] (86 Ill.Admin.Code §1910.65(b)).

The Board finds the comparables submitted by the board of review were sufficiently similar to the subject in use, age, design, exterior construction and features. They had improvement assessments ranging from $529,620 to $1,111,800 or from $19.19 to $22.89 per square foot of building area or from $5,350 to $8,752 per bed. The subject has an improvement assessment of $857,030 or $21.78 per square foot of building area or $7,142 per bed, which falls within the range established by the most similar assessment comparables contained in this record. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Board finds the evidence demonstrates the subject property is uniformly assessed by clear and convincing evidence.

APPELLANT:	**J & M 1527, LLC**
DOCKET NUMBER:	**09-33391.001-C-1**
DATE DECIDED:	**August, 2012**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a 6,396 square foot parcel of land improved with two buildings. Building #1 is an 80 year-old, four-story, masonry, mixed-use building containing approximately 15,912 square feet of building area and building #2 is a 146 year-old, coach house containing 1,800 square feet of building area. The appellant, via counsel, argued that the fair market value of the subject was not accurately reflected in its assessed value.

In support of the market value argument, the appellant submitted an appraisal undertaken by David Barros and Mitchell J. Perlow, MAI of Property Valuation Services. The report indicates Barrow and Perlow are State of Illinois certified general appraisers and Perlow has the designation of a MAI. The appraisers indicated the subject has an estimated market value of $880,000 as of January 1, 2009. The appraisal report utilized the income and sales comparison approaches to estimate the market value of the subject property. The appraisal finds the subject's highest and best use as improved to be its existing use as remedied of short lived physical deterioration for the remainder of its economic life.

In the income approach to value, the appraisers analyzed the subject's residential rental rates along with four retail rental comparables and six residential rental comparables. The appraisal indicates all the comparables are current offerings and a downward adjustment was made for this. After adjustments, the appraisers estimated a potential gross income of $174,800. Vacancy and collection loss of 10% was deducted to arrive at an effective gross income of $157,320. Projected expenses were estimated at $58,969 for a net operating income of $98,351. A review of market surveys and the band of investment were utilized to establish a capitalization rate of 9% that was then loaded to 11.30% for an estimate of value under the income approach of $870,000, rounded.

Under the sales comparison approach, the appraisers analyzed the sales of five properties described as masonry, three or four-story, mixed-use or residential buildings. The properties contain between 5,938 and 23,800 square feet of building area. The comparables sold from June 2006 to January 2010. The appraisal indicates the properties sold for prices ranging from $32.56 to $53.01 per square foot of building area, including land. The appraisers adjusted each of the comparables for pertinent factors. Based on the similarities and differences of the comparables when compared to the subject, the appraisers estimated a value for the subject under the sales comparison approach of $52.00 per square foot of building area, including land or $885,040, rounded.

In reconciling the two approaches to value, the appraisal gave greatest emphasis to the sales comparison approach with secondary emphasis on the income approach to arrive at a final estimate of value for the subject as of January 1, 2009 of $880,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $233,991 was disclosed. The subject's final assessment reflects a fair market value of $1,582,567 when the Cook County Real Property Assessment Classification Ordinance levels of assessment of 13% for Class 3 property and 16% for Class 2 property are applied. In support of the commercial portion of the property, the board submitted raw sales information on five properties suggested as comparable. The properties are described as masonry, three or four-story, retail/residential buildings. The properties range in age from 3 to 116 years-old and in size from 12,800 to 14,400 square feet of building area. The properties sold from October 2004 to April 2009 for prices ranging from $2,000,000 to $3,750,000 or from $133.70 to $295.19 per square foot of building area, including land. The board also submitted the property characteristic printout for the subject's coach house. Based on this evidence, the board of review requested confirmation of the subject's assessment.

At hearing, the appellant's attorney argued that the appraisal valued only the real estate and used sales in the subject's area that were similar to the subject.

The board of review's representative, Colin Brady, rested on the evidence submitted by the board and argued that the validity and credibility of the appellant's appraisal was questionable. Brady asserted: sale #1 was over 6,000 square feet larger than the subject, over 43 years older and located over five miles away; sale #2 has no record of the sale with the Recorder of Deeds Office; sale #4 has no record of the sale for this property identification number; sale #4 is much larger than the subject; and sale #5 is much smaller.

The board of review submitted *BOR's Group hearing Exhibit #1*, recorder of deeds website printouts of the five sales comparables used in the appellant's appraisal. These printouts show for four properties a judicial sale, no sale occurring during the time period reflected in the appraisal or no record of a property with the property identification number listed in the appraisal.

In response, the appellant's attorney submitted *Appellant's Hearing Exhibit #1*, an assessor's printout for the address listed as sale comparable #3 in the appraisal which shows a different property identification number than listed in the appraisal, but the same picture and a recorder of deeds printout listing the sale. The appellant's attorney acknowledged the appraisal is sloppy with correlating the property identification numbers and that there were multiple mistakes within the appraisal. He did not have any documentation as to sale #2. He also argued that the board of review's evidence was insufficient to invalidate the appraisal.

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 not warranted.

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 is not warranted.

In determining the fair market value of the subject property, the PTAB finds appellant's appraisal places the greatest weight for establishing the subject's market value on the sales comparison approach to value. However, the PTAB finds this portion of the appraisal is riddled with errors. In several instances the property was misidentified or, based on the hearing exhibits, did not reflect the proper sales information. Without the witness at hearing to testify regarding these discrepancies, how these mistakes affect the estimate of value, what data was analyzed and how adjustments were made, the PTAB gives this appraisal no weight.

Therefore, the PTAB finds the appellant submitted insufficient evidence to show the subject property was overvalued a reduction in the subject's assessment is not warranted.

APPELLANT:	**KLHR LLC**
DOCKET NUMBER:	**09-00903.001-C-2**
DATE DECIDED:	**September, 2012**
COUNTY:	**Will**
RESULT:	**No Change**

The subject property consists of 2.97 acres or 129,373 square feet of land area located in Troy Township, Will County.

The appellant appeared before the Property Tax Appeal Board through legal counsel claiming the subject property was incorrectly assessed as of the January 1, 2009 assessment date based on a contention of law. The appellant contends that the subject parcel was improperly denied the "developer's" exemption in accordance with Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Based on the facts in this record, the parties did not dispute that the property was platted in accordance with the Plat Act; the platting occurred after January 1, 1978; and at the time of platting the property was in excess of 5-acres when it was subdivided; and the property was vacant as of the January 1, 2009 assessment date.

In the legal brief submitted to the Board and argued at hearing, counsel explained that during the 2008 assessment year the subject parcel received a "developer's" preferential assessment of $4,489 as provided under Section 10-30 of the Property Tax Code (35 ILCS 200/10-30). In 2009, the subject parcel lost the preferential "developer's" exemption. Counsel argued the sole contention of this appeal is that the subject parcel should not have lost the preferential "developer's" exemption from 2008 to 2009 as provided by Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Section 10-31 of the Property Tax Code provides:

> (a) In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property, if:
>
> (1) The property is platted and subdivided in accordance with the Plat Act;
>
> (2) The platting occurs after January 1, 1978;
>
> (3) At the time of platting the property is in excess of 5 acres; and
>
> (4) At the time of platting or replatting the property is vacant or used as a farm as defined in Section 1-60.
>
> (b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance. An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of

> Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b).
>
> (c) Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining property, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. Holding or offering a platted lot for initial sale shall not constitute a use of the lot for business, commercial or residential purposes unless a habitable structure is situated on the lot or unless the lot is otherwise used for a business, commercial or residential purpose. The replatting of a subdivision or portion of a subdivision does not disqualify the replatted lots from the provisions of subsection (b).
>
> (d) This Section applies on and after the effective date of this amendatory Act of the 96th General Assembly and through December 31, 2011.
> (Source: P.A. 96-480, eff. 8-14-09.)

Counsel argued the owner of the subject property received notice dated August 19, 2009, from the county assessor that the subject property was losing its preferential assessment due to its initial sale in September 2008 for $970,626. Counsel did not know the specifics or condition of the transaction. Counsel argued that the notice of revised assessment occurred after the effective enactment date of August 14, 2009. Therefore, the subject parcel is entitled to the preferential assessment as provided in Section 10-31 of the Property Tax Code. Specifically, counsel cited Section 10-31(b) of the Property Tax Code (35 ILCS 200/10-31(b)), which provides in pertinent part:

An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, **does not disqualify that lot from the provisions of this subsection (b)**. [Emphasis Added]

The appellant argued that Section 10-30 of the Property Tax Code (35 ILCS 200/10-30) does not control in determining the subject's 2009 assessment. Counsel acknowledged the subject parcel does not qualify for a preferential developer's assessment for the 2010 assessment year under Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31).

Based on these arguments, the appellant requested the subject's assessment be reduced to $4,489, which reflects application of Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31).

Under questioning from the Board's Administrative Law Judge, the parties stipulated that the subject's assessment date in this appeal was January 1, 2009. (Tr. P. 8). Appellant's counsel was questioned whether the Property Tax Code allowed for prorated or proportional assessments

from the date legislation was enacted through the end of the assessment year, more specifically, whether Section 10-31 of the Property Tax Code provides for proration. Counsel agreed that neither Sections 10-30 nor 10-31 of the Property Tax Code (35 ILCS 200/10-30 and 10-31) provide for prorated application. (Tr. p. 12). Counsel reiterated the subject parcel sold in 2008 and was in the process of being developed throughout 2009, but was not occupied until 2010. In summary, appellant's counsel argued the subject parcel should not loose its preferential "developer's" exemption for 2009 because it had not lost the exemption as of August 14, 2009, since the notice of the 2009 revised assessment was dated August 19, 2009. Counsel argued the subject lost the exemption due to its initial transfer, which is prohibited under Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Counsel agreed the new legislation does not have language pertaining to retroactivity nor a proactive date, but does list a clear termination date. Counsel also agreed that the Property Tax Appeal Board's determination is whether Sections 10-30 or 10-31 of the Property Tax Code (35 ILCS 200/10-30 and 10-31) controls in determining the subject's correct assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $256,746 was disclosed. The subject's assessment reflects an estimated market value of $780,060 using Will County's 2009 three-year median level of assessments of 33.17%. In support of the subject's assessment, the board of review submitted a short summary brief addressing the appeal prepared by the township assessor, the subject's property record card and a Real Estate Transfer Declaration regarding the subject's sale. The Real Estate Transfer Declaration depicts the subject property sold for $970,616 in September 2008. Mr. John Trowbridge, Deputy Supervisor of Assessments, was designated to represent the board of review. Scott Koca, Deputy Assessor for Troy Township, was also present and provided limited testimony in connection with this appeal.

The board of review contends that since the subject parcel sold in September 2008 for $970,626 by the original developer to another developer, its preferential "developer's" assessment is no longer applicable under Section 10-30 of the Property Tax Code. (35 ILCS 200/10-30). Therefore, the subject parcel was valued and assessed at 33 1/3% of its estimated fair cash value as of its January 1, 2009 assessment date. The board of review noted the subject's assessment reflects an estimated market value less than its 2008 sale price. Section 10-30(c) provides in part:

> Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial, or residential purpose, or **upon the initial sale of any platted lot, including a platted lot which is vacant** [Emphasis Added]: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining properties, **when next determined** [Emphasis Added], shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. (35 ILCS 200/10-30(c)).

The board of review also argued the subject property does not qualify for a preferential developer's assessment under Section 10-31(b) of the Property Tax Code, but provided no further explanation.

The board of review also argued that the revised publication (notice) date of August 19, 2009, is not key to whether the subject property is to be assessed under Section 10-31 of the Property Tax Code (35 ILCS 200/10-31). The board of review agreed the legislation was enacted on August 14, 2009, but the subject's assessment date was January 1, 2009.

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

After hearing oral arguments 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 no reduction in the subject's assessment is warranted based on the contention of law.

The appellant contends the subject property is entitled to a preferential "developer's" assessment as provided by Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). Specifically, appellant argued the enabling legislation of Section 10-31 was effective on August 14, 2009 whereas the notification date revising the subject's 2009 assessment was August 19, 2009, five days subsequent to the enactment of Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). The appellant alleges the date of notice was the date the subject lost the preferential "developer's" assessment, which was formerly granted in the 2008 assessment year under Section 10-30 of the Property Tax Code. (35 ILCS 200/10-30). Appellant contends that since the notice of revised assessment occurred after the effective date of August 14, 2009, the subject parcel is entitled the preferential developer's assessment provided by Section 10-31 of the Property Tax Code. (35 ILCS 200/10-31). The board of review contends that the subject parcel sold in 2008 and no longer qualified for the preferential "developer's" assessment as of January 1, 2009 pursuant to Section 10-30 of the Property Tax Code. (35 ILCS 200-10-30). The Board finds the appellant's reliance on the notification date in order to receive the preferential "developer's" assessment to be misplaced.

The Property Tax Appeal Board finds that Section 10-31 of the Property Tax Code is not applicable to this 2009 assessment appeal. Sections 9-95, 9-155 and 9-175 of the Code provide that real estate is to be assessed in the name of the owner and as of January 1 of that assessment year. (See People ex rel. Kassabaum v. Hopkins, 106 Ill. 2d 473, 476-477, 478 N.E.2d 1332, 1333 (1985). Section 9-95 of the Code provides in part:

> All property subject to taxation under this Code, including property becoming taxable for the first time, shall be listed by the proper legal description in the name of the owner, and assessed at the times and manner provided in Section 9-215 through 9-225, and also in any year that the Department orders a reassessment (to the extent the reassessment is so ordered), with reference to **amount owned on January 1 the year for which it is assessed** [Emphasis Added], including all property purchased that day. . . . (35 ILCS 200/9-95).

Section 9-155 of the Code states in part that:

> On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants . . . the assessor . . . shall actually view and determine as near as practicable the value of each property listed for taxation **as of January 1, of that year** . . . . [Emphasis Added] (35 ILCS 200/9-155)

Section 9-175 of the Code provides in part that:

> The **owner of property on January 1, in any year shall be liable for the taxes of that year** . . . . [Emphasis Added] (35 ILCS 200/9-175).

The Board finds that these provisions clearly enumerate the date for assessment purposes is as of January 1 of the assessment year in question and shall be subject to the applicable statutory provisions of the Property Tax Code. The status of property for taxation and liability to taxation is fixed on January 1. People ex rel Kassabaum v. Hopkins, 106 Ill. 2d at 477.

In Rosewell v. Lakeview Limited Partnership, 120 Ill.App.3d 369, 373, 458 N.E.2d 121, 124 (1st Dist. 1983), the court also held that, unless otherwise provided by law, a property's status for purposes of taxation is to be determined as of January 1 of each year. The court noted that section 27a of the Revenue Act of 1939 (Ill.Rev.Stat.1981, ch. 120, par. 508a; now codified at 35 ILCS 200/9-175, 9-180 & 9-185) applied to status, and provides that the owner of real property on January 1 shall be liable for the taxes of that year. Lakeview Limited Partnership, 120 Ill.App.3d at 373. The court also stated that there are only two circumstances that allow change applications from the January 1 date. One circumstance deals with the situation where a property becomes taxable or exempt after January 1 and the second circumstance provides for proportionate assessments in the case of new construction or uninhabitable property. Id. at 373. (See 35 ILCS 200/9-180 & 9-185). Neither of these exceptions are applicable to this appeal.

The Property Tax Appeal Board finds Section 10-31 of the Property Tax Code does not contain any language providing for retroactivity in the application of this provision. This finding is in direct compliance with the appellate court's holding in Kennedy Brothers, Inc. v. Property Tax Appeal Board, 158 Ill.App.3d 154, 510 N.E.2d 1275 (2nd Dist. 1987).

Finally, the Section 10-31(d) states as follows:

> This Section applies **on and after the effective date** [Emphasis Added] of this amendatory Act of the 96th General Assembly and through December 31, 2011. (35 ILCS 200/10-31(d)).

The Board finds section 10-31 of the Property Tax Code was not applicable for the 2009 assessment year and applies beginning for assessment year 2010. The Board finds the September 2008 transfer of the subject property referenced in this record was an 'initial sale' and disqualified the property from the developer's assessment for 2009 pursuant to section 10-31(c) of the Property Tax Code. Section 10-30(a) of the Property Tax Code provides in pertinent part:

> (c) Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial, or residential purpose, or **upon the initial**

> **sale of any platted lot, including a platted lot which is vacant**: (i) **the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot** [Emphasis Added], (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining properties, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. . . (35 ILCS 200/10-30(c)).

Section 10-30(d) of the Code (35 ILCS 200/10-30(d)) also states:

> This Section applies **before the effective date of this amendatory Act** of the 96th General Assembly and then applies again beginning January 1, 2012.

The Property Tax Appeal Board finds the evidence shows that the appellant purchased the subject property from the original developer and was the owner of the subject parcel as of the January 1, 2009 assessment date at issue. The evidence also shows the subject property was sold to the appellant in September 2008. The Board finds section 10-30(c) of the Property Tax Code regarding the "initial sale of any platted lot" would include the transfer of the subject property as detailed in the September 2008 Real Estate Transfer Declaration filed by the board of review. Based on this analysis of the record, the Property Tax Appeal Board finds that the board of review correctly applied Section 10-30(c) of the Property Tax Code in determining that the subject parcel no longer qualified for the preferential "developer's" assessment as of January 1, 2009. Based on these facts the Property Tax Appeal Board finds the board of review did not err in assessing the subject property in accordance with its estimated market value as of January 1, 2009.

In conclusion, the Property Tax Appeal Board finds the board of review correctly assessed the subject property as of the January 1, 2009 assessment date.

APPELLANT:	**Maharaj 2 Corporation**
DOCKET NUMBER:	**09-05516.001-C-1**
DATE DECIDED:	**April, 2012**
COUNTY:	**Edgar**
RESULT:	**No Change**

The subject property consists of a one-story concrete block commercial building that contains 4,095 square feet of building area. The building is used as a gas station/convenience and two-bay oil change service garage. The commercial building was constructed in 1993. Amenities include two underground gasoline storage tanks, two gasoline pumps and a canopy. The improvements are situated on 73,500 or 1.688 acres of land area. The subject property is located Paris, Edgar County, Illinois.

The appellant appeared before the Property Tax Appeal Board with legal counsel claiming the subject property's assessment is not reflective of its fair market value. The appellant completed the commercial appeal petition indicating the basis of the appeal was comparable sales. In support of this claim, the appellant submitted photographs, property record cards and a grid analysis detailing information for three suggested comparable sales. The comparables are located in the community of Paris, Illinois, like the subject. The comparables consist of one-story concrete block buildings that are from 7 to 27 years old. Comparables 1 and 2 are used as gas station/convenience stores while comparable 3 is used as a liquor/convenience store. The buildings were reported to range in size from 2,025 to 3,336 square feet of building area that are situated on sites that range in size from 21,603 to 24,150 square feet of land area. The comparables sold from April 2004 to April 2008 for sale prices ranging from $250,000 to $725,000.

The appellant also submitted property record cards for eight other suggested comparable properties. However, no descriptive comparative analysis was provided for these suggested comparables. The evidence also disclosed the subject property was purchased by the appellant in April 2007 for $500,000.

Counsel called Raj Patel as a witness. Patel is the owner of the subject property. At the hearing, counsel argued there are four different aspects of this appeal. The first aspect raised by the appellant at the hearing was the manner in which each area of the subject building was assessed (oil change area and gas station/convenience store area). At the hearing, the appellant's counsel provided a diagram of the subject building and a limited assessment analysis of the comparables originally submitted by the appellant. The new assessment analysis included the eight suggested comparables for which no comparative analysis was originally provided. The diagram depicts the various areas of the building such as the office, utility room and bathrooms. The witness argued these areas are not part of the gas station/convenience store operations, but the oil change operations of the building. The witness argued these areas should be deducted from the gas station's assessment, but added to the oil change area of the building's assessment. The evidence disclosed the two areas are valued and assessed at different rates.

The witness also argued that when valuing a gas station, a critical factor is the number of gasoline storage tanks and the number of pumps. The witness argued that not all gas stations are alike. The witness testified the cost to install a new gasoline storage tank and pump is at least $100,000, but provided no evidence to support this testimony. The appellant took exception with the assessor's methodology of valuing gas stations at the same rate of $125.00 per square foot of building area, which ignores the significance of the number of gasoline storage tanks and pumps. However, in the new documentation submitted at hearing, the appellant calculated a correct assessment for the subject building, excluding land, should be $65,447 based on uniformity using those same depreciated valuation rates as determined by the assessor. The witness testified some of the comparables have from 4 to 6 gasoline tanks and pumps, which were valued at $125.00 per square foot of building area, like the subject's gas station/convenience store operations. In summary, the appellant opined that since the subject has only two gasoline storage tanks and pumps, it should be assessed at one-half the rate of the comparable gas stations.

Similarly, the appellant argued that the oil change portion of the subject building should be valued at a similar rate as other oil change stations. The appellant argued the subject should be valued at a lesser rate than the Speedie Lube, which was valued at $54.70 per square foot of building area. The appellant argued Speedie Lube is a superior 3 bay oil change property when compared to the subject.

Finally, the appellant argued the subject's land assessment increased from $15,000 to $18,000 or 23.33%, which seems excessive because there have been no changes to the land.

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

Under cross-examination, Patel testified the bathrooms inside the subject building can be accessed from both the gas station/convenience and oil change area. The bathrooms are separated for both men and women. Patel also testified regarding the increase in the subject's property tax bill.[1] Patel is not an appraiser or expert in the field of real estate valuation.

For clarification, appellant's counsel was questioned whether the data and arguments presented at the hearing are grounded in the principle of unequal treatment or uniformity of assessments. Counsel agreed the arguments and accompanying documentation for the first time presented at hearing were based on the principles of unequal treatment or uniformity of assessments.

The Property Tax Appeal Board finds it will not consider this new evidence and arguments presented at hearing. Section 16-180 of the Property Tax Code provides in pertinent part:

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

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[1] The appellant raised this issue many times during the hearing. The Board finds it plays no part in the calculation of tax bills of the subject property or the suggested comparables used by the appellant in this appeal. Section 1910.10(f) of the rules of the Property Tax Appeal Board states:

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

Additionally, Section 1910.50(a) of the rules of the Property Tax Appeal Board states in pertinent part:

> Each appeal shall be limited to the grounds listed in the appeal petition filed with the Board. (86 Ill.Admin.Code §1910.50(a)).

The appellant's appeal petition that was filed with the Property Tax Appeal Board was clearly marked as "comparable sales", which suggests that the subject's assessment was not reflective of its fair market value. Nevertheless, at the hearing the appellant attempted to present a lack of uniformity argument using the assessment methodology that was provided by the board of review in response to the appellant's appeal. The appellant did not outline the unequal treatment argument prior to the hearing. As a result, the Board finds the documentation and testimony presented at the hearing regarding uniformity of assessments is a new argument and shall not be considered in determining the subject's correct assessment.

Section 1910.67(k) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.67(k)) states in pertinent part:

> In no case shall any written or documentary evidence be accepted into the appeal record at the hearing unless:
>
> 1) Such evidence has been submitted to the Property Tax Appeal Board prior to the hearing pursuant to this Part;
>
> 2) The filing requirement is specifically waived by the Board; or
>
> 3) The submission of the written or documentary evidence is specifically ordered by the Board or by a Hearing Officer.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $144,600 was disclosed. The subject's assessment reflects an estimated market value of $428,191 or $104.56 per square foot of building area including land using Edgar County's 2009 three-year median level of assessments of 33.77%.

In support of the subject's assessment, the board of review submitted property record cards, Real Estate Transfer Declarations and an analysis of three suggested comparable sales. Two of the comparables were also utilized by the appellant. All the comparables are gas station/convenience stores, similar to the subject. The comparables are located within 2.7 miles of the subject in Paris, Illinois. The comparables consist of one-story concrete block buildings that were built from 1987 to 2000. The comparables are reported to be in average condition like the subject. The comparables have canopies that range in size from 1,440 to 4,000 square feet. The buildings range in size from 1,584 to 3,336 square feet of building area and are situated on lots that range in size from 21,299 to 22,862 square feet of land area. The comparables sold from July 2004 to April 2008 for prices ranging from $325,000 to $725,000 or from $205.18 to $336.72 per square foot of building area including land.

The board of review also indicated the subject property was purchased by the appellant in April 2007 for $500,000 or $122.10 per square foot of building area including land, which is considerably more than its estimated market value as reflected by its assessment.

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

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

The appellant's original appeal petition and evidence disclosed the basis of this appeal was that the subject property's assessment was not reflective of fair market value. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 183, 728 N.E.2d 1256 (2nd Dist. 2000). The appellant has not met this burden of proof.

Both parties submitted descriptive and sales information for four suggested comparable properties for the Board's consideration. In addition, the record disclosed the subject property was purchased by the appellant for $500,000 in April 2007, 20 months prior to the subject's January 1, 2009 assessment date.

The Board finds the subject property consists of a single building that contains 4,095 square feet of building area that is used for the business purposes of a gasoline station, convenience store and oil change service facility. The building is situated on 73,500 square feet of land area.

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**. 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 record shows the subject property was purchased for $500,000 in April 2007, approximately 20 months prior to the subject's January 1, 2009 assessment date. The Board finds this record is void of any evidence showing the subject's sale was not an arm's-length transaction. As a result, the Property Tax Appeal Board finds the best evidence of the subject's fair market value contained in this record is its April 2007 sale price for $500,000. The subject's assessment reflects an estimated market value of $428,191, which is considerably less than its 2007 sale price. Therefore, no reduction in the subject's assessment is justified.

The Board further finds the parties submitted four suggested comparable sales for consideration. Two of the comparables were submitted by both parties. The Board placed little weight on two comparable sales. Comparable 3 submitted by the appellant is a liquor/convenience store, unlike

the subject's use as a gas station, convenience store, and oil change facility. The Board also gave little weight to one common sale submitted by both parties (appellant #1 and board of review #2). This property sold in April 2004, which is dated and not considered indicative of fair market value as of the subject's January 1, 2009 assessment date. The Board finds the remaining two comparables are more similar to the subject in location, age and use. However, these comparable properties are smaller in building size and contain considerably less land area when compared to the subject. They sold in March 2007 and June 2008 for prices of $325,000 and $681,854 or $205.18 and $336.72 per square foot of building area including land. The subject's assessment reflects an estimated market value of $428,191 or $104.56 per square foot of building area including land, which is less than the two most similar comparable sales contained in this record on a per square foot basis. After considering any necessary adjustments to the most similar comparable sales for differences when compared to the subject, the Board finds the subject's estimated market value as reflected by its assessment is well supported and no reduction is warranted..

APPELLANT:	**Marathon Petroleum Company LLC** [1]
DOCKET NUMBER:	**08-02426.001-C-2**
DATE DECIDED:	**January, 2012**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a 44,400 square foot site improved with a one-story, masonry constructed gas station/mini-mart building containing 3,200 square feet of building area. The building was constructed in 1987. The subject property has six pumps with three islands and 12 fueling positions along with underground storage tanks. A steel canopy with approximately 3,496 square feet and 24 lights covers the pumps and fueling areas. The subject has a land to building ratio of approximately 13.88:1. The property is located at 22W275 North Avenue, Glen Ellyn, Milton Township, DuPage County.[2]

The appellant called as its witness Joseph M. Ryan. Ryan is a real estate appraiser with the designation of Member of the Appraisal Institute (MAI) from the Appraisal Institute and an Illinois State Certified General Appraiser. Ryan is a Principal of the LaSalle Appraisal Group, a firm that primarily does appraisals of commercial and industrial properties. Representative clients include Marathon, BP, Shell, Exxon Mobil, Atlas Oil and Graham Oil.

He has appraised between 625 and 650 gas stations. He further testified that he has had direct contact with the major oil company employees and has become familiar with oil company retail trends and strategies. Ryan testified the unit of comparison used in the oil industry for buying and selling service stations is price per square foot of land area. The unit of comparison he uses in valuing service stations is price per square foot of land area. The witness explained that the most valuable component of any gas station is the land. He further stated that the buildings on gas station sites have changed over the years but the constant has been the land area. The appraiser testified that if one uses building square footage as the unit of comparison the range in values is too wide making the adjustments unwieldy.

Ryan prepared a summary appraisal report on the subject property which was marked as Appellant Exhibit #3. The effective date of the appraisal was January 1, 2008. Ryan explained the subject property is located on the south side of North Avenue, east of Main Street, at the intersection of North Avenue and Park Boulevard in unincorporated DuPage County. Ryan testified the subject's location North Avenue is divided by a grassy median and a raised curb, which allows the subject property to have access only from eastbound traffic. He testified that North Avenue has three lanes in either direction and that the intersection of North Avenue and Park is not signalized. He also testified that Park is a residential street. The witness did not consider the location to be a major intersection.

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[1] The intervening school district adopted the evidence presented by the DuPage County Board of Review and submitted no independent evidence. The intervenor did not appear at the hearing and is found to be in default pursuant to section 1910.69(b) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(b)).

[2] At the beginning of the hearing Mr. Hemmesch made a Motion in Limine to bar the use of the Valuation Analysis submitted by the board of review (Board of Review Exhibit #2) and the testimony of those that prepared the exhibit. Subsequent to the hearing the Motion in Limine was withdrawn.

The witness testified that an optimal location for a gasoline service station would be at a signalized intersection with high traffic counts on both streets that border the location. He explained that he would be looking for curb cuts that allow ingress and egress in either direction on both right of ways. Ryan was of the opinion that negative aspects of the subject's location include the lack of a signalized intersection and there is no chance of attracting westbound traffic.

Ryan testified the subject property is improved with a 3,200 square foot gas station, mini-mart type of building constructed in 1987 with an effective age of 12 years as of the date of value. The appellant's appraiser determined the highest and best use of the site as vacant was for specialty retail uses such as a service station, branch bank, restaurant or other smaller single-tenant building. The witness determined the highest and best use of the property as improved was for continued use as a gas station.

In estimating the market value of the subject property Ryan developed only the sales comparison approach to value. The cost approach was not developed because the building was constructed in 1987 and was closer to the end of its economic life than the beginning. He also testified buyers and sellers within the market place don't rely on the cost approach in their investment decisions. He further testified the income approach has less reliability because oftentimes there is low rent and then rent is paid on gallons pumped, which includes a business element.

In the sales comparison approach Ryan used five sales located in Aurora, Warrenville, and Downers Grove that ranged in size from 41,848 to 67,518 square feet of land area. The comparables were improved with buildings that ranged in size from 3,360 to 5,124 square feet of building area and in age from 5 to 18 years old. The witness testified these comparables had similar land sizes and building sizes as the subject. He also was of the opinion the comparables had a fairly tight land to building ratio ranging from 10.01:1 to 18.26:1 while the subject had a land to building ratio of 13.88:1. Ryan also considered location and testified two of the sales, comparable sale #1 and comparable sale #2, were not located at signalized intersections. The sales occurred from June 2005 to September 2008 for prices ranging from $972,000 to $1,910,000 or from $17.77 to $31.14 per square foot of land area, building included. Ryan testified he compared and contrasted each of the sales to the subject property based on location, land size, age, land to building ratio, property rights, condition of sale and market conditions. After considering these adjustments, Ryan estimated the subject had a market value of $28 per square foot of land area, building included, or $1,250,000, rounded.

On cross-examination Ryan indicated his comparable sale #4 may have gone from a gas station to a car wash to a discount cigarette place. Ryan also agreed that his sale #5 was a gas station that also had a McDonald's restaurant building and a separate car wash. Ryan's report indicated comparable sale #5 had a deed restriction stating the new owner must only sell BP brand gas at the site for 20 years. Ryan also indicated his comparable sale #1 had a car wash. Ryan testified his comparable sale #3 had 3,945 square feet of building area and there was a typing error on page 35. He further indicated that his comparable #5 had 5,124 square feet of building area and the 4,180 square feet of building area reported on page 39 was a typo and the sales price per square foot reported on page 39 was also a typo. Ryan also agreed his report at page 23 indicated the typical structural life for a building such as the subject is 25 years. The witness

further explained the prices used for the comparables was what was reported on the transfer declarations and the prices reflected in his report are for the real estate only.

Under redirect the witness testified the traffic count past the subject property was 66,000 cars per day but you would have to cut that in half because it is not accessible to half of the traffic. He further testified that his comparable sale #2 had a rather low traffic count of 10,008 and the rest of the traffic counts were between 33,000 and 35,000. The witness also agreed the subject does not have a car wash.

Under re-cross Ryan agreed that his appraisal indicated that the sales were verified through public records and the transfer document. He also indicated the traffic count information was not discussed in his report.

The board of review submitted its "Board of Review Notes on Appeal" and a Valuation Analysis prepared by Robert Earl and Dawn Hanson of the Milton Township Assessor's Office. The subject property had a final total assessment of $598,470 which reflects a market value of $1,798,828 or $40.51 per square foot of land area, building included, when applying the 2008 three year average median level of assessments for DuPage County of 33.27% as determined by the Illinois Department of Revenue.[3]

The board of review called as its witness Dawn Hanson, the commercial deputy assessor for Milton Township. Ms. Hanson had been with the Milton Township Assessor's office since 2007. She testified that she worked as an appraiser with William J. Carter in the 1980s travelling across the country doing commercial appraisals. She indicated that in 1994 she was the Fox Township assessor for a four year term. She further testified that she had been on the Kendall County Board of Review for six years. She was also a residential deputy assessor with York Township for approximately five years and then she began work with Milton Township. She also testified she has the Certified Illinois Assessing Officer (CIAO) designation and is a licensed real estate agent.

Under cross-examination Hanson testified she was a licensed residential real estate appraiser from 1998 through 2007. She testified that she holds herself out as being able to assess commercial property. While working with other appraisers Hanson indicated that she had not appraised any other functioning gas stations. While with the Kendall County Board of Review Hanson indicated that she had at least two hearings on gas stations. She began working in the residential section of the Milton Township Assessor's Office in January 2007 and did not value any gas stations. In January 2008 she began working in the Milton Township's commercial division. She testified that the report that she prepared in the instant appeal was the first she had prepared of this nature on gas stations. Hanson also testified there were 11 other gas stations in Milton Township that she valued for assessment purposes in 2008. She indicated that part of her duties as a deputy township assessor in the commercial section was to value gas stations in her jurisdiction. Hanson further testified that in valuing gas stations she typically uses the cost approach and the sales comparison approach to value.

[3] The board of review incorrectly reported the subject's assessment on the "Board of Review Notes on Appeal" submitted in this matter.

Appellant's counsel objected to Hanson's qualifications to give opinion testimony. The Board overrules the objection finding that she has sufficient education, training and work experience to give opinion testimony.

Hanson identified Board of Review (BOR) Exhibit #2 as the valuation report she prepared of the subject property. She testified she used nine comparable sales in valuing the subject property. The comparables were located in the communities of Aurora, Woodridge, Bartlett, Roselle, Willowbrook, Lombard, Bloomingdale, Wheaton and West Chicago. Board of review comparable sale #1 was the same sale as Ryan's sale #3. The comparables ranged in land area from 12,425 to 84,584 square feet. The comparables were improved with buildings that ranged in size from 410 to 3,142 square feet of building area and that were constructed from 1958 to 2005. The comparables had from one to three islands; from three to six pumps; and from 6 to 12 fueling stations. These properties had land to building ratios ranging from 13.2:1 to 82.8:1. The sales occurred from May 2005 to October 2007 for prices ranging from $930,000 to $3,200,000 or from $607.89 to $3,170.73 per square foot of building area, land included. Alternatively, the comparables sold for unit prices ranging from $30.06 to $69.27 per square foot of land area, including building.

Hanson testified she selected her comparable sale #1 because she knew that it had an awkward ingress/egress, similar to the subject. Comparable sale #2 was selected because it is located on Route 53 in Woodridge and has a lot of traffic like North Avenue. Hanson was of the opinion this comparable had better access than the subject. Hanson was of the opinion comparable sale #3 had better access than the subject. Sale #4 was selected due to its location even though the building and land area are both smaller than the subject. Sale #5 was selected due to its location on Route 83, a major thoroughfare. The building was smaller than the subject building and the site was 10,000 square foot smaller than the subject's site. Sale #6 had a mini-mart with a building approximately 800 square feet smaller than the subject but with a site approximately double the size of the subject parcel. Sale #7 was selected because it was located on a major thoroughfare. Sale #8 was located within Milton Township. Sale #9 was selected due to its location on Roosevelt Road, a fairly heavily travelled thoroughfare.

Hanson testified she made adjustments to the sales based on location, ingress/egress, land to building ratio, date of sale, marketing conditions and building size. Her adjustments ranged from -10% to -75% resulting in adjusted sales prices ranging from $547.10 to $882.05 per square foot of building area, land included. In the report Hanson asserted that due to the subject's age, average condition and indirect access from west bound North Avenue the subject was at the lower value range. She estimated the subject had an estimated value of $575.00 per square foot of building area, including land, or $1,851,500.

She also indicated the comparables had sales prices ranging from $30 to $69 per square foot of land area rounded, building included. The deputy assessor did not make any adjustments to the comparables when using a price per square foot unit of comparison. She indicated the median sales price was $43 per square foot of land area. Applying the median value to the subject resulted in an estimated value of $1,909,200.

Hanson indicated in the report that since gas stations are typically valued on a price per square foot of building area and these mini-marts/convenience stores are valuable components, more

weight was given to the value determined using price per square foot of building area. She estimated the subject property had a market value of $1,850,000.

Under cross-examination Hanson agreed that she is not a licensed real estate appraiser and does not have the MAI designation. She also agreed BOR Exhibit #3 was the only valuation report of a gas station that she had prepared. Hanson further agreed that she does not know anyone in the oil industry. Hanson also agreed that the unadjusted price per square foot of building area for her comparables was a broad range of values. She disagreed that her adjustments were unusually high even though two were adjusted by 75%, one was adjusted by 50% and one was adjusted by 30%. She did agree, however, that price per square foot of land area would be the better way to develop a unit of comparison.

Hanson also agreed the subject property was not located at a major intersection; the subject is not located at a signalized intersection; and agreed that access to the subject property by west bound traffic on North Avenue is restricted by a large grassed and treed median. She further agreed that one can only make a right turn in and a right turn out of the station on North Avenue. She also agreed that the traffic on Park is residential in nature.

On page 18 of her report Hanson made the statement the highest and best use of the subject as improved is the existing use as a gas station/mini-mart. In determining the highest and best use as improved Hanson made the statement "that the current use of the property results in net operating income and corresponding value greater than that obtained by placing the site in an alternative use." Hanson testified she had not reviewed the net operating income of the subject nor had she reviewed the net operating income of alternative uses. She explained that this statement was just part of a format she used which was based on a form from Fred Beno of York Township.

She also agreed her comparables #1, #2, #3, #5, #6, #7 and #9 were located at signalized intersections.

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

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

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. 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). 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 market data in the record demonstrates a reduction in the subject's assessment is warranted.

Initially, the Board finds the parties are in general agreement with respect to the description of the subject property and the conclusion that the highest and best use as improved is the existing use. Additionally both parties presented either an appraisal or valuation analysis based on comparable sales of gas stations.

One issue before the Property Tax Appeal Board concerned the proper unit of comparison to be used to value gas stations. The Board finds Ryan's testimony that the unit of comparison used in the oil industry for buying and selling service stations is price per square foot of land area is the most credible in this record. The witness explained that the most valuable component of any gas station is the land. His conclusion is buttressed by the fact he has appraised between 625 and 650 gas stations and has had direct contact with the major oil company employees and has become familiar with oil company retail trends and strategies. Based on this record the Property Tax Appeal Board finds it is appropriate to use price per square foot of land area, including the building, in valuing gas stations.

The record contains sales data on five comparables submitted in the appellant's appraisal and nine sales submitted in the board of review's valuation report. The Board gave less weight to the appellant's comparable sales #1 and #2 due to the fact they both sold in June 2005, approximately 2½ years prior to the assessment date at issue. The Board also gave less weight to appellant's comparable sale #4 due to the fact that there was a change in use from a gas station to a car wash and then to a cigarette discount store after the property sold. This change in use indicates this sale and the subject property differed in highest and best use as improved and would not be substitutes in the market.

With respect to the sales selected by Hanson, the Board finds little weight should be given sales #4 through #9. Both sales #4 and #5 were improved with buildings significantly smaller and older than the subject building and had land to building ratios significantly higher than the subject property. Less weight was given comparable sale #6 due to date of sale, the age of the building and the land to building ratio. The Board gave less weight to sales #7, #8 and #9 due to the dates of sale and the building ages.

The Board finds both Ryan and Hanson had a common sale located at 1207 North Eola Road, Aurora, Illinois, that sold in October 2007 for a price of $1,910,000 or $31.14 per square foot of land area, including building.[4] The Board gives some weight to the appellant's comparable #5 but notes the sales price of $17.77 per square foot of land area, including building, seems relatively low compared to other sales deemed relevant and probative by this Board. This relatively low sales price may be due to the fact there is a deed restriction stating the new owner

[4] Ryan and Hanson differed slightly on both the building size and land size of this comparable. The Board finds that Hanson's valuation report included a copy of the listing sheet which supported the data in the Ryan appraisal. The Board accepts Ryan's conclusion of the unit price of this comparable.

must only sell BP brand gas at the site for 20 years. The Board also finds sales #2 and #3 used by Hanson were good comparable sales. These two comparables were improved with one-story retail service stations constructed in 1995 and 1996 with 1,872 and 2,858 square feet of building area respectively. These properties had 34,556 and 65,340 square feet of land area resulting in land to building ratios of 18.5:1 and 22.9:1, respectively. These two comparables were superior to the subject in both building age and land to building ratio. These comparables sold in October 2007 and September 2007 for prices of $1,300,000 and $2,801,000 or $37.62 and $42.87 per square foot of land area, including building. Hanson indicated in her testimony and within her valuation report that these comparables were superior to the subject in various aspects including building age, superior land to building ratio and superior ingress/egress. Therefore, the Board finds downward adjustments would be required to these two sales to make them comparable to the subject. In summary, the Board finds the best comparables in the record had unadjusted sales prices ranging from $17.77 to $42.87 per square foot of land area building included.

In conclusion, after considering these most relevant sales and the testimony of the witnesses, the Property Tax Appeal Board finds the subject property had a market value of $31.00 per square foot of land area, building included, resulting in a market value of $1,376,400 as of January 1, 2008. Since market value has been established the 2008 three year average median level of assessments for DuPage County of 33.27% as determined by the Illinois Department of Revenue shall apply..

APPELLANT:	**Charles Scharfenberg**
DOCKET NUMBER:	**08-01460.001-C-2**
DATE DECIDED:	**May, 2012**
COUNTY:	**Knox**
RESULT:	**No Change**

The subject property consists of a 4.65 acre parcel improved with eight greenhouse structures and a garage/office. The greenhouses are assembled with hoop style metal supports covered by plastic, which are used for growing flowers and farm products. The structures have overhead watering systems, fans and liquid propane heaters. The greenhouses are attached to the ground with earth anchors, which are large screw-in metal rods. The appellant claimed the greenhouses were constructed in the late 1980's while the board of review's property record cards indicate the greenhouses were constructed from 1991 to 2005. The subject parcel is also improved with a combined 4,665 square feet of asphalt and concrete. The subject property is located in Knox County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board contending the assessment of the subject property was in error. More specifically, the appellant argued that the greenhouse structures situated on the subject parcel do not have permanent foundations and should not be classified and assessed as real estate, but should be considered personal property and exempt from real estate taxation. In support of this claim, the appellant submitted two photographs depicting a typical greenhouse situated on the subject parcel. Additionally, the appellant cited section 1-130 of the Property Tax Code. (35 ILCS 200/1-30). As of the subject's January 1, 2008 assessment date, section 1-130 of the Property Tax Code provides in part:

> 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 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 on a permanent foundation**.** (35 ILCS 200/1-130), (Amended by P.A. 91-502, § 5, eff. Aug. 13, 1999.).

The appellant argued the greenhouses do not have permanent foundations, therefore they cannot be assessed and taxed as real property.

The appellant also submitted copies of correspondences from the Supervisor of Assessment(s) for the Illinois counties of Mercer, Hancock, McDonough and Henderson to further support the position that the greenhouses should not be assessed as real property. In summary, these assessment officials do not classify or assess greenhouses as real property. Mercer County: polyethylene greenhouses are not assessed as real property because they are not on any permanent foundation and are readily removable. Hancock County: hoop buildings are not assessed as real property. However, any concrete walls or floors will be taxed. McDonough County: we do not assess polyethylene greenhouses. Henderson County: I do not assess greenhouses that do not have a permanent foundation.

In the brief, the appellant argued the greenhouses can be easily moved by merely removing the outer shell and un-screwing the earth anchors from the ground. To support the proposition that the greenhouse building are not real property, the appellant cited the appellate court's holding regarding the definition of a permanent foundation in Christian County Board of Review v. Property Tax Appeal Board, 368 Ill.App. 3d 792 (5th Dist. 2006). The appellant argued the foundation language in the Code is not determinative; it is illustrative of the legislature's intent as to what should be taxed. In order to be determined a fixture the structure needs to be attached to the realty in a way which precludes its easy removal. Whether something is a fixture rather than a piece of personal property depends upon the nature of its attachment to the real estate, its adaptation to and necessity for the purposes for which the premises are devoted, and whether or not it was intended that the item should be considered to be part of the realty. (Nokomis Quarry Company v. Dietl, 333 Ill.App.3d 480 (5th Dist. 2002)).

The appellant argued the greenhouse structures are akin to mobile homes which are in a mobile home park and are not taxed as realty. The appellant also argued the greenhouses are similar to moveable lawn sheds, which are not fixtures and should not be taxed as real estate.

With respect to the evidence submitted by the board of review, the appellant argued evidence as to other greenhouse structures does not provide significant evidence as to the construction of the other greenhouses. The appellant alleges the type of greenhouse is important as to their classification as real property. It is akin to storage buildings, some are affixed to the real estate by foundation or slab and some are moveable. The appellant reiterated the greenhouse structures are easily removable and should not be classified as real estate. The appellant argued the other greenhouses are of more permanent construction and are truly a building permanently affixed to the real estate. Based on this evidence, the appellant requested the subject's improvement assessment be reduced to $0.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $177,280 was disclosed.

In support of the subject's assessment, the board of review submitted a letter addressing the appeal along with seven exhibits. (Exhibits 1 through 7)

Exhibit 1 is a sketch of the greenhouses situated on the subject parcel. The board of review claims each of the greenhouses are assessed on a per square foot basis based upon their construction type. The board of review noted concrete and asphalt paving, along with a garage, are also part of the subject's assessed value.

Exhibit 2 is a copy of page 23 from the 2006 Components and Cost Schedules of the Illinois Real Property Appraisal Manual showing the cost range for greenhouses. The board of review argued none of the greenhouses are being assessed anywhere near the price shown in the manual.

Exhibits 3 through 7 are comprised of property record cards for other properties in Knox County that either still or did have greenhouses/nurseries on them of similar construction type as the subject. The board of review argued the property record cards show greenhouse structures have been assessed as real estate since the 1950's.

Exhibit 3 depicts 1,256 square feet of shed/greenhouses erected in 1952. The greenhouses contain 1,126 square feet and are of glass or fiberglass construction. Exhibit 4 depicts a 425 square foot greenhouse of unknown construction that was erected in 1952. Exhibit 5 depicts a greenhouse of unknown size or construction that was erected in 1988. Exhibit 6 depicts a frame and fiberglass greenhouse containing 1,320 square feet building area that was erected in 1988. Exhibit 7 depicts an 896 square foot nursery display building that was reportedly constructed in 1950.

In their brief, the board of review addressed the issue of "like properties" that were assessed as real estate prior to January 1, 1979. The board of review argued although other greenhouses may not be identical to the subject, they are "like properties". The board of review contends the greenhouses are permanent year round fixtures. The board of review agreed the greenhouses are anchored to the ground with hoop framing bolted to the anchors. There are also 2 x 6 boards attached to the entire interior of the structures. Some sides and roofs of the greenhouses are plastic membrane, but some fronts, sides and backs are made of fiberglass. The board of review argued the greenhouses do not have gravel floors, but concrete or asphalt sidewalks that run through the middle and outside from greenhouse to greenhouse. In summary, the board of review contends that like kind property to that of the subject has been classified and assessed as real estate prior to 1979.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of 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 subject greenhouses have been incorrectly classified and assessed as real property. The appellant argued the greenhouses should be considered personal property, which is exempt from assessment and not taxed as real estate. The board of review contends the subject greenhouses are like kind to other greenhouses located in Knox County that were classified and assessed as real property prior to 1979. Therefore, the greenhouses should be classified and assessed as real property.

The Property Tax Appeal Board finds 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. . . 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 on a permanent foundation**.** (35 ILCS 200/1-130).

As an initial matter, the Board finds the appellant's contention that the subject greenhouses should not be assessed as real property because they were not placed on a permanent foundation to be unpersuasive and without merit. The appellant relied on section 1-130 of the Code (35 ILCS 200/1-130) in support of this claim. The Board finds this part of section 1-130 of the Code does not support this proposition. The Board finds the "permanent foundation" language pertains

to "any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling". The board finds the structures that are the subject matter of this appeal are not vehicles or similar portable structures **used or so constructed as to permit its use as a dwelling** (emphasis added). The structures are used as greenhouses to grow flowers and farm products.

As a general proposition, except in counties with more than 200,000 inhabitants that classify property for taxation purposes, each tract or lot of property is to be valued at 33 1/3% of its fair cash value. (35 ILCS 200/9-145).

Of further importance to this appeal is the following passage from the Illinois Constitution, which states:

> On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. . . . Ill.Const. 1970, art.IX, §5(c).

As mandated by the above excerpt from the Constitution of 1970 the General Assembly enacted the Illinois Replacement Tax Act (Ill.Rev.Stat.1979, ch.120, ¶499.1, now codified at 35 ILCS 200/24-5) to replace the revenues lost by the abolition of the personal property tax. Also known as the "Freeze Act", the statute was amended in 1983 to add a prohibition against the reclassification of property of like kind acquired or placed in use after January 1, 1979. Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855, 863-864 (3rd Dist. 1983). Section 24-5 of the Code now provides in part that:

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

The legislature's intent in passing this provision of the Replacement Tax Act was to "freeze" classifications of property to their pre-January 1, 1979 classifications. Property that was lawfully classified as real property or personal property before January 1, 1979, cannot be reclassified as personal property or real property after that date. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981); People ex rel. Bosworth v. Lowen, 155 Ill.App.3d 855 (3rd Dist. 1983). As a result, the classification of property as either real or personal prior to January 1, 1979, controls the status of property after January 1, 1979. Central Illinois Light Co. v. Johnson, 84 Ill.2d 275 (1981).

The Property Tax Appeal Board finds the taxpayer has the burden of proving that property is exempt under section 24-5 of the Code and proving that such property was lawfully assessed and taxed as personal property prior to January 1, 1979. Trahraeg Holding Corp. v. Property Tax

Appeal Board, 204 Ill.App.3d 41, 43 (2nd Dist. 1990). However, if the taxpayer meets this burden, the property must be classified as personal property without resorting to any other method of classification. Trahraeg Holding Corp., 204 Ill.App.3d at 43; Oregon Comm. School Dist. v. Property Tax Appeal Board, 285 Ill.App.3d 170, 176 (2nd Dist. 1996).

The court in County of Whiteside v. Property Tax Appeal Board, 276 Ill.App.3d 182 (3rd Dist. 1995) considered the criteria used by the Property Tax Appeal Board in determining whether certain items of machinery and equipment put into service after 1979 was "of like kind" to pre-1979 personal property. The court stated "any common sense construction of the term like kind would require substantial similarities between pre-1979 and post-1979 equipment." County of Whiteside, 276 Ill.App.3d at 186. The court concluded the factors relied upon by the Property Tax Appeal Board were sufficient to establish a like kind relationship. The factors relied upon by the Property Tax Appeal Board in that appeal included: (1) performance of the same function; (2) production of the same product; (3) similar portability and manner of attachment; and (4) that the new equipment replaced the existing equipment. Id.

The court in Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170 (3rd Dist. 1996), further discussed the workings of the Freeze Act. The court noted the Freeze Act also provides that the classification is frozen only if it was lawfully made. The court further stated that it is unlawful for an assessor to exempt one kind of property while classifying the same kind of property in the same district as nonexempt. The court further recognized that Article IX, section 4(a) of the Illinois Constitution states that, "taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." The Illinois Supreme Court explained that:

> The principle of uniformity of taxation requires equality in the burden of taxation. [Citation.] This court has held that an equal tax burden cannot exist without uniformity in both the basis of assessment and in the rate of taxation. [Citation.] The uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. [Citation omitted.]

The court concluded that an assessment of taxes on property is not lawful if it creates a "substantial disparity between similar properties or classes of taxpayers." Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d 170, 178 (3rd Dist. 1996); Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309 (3rd Dist. 1973).

The court in Oregon found that the Freeze Act contains no language indicating that the like kind comparison of machinery and equipment is limited to property located at one plant or at the same location. Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d at 180-181. The court also found that the legislative history of the Freeze Act indicates that the purpose of the like-kind provision was to continue the assessment practices of assessors in their respective counties. Id.

When a county's pre-1979 method of classifying property as real or personal can be ascertained, that practice must be applied to property acquired in the same county after January 1, 1979. Oregon Comm. School District v. Property Tax Appeal Board, 285 Ill.App.3d at 182.

With these assessment and classification principles in place, the Property Tax Appeal Board finds the subject property was correctly classified and assessed as real property. The primary issue before this Board is whether the greenhouses are to be classified and assessed as real property. As previously stated, Section 1-130 of the Code defines "real property" in pertinent part as:

> The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . . (35 ILCS 200/1-130).

The Property Tax Appeal Board finds that the evidence (property record cards) provided by the Knox County Board of Review was that like kind greenhouses located in Knox County had been classified and assessed as real estate since at least 1952. (See board of review Exhibits 3 and 4). The appellant provided no credible evidence to refute this contention. Instead, the appellant to some extent challenged the like kind nature of the other greenhouses submitted by the board of review. The Board finds the two other greenhouses detailed on this record that were lawfully assessed as real property prior to 1979 sufficiently establishes "like-kind" to support the conclusion the subject greenhouses should be classified and assessed as real property pursuant to the dictates of section 24-5 of the Property Tax Code. (35 ILCS 200/24-5). The Board finds the structures situated on the subject parcel perform the same basic tasks used for growing flowers and farm products inside of greenhouses.

In summary, the Board finds greenhouses in Knox County that are used for growing flowers and farm products are lawfully and uniformly assessed as real property. As a result, the Property Tax Appeal Board finds the greenhouses situated on the subject parcel are like kind properties that should have the same classification for real property assessment purposes as required by the uniformity clause of the Illinois Constitution of 1970 and section 24-5 of the Property Tax Code which provides in part that:

> No property lawfully assessed and taxed as real property prior to January 1, 1979, or property of like kind acquired or placed in use after January 1, 1979, shall be classified as personal property.

As a final point, the Board further finds the appellant did not challenge the estimated market value of the subject property as reflected in the assessment. Based on this record the Board finds the subject's total assessment is not illegal or excessive as of January 1, 2008.

APPELLANT:	**State Bank of Countryside**
DOCKET NUMBER:	**09-00841.001-C-2**
DATE DECIDED:	**August, 2012**
COUNTY:	**Will**
RESULT:	**No Change**

The subject property consists of a one-story owner occupied building that contains 5,487 square feet of building area. The building is of masonry exterior construction that was built in 2008. The building features an unfinished basement, central air conditioning, sprinkler fire protection, four bathrooms, 40,000 square feet of paving, and a 1,600 square foot canopy covering three drive-up lanes. The improvements are situated on 50,790 square feet or approximately 1.17 acres of land area. The subject property is used as a banking facility. The subject property has land to building ratio of 9.26:1. The property is located in Homer Township, Will County.

The appellant appeared before the Property Tax Appeal Board through counsel claiming overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal of the subject property prepared by a state licensed appraiser. Using the three traditional approaches to value, the appraisal report conveys an estimated market value of $1,650,000 as of January 1, 2009. The appraiser was not present at the hearing to provide direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. Counsel explained the appraiser is deceased.

Counsel attempted to present testimony from Mr. Tom Grogan, an appraiser from Sterling Valuation, regarding the contents of the appraisal report. The Will County Board of Review argued Grogan did not develop or sign the appraisal report. The board of review requested the Property Tax Appeal Board give no weight to the appraisal conclusion due to the inability to question the appraiser regarding the selection of the comparables, the adjustment process and final value conclusion. In response, counsel requested the Property Tax Appeal Board use its equitable power to allow Grogan's testimony and enter the appraisal into evidence for the sake of fairness. Initially, Grogan was willing to take full responsibility of the appraisal report, however, after being fully informed of a possible USPAP (Uniform Standards of Professional Appraisal Practice) violation[12], Grogan declined to provide testimony in connection with the appraisal report. More importantly, the Board takes notice that Section 1910.67(l) of the rules of the Property Tax Appeal Board provides in pertinent part:

> Appraisal testimony offered to prove the valuation asserted by any party shall not be accepted at the hearing unless a documented appraisal has been timely submitted by that party pursuant to this Part. Appraisal testimony offered to prove the valuation asserted may only be given by a preparer of the documented appraisal whose signature appears thereon. (86 Ill.Admin.Code §1910.67(l)).

[12] The record disclosed the subject lot was purchased in January 2007 for $1,175,000. The subject's land sale was not disclosed in the appraisal report.

Since Mr. Grogan's signature was not on the appraisal report, he was not allowed to testify in connection with the appraisal report.

At the hearing, the appellant's counsel argued that despite a dramatic economic decline the subject's assessment increased by 20.9% from 2008. Counsel noted the appellant did not contest the subject's land assessment of $84,482, which reflects an estimated market value of approximately $253,446.

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

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling $742,165 was disclosed. The subject's assessment reflects a market value of $2,237,459 or $407.78 per square foot of building area including land using the 2009 three-year average median level of assessments for Will County of 33.17%.

In response to the appeal, the board of review raised some concerns regarding the appellant's appraisal report. Additionally, Dale Butalla, Deputy Assessor for Homer Township, was called as a witness to refute various aspects of the appraisal report.

The board of review argued the appellant's appraiser mischaracterized the subject building as being 2 years old, when in fact the building was completed and an occupancy permit issued in March 2008, just nine months prior to the January 1, 2009 assessment date. Under the cost approach, the appraiser estimated the subject building suffered physical depreciation of 4% or $55,200 using the age life method of calculating depreciation because it is two years old. Notwithstanding the error of the subject's age, the board of review argued using the appraiser's depreciated building value of $1,324,800 and adding the subject's 2007 land sale of $1,175,000 equals $2,499,800, which is greater than its estimated market value of $2,237,459, as reflected by its assessment. The board of review argued land sale 4 under the cost approach was actually an improved office condominium, not vacant land. The board of review argued the appraiser misidentified land sale 5 as commercially zoned. The board of review argued land sale 5 sold with residential zoning, unlike the subject, but was rezoned for commercial use one and one-half years later. All the land sales were considerably larger in size than the subject. Under the income approach to value, the board of review argued rental comparable 2 needs clarification. The board of review claimed the lessee leases a small portion of the (bank) building at a reduced fee or there is a special interest. The board of review explained the lessee was the former owner, who sold to the new developer/owner. Rental comparable 3 is owner occupied, not leased. With respect to the sales comparison approach, the board of review argued three of the comparable sales are located in McHenry, Lake and Kane Counties. The board of review argued there were many banking facility sales within Will County. The board of review argued the appellant's appraiser mischaracterized comparable sale 5 as a bank because it is a jewelry store.

Under cross-examination, Butalla testified he spoke with the tenants or occupants of rental comparables 1 through 3 on November 18, 2009 regarding lease information. The occupant of rental comparable 1 confirmed the lease, but did not know the specifics. Rental comparables 2 and 3 are owner occupied and do not lease. However, rental comparable 3 leases approximately 1/3 of the basement space to a doctor. Butalla did not formally request their actual leases or speak with the owners.

In support of its contention of the correct assessment of the subject property the board of review called Dale Butalla, who was accepted as an expert witness to provide testimony.

Butalla first testified he requested the subject's actual construction costs[13] to substantiate the appraiser's cost approach.

The township assessor next analyzed eight suggested vacant land sales located from next door to 4 miles from the subject within Homer Township. The commercial zoned lots range in size from .78 of an acre to 2.47 acres or from 33,846 to 107,723 square feet of land area. The comparables sold from May 2005 to May 2010 for prices ranging from $500,000 to $2,100,000 or from $13.51 to $20.33 per square foot of land area. The assessor noted that land comparable 1, which is located next to the subject, sold in October 2009 for $2,100,000 or $19.49 per square foot of land area. Land comparable 1 contains some water detention area, inferior to the subject. Again, the subject's 1.17 acres or 50,790 square feet of land area sold in January 2007 for $1,175,000 or $23.14 per square foot of land area. The assessor argued the subject and comparable land sales demonstrate the appellant's appraiser's land value conclusion of $260,000 or approximately $5.00 per square foot of land area is not supported. The board of review also submitted copies of the Illinois Real Estate Transfer Declaration associated with each of the land sales.

Butalla next provided testimony in connection seven suggested improved comparable sales. The comparables are located throughout Will County. The comparables are improved with one-story masonry banking facilities that range in size from 1,600 to 6,777 square feet of building area that were constructed from 1978 to 2008. Property record cards associated with each property were submitted. Each comparable has drive-thru banking service. Comparable 3 has a basement. The comparable properties have sites that range in size from 1.04 to 1.72 acres or from 45,433 to 74,935 square feet of land area. Land to building ratios ranged from 8.51:1 to 46.83:1. The suggested comparables sold from February 2005 to June 2009 for prices ranging from $1,500,000 to $4,550,000 or from $356.56 to $937.50 per square foot of building area including land. The subject's assessment reflects an estimated market value of $2,237,459 or $407.78 per square foot of building area including land. The board of review argued the subject's assessment is supported by these similar comparable sales.

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

Under cross-examination, Butalla testified he believed the improved sales were between banking institutions. He did not know if there was any mandate by the FDIC or the Controller of the Currency. Butalla did not know if the sales included a business value, but the transactions were individual bank sales. Butalla testified he did not recall receiving the Real Estate Transfer Declaration associated with each sale[14]. The witness agreed comparable 1 sold in 2005; comparables 2 and 4 sold in 2006; and three comparables sold in 2007. Butalla agreed comparable 2 was leased at the time of sale. He did not know if any other comparables were

[13] The Board ordered and subsequently received the subject's actual construction contract. The contract, dated October 15, 2006, disclosed the costs to construct the subject banking building of $2,039,000.
[14] The Board ordered and subsequently received the Real Estate Transfer Declaration associated with each sale for review.

under a lease agreement. The location and surrounding of the comparables were also discussed. Butalla agreed the subject's location is not as "commercialized" as the comparables.

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 change in the subject's assessment.

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 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)).

In support of the overvaluation argument, the appellant submitted an appraisal of the subject property estimating a fair market value of $1,650,000 or $300.71 per square foot of building area including land as of January 1, 2009. The Property Tax Appeal Board finds that based on the valuation evidence contained in this record, the subject's land value is one of the main value considerations in this appeal, although the appellant did not request a change in the subject's land assessment. The Board finds the subject parcel consists of real property including both land and improvements thereon. In Showplace Theatre Company v. Property Tax Appeal Board, 145 Ill.App 3d. 774 (2nd Dist. 1986), the court held an appeal to the Property Tax Appeal Board includes both land and improvements and together constitute a single assessment. In accordance with Showplace, the Property Board Tax Appeal Board analyzed the subject's total assessment in making the determination on whether its assessment is reflective of fair cash value. The Board finds the conclusion of value contained in the appraisal submitted by the appellant not credible and was given no weight for several reasons.

The appellant's appraiser was not present at the hearing to provided direct testimony or be cross-examined regarding the appraisal methodology and final value conclusion. In Novicki v. Department of Finance, 373 Ill.342, 26 N.E.2d 130 (1940), the Supreme Court of Illinois stated, "[t]he rule against hearsay evidence, that a witness may testify only as to facts within his personal knowledge and not as to what someone else told him, is founded on the necessity of an opportunity for cross-examination, and is basic and not a technical rule of evidence." Novicki, 373 Ill. at 344. In Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887, 450 N.E.2d 788, 71 Ill.Dec. 100 (1st Dist. 1983) the appellate court held that the admission of an appraisal into evidence prepared by an appraiser not present at the hearing was in error. The court found the appraisal was not competent evidence stating: "it was an unsworn ex parte statement of opinion of a witness not produced for cross-examination." This opinion stands for

the proposition that an unsworn appraisal is not competent evidence where the preparer is not present to provide testimony and be cross-examined.

Additionally, in response to the appeal the board of review pointed out several un-refuted deficiencies contained within the appraisal report, which undermines the credibility, reliability and validity of the value conclusion. Foremost, the evidence contained in this record shows the subject lot was purchased in January 2007 for $1,175,000 or $23.13 per square foot of land area. The subject's land acquisition costs were not disclosed in the appraisal report and clearly undermine the appraiser's land value conclusion of $260,000 or approximately $5.00 per square foot of land area. Next, the Board finds the actual new construction costs for the subject building were $2,039,000. Again, this amount was not disclosed in the appellant's appraisal report. The Board further finds the subject's land acquisition and construction costs total $3,214,000 or $585.75 per square foot of building area including land. The subject's actual cost new cast further doubt on the appellant's appraiser's final value conclusion of $1,650,000 or $300.71 per square foot of building area including land. Additionally, the subject's total cost of $3,214,000 or $585.75 per square foot of building area including land lends support to the subject's estimated market value of $2,237,459 or $407.78 per square foot of building are including land as reflected by its assessment.

The Board further finds there are other aspects of the appellant's appraisal report that further detract from the final value conclusion. First, the Board finds the appraiser mischaracterized the age of the subject building as being 2 years old. The record clearly shows the subject building was completed and occupied in March 2008, less than nine months prior to the January 1, 2009 assessment date. The Board finds land sale 4 under the cost approach was actually an improved office condominium, not vacant land. The Board finds all the land sales used under the cost approach were considerably larger in size than the subject. Under the income approach to value, the Board finds the credible evidence and testimony indicate rental comparable 3 is owner occupied, not leased. With respect to the sales comparison approach, the Board finds it problematic that the appellant's appraiser utilized dissimilar comparable sales that are located in McHenry, Lake and Kane Counties. Based on this record, the Board finds there were many available banking facility sales more proximate in location within Will County for comparison to the subject.

The Board finds the board of review, through Butalla, presented sales information on seven suggested comparable banking facilities located throughout Will County to demonstrate the subject property was not overvalued. The Board gave less weight to comparables 1, 2 and 4. These comparables sold in 2005 or 2006, which are dated and less reliable indicators of fair market value as of the subject's January 1, 2009 assessment date. In addition, comparable 2 was a sale leaseback (leased fee) transaction and comparable 4 was considerably older in age and smaller in size when compared to the subject.

The Board finds the remaining four comparables are more similar when compared to the subject in location, use, age, land area, building size, exterior construction and features. These properties sold from January 2007 to June 2009 for prices ranging from $1,649,385 to $4,550,000 or from $356.56 to $902.01 per square foot of building area including land. The subject's assessment reflects a market value of $2,237,459 or $407.78 per square foot of building area including land. The Board finds the subject property's estimated market value falls at the

lower end of the range established by these raw sale prices. Additionally, three of the four properties sold for prices significantly above the appellant's appraiser's estimated value of $1,650,000 or $300.71 per square foot of building area, including land, which further demonstrates the appraiser's opinion of value is not credible.

Based on this record, the Board finds the appellant failed to demonstrate the subject property 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 Velasquez**
DOCKET NUMBER:	**07-04084.001-C-2**
DATE DECIDED:	**April, 2012**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property consists of a 22,466 square foot site improved with a three-story masonry constructed, garden type walk-up apartment building, built on a slab foundation, that contains approximately 8,446 square feet of gross building area and 6,700 square feet of net rentable area. The subject has 9 apartment units composed of 7 one-bedroom units and 2 two-bedroom units. The subject building also has laundry and storage rooms. Additional on-site improvements include a concrete paved open parking lot for 19 vehicles. The subject has a land to building ratio of 2.66:1. The subject property is located at 1058 South York Road, Bensenville, Addison Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted a narrative appraisal prepared by real estate appraisers Arthur Murphy and Genadi Dvorkin of Urban Real Estate Research, Inc., which was marked as Appellant's Exhibit No. 1. The appraisers estimated the subject property had a market value of $420,000 as of January 1, 2007.

At the hearing the appellant called as its witness Arthur J. Murphy, a state certified general appraiser who also has the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute. The witness was accepted as an expert and allowed to give opinion testimony.

At page 17 of Appellant's Exhibit No. 1 the report stated the subject property was purchased in September 2004 for a price of $890,000. The report stated this price included both the real estate value and an investment value. The report also indicated the current improvement is highest and best use of the subject property as improved. (Appellant's Exhibit No. 1, page 55). In estimating the market value of the subject property the appraisers developed the three traditional approaches to value. Although not testified to in detail at the hearing, the Property Tax Appeal Board will summarize the approaches to value developed by the appraisers.

Under the cost approach to value the appraisers first estimated the land value using three land sales located in Elmhurst and Bensenville. The land comparables ranged in size from approximately 10,113 to 20,000 square feet and sold from May 2005 to January 2008 for prices ranging from $168,000 to $333,000 or from $16.65 to $17.60 per square foot of land area. The appraisers estimated the subject site had a land value of $16.00 per square foot of land area or $360,000, rounded.

The appraisers next estimated the replacement cost new of the improvements using the *Marshall Valuation Computerized Cost Service* to be $865,259, which included indirect costs and an entrepreneurial incentive. Physical depreciation was estimated to be 66% using an effective age of 33 years and a 50 year economic life. The appraisers made no deduction for functional

obsolescence due to the fact that replacement cost was used. The appraisers were of the opinion the subject suffered from economic obsolescence in the amount of $256,615 or 29.65% of the replacement cost new based on their conclusion the subject's potential income is insufficient to provide an acceptable rate of return for the land and improvements. Total depreciation was estimated to be $827,586, which was deducted from the cost new to arrive at a depreciated building value of $37,673. To this the appraisers added $15,575 for the depreciated value of the site improvements and the estimated land value of $360,000 to arrive at an estimated value under the cost approach of $410,000, rounded.

The second approach to value developed by the appraisers was the income approach to value. The first step was to estimate the subject's potential gross income using four rental comparables located in Bensenville. These comparables had monthly rental rates for one-bedroom apartments ranging from $610 to $735; the subject's actual rent for one-bedroom apartments was from $725 to $735 per month. These comparables had monthly rental rates for two-bedroom apartments ranging from $670 to $885; the subject's actual rent for two-bedroom apartments was from $800 to $880 per month. The appraisers estimated the subject property would have a market rent of $730 per month for the one-bedroom apartments and $850 per month for the two-bedroom apartments resulting in a total annual potential gross income of $81,720. The appraisers also added $700 to account for the subject's laundry annual income to arrive at a total gross potential income of $82,420.

From this amount 9% was deducted to account for vacancy to arrive at an effective gross income of $75,065. This deduction was based on the subject's historical weighted vacancy from 2004 through 2006 and Institute of Real Estate Management (IREM) statistics. Using the subject's historical income and expenses, 2007 IREM market data for garden apartments in the Chicago Metropolitan Area and expenses from comparables, the appraisers estimated the subject property would have expenses of $30,128. Deducting expenses resulted in a net operating income of $44,937.

The final step was to estimate the capitalization rate using the band of investment method. The appraisers estimated the subject would have a 65% loan to value ratio. They further estimated the subject would have a 6.10% interest rate on the loan and an 11% return on the equity component resulting in a capitalization rate of 9.5%. To this the appraisers added 1.8% for the tax load to arrive at a loaded capitalization rate of 11.3%. Capitalizing the net income resulted in an estimated value under the income approach of $400,000.

The final approach developed by the appraisers was the sales comparison approach to value using three comparable sales. The comparables were located in Northlake, Franklin Park and Bensenville. The comparables were improved with two-story or three-story apartment buildings ranging in size from 6,320 to 20,590 square feet of building area. The buildings were constructed from 1967 to 1975 and had from 10 to 29 units. The sales occurred from January 2004 to October 2007 for prices ranging from $550,000 to $1,950,000 or from $45,000 to $67,241 per unit and from $81.82 to $94.71 per square foot of building area. The appraisers considered comparable sales #1 and #2 to be overall similar to the subject while comparable #3 was considered superior to the subject. Based on these sales the appraisers estimated the subject property had an estimated value under the sales comparison approach of $50,000 per apartment unit or $450,000.

In reconciling the three approaches to value the appraisers indicated within the report that the income approach was given primary emphasis, the sales comparison approach was given secondary consideration and the cost approach was given the least weight. In conclusion the appraisers estimated the subject property had an estimated market value of $420,000 as of January 1, 2007.

At the hearing Murphy discussed the location of the comparable sales and indicated they were located from approximately ½ mile to approximately 4 miles from the subject property. He also testified the subject is located across the street from a shopping center and near subsidized housing. Using Appellant's Exhibit No. 3, three aerial photographs depicting the subject property and its neighborhood, Murphy testified the subject property has a narrow lot with surplus land in the back. He also identified the location of the shopping center and the subsidized housing, which he was of the opinion had a negative impact on the subject property.

With respect to comparable sale #3, located on York Road in Bensenville, Murphy testified this property is located in a lovelier residential area and does not have the shopping center. He further testified this comparable had balconies on the second floor and more greenery, thus it is in a better location. For these reasons the appraiser thought this comparable was superior to the subject property.

The witness also explained that the owner purchased the subject property due to the size of the site and with the idea of constructing an additional building on the unpaved rear section.

Under cross-examination Murphy agreed that he did not personally inspect the subject property. With respect to the sale of the subject property, Murphy stated he did not have a personal conversation with the owner regarding the reason he paid what he did for the property. The witness also indicated that the reference to the Chicago market in the report was the result of a "cut and paste" in the wrong spot.

Murphy was questioned with respect to the statement on page 40 of the appraisal stating in part, "the subject suffers from a low degree of physical depreciation." He stated this means the property was in good shape. However, on page 66 of the appraisal a deduction of 66% was made for physical depreciation, which Murphy agreed was high.

With respect to the capitalization rate applied in the income approach, Murphy was questioned about the statements on page 106 of the appraisal that various published sources had reported capitalization rates averaging from 6.0% to 7.03%, yet the appraiser estimated a capitalization rate of 9.5% for the subject property. He explained the rates were for good investment-type properties; however, he considered the subject not to be a good investment-type property. Murphy did agree that the capitalization rate is a little too high.

With respect to comparable sale #1 located in Northlake, the appraiser stated that this property was not located in DuPage County but in Cook County. This comparable sold in 2007 and was indicated to have a capitalization rate of 8%. The appraiser stated that sale #2, located in Franklin Park, was not in DuPage County. Sale #3, located on York Road in Bensenville, is located in DuPage County. This property sold in 2004 and Murphy indicated a slight upward

adjustment would be need for 2007. The appraiser was of the opinion that the market for these types of properties got better from 2004 to 2007.

Murphy also agreed that page 11 of the appraisal makes reference to an addendum that accompanies the appraisal report with respect to a description of market value for ad valorem appraisal assignments, but the addendum was not attached to the appraisal or otherwise submitted. The appraisal at pages 13 and 14 also makes reference to the addendum that was not otherwise submitted.

The board of review submitted its "Board of Review Notes on Appeals" wherein its final assessment of the subject property totaling $262,490 was disclosed. The subject's assessment reflects a market value of $789,206 or $87,690 per apartment and $93.44 per square foot of building area, including land, when applying the 2007 three year average median level of assessments for DuPage County of 33.26%.

At the hearing the board of review called as its witness Frank Marack, Jr., Chief Deputy Assessor of Addison Township. In support of the assessment the witness submitted a list of six comparable sales of apartment buildings that were located in Bensenville. The comparables were improved with two and three story buildings of masonry construction that ranged in size from 3,456 to 19,695 square feet of building area. The comparables had from 4 to 18 apartments and were built from 1960 to 1989. These properties had sites that ranged in size from 4,773 to 55,392 square feet of land area resulting in land to building ratios ranging from .86:1 to 3.10:1. The sales occurred from January 2005 to September 2006 for prices ranging from $480,000 to $1,350,000 or from $70,139 to $120,000 per apartment and from $64.10 to $138.89 per square foot of building area, including land. Marack testified that the comparables are located within 1½ miles from the subject and comparable #1, located at 1040 S. York Road, Bensenville, is 245 feet north of the subject property.

Marack testified that the subject's assessment reflects a market value of $787,548 or $87,505, when applying the statutory level of assessment of 33 1/3%, which is within range established by the comparable sales. The deputy assessor was also of the opinion the subject did not have excess land. The witness also agreed the subject property sold in September 2009 for a price of $890,000 or $98,889 per unit, which is greater than the market value as reflected by the assessment.

Under cross-examination Marack agreed that his comparable sale #5, 1003 Argyle Street, was converted from an apartment building to a condominium after the sale. He also testified that his comparable sale #1 had a detached two-car garage and that comparable sale #4 was 17 years newer than the subject building.

Under redirect examination Marack stated he did not know the apartment mix for comparable #1; comparable #2 had 3 one-bedroom units and 3 two-bedroom units; comparable #3 had 2 one-bedroom units and 4 two-bedroom units; he did not know the apartment mix for comparable #4; comparable #5 had 14 one-bedroom units and 4 two-bedroom units; and comparable #6 and 9 one-bedroom units had 9 two-bedroom units. He also testified that comparable #4, located at 234 George Street, also had a 2,280 square foot detached garage.

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. 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 did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The record contains an appraisal of the subject property submitted by the appellant and comparable sales provided by the board of review. Additionally, both parties agreed the subject property sold in September 2009 for a price of $890,000 or $98,889 per unit and $105.38 per square foot of building area, including land. The subject's assessment reflects a market value of $789,206 or $87,690 per apartment and $93.44 per square foot of building area, including land, when applying the 2007 three year average median level of assessments for DuPage County of 33.26%.

After considering the testimony of the witnesses and the evidence presented by the parties, the Board finds the comparable sales submitted by the board of review are the best evidence of market value in the record. The six sales provided by the board of review were improved with apartment buildings located in Bensenville that had varying degrees of similarity to the subject property. The comparables were improved with two and three story buildings of masonry construction that ranged in size from 3,456 to 19,695 square feet of building area. The comparables had from 4 to 18 apartments and were built from 1960 to 1989. These properties had sites that ranged in size from 4,773 to 55,392 square feet of land area resulting in land to building ratios ranging from .86:1 to 3.10:1. The sales occurred from January 2005 to September 2006 for prices ranging from $480,000 to $1,350,000 or from $70,139 to $120,000 per apartment and from $64.10 to $138.89 per square foot of building area, including land. The subject's assessment reflects a market value of $789,206 or $87,690 per apartment, which is within the range established by these comparable sales.

The Board finds the comparable most similar to the subject in number of units and land area was board of review comparable #4, located at 234 George Street, which sold in September 2006 for a price of $921,500 or $115,188 per unit, which is significantly above the unit value of the subject property as reflected by the assessment. The comparable most similar to the subject in location was board of review comparable #1 located at 1040 S. York Road, 245 feet north of the subject, which sold in May 2005 for $480,000 or $120,000 per apartment unit, significantly above the unit value of the subject property as reflected by the assessment. As a final point, the Board finds the subject's September 2009 purchase price of $890,000 or $98,889 per unit is significantly above the market value reflected by the assessment of $789,206 or $87,690 per apartment unit.

In light of these sales and further considering the sale of the subject property, the Board finds the appraised value of $420,000 or approximately $46,667 per apartment unit is not credible.

Based on this record the Property Tax Appeal Board finds the assessment of the subject property is not excessive in relation to the market value of the property as reflected by the assessment. In conclusion, the Board finds the assessment of the subject property as established by the board of review is correct and a reduction in the assessment is not justified.

2012 COMMERCIAL CHAPTER

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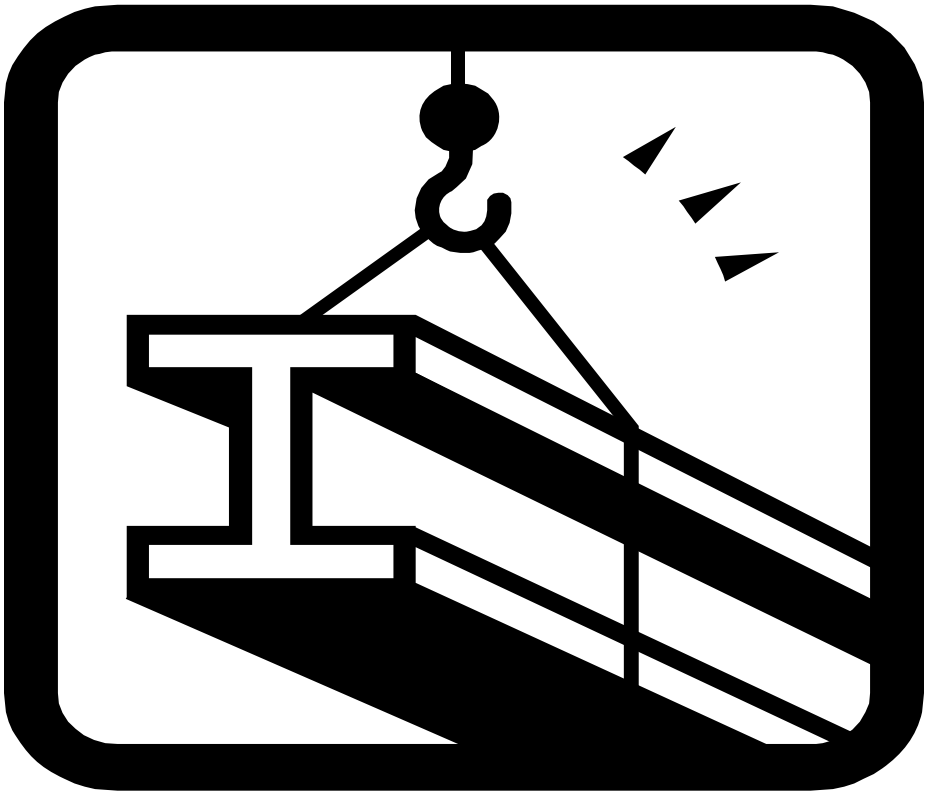
[Items Contained in Italics Indicate
Arguments or Evidence in Opposition to the Appellant's claim]

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2012 INDUSTRIAL DECISIONS



PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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2012 INDUSTRIAL CHAPTER

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APPELLANT:	**Cognis Corp.**
DOCKET NUMBER:	**07-02813.001-I-3 thru 07-02813.003-I-3**
DATE DECIDED:	**September, 2012**
COUNTY:	**Kankakee**
RESULT:	**Reduction**

For purposes of taking oral testimony and evidence at hearing the Property Tax Appeal Board, without objection, consolidated 06-01808.001-I-3 through 06-01808.007-I-3 and 07-02813.001-I-3 through 07-02813.003-I-3 pursuant to Property Tax Appeal Board rule 1910.78 (86 Ill.Adm.Code 1910.78).[1] A separate decision will be issued for each appeal.

The subject property consists of three parcels of land improved with a multi-building industrial facility. The subject contains approximately 74 buildings.[2] The buildings range in size from one-story to five-story with two of the buildings having a basement. The plant was originally constructed in 1948 with multiple additions being added from 1948 to 2005. The subject contains 586,760 square feet of building area. The original buildings, constructed in 1948 are of brick construction and consist of the main office, a quality control lab and several smaller buildings. Fifteen of the buildings are constructed with insulated metal panel walls and were built between 1971 and 2005. These buildings include a warehouse, a sulfation building and a polyamides (solids packaging) building. Nineteen buildings of concrete block construction were built between 1948 and 1993. In addition, there are 11 steel framed buildings that were built between 1948 and 1978. These buildings include a bulk storage building and the "BEEP" building. There is also 13 steel framed buildings that were built between 1948 and 1997, which include the sulfation drumming building and the sulfation building. A materials management building, containing 125,930 square feet of building area was constructed in 1952 with an addition in 2005. This building was constructed of steel frame with brick and steel exterior walls and contains a sprinkler system. The majority of buildings (90%) have a clear ceiling height of approximately 18 feet with the remaining 10% having a clear ceiling height of approximately 12 feet. There are office areas located throughout the plant in six different buildings. The total office space is 31,301 square feet of air-conditioned building area. Heat and air-conditioning is provided by four boilers. In addition, the plant contains 25 loading docks. The subject is located in Kankakee Township, Kankakee, Illinois.

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 summary appraisal report prepared by J. Edward Salisbury of Salisbury and Associates, Inc. Real Estate Appraisers and Consultants. Salisbury estimated the subject property had a market value of $6,700,000 as of January 1, 2006. Salisbury was called as a witness on behalf of the appellant.

[1] At hearing, appellant's counsel agreed that only three parcels were under appeal, 16-17-18-100-009, 16-17-18-100-013 and 16-17-18-300-002.

[2] During the hearing, the board of review was requested by the hearing officer to submit information regarding the correct number of buildings. Information received from the Kankakee County Assessor's Office depicts the subject contains approximately 74 buildings which includes two guard shacks. However, it was pointed out that some buildings, which may appear as one, are actually two buildings with a shared common wall.

Salisbury testified that he has been involved in property tax for 35 years and has appraised hundreds of properties. Salisbury has a Certified Assessment Evaluator ("CAE") designation from the International Association of Assessment Officers ("IAAO"). He is also a senior instructor with "IAAO."

Salisbury began his testimony explaining various errors he discovered within his appraisal report. The errors included identifying that the purpose of the report was not for valuing part of a trust, but rather, for valuing the property for property tax purposes; the intended user was meant to be Cognis, not Miller Container; there was a population increase in the County population and not necessarily in the community; Building number 82 (appraisal page 35) should indicate a year built of 1969 and building number 115 should indicate a construction date of 1997. In addition, an error was made on the weighted age calculations on page 36 of his report. The size of the first building should be 59,851 and not 60,305. This error caused a change in the weighted age from 5.96 on that building to 5.92. For the year labeled 1958, it should read .43 instead of .76, 1992 should be .04 and not .41, 1993 should be .01 instead of .09, 1994 should be .04 and not .44, 1996 should be .09 and not .91 and 2005 should be .02 instead of .24. As a result of these changes the weighted age should be 39.69 or 40 years, rounded, instead of 42. Further errors included the estimate of depreciation for sales comparison #4. The depreciation for this comparable should be 75.6 and not 95.6. Regarding sale #7, Salisbury testified that the sales information shown in the report is correct, however, the information is about a prior sale of that property. The property actually sold twice and the first sale occurred in 1998. On page 35 of his report, sale #1 indicates 40 years of age when it should be 35. Sale #3, on page 60 of his report incorrectly states a size of 540,455 square feet of building area, when it should have included a mezzanine area which changes the size to 579,735 square feet of building area. The corresponding price per square foot for this comparable would change from $3.87 to $3.91. On page 73 the age for listing #1 should read 30 years. On page 76 of his report wherein he discusses his adjustments, the age and condition explanation was not changed to reflect the pluses and minuses shown on page 75. On page 78, Salisbury's report indicates some weight was given to the income approach; however, this should have been removed because the income approach was not utilized in this report. Salisbury testified that these changes, made at hearing, do not influence or change his estimate of value for the subject.

Salisbury testified that the subject contained 96.3-acres of land area with 42.95-acres being excess land area. The original buildings, out of approximately 67 buildings, were built in 1948 with numerous additions from 1948 to 2005. The majority of buildings are one-story, however, they range up to five stories in height. Salisbury opined that the subject is unique in the sense that it has a large number of non-connected smaller buildings. Salisbury's report (page 39) depicts the present use of the site as though vacant is the highest and best use. As improved, Salisbury determined the highest and best use for the subject to be for continued industrial use. He analyzed all three traditional approaches to value in estimating a value for the subject; however, he ultimately used only the cost approach and the sales comparison approach.

Salisbury did not use the income approach to value because he felt the subject contained a great number of separate buildings in a very large complex. Because of this, he did not believe a tenant could be found to rent the entire complex. The complex would have to be broken down

into smaller components and trying to estimate the market rent for each of those components would be very difficult.

One of the approaches to value developed by Salisbury was the cost approach. Salisbury examined three land sales located in Manteno, Illinois, and five sale listings located in Kankakee, Illinois. The three sales ranged in size from 13.06 to 117.61-acres and sold in either April 2000 or March 2002 for prices ranging from $224,250 to $1,800,000 or from $15,305 to $17,170 per acre. The five sale listings ranged in size from 30 to 160-acres and were listed from January 2006 to August 2007 for prices ranging from $900,000 to $4,560,000 or from $21,600 to $30,000 per acre. The land sales were given a positive adjustment for market conditions at time of sale; sale #1 and listings #2, #3 and #5 were adjusted upward for size. Based on these adjustments, Salisbury concluded a value for the subject's building site (53.88-acres) and excess land (42.95-acres) of $20,000 per acre, for a total estimated land value of $1,940,000, rounded.

For the subject's improvements, Salisbury used Marshall Swift. He considered the buildings to be light manufacturing, average steel. He calculated a final square foot cost for the subject of $42.06 which was then multiplied by the square footage of 586,760 and added to the lump sum adjustments for fencing, roadways, parking areas, and sidewalks to estimate a replacement cost new for the subject improvements of $26,444,126. For depreciation, Salisbury utilized a market abstraction method by examining sales #2, #3, #4, #7 and #8.[3] The indicated range was 2.11% to 3.78% of depreciation per year. Salisbury used 2% depreciation per year for the subject. He then multiplied this 2% per year depreciation for the subject's improvements by the weighted age (42 years) which indicated a depreciation rate of 84% from all causes. After applying this rate to the subject's replacement cost new of the improvements ($26,444,126) and adding in the land value ($1,080,000) indicated a market value for the subject by the cost approach of $5,300,000. He then added the excess land value ($860,000) to this estimate for a total estimate of value for the subject using the cost approach of $6,160,000.

The next approach developed by Salisbury was the sales comparison approach. Salisbury examined eight improved sales and one sale listing located from 115 to 215 miles from the subject. The eight sales were located in Freeport, Centralia, Effingham, Loves Park, Danville, Galesburg, Milan and Decatur, Illinois. The sale listing was located in Salem, Illinois. The sales ranged in size from 309,000 to 935,322 square feet of building area; ranged in age from 21 to 46 years old; and contained from 12.68 to 103.36-acres of land area. These properties had land-to-building ratios ranging from 1.59:1 to 8.98:1 and office space ranging from 0.0% to 20.65%. These properties sold from January 2002 to June 2007 for prices ranging from $900,000 to $8,000,000 or from $2.91 to $12.67 per square foot of building area, including land. The 30 year old sale listing was improved with a 685,620 square foot building, contained 60.65-acres of land area, a land-to-building ratio of 3.85:1 and 7.0% of office area. This property was listed for sale in May 2007 for $6,300,000 or $9.19 per square foot of building area, including land. The subject was depicted as a 42 year old improvement containing 586,760 square feet of building area, 53.88-acres of land area, and a land-to–building ratio of 4.00:1 with 5.33% office space. The comparables were adjusted for market conditions at time of sale, location, building area, land-to-building ratio, age and condition. After analyzing the factors affecting value, Salisbury concluded a price of $10 per square foot of gross building area for the subject was

[3] Sale #7 is a previous sale that occurred to that property.

appropriate. He then multiplied this amount by 586,760 square feet to estimate a total market value for the subject's building site and improvements of $5,870,000. He then added in the value of the excess land ($860,000) to arrive at an estimated value for the subject by the sales comparison approach of $6,730,000 or $6,700,000, rounded, as of January 1, 2006. Salisbury testified that he did not appraise the subject property for January 1, 2007; however, he did not believe the value would be higher than $6,700,000. Salisbury testified that there has been a decrease in value of industrial property since 2000.

During cross-examination, Salisbury acknowledged that on page 52 of his report he used data from a 1998 sale of comparable #7 to compute depreciation and data from a 2005 subsequent sale of the same property with respect to estimating a value for the subject from sale #7. Salisbury agreed that if he had used the 2005 sale for this comparable to calculate depreciation, it would have changed the result. Salisbury agreed that had he used the 40 years weighted age instead of the 42 years that he used, it would have increased the value of the subject greater than the estimated $6,700,000 he calculated in the cost approach.

Upon questioning from the hearing officer, Salisbury testified that when he selected the 2% rate of depreciation, it was based on an age for the subject of 42 years. If he had used 40 years, which he may have, he might have used a little higher depreciation rate, which would have decreased the value of the subject property by 2%.

Salisbury was also question regarding the arm's-length nature of sale #3. The Real Estate Transfer Declaration sheet depicts this property was not sold or advertised using a real estate agent. Salisbury also acknowledged that comparable sale #3, which is depicted as having a sale date of January 2006, also had a sale in March 2007 for $4,194,477 or for $7.77 per square foot of building area, including land. This subsequent sale was not shown or discussed in the appraisal report. Upon questioning about this sale from the hearing officer, Salisbury testified that this subsequent sale regarding comparable #3 was not an arm's-length transaction because the parties to the sale were related.

Salisbury testified that when finding comparables, the first thing he does is try to find sales in communities that are located on an interstate. Then, he looks at a number of other features. Salisbury stated that for industrial and bigger stores or unique properties the market area expands.

Salisbury explained that with abstracted depreciation a person would start with the sale price of the property and then subtract the land value. In each of the sales he used, Salisbury had land sales in each of those communities to estimate land value. He then multiplies the estimated the land value by the number of acres in that property to get the land value which he then subtracts from the sale price.

On re-direct, Salisbury testified that comparable sale #8 received a lower land value estimate because the surrounding land area is wooded with a ravine and creek. In addition, even though it is 103-acres, it has only 20 to 25-acres which are usable. Salisbury further testified that land values for industrial property in Decatur are generally significantly higher than the estimated $8,000 per acre he used for this property. Based on this evidence, the appellant requested a reduction in the subject's assessment commensurate with the appraised value of $6,700,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment for each parcel was disclosed as follows:

P.I.N.	Land	Improvements	Total
16-17-18-100-009	85,368	4,300,637	$4,386,005
16-17-18-100-013	44,794	2,335,418	$2,380,212
16-17-18-300-002	116,582	371,509	$488,091

For 2007 the subject parcels under appeal had a total assessment of $7,254,308, which reflects a market value of approximately $21,752,047 for 2007 using the three-year average median level of assessments for Kankakee County of 33.35%. The board of review deferred to the intervenors for the presentation of evidence in support of the subject's assessment.

The intervenors, City of Kankakee and Kankakee School District No. 11 submitted a summary appraisal report prepared by Dale Kleszynski of Associated Property Counselors, Ltd. Kleszynski estimated the subject property had a market value of $15,000,000 as of January 1, 2006. Kleszynski was called as a witness on behalf of the intervenors.

Kleszynski is president of Associated Property Counselors Limited, a real estate appraisal and consulting firm. He has been an appraiser and consultant since 1977. Kleszynski is an Illinois licensed real estate appraiser as well as being licensed in Indiana and Michigan. Kleszynski obtained his MAI certified appraiser designation in 1984. He was also awarded with the SRA designation from the Appraisal Institute. Kleszynski is a past president of the Chicago chapter of the Appraisal Institute and served as a board member of the Board of Directors. He has been a member of the Executive Committee and chaired a committee of the General Appraisal Board. Kleszynski testified that the General Appraisal Board set the standards for education and admissions for those seeking the MAI designation. In addition, Kleszynski developed the litigation series for the Appraisal Institute including sections on eminent domain and various problems in appraising real estate for purposes of litigation. During his career, he has prepared thousands of appraisals. He has appraised real estate ranging from residential to special purpose parcels, including chemical processing plants. He has appraised factories, asphalt plants, airports, single family subdivisions, general industrial, commercial and office buildings. Recently, he has been appraising properties in the six collar counties of Chicago, Indiana, Michigan and Wisconsin. Kleszynski testified that in the last five years he has appraised hundreds of industrial properties. During his career, he believes he has appraised almost every major manufacturing facility in the Kankakee area.

Kleszynski inspected the interior and exterior of the subject property on September 29, 2008. In addition, he obtained data from the appraisal previously prepared by Salisbury on the subject along with data from the assessor's records. He also examined a layout of the facility during his inspection. Kleszynski described the subject as being located in a predominantly industrial area with vacant acreage and agricultural land being located beyond it. Kleszynski testified the subject contains 71 industrial buildings after examination of the list provided to him and after looking at the site plans. He found the vast majority of buildings are one-story, however, there are mezzanine areas and two-story buildings located throughout the complex. In addition, the

subject contains storage area used for general warehousing; off-street and gated parking, 5.33% of office space or approximately 31,300 square feet. Kleszynski further testified the subject has ceiling heights in the office area ranging from 8 to 10 feet and from 10 to 30 feet in the manufacturing and storage areas. Kleszynski recalls the subject has an alarm system and is fully sprinklered. He did not verify if each building was sprinklered. Kleszynski described the subject as an integrated system for manufacturing chemical products. The subject site, described as a self-contained facility, contains on-site water, a material handling system and a water treatment plant. Kleszynski testified that even though the buildings are free-standing, within the buildings there are interconnected processes that provide steam, electrical and various products from one building to another. In addition, he found a significant number of storage tanks.

Kleszynski concluded an average age for the improvements to be 40 years old. Kleszynski identified excess land, approximately 42.95-acres, as being that property that is farmed located adjacent to the subject property. Kleszynski described the subject as being well maintained, in average to good condition, with no significant signs of deferred maintenance. He considered the subject to be industrial to heavy industrial because there are a number of processes occurring in each one of the buildings with certain areas being allocated for storage. Kleszynski testified that the predominant applications at the property were manufacturing and chemical in character. In addition, during his inspection, he observed that the construction of the individual buildings were such that the floor loads were heavy because of the number of tanks located on those floors. Further, he found that the superstructure did not contain light steel, but, were more reflective of things he has seen in competitive chemical processing plants and other heavy manufacturing facilities.

Kleszynski evaluated the subject property in fee simple estate. He found the highest and best use of the subject property as vacant was for industrial development consistent with its current use as well as area development patterns, which were industrial in character. Kleszynski testified that the highest and best use of the subject property as improved is its current use. In estimating a value for the subject property, Kleszynski developed a cost approach to value as well as a direct sales comparison approach to value. Kleszynski did not develop an income approach to value because he opined that the subject was somewhat specialized in character. In addition, he testified that the physical characteristics of the subject do not lend it to being a leased property. He has found that property similar to the subject is traditionally owner occupied and developed so that the application that will be occurring there can be completed in accordance with their specifications.

Under the cost approach to value, Kleszynski first estimated the value of the land as if it were vacant and available for sale. He researched six comparable land sales located in the subject's market area. The land sales were located within the municipality of Kankakee as well as the area outside of Kankakee. Kleszynski testified that land sales in Kankakee would best reflect the interaction between buyer and seller of industrial land in the subject area. He stated he considered excess land when selecting the land sales and making adjustments. The six land sales were located in Kankakee, Illinois and ranged in size from 5.01 to 217.35-acres. They sold from May 2003 to November 2006 for prices ranging from $125,000 to $3,056,518 or from $14,063 to $36,393 per acre. The land sales were adjusted for date of sale and size. Kleszynski felt no other adjustments were required. Based on these adjustments, Kleszynski concluded a value for the

subject's land area of $22,000 per acre, for a total estimated land value of $2,130,260 or $2,130,000, rounded.

For the subject's improvements, Kleszynski reviewed the Marshall Valuation Service material to estimate actual reproduction cost new for the subject. He considered the buildings to be industrial, instead of light industrial as used by Salisbury. This was based on his observations of the property characteristics during his inspection and as reviewed using the data from Marshall Swift. He utilized a base industrial manufacturing cost of $41.50 per square foot of building area indicated in Marshall Swift and verified that amount with internal files from his office in which he had been involved with appraisals of newly constructed industrial facilities. After making adjustments for physical characteristics such as story height, number of stories, perimeter size, height and size, local costs and miscellaneous factors, he estimated an adjusted cost price of $46.42 per square foot of building area.

For depreciation, he relied on his inspection and considered the buildings were constructed between 1948 and 2005. He found the improvements appeared to be very well maintained and that the owner had taken steps to properly maintain the improvements; thereby, it was his opinion that the effective age of the property was approximately 35 years. Based on the maintenance he observed he concluded the subject's total life was at least 70 years or longer. Kleszynski testified that during his inspection, some of the buildings were 60 years old and appeared very well maintained. In addition, during his tour, the person escorting him indicated the owner maintained the building to accommodate the ongoing use and that when things need to be done, they were done. Kleszynski used the age-life method to calculate the subject's depreciation. The effective age of 35 years was applied to the 70 years expected life which indicated physical depreciation of 50%. Kleszynski further testified that he did not use the extraction method to determine depreciation because it lacked credibility in this particular instance. He explained that because the subject contained approximately 71 buildings, a person would have to do 71 cost approaches for each one of the buildings in order to get the estimated reproduction cost new of each building. In addition, he found the subject to be a specialized property, and therefore, the application of the extraction method loses credibility. Kleszynski testified that the extraction method of depreciation is not an appropriate tool in this instance. Kleszynski found the subject contained 10% functional obsolescence because the 71 buildings have varying ceiling heights, various applications and various dock doors. He found the subject to be a unique property designed for the ongoing application that is occurring. Kleszynski found a certain level of functional obsolescence was built into the subject property when compared to a more traditional industrial manufacturing or distribution center. He found no economic obsolescence because there were no identifiable factors such as an oversupply of labor, bad transportation or things of that character impacting the subject.

Kleszynski estimated the reproduction cost new of the improvements to be $27,237,399. Depreciation of 60% from all causes was subtracted to arrive at a depreciated value of the improvements of $10,894,960 to which depreciated land values of site improvements of $500,000, a lump sum adjustment of $2,000,000 for infrastructure, tanks, etc., and a land value of $2,130,000 were added to indicate a total estimated value by the cost approach of $15,524,960 or $15,525,000, rounded.

The next approach developed by Kleszynski was the sales comparison approach. Kleszynski examined six industrial buildings and industrial complexes. The comparables were located in Kankakee, Joliet, Matteson, Sauk Village and Wilmington, Illinois. The furthest sale was in Joliet, approximately 40 miles from the subject. Kleszynski felt there were sufficient sales data in the subject's immediate area, and therefore, he did not need to search 150 or 200 miles from the subject. He found the sales from several databases, internal files, public records, CoStar Comps and LoopNet. In addition, Kleszynski testified that he has an ongoing relationship with the primary brokers operating in Kankakee.

The six sales consisted of industrial complexes that were built from 1961 to 1981.[4] The comparables contained from 14.11 to 264-acres of land area; had building areas ranging from 144,000 to 2,877,165 square feet with land-to-building ratios ranging from 2.21:1 to 13.80:1. Kleszynski verified the arm's-length nature of the sales comparables. The comparables sold from February 2003 to January 2007 for prices ranging from $3,250,000 to $68,596,000 or from $20.80 to $25.48 per square foot of building area, including land.[5] The comparables were adjusted for date of sale, land-to-building ratio, building area and physical variations when compared to the subject. Based on the adjustments, Kleszynski estimated a unit value for the subject improvements of $14,082,240 or $24.00 per square foot of building area, including site value, before consideration of the subject's excess land. Kleszynski then added the estimated value of the excess land ($944,900) for a total estimated value of the subject using the direct sales comparison approach of $15,027,140 or $15,000,000, rounded, as of January 1, 2006.

In reconciliation of the approaches he used, Kleszynski testified that he placed the greatest amount of weight on the direct sales comparison approach to value in formulating his final value conclusion. Kleszynski felt he had several very good sales that were heavier industrial type facilities that consisted of multiple buildings on large tracts of ground. He testified that these sales were most reflective of the subject property and the strength of those transactions was greater or better than the cost approach to value. The multi-building sales were comparables #2, #3, #4 and #6.

During cross-examination, Kleszynski acknowledged that improved sale #1, as depicted in his appraisal, was not an arm's-length transaction. Kleszynski was also questioned regarding sale #2, which counsel indicated was a sale transaction involving a lease. Kleszynski considered sale #2 to be a market transaction based on a sworn statement that "the consideration paid was a fair reflection of the fair market value as of the sale date." Kleszynski further testified that his opinion was based on what he had learned from the grantor, Center Point Properties. Kleszynski further acknowledged that sale #4 was partially leased at time of sale. Kleszynski reiterated that sale #4 was a fee simple estate transaction. Kleszynski considered the subject property to be self-contained meaning it had its own water treatment facility and electrical transformers. He also considered sale comparables #2, #3 and #6 as being close examples of self-contained properties. Kleszynski testified that he does not agree with the general statement that if property is sold, which contains a lease, is more valuable than one sold without a lease. Kleszynski explained that if property is leased in part or in whole and it is leased at a market level and it

[4] Sale #3 was rehabbed in 1992 and sale #6 was rehabbed in 1984.

[5] Kleszynski made various changes to sale comparable #1 which actually sold in September 2006. The sale price for this property did not change as a result of the errors.

sells for a market price that is consistent with other transactions, then the sale of the leased fee estate contributes nothing additional to the transaction. He did not believe the leased sales used in his appraisal diminished their arm's-length nature, because they were representative of the market based on his verification after examination of the transfer declaration sheets, consultations with the grantors and examination of other sales. Kleszynski testified that based on his knowledge of the market, he concludes that the value for the subject in 2006 would be the same in 2007 with no variation between those two points in time and based on his expert opinion the value of $15,000,000 for January 1, 2006 would also apply for January 1, 2007.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record as submitted by both the appellant and the intervenors 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). The Board finds the evidence herein indicates a reduction in the subject's assessment is warranted.

The Board finds the best evidence of market value in the record is the appraised value presented by Kleszynski on behalf of the intervenors. Kleszynski developed the cost and sales comparison approaches to value in estimating the subject property had a market value of $15,000,000 as of January 1, 2006.

Under the cost approach Kleszynski utilized six land sales located in the subject's market area. Kleszynski testified that land sales in Kankakee best reflected the market value of industrial land in the subject area. The land sales ranged in size from 5.01 to 217.35-acres and sold from May 2003 to November 2006 for prices ranging from $125,000 to $3,056,518 or from $14,063 to $36,393 per acre. The land sales were adjusted for date of sale and size. Kleszynski concluded a value for the subject's land area of $22,000 per acre, for a total estimated land value of $2,130,000, rounded. Salisbury used only three land sales along with five listings. Each land sale used by Salisbury was located in Manteno and was more remote in date of sale than what Kleszynski used. The difference between both appraisers' estimation of land value was only $2,000 per acre, however, the Board finds Kleszynski's estimate of value is better supported by using properties located within the subject's immediate market area with sale dates closer to the assessment date in question. The Board finds Kleszynski was more familiar with the general locale where the land sales were located. Based on the testimony and credibility of the witnesses, the Board finds Kleszynski's estimate of the subject's land value was more credible.

Kleszynski next developed the replacement cost new of the improvements utilizing Marshall Swift. Based on his observations, he considered the subject to be industrial, whereas, Salisbury considered the subject to be light industrial. In addition, Kleszynski found the subject to be well maintained with an effective age of 35 years old. The Board finds Kleszynski's use of the age-life method to calculate 50% depreciation[6] was more credible than the market abstraction method

[6] An additional 10% functional obsolescence was added to this amount.

as used by Salisbury. The Board finds both appraisers agreed the subject is unique in that it contains a large number of buildings thereby making the abstraction method for calculation of depreciation difficult at best. Further, the Board finds Salisbury's abstraction method utilized properties located over 122 miles from the subject, while other sales, more proximate in time and location to the subject were available. During his testimony, Salisbury admitted that land values in Decatur were generally significantly higher than the estimated land value he used for the subject property. In addition, the Board finds Salisbury made numerous errors in the data he used, wherein he acknowledged that his estimate of the subject's weighted age should be changed from 42 years to 40 years old. Kleszynski utilized a base cost of $41.50 per square foot of building area utilizing Marshall Swift and verified this amount utilizing internal files from newly constructed projects he had been involved with, for an adjusted based price of $46.42 per square foot of building area. Based on the reliability of the data presented and the credibility of the witnesses, the Board finds Kleszynski's estimate of value for the subject of $15,525,000, using the cost approach to value to be better supported and more indicative of the subject's fair market value for industrial property located in Kankakee in 2006.

The Board finds both appraisers placed more weight on their respective sales comparison approach to value. Salisbury relied upon sales located from 115 to 215 miles from the subject, while Kleszynski utilized sales within approximately 40 miles of the subject. Salisbury testified that he looked for sales located near interstates while Kleszynski relied upon sales in the immediate vicinity of the subject. Kleszynski found his multi-building sales comparables #2, #3, #4 and #6 to be most reflective of the subject. These four sales sold from February 2003 to January 2007 for prices ranging from $9,250,000 to $68,596,000 or from $20.80 to $23.84 per square foot of building area. They had land-to-building ratios ranging from 2.89:1 to 13.80:1. After making various adjustments, Kleszynski estimated a unit value for the subject of $24.00 per square foot of building area or $14,082,240.[7] From this, he added his excess land value estimate of $22,000 per acre or $944,900 for a total estimate of value using the sales comparison approach to value of $15,000,000, rounded. Salisbury utilized eight sales and one listing. The sales occurred from January 2002 to June 2007 and sold for prices ranging from $900,000 to $8,000,000 or from $2.91 to $12.67 per square foot of building area, including land. The comparable listing was listed for sale in May 2007 for $6,300,000 or $9.19 per square foot of building area, including land. Salisbury concluded a price of $10 per square foot of gross building area or $5,870,000 was appropriate. He then added in the value of the excess land of $860,000 to arrive at an estimated value for the subject by the sales comparison approach of $6,700,000, rounded, as of January 1, 2006. However, when questioned regarding sale #3, Salisbury testified that the Real Estate Transfer Declaration sheet depicts sale #3 was not sold or advertised using a real estate agent. In addition, sale #3, which is depicted as having a sale date of January 2006, also had a sale in March 2007 for $7.77 per square foot of building area, including land, which was not shown or discussed in the appraisal report. Kleszynski acknowledged that his sale comparables #2, #3 and #6 involved a sale of leased properties; however, upon his inquiry with the grantors, examinations of the transfer declaration sheets, examination of other sales and/or knowledge of real estate in Kankakee, he still considered these sales to be reflective of the market and arm's-length transactions. Based on his knowledge, Kleszynski testified that the leases did not contribute value to each sale. Kleszynski testified that

[7] This includes the improvement and site value.

these three properties were most reflective of the subject's self-contained character, meaning that they were self supporting.

Based on the evidence and credible testimony presented, the Board finds Kleszynski's estimate of value using the sales comparison approach to value is better supported in this record. The Board agrees that Kleszynski's comparables #2, #3 and #6, being in close proximity to the subject, better reflect the character and use of the subject. Sale #2 sold in December 2004 for $23.84 per square foot of building area, including land, has a land-to-building ratio identical to the subject, zoning identical to the subject and features numerous buildings, similar to the subject. Sale #3 sold in January 2007 for $23.20 per square foot of building area, including land, has a land-to-building ratio of 2.89:1, is similar in size to the subject, and also has numerous buildings, similar to the subject. Sale #6 is a multi-building property that sold in February 2003 for $22.33 per square foot of building area, has a land-to-building ratio of 5.07:1. After considering the adjustments and differences when compared to the subject, the Board finds Kleszynski's estimate of $24.00 per square foot of building area, including improved land, for the subject is well supported. Kleszynski then added the excess land (42.95-acres) value of $944,900 to indicate a total fair market value for the subject of $15,000,000, rounded, as of January 1, 2006.

In conclusion, after comparing the evidence and testimony presented by the parties, the Property Tax Appeal Board finds the evidence and testimony presented by Kleszynski to be the most credible and best evidence of market value in this record.

Based on this record, the Property Tax Appeal Board finds the subject property had a market value of $15,000,000 as of January 1, 2007. Since market value has been determined, the 2007 three-year average median level of assessment for Kankakee County of 33.35% shall apply.

APPELLANT:	**Iron Mountain**
DOCKET NUMBER:	**09-04645.001-I-2 thru 09-04645.002-I-2**
DATE DECIDED:	**November, 2012**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject parcels consist of an approximately 90,040 square foot site improved with a 29-year-old single-tenant masonry industrial warehouse that is used primarily for dry document storage and which has minimal office space. The building contains 45,184 square feet of building area of which 1,440 square feet or about 3% is office space with a wet sprinkler system. An addition was constructed in 1987. The warehouse area has 26 foot ceiling heights and there are nine loading docks at the rear of the building. The subject site is also improved with about 14,200 square feet of asphalt pavement for the access drive and parking lot. The property is located in Bensenville, Addison Township, DuPage County.

The appellant through counsel submitted evidence 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 prepared by Peter D. Helland and Edward V. Kling of Real Valuation Group, LLC, estimating a fair market value for the subject property of $2,250,000 as of January 1, 2009, using the three traditional approaches to value. The purpose of the appraisal was to provide a basis for an appeal of the assessment of the subject property.

In estimating the market value the appraisers first developed the cost approach with the initial step of estimating the site value using five comparable land sales. The land comparables were located in Bloomingdale, Carol Stream and Glendale Heights. The comparables ranged in size from 79,882 to 203,425 square feet of land area. The properties sold from March 2007 to December 2008 for prices ranging from $500,000 to $1,695,711 or from $5.56 to $8.34 per square foot of land area. Based on these sales the appraisers estimated the subject site had an estimated value of $7.50 per square foot of land area or $675,000, rounded.

The next step under the cost approach was to estimate the replacement cost new of the improvements using cost manuals and experience with construction costs in the area. The appraisers developed a replacement cost new of $2,916,610 or $64.55 per square foot of total building area. In estimating depreciation the appraisers estimated physical depreciation using the age-life method. They estimated the subject had an effective physical age of 30 years and a physical life of 90 years resulting in physical deterioration of 33%. They estimated functional obsolescence of 8% due to excessive ceiling heights for which a buyer would not pay a premium and they estimated external obsolescence of 12% based on the fall of the banking and mortgage industries causing an overall downturn in real estate values due to extended marketing periods and limited credit availability. Deducting all three forms of depreciation of 55% or $1,604,245 resulted in a depreciated value of the improvements of $1,312,564. A value for site improvements of $11,000 was then added along with 12% for entrepreneurial incentive of $158,828 for a total of $1,482,392. Adding back the land value resulted in an estimated value under the cost approach of $2,160,000, rounded.

The next approach to value developed was the sales comparison approach where the appraisers utilized five sales located in Addison and Bensenville. The comparables consist of lots ranging in size from 23,022 to 112,823 square feet of land area which are improved with industrial structures that were 21 to 45 years old. The buildings range in size from 11,360 to 55,650 square feet of building area. The comparables feature land-to-building ratios ranging from 1.56:1 to 3.5:1 whereas the subject has a land-to-building ratio of 1.99:1. The properties sold from August to December 2008 for prices ranging from $480,000 to $3,100,000 or from $42.09 to $64.72 per square foot of building area including land. After making qualitative adjustments to the comparables as outlined on page 52 of the report, the appraisers opined that the subject has a value of $50.00 per square foot of building area or a market value under the sales comparison approach of $2,260,000, rounded.

Under the income approach to value, four suggested rental comparables and two listings were utilized. The comparables were described as industrial buildings that range in size from 2,970 to 57,835 square feet of building area. Comparables #2, #3 and #4 along with listing #1 were multi-tenant buildings. Four comparables were built from 1982 to 1986 with no dates of construction revealed for two properties. Comparables #1 through #4 had rental rates of $7.00 to $7.99 per square foot of building area with the listings having asking rents of $6.00 and $6.25 per square foot, respectively. After consideration of the adjustment process, the appraisers concluded the subject property had a projected rental rate of $6.50 per square foot of building area. Therefore, the subject's potential annual income was estimated to be $293,696. Vacancy was estimated to be 9% or $26,433, resulting in an effective annual income of $267,263. Expenses for management, real estate taxes, insurance, reserves, legal and accounting totaled $83,865 resulting in a net operating income of $183,398. Using the band of investments method as considered from the overall rate from debt coverage ratio, the appraisers calculated an overall capitalization rate of 8.25% to be applied to the subject net operating income. As a result, the appraisers concluded a value under the income approach of $2,310,000, rounded.

In reconciliation, the appraisers gave primary consideration to the sales and income approaches to value in arriving at their opinion of $2,250,000 for the subject property as of January 1, 2009.

Based on this evidence, the appellant requested a reduction in the subject's total assessment to approximately $749,925 to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeals" wherein the subject's final total assessment of $879,050 was disclosed. The total assessment of the subject property reflects a market value of approximately $2,642,965 or $58.49 per square foot of building area including land using the 2009 three-year median level of assessments in DuPage County of 33.26%.

In support of the subject's estimated market value as reflected by its assessment, the board of review submitted data prepared by the Addison Township Assessor's Office indicating a market value of $2,710,000 for the subject based on comparable sales. The assessor prepared a spreadsheet of fourteen sales of industrial properties "in our office." In the spreadsheet, the assessor reported the properties were located in Bensenville, Elmhurst, Wood Dale and Addison. The buildings range in size from 30,520 to 73,734 square feet of building area with ceiling heights ranging from 16 to 28 feet, office areas ranging from 2.19% to 19.54% of building area

and land-to-building ratios ranging from 1.6:1 to 3.85:1. The buildings were constructed from about 1960 to 1996. These fourteen sales occurred from October 2006 to October 2008 for prices ranging from $1,948,850 to $5,950,000 or from $46.53 to $105.23 per square foot of building area including land. In a final page of the submission, the assessor reported qualitative adjustments when comparing these properties to the subject. From this data, the assessor wrote that the assessor concluded that $60.00 per square foot of building area is a fair and equitable unit value for the subject.

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

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds a reduction in the subject property's assessment is not 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. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). The Board finds the appellant has not overcome this burden.

In this appeal, the appellant submitted an appraisal report estimating a fair market value for the subject property of $2,250,000 or $49.80 per square foot of building area including land as of January 1, 2009. The Property Tax Appeal Board finds most of the sales considered by the appraisers were dissimilar to the subject property in land area and building size. Only sale #3 was somewhat similar to the subject in these characteristics; the remaining four sales were mostly smaller lots and much smaller buildings than the subject despite being in nearby communities to the subject. Similarly with regard to the appraisers' reliance upon the income approach to value, the data considered again was dissimilar to the subject with the exception of listing #1 with an asking rent of $6.00 per square foot of building area. Given the dissimilarity of the data sets analyzed by the appraisers to arrive at their value conclusion for the subject, the Property Tax Appeal Board finds that the value conclusion presented by the appellant's appraisers is not a valid or reliable indicator of the market value of the subject property. Thus, the Board has placed no substantive weight on the value conclusion of the appraisal and furthermore finds that most of the raw sales data submitted within the appraisal is so dissimilar to the subject property that no reliable indication of the subject's market value can be gleaned from most of those sales.

The board of review submitted fourteen suggested comparable sales for consideration. Of the sales presented, the Property Tax Appeal Board finds that sales #6, #7 and #8 were most similar to the subject in building size so that they may be somewhat probative of the subject's estimated market value as of the valuation date at issue. These three properties sold for prices ranging from $2,490,000 to $3,223,413 or from $51.85 to $71.70 per square foot of building area including land. The subject's assessment reflects an estimated market value of $2,642,965 or $58.49 per square foot of building area including land, which is within the range of these most similar sales comparables presented by the board of review and supported by the most similar sale #3 in the appellant's appraisal report which sold in October 2008 for $55.71 per square foot of building area including land. Therefore, no reduction in the subject's assessment is warranted on this record.

APPELLANT:	**Ellias Kademoglou**
DOCKET NUMBER:	**09-04629.001-I-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property contains approximately 30,960 square feet of land which is improved with a 1-story, single tenant industrial building of masonry construction with approximately 16,476 square feet of gross building area. Approximately 2,340 square feet is office space and 14,136 square feet is warehouse space. The building was constructed in 1976 and features a 16 foot clear ceiling height. There are two truck level docks and one drive-in door. The building is located near O'Hare Airport in Elk Grove Village, Addison Township, DuPage County.

The appellant's appeal is based on overvaluation. While additional bases of the appeal in Section 2d of assessment equity and contention of law were checked, the appellant through legal counsel failed to submit any evidence in support of either of these assertions. The appellant submitted an appraisal report prepared by David Rogers and Edward Kling in which a market value of $1,000,000, or $10.00 per square foot of land area or $41.90 per square foot of improved area, was estimated for the subject property as of January 1, 2009. The appraisers developed the sales comparison approach, the income approach and the cost approach in estimating the fair market value of the subject property.

In the sales comparison approach, the appraisers considered five comparable properties. The comparables are located in close proximity to O'Hare Airport as well as located close to the subject based on the map submitted by the appraisers. The lots range in size from 23,022 to 55,084 square feet of land area. The buildings range in size from 11,375 to 24,501 square feet of building area and range in age from 29 to 47 years. These comparables sold between December 2007 and December 2008 for prices ranging from $480,000 to $1,600,000 or from $42.20 to $65.30 per square foot of building area including land (unadjusted). The appraisers adjusted the comparables from -5% to +25%. The adjusted sale prices range from $52.75 to $64.00 per square foot of building area. Based on these comparables the appraisers estimated the subject's fair market value to be $60.00 per square foot of building area including land as of January 1, 2009 or $990,000 rounded, using the sales comparison approach.

In the income approach the appraisers analyzed six comparable rental properties and used a capitalization rate of 8.25% plus an effective tax rate of 1.9724%, for a total loaded capitalization rate of 10.222%, to estimate the subject's value at $996,500 or $60.48 per square foot of building area including land.

In the cost approach the appraisers valued the land at $300,000 based on consideration of five land sales. The cost new was estimated to be $1,056,342. Depreciation was estimated to be 40%. The contributory value of site improvements was estimated to be $70,000, for a total estimated value of $1,000,000 for the building and the land, or $60.69 per square foot of building area including land using the cost approach.

In the reconciliation, the appraisers gave greatest weight to the income and sales comparison approaches in arriving at an estimated market value for the subject of $1,000,000 or $60.69 per square foot of building area. Based on this evidence, the appellant requested that the subject's assessment be reduced to $333,300 which would reflect a market value of approximately $1,000,000 at the statutory level of assessment of 33.33%.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $397,730 was disclosed. The subject's assessment reflects an estimated market value of $1,195,820 or $72.58 per square foot of living area, land included, using the 2009 three-year median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code Sec. 1910.50(c)(1)).

In support of the subject's assessed value, the board of review submitted a grid analysis and property data sheets for six comparable properties. The board of review's six comparables were built from 1968 through 1992 and range in size from 14,776 to 21,280 square feet of building area. The comparables are 1-story industrial buildings of masonry construction. The comparables feature office area that account for 8.54% to 25.21% of the floor space. The comparables sold from September 2007 through December 2008 for prices ranging from $1,085,000 to $1,720,000 or from $60.00 to $80.83 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 this appeal. The Property Tax Appeal 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 must be proven 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 of the subject property or comparable sales. (86 Ill.Admin.Code §1910.65(c)). After an analysis of the evidence in the record, the Board finds a reduction in the subject's assessment is warranted.

The Board finds the appellant submitted an appraisal of the subject property with a final value conclusion of $1,000,000 as of the subject's assessment date of January 1, 2009. Reasonable adjustments were made to the comparables for differences between the subject.

The board of review submitted six comparable sales. Comparables #2 and #4 sold most distant from the subject's assessment date of January 1, 2009, and comparables #5 and #6 differed significantly from the subject in size. Comparables #1 and #3 had significantly more finished office area than the subject. The board of review did not adjust for these differences in its evidence. Therefore these comparables received less weight in the Board's analysis.

Based on this record, the Board finds the appraisal report to be the best evidence of market value in the record. The Board further finds the subject property had a fair market value of $1,000,000

as of January 1, 2009. Since market value has been established, the 2009 DuPage county three-year median level of assessments of 33.26% shall apply.

APPELLANT:	**Miller Container Corp.**
DOCKET NUMBER:	**09-01368.001-I-3 thru 09-01368.002-I-3**
DATE DECIDED:	**July, 2012**
COUNTY:	**Rock Island**
RESULT:	**Reduction**

The subject property consists of two parcels containing a total of approximately 23.08 acres. The parcels are improved with two connected industrial buildings of part one-story and part two-story design containing approximately 465,678 total square feet of building area[1] built in 1959 with various additions beginning in 1960 and occurring until 2004. The building is predominately steel framed and metal clad with shop/warehouse clear ceiling heights ranging from 15'6" to 23'4" for a weighted average of 20'6", wet sprinklered, and features four interior rail loading spots and 27 exterior truck loading docks. There are various air-conditioned office areas within the building totaling 13,550 square feet or 3% of office build-out. Site improvements of the property include asphalt drives, parking areas, concrete loading docks along with exterior lighting and landscaping. The property is located in Rock Island, Blackhawk Township, Rock Island County.[2]

The appellant appeared through counsel before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value. In support of this argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraiser J. Edward Salisbury of Salisbury & Associates, Inc. Using the three traditional approaches to value, the appraiser estimated the subject property had a market value of $6,100,000 as of January 1, 2006. In reconciling the three approaches to value, Salisbury gave most weight to the sales comparison approach.

The subject property consisting of two parcels has a total assessment of $2,918,931. The subject's total assessment reflects an estimated market value of $8,773,463 using the 2009 three-year median level of assessments in Rock Island County of 33.27% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)). In support of the subject's assessment, the board of review presented an appraisal prepared by a Certified General Real Estate Appraiser Howard B. Richter of Howard B. Richter & Associates, Inc. Using the sales comparison approach to value, Richter estimated the subject property had a market value of $8,200,000 as of January 1, 2009.

PRELIMINARY MATTER

[1] The board of review failed to submit a copy of the subject's property record card as required by the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.40(a)). Salisbury's report depicted the subject as containing 465,678 square feet of building area of which 16,545 square feet was said to be office area. Comparing Salisbury's report on page 27 to Richter's report on page 16 where the improvements were itemized, it appears that Richter did not include a "garage building" said to have been constructed in 2003 of 8,400 square feet of building area.

[2] The Property Tax Appeal Board takes notice that this property was the subject matter of an appeal in Docket No. 06-00660.001-I-2 through 06-00660.002-I-2 wherein the appraiser Salisbury appeared to provide testimony regarding his appraisal report and was subject to cross-examination. (86 Ill.Admin.Code §1910.90(i)). Furthermore, this property has been the subject matter of appeals in 2007 and 2008 where the parties arrived at stipulated total assessments of $2,048,380 and $2,057,158, respectively, in Docket Nos. 07-00950 and 08-01356.

At hearing, the appellant's appraiser Salisbury was not present to provide testimony and/or to be cross-examined regarding his report, the methodology used and/or the adjustments made to arrive at a value conclusion. For the appellant's case-in-chief, counsel for the appellant rested on the written record.

In response thereto, the board of review requested that the appellant's appeal be dismissed "based on the lack of evidence on the part of the appellant" noting the appellant's evidence consisted of an appraisal with a value conclusion as of January 1, 2006 whereas the board of review had an appraisal, with the appraiser present and ready to testify, with a value conclusion as of January 1, 2009, the assessment date at issue in this proceeding.

In reply, the appellant's counsel argued that the Salisbury appraisal was subjected to cross-examination in a prior year or years that this property has been appealed before the Property Tax Appeal Board. The appellant's counsel further responded, in part, that the lack of testimony as to the appraisal may impact the weight to be given to the report, but that it did not merit dismissal of the appellant's appeal.

The Property Tax Appeal Board hereby denies the dismissal motion made by the board of review. Considering the Official Rules of the Property Tax Appeal Board, there is no provision for dismissal of an appeal when an appraiser is not present at a hearing. (See 86 Ill.Admin.Code §1910.67(l) & §1910.69).

The board of review's dismissal request also was made with regard to this 2009 assessment appeal contending in essence that the appellant presented no value evidence for the subject property as of January 1, 2009. The Property Tax Appeal Board also denies the board of review's dismissal motion on this basis because 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 §1910.65(c). The Salisbury appraisal with a valuation date of January 1, 2006 was filed to challenge the assessment date of January 1, 2009 in this matter. In Cook County Board of Review v. Property Tax Appeal Board, 334 Ill.App.3d 56, 777 N.E.2d 622 (1st Dist. 2002), the court stated "[t]here is no requirement that a taxpayer must submit a particular type of proof in support of an appeal. The rule instead sets out the types of proof that *may* be submitted. . . . Whether a two-year old appraisal is 'substantive, documentary evidence' of a property's value goes to the weight of the evidence, not its admissibility. [citing Department of Transportation v. Zabel, 47 Ill.App.3d 1049, 1052, 362 N.E.2d 687 (1977) (whether a six-month-old appraisal is sufficient to establish value is for the trier of fact to consider in weighing the evidence)]."

In conclusion, as to the absence of Salisbury at hearing, the Property Tax Appeal Board finds that Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill.App.3d 474 (2nd Dist. 1979); Russell v. License Appeal Comm., 133 Ill.App.2d 594 (1st Dist. 1971). Thus, in the absence of an appraiser being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the evidence and

the value conclusion of $6,100,000 as of January 1, 2006 has been significantly diminished and cannot be deemed conclusive as to the value of the subject property. See also Novicki v. Dept. of Finance, 373 Ill. 342 (1940); Grand Liquor Co., Inc. v. Dept. of Revenue, 67 Ill. 2d 195 (1977); Jackson v. Board of Review of the Dept. of Labor, 105 Ill. 2d 501 (1985). In summary, the Board finds the appellant's appraisal report is tantamount to hearsay. Oak Lawn Trust & Savings Bank v. City of Palos Heights, 115 Ill.App.3d 887 (1st Dist. 1983).

APPELLANT'S CASE-IN-CHIEF

In reconciling the three approaches to value, Salisbury gave most weight to the sales comparison approach to arrive at an estimate of value of $6,100,000 as of January 1, 2006. In the sales comparison approach to value Salisbury considered eight comparable sales and one listing which were located in Davenport, Iowa and the Illinois communities of Macomb, Centralia, Effingham, Loves Park, Danville, Galesburg, Salem and Kankakee. The comparables ranged in size from 175,251 to 850,000 square feet of building area and ranged in age from 15 to 37 years old. The comparables featured land-to-building ratios ranging from 2.60:1 to 7.05:1, clear ceiling heights ranging from 17' to 40', and office build-outs ranging from .80% to 14.27% of building area. The properties sold from September 2000 to September 2006 for prices ranging from $564,000 to $6,300,000 or from $1.97 to $12.51 per square foot of building area including land. The listing, which has a verification date of September 2006 in the appraisal, was offered for $6,300,000 or $9.19 per square foot of building area including land.

After making adjustments to the comparables for date of sale, location, land-to-building ratio, conditions of sale, date of sale, size, condition of property, and age, the appraiser was of the opinion the subject had an indicated value under the sales comparison approach of $13.00 per square foot of building area or $6,100,000, rounded, as of January 1, 2006.

For the cost approach to value, the appraiser estimated a market value of the subject of $5,900,000, rounded.

Also as outlined in the appraisal report, Salisbury estimated a value for the subject under the income approach of $6,000,000, rounded.

Based on the foregoing evidence, the appellant requested a reduction in the subject's 2009 assessment reflective of the opinion of value in the Salisbury report.

BOARD OF REVIEW'S CASE-IN-CHIEF

As noted previously, the subject's final 2009 assessment of $2,918,931 reflects an estimated fair market value of $8,773,463. However, the board of review submitted an appraisal with an estimated market value of $8,200,000 as of January 1, 2009. In a cover letter filed in this matter with the board of review's evidence, the board of review conceded that the Richter appraisal justifies a reduction in the assessment of the subject property. As such and based upon the appraisal's opinion of fair market value, the board of review proposed to stipulate to a total 2009 assessment of $2,733,060 which would reflect an estimated fair market value of $8,214,788

using the three-year median level of assessments of 33.27%. Appellant rejected this proposed stipulation.[3]

At the hearing, the board of review called Howard B. Richter, the appraiser, as its witness. In his sales comparison approach to value, Richter analyzed six comparable sales which were located in East Moline, Rock Island, Peoria, Wilmington, Granite City and Loves Park. Richter testified the comparables were selected from similar sized, qualities of communities statewide which he characterized as "second-tier communities" and avoiding metropolitan Chicago which would reflect different economic characteristics. The comparables ranged in size from 105,000 to 545,000 square feet of building area and ranged in age from 14 to 56 years old. The comparables featured land-to-building ratios ranging from 1.64:1 to 5.82:1. Five of the properties have clear ceiling heights ranging from 14' to 32'; no ceiling height data was reported for Sale #3. The comparables have office build-outs ranging from 1.9% to 27.2% of building area and five comparables have from 11 to 111 truck loading docks with Sale #6 having "50' x 24' bays." The properties sold from March 2007 to September 2008 for prices ranging from $2,700,000 to $20,000,000 or from $20.46 to $46.51 per square foot of building area including land. After considering adjustments to the comparables for location, land-to-building ratio, size and condition, the appraiser was of the opinion that the subject had an indicated value under the sales comparison approach of $18.00 per square foot of building area including land or $8,200,000, rounded.

The appraiser testified that the income capitalization approach to value was not used as properties the size of the subject along with related relocation costs means the subject would lease only under distressed conditions. He also asserted that rentals are not consistent with the prices being paid by owner-users and the subject is not an investment grade property due to its age and condition. Therefore, Richter surmised that the subject would typically be purchased by an owner-user. (TR. 14)[4]

Richter also testified that the cost approach was not used since the subject has "heavily depreciated" and depreciation is very difficult to calculate with any degree of precision. However, Richter did include in a highest and best use analysis "comparison with vacant land sales to show that the building does contribute to the value of the land if vacant." (TR. 15)

Based on its appraisal evidence, the board of review requested a finding of $8,200,000 as the fair market value of the subject as of the assessment date.

On cross-examination, Richter stated that he verified each of the six sale comparables which he used in the appraisal report. The appraiser testified that each of the sales were originally reported by CoStar Comps, a service he uses and that he verified the data from that starting point. Sale #1 was verified by viewing the building's exterior, review of county records on the sale and spoke with a knowledgeable, local appraiser, Mark Nelson, as to his familiarity with the property. He stated he did the same thing with Sale #2 in Rock Island. For Sale #3, Richter

[3] In addition, shortly before the date scheduled for hearing, counsel for the appellant proposed a stipulation for a total assessment of $2,031,299 which would reflect an estimated market value of $6,105,497 based on the three-year median level of assessments in Rock Island County. The board of review rejected this proposed assessment reduction and the matter proceeded to hearing as discussed herein.
[4] References to the transcript of the proceedings are denoted "TR." followed by page citation(s).

spoke with one of the two brokers involved in the sale named Gregory Stone and also spoke with an area appraiser Hugh Turley who was also familiar with the property. For Sales #4 and #5, Richter had observed both of these properties for prior appraisal assignments, but he still performed the same research, consulted with local appraisers, including he believes, Ed Brorsen in Kankakee. As to Sale #6, Richter reviewed county records, published records, and spoke with an appraiser in the Loves Park area.

Richter acknowledged that only in the case of Sale #3 was the broker he spoke with a party to the sale transaction; in the other five sales, he was unable to contact the buyer or seller, but he contends that CoStar Comps "did" in preparing their data prior to publication. (TR. 19) Richter acknowledged that some of his data was drawn directly from CoStar.[5]

The witness was asked to discuss which, if any, of the six sales he analyzed were leased at the time of sale. In summary the witness acknowledged that only two of the properties were not leased, while the remaining four sales were either leased or may have been leased.[6] Richter testified that no adjustments were made for the four sales that were or may have been leased "because none of the leases were of recent duration, had substantial remaining term to my knowledge and at the time were all reported and accepted by their local assessors as being reflective of market value, not subject to lease." (TR. 22)

On redirect examination, Richter stated that given all of the available information, if he were doing the appraisal of the subject again, he would still use the same six comparable sales. He also testified that he uses CoStar Comps as an initial step in research in his appraisal projects.

Upon additional cross-examination, Richter testified that in each sale, with the exception of Sale #3,[7] the sworn-to real estate transfer declaration was relied upon wherein the parties to the transaction reported that the sale price was reflective of market value and was not influenced by a lease. Moreover, this conclusion was "accepted on that basis by the local assessor." (TR. 26)

APPELLANT'S REBUTTAL EVIDENCE

[5] Counsel argued that data prepared by CoStar Comps was tantamount to hearsay since the preparer of the material was not available for questioning. Experts, however, can give opinions based on reliable facts not in evidence. Wilson v. Clark, 84 Ill.2d 186 (1981). Rather, the burden is placed upon the adverse party during cross-examination to elicit the facts underlying the expert opinion. Moller v. Lipov, 368 Ill.App.3d 333 (1st Dist. 2006). The Board also recognizes that appellant's counsel waived this objection later during the hearing. (TR. 39-40)

[6] Specifically, Richter testified that Sale #1 was leased "at one point" but he was not sure if the lease was in effect at the time of sale as the property was vacant when sold. The witness stated it was unknown if the lease had been bought out or terminated at the time of sale; the 1997 ten-year-lease was within a few months of expiring when the property sold. As to Sales #2 and #3, Richter testified these were not leased. Sale #4 may have been leased, but Richter "can't verify that personally." Sale #5 was in a month-to-month period following the expiration of its lease which "was due to be terminated in 15 months." The witness further asserted that near the end of the lease term either party could void the lease upon 30-days notice effectively making it a month-to-month rental which "would not have affected market value to a seller." (TR. 21) For Sale #6, Richter testified "it's not clear." A 1992 lease was in place and set to expire in 2012; the witness acknowledged that the property was occupied, but he could not ascertain if it was the same lessee or a successor lessee or a "succeeded lease." (TR. 21)

[7] Richter spoke to one of the principals in this sale transaction concerning this owner-occupied property.

For rebuttal, the appellant called Michael E. Lipowsky an Illinois Certified General Real Estate Appraiser with Lipowsky & Associates as a witness. The assignment given to Lipowsky was to "look at specific comparable transactions, not [to] do a review appraisal or any kind of review of Mr. Richter's appraisal." (TR. 29) The sales the witness was asked to look at "just so happens to be in [Richter's] appraisal report, and to conclude whether or not they would be applicable to a fee simple estate or what problems they would have in comparing them for a property of a fee simple estate." (TR. 29-30) In this regard, Lipowsky prepared a three-page letter dated July 19, 2011 with numerous attachments which the appellant filed as rebuttal in this proceeding.

As to Richter's Sale #2, this is the only one of the six sales "that would meet the qualifications of arm's length, fee simple transaction" as stated in the first paragraph of Lipowsky's letter.

As to the data he gathered and verified on the six sales, Lipowsky characterized this as "definitely conflicting information" which he contended absolutely would impact the value conclusion of the subject property for comparison purposes. He testified that the data goes to the "internal validity of the appraisal report" which the witness stated means with the data available, is he measuring what he thinks he is measuring? The witness asserted that in sales of leased-fee estates (triple net leases), the buyer and the seller are analyzing the lease terms and the monthly rental, not the physical characteristics and qualities of the real estate. Lipowsky further opined that five of the six sales analyzed by Richter were leased-fee sales and "they would have never sold for the price they did if they was [*sic*] fee simple estates." (TR. 33) In this regard, Lipowsky opined that an adjustment for the real property interest would be required to these leased-fee sales. (See Attachment 16, pages on "transactional adjustments - real property rights conveyed" from The Appraisal of Real Estate, 13th Edition published by the Appraisal Institute, p. 322-23)

As shown in Lipowsky's data, Richter's Sale #1 was not advertised for sale. (See Attachment 1, a copy of a PTAX-203 Illinois Real Estate Transfer Declaration) Moreover, Lipowsky asserted that the property was under a long-term triple net lease until 2014 and thus a leased-fee interest was sold in the property, not fee simple title. (See Attachments 2 & 3, Assignment of Possession, Rents and Profits and a copy of an expired listing)

For Richter's Sale #3, according to Lipowsky the "building was never on the market." (TR. 31) In support of this contention, he included Attachment 4, a copy of a PTAX-203, Illinois Real Estate Transfer Declaration indicating that the property was not advertised for sale or sold using a real estate agent. The building was subject to a total business buyout according to Lipowsky. In support of this contention, he included Attachment 5, a copy of a newspaper article entitled, "German company buys L.R. Nelson."

As to Richter's Sale #4, according to Lipowsky the property was not advertised for sale and the "buyer is exercising an option to purchase." (See Attachment 6, PTAX-203 Illinois Real Estate Transfer Declaration) According to Lipowsky's investigation, the buyer was Dow Chemical Company which had been the lessee for the property for a number of years and was leasing the property at the time of purchase. (See Attachment 7, Memorandum of Lease Agreement dated February 4, 2003 with purchase option) In addition, Lipowsky opined that this property, located in a collar county to the Chicago metropolitan area, is "heavily influenced by the Chicago real estate market." In support of this contention, Lipowsky included Attachment 8 documenting an

October 2007 sale of 85.36-acres of vacant land located in close proximity to Sale #4 for a price of $77,905 per acre.

For Sale #5 presented in Richter's appraisal, Lipowsky contended that the property is not a trucking terminal, but is "a distribution warehouse." (See Attachment 10, describing the logistics services provided by Ozburn Hessey Logistic Services) Moreover, this property was 100% leased at the time of sale as shown in Attachment 11, PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A and therefore, a leased-fee interest was sold in the property, not fee simple title according to Lipowsky. (See also Attachment 12, Assignment of Rents)

As to Richter's Sale #6, Lipowsky found the property was 100% leased at the time of sale (Attachment 13, PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A) and therefore, Lipowsky contends that a leased-fee interest was sold in the property, not fee simple title. As set forth in his memorandum, Lipowsky also asserted this transaction "was the results [*sic*] of a sale-leaseback arrangement from Barber-Coleman Company." (See Attachment 14, Memorandum of Recording of Lease and Attachment 15, Memorandum of Guaranty)

On cross-examination, Lipowsky testified that he was retained to do the assignment by Property Tax Services of Illinois. Since Property Tax Service of Illinois is not the appellant, taxpayer and/or owner of the subject property, the board of review asserted that "everything that Mr. Lipowsky has stated is hearsay." The Hearing Officer advised the board of review representative, a non-attorney, that he was in error in this legal assertion.

Upon further cross-examination, Lipowsky testified that an appraiser should know what the lease terms are of these sale properties to derive and/or consider an appropriate adjustment to the sale price. (TR. 36) He did not know the exact lease terms for either Richter's Sale #1 or Sale #4. However, for Sale #5 the lease terms were presented as part of the rebuttal in Attachment 12 and the assignments of rents also shows the lease agreement of $5,553,555.60 according to the witness. (TR. 37) As to Richter's Sale #6, the only lease information Lipowsky had was that it was a sale leaseback arrangement for 20 years.

Based on a question from the Hearing Officer, Lipowsky opined that even if the leases were at market rent, these sales used by Richter would reflect fair market value "of a leased-fee estate." He further contended that a triple net investor would pay a premium for a property with a lease in place. In addition, it was his opinion that decisions of the Property Tax Appeal Board have frowned upon the use of leased fee estates as comparisons to owner-occupied properties. Therefore, Lipowsky felt that many of the sales used by Richter were not comparable to the subject. (TR. 38)

BOARD OF REVIEW'S SURREBUTTAL EVIDENCE

The board of review recalled Richter as a witness to address the assertions made by Lipowsky. Richter stated that he used the CoStar Comparables source to identify which properties to research. The initial search led to 12 or 15 sales which, "for one reason or another," were narrowed down to the six most comparable and most appropriate in terms of the conditions of sale. (TR. 40)

The witness asserted he obtained the "reporting transfer declarations" on each of the properties, spoke with local assessors, and spoke with a local, knowledgeable party, either a broker involved in the sale or an appraiser familiar with the property. Based on these actions, Richter stated he was satisfied that all reasonable steps were taken to verify the data provided from multiple sources. He further asserted "as a qualified expert witness, I am allowed to rely on data obtained in this manner."

Next, the witness addressed in turn Lipowsky's remarks on the six comparable sales which Richter presented in his appraisal report. Richter stated, "He [Lipowsky] has presented matters of fact, which I do not believe are matters of fact. He has testified to matters of his judgment in which I question the judgment involved." (TR. 41)

As to Lipowsky's reliance for Sales #1 and #3 on real estate transfer declarations that the property was not advertised for sale, Richter contends that for a party who offers very large industrial buildings for sale, there is no advertisement in the newspaper and there is no sign in the front of the property "to antagonize or arouse the suspicions and concerns of your employees." (TR. 42-43, 47) Richter stated, "All of these properties were made known that they were available for sale except one that we will speak of later. It was made known to the small circle of brokers who work nationwide on buildings of this size and quality. That is how these properties are marketed." (TR. 43)

Richter further asserted that he spoke with brokers regarding several of these sales who assured him that they have flyers in their files. "That is how these kinds of properties are marketed and sold." (TR. 43) Thus, these methods of selling a property according to Richter do "not constitute advertising as most people describe it on Page 1, Line 7 of the transfer declaration." (TR. 43) The witness contended just because the PTAX-203 was marked "not advertised" did not mean that the property was not widely known among likely purchasers.

"This is one of the reasons why in each case of the sales we used, the local assessors indicated that they considered it a valid sale having the property exposed to the market" the witness stated. (TR. 44)

Next, Richter asserted that Attachment 3 "is very clearly an altered document or a complete fiction." (TR. 44) This purported expired listing fails to identify the broker or the listing price of the property, both of which are standard parts of a listing. In addition, the document has no date. However, if Lipowsky contends that this is an offering sheet, then Richter contends that Sale #1 was in fact advertised as shown in Attachment 3.

Further as to Sale #1, the property may have been leased through 2014, but Attachment 3 also asserted the occupancy was 0% (i.e., vacant). The witness further stated, "This document has either been significantly altered or created out of whole cloth by someone. I'm not suggesting Mr. Lipowsky. I'm saying whatever was his source for this document, we have no knowledge of the source, and there is insufficient material here to give it any weight." (TR. 46)

As to Sale #2, Richter reiterated that he found this to be the most relevant sale in valuing the subject property due to its proximity to the subject. He further noted the property was not leased

when it sold and it was sold by an owner-user to an owner-user. The witness further noted that Lipowsky had no criticisms of this sale property.

The Lipowsky "investigation" of Sale #3 relies upon a newspaper article for the proposition that the sale involved an entire business buyout which Richter opined was insufficient documentation of a real estate transaction. The witness asserted there was no contention by Lipowsky that he consulted with any party to the transaction to determine if his assertion was accurate. (TR. 47) The witness further testified that he spoke with a broker who negotiated the sale of the real estate which was entered into after the parties had agreed to a sale of other assets and the ongoing business. (TR. 47-48) Moreover, Richter asserted that the building was not owned by the corporation, but was owned individually by the party who owned the corporation; he testified that the sale of the building was a separately negotiated agreement and was recognized as a valid sale by the assessor. (TR. 48-49)

For Richter's Sale #4, the witness acknowledged that the sale was the result of an option to purchase. Richter testified that, "If, in fact, the terms of the option were consistent with the price paid, I agree the sale should not have been used. We don't know. If, in fact, the terms are different, the sale is valid." (TR. 49) Since the sale would have terminated the lease, Richter contended Sale #4 was not the sale of a leased interest. The witness further stated that Sale #4 is the only sale he now would question having included in the appraisal without having the terms of the option; he stated that "Since we don't have those terms, I stand silent on this sale. I don't know if it's valid or not." (TR. 50)

The company operating in Sale #5 is a "logistics provider" which Richter testified "is a trucking company" and thus he contends the property is properly characterized as a trucking terminal or a trucking distribution facility. (TR. 50-51) As to use of this property in valuing the subject, Richter noted Sale #5 required a downward adjustment because it had a highly functional design for use as a truck terminal. He contends that if Lipowsky's criticism is valid, less of a downward adjustment would be made resulting in a higher indicated value for the subject. (TR. 51-52) As to the existing lease on this sale, Richter contends the lease was set to expire in about 15 months "[s]o whether the rent was high or low would not have greatly influenced the sale price, but more importantly this lease could be cancelled by either party on 30 days' notice." (TR. 52) Since the buyer could terminate the lease, if one still existed, on 30 days' notice, Richter contends the sale did not represent a leased-fee interest, but rather was reflective of a fee simple interest.

Richter also opined based on his experience that no lease dating from the 1990's would approach the economic rent of a property as of 2007/2008. "Typical rental escalations in leases are two percent, three percent annually, perhaps five or seven percent in five-year increments or ten years [*sic*] in five-year increments." (TR. 55) Based on the foregoing, Richter opined the assumption must be that a 17-year-old lease would have had a very low rental compared to the economic rent and would have depressed the price paid, not increased the price paid. (TR. 55-56) In summary, without knowing the lease terms, Richter contends there is no reason to assume the rent would have been above market rent.

As to Sale #6, Richter contends that Lipowsky's discussion of a sale leaseback of this property was the 1992 sale of the property, not the 2008 [*sic*] sale.[8] (TR. 54-55)

In conclusion, Richter contends that the Lipowsky criticisms of the six sales which Richter examined at best results in Sales #2, #3 and #5 being uncontested with sales prices of $20.46, $46.51 and $33.64 per square foot of building area including land. As the appraisal concluded a value for the subject of $18.00 per square foot of building area including land which is below the three sales "that we know were sold in fee simple," Richter testified that he would be comfortable valuing the subject property just on these three sales and would not alter his final opinion of value. (TR. 57-58)

Upon cross-examination, Richter acknowledged that he was unaware of the terms of the leases or potential leases involved in Sales #1, #4, #5 and #6. (TR. 59) He further opined that it was quite acceptable to be unaware of the lease terms of those properties.

APPELLANT'S SURREBUTTAL EVIDENCE

The appellant recalled Lipowsky as a witness. As to Sale #1, if the property was "listed in brokers' file, well-known in the marketplace of industrial brokers" then the property was advertised. (TR. 61-62) As to the allegation that Attachment 3 was an altered document, Lipowsky testified he obtained the document from a nationally known comp service known as LoopNet; expired listings do not provide broker information on the website data. (TR. 62-63)

Lipowsky also opined that an appraiser should know the terms of a lease "because it has a great impact on the value of the property." He opined that not knowing the lease terms borders on negligence by Richter. (TR. 64)

As to Richter's Sale #3, Lipowsky reiterated that his Attachment 4 reflects the seller as LR Nelson Corporation, not an individual owner as claimed by Richter in surrebuttal. (TR. 64-65)

For Richter's Sale #5, Lipowsky testified that he verified the sale data and "to this day the same tenant is still in that building." (TR. 65) As such, Lipowsky opined that there was a leased-fee transaction.

For Sale #6 considered by Richter, Lipowsky stated:

> The information that it was the results of a sale leaseback, the sale leaseback included the rent that was indeed many years prior to the sale. Once again, the terms are not known by the appraiser. Makes this a highly suspect sale. Whether he don't know whether an upward or downward adjustment should be necessary. That in itself is subject to very scrutinization (phonetic) by anybody relying on this information.

(TR. 66) In conclusion, Lipowsky contended this detracts from Richter's credibility as a professional or expert witness.

[8] Sale #6 sold in March 2007 according to Richter's appraisal.

Upon cross-examination, the witness acknowledged that Attachment 3 (the LoopNet expired listing) indicated "occupancy: 0%" as to the property identified as Sale #1. (TR. 68)

THE MERITS

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

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). 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 §1910.65(c)). As also previously acknowledged by the board of review, the Property Tax Appeal Board finds the evidence in the record establishes that a change in the subject's assessment is justified as the evidence provided by both parties demonstrates the subject's assessment is excessive.[9]

For 2009 the subject property had a total assessment of $2,918,931 reflecting a market value of approximately $8,773,463 or $19.19 per square foot of gross building area, land included, when using the 2009 three year median level of assessments for Rock Island County of 33.27%.

In support of the overvaluation argument, the appellant submitted an appraisal of the subject property prepared by J. Edward Salisbury of Salisbury & Associates, Inc. estimating the subject property had a market value of $6,100,000 or approximately $13.00 per square foot of building area, including land, as of January 1, 2006. The Property Tax Appeal Board finds the conclusion of value contained in the Salisbury appraisal report cannot be deemed credible and/or a reliable indicator of value in the absence of the appraiser's testimony at hearing. (See preliminary matter discussion above) Moreover, the Board finds the sales considered by Salisbury were not proximate in time to the assessment date of January 1, 2009. Therefore, the Board finds there is no data from the Salisbury appraisal which supports a reduction in the assessment of the subject property on grounds of overvaluation.

[9] The Property Tax Appeal Board further recognizes that the Rock Island County Board of Review proposed to stipulate to a lower total assessment reflecting a market value of approximately $8,200,000 which the appellant rejected.

In response to the appeal, the Rock Island County Board of Review submitted an appraisal prepared by Howard B. Richter of Howard B. Richter & Associates, Inc., estimating the subject property had a market value of $8,200,000, rounded, or $18.00 per square foot of building area, including land, as of January 1, 2009.

The appellant as rebuttal evidence submitted a three-page letter prepared by Michael E. Lipowsky of Lipowsky & Associates with numerous attachments "analyzing the six specific Illinois industrial sales" in the Richter appraisal report. Lipowsky concluded that only Sale #2 presented by Richter was a valid arm's length fee simple transaction. Richter also testified that Sales #2 was the best comparable in his presentation and was relied upon most heavily in arriving at a value conclusion for the subject.

The board of review's witness Richter testified and the appraisal itself stated the sales comparison approach was the most applicable method in arriving at the estimate of value for the subject of approximately $8,200,000 or $18.00 per square foot of building area, including land, due in part to the age and size of the facility which would make the cost and income approaches to value inappropriate. The Property Tax Appeal Board agrees that the sales comparison approach is the most applicable method under the facts of this appeal; however, the Board finds the board of review's appraiser Richter did not adequately analyze the sales within the report and the majority of the sales were not good indicators of fair cash value, which undermines the ultimate conclusion of value proffered by Richter.

The appellant's rebuttal evidence disclosed that Richter's Sales #1, #3 and #4 were not advertised for sale as reported on the applicable PTAX-203 Illinois Real Estate Transfer Declarations executed by the parties to the various transactions under penalties of perjury.[10] In response in part to these assertions, Richter pointed out that Lipowsky's Attachment 3, which the witness believed to be an altered document "or a complete fiction" which should be given no weight, establishes that the property identified as Sale #1 was advertised since an expired listing existed on this property. In reply, Lipowsky also stated that if Sale #1 was listed in a brokers' file and was well-known as being for sale in the marketplace, then the property was advertised for sale. Based on the evidence presented and in reliance upon the PTAX-203 Illinois Real Estate Transfer Declarations, the Property Tax Appeal Board finds these three sales used by Richter in the appraisal may not have been truly indicative of market value and should be discounted.

Furthermore, the appellant's rebuttal evidence disclosed that Sales #1, #5 and #6 analyzed by Richter were leased at the time of sale resulting in the sale of a leased-fee interest, not a fee simple interest in these properties according to Lipowsky. In reply, Richter noted that the purported listing document presented by Lipowsky as Attachment 3 for Sale #1 noted that "occupancy" was 0%. Upon further examination of the exhibit as to Sale #1, the Property Tax Appeal Board also finds that Attachment 3 under "highlights" stated "fully-leased through 2014!" As to Sale #5, in reply Richter disputed the characterization that the property was leased when sold "since the lease was set to expire in about 15 months" which Richter opined would not have greatly influenced the sale price. Moreover, Richter contended the lease could be cancelled

[10] "Any person who willfully falsifies or omits any information required in this declaration shall be guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for subsequent offenses." (See page 2, Step 4 of PTAX-203)

by either party on 30 days' notice so the witness asserted Sale #5 was not a sale of a leased-fee interest and furthermore a 17-year-old lease would probably not be reflective of market rent as of the time of sale. The Board finds that no documentation was presented to dispute the information contained in the two PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A's (Attachments 11 & 13) reporting that the property in Sales #5 and #6 were 100% leased at the time of sale.[11] As noted in the textbook, The Appraisal of Real Estate, 12th Edition, by the Appraisal Institute:

> Income-producing real estate is often subject to an existing lease or leases that encumber the title. By definition, a property that is subject to one or more leases is no longer a fee simple estate. Thus, if the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple estate for another property, the sale can only be used if reasonable and supportable market adjustments for the difference in rights can be made.

(Id. at p. 431) Therefore, the Board finds that these three sales reported in Richter's appraisal may also not be truly indicative of market value and should be discounted.

Sale #4 presented by Richter was disclosed to have been a sales transaction which was the result of an option to purchase according to Lipowsky. When testifying in reply, Richter acknowledged that he now does not know whether this was a valid sale or not since the terms were unknown. Therefore, even Richter acknowledged that Sale #4 may not be truly indicative of market value and should be discounted.

Based on this analysis, the Board finds that five of the six sales relied upon in Richter's sales comparison approach are not reliable or credible estimates of market value and should be given little weight because they were not advertised and/or because they reflect leased-fee interests when sold. However, the parties agree that Sale #2 presented in Richter's appraisal was a valid arm's length transaction that was close in proximity to the subject. This property, consisting of 229,754 square feet of building area or roughly 50% of the subject's building area, sold in February 2008 for $4,700,000 or $20.46 per square foot of building area including land. Accepted real estate valuation theory provides that all factors being equal, as the size of the property increases, the per unit value decreases. In contrast, as the size of a property decreases, the per unit value increases. Furthermore, the board of review in its evidence acknowledged that the subject property was overvalued based on its assessment at $8,773,463 or $19.19 per square foot of gross building area, land included.

While the board of review's appraisal has been severely weakened and lacks necessary details in adjusting sales comparables for their leased fee interest and/or lack of being advertised on the market as outlined above, in the end the Property Tax Appeal Board finds that, despite these significant appraisal flaws, the appraisal submitted by the board of review estimating the subject's market value at $8,200,000 or $18.00 per square foot of building area including land is

[11] As to Lipowsky's assertion that Sale #6 presented by Richter concerned a sale-leaseback arrangement, Richter replied that Lipowsky's information concerned a 1992 sale of this property, not the "2008" [*sic*] sale presented in Richter's report.

still the best evidence of the subject's market value in the record and is supported by Sale #2 in the record.

In conclusion the Property Tax Appeal Board finds the subject property had a market value of $8,200,000 or $18.00 per square foot of building area, including land, as of January 1, 2009. Since market value has been established, the Property Tax Appeal Board finds the 2009 three year median level of assessments for Rock Island County of 33.27% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**Johanna Morgan**
DOCKET NUMBER:	**08-30256.001-I-1**
DATE DECIDED:	**April, 2012**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property is improved with a one-story building of brick construction that contains 6,000 square feet of building area. The building was constructed in 1956. The subject property has a 46,641 square foot site and is located in Chicago Heights, Bloom Township, Cook County. The property is classified as a class 5-93 industrial building under the Cook County Real Property Assessment Classification Ordinance (hereinafter "Ordinance") and is to be assessed at 36% of market value.

The appellant contends overvaluation based on a recent sale of the subject property. In support of this argument the appellant completed Section IV - Recent Sale Data on the Industrial Appeal form disclosing the subject property was purchased in October 2005 for a price of $77,000. The appellant indicated that the parties to the transaction were not related and the property was advertised for sale on the internet. To further document the sale the appellant provided a copy of the Industrial Building Purchase Contract, a copy of the settlement statement, a copy of the warranty deed and a copy of the Illinois Real Estate Transfer Declaration.

In the brief submitted on behalf of the appellant, counsel explained the subject property is an owner-occupied crematory known as Heights Crematory. The appellant's attorney explained the subject's assessment was reduced in 2005 and 2006 by the assessor to $27,720 to reflect the purchase price. He further explained that the subject property was the subject matter of an appeal before the Property Tax Appeal Board in 2007 under Docket Number 07-28836.001-I-1. In that appeal the Property Tax Appeal Board issued a decision reducing the assessment of the subject property to $27,720 based on a settlement. The appellant's attorney argued the October 21, 2005 purchase price is still the best indicator of the property's market value as of January 1, 2008 and requested the subject's assessment be reduced to $27,720.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $49,678 was disclosed. The subject's assessment reflects a market value of $137,994 or $23.00 per square foot of building area, land included, when applying the 36% Ordinance level of assessment for class 5-93 industrial property.

In support of the assessment the board of review provided information on five comparable sales improved with one-story industrial warehouse buildings that ranged in size from 5,000 to 7,000 square feet of building area. The information provided by the board of review indicated that four of the buildings were constructed from 1968 to 1995. The comparables had ceiling heights that ranged from 12 to 18 feet. The comparables were located in Orland Park, Alsip, Markham and Frankfort. The sales occurred from April 2004 to October 2009 for prices ranging from $315,000 to $600,000 or from $63.00 to $100.00 per square foot of building area, including land.

In rebuttal the appellant provided a new comparable sale. The Board finds this new comparable is improper rebuttal evidence pursuant to section 1910.66(c) of the rules of the Property Tax

Appeal Board which provides that, "[r]ebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties." (86 Ill.Admin.Code 1910.10(c)). Based on this rule, the Property Tax Appeal Board will not consider the new comparable sale submitted by the appellant as rebuttal evidence.

The appellant's counsel further argued in rebuttal that the board of review provided no industrial sales located in Chicago Heights. He further asserted the comparables submitted by the board of review were located from 10.59 to 18.07 miles from the subject property, which was supported by Mapquest estimates of driving distances (Appellant's Exhibit B). The appellant's attorney also argued the comparables submitted by the board of review were located in communities with average household incomes between 33% and 244% higher than Chicago Heights, which was supported by information from the website MuniNetGuide.com (Appellant's Exhibit 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 the appeal. The Board further finds a reduction in the assessment of the subject property is supported by the evidence in the record.

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). 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 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 to be the October 21, 2005 purchase of the subject property for a price of $77,000. The record disclosed the parties to the transaction were not related and the property was exposed on the open market. The Board further finds that although the sale of the subject property occurred in excess of two years prior to the assessment date at issue, the board of review submitted information on two comparable sales that sold in 2004, which indicates that the subject's sale date is relevant and probative of market value for assessment purposes.

The Property Tax Appeal Board gives little weight to the comparable sales submitted by the board of review due to the fact that each was an industrial warehouse unlike the subject which is used as a crematory. Additionally, the Board finds four of the comparables were significantly newer than the subject building and each was located in a community that appeared to be superior to Chicago Heights based on the reported average household incomes that were between 33% and 244% higher than Chicago Heights.

Based on this record the Board finds the subject property had a market value of $77,000 as of January 1, 2008 and the 36% level of assessments for class 5-93 industrial property under the Ordinance shall apply.

APPELLANT:	**Cari A. Murray**
DOCKET NUMBER:	**07-28742.001-I-1 thru 07-28742.007-I-1**
DATE DECIDED:	**June, 2012**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a 44,640 square foot parcel of land improved with a 52-year old, one-story, masonry, 44,280 square foot industrial building. The appellant, via counsel, argued that the fair market value of the subject was not accurately reflected in its assessed value.

In support of the market value argument, the appellant submitted an appraisal by James A. Matthews and Jennifer Soto-Burrell of James A. Matthews, Inc. The report indicates Matthews and Soto-Burrell are State of Illinois Certified General Appraisers. The appraisers indicated the subject has an estimated market value of $355,000 as of January 1, 2007. The appraisal report utilized the sales comparison approach to value to estimate the market value for the subject property. The appraisal finds the subject's highest and best use is its current use.

Under the sales comparison approach, the appraisers analyzed the sales of four one-story to four-story industrial buildings located within the subject's market. The properties contain from 68,000 to 95,024 square feet of building area. The comparables sold from January 2004 to June 2004 for prices ranging from $540,000 to $1,025,000 or from $5.99 to $10.79 per square foot of building area, including land. The appraisers adjusted each of the comparables for pertinent factors. Based on the similarities and differences of the comparables when compared to the subject, the appraisers estimated a value for the subject under the sales comparison approach of $8.00 per square foot of building area, including land, or $355,000, rounded.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $199,259 was disclosed. The subject's final assessment reflects a fair market value of $553,497 when the Cook County Real Property Assessment Classification Ordinance level of assessments for class 5b property of 36% is applied. In support of the subject's assessment, the board of review presented of five suggested comparables located within the subject's market. The properties consist of one to five-story industrial buildings that range in size from 43,000 to 49,196 square feet of building area. The comparables sold from July 2002 to January 2008 for prices ranging from $1,725,000 to $6,180,000 or from $35.06 to $138.26 per square foot of building area, including land.

At hearing, the appellant's attorney argued that the appraisal is the best evidence of the subject's market value. He also noted that the appraisal indicates the subject is highly depreciated. The board of review's representative noted that the appraisal's comparable sales have recording dates from 2004 to 2007.

After hearing the testimony and 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.

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

In determining the fair market value of the subject property, the PTAB finds the best evidence to be the appellant's appraisal. The appraisers utilized the sales comparison approach to value in determining the subject's market value. The PTAB finds this appraisal to be persuasive for the appraisers: have experience in appraising; personally inspected the subject property and reviewed the property's history; and used similar properties in the sales comparison approach while providing sufficient detail regarding each sale as well as adjustments that were necessary. The PTAB gives little weight to the board of review's comparables as the information provided was unadjusted raw sales data.

Therefore, the PTAB finds the subject had a market value of $355,000 for the 2007 assessment year. Since the market value of this parcel has been established, the Cook County Real Property Assessment Classification Ordinance for class 5b property of 36% will apply. In applying this level of assessment to the subject, the total assessed value is $127,800 while the subject's current total assessed value is above this amount. Therefore, the PTAB finds that a reduction is warranted.

APPELLANT:	**Verizon Communications**
DOCKET NUMBER:	**08-04552.001-I-2**
DATE DECIDED:	**June, 2012**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property is improved with a one-story, owner occupied, single tenant, industrial building that contains 46,709 square feet of building area including 4,705 square feet of office space. The building is of masonry exterior construction with a slab foundation and was built in 1985. The building has an 18 foot interior ceiling height and has central air conditioning. The property has a 97,650 square foot site resulting in a land to building ratio of 2.09:1. The property is located in Westmont, Downers Grove Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board by counsel challenging the assessment as established for the 2008 tax year on the basis of overvaluation. In support of this argument the appellant submitted a narrative appraisal prepared by Shawn Schneider and Susan Z. Ulman of Zimmerman Real Estate Group, Ltd. estimating the subject property had a market value of $1,400,000 as of January 1, 2008, which was marked as Appellant's Exhibit No. 1.

Ms. Ulman was called as the appellant's witness. Ulman is president of Zimmerman Real Estate Group. She has the Member of the Appraisal Institute (MAI) designation, the Senior Real Property Appraiser (SRPA) designation from the Appraisal Institute and is a State of Illinois State Certified General Real Estate Appraiser. The witness testified that Zimmerman Real Estate Group practices primarily in the Chicago Metro area appraising industrial properties, apartments, offices, retail, hotels and vacant land. She further testified she has done considerable work in DuPage County and with industrial types of buildings in DuPage County.

Ms. Ulman testified that she performed an exterior inspection of the subject property while Shawn Schneider, a vice president of Zimmerman Real Estate Group, did an interior and exterior inspection. She further testified that Schneider prepared the appraisal report and she performed the review. The witness inspected the property in June 2011.

The appraiser testified the analysis was a complete summary report containing the three approaches to value; the cost approach, the income approach and the sales comparison approach. The purpose of the appraisal was to estimate the market value of the property as if owned in the fee simple estate, free and clear of all encumbrances, special assessments and liens. (Appellant's Exhibit No. 1, page 5.) The appraisers also concluded the highest and best use of the subject property as improved is the continued use as an industrial type facility until such time that the improvements reach the end of their effective useful life. (Appellant's Exhibit No. 1, page 22.)

Under the cost approach to value the appraiser accepted the township assessor's estimated land value but rounded the value to $665,000. In estimating the replacement cost new of the improvements the appraiser used the *Marshall & Swift Valuation Service*. The appraiser estimated the subject property had a base cost of $39.00 per square foot plus $1.50 per square foot allowance for the sprinkler system. The appraiser made adjustments to the base cost for height and size refinements, a current cost multiplier and a local multiplier to arrive at a square

foot cost of $47.76 resulting in a replacement cost new of $2,230,822. To this the appraiser added $25,000 for the value of the site improvements to arrive at a replacement cost new of $2,255,822. The appraiser then added 8% of the indicated replacement cost for entrepreneurial profit, real estate taxes and other soft costs to arrive at a total replacement cost new of $2,436,288. The appraiser estimated the subject property suffered from 65% physical deterioration. The appellant's appraiser was of the opinion the subject did not suffer from significant functional and economic obsolescence. Deducting $852,701 in depreciation and adding $665,000 for the land value resulted in an estimated value under the cost approach of $1,520,000, rounded.

The next approach to value developed by the appraiser was the income approach to value. The first step under the income approach was to estimate the market rent for the subject property. The appraisal had four rental comparables improved with industrial buildings that ranged in size from 56,046 to 288,366 square feet of building area. Comparables #1 through #3 were multi-tenant buildings. The building areas within the rental comparables that were leased ranged in size from 36,891 to 69,725 square feet with rents ranging from $4.50 to $5.25 per square foot on a net basis. The appraisal also had information from CB Richard Ellis for the 4th Quarter of 2007 listing the average asking lease rates. Based on this information the appraiser estimated the subject had a market rent of $5.00 per square foot on a net basis or $233,545.

The next step in the income approach was to estimate the vacancy and collection loss. The report indicated that the Industrial Market Index 4th Quarter 2007 published by CB Richard Ellis indicated the overall Chicago area industrial market had an 8.6% vacancy and the West Suburbs industrial market had a 6.6% vacancy. The appraiser used a 10% allowance for vacancy and collection loss resulting in an effective gross income of $210,191.

The appraisal indicated that since the income was estimated on a net basis the expenses incurred by the lessor would include a nominal management fee, leasing expenses and reserves for replacement. The appraiser estimated the subject would have $76,883 for management and leasing, insurance, operating expenses and reserves resulting in a net operating income of $133,307.

The final step was to estimate the capitalization rate to be applied to the net operating income. Using the band of investment technique the appraiser estimated the subject property would have an overall rate of 9.5%. The appraiser also used a modified tax load factor of .01616% to reflect the real estate tax expense due to vacancy. Adding the components resulted in a loaded capitalization rate of 9.66%. Capitalizing the net income of $133,307 by 9.66% resulted in an estimated value under the income approach of $1,380,000 rounded. The appraiser testified the subject property is owner occupied and utilized by Verizon. She also agreed that the subject has approximately 10% of the building area devoted to office space.

The final approach developed by the appraiser was the sales comparison approach to value in which five comparable sales were used. The comparables were improved with buildings that ranged in size from 29,450 to 67,451 square feet of building area and were constructed from 1960 to 1996. The comparables were described as being three manufacturing buildings and two warehouse buildings. These comparables had sites that ranged in size from 72,310 to 219,107 square feet of land area resulting in land to building ratios ranging from 2.26:1 to 4.12:1. The

comparables were located in Downers Grove, Bloomingdale, Glendale Heights and Naperville. The sales occurred from October 2006 to July 2008 for prices ranging from $875,000 to $2,243,000 or from $13.54 to $36.78 per square foot of building area, including land. Adjustments to the comparables were made for such items as market condition changes, location, building age, building size and land-to-building ratio. Based on these sales the appellant's appraiser estimated the subject property would have a market value of $30.00 per square foot of building area or $1,400,000, including land, rounded.

In reconciling the three approaches to value, the appellant's appraiser gave most weight to the sales comparison approach to value and estimated the subject property had a market value of $1,400,000 as of January 1, 2008. The witness stated most weight was given to the sales comparison approach because properties of this type are most frequently bought for use by an owner occupant. Ulman testified the income approach was the second most reliable approach in her analysis.

The appellant requested the subject's assessment be reduced to reflect the appraised value.

Under cross-examination the witness explained that CAM, as a deduction in the income approach, typically has the definition of common area maintenance, however, in this case it is for general overall maintenance. She explained CAM is current operating expenses such as upkeep, repair and maintenance. The witness further explained that CAM is only during the 10 percent period they projected the subject to be vacant.

The witness was of the opinion that higher ceiling heights would command a higher rent than a lower ceiling height when considered significantly different and helpful to the operation of the property. She also agreed that office percentage is an important consideration to a tenant. The witness did not know the ceiling height or the percent of office space for rental comparable #1. Only the clear ceiling height for rental comparable #3 was disclosed, which ranged from 14 to 30 feet. The appraiser testified the subject has a clear ceiling height of 18 feet. The appraiser testified that in the income approach they did not present any adjustments for ceiling height or office space differences.

Within the sales comparison approach the appraiser did not indicate ceiling heights or office percentages associated with the comparables. She testified that she did not include those elements in the descriptions of the comparables because there is a lot of similarity in terms of properties of similar vintage having similar features. The witness indicated comparable #1 was constructed in 1960 and was similar enough to be considered. Ulman indicated they retained a service called CoStar to verify the sale price of comparable #1. The appraisal reported a sales price for comparable sale #1 of $1,550,000 while the PTAX-203 Illinois Real Estate Transfer Declaration (hereinafter "PTAX-203", or "Illinois Real Estate Transfer Declaration" or "transfer declaration") for the sale, which was submitted by the board of review, disclosed a price of $1,500,000. The appraiser further testified the second sale of comparable #1 that occurred in December 2007 for a price of $2,750,000 was not available when they were doing their analysis. The board of review submitted a copy of the Illinois Real Estate Transfer Declaration associated with the second sale of comparable #1 that occurred in December 2007. The transfer declaration associated with the December 2007 sale indicated the property was advertised and that major remodeling occurred in March 2007. The PTAX-203-A Illinois Real Estate Transfer Declaration

Supplemental Form A (hereinafter "PTAX-203-A" or "Illinois Real Estate Transfer Declaration Supplemental Form A") for this sale indicated the property was on the market 7 months and the improvement was not occupied when it sold. Ulman testified the buyer later demolished the improvements on this property and the property, as vacant land, is currently listed for $2,750,000.

Ulman was also questioned about whether or not the Illinois Real Estate Transfer Declaration for sale #3 was checked because it reflects a sale of 50% interest. The board of review submitted a copy of the Illinois Real Estate Transfer Declaration associated with comparable #3 that reflected there was a transfer of less than 100% of the property and further indicated a sale of 50% interest to other owners for a price of $987,500. Ulman did not know this was a sale of a partial interest when the report was written. She further indicated the sale price would not be a reliable indicator for 100% of the property.

With respect to sale #4, Ulman testified she had the deed but did not recall if she looked at the Illinois Real Estate Transfer Declaration associated with this sale. According to the witness, the deed, based on the revenue stamps, showed a consideration of $2,243,000 was paid for the property. The witness stated she looked at the transfer declaration in preparation for the hearing but not in the preparation of the appraisal. The witness testified this was a sale of less than a 100 percent interest in the property, 86.4%, and would not be a reliable indicator of 100% interest in the property.

With respect to sale #5 the witness indicated that she looked at the sales declaration for this property in preparation for the hearing but relied on CoStar research in the preparation of the appraisal. The transfer declaration for this property, which was submitted by the board of review, indicated a sales price of $1,750,000 and that the transfer was less than 100% interest in the property.

Ulman testified page 3 of the appraisal was in error wherein it was stated "The subject property is encumbered by short-term leases." The report was also in error on page 3 in describing the subject property is an income producing residential type property because the subject property is an industrial property and is producing no income. The report was also in error on page 3 in stating that the income approach was given the most weight in the analysis. The appraiser also agreed the appraisal was in error on page 6 in stating the subject property is located in Chicago, Illinois.

Under redirect examination the appraiser testified that the PTAX-203 Illinois Real Estate Transfer Declaration for the December 2007 sale of comparable #1 indicated the property was purchased by MacNeil Real Estate located on Wisconsin Avenue approximately one block from the comparable. The appraiser stated she would not have used the December 2007 sale of the comparable for a price of $2,750,000. She opined the purchaser paid a premium too because the property was located nearby. Ulman was of the opinion the sale was not a good indicator of market value, rather the transaction was an indicator of what a neighbor would pay for the property.

With respect to comparable sale #4, the appellant's appraiser stated the Illinois Real Estate Transfer Declaration disclosed this was a sale between related individuals or corporate affiliates.

Additionally, the witness testified that the PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A, question 3, indicated that the number of months this property was listed on the market as "none."

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $764,610 was disclosed. The subject's assessment reflects a market value of $2,298,197 or $49.20 per square foot of building area, land included, when using the 2008 three year average median level of assessments for DuPage County of 33.27%.

In support of its contention of the correct assessment of the subject property the board of review called as its witness Edward Rottmann, head of the commercial/industrial department in the Downers Grove Township Assessor's Office. Rottmann has the Independent Fee Appraiser Senior (IFAS) designation and is a state certified general appraiser and a certified appraiser reviewer. The witness also has the Certified Illinois Assessing Officer (CIAO) designation. Rottmann prepared a report that was submitted by the board of review in support of its contention of the correct assessment.

Rottmann testified he utilized CoStar Comps to identify comparable sales. He ultimately selected four sales located in Downers Grove Township and one sale in York Township, approximately two blocks outside Downers Grove Township. The board of review submitted copies of the property record cards or printouts from the assessor's website, the Illinois Real Estate Transfer Declarations, and the Illinois Real Estate Transfer Declaration Supplemental Form A for the five comparables he selected.

The comparables were improved with industrial buildings that ranged in size from 25,000 to 52,695 square feet of building area and were constructed from 1973 to 1999. The assessor indicated four of the comparables were one-story buildings that had ceiling heights that ranged from 15 to 27 feet and offices that ranged in size from 8% to 28% of building area. The comparable properties had sites that ranged in size from 66,837 to 158,994 square feet resulting in land to building ratios ranging from 2.00:1 to 4.16:1. The sales occurred from September 2006 to May 2008 for prices ranging from $1,500,000 to $3,884,174 or from $52.89 to $114.00 per square foot of building area, including land. The record indicated that comparable sale #1 sold in October 2006 for a price of $3,150,000 and again in July 2008 for a price $3,884,774. The PTAX-203's indicated that comparable sales #1, #3 and #5 were advertised and the PTAX-203-A's indicated comparable sales #1, #4 and #5 were advertised on the market from 2 to 8 months.

Rottmann testified that when dealing with industrial warehouse buildings ceiling height and office space are very normal measures of comparison. Rottmann testified comparable #2, which sold for $114.00 per square foot of building area, was much more superior than the subject property. He explained these five sales were included in the analysis because he was showing the market in Downers Grove Township.

Rottmann also testified that he found 21 sales in DuPage County using CoStar Comps and the same parameters as contained in the appellant's appraisal of 29,450 to 67,451 square feet of building area constructed between 1960 and 1996. After eliminating the sales that were not arm's length and three included in the appellant's appraisal, 14 sales remained. The 14 sales were

improved with industrial buildings that ranged in size from 29,808 to 78,420 square feet and were built from 1965 to 1996 with one being renovated in 2007. Nine of these were reported to have office space ranging from 4% to 35% of building area and ceiling heights ranging from 20 feet to 28 feet. These properties had land to building ratios ranging from 1.08:1 to 4.66:1. The sales occurred from November 2006 to July 2008 for prices ranging from $1,476,398 to $5,950,000 or from $49.53 to $105.23 per square foot of building area, including land.[1]

Rottmann testified all of his sales were 100 percent interest conveyed and verified as arm's length transactions through the sales declarations and the assessor's cards.

The witness further testified that after looking over everything, his conclusion was that at $49.00 per square foot of building area the subject property is probably low as far as being assessed. He did not think a value of $30.00 per square foot of building area for the subject property would be an appropriate value.

Based on this evidence the board of review requested at the hearing that the assessment of the subject property be increased to $996,666 or to reflect a market value of approximately $2,990,000 or $64.00 per square foot of building area, including land.

Under cross-examination Rottmann testified he has a separate appraisal business, Realtec Corporation. He also testified that he is the commercial/industrial consultant with Downers Grove Township and through that position he was given control over the commercial/industrial department. The witness clarified that he is not an employee of Downers Grove Township.

Rottmann testified that through Realtec Corporation most of his appraisals are for ad valorem purposes. However, he is also the senior appraiser for Arthur Sheridan & Associates where he does other types of appraisals. Rottmann does appraisals for taxpayers to challenge their assessments and practices in DuPage County. The witness testified that he was retained to consult with Downers Grove Township 12 or 13 years ago and has appeared once before the DuPage County Board of Review relative to an ad valorem tax appeal appraisal during that period of time. The witness testified he doesn't do any work in Downers Grove Township and was of the opinion there was no conflict of interest.

Board member Carl Peterson testified that Rottmann has not appeared before him at the DuPage County Board of Review and he does all of the commercial/industrial appeals.

With respect to the documentation prepared by Rottmann, he testified it is not an appraisal and he did not provide an opinion of value. He stated that even though in the last sentence of the narrative he prepared he requested the Property Tax Appeal Board increase the assessment, he did not offer an opinion of value.

Rottmann further agreed that he had not adjusted the sales he submitted and there was no analysis as far as location, building height and ceiling height. The witness testified his sale #1 had more office space and the warehouse portion has more ceiling height than the subject

[1] The median sales price for these comparables was $65.00 per square foot of building area, including land, and the mean sales price for the comparables was $67.71 per square foot of building area, including land.

property. Sale #1 also had more land area than the subject property with 353,053 square feet. Rottmann was of the opinion that buildings with more ceiling height would sell for more on the open market, if all else is equal, and property with more land area would sell for more on a square foot basis. Rottmann did not know whether sale #1 was an owner-occupied property or multi-tenant.

Rottmann agreed sale #2 was constructed in 1999 and has 25,000 square feet, making it newer and smaller than the subject property. He also agreed that smaller buildings sell more per square foot, if all else is equal.

With respect to sale #3, the building has slightly higher ceiling heights of 20 to 22 feet. Rottmann testified the transfer declaration for comparable #3 stated the property was on the market for sale zero months. The witness did not know whether a tenant was in the building that purchased the property.

Rottmann also agreed that comparable #4 was a smaller building than the subject building. The ceiling height on the comparable is 16 and 22 feet compared to the subject's 18 feet. Rottmann had no knowledge whether or not this was a USDA facility.

Rottmann was also questioned about whether or not sale #5 was part of a 1033 exchange. He also did not know whether comparable #5 was a multi-tenant building. Rottmann also agreed that he did not adjust the data for the other 14 sales he submitted.

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

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 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 the evidence in the record demonstrates a change in the subject's assessment is not justified.

In support of the overvaluation argument the appellant submitted an appraisal of the subject property prepared by Shawn Schneider and Susan Z. Ulman of Zimmerman Real Estate Group, Ltd. estimating the subject property had a market value of $1,400,000 or approximately $30.00

per square foot of building area, land included, as of January 1, 2008. The Board finds the conclusion of value contained in the appraisal and testified to by Ms. Ulman is not credible.

The appellant's witness testified and the appraisal itself stated that the sales comparison approach was given the most emphasis in arriving at the estimate of value of $1,400,000 or approximately $30.00 per square foot of building area, rounded. The Board agrees that the sales comparison approach should be given the most emphasis under the facts of this appeal; however, the Board finds the appellant's appraisers did not adequately analyze the sales within the report and the sales were not good indicators of fair cash value, which undermines the ultimate conclusion of value proffered by the appraisers. The evidence disclosed that comparable sale #1 in the appraisal sold twice, first in March 2007 for a price of $1,500,000 or $28.20 per square foot of building area, including land (based on the Illinois Real Estate Transfer Declaration) and again in December 2007, within one month of the assessment date at issue, for a price of $2,750,000 or $51.71 per square foot of building area, including land. Of these two transactions, the Board finds the most probative sale would have occurred most proximate in time to the assessment date. Although Ulman testified she would not have used the second sale, this was based on assumptions. (Transcript page 67.) A copy of the Illinois Real Estate Transfer Declaration and the copy of the Illinois Real Estate Transfer Declaration Supplemental Form A associated with the December 2007 sale disclosed the property was advertised for sale and was on the market for 7 months. Furthermore, there was no showing that the parties to the transaction were related individuals or corporate affiliates. Using the first and lower sales price of this comparable would appear to result in understating the market value of the subject property.

Sale #2 used by the appraisers was significantly older than the subject property being originally constructed in 1961 or 1962. The report indicated this building was renovated in 2007; however, that was after the October 2006 purchase.

Appraisal sale #3 was disclosed to be a sale of a partial interest (50%) for a price of $987,500. Ulman testified that would not be a reliable indicator for a 100% interest of the property. If the price is reflective of the market value of a ½ interest in the real estate, the full value for this comparable would appear to be $1,975,000 or $67.06 per square foot of building area, including land. This is significantly above the appraisers' estimated value of $30.00 per square foot of building area and above the market value reflected by the subject's assessment.

With respect to appraisal comparable sale #4, the Illinois Real Estate Transfer Declaration indicated a net consideration for the real estate of $3,802,742 not the $2,243,000 as reported in the appraisal. (The record actually contains copies of two Illinois Real Estate Transfer Declarations associated with this sale for a combined net consideration of $4,400,001. Using this total consideration for this comparable would reflect a $72.15 per square foot of building area, including land.) Furthermore, the Illinois Real Estate Transfer Declaration indicates this was a sale between related individuals or corporations and there was a transfer of less than 100% interest. The Board finds this sale as reported in the appraisal may not be truly indicative of the purchase price and market value and should be discounted.

The record further disclosed through Illinois Real Estate Transfer Declaration that appraisal sale #5 was a sale of less than 100% interest in the property. As noted, Ulman had testified that a sale of a partial interest would not be a reliable indicator for a 100% interest of the property. The

Board finds this sale as reported in the appraisal may not be truly indicative of market value and should be discounted.

Based on this analysis, the Board finds the sales comparison approach contained in the appellant's appraisal is not a reliable or credible estimate of market value and should be given little weight. Due to the fact that the appraisers gave most emphasis to this approach in arriving at their conclusion of market value, the Board finds their conclusion of value is not reliable or credible.

The Board finds the board of review, through Rottmann, presented information on 19 sales that demonstrated the subject property was not overvalued. Five sales, located in Downers Grove Township and York Township, sold from September 2006 to May 2008 for prices ranging from $1,500,000 to $3,884,174 or from $52.89 to $114.00 per square foot of building area, including land. Additionally, Rottmann identified 14 other sales in DuPage County that sold from November 2006 to July 2008 for prices ranging from $1,476,398 to $5,950,000 or from $49.53 to $105.23 per square foot of building area, including land. The subject's assessment reflects a market value of $2,298,197 or $49.20 per square foot of building area, land included, when using the 2008 three year average median level of assessments for DuPage County of 33.27%. The subject property has a unit value below the range established by these raw sales prices. Additionally, these sales have prices significantly above the appellant's appraisers' estimated value of $30.00 per square foot of building area, including land, which further demonstrates the appraisers' opinion of value was not credible.

Based on this record, the Board finds no change in the assessment of the subject property is warranted.

APPELLANT:	**Carl Yelnick**
DOCKET NUMBER:	**06-25300.001-I-1 thru 06-25300.004-I-1**
DATE DECIDED:	**April, 2012**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property is improved with a one-story industrial building with 8,625 square feet of building area. The building was constructed in 1949. The subject property has a 48,140 square foot site resulting in a land to building ratio of 5.58:1. The subject property is located in Chicago, Lake Township, Cook County. The property is classified as a class 5-93 industrial property under the Cook County Real Property Assessment Classification Ordinance and is to be assessed at 36% of market value.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted a Limited Restricted Appraisal report prepared by James A. Matthews, a Certified General Real Estate Appraiser. Matthews developed the sales comparison approach using five comparable sales improved with one-story single tenant industrial buildings that range in size from 6,600 to 15,000 square feet of building area. The buildings were constructed from 1949 to 1967. These properties had sites that ranged in size from 9,975 to 39,767 square feet resulting in land to building ratios ranging from 1.11:1 to 1.54:1. These properties were located in Chicago, Alsip, Riverdale, Cicero and Blue Island. The sales occurred from May 2001 to June 2003 for prices ranging from $100,000 to $150,000 or from $10.00 to $15.15 per square foot of building area, including land.

The report indicated that all sales were adjusted upward for time; three were adjusted upward for inferior land to building ratios; all sales but comparable #3 were adjusted for building size. The appraiser stated within the report the adjusted range was from $12.20 to $20.15 per square foot of building area with a mean of $16.11 per square foot of building area and a median of $15.13 per square foot of building area. Based on these sales the appraiser estimated the subject property had a market value of $16.00 per square foot of building area, including land, or $140,000 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 $84,827 was disclosed. The subject's assessment reflects a market value of $235,631 or $27.32 per square foot of building area, including land, using the 36% level of assessment for class 5-93 industrial property under the Cook County Real Property Assessment Classification Ordinance.

As evidence in support of the assessment the board of review submitted a memo and information on five comparable sales. The comparables were described as one-story industrial buildings that ranged in size from 6,000 to 12,000 square feet of building area. The comparables were located in Chicago, Bedford Park and Oak Lawn. These properties had sites that ranged in size from 9,365 to 69,696 resulting in land to building ratios ranging from 1.18:1 to 5.81:1. The sales occurred from June 2002 to May 2007 for prices ranging from $325,000 to $840,000 or from $53.73 to $70.00 per square foot of building area, including land.

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 appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant submitted what was described as a "Limited Restricted Appraisal report" by the appellant's appraiser.[1] The Board gives little weight to the appellant's appraisal report due to the fact it is a restricted appraisal and the sales used by the appraiser occurred from approximately 30 months to 55 months prior to the assessment date at issue. The data provided by the board of review included three sales that occurred from September 2006 to May 2007 for prices ranging from $55.56 to $70.00 per square foot of building area, including land. The subject's total assessment reflects a market value of $27.32 per square foot of building area, including land, which is below the unit value of the best comparables in the record. Based on this record the Board finds a reduction in the subject's assessment is not justified.

[1] 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.

2012 INDUSTRIAL CHAPTER

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