State of Illinois

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

DECIDED BY THE BOARD

During Calendar Year 2018

Mauro Glorioso
Executive Director

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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

Mauro Glorioso
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

2018 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.ptab.illinois.gov 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 via the "Appeal Status Inquiry" link.

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.

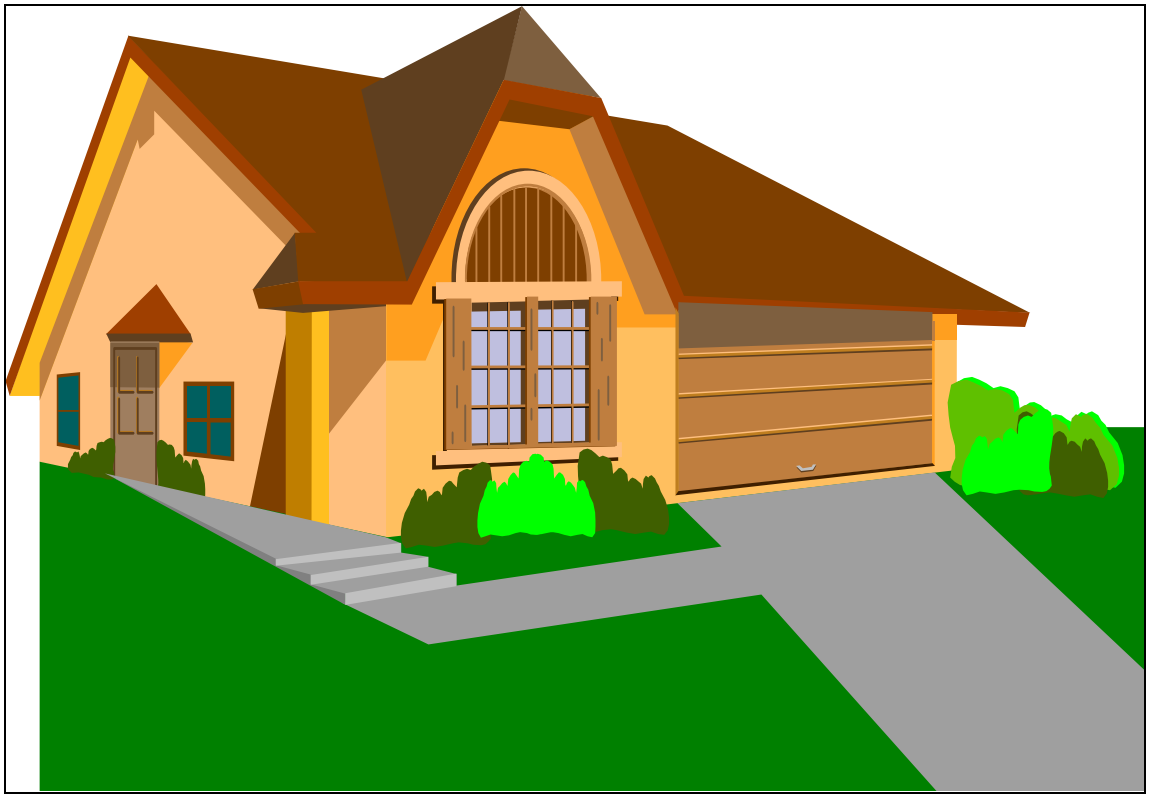
The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial 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 2018 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

2018 RESIDENTIAL DECISIONS



PROPERTY TAX APPEAL BOARD
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2018 RESIDENTIAL CHAPTER

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APPELLANT:	**David Anderson**
DOCKET NUMBER:	**14-03046.001-R-1**
DATE DECIDED:	**April, 2018**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a two-story dwelling of pine siding exterior construction with 1,408 square feet of living area. The dwelling was constructed in 1948. Features of the home include a full unfinished basement and a one-car garage. The property has a 7,250 square foot site and is located in Lombard, York Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board contending overvaluation and assessment inequity of the land and building as the bases of the appeal. In support of these arguments, the appellant submitted information on five comparable sales located within 940 feet of the subject property. The appellant reported that the comparables were improved with 1, one-story dwelling, 2, 1.5-story dwellings and 2, two-story dwellings of frame or brick exterior construction. The dwellings were constructed from 1946 to 1953. Each comparable has a basement with one comparable having a finished area, central air conditioning, three comparables have one or two fireplaces, one comparable has a carport and three comparables have a one-car or two-car garage. The dwellings range in size from 1,065 to 1,927 square feet of living area and have sites ranging in size from 7,250 to 12,606 square feet of land area.[1] The comparables sold from October 2011 to June 2013 for prices ranging from $140,000 to $220,000 or from $73.43 to $131.46 per square feet of living area, land included. The improvement assessments range from $20,920 to $53,550 or from $10.86 to $28.04 per square foot of living area. The site assessments range from $20,590 to $34,520 or $2.74 and $2.84 per square foot of land area.

Under cross-examination, the appellant testified that his comparable #4 is located at 626 Hammerschmidt, not 5 N Glenview Avenue as per the board of review's grid analysis.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $61,120. The subject's assessment reflects a market value of $183,378 or $130.24 per square foot of living area, land included, when using the 2014 three-year average median level of assessment for DuPage County of 33.33% as determined by the Illinois Department of Revenue. The subject has an improvement assessment of $40,430 or $28.79 per square foot of living area and a site assessment of $20,590 or $2.84 per square foot of land area.

Representing the board of review was Chairman Anthony Bonavolonta. Bonavolonta called York Township Deputy Assessor Lisa Bosma as a witness. In support of its contention of the correct assessment the board of review, through the township assessor, submitted information on six comparable sales located in the same neighborhood code assigned by the township assessor as the

[1] The board of review submitted property record cards (PRC) for the appellant's comparables. Based on the information obtained from the PRC, the appellant's grid analysis contains some errors. Appellant's comparable #1 does not have central air conditioning; comparable #3 does not have a garage; and comparable #5 has a fireplace.

subject property. One comparable was also utilized by the appellant. Bosma testified that the comparables were constructed from 1907 to 1954 and improved with two-story dwellings of frame, brick, or frame and brick exterior construction. Each comparable has a basement with three comparables having a finished area, three comparables have central air conditioning, three comparables have one or two fireplaces and each comparable has a one-car or two-car garage. The dwellings range in size from 1,128 to 2,593 square feet of living area and have sites ranging in size from 7,250 to 11,840 square feet of land area. The comparables sold from April 2011 to June 2013 for prices ranging from $149,000 to $340,000 or from $108.11 to $156.61 per square foot of living area, land included. The improvement assessments range from $46,040 to $84,730 or from $20.74 to $43.58 per square foot of living area. The site assessments range from $20,590 to $32,850 or $2.77 and $2.84 per square foot of land area.

Conclusion of Law

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

The parties submitted ten suggested comparables for the Board's consideration. The Board gave less weight to the appellant's comparables #3 and #5, along with the board of review's comparables #1, #3 and #4 as these sales occurred from April 2011 to December 2012, making them less indicative of fair market value as of the subject's January 1, 2014 assessment date. The Board gave also less weight to the board of review's comparables #5 and #6 based on their considerably larger dwelling size when compared to the subject.

The Board finds the best evidence of market value to be the appellant's comparable #1, #2 and #4, along with the board of review's comparable #2, which is also appellant's comparable #1. These comparables are most similar when compared to the subject in location, dwelling size, age, design, exterior construction and features and sold for prices ranging from $141,499 to $220,000 or from $73.43 to $115.18 per square foot of living area, including land. The subject's assessment reflects a market value of $183,378 or $130.24 per square foot of living area, including land, which is within the range established by the best comparables in this record on an overall price basis but above the range on a per square foot basis. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's estimated market value as reflected by its assessment is not supported. Therefore, a reduction in the subject's assessment is warranted.

The appellant also contended unequal treatment in the subject's assessment as a 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 and considering the reduction in assessment for overvaluation, the Board finds no further reduction in the subject's assessment is warranted.

APPELLANT:	**John Cooper**
DOCKET NUMBER:	**14-03666.001-R-1**
DATE DECIDED:	**April, 2018**
COUNTY:	**Edwards**
RESULT:	**Reduction**

The subject parcel owned by the appellant/taxpayer is improved with a mobile home and ancillary structures which were described as belonging to the mobile home owner/tenant and consisting of items "such as" portable carports, portable storage sheds, decks, non-movable steps and central air units. The parcel has a 9,600 square foot site and is located in Albion, Albion Township, Edwards County.

The appellant pursued this appeal as a contention of law contending that the ancillary structures located on the subject parcel should not be assessed as real estate and furthermore should not be taxed to the land owner since the land owner does not own those ancillary items. In support of this argument the appellant submitted a ten-page brief.

There is no dispute on the record that the mobile home is being taxed pursuant to the privilege tax or the Mobile Home Local Services Tax Act (35 ILCS 515/1 et seq.). From the record, this tax bill is being issued to the mobile home owner directly. The parties have no dispute regarding the privilege tax billing for the existing mobile home.

Factually, the appellant contends the subject parcel is being rented as a vacant lot and it was the tenant of the vacant lot who has placed both the mobile home and ancillary structures (described as personal property) upon the parcel. The appellant further contends that the subject parcel will remain a vacant lot when the mobile home owner moves and "takes all of their belonging[s] with them, including these ancillary structures." (Brief, p. 1) Since the appellant did not make the improvements to the land, the appellant contends that he should not be taxed for the items.

For purposes of this appeal, the appellant/taxpayer disputes only the real property assessment for these ancillary structures, described as personal property owned by the tenant. The appellant asserted that those items are not subject to assessment as real property under the Property Tax Code and furthermore should not be assessed to the appellant as he is only the owner of the land, not the owner of the items of personal property.

Based upon the foregoing argument, the appellant seeks to reduce the improvement assessment of the subject parcel from $1,000 to zero.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $3,305. The assessing officials assigned an improvement assessment to the subject parcel of $1,000.

The assessing officials failed to provide a copy of the property record card with the evidentiary submission to the Property Tax Appeal Board. (86 Ill.Admin.Code S1910.40(a)). The board of review also did not provide any itemization of what improvements have been assessed or data on

the individual assessments attached to those items. Additionally, the board of review did not dispute in any manner the appellant's contention of the ancillary structures which were assessed as improvements to the subject parcel with a total assessment of $1,000.

In support of its contention of the correct assessment, the board of review submitted citations to the Property Tax Code and cases, one in particular, arguing that the assessment of improvements to the owner of the land or parcel are legally appropriate.

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

Conclusion of Law

The parties did not dispute the fact that the mobile home located on the subject property owned by the tenant was receiving the privilege tax provided by the Mobile Home Local Services Tax Act (35 ILCS 515/1 et seq.). For this appeal, the appellant contends the subject's ancillary structures, located on the subject parcel, should not be assessed and taxed as real estate to the owner of the land, because the owner of the land does not own the ancillary structures. In other words, the appellant asserts that he should not be liable for the assessment of the subject property "improvements" because he was not the owner of these ancillary improvements.

Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

> Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63. After a thorough review of the evidence in the record and the arguments that have been made, the Board finds the appellant established by a preponderance of the evidence that a reduction in the subject's improvement assessment is warranted commensurate with the appellant's request.

Only the appellant provided a description of the reported 'ancillary structures' which were imprecisely described "such as portable carports, portable storage sheds, decks, non-movable steps and central air units." There were no photographs of the purported items. There was no property record card provided that itemized the assessed improvements and the individual assessments assigned to each of the improvements. Therefore, in this regard, the record is severely lacking in detail. However, the Property Tax Appeal Board further finds that the board of review did not dispute in any manner the appellant's description of the assessed improvements on the subject parcel.

In the case of In re Hutchens, 34 Ill.App.3d 1039 (4th Dist. 1976), cited by both parties in this proceeding, a cabin, transported to leased land, set upon pillars made of concrete blocks, and shimmed up with shingles, was taxed separately from the land. Unlike in the cases involving the assessment of mobile homes, in Hutchens there was no statutory scheme for classifying the cabin. In Hutchens, the trial court found that the manner of the placement of the cabin on blocks and a

provision of the lease for plumbing connections between the cabin and a septic tank and a well sufficiently attached the cabin to the land to 'become a part of it.' (Id. at 1040-1041) On appeal, the court found that while the cabin was part of the real estate, it should not have been assessed and taxed as a separate entity but determined that the value of the cabin should have been included in the assessment of the tract of land that was listed in the name of the landlord. On appeal, the Fourth District Appellate Court held that as far as property taxes are concerned, the finding of the trial court that the cabin was part of the real estate was not contrary to the manifest weight of the evidence. The Property Tax Appeal Board finds that Hutchens, in part, stands for the proposition that ancillary improvements which were owned by different individuals does not preclude the ancillary improvements from being classified, assessed and taxed as improvements to the real estate or to the land owner.

However, the Property Tax Appeal Board finds that the instant factual circumstance of ancillary improvements to a mobile home being made by the tenant of the property is factually and legally indistinguishable from the determination in Boone County Board of Review v. Property Tax Appeal Board, 276 Ill.App.3d 989, 659 N.E.2d 72, 213 Ill.Dec. 442 (2nd Dist. 1995). In Boone, the issue concerned the assessment of certain additions constructed by mobile homeowners that were assessed against the *mobile home park owners*. The additions included canopies, decks, porches and garages that mobile homeowners, who were leasing lots from the *park owners*, had placed upon the lots. The court found that "annexations by a tenant are presumed to be made for the tenant's benefit and not made to enrich the freehold." (Id. at 997). Based on the evidence of record in Boone, both the park owners and the mobile home owners did not intend the additions at issue to become permanent.

After considering the unrefuted evidence in this record from the appellant that the subject vacant lot will remain vacant "when the mobile home owner moves and takes all of their belonging[s] with them," the Property Tax Appeal Board likewise finds the ancillary improvement(s) described in this appeal are not fixtures, are not annexed to the realty and there is no indication that there was an intent to make a permanent accession to the freehold. Therefore, on this record, the Property Tax Appeal Board finds the subject ancillary improvements are properly classified as personal property which is not assessable as real property to the land owner. (See Boone County Board of Review, *supra*).

In conclusion, based on the evidence of record in this matter, the Board finds a reduction in the subject's assessment is justified commensurate with the appellant's request.

APPELLANT:	**John Ross Depa**
DOCKET NUMBER:	**13-01627.001-R-1**
DATE DECIDED:	**March, 2018**
COUNTY:	**Lake**
RESULT:	**No Change**

The subject property consists of a two-story townhome style dwelling of brick and frame exterior construction with 2,382 square feet of living area. The dwelling was constructed in 2006. Features of the home include a basement, central air conditioning, a fireplace and a two-car garage having 410 square feet of building area. The property has a 2,509 square foot site and is located in Hawthorn Woods, Fremont Township, Lake 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 called as his witness Grant M. Stewart. Stewart is employed by Grant M. Stewart and Associates, Inc. and is a Certified Residential Real Estate Appraiser licensed in Illinois. Stewart testified that he has been a certified residential appraiser approximately 30 years.

Stewart testified that he inspected the interior and exterior of the subject property and prepared an appraisal of the subject. The purpose of the appraisal was to develop an opinion of market value of the subject property as of January 1, 2013. Stewart provided direct testimony regarding the appraisal methodology and final value conclusion. The appraiser relied on the sales comparison approach to value. The appraisal report conveys an estimated market value of $265,000 as of January 1, 2013.

During the appraiser's testimony, Stewart testified that when the appellant purchased the home, it had been a "display home " and included furnishings. Stewart acknowledged that there was no evidence submitted as documentation of the personal property.

Under the sales comparison approach to value, the appraiser utilized four suggested sales located in Hawthorn Woods within .2-of a mile from the subject property. The dwellings were described as two-story townhome style dwellings of brick and frame exterior construction. Each comparable has a basement with one comparable having finished area and two comparables having a walk-out style basement. Features also included central air conditioning, a fireplace and a two-car garage. The dwellings are from 4 to 7 years old. The dwellings range in size from 2,292 to 2,461 square feet of living area and are situated on lots that range in size from 2,505 to 3,284 square feet of land area. The comparables sold from April 2012 to July 2013 for prices ranging from $253,000 to $319,000 or from $102.80 to $134.94 per square foot of living area, land included. After adjusting the comparables for differences when compared to the subject in site, view, age, dwelling size, baths and other amenities, the appraiser calculated that the comparables had adjusted sale prices ranging from $261,000 to $304,000 or from $106.05 to $128.60 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 $265,000 or $111.25 per square foot of living area land included as of January 1, 2013 using the sales comparison approach.

Under cross-examination, Stewart testified that it was an error that he did not include the subject's sale in the appraisal. Stewart acknowledged on page 1 of his appraisal that under foundation the outside entry/exit is marked with an "x," but the subject property does not have a walk-out style basement. Stewart testified that under "Additional Features" it states that the basement has 2 rooms, and a .1 bath, in which that is an error, the basement is neither finished nor has a half-bath.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $101,656. The subject's assessment reflects a market value of $305,824 or $128.39 per square foot of living area, land included, when using the 2013 three-year average median level of assessment for Lake County of 33.24% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted information on the sale of the subject property. The board of review submitted a PTAX-203, Illinois Real Estate Transfer Declaration disclosing that the subject property sold in August 2012 for a price of $370,000. The declaration disclosed that the property was advertised for sale and there was no "personal property" included in the sale purchase. The board of review also included a copy of the Multiple Listing Service sheet of the subject property disclosing that the property was on the market for 146 days prior to its sale.

Conclusion of Law

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

The Board finds the best evidence of market value to be the purchase of the subject property in August 2012 for a price of $370,000. The board of review provided evidence demonstrating the sale had the elements of an arm's length transaction. The board of review disclosed that the property was sold using a Realtor and that the property had been advertised on the open market with the Multiple Listing Service for 146 days. In further support of the transaction, the board of review submitted a copy of the PTAX-203 Illinois Real Estate Transfer Declaration, which did not include any personal property in the purchase price. The Board finds the purchase price is above the market value reflected by the assessment. Furthermore, the Board gives little weight to the appellant's appraisal report as the opinion of value is not supported by the sale of the subject which occurred only four months prior to the January 1, 2013, effective valuation date of the appraisal. The Board finds the appraiser failed to disclose that the property had sold, which further undermines the appraiser's value conclusion. Based on this record, the Board finds the subject property had a market value of $370,000 as of January 1, 2013. Based on this evidence, the Board finds a reduction in the subject's assessment is not justified

APPELLANT:	**Kenneth DeRango**
DOCKET NUMBER:	**15-06315.001-R-1**
DATE DECIDED:	**January, 2018**
COUNTY:	**McHenry**
RESULT:	**Reduction**

The subject property consists of a one-story single-family dwelling of frame and masonry construction with 1,977 square feet of living area. The dwelling was constructed in 2013. Features of the home include a concrete slab foundation, central air conditioning and an attached two-car garage of 501 square feet of building area. The property has a 10,083 square foot site and is located in Woodstock, Greenwood Township, McHenry County.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument the appellant submitted information on six equity comparables that were described as being older than the subject dwelling being "5-10" years old. The comparables range in size from 1,933 to 2,461 square feet of living area with full basements, central air conditioning and two-car or three-car garages. Four of the comparables have one or two fireplaces. The comparables have improvement assessments ranging from $37,485 to $51,893 or from $19.39 to $21.09 per square foot of living area.

Based on this evidence, the appellant requested a reduced improvement assessment of $56,345 or $28.50 per square foot of living area.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $73,222. The subject property has an improvement assessment of $72,332 or $36.59 per square foot of living area.

In response to the appeal, the board of review contends that the subject is located in the Maples at the Sonatas planned development neighborhood where properties are semi-customizable and generally have superior quality of construction. In contrast, the appellant's comparables are located in The Sonatas planned development which do not have the same marketability and are not appropriate for comparison.

In support of its contention of the correct assessment the board of review submitted a spreadsheet of "all the detached properties within the Maples at the Sonatas planned development area." The spreadsheet depicts three models, the Palazzo, the Portico and the Promenade; the subject is described as a Promenade. The data only sets forth the design, year built, dwelling size, "rooms" and bedrooms along with assessment data. The relevant Promenade model data depicts six, one-story dwellings and one, two-story dwelling that were built between 2010 and 2013. The homes range in size from 1,995 to 2,481 square feet of living area. The board of review noted that average improvement assessment of these comparables was $35.22 per square foot of living area and the median improvement assessment was $35.92 per square foot of living area.

Based on this data, the board of review proposed a reduction in the subject's improvement assessment to $71,014 based on the median assessment.

The appellant was provided with the board of review's evidence and filed no response or rebuttal to the proposed assessment reduction.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds a reduction in the subject's assessment is warranted.

The parties submitted a total of 13 equity comparables to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to the appellant's comparables due to their location in a different development than that of the subject property. The appellant did not refute this distinction made in the board of review's filing. The Board has also given reduced weight to the two-story Promenade dwelling that was reported by the board of review.

The Board finds the best evidence of assessment equity to be the one-story Promenade dwellings submitted by the board of review. The homes are reportedly similar to the subject in location and age and range in size from 1,995 to 2,470 square feet of living area. These comparables had improvement assessments that ranged from $31.67 to $37.54 per square foot of living area. Although the subject's improvement assessment of $36.59 per square foot of living area falls within the range established by the best comparables in this record, the McHenry County Board of Review recommended a reduction of the subject's improvement assessment to the median improvement assessment of $35.92 per square foot of living area for a reduced improvement assessment of $71,014. Therefore, based on this record the Board finds a reduction in the subject's assessment is justified.

APPELLANT:	**Jonathan Gardiner**
DOCKET NUMBER:	**14-03985.001-R-2**
DATE DECIDED:	**May, 2018**
COUNTY:	**Tazewell**
RESULT:	**Reduction**

The subject property is improved with a two-story frame dwelling that was built in 2013. The home features a full basement with finished area, central air conditioning, a fireplace and an attached three-car garage with 750 square feet of building area. The property has a .22-acre site located in Morton, Morton Township, Tazewell County.

Based upon a contention of law, the appellant asserts that the subject property was improperly assessed as omitted property for both tax years 2014 and 2015.[1] The appellant argues that in accordance with Section 9-270 of the Property Tax Code (hereinafter "Code"), the subject property meets an exception to the provision for omitted property assessment in that the assessor received a building permit for the subject property evidencing new construction, but failed to list the improvement on the tax rolls. (35 ILCS 200/9-270) As a consequence of the erroneous assessment, the appellant asserts there is no liability for any taxes due related to the improvement assessment and the assessment should revert to $160, being the amount of the assessment prior to the omitted property assessment made in May 2016 and affirmed by the Tazewell County Board of Review by a decision issued on August 15, 2016.

The appellant reported that the subject property was purchased on December 6, 2013 for $324,900 as new construction, having been completed shortly before the appellant moved in. The home was built pursuant to building permit #13042 which was filed with the Village of Morton and reportedly shared with the Morton Township Assessor, Vivian Hagaman, but the township assessor failed to list the improvement on the tax rolls (citing Sec. 9-270(4) of the Code). (See Exhibit I) The appellant asserted, "we otherwise provided notice of our purchase of this improved property (Section 9-270(3))."

The appellant also complains that there was "no fair hearing" before the Tazewell County Board of Review, their decision should not stand, and the board of review disregarded the counsel of the Tazewell County Assistant State's Attorney. As an initial matter, the appellant's complaints regarding the appeal process before the Tazewell County Board of Review will be briefly addressed along with the argument that the valuation for years 2014 and 2015 should be reversed, in part, due to errors/omissions at the board of review level. The law is clear that proceedings before the Property Tax Appeal Board are de novo "meaning the Board will only consider the evidence, exhibits and briefs submitted to it, and will not give any weight or consideration to any prior actions by a local board of review . . . ." (86 Ill.Admin.Code §1910.50(a)). Moreover, the jurisdiction of the Property Tax Appeal Board is limited to determining the correct assessment of the property appealed to it; the Property Tax Appeal Board has no jurisdiction to address any alleged procedural and/or due process violations alleged with regard to actions and/or inactions at the local board of review level. (35 ILCS 200/16-180). Thus, the Property Tax Appeal Board will consider the evidence presented by both parties to this proceeding in determining the correct

[1] Two separate appeals were timely filed by the appellant and two separate decisions will issue for these appeals.

assessment of the subject property and will not further address any complaints about the hearing process at the local county board of review level.

Through a 4-page single-spaced brief along with attachments, Exhibits I through XII, the appellant outlined the history of the subject parcel being "tracked" by the Morton Township Assessor, Vivian Hagaman, from building permit to final painting. In support the appellant referred to Exhibit I which consists of a copy of the subject's property record card with a print date of "01/02/2014" along with a handwritten notation of "permit – 13042 4/1," a second handwritten notation "SFR [single family residence] $263,000" and the property record card also has a typed entry in the lower left corner of "12/5/13 – Certificate of Occupancy"; a form "Residential Data Collection Sheet" with percent of completion being 100% as of November 4, 2013 and a notation "occupied 12-5-13"; and two pages, both of which are entitled Application for Building Permit and Certificate of Occupancy dated 4-1-13, one of which was granted as of 5-2-13. The appellant reported that next, shortly after the sale, a Trustee's Deed was filed and recorded with the County to evidence the real estate transfer and pay the transfer taxes including Form PTAX-203 evidencing the sale price. (See Exhibit II – copies of the PTAX-203, Trustee's Deed and Affidavit for Purposes of Illinois Plat Act Requirements) Based upon this documentation, the appellant contends he complied with all the filings required by Tazewell County and the Code.

In the brief, the appellant asserted that the 2014 tax bill did not list the construction of the home, "but never having owned a home before, we were under the impression that the property tax value would not increase until the 2015 tax year." The appellant contends the tax bill of $11.46 was paid timely. Next, the appellant cites to Exhibit III, a copy of the Tazewell County Property Tax Bill for 2015 taxes payable 2016 totaling $11.32 which still did not list the home; the first installment was due June 1, 2016. The appellant asserted that on May 2, 2016, he contacted the Tazewell County Assessment Office to check if the bill was correct. In support, the appellant referred to Exhibit IV, "File of the Morton Township Assessor" concerning the 2016 Correction, Property Administrative Information with handwritten notes from Vivian Hagaman which includes a Tazewell County Certificate of Error #2015000371 for tax year 2015 due to omitted property, a Certificate of Error Worksheet for tax year 2015 noting "omitted new construction for 2014 & 2015 (2015 factor 1.0280)" and multiple property record cards with handwritten notations. The appellant asserts that while the property permits and notices were reportedly filed according to the assessment office, "the county failed to update the tax rolls."

As depicted by Exhibit V, on August 10, 2016 a PTAX-228 Notice of Property Assessment was issued for tax year 2016 noting that the 2015 assessment was $160 and for 2016 was increased to $111,570 by the township assessor and further increased by the Chief County Assessment Officer to $112,690. The appellant contends that his affirmative actions assisted the county in discovering and correcting this error. The county officials also informed the appellant that the taxes would be increased for tax year 2014 and 2015 as omitted property and not as an administrative error.

As depicted in Exhibit VI, a notice dated May 9, 2016 from Mary J. Burress, Tazewell County Treasurer, advised the appellant that payment for both the 2014/15 and 2015/16 real estate tax bills totaling $14,804.04 was due on September 1, 2016; the notice encouraged a call to the Treasurer's Office if the full amount could not be paid by the due date. Also, as part of the Exhibit VI were copies of a tax bill for 2014 taxes payable 2015 and a tax bill for 2015 payable 2016.

The appellant reports and depicts with Exhibit VII that he objected in writing in June 2016 to Gary Twist, Chief County Assessment Officer, concerning the issuance of additional tax bills. In support of his objection, the appellant contended that pursuant to the Code the taxes could not be collected, citing both to Sections 9-260(a) and 9-270. In response, a meeting was established with the Tazewell County Board of Review members to discuss omitted property which was held on July 12, 2016. (See Exhibit VIII & Brief, p. 2). At the meeting, the appellant asserts that his legal arguments were dismissed, he was advised to discuss his questions with the State's Attorney who advised the appellant that legal issues can be discussed with the board of review; upon re-raising the issue with the board of review, the appellant was finally told he could appeal the board of review decision. The appellant followed up the meeting with an e-mail communication to the board of review, Exhibit IX, along with additional documents including the previously referenced Code provisions.

After this communication, the appellant spoke with Mike Holly, Assistant State's Attorney, who reportedly acknowledged that the "assessor" had received the building permit, had visited the construction site, but failed to add the subject property to the rolls. The appellant asserts that it was Holly's opinion that the appellant had a "solid" argument and that Holly had so informed the board of review.

Thereafter, the appellant received an e-mail from Gary Twist dated July 29, 2016 advising that the subject property would be assessed as omitted property for both 2014 and 2015 (Exhibit X) along with a modification to the 2014 assessment based upon the purchase price and with an equalization factor applied to the 2015 assessment. Next, the appellant received the board of review final decision on omitted property for 2014 and 2015 tax years dated August 15, 2016.

Based on the foregoing evidence and argument, the appellant seeks a reduction in the 2014 assessment of the subject property to $160 prior to the assessment for omitted property.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $108,290. The subject's assessment reflects a market value of $325,782, land included, when using the 2014 three-year average median level of assessment for Tazewell County of 33.24% as determined by the Illinois Department of Revenue.

In response to the appeal, the board of review initially submitted a two-page letter. While the appellant asserted that a building permit was filed by the builder, there was no documentation of occupancy provided. Pursuant to Village of Morton ordinances, the board of review contends that a notice of occupancy was required. Furthermore, while Section 9-265 of the Code (35 ILCS 200/9-265) provides that interest may not be charged for property omitted by ministerial assessor error, nothing prevents the collection of the principal amount of back taxes.[2]

[2] Section 9-265 of the Code (35 ILCS 200/9-265) states in pertinent part that:

> (a) If any property is omitted in the assessment of any year or years, not to exceed the current assessment year and 3 prior years, so that the taxes, for which the property was liable, have not been paid, or if by reason of defective description or assessment, taxes on any property for any year or years have not been paid, or if any taxes are refunded under subsection (b) of Section 14-5 because the taxes were assessed in the wrong person's name, the property, when discovered, shall be listed and assessed by the board of review or, in counties with 3,000,000 or more inhabitants, by the

The board of review did not address in any manner the prohibitions set forth in Section 9-270 of the Code that were also cited by the appellant (35 ILCS 200/9-270).

Based on the foregoing arguments, the board of review requested confirmation of the subject's omitted property assessment totaling $108,290 for tax year 2014.

In written rebuttal, the appellant contended that Section 9-270 of the Code (35 ILCS 200/9-270) stands for the proposition that no omitted property assessment may issue if the assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property but failed to list the improvement on the tax rolls. Furthermore, the appellant contends that a Certificate of Occupancy was issued by the Village of Morton when the appellant moved into the home, citing to the document in Exhibit I previously filed herein that is entitled "Application for Building Permit and Certificate of Occupancy"; the last portion of one of these documents states in pertinent part "No building shall be occupied until the Certificate of Occupancy is issued by the Village of Morton." Also attached to the rebuttal was new documentation, a Certificate of Occupancy issued by the Morton, Illinois Zoning Department dated December 5, 2013. The appellant also referenced the township assessor's record of "percent of completion." In further response to the board of review's argument, the appellant asserted that while Section 9-265 of the Code allows a charge for omitted property, Section 9-270 "specifically limits the application of Section [9-265] to our situation."

Conclusion of Law

The appellant has disputed both the land and improvement assessments of the subject property based upon a contention of law. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

> Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

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county assessor either on his or her own initiative or when so directed by the board of appeals or board of review.

. . .

(c) For purposes of this Section, "defective description or assessment" includes a description or assessment which omits all the improvements thereon as a result of which part of the taxes on the total value of the property as improved remain unpaid.

. . .

(e) When property or acreage omitted by either incorrect survey or other ministerial assessor error is discovered and the owner has paid its tax bills as received for the year or years of omission of the parcel, then the interest authorized by this Section shall not be chargeable to the owner. However, nothing in this Section shall prevent the collection of the principal amount of back taxes due and owing.

. . . .

From the record it appears that for tax year 2013, the subject parcel was assessed as vacant land with a total assessment of $160 and the resulting tax bill which the appellant paid. The low assessment of the subject parcel suggests that the property was receiving a preferential assessment, such as that afforded under the developer's exemption provisions of the Property Tax Code (see 35 ILCS 200/10-30 et seq.). On this record, the appellant reported that the subject property was purchased on December 6, 2013 as new construction that had been recently completed. The ownership history of the subject parcel as depicted on the property record card (Exhibit I) displays the original owner as AK Morton Development LLC followed by ownership by Henderson Weir Agency. The Board takes notice that Section 10-30(c) of the Property Tax Code (35 ILCS 200/10-30(c) provides in pertinent 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: (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, 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)). [Emphasis added.]

Subsection (b) of Section 10-30 provides for the assessment of platted and subdivided land based on the estimated price "for the same purposes for which the property was used when last assessed prior to its platting." Therefore, the Property Tax Appeal Board finds that the subject parcel was likely preferentially assessed as part of a subdivision and pursuant to Section 10-30(c) once sold to the appellant in late 2013 was no longer entitled to a preferential assessment. In light of the change in ownership when the appellant purchased the parcel, the Property Tax Appeal Board finds that the subject land was no longer entitled to an assessment of $160 for tax year 2014. In the absence of any other evidence from the appellant that the subject's land assessment was not otherwise incorrect, beyond the citation to Section 9-270 of the Code concerning omitted property, the Board finds that no change in the subject's land assessment is warranted on this record.

The remaining issue before the Property Tax Appeal Board is the correct 2014 tax year assessment, if any, of the dwelling located on the subject parcel given the appellant's argument concerning the applicability of Section 9-270 of the Code (35 ILCS 200/9-270). As to the improvement assessment, the question posed is whether the board of review had the authority to assess the subject improvements as omitted property for the assessment year at issue. Based on the facts elicited in this record and in particular subpart (4) of Section 9-270, the Property Tax Appeal Board finds that the board of review did not have the authority to assess the subject improvements as omitted property for the assessment year at issue and, therefore, a reduction in the subject's improvement assessment is warranted.

The appellant's argument is essentially that the board of review should be deemed prohibited from assessing the improvement on the subject property as "omitted property" under the Code due to the failures of the assessing officials. The appellant asserts that he should not be liable for the

improvement assessment of the subject property because the township assessor received a copy of the building permit, recorded the Certificate of Occupancy on the subject's property record card prior to January 2, 2014 and, as part of the assessor's record, maintained a "Residential Data Collection Sheet" that recorded various aspects of the subject dwelling including, but not limited to, the building permit dated 4/1/13, the style, foundation, exterior, porches, wood deck, garage, fireplace, air conditioning and a calculation of "Percent of Completion" along with a notation "occupied 12-5-13." Based upon this documentation maintained in the assessor's files, the appellant contends that the township assessor, Vivian Hagaman, recorded the subject property as 100% complete, but yet failed to place the property on the tax rolls. Lastly, the appellant contends that on May 2, 2016 (Exhibit IV), it was the appellant who questioned if the county had failed to place the subject property on the tax rolls for tax year 2015.

The Property Tax Appeal Board finds the argument made by the appellant has merit. The Property Tax Appeal Board first recognizes that the statutory provision for the assessment of omitted property previously provided as follows:

> A charge for tax and interest for previous years, as provided in Sections 9-265 or 14-40, shall not be made against any property for years prior to the date of ownership of the person owning the property at the time the liability for the omitted tax was first ascertained. Ownership as used in this section shall be held to refer to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale, or other form of contract. No charge for tax of previous years, as provided in Section 9-265, shall be made against any property if (a) the property was last assessed as unimproved, (b) the owner of the property gave notice of subsequent improvements and requested a reassessment as required by Section 9-180, and (c) reassessment of the property was not made within the 16 month period immediately following the receipt of that notice. The owner of property, if known, assessed under this and the preceding section shall be notified by the county assessor, board of review or Department, as the case may require. (P.A. 88-455, Art. 9, § 9-270, eff. Jan. 1, 1994).

The statutory provision, Section 9-270, for omitted property was significantly changed as of March 10, 2011. Thus, the statutory provision which the appellant has argued provides as follows in Section 9-270 of the Code (35 ILCS 200/9-270):

> Omitted property; limitations on assessment. A charge for tax and interest for previous years, as provided in Sections 9-265 or 14-40, shall not be made against any property for years prior to the date of ownership of the person owning the property at the time the liability for the omitted tax was first ascertained. Ownership as used in this section shall be held to refer to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale, or other form of contract. **No charge for tax of previous years, as provided in Section 9-265, shall be made against any property if** (1) the assessor failed to notify the board of review of an omitted assessment in accordance with subsection (a-1) of Section 9-260; (2) the property was last assessed as unimproved, the owner of the property gave notice of

> subsequent improvements and requested a reassessment as required by Section 9-180, and reassessment of the property was not made within the 16 month period immediately following the receipt of that notice; (3) the owner of the property gave notice as required by Section 9-265; **(4) the assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property but failed to list the improvement on the tax rolls;** (5) the assessor received a plat map, plat of survey, ALTA survey, mortgage survey, or other similar document containing the omitted property but failed to list the improvement on the tax rolls; (6) the assessor received a real estate transfer declaration indicating a sale from an exempt property owner to a non-exempt property owner but failed to list the property on the tax rolls; or (7) the property was the subject of an assessment appeal before the assessor or the board of review that had included the intended omitted property as part of the assessment appeal and provided evidence of its market value. The owner of property, if known, assessed under this and the preceding section shall be notified by the county assessor, board of review or Department, as the case may require. (Source: P.A. 96-1553, eff. 3-10-11.) [Emphasis added.]

Based on the record, the parties agree that the board of review never assessed any of the improvements prior to the omitted property assessments for 2014 and 2015. Pursuant to Section 9-270 of the Code, of the seven subparts there is one particular exception to the authority of a board of review to assess omitted property at subpart (4) where "the assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property but failed to list the improvement on the tax rolls."

The appellant's submission included a copy of the subject's property record card, a Residential Data Collection Sheet, a Percent of Completion data sheet, and an Application for Building Permit and Certificate of Occupancy that was dated April 1, 2013 referencing Permit No. 13042, the same building permit number referred to in a handwritten notation on the subject's property record card. Multiple documents submitted in this record by the appellant along with the lack of any evidence by the board of review to refute the documentation supports the appellant's argument that the assessor had received a building permit associated with the subject dwelling. The Tazewell County Board of Review submitted no argument refuting the genuineness of the appellant's documentation which was reportedly maintained by the township assessor's office nor did it assert that the assessor did not receive a copy of the building permit associated with the construction of the subject dwelling. Therefore, the Property Tax Appeal Board finds the appellant established that in accordance with Section 9-270 of the Code, the Tazewell County Board of Review was prohibited from assessing the subject improvement as omitted property for the assessment year at issue.

In conclusion, the Property Tax Appeal Board finds removal of the subject's improvement assessment is justified based upon subpart (4) of Section 9-270 of the Property Tax Code as shown in this record. Thus, the Board finds removal of the subject's improvement assessment is warranted.

APPELLANT:	**Gregory Gulik**
DOCKET NUMBER:	**15-32503.001-R-1**
DATE DECIDED:	**June, 2018**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a two-story, single-family dwelling of masonry construction. The dwelling is approximately 19 years old and has 2,126 square feet of living area. Features of the home include a full finished basement, central air conditioning, a fireplace and a two-car garage. The property has a 3,250-square foot site and is located in Chicago, North Chicago Township, Cook County. The property is a class 2-78 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal report, dated January 18, 2016, estimating the subject property had a market value of $710,000 as of January 1, 2015. The appraiser developed the sales comparison approach for estimating the market value of the subject property. Under the sales comparison approach, the appraiser considered five comparable properties that sold from April 2014 to December 2015 for prices that ranged from $862,500 to $935,000 or from $312.61 to $336.45 per square foot of building area, land included.[1] Based upon a map provided by the appraiser, two of the comparables were located in close proximity to the subject property, and three of the comparables were located in the same general area as the subject property. The comparables have sites that range from 2,773 to 3,250 square feet of land area. The comparable properties are improved with two-story dwellings; however, the appraiser provided limited and contradictory information regarding the dwellings. The comparable dwellings range in age from 14 to 22 years old and contain from 2,600 to 2,850 square feet of building area. However, on page 40 of the appraisal report, comparable #3 was described as having 2,236 square feet of building area and a sale price per square foot of $393.56. On page 43, comparable #3 was listed as having 2,815 square feet of building area and a sale price per square foot of $312.61. The appraiser did not provide information regarding the comparables' exterior construction and features such as foundation, below-grade finished area, central air conditioning, fireplaces, and garages, if any. After identifying differences between the comparable properties and the subject, the appraiser made percentage adjustments to the sale prices for differences in age/condition, land area and building size. The appraiser determined that the adjusted sale prices of the comparable properties ranged from $314.17 to $336.71 per square foot of building area, land included. As a result, the appraiser concluded the subject property had a market value of $335 per square foot of building area or $710,000, rounded, as of January 1, 2015. Based upon the appraisal, the appellant requested that the subject's total assessment be reduced to $71,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $87,876. The subject's assessment reflects a market value of

[1] When discussing the comparables, the appraiser used the term "building area" instead of living area. The appraiser stated the source for information about the comparables came from "MLS comps." The appraiser did not explain if the term "building area" included below-grade finished area.

$878,760 or $413.34 per square foot of living area, land included, when applying the 10% level of assessment for class 2 residential properties under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted information on four comparable sales that sold from May 2014 to November 2015 for prices that ranged from $881,500 to $1,350,000 or from $350.36 to $563.91 per square foot of living area, land included. Two of the four comparable sales were also analyzed in the appraisal report. Board of review comparable #1 is the same property as the appraiser's comparable #1, and board of review comparable #4 is the same property as the appraiser's comparable #5. However, the board of review reported different living areas for these two comparables.[2] The board of review comparables have the same assigned neighborhood and classification codes as the subject. One of the comparables was described as being located on the same block as the subject, and two other comparables were located one-quarter mile from the subject. The comparables have sites that range from 2,773 to 3,531 square feet of land area. The comparables are improved with two-story dwellings of frame or masonry construction. The dwellings range in age from 12 to 19 years old and contain from 2,126 to 2,516 square feet of living area. Each comparable has a full basement, two of which have finished area. Each comparable has central air conditioning and a two-car garage, and two comparables have a fireplace. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant's attorney asserted the board of review had submitted three comparables with sale dates that occurred after the January 1, 2015 assessment date: "Taxpayer objects to respondent's sales comparable #2, 3 and 4 because these sales comps sold after the effective lien date of January 1, 2015. As a result, taxpayer requests that Property Tax Appeal Board place little or no weight to the respondent's sales comp #2, 3 and 4."

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds the appellant 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 report that utilized the sales comparison approach to value. The appraiser analyzed five comparable sales that occurred from April 2014 to December 2015 for prices that ranged from $862,500 to $935,000 or from $312.61 to $336.45 per square foot of building area, land included. The Board finds the appraiser submitted contradictory evidence for one of these comparables. On page 40 of the appraisal report, comparable #3 was listed as having **2,236** square feet of living area and a sale price of $**393.56** per square foot. However, in the summary of sales comparison data on page 43, this comparable is

[2] With the "Notes on Appeal," the board of review reported listed comparable #1 as having 2,516 square feet of living area, not the 2,620 square feet of building area reported by the appraiser. The board of review listed comparable #4 as having 2,126 square feet of living area, not the 2,850 square feet of building area reported by the appraiser.

listed as having **2,815** square feet of living area and a sale price of $**312.61** per square foot. When the appraiser analyzed the sales data, comparable #3's sale price of $312.61 per square foot was the lowest of the five comparable sales. Using the figure provided on page 40, comparable #3's sale price per square foot would have been at the high end of the range. The Board finds that two of the appraiser's comparables were also used by the board of review on the grid analysis provided with the "Notes on Appeal." Although the parties reported the same sale prices for these two comparables, the board of review indicated the two comparables had much less living area than what was reported by the appraiser. The appraiser reported that comparable #1 (located at 350 W. Scott Street in Chicago) had **2,620** square feet of building area and a sale price of $**336.45** per square foot, but the board of review listed the dwelling as having **2,516** square feet of living area and a sale price of $**350.36** per square foot. The appraiser reported that comparable #5 (located at 339 W. Goethe Street in Chicago) had **2,850** square feet of building area and a sale price of $**328.07** per square foot, but the board of review listed the dwelling as having **2,126** square feet of living area and a sale price of $**439.79** per square foot. The Board finds the appraiser used five comparables with sale prices that ranged from $862,500 to $935,000 to arrive at an estimate of value for the subject property of $710,000. To accomplish that, the appraiser used sale prices per square foot from dwellings that were described as having significantly more building area than the subject. However, the Board finds that the discrepancies regarding three of the five comparables analyzed by the appraiser undermine the credibility of the estimate of value contained in the appraisal report. As a result, the Board has given diminished weight to the conclusion contained in the appellant's appraisal and has instead examined the raw sales presented by both parties.

In rebuttal, the appellant's attorney requested the Board give little or no weight to board of review comparable sales #2 through #4, due to their 2015 sale dates. However, the Board finds two of the appraiser's comparable sales also had 2015 sale dates. The appraiser's comparable #4 sold in September 2015 and comparable #5 sold in December 2015. Moreover, the appraiser's comparable #5 was the same property as board of review comparable #4. The Board finds that all of the comparables submitted by the parties sold proximate to the January 1, 2015 assessment date.

The Board considered the seven comparable sales submitted by the parties. The Board gave less weight to the appraiser's comparable sales. The appraiser provided limited and sometimes contradictory information regarding these comparables, which prevents a meaningful analysis to determine how truly comparable they were to the subject property. The Board finds the best evidence of market value in the record to be board of review comparable #4. This property was located on the same block as the subject and was nearly identical to the subject property in all characteristics, differing only in exterior construction. Although board of review comparable #4 was also used as a comparable by the appraiser, the Board finds the board of review's evidence regarding this comparable to be more complete and more persuasive. As further support, the Board finds board of review comparables #1 through #3 were also similar to the subject in location, story height, living area and features such as full basements, central air conditioning, and two-car garages. As a group, the board of review comparables sold from May 2014 to November 2015 for prices that ranged from $881,500 to $1,350,000 or from $350.36 to $563.91 per square foot of living area, land included. The subject's assessment of $87,876 reflects a market value of $878,760 or $413.34 per square foot of living area, land included, which falls within the range established by the best comparable sales in the record on a square foot basis. Based upon the evidence in the record, the Board finds a reduction in the subject's assessment is not justified.

APPELLANT:	**Linda Jelinek**
DOCKET NUMBER:	**15-21268.001-R-1**
DATE DECIDED:	**February, 2018**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of 31,450 square feet of land with two improvements thereon. The first improvement is a 90-year old, two-story, masonry, single-family dwelling with 8,174 square feet of living area. Features of the home include a full basement, five bathrooms, and two fireplaces. The second improvement is a coach house with a three and one-half car garage on the first floor and approximately 1,373 square feet of living area on the second floor. The property is located in Evanston Township, Cook County. The subject is classified as a class 2, residential property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument, the appellant submitted descriptive and assessment information on six suggested equity comparables. Each is improved with a single-family dwelling of stucco or masonry exterior construction, while located from a one to three block radius of the subject. They ranged in age from 9 to 130 years; in improvement size from 5,174 to 7,401 square feet of living area; and in improvement assessments from $11.77 to $17.35 per square foot of living area. In support, the appellant submitted a printout from the assessor's website, with a notation only on the printout for property #1 that indicated a partial assessment.

At hearing, the appellant testified that she has lived in the subject for over 40 years and that the subject contains amenities in their original condition without any upgrades, which also includes the original roof that has been patched over the years. She also indicated that her property #6 is located across the street from the subject and has been totally gutted and rehabbed by that neighbor, which she personally viewed from the subject's location.

As to the subject's condition, she submitted, without objection from the board of review, Appellant's Group Exhibit #1 containing eight pages. The initial two pages are dated March 3, 2017 and reflect work bids for three roof areas totaling less than $20,000 in repairs. The next four pages contained copies of black and white photographs that the appellant testified reflected the interior and exterior of the subject property. One picture reflects cracking in an undisclosed ceiling, while a second picture depicts the main entrance with chipping concrete steps and a pile of bricks in front of those steps which were previously used as a side walk. A third picture depicts a second pile of bricks stacked on the other side of the front porch. She asserted that the work for the front porch area would cost approximately $20,000. The appellant asked for leave to submit these copies after the hearing because she only had one copy which she wanted to keep. Without objection from the board of review, the appellant was given time to submit another copy of these documents to both the Board and the board of review. She timely submitted those copies.

Further, she testified that none of the work reflected in the roofing bid had been undertaken from the bid date of March, 2017 to the hearing date of October, 2017. Thereafter, she repeated her assertion that the subject needs a great deal of work.

In addition, she stated that there are two improvements on the subject property being a single-family dwelling and a coach house. Both improvements share one parcel number. Appellant stated that she is really appealing the entire property's assessment. She stated that she had been ill, but that each of her comparable properties also contain a coach house or something comparable. She stated that she believes that the printouts that she submitted reflect that the total data including a coach house on each property.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $186,464. The subject property has an improvement assessment for the first improvement of $136,898 or $16.76 per square foot using 8,174 square feet of living area and for the second improvement of $9,468 or $6.90 per square foot using 1,373 square feet of living area. In support of its contention of the correct assessment, the board of review submitted descriptive and assessment information in the form of a grid analysis for each of the subject's two improvements. Each grid analysis reflects that the subject's improvements are in deluxe condition, while the submitted properties are in average condition without further explanation.

As to improvement #1, the main building, the board of review submitted descriptive and assessment data on four suggested equity comparables located either on the same block as is the subject or within a two-block radius from the subject. The parcels were improved with two-story, single-family dwellings of frame, masonry or frame and masonry exterior construction. They ranged in age from 95 to 135 years; in improvement size from 5,093 to 5,688 square feet of living area; and in improvement assessments from $18.10 to $18.87 per square foot of living area. Features included basement area, five or six bathrooms, garage area from two to three and one-half cars, while three properties also contained fireplaces.

As to improvement #2, the coach house, the board of review submitted descriptive and assessment data on four suggested equity comparables. The parcels were improved with two-story, single-family dwellings of frame, stucco, masonry or frame and masonry exterior construction. They ranged in age from 92 to 120 years; in improvement size from 1,040 to 1,920 square feet of living area; and in improvement assessments from $24.24 to $27.72 per square foot of living area. Features included a full basement, one to three bathrooms, with two properties containing garage area.

In written rebuttal, the appellant submitted duplicate copies of printouts from the assessor's website that were attached to her original pleadings relating to the subject and the suggested comparables.

In response to the appellant's questions, the board's representative testified that each building is accorded a distinct assessed value; therefore, each building must be looked at distinctly as does the county assessor. He was unsure as to how a taxpayer could obtain the same type of printouts attached to the board's notes on appeal. In addition, he rested on the evidence submitted for each building on the subject property.

As to the subject's coach house, the appellant argued that the board of review's four suggested comparables are improved with a single-family dwelling to compare to the subject's coach house. She asserted that the board's houses contain street frontage, walkways and front doors, all of which are lacking in the subject's coach house that contains a side door and living area above a garage.

Moreover, she stated that she has personal knowledge of the board's property #1 which she has been in. She asserted that it lacks comparability to her coach house.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

In totality, the parties submitted 10 suggested comparables for the subject's main dwelling. The Board finds the best evidence of assessment equity to be appellant's comparables #2, #5 and #6, as well as the board of review's comparables #1 and #4. The remaining properties were accorded diminished weight due to a disparity in location, improvement size, and/or incomplete assessment data. The five comparables ranged in age from 9 to 122 years and in improvement size from 5,574 to 7,401 square feet of living area. These five comparables had improvement assessments that ranged from $14.90 to $18.35 per square foot of living area. The subject's improvement assessment for the main dwelling of $16.76 per square foot of living area falls within the range established by the best comparables in this record.

The Board notes that the appellant asserted that the subject was in poor condition due to the absence of any upgrades to the improvement. She submitted a roofing bid for patch work but admitted that none of the work was undertaken. She submitted three photographs depicting a crack in a ceiling as well as a cracked front walkway, chipping concrete steps, and two stacks of carefully laid bricks along said walkway. However, the Board finds that the above reflects a few items of maintenance that the appellant has chosen to defer. Thereby, the appellant has chosen not to upgrade the improvements' finishes. Therefore, the Board finds this assertion unsupported.

As to the subject's coach house, the appellant's pleadings did not submit any evidence in protest of this structure. Her assertion that her comparables contain a "coach house or something comparable" without specific data is less than persuasive. Further, the board of review's representative testified that the county assessor accords assessments to each structure distinctly. In support of this testimony, the board of review submitted four suggested properties to support the improvement assessment of the subject's coach house. These comparables located within a two-block radius of the subject ranged in age from 92 to 120 years; in improvement size from 1,040 to 1,920 square feet of living area; and in improvement assessments from $24.24 to $27.72 per square foot of living area. The subject's coach house is accorded an improvement assessment of $6.90 per square foot of living area which is considerably lower than the range established by the comparables. The Board finds that this may account for the fact that the comparables were single-family dwellings, while the subject property was a single-family, coach house with 1,373 square feet of living area.

Based on this evidence and testimony, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and a reduction in the subject's improvement assessment is not justified.

APPELLANT:	**Katasha Jones**
DOCKET NUMBER:	**16-22636.001-R-1**
DATE DECIDED:	**December, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject consists of a two-story dwelling of frame and masonry construction with 1,696 square feet of living area. The dwelling is seven years old. Features of the home include four bedrooms and a two-car garage. The property has a 1,925 square foot site, and is located in Bremen Township, Cook County. The subject is classified as a class 2-95 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted evidence disclosing the subject property was purchased on December 22, 2015 for a price of $83,000, or $48.94 per square foot of living area. The settlement statement submitted by the appellant states that the Seller was Fannie Mae. The appellant also submitted an MLS printout indicating this was a sale pursuant to a foreclosure. Based on this evidence, the appellant requested a reduction in the subject's assessment to 10.00% of the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $15,578. The subject's assessment reflects a market value of $155,780, or $91.85 per square foot of living area, including land, when applying the 2016 statutory level of assessment for class 2 property of 10.00% under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted four comparables reflecting both equity and sale data. These comparables sold between February 2013 and October 2015 for sale prices ranging from $92,000 to $126,250, or $58.37 to $85.54 per square foot of living area, including land.

In written rebuttal, the appellant argued that the board of review did not address the appellant's purchase argument and distinguished the board of review's comparables from the subject property.

Conclusion of Law

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

The Board finds that the sale of the subject in December 2015 for $83,000 was a "compulsory sale." A "compulsory sale" is defined as:

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

35 ILCS 200/1-23. The Board finds that the sale of the subject is a compulsory sale, in the form of a foreclosure, based on the settlement statement submitted by the appellant, which lists Fannie Mae as the seller.

Real property in Illinois must be assessed at its fair cash value, which can only be estimated absent any compulsion on either party.

> Illinois law requires that all real property be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is likewise ready, willing, and able to buy, but is not forced to do so.

Bd. of Educ. of Meridian Cmty. Unit Sch. Dist. No. 223 v. Ill. Prop. Tax Appeal Bd., 2012 IL App (2d) 100068, ¶ 36 (citing Chrysler Corp. v. Ill. Prop. Tax Appeal Bd., 69 Ill.App.3d 207, 211 (2d Dist. 1979)).

In considering the compulsory sale of the subject, the Board may look to the market value evidence submitted by the parties to determine whether the purchase price was at the subject's fair market value. 86 Ill.Admin.Code §1910.65(c). Such evidence may consist of the sales of comparables properties. 86 Ill.Admin.Code §1910.65(c)(4); see, Calumet Transfer, LLC v. Ill. Prop. Tax Appeal Bd., 401 Ill.App.3d 652, 655-56 (1st Dist. 2010) ("[The Board] allowed the [intervenor] to challenge the arm's-length nature of the transaction by offering evidence of comparable property sales. This was permissible under paragraph (4) of section 1910.65(c).")

In the instant appeal, the board of review submitted four sale comparables. The Board finds the board of review's comparables #1 through #4 to be most similar to the subject, as the appellant failed to submit any sale comparables for the Board's review. These comparables sold for prices ranging from $58.37 to $85.54 per square foot of living area, including land. The subject's sale price reflects a market value of $48.94 per square foot of living area, including land, which is below the range established by the best comparables in this record. However, the subject's current assessment reflects a market value of $91.85 per square foot of living area, including land, which is above this range. Therefore, while the Board finds that the sale of the subject in December 2015 for $83,000 was below the subject's fair market value, the subject is over-assessed based on the sale comparables submitted by the board of review. Accordingly, Board finds that the subject is overvalued, and a reduction in the subject's assessment is warranted.

APPELLANT:	**Jeff &Chris Kowalkowski**
DOCKET NUMBER:	**15-05881.001-R-1**
DATE DECIDED:	**October, 2018**
COUNTY:	**DuPage**
RESULT:	**No Change**

The subject property consists of a one-story ranch dwelling of frame construction with 1,270 square feet of living area. The dwelling was constructed in 1955. Features of the home include a partial unfinished basement, a fireplace and a 238 square foot garage. The property has a 9,000 square foot site and is located in Glen Ellyn, Milton Township, DuPage County.

Appellant/Attorney, Jeffrey Kowalkowski, appeared before the Property Tax Appeal Board on behalf of both appellants, contending as a matter of law that section 10-20 of the Property Tax Code (35 ILCS 200/10-20) regarding repairs and maintenance of residential property applied to the subject improvement as an exemption from increasing the subject's assessment during a general reassessment period for the 2015 tax year. In support of this argument, the appellants submitted a Memorandum of Law, a March 16, 1998 18th Judicial Circuit Court Order (Appellants' Exhibit "A-1") and a partial transcript (Appellant Exhibit "A18 – A21"), statutory language, and a 2015 Change of Assessment Notice issued by the DuPage County Board of Review.

At issue in this appeal is the applicability of section 10-20 of the Property Tax Code which states:

> Repairs and maintenance of residential property. Maintenance and repairs to residential property owned and used exclusively for a residential purpose shall not increase the assessed valuation of the property. For purposes of this Section, work shall be deemed repair and maintenance when it (1) does not increase the square footage of improvements and does not materially alter the existing character and condition of the structure but is limited to work performed to prolong the life of the existing improvements or to keep the existing improvements in a well maintained condition; and (2) employs materials, such as those used for roofing or siding, whose value is not greater than the replacement value of the materials being replaced. Maintenance and repairs, as those terms are used in this Section, to property that enhance the overall exterior and interior appearance and quality of a residence by restoring it from a state of disrepair to a standard state of repair do not "materially alter the existing character and condition" of the residence. (35 ILCS 200/10-20).

The Memorandum of Law depicts the subject was purchased in 1994 and substantial repairs and maintenance were conducted on the property at that time. In 1995, the Milton Township assessor reassessed the subject property to its full value in 1995. The appellants appealed the 1995 and 1996 assessment increases based on the repair and maintenance language found in Section 10-20 of the Property Tax Code. The appeals were subsequently denied by both the DuPage County Board of Review and the Property Tax Appeal Board. The appellants then filed a lawsuit in DuPage County, Case Number 97 TX 0006, claiming the board of review and the Property Tax Appeal Board erroneously denied application of Section 10-20 of the Property Tax Code. On March 16, 1998, the circuit court ordered judgment be entered in plaintiffs' favor and overturned

the decisions of the DuPage County Board of Review and the Property Tax Appeal Board. The circuit court order further stated the repair and maintenance exemption (35 ILCS 200/10-20) applied to plaintiffs' [taxpayers'] property. (Appellants' Exhibit A-1). The appellants argue the repair and maintenance exemption does not contain a time limitation, and therefore, applies to the subject property as long as the taxpayers reside in the property as their primary residence.

At hearing, Jeffrey Kowalkowski testified that for 2015 the appellants stipulated that the assessment for the subject property is correct, however, the subject property is entitled to a repair and maintenance exemption pursuant to Section 10-20 of the Property Tax Code for repairs and maintenance performed on the subject property in 1995. The appellants agreed the subject property was underassessed at approximately 18% to 20% from 1995 and for the next 20 years in accordance with the court order of 1998. In 2015, the appellants received a Change of Assessment Notice for tax year 2015 from the DuPage County Board of Review based on a general reassessment period in which the subject property was assessed at 100% of its full market value. The appellants argued the repair and maintenance exemption was erroneously not applied to the subject's 2015 assessment. Appellants further argue Section 10-20 of the Property Tax Code does not contain a time limit in its application and, therefore, the circuit court order of 1998 should still be applied to the subject property. Based on this argument, the appellants request an 18% reduction in the subject's 2015 assessment be reapplied for repair and maintenance that occurred in 1994/1995.

During cross-examination, the appellant agreed section 10-20 of the Property Tax Code does not contain the word "exemption." Appellant further agreed that he drafted the Court Order of 1998 in accordance with the Judge's ruling. The appellant acknowledged the subject's assessment could increase each year, however, the assessment should exempt 18% to 20% of the subject's assessment for the repairs and maintenance to the subject property performed in 1995. Appellant agreed that the local assessor assessed the subject property in 2015 at 100% of its full market value during the first year of the general assessment period. The appellant argued the assessment increase from 2014 to 2015 was caused by non-application of the repair and maintenance exemption to which the subject was entitled. The appellant argued the subject's assessment was increased more than the general reassessment increase of the subject's neighborhood of approximately 5%. During questioning, the appellant was unable to provide support for the claim that neighboring comparable properties increased from 2014 to 2015 by approximately 5%. The appellant testified the subject house was purchased in 1994; the roof and siding were replaced, electrical repairs were made, and the plaster ceilings were repaired. The appellant was then ordered by the hearing officer to produce the full transcript of the Court Order of 1998. The appellant responded that he was unable to produce same. Missing from the transcript is any indication of the length of application of the circuit court's order.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $84,430. The subject property has an improvement assessment of $57,600 or $45.35 per square foot of living area. In support of its contention of the correct assessment the board of review submitted information on five equity comparables. The comparables were one-story dwellings of frame construction ranging in size from 975 to 1,098 square foot of living area. The comparables were built from 1950 to 1957, had unfinished basements ranging in size from 975 to 1,098 square feet, and one or two-car garages. The

comparables had improvement assessments ranging from $48,640 to $55,780 or from $47.02 to $50.80 per square foot of living area.

The board of review called Mary Cunningham, the Milton Township Deputy Assessor, as its witness. Ms. Cunningham testified that the subject property was reassessed in 2015 based on a mass appraisal method and its assessment of the subject property represents 1/3 of the subject's fair market value. Cunningham testified that properties in the subject's neighborhood, being approximately 100 properties, were assessed at 1/3 of their fair market value and any exemptions are then applied after that. Cunningham testified the subject was assessed fairly and uniformly with all other properties in the subject's neighborhood. Cunningham further testified that in 2015 the only exemption applied to the subject property was the residential homestead exemption. No credit was applied for the 1994/1995 repair and maintenance. Cunningham testified the subject is actually underassessed for similar type homes in the subject's neighborhood. The general 4-year assessment period in DuPage County began in 2015. (35 ILCS 200/9-215) Her office utilized a mass appraisal process to assess the subject's neighborhood in 2015 based on style, age, size and amenities, and applied this same standard to the subject property. Cunningham testified the subject's 2015 assessment was not based in any way or part on the subject's 1994/1995 repair and maintenance. Cunningham further testified that some properties in the subject's neighborhood had received an assessment reduction based on structural issues, however, the subject has not requested nor received the same.

During rebuttal, the appellant testified that for 2015 there were no structural deficiencies for the subject property. The appellant testified that the repair and maintenance credit/exemption was removed when the subject was assessed at full market value in 2015 without removing or giving credit for the repairs and maintenance performed in 1994/1995.

Conclusion of Law

The taxpayer contends as a matter of law that Section 10-20 of the Property Tax Code (35 ILCS 200/10-20) applies to the subject property and therefore a reduction in the subject's assessment is applicable in 2015 based on repairs and maintenance performed on the subject property in 1994/1995 in reliance upon a cited circuit court ruling made in 1998.

The appellants appear to also argue equal treatment in the assessment process was improper as a basis of the appeal when the subject should have received an exemption/credit for repairs and maintenance. The rules of the Property Tax Appeal Board state that inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellants did not meet this burden of proof and a reduction in the subject's assessment is not warranted on this asserted lack of equal treatment.

Section 9-145 of the Property Tax Code states in part:

> Statutory level of assessment. Except in counties with more than 200,000 inhabitants which classify property for purposes of taxation, property shall be valued as follows:
> (a) Each tract or lot of property shall be valued at 33 1/3% of its fair cash value. (35 ILCS 200/9-145)

Section 1-50 of the Property Tax Code states:

> Fair cash value. 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)

Section 1-65 of the Property Tax Code states:

> General Assessment. The general assessment of property under Sections 9-215, 9-220 and 9-225. (35 ILCS 200/1-65)

Section 9-215 of the Property Tax Code states:

> General assessment years; counties of less than 3,000,000. Except as provided in Sections 9-220 and 9-225, in counties having the township form of government and with less than 3,000,000 inhabitants, the general assessment years shall be 1995 and every fourth year thereafter. In counties having the commission form of government and less than 3,000,000 inhabitants, the general assessment years shall be 1994 and every fourth year thereafter. (35 ILCS 200/9-215)

Section 9-155 of the Property Tax Code states in part.

> Valuation in general assessment years. On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, and as soon as he or she reasonably can in each general assessment year in counties with 3,000,000 or more inhabitants, or if any such county is divided into assessment districts as provided in Sections 9-125 through 9-225, as soon as he or she reasonably can in each general assessment year in those districts, the assessor, in person or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year, or as provided in Section 9-180, and assess the property at 33 1/3% of its fair cash value . . . . (35 ILCS 200/9-155)

In Hall v. Property Tax Appeal Board of State of Illinois, 98 Ill.App.3d 824 (3rd Dist. 1981), a case involving Section 10-20 of the Code, the court stated in regard to the provision prohibiting an increase in assessed valuation due to maintenance and repairs that "the burden is on the person claiming the exemption to prove clearly and conclusively that he is entitled to one." (Id. at 828, citing People ex rel. County Collector v. Hopedale Medical Foundation (1970), 46 Ill.2d 450).

The testimony herein indicates the subject's assessment reflects the subject's fair market value per the appellant and is equitable per the township assessor. The deputy assessor testified the subject's

assessed value was not increased in 2015 due to repairs and maintenance, but due to the beginning of the general assessment and is reflective of the property's fair cash value. As to the repair and maintenance contention, the Board further finds the record is devoid of evidence establishing the subject property was completed with repairs and maintenance immediately prior to the 2015 tax assessment year. The appellant testified herein that in 2015 the subject was not deficient nor in deferred maintenance. The testimony herein by the local deputy assessor indicated the subject, along with the subject's neighborhood, was reassessed in 2015 at 1/3 of its fair market value utilizing a mass appraisal method taking into account the subject's design, size, construction and amenities. The appellants are not disputing that the subject's 2015 assessment correctly reflects its full market value; however, they assert the subject's assessment must receive credit of approximately 18% for repairs and maintenance performed on the subject in 1994/1995.

The evidence herein consists of a partial transcript from a 1998 court order which allows the repair and maintenance exemption for 1995/1996 but is missing the language which might have explained how long the exemption was to be applied. The appellants argue the exemption applies for as long as they reside in the subject as their primary residence. The Board finds Section 10-20 of the Property Tax Code (35 ILCS 200/10-20) states in part, "[m]aintenance and repairs to residential property owned and used exclusively for a residential purpose shall not increase the assessed valuation of the property." The Board finds the 1998 circuit court order applies the repair and maintenance exemption to the subject's 1995 and 1996 taxes but is silent regarding future tax years. The Board finds, based on the above cited case, the appellants must provide clear and conclusive proof that the subject's 2015 assessment was increased based on repairs and maintenance which the appellants testified were made back in 1994/1995.

The record, on the other hand, depicts the subject's 2015 assessment increased as a result of the general assessment period which began in 2015. The appellants claim the subject received a 2015 assessment greater than similar type properties within the subject's neighborhood, however the record does not support this argument. The Change of Assessment Notice depicts the subject's assessment increased from 2014 to 2015 in the amount of approximately $4,430. The appellants failed to provide evidence establishing that the assessment increase from 2014 to 2015 of the subject property was greater than similar neighborhood properties from which a comparison could be made. The Board finds nothing in this record depicts the percentage of increase or decrease of assessments for neighboring properties from 2014 to 2015. Therefore, the Board is unable to compare the subject's assessment increase with similar type properties within the subject's neighborhood.

The appellant asserted a general assessment increase in 2015 of 5% for neighboring properties, however, the Board finds this claim is unsupported in this record. The 2015 Change of Assessment Notice depicts the subject's 2015 assessment revision is based on sales occurring between January 1, 2012 to December 31, 2014. Further, the board of review submitted five comparables with features generally similar to the subject. The comparables had improvement assessments ranging from $47.02 to $50.80 per square foot of living area. The subject's improvement assessment was depicted as $45.35 per square foot of living area, which is below the established range on a per-square-foot basis. The Board finds nothing in this record indicates the subject's assessment is inequitable when compared to similar dwellings.

Article IX, Section 4(a) of the Illinois Constitution states in relevant part:

> (a) 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.Art.IX §4)

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 board of review 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 presented.

Exemptions in the Property Tax Code are found in Article 15, sections 15-5 thru 15-185. The provision at issue in this appeal, section 10-20 of the Property Tax Code, is found in Article 10, Division 2 concerning Residential Property. Therefore, it is clear that section 10-20 is not an "exemption" as has been argued by the appellants and the Board does not find any merit in this contention, despite the mis-application of the term in Hall at 829. Section 10-20 is a provision which prohibits an assessing official from increasing a residence's assessed value for merely maintaining the property to a standard state of repair.

Based on this record, the Board finds the appellants did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed nor establish by a preponderance of the evidence that the subject's assessment was increased based on repair and maintenance that occurred in 1994/1995 and therefore a reduction in the subject's assessment is not justified.

APPELLANT:	**Henry Laskiewicz**
DOCKET NUMBER:	**15-22837.001-R-1**
DATE DECIDED:	**July, 2018**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a one-story dwelling of masonry construction. The dwelling is approximately 54 years old and has 1,400 square feet of living area. Features of the home include a concrete slab foundation, central air conditioning and a two-car garage. The property has an 8,036-square foot site and is located in Des Plaines, Maine Township, Cook County. The subject is classified as a class 2-03 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends assessment inequity as the basis of the appeal. In support of this argument, the appellant submitted information on four equity comparables with the same assigned neighborhood and classification codes as the subject. The comparables are improved with one or one and one-half story dwellings of masonry construction. The dwellings are from 58 to 66 years old and contain from 1,227 to 1,701 square feet of living area. Three comparables have basements; two comparables have central air conditioning; and three have fireplaces. Information regarding garages was not provided on the appellant's grid analysis. The comparables have improvement assessments ranging from $11,988 to $16,458 or from $9.39 to $9.77 per square foot of living area. The appellant submitted a map showing the location of the subject property and the comparable properties. The map disclosed that three of the comparables were located in the same general area as the subject, and another comparable was located over three miles from the subject. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment to $13,426 or $9.59 per square foot of living area.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of $20,808 was disclosed. The subject property has an improvement assessment of $16,590 or $11.85 per square foot of living area. The board of review presented descriptions and assessment information on four comparable properties with the same neighborhood and classification codes as the subject. The comparables were located on the same block or tax block as the subject property. The comparables are improved with one-story dwellings of masonry construction. The dwellings are from 53 to 56 years old and contain from 1,326 to 1,445 square feet of living area. Three comparables have finished basements, either full or partial, and another has a partial unfinished basement. Three comparables have central air conditioning, and each comparable has a garage. These properties have improvement assessments ranging from $17,304 to $19,226 or from $13.00 to $13.84 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in

the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The parties presented assessment data on a total of eight suggested comparables. The Board gave less weight to the appellant's comparables, due to differences in location, design, age and/or living area. The Board finds the best evidence of assessment equity to be the comparables submitted by the board of review. The Board finds these comparables were located in the same block or tax block as the subject and, despite differences in foundation, were also very similar in story height, exterior construction, age, living area. In addition, three of the board of review comparables had central air conditioning like the subject. The board of review comparables had improvement assessments that ranged from $13.00 to $13.84 per square foot of living area. The subject's improvement assessment of $11.85 per square foot of living area falls below the range established by the best comparables in this record. The Board considered adjustments and differences in the comparables when compared to the subject. The comparables submitted by the board of review had full or partial basements, while the subject had a concrete slab foundation. The superior attribute of a basement helps to explain why these comparables had higher improvement assessments than the subject. Based on this record, the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and a reduction in the subject's assessment is not justified.

APPELLANT:	**Timothy Maurer & Carmela Cristoforo**
DOCKET NUMBER:	**16-01261.001-R-1**
DATE DECIDED:	**February, 2018**
COUNTY:	**Kane**
RESULT:	**Reduction**

The subject property consists of an owner-occupied dwelling that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 15-00283.001-R-1. The property is located in Aurora, Aurora Township, Kane County.

In the appeal under Docket Number 15-00283.001-R-1, the Property Tax Appeal Board rendered a decision pursuant to a proposed reduced assessment by the Kane County Board of Review which the appellants accepted resulting in a lowering of the assessment of the subject property to $61,327 based on the agreement of the parties. The appellants base this appeal on a contention of law and assert that the subject property is owner occupied such that, in accordance with Section 16-185 of the Property Tax Code (35 ILCS 200/16-185), the 2015 assessment determination of the Property Tax Appeal Board should be carried forward to tax year 2016 as both 2015 and 2016 are in the same general assessment cycle in Kane County. (See 35 ILCS 200/9-215).

Thus, the appellants requested a reduction in the subject's assessment to $61,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $73,326.

In response to the appeal, the board of review indicated that it would "request the prior year's PTAB [Property Tax Appeal Board] ruling be carried forward pursuit [*sic*] to Section 16-185 of the Property Tax Code subject to equalization (1.1629% factor for 2016)."

Based on this argument, the board of review requested the subject's assessment be reduced to $71,317.

The appellants were informed of this proposed assessment agreement for tax year 2016 and noted the proposal was higher than was requested in the instant appeal for 2016. In further support, the appellants cited Section 16-185 and referred to the fact that the dwelling is owner-occupied and that the tax year is in the same general assessment period. (35 ILCS 200/16-185). Therefore, the appellants rejected the proposed assessment.

Conclusion of Law

The subject property was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 15-00283.001-R-1. In that appeal the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to $61,327 based on the agreement of the parties.

The appellants' 2016 appeal is based upon a contention of law with citation to a single provision of the Code. The appellants relied upon Section 16-185 of the Code (35 ILCS 200/16-185) which provides in pertinent part:

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

The board of review did not dispute that the subject property is an owner-occupied dwelling. The board of review also reported that for tax year 2016 Aurora Township, where the subject property is located, had an equalization factor of 1.1629%.

The Property Tax Appeal Board takes notice of its 2015 decision in Docket No. 15-00283.001-R-1 reducing the subject's 2015 assessment to $61,327. The record further indicates that the subject property is an owner-occupied dwelling and that the 2015 and the 2016 tax years are within the same general assessment period. The record further disclosed that in the 2016 tax year there was an equalization factor of 1.1629 applied to the assessments of non-farm properties located in Aurora Township. The record contains no evidence indicating the subject property sold in an arm's length transaction subsequent to the Board's decision for the 2015 tax year or the decision of the Property Tax Appeal Board for the 2015 tax year was reversed or modified upon review. For these reasons the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted to reflect the Property Tax Appeal Board's decision for the 2015 tax year plus the application of the township equalization factor of 1.1629.

APPELLANT:	**Metropolitan Condominium Association**
DOCKET NUMBER:	**14-22192.001-R-1**
DATE DECIDED:	**April, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property is a 750 square foot vacant laundry room contained in a 27-year-old residential condominium building. The building contains hundreds of residential and commercial condominium units. The property has a 32,651 square foot site and is located in Lake View Township, Cook County. The subject is classified as a class 5-99 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant's appeal is based on a contention of law. Appellant's attorney submitted a brief arguing that the vacant laundry room should be assessed at $1.00 pursuant to the Illinois Condominium Property Act (765 ILCS 605/10(a)) because it is used for the exclusive benefit and enjoyment of all unit owners. The appellant argued the subject is part of the common area of the condominium development as defined by the Declaration of Condominium, appended to the brief as Exhibit E. The appellant's Exhibit B is an affidavit of the agent of the condominium association (hereinafter, "Association"), attesting: (1) that all the condominium parcels have been operated and maintained by the Association; (2) that the Declaration conforms to the Condominium Property Act; (3) that a vacant laundry room (the subject herein) is identified by Property Index Number 14-08-209-022-1254 (hereinafter, "PIN 1254") and is used exclusively by condominium unit owners for residential purposes; and (4) that the laundry room is owned by the Association. The appellant's Exhibit A is a Special Warranty Deed granting PIN 1254 to the Association and describing it as a common element. The appellant also appended two black-and-white photographs collectively marked Exhibit C. These photographs depict a vacant room filed with boxes, electrical equipment, and metal framing. The appellant requested the Board to assess the subject's land at $1.00 and its improvement at $1.00, for a total assessment of $2.00.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $36,582. The subject's assessment reflects a market value of $146,328, or $195.10 per square foot of living area, when applying the 2014 level of assessment of 10.00% for Class 5 property under the Cook County Real Property Assessment Classification Ordinance. The board of review submitted a brief disclosing the subject is a "750 square foot laundry room of a condominium building…" In support of its contention of the correct assessment, the board of review submitted information on four suggested comparable sales.

At hearing, the appellant reiterated the request for a $1.00 assessment pursuant to the Condominium Property Act. The appellant explained the subject was no longer used as a laundry room but is now a storage room. The appellant stated that the first photograph of Exhibit C depicted storage boxes and electronic equipment. The second photograph depicted the metal framing for the former laundry machines and some stored items. The board of review representative testified that the subject should not be given a favorable common elements assessment because it is no longer used for the original purpose of a laundry room. He offered a copy of the Condominium Property Act section describing common elements (765 ILCS 605/10(a)). It was admitted into evidence as BOR Exhibit #1. In rebuttal argument, the appellant

argued that no one resides in the former laundry room, that it now clearly contains stored items, and that there is no evidence it is not used for the exclusive benefit and enjoyment of the unit owners.

Conclusion of Law

The appellant's appeal is based on a contention of law. When a contention of law is the basis of the appeal, the appellant "shall submit a brief in support of his position" 86 Ill.Admin.Code §1910.65(d). The appellant must prove his case by a preponderance of the evidence. "Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence." 5 ILCS 100/10-15. The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

Both parties agree as to the applicable law. They do not dispute that, if the subject is used for the exclusive benefit and enjoyment of all unit owners, it qualifies as common element.

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

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

35 ILCS 200/10-35(a).

The Illinois Condominium Property Act states in relevant part that:

> For purposes of property taxes, real property owned and used for residential purposes by a condominium association, including a master association, but subject to the exclusive right by easement, covenant, deed or other interest of the owners of one or more condominium properties and used exclusively by the unit owners for recreational or other residential purposes shall be assessed at $1.00 per year.

765 ILCS 605/10(a).

Therefore, this appeal involves a question of fact: is the subject common element or not? The evidence establishes that it is common element and qualifies for the favorable $1.00 assessment.

The appellant's two photographs clearly depict stored items. The appellant's brief appended to its Petition and its arguments at hearing disclose the subject was a former laundry room now used as a storage room. Even the board of review's brief appended to its Notes on Appeal discloses it was a "laundry room" in a condominium building. The evidence establishes that the subject continues to be used exclusively for the benefit and enjoyment of the unit owners. Its current use as a storage room does not detract from that fact, and the board of review's evidence does not establish otherwise. Therefore, based on the evidence presented, the Board finds that the appellant has sustained it burden of proof by a preponderance of the evidence and that an assessment reduction is warranted.

APPELLANT:	**Jean Michaels & Albert Winston**
DOCKET NUMBER:	**15-23481.001-R-1**
DATE DECIDED:	**February, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a 28-year old, two-story, frame, single-family dwelling with approximately 2,688 square feet of living area. Features of the home include two and one-half baths; a full, finished basement; and a two-car garage. The property has a 3,000 square foot site and is located in Lake View Township, Cook County. The subject is classified as a class 2, residential property under the Cook County Real Property Assessment Classification Ordinance.

The appellants contend overvaluation as the basis of the appeal. In support of this argument, the appellants submitted an appraisal estimating the subject property had a market value of $880,000 as of January 31, 2013. The appraisal indicated that the property was owner-occupied with the purpose of the appraisal for refinancing, while developing the sales comparison approach to value. The appraisal indicated that the subject contained 2,684 square feet of living area, while submitting photographs and a building schematic.

The appraisal report used six improved properties located from 0.04 to 0.47-mile radius. The properties sold from July 2012 to January 2013 for unadjusted prices that ranged from $275.12 to $449.22 per square foot of living area. They were improved with single-family dwellings, two of frame exterior construction and four of masonry exterior construction. The improvements ranged in improvement size from 2,048 to 3,444 square feet; have 2.1 to 3.1 bathrooms; and two-car garages. The appraisal estimated a market value of $880,000. Based upon this information, the appellants requested a reduction in the subject's assessment.

At hearing, the appellant, Albert Winston, argued that despite a reduction received at the Cook County board of review's hearing level, the subject property still experienced a 32.5% increase in assessment from tax years 2014 to 2015, the latter of which he noted was the subject's new triennial reassessment period. He asserted that property values within his property's area have not risen at that level. He stated that they have lived in the subject for 15 years as of the date of this appeal. He indicated that the subject is a frame home larger than most frame homes, and that it is flawed for the county to use masonry homes as comparables to the subject. He further asserted that only one of the county's comparables is reasonable. He also stated that the market value estimated in his appraisal is within the range of reasonableness for the subject property.

As to the appraisal's raw sales data, the appellants' testified that they are familiar with those 6 sales which are located within several blocks of the subject property, but that they had not been inside these properties.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $113,092. The subject's assessment reflects a market value of $1,130,920 or $420.73 per square foot of living area, including land, based upon 2,688 square feet when applying the 10% level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted assessment and sales data on eight suggested comparables located within a two-block radius of the subject. These properties were improved with a two-story or three-story, masonry or frame dwelling. They ranged in age from 4 to 24 years and in improvement size from 2,190 to 3,781 square feet of living area. They sold from January 2014 to July 2015 for prices that ranged from $465.93 to $773.60 per square foot. The properties had improvement assessments that ranged from $36.98 to $50.98 per square foot. The board's grid sheet reflected that the subject property is of average condition, while property #1 was accorded a deluxe condition, without further explanation.

In written rebuttal, the appellants detailed the lack of comparability of the board of review's properties in comparison to the subject. Specifically, they noted that the board's properties were not in the same vicinity as the subject. The appellants' argued that the subject property is not only located on a main thoroughfare which experiences a heavy traffic flow, but that the board's properties are all located on residential, low-traffic streets that are only two blocks in length. In support of this argument, they submitted a Google map reflecting the locations of the subject and its surrounding streets. Moreover, the appellants noted the upgraded and additional amenities in the board's properties that are not included in the subject property, while detailing variances in pertinent factors of comparison, such as exterior construction, improvement age, improvement size, lot size, living area, and building design.

As to the appellants' evidence, the board of review's representative raised a hearsay objection regarding the appellants' appraisal due to the absence of the appraiser at hearing to testify regarding the methodology used therein. Therefore, he asserted that no weight should be accorded the adjustments and conclusions of value reflected in the appellants' appraisal. As to the board's grid sheet, the board's representative stated that he had neither personal knowledge of the distinguishing characteristics of “average” versus “deluxe” condition nor was he aware of whether the board's sales properties were arm's length transactions.

At hearing, the appellants' testified regarding data that they submitted relating to the board of review's suggested comparables. They stated that while using a multiple listing service, they found that the board's property #1 reflects a single-family dwelling with upgraded, luxury amenities and deluxe condition located on a low-traffic street. They stated that this was in contrast to the subject that contains average finishes that have not been upgraded over the years, while the subject is located on a well-traveled thoroughfare. In support, interior and exterior photographs of the board's #1 were submitted and identified for the record as Appellant's Exhibit #1 over the objection of the board of review's representative. Moreover, as an overall review of the board's comparable properties, appellant, Jean Michaels, testified that when she telephoned the board of review's offices for guidance on locating comparables, she was told that she should not look at improvements that contained more than 500 square feet of additional area in comparison to the subject's size of 2,688 square feet. Therefore, she argued that many of the board's properties violate that rule she was given by a board of review employee.

The appellants' further asserted that property #2 lacked comparability due to size, style, age and lot size as well as a premium location off of high-traffic areas; property #3 was not the same classification as the subject and was also located on a premium street; property #4 was asserted to be the most comparable to the subject; property #5 varied in style, size, age and lot size; property

#6 varied in style, size, and lot size; property #7 varied in exterior construction while its location was on a dead-end street with minimal traffic; and property #8 varied in exterior construction and improvement age.

As to the board's property #4, the appellants testified that they have viewed interior photographs of this property on or about the listing date of February 2015 that reflect a chef's kitchen with updated appliances, granite countertops, new wood cabinets, and an island with running water, while that building also contains three fireplaces and bathrooms with high-end ceramic tile and glass doors. In contrast, they stated that the subject's improvement contains none of the above and only one fireplace, while they testified that there are significant differences between this property and the subject property.

In response to this argument, the board's representative testified that the significant differences alluded to by the appellants between the board's property #4 and the subject are accounted for by the variance in market value per square foot. He stated that the subject property's market value for tax year 2015 is $420.73 per square foot of living area, while the board's property #4 which contains undisputed, upgraded amenities contains a market value of $497.26 per square foot based upon its sale price in April 2015.

Further, the appellants' testified that the subject property is not only located on a main thoroughfare but rather sits at a corner with an alley. In comparison, they stated that the board's comparable properties were all located on side streets, all of which dead end on Wrightwood, which is the subject's main thoroughfare. They stated that there is not only high traffic and noise from the street and the alley, but that the subject suffers from truck deliveries in that alley as well as vandalism from patrons of the bar located across the alley from the subject.

Conclusion of Law

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

Initially, the appellant submitted a uniform residential appraisal report that included six sales properties. However, the appellant's appraiser or preparer was not present at hearing to testify as to his qualifications, identify his work, testify about the contents of the evidence, the conclusions or be cross-examined by the board of review and the Board.

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

appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated, however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has objected to the appraisal's adjustments and conclusions as hearsay. Therefore, the Board finds the appraisal hearsay and the adjustments and conclusions of value are given no weight.

In totality, the Board will consider the raw sales data relating to the 14 properties submitted by the parties. In reviewing the parties' properties, the Board notes that the appellants repeatedly argued that masonry properties lacked comparability to the subject; however, four of the six sale properties submitted by the appellants were of masonry exterior construction. In addition, several of the appellants' assertions regarding the board's comparable properties upgraded amenities relate to personal property such as appliances. Therefore, the Board finds these arguments unpersuasive.

The Board finds most probative appellants' comparable sales #3, #5 and #6 as well as the board of review's comparable sales #4, #7 and #8. The six sales were improved with a two-story, single-family dwelling located within the subject's neighborhood. They ranged in improvement age from 8 to 21 years and in improvement size from 2,160 to 2,851 square feet of living area. They sold from October 2012 to April 2015 for unadjusted prices ranging from $318.69 to $695.99 per square foot of living area. In comparison, the appellants' assessment reflects a market value of $420.73 per square foot of living area which is within the range established by these sale comparables. The Board accorded diminished weight to the remaining properties due to disparities in sales date, location, style, lot size, improvement age, improvement size, condition and/or amenities. After making adjustments for pertinent factors and the differences in the six comparables when compared to the subject, the Board finds the owner-occupied, subject's per square foot assessment and market value is not supported and that a slight reduction is warranted for site location, improvement condition, and/or amenities.

APPELLANT:	**John & Joann O'Brien**
DOCKET NUMBER:	**15-05375.001-R-1**
DATE DECIDED:	**May, 2018**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject property consists of a 1.5-story dwelling of frame, aluminum or vinyl exterior construction with 2,560 square feet of living area.[1] The dwelling was constructed in 1924. Features of the home include a partial basement with 30% finished area, central air conditioning, a fireplace and a two-car garage. The property has an 8,659-square foot site and is located in Elmhurst, York Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellant called as his witness Michael J. Walsh. Walsh is employed by Citywide Services and is a Certified Residential Real Estate Appraiser licensed in Illinois.

Walsh testified that the purpose of the appraisal was to develop an opinion of market value of the subject property for tax appeal purposes. Walsh provided direct testimony regarding the appraisal methodology and final value conclusion. The appraiser relied on two sales comparison approaches to value. The appraisal report conveys an estimated market value of $433,000 as of November 2, 2015.

Walsh testified that the subject property is an older frame home and that the older homes are being torn down rapidly for new construction. Walsh stated that for the older frame homes, the highest and best use is their land. Walsh testified that he first looked at what land values were selling for in the subject's neighborhood. Walsh then testified that he looked-for single-family home sales and found they were selling for approximately the same thing on a per square foot of their land, so no matter how nice these older homes were, no matter how much functional utility they still had, they were selling for their approximately their land value. So, the greatest weight was placed on the value of the land and no adjustments were made for differences in bedrooms, bathrooms or different features.

Under the first sales comparison approach to value, Walsh used three teardowns for the value in the land. These comparables were recent sales in the subject's immediate Elmhurst neighborhood. The comparables have sites ranging in size from 6,978 to 9,374 square feet of land area and sold from $390,000 to $435,000 or from $46.40 to $55.89 per square foot of land area. Walsh made adjustments for their difference in time at a rate of 0.25% per month due to the increasing market. Based on these sales the appraiser estimated the subject property had an estimated market value under the sales comparison approach for teardown sales of $433,000.

[1] The appellant's appraiser reported a dwelling size of 2,560 square feet of living area with a schematic drawing. The assessing officials reported a dwelling size of 2,552 square feet of living area but lacked any schematic drawing to support the contention. The Board finds the slight size dispute is not relevant to determining the correct assessment of the subject property based on the evidence in the record.

Under the second sales comparison approach to value, Walsh utilizes four suggested sales, one pending sale, and an active listing located in Elmhurst from .16 to .62 of a mile from the subject. The comparables ranged in size from 1,403 to 2,800 square feet of living area and are situated on lots that range in size from 7,904 to 13,953 square feet of land area. Comparables #1 through #4 sold from November 2014 to September 2015 for prices ranging from $440,000 to $560,000 or from $200.00 to $295.70 per square foot of living area, land included. Comparable #5 is a pending sale for $549,900 or $260.00 per square foot of living area, land included. Comparable #6 is an active listing for $475,000 or $338.56 per square foot of living area, land included. Walsh adjusted the sale price for concessions and date of sale. The adjusted price of land ranged from $41.18 to $57.09 per square foot of land area. Based on these sales, pending sale and active listing the appraiser estimated the subject property had an estimated market value under the sales comparison approach of $433,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $183,900. The subject's assessment reflects a market value of $552,252 or $215.72 per square foot of living area, land included, when using the 2015 three-year average median level of assessment for DuPage County of 33.30% as determined by the Illinois Department of Revenue.

Representing the board of review was Chairman Anthony Bonavolonta. Bonavolonta called York Township Deputy Assessor Julie Patterson as a witness.

Patterson testified that this neighborhood, along with all of Elmhurst, is composed of primarily teardown properties. She testified that there are homes that are being bought to live in, so they are not all teardowns.

In support of its contention of the correct assessment, the board of review through the township assessor submitted information on eight comparable sales. These comparables are located within the same neighborhood code as the subject property. The comparables are improved with 1.5-story dwellings of frame, brick or stone, stucco or dryvit, and frame, aluminum or vinyl exterior construction that were built from 1924 to 1953. Features include a basement and a one-car or two-car garage. The dwellings range in size from 1,737 to 2,384 square feet of living area and have sites ranging in size from 4,960 to 8,940 square feet of land area. The comparables sold from December 2012 to October 2014 for prices ranging from $494,000 to $560,000 or from $209.73 to $302.01 per square foot of living area, land included.

Conclusion of Law

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

The Board finds the best evidence of market value to be the appraisal of the subject property submitted by the appellants. The Board finds the appellants' appraiser provided competent testimony regarding the selection of the comparables, the adjustment process and final value conclusion. The Board further finds the board of review failed to adequately refute the appraiser's final value conclusion. The subject's assessment reflects a market value of $552,252 or $215.72 per square foot of living area, including land, which is above the appraised valued. The Board finds the subject property had a market value of $433,000 as of the assessment date at issue. The Board gave less weight to the board of review's comparables #1, #2, #4, #5 and #7. The comparables sold from December 2012 to August 2013, which is less indicative of fair market value as of the subject's January 1, 2015 assessment date. The Board gave less weight to the board of review's remaining comparables based on their considerably smaller dwelling size and/or newer age. Since market value has been established, the 2015 three-year average median level of assessments for DuPage County of 33.30% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**Jatin Patel**
DOCKET NUMBER:	**15-27023.001-R-1**
DATE DECIDED:	**May, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a two-story dwelling of masonry construction. The dwelling is approximately 15 years old and has 5,214 square feet of living area. Features of the home include a full unfinished basement, central air conditioning, a fireplace and a three and one-half car garage. The property has a 14,361 square foot site and is located in Orland Park, Orland Township, Cook County. The subject is classified as a class 2-09 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted evidence disclosing the subject property was purchased on June 11, 2015, for a price of $510,000. In Section IV – Recent Sale Data of the residential appeal form, the appellant stated the property was purchased from an individual; the parties to the transaction were not related; the property was sold using a realtor; the property had been advertised for sale with a multiple listing service (MLS); and the subject was on the market for 343 days prior to its sale. To document the transaction, the appellant submitted copies of the settlement statement, the sale contract, and the MLS data sheet. The settlement statement revealed that commissions had been paid to two realty firms, and the MLS data sheet disclosed that the property was first listed for sale on March 3, 2014 at a price of $679,000 but did not sell. After 343 days on the market, the property sold in June 2015 at a price of $510,000. Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the purchase price.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $59,300. The subject's assessment reflects a market value of $583,661 or $111.94 per square foot of living area, land included, when using the 2015 three-year average median level of assessment for class 2 property of 10.16% under the Cook County Real Property Assessment Classification Ordinance as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review submitted information on four comparable sales that sold from March 2014 to December 2015 for prices that ranged from $610,000 to $1,300,000 or from $111.95 to $247.15 per square foot of living area, land included. The comparables have the same assigned neighborhood and classification codes as the subject. Their sites range from 32,931 to 38,699 square feet of land area. The comparables are improved with two-story dwellings of masonry construction. The dwellings range in age from 13 to 22 years old and contain from 5,171 to 5,489 square feet of living area. The comparables have features with varying degrees of similarity to the subject. As part of its submission, the board of review also made reference to the June 2015 sale of the subject property at a price of $510,000 or for $97.81 per square foot of living area, land included. Based on this evidence, the board of review requested confirmation of the subject’s assessment.

The appellant submitted a rebuttal brief noting in part that the board of review did not dispute the arm's length sale transaction of the subject property.

Conclusion of Law

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

The Board finds the best evidence of market value to be the purchase of the subject property in June 2015 for a price of $510,000. The appellant provided ample evidence demonstrating the sale had the elements of an arm's length transaction. The appellant completed Section IV - Recent Sale Data of the residential appeal form disclosing the parties to the transaction were not related, the property was sold using a realtor, and the property had been advertised on the open market with a multiple listing service. The Board finds the purchase price is below the market value reflected by the assessment.

The Board finds the board of review did not present any evidence to challenge the arm's length nature of the transaction and was not able to overcome the appellant's contention that the purchase price was reflective of market value. The board of review presented four comparable sales that sold from March 2014 to December 2015 for prices that ranged from $610,000 to $1,300,000 or from $111.95 to $247.15 per square foot of living area, land included. Nevertheless, the Board finds the subject's listing history more persuasive than the board of review market evidence. The subject property was first listed for sale on March 3, 2014 at a price of $679,000 but did not sell. After 343 days on the market, the property sold in June 2015 at a price of $510,000. The Board finds the subject property had a market value of $510,000 as of the January 1, 2015 assessment date.

The Board finds that a reduction in the subject's assessment commensurate with the appellant's request is appropriate.

APPELLANT:	**Christine J. Patton**
DOCKET NUMBER:	**15-22369.001-R-1**
DATE DECIDED:	**May, 2018**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a single condominium unit with a 0.6028% interest in the common elements. It is located in a 144-unit building that is 37 years old. The property has a 202,660 square foot site and is located in Bremen Township, Cook County. The subject is classified as a class 2-99 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted sale information on 21 sale comparables. These comparables sold between February 2012 and April 2015 for sale prices ranging from $10,000 to $61,800. The appellant failed to provide either the square footage of unit area or the percentage of ownership in the common elements for the sale comparables. Additionally, the appellant failed to provide any brief citing any applicable statute or case law.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $3,178. The subject's assessment reflects a market value of $31,780 when applying the 2015 statutory level of assessment for class 2 property of 10.00% under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted information on three sale comparables that reflected sale data. These comparables sold between February 2012 and June 2013 for sale prices ranging from $23,000 to $50,000. Based on the analysis provided, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

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

The Board finds the best evidence of market value to be the board of review's comparables. All of these units are located in the same association as the subject property and the board of review provided the percentage of ownership in the common elements for all of these units. Additionally, all of these sales occurred at a time proximate to the January 1, 2015 valuation date and are reflective of the subject's market value at that time. When comparing the sale prices and percentage of ownership in the common elements of the comparables to the subject property, the Board finds that the subject property's current market value of $31,780 falls below the market value indicated by the best comparables contained in the record. Therefore, the Board finds that the appellant has

not met its burden by a preponderance of the evidence and that the subject does not warrant a reduction based upon the market data submitted into evidence.

APPELLANT:	**Gregory R. Ranalletta**
DOCKET NUMBER:	**16-06402.001-R-1**
DATE DECIDED:	**August, 2018**
COUNTY:	**Sangamon**
RESULT:	**Reduction**

The subject property consists of a one-story single-family dwelling of brick exterior construction that was built in 1965. Features of the home include a full basement, central air conditioning, two fireplaces and an attached two-car garage. The property is located in Springfield, Capital Township, Sangamon County.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. In support of this overvaluation argument, the appellant completed Section IV – Recent Sale Data of the Residential Appeal petition. The appellant reported the subject property was purchased in November 2016 for $195,000 from Margot Kramer Trustee; the parties to the transaction were not related; and the property was advertised by the Real Estate Group, agents Megan Presnall and Betty Grady, for a period of more than 4 to 6 weeks prior to the sale.

In a brief, the appellant reported the property was originally listed with an asking price of $214,900 and after several weeks, was reduced to $199,900. The appellant contends that an offer of $195,000 was submitted and accepted; actual consideration was $194,000 to reflect defects that were uncovered in an inspection. Documentation of the sale transaction included the PTAX-203 Illinois Real Estate Transfer Declaration depicting a sale price of $195,000; a Master Statement also depicting a sale price of $195,000; and portions of an appraisal prepared as of October 31, 2016 with a depicted value conclusion of $195,000.

The evidence further revealed that the appellant filed the appeal directly to the Property Tax Appeal Board following receipt of the notice of a township equalization factor issued by the board of review which increased the subject's assessment from $71,844 to $72,714. The Notice states that the equalized assessment reflects a market value of approximately $218,142.

Based on the foregoing evidence, the appellant requested the subject's total assessment be reduced to $65,000 which would reflect the subject's purchase price of approximately $195,000.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property. Thus, the Sangamon County Board of Review was found to be in default on May 3, 2018, pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.69(a))

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 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 appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the only evidence of market value in the record is the evidence that the subject property was purchased for $195,000 in November 2016. The Board finds the subject's assessment reflects a market value greater than the purchase price. The board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by section 1910.40(a) of the rules of the Property Tax Appeal Board and is found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.40(a) & 1910.69(a)).

The Property Tax Appeal Board has examined the information submitted by the appellant and finds that, in the absence of any contradictory evidence, it supports a reduction in the assessed valuation of the subject property. However, the record also indicates that the appellant appealed the assessment directly to the Property Tax Appeal Board based on notice of a township equalization factor issued by the board of review. Since the appeal was filed after notification of an equalization factor, the amount of relief that the Property Tax Appeal Board may grant is limited.

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

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

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

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

These provisions mean that where a taxpayer files an appeal directly to the Property Tax Appeal Board after notice of application of an equalization factor, the Board cannot grant an assessment reduction greater than the amount of increase caused by the equalization factor. Villa Retirement Apartments, Inc. v. Property Tax Appeal Board, 302 Ill.App.3d 745, 753 (4th Dist. 1999). Based on a review of the evidence contained in the record, the Property Tax Appeal Board finds a reduction in the assessment of the subject property is supported based on overvaluation. However, the reduction is limited to the increase in the assessment caused by the application of the equalization factor of 1.0121.

APPELLANT:	**River Key Construction, Inc.**
DOCKET NUMBER:	**13-02012.001-R-1 thru 13-02012.063-R-1**
DATE DECIDED:	**June, 2018**
COUNTY:	**Winnebago**
RESULT:	**No Change**

The subject property consists of 63 vacant lots of various size containing a total of 21.41 acres of land area. The subject lots consist of countryside (no water frontage), canal (water frontage along the interior canals) and river (water frontage along Rock River) and are located within the River Key Subdivision, Plats 1, 2 & 3, in Owen Township, Winnebago County, Illinois.

The appellant appeared before the Property Tax Appeal Board contending assessment inequity as the basis of the appeal. In support of this argument the appellant submitted Plat 1, containing 7 lots; Plat 2, containing 16 lots; and Plat 3, containing 41 lots. The appellant also submitted a spreadsheet summarizing all parcels within Winnebago County receiving an assessed value of less than $100 since the 2009 real estate tax assessment year. For 2013, 2014 and 2015, the subject parcels are receiving a preferential "Developer's Relief Assessment" pursuant to Section 10-30 of the Property Tax Code (35 ILCS 200/10-30).

Section 10-30(b) of the Code states in relevant part:

> (a) … 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: … (4) At the time of platting 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 each year based on the estimated price the property would bring at a fair voluntary sale for use by the buyer for the same purposes for which the property was used when last assessed prior to its platting.

(35 ILCS 200/10-30(b))

The appellant argues that based on similarly situated lots with similar characteristics, the subject parcels are inequitably assessed. Appellant argues that it is the practice of the Winnebago County Board of Review, with the exception of the appellant's parcels in River Key Subdivision (coded 0039), to assess properties coded 0039, 0059 and 0089 at values of $100 or less. River Keys Construction purchased the subject lots in 1998. The appellant argued that the subject land was farmed in 1998 and assessed as class code 0020 (vacant farmland). In 2000, improvements such as canal excavation, raising grade elevations above flood elevations, grading, water, sanitary and sewer installations and roadways began. In 2000 the land was reclassified as vacant land. Plat 1, 7 lots containing 38.97 acres was recorded in 2001, Plat 2, 16 lots containing 21.21 acres was recorded in 2004 and Plat 3, 41 lots containing 15.14 acres was recorded in 2007.

The appellant argued that the reclassification in 2000 resulted in a land assessment increase of approximately 85%. Appellant argued the subject lots have a total land assessment of approximately $60,100, reflecting a market value of $181,297 or $8,468 per acre.[1] Wherein, if they were assessed correctly (at $100), the subject lots would have a land assessment total of $6,400 reflecting a market value of $19,200 or $245.30 per acre.[2]

Tammy Veitch, Secretary of River Key Construction, was called as a witness and testified that similar lots within Winnebago County were assessed at levels lower than the subject lots. Ms. Veitch pointed out 6 lots receiving an assessment less than the subject. Appellant's exhibit "A" represents 7 lots (Plat 1), 16 lots (Plat 2) and 40 lots (Plat 3) located in River Key Subdivision retained by the taxpayer which are receiving assessments in excess of $100.

During cross-examination, Veitch testified that in 2013 canal lots were marketed for between $75,000 and $90,000 with waterfront lots averaging between $78,000 and $80,000 with a countryside lot selling for less than $20,000. Based on this evidence, the appellant requested a reduction in the assessments of the subject parcels.

On redirect, Veitch testified 1,942 lots were coded 0039 in Winnebago County, and of that number 1,558 were receiving assessments less than $100. Each lot under appeal is a vacant residential lot, approximately 1/3 of an acre, with some having water frontage. Veitch testified that 5 lots in "Stevens Ridge Development" are comparable to a "country side" River Key lot and are assessed at $100 or less.[3]

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject parcels of $60,100 reflecting a market value of $181,297 or approximately $8,468 per acre using the 2013 three-year average median level of assessments for Winnebago County of 33.15% as determined by the Illinois Department of Revenue. It was argued the Illinois Property Tax Code requires the vacant lots be assessed as if they were not platted or otherwise improved. Thus, the assessment is based on the market value of land as if it were vacant non-farmland 21.41 acres with some frontage on Rock River.

The board of review further argued, the subject properties were not farmed in 2000, 2001 or any time since. Thus, the board of review argued that in 2001, the subject parcels were assessed as vacant non-farmland and their assessment was based on the market value of vacant land pursuant to Section 10-30 of the Code. It was argued the subject parcels as well as the appellant's comparables were all assessed under 35 ILCS 200/10-30 by looking at their use prior to platting and in accordance with Illinois Appellate Court interpretations in Mill Creek Development, Inc. v. Property Tax Appeal Board, 345 Ill.App.3d 790 (3rd Dist. 2003) and Paciga v. Property Tax Appeal Board, 322 Ill.App.3d 157 (2nd Dist. 2001).

[1] Appellant's brief depicts appellant holds title to 64 of the development's 150 platted lots as of 2013. One lot was inadvertently not appealed to the Property Tax Appeal Board.
[2] Based on 78.27 acres of platted lots and vacant land.
[3] Parcel numbers 07-35-177-001, 07-35-177-006, 07-35-177-002, 07-35-177-003 and 07-35-177-004 in appellant's exhibit "A."

On direct examination, Brent Ferguson, the Owen Township Assessor, testified that lots in Owen Township that were farmed immediately prior to platting were receiving assessments of approximately $100. However, if they were not farmland immediately prior to platting, and were vacant non-farmland, they were receiving an assessment over $100. Ferguson testified the difference was caused by the statue's interpretation that the use of the property immediately prior to platting, which determined the assessment, was frozen at time of platting, subject only to yearly equalization factors. The subject parcel assessments were based on their vacant non-farm use immediately prior to platting. Ferguson stated that in Owen Township, all vacant residential non-farmland lots, are assessed uniformly. Ferguson further testified that the preferential assessments pursuant to Section 10-30 of the Code created non-uniform assessments within Owen Township because of use immediately prior to platting. Code 0039 means the parcel is receiving the "Developer's Relief" preferential assessment according to use immediately prior to platting. Ferguson testified the difference between the assessments is caused by the subject parcel's use immediately prior to platting. Ferguson testified that the lots in "Stevens Ridge Development" were vacant farmland immediately prior to platting and were therefore assessed at $100, unlike the subject. Ferguson further testified that River Keys is the only subdivision in Owen Township that is vacant non-farmland that is receiving the "Developer's Relief" preferential assessment; there were no other vacant non-farmland lots in Owen Township receiving the preferential assessments.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the assessments of the subject parcels is not warranted.

The Board finds Section 10-30 of the Code requires the assessment of the subject parcels be based on the use of the property immediately prior to platting (35 ILCS 200/10-30). The record further depicts the subject parcels were not farmed in 2000 or thereafter. The record disclosed the subject parcels were classified and assessed as vacant non-farmland immediately prior to platting (2001, 2004 and 2007) and were assessed according to use at time of platting for tax years 2013, 2014 and 2015. Ferguson testified that all vacant non-farm land property within Owen Township was assessed uniformly depending on the various features and use immediately prior to platting. He further stated that the six comparables relied upon by the appellant were farmed immediately prior to platting, and therefore, were not similar to the subject at time of platting. The subject parcels under appeal are the only parcels within Owen Township that were not farmed immediately prior to platting. Appellant's counsel stated that customarily lots are farmed right up until platting occurs, and he was not aware of other non-farmland lots receiving preferential treatment under Section 10-30 of the Code that were platted. Ferguson explained that even though they may have similar characteristics in 2013 or other years, their assessments were based on their assessed use immediately prior to when they were originally platted, until development occurs.

The court in Paciga v. Property Tax Appeal Board, 322 Ill.App.3d 157 (2nd Dist. 2001) held that "property at issue must be assessed at the assessed valuation prior to platting." Id. at 163. In addition, the court in Mill Creek Development, Inc. v. Property Tax Appeal Board, 345 Ill.App.3d 790 (3rd Dist. 2004) held that "the tax valuation must remain at its prior assessment level until development has occurred pursuant to Section 10-30(c)." Id. at 794.

The record is clear the subject parcels were not farmed in 2000 and thereafter. The record also depicts the subject parcels were reclassified and assessed as vacant non-farmland in 2000, immediately prior to platting, which occurred in 2001, 2004 and 2007. The record further reveals the subject parcels were assessed as non-farmland vacant property according to use immediately prior to platting, subject only to equalization. The Board finds similar type properties that were utilized as non-farmland vacant properties within Owen Township were assessed uniformly.

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 presented.

Based on the above analysis, the Board finds a reduction in the subject assessments is not warranted based on Section 10-30 of the Property Tax Code and the holdings in Paciga and Mills Creek Development, Inc. that the assessments immediately prior to platting shall remain in effect until development occurs pursuant to Section 10-30(c) of the Property Tax Code.

APPELLANT:	**River Key Construction, Inc.**
DOCKET NUMBER:	**14-02908.001-R-1**
DATE DECIDED:	**July, 2018**
COUNTY:	**Winnebago**
RESULT:	**No Change**

The subject property consists of 88,454 square feet of land area improved with a boat barn and fence. The subject is located in Owen Township, Winnebago County.

The appellant contends the subject parcel is used as a boat storage area for the River Key Owners Association and should be reclassified as Association-owned and receive an assessed value of $1. The appellant also contends the subject is inequitably assessed in accordance with other association-owned property. In support of these arguments the appellant submitted four comparables consisting of associated-owned properties which each had an assessment of $1. The appellant also submitted aerial photographs of the subject and the comparables along with a brief, brochure, tentative plat map, "River Key Owners Association" ledgers, and a Declaration of Covenants and Restrictions for River Key Subdivision. Appellant's argument depicts the subject parcel remains in the developer's name with no transfer of title recorded. The brochure depicts a "Boat and Dock Storage Buildings (Owned by Lot Owners of River Keys)." The Tentative Plat River Key Subdivision depicts "Boat & Dock Storage Buildings Owned By Lot Owners of River Key." The Ledgers depict payment of taxes for the subject parcel by River Key Owners Association. The recorded Declaration of Conditions and Restrictions of River Key Subdivision, Section 2, states in relevant part:

> **The Association shall hold title to the Channel (Out Lot "A") and to Lot 45** and shall be responsible for the enforcement of covenants and restrictions as contained herein for the management and maintenance, including construction of boat launch and additional improvements on Lot 45, being the lot designated for the private use of the lot owners. The Association shall be responsible for the maintenance of the subdivision sign located at the entrance to the subdivision and the boat storage facility."
>
> (Emphasis Added)

However, Section 2(g) of the Declaration of Condition and Restrictions states in relevant part:

> Upon the sale of thirty lots or sooner at the election of the Developer, **the Developer shall convey Lot 45 and the channel to the Association**. . . .
>
> (Emphasis Added)

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

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject parcel of $17,406. The board of review submitted a letter from the

Owen Township Assessor, Trent Ferguson, stating the subject property was not owned by an Association and therefore does not qualify for the preferential assessment of an Association. In addition, the letter depicts the comparables submitted by the appellant were owned by various associations and were therefore not comparable to the subject parcel. Based on this argument, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal based on the subject parcel's ownership. The Board finds nothing in this record depicts the subject parcel (presumably "the Channel" (Out Lot "A") was conveyed to the River Key Owners Association as enumerated in Section 2(g) of the Declaration of Conditions and Restrictions of River Key Subdivision. The Board finds the payment of taxes, advertisements and/or use does not determine actual ownership. In its brief, appellant admits "[t]he parcel still remains in the developer's name and no transfer of title has occurred with a recorded instrument." Therefore, the Board finds the board of review's argument that the subject is not owned by an "Association" is not sufficiently refuted. Further, the Board finds the use of "Association" properties to compare to the subject's assessment which the Board has determined is not owned by the River Key Owners Association, because it was not properly conveyed as required, does not show by clear and convincing evidence the subject property is inequitably assessed.

Based on this analysis, the Board finds no reduction in the subject's assessment is warranted.

The appellant did not cite any provision of the Property Tax Code that would support its conclusion the subject parcel should receive a $1 assessment. Section 10-35 of the Property Tax Code provides for a $1 assessment of common areas. Section 10-35 state in part:

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

(35 ILCS 200/10-35)

In this appeal, the appellant failed to establish that the use of the boat storage area is reserved in whole as an appurtenance to the separately owned lots, parcels or areas in the River Key

Subdivision. Therefore, the Board finds the subject property is not entitled to a $1 assessment based on this record.

APPELLANT:	**Kourtney Rivera**
DOCKET NUMBER:	**16-00244.001-R-1**
DATE DECIDED:	**July, 2018**
COUNTY:	**Boone**
RESULT:	**Reduction**

The subject property consists of a two-story single-family dwelling of vinyl siding exterior construction with approximately 2,474 square feet of living area.[1] The dwelling was constructed in 2003. Features of the home include a full unfinished basement, central air conditioning, a fireplace and an attached three-car garage. The property has an 18,000 square foot site and is located in Belvidere, Belvidere Township, Boone County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal prepared by Brad Fidder, a licensed appraiser, for purposes of determining market value for a tax assessment appeal which estimated the subject property had a market value of $170,000 as of January 1, 2016.

Utilizing the sales comparison approach to value, the appraiser analyzed eight sales located within .7 of a mile of the subject property. The comparables were described as lots ranging in size from .23 to .43 of an acre of land area which have been improved with two-story dwellings of siding or brick and siding exterior construction. The homes ranged in age from 10 to 15 years old and ranged in size from 2,380 to 2,656 square feet of living area. Seven of the comparables had unfinished basements and comparable #8 had finished basement area. Each of the comparables has central air conditioning, a fireplace and a two-car or a three-car garage. The sales occurred from March 2013 to August 2015 for prices ranging from $170,000 to $195,500 or from $64.84 to $74.94 per square foot of living area, including land. After making adjustments to the comparables for differences in porch/patio/deck features, landscaping, garage stalls and/or exterior construction, the appraiser estimated the comparables had adjusted sales prices ranging from $163,770 to $191,500.

From this data, the appraiser concluded an estimated market value for the subject of $170,000 as of January 1, 2016. Based on this evidence, the appellant requested an assessment reflective of the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $59,537. The subject's assessment reflects a market value of $177,458 or $71.73 per square foot of living area, including land, when using the 2016 three-year average median level of assessment for Boone County of 33.55% as determined by the Illinois Department of Revenue.

[1] The appellant's appraiser reported a dwelling size of 2,455 square feet of living area as compared to the assessing officials who report 2,474 square feet of living area. Both parties have schematic drawings to support their respective calculations. The Board finds this slight size discrepancy does not prevent a determination of the correct assessment on this record.

As to the appellant's appraisal, the board of review noted that the appraiser "is a longtime resident of Belvidere, Boone County, Illinois and it is reasonable to assume he is familiar with the current Real Estate Market in the area and has access to recent sales." The board of review also noted that the appraisal provided eight similar style homes to the subject and "provides a reasonable value range for determining an indication of value for the subject." The board of review also placed the eight appraisal sales in a spreadsheet (Exhibit 2) and reported that appraisal sale #3 had a more recent August 2015 sale price of $195,000, rather than the September 2013 sale price of $170,000 that the appraiser reported.

In support of its contention of the correct assessment the board of review submitted information on six comparable sales in a spreadsheet (Exhibit 4) where comparables #2, #5 and #6 were the same properties as appraisal sales #5, #3 and #4, respectively. The comparables were described as lots ranging in size from 10,890 to 18,295 square feet of land area which have been improved with two-story dwellings of frame or frame and brick exterior construction. The homes were built between 2002 and 2006. The homes ranged in size from 2,420 to 2,596 square feet of living area. Each comparable had an unfinished basement, central air conditioning, a fireplace and a garage ranging in size from 484 to 862 square feet of building area. The sales occurred from December 2013 to August 2015 for prices ranging from $155,000 to $195,500 or from $63.37 to $77.66 per square foot of living area, including land. After making adjustments to three of the comparables for brick trim, the board of review reported the comparables had adjusted sales prices ranging from $63.37 to $77.26 per square foot of living area, including land.

Furthermore, the board of review noted that the subject's estimated market value as reflected by its assessment was based upon "mass appraisal" techniques. As such, the board of review also presented Exhibit 6 consisting of 18 sales in the subject's subdivision which occurred between January 2013 and October 2015 for prices ranging from $150,000 to $195,500 with a reported median sale price of $175,450. The homes range in size from 2,398 to 2,709 square feet of living area and were built between 2000 and 2006.

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

Conclusion of Law

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

The Board finds the best evidence of market value to be the appraisal submitted by the appellant which reflects comparables similar to the subject which have been adjusted for differences when compared to the subject. Less weight was given to the three additional comparable sales presented by the board of review as the sales occurred more remote in time to the assessment date at issue of January 1, 2016 and/or lacked adjustments for differences when compared to the subject property. The subject's assessment reflects a market value of $177,458 or $71.73 per square foot of living

area, including land, which is slightly above the appraised value. Given the agreement of the parties as to the relevant sales and what appears to be a credible appraisal report with reasonable and logical adjustments for differences, the Board finds the subject property had a market value of $170,000 as of the assessment date at issue. Since market value has been established the 2016 three-year average median level of assessments for Boone County of 33.55% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**David Rosen**
DOCKET NUMBER:	**14-23783.001-R-2**
DATE DECIDED:	**December, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a two-story, masonry, single-family dwelling of approximately 109 years of age. Features of the home include a full basement with a recreation room therein, five full bathrooms, central air conditioning, six fireplaces and a two-car garage with a deck above it. The property has approximately 5,589 square foot site and is located in Lake View Township, Cook County. The subject is classified as a class 2, residential property under the Cook County Real Property Assessment Classification Ordinance.

Procedurally at hearing, the Board indicated that the 2014 and 2015 tax appeal years would be heard simultaneously without objection from the parties. Moreover, the Board indicated that distinct decisions would be rendered for each tax year.

Further, the board of review's representative, William Grossi, moved to admit portions of the board of review's hearing files into evidence at the PTAB hearing, while distributing a multi-page brief as well as copies of a 2011 and 2014 appraisal for the subject property both of which had been commissioned by the appellant. At hearing, the board's representative argued that relevant evidence is admissible as long as its probative value outweighs its prejudicial value and is relevant to establish the value of the property. He also asserted that PTAB could take judicial notice because the board of review is a quasi-judicial agency. The first appraisal was identified for the record as Document #1 CCBOR Motion and is an appraisal of the subject property with an effective date of January 1, 2014, a market value of $2,400,000, and was prepared by appraisers Goldberg and Ulman (hereinafter Ulman appraisal). He asserted that this appraisal was commissioned by the taxpayer/appellant for the 2014 tax year and reflects a different market value than the 2014 appraisal submitted by the appellant's attorney. The appellant's attorney objected while asserting that Ulman be called as a witness and without that no value whatsoever should be accorded the appraisal and raising a hearsay objection.

As to the board of review's Document #2, it was a copy of the appellant's 2011 appraisal evidence submitted within the appellant's initial pleadings. He asserted that all these appraisals reflect wildly different values. The appellant's attorney objected to the admission, while stating 'if you want credibility, bring the appraisers.

Over the appellant's objection, the Board admitted Document #1 into evidence for impeachment purposes while noting that the appellant has a standing hearsay objection to this document because the expert preparer is not at the hearing to testify regarding the nature of the methodology used in the report. As to Document #2, the Board denied its admission because the same 2011 appraisal was submitted by the appellant as Exhibit #11 of the initial pleadings.

The appellant raises three arguments. First, that the county assessor improperly reassessed the subject property in the third year of the triennial reassessment period based upon a multiple listing service asking price of $5,000,000.

Then, the appellant contends that there is overvaluation and inequity as the second and third bases of the appeal. In support of the overvaluation argument, the appellant submitted a plethora of documents including:

Exhibit #1 - copies of documents from the county assessor level appeal, a copy of an article about the subject property entitled 'Lakeview Mini-Mansion…', and a copy of a multiple listing service (hereinafter MLS) sheet for the subject property with an asking price of $4,999,999;

Exhibit #2 - copies of county assessor printouts for the subject and other properties with highlights and writing by an unidentified individual;

Exhibit #3 - a copy of a county assessor printout for the subject dated 4-10-14 with highlights and writing by an unidentified individual;

Exhibit #4 - a copy of an affidavit from the appellant stating that the subject, then a two-unit apartment building, was purchased in 2005 for $938,500 and was converted into a single-family dwelling with renovation concluding in early 2010. There is an assertion that the subject was reassessed by the county assessor in a non-triennial assessment year. This exhibit also included a copy of an affidavit from a real estate broker stating that the subject property had been listed for sale for 238 days without any interested callers as well as a copy of an MLS sheet;

Exhibit #6 - copies of a grid sheet entitled '2012 Lake View Township Triennial' as well as copies of MLS sheets or articles from unidentified sources; at hearing, the appellant's attorney asserted that these properties were located in both Lake and Cook counties;

Exhibit #7 - copies of undated assessor printout for the subject, copy of the subject's property record card dated 4-26-11 reflecting a building diagram as well as 3,620 square feet of living area, and unsigned, building record printouts for the subject reflecting 3,620 and 4,280 square feet of living area with extraneous handwriting thereon;

Exhibit #8 - a copy of the subject's plat of survey with extraneous highlighting and printing thereon that reflects 3,720 square feet of living area with field work completed on 2-24-05;

Exhibit #9 - a copy of 'Standard on Verification and Adjustment of Sales as published by the International Association of Assessing Officers approved as of 11-10;

Exhibit #10 – a copy of a Google aerial map reflecting the subject's block as well as other blocks with extraneous highlighting and printing thereon as well as photographs of the subject building;

Exhibit #11 – copies of a residential appraisal for the subject with an effective date of 1-19-11 and a market value of $1,750,000 undertaken by Patrick Maher (hereinafter Maher appraisal) as well as a retrospective appraisal report with an effective date of 1-1-14 and a market value of $1,900,000 prepared by Andrew Hartigan (hereinafter Hartigan appraisal);

Exhibit #12 – a page with a photograph of the subject as well as three other buildings with limited descriptive data as well as copies of MLS sheets;

Exhibit #14 – a copy of an e-mail chain between unidentified individuals. There was no Exhibit #5 or #13 submitted.

The appellant submitted additional evidence in response to the Board's request for a copy of the subject's board of review decision. The appellant's submission also included another copy of the appellant's initial petition, a grid sheet of eight properties with limited data thereon, and multiple copies of MLS printouts sheets that appear to have been obtained from a real estate broker.

Based upon this evidence, the appellant requested a reduction. The appellant's attorney asserted that the correct size of the subject's improvement was 3,720 square feet and did not call any witnesses to testify at the hearing.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject initially of $99,249, which was later corrected to reflect $240,000. The subject's assessment reflects a market value of $2,400,000 or $662.98 per square foot of living area, using 3,620 square feet, when applying the level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 10%.

In support of its contention of the correct assessment, the board of review submitted data on four suggested comparable sales. These properties sold from December 2012 to December 2013 for prices that ranged from $595.73 to $734.74 per square foot. The properties were improved with a two-story or three-story, single-family dwellings with either masonry or frame and masonry exterior construction. They ranged in age from 7 to 119 years and in size from 2,375 to 4,838 square feet of living area.

In support of the contention of inequity, the board of review submitted assessment data on the four sales comparables as well as a fifth equity comparable on a second grid sheet. In total, the five equity comparables contained improvements that were either two-story or three-story, single-family dwellings with masonry or frame and masonry exterior construction and full basements. They ranged in improvement age from 7 to 126 years; in improvement size from 2,375 to 4,838 square feet; in bathrooms from 4 to 6; in fireplaces from 0 to 3; while in garage area properties #1 through #4 contained either a one-car or three-car garage. Properties #1 and #4 were identified as being located in the subject's subarea. The improvement assessments ranged from $24.75 to $66.81 per square foot, while the subject's improvement assessment using 3,620 square feet was $59.20 per square foot of living area.

At hearing, the board's representative argued that under 35 ILCS 200/9-85 the county assessor and board of review in counties over 3,000,000 or more shall have authority annually to revise the assessment books and correct them as appears to be just. He stated that this gives the assessor latitude in performing assessments yearly if they deem it to be just. However, he testified that he has no personal knowledge of the assessor's thought process regarding the subject property. Thereafter, he noted the variances in comparability of the subject property and the appellant's proposed comparables.

As to the subject property, the board of review moved an MLS listing from 2015 into evidence. After considering the parties' positions, it was admitted into evidence over the objection of the

appellant and identified as CCBOR #1 for the record. The MLS sheet contained a date of 3-11-15 with a list price of $2.895 million and stated that the improvement was built in 2010 and that it contained 6,000 square feet. In contrast, the appellant's attorney argued that if this MLS was to be entered into evidence that the county should have produced a witness to testify regarding it.

In rebuttal at hearing, the appellant's attorney asserted that the board of review's comparables lack comparability in various ways and that the CCBOR #1 was in error as to improvement size and age. In addition, he noted that the appellant's Exhibit #7 from the building department reflects that the subject was renovated and not torn down; therefore, the age of the subject's improvement should be 109 years.

In written rebuttal, the appellant submitted a copy of the board of review's notes with handwritten comments and corrections relating to the subject's assessment as well as the board's comparables and Google maps displaying the locations of the subject and the board of review's comparables. In addition, the appellant resubmitted a copy of the petition and the appellant's four equity comparables as well as new grid sheets reflecting additional evidence numbered comparables #5 through #14. At hearing, the board's representative objected to the submission of new evidence in the guise of rebuttal evidence.

As to the appellant's written rebuttal, Section 1910.66(c) of the official rules of the Property Tax Appeal Board states that

> rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties...a party to the appeal shall be precluded from submitting its own case in chief in the guise of rebuttal evidence. 35 ILCS 200/16-180.

Therefore, the Board shall not accord any weight to the appellant's subsequent new evidence submissions submitted in the guise of rebuttal evidence.

Lastly, in the appellant's closing arguments, the attorney requested a 'rollover' of the subject's 2012 & 2013 total assessments of approximately $890,000 to the 2014 assessment year.

Pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185), the Board finds that the prior year's decision solely rendered by the board of review should not be 'rolled over' to the subsequent year.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in part:

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

There is no evidence in this record that the Property Tax Appeal Board rendered any decision reducing the subject's 2012 or 2013 assessment. Therefore, the Property Tax Appeal Board finds that a 'rollover' reduction in the subject's assessment is not warranted under this provision.

Conclusion of Law

Initially, the parties' evidence reflects approximately five suggested improvement sizes. The board of review's pleadings reflect 3,620 square feet of living area, while the appellant's submission of copies of the subject's property record card reflects 3,620 square feet and two county assessor field check sheets reflect 3,620 square feet dated in 2011 and 4,280 square feet with unexplained handwriting thereon. In addition, the appellant's pleadings reflect 3,620 square feet of living area, while the appellant's Maher 2011 appraisal reflects 3,747 square feet, which is also reflected on the subject's plat of survey from 2005 prior to any renovations. The appellant's Hartigan 2014 appraisal also reflects the subject containing 3,620 square feet. Moreover, the Ulman 2014 appraisal commissioned by the appellant and submitted by the board of review reflects 3,835 square feet. The Board finds that the best evidence of the subject's improvement size was the signed and dated copy of the assessor's property record card for the subject reflecting 3,620 square feet of living area.

Second, the appellant contends that the county assessor exceeded its authority by reassessing the subject property within a triennial reassessment period. In contrast, the board of review cited 35 ILCS 200/9-85, where the county assessor and board of review in counties of 3,000,000 or more shall have authority annually to revise the assessment books and correct them as appears to be just. The board of review's representative argued that this gives the assessor latitude in performing assessments yearly if they deem it to be just. The Board finds that the appellant failed to submit a legal brief or persuasive authority to support its contention in contrast to the board of review's argument and case law; therefore, the Board finds a reduction based on the appellant's contention unjustified.

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

Despite the appellant's submission of a plethora of paper in its pleadings, the Board finds that the appellant failed to call any witnesses to explain the documentation or lay a foundation for any of the paperwork, including photographs, with the majority of the documents reflecting highlights and/or extraneous printing thereon. The Board finds it poignant that the appellant's attorney objected at hearing when the board of review requested admittance of the Ulman appraisal, stating 'if you want credibility, bring the appraisers' and then the attorney failed to call any witnesses in the appellant's case in chief. Therefore, no weight could be afforded to these documents.

In viewing the totality of the market value evidence, the Board finds that three appraisals of the subject property commissioned by the appellant were submitted into evidence. However, the

appellant failed to call as a witness any one of the appraisers whose work product was submitted and included in a voluminous record. Specifically, these appraisers were not present at hearing to testify as to their qualifications, identify their work, testify about the contents of the evidence, the conclusions or be cross-examined by the opposing party and the Board. 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 appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated, however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has not objected to the appellant's appraisal as hearsay, while the appellant's attorney made a hearsay objection regarding the absence of a witness from the board of review relating to the Ulman appraisal commissioned by the appellant and submitted by the board of review. Nevertheless, the parties failed to call any appraisal witnesses in their case in chief where a total of three appraisals of the subject were submitted. Therefore, the Board finds the appraisals hearsay and the adjustments and conclusions of value are given no weight. However, the Board will consider the raw sales data submitted by both parties.

In totality, the parties submitted 19 suggested sale comparables. The Board finds that the best evidence of market value to be the appellant's Hartigan appraisal properties #3, #4, #5 and #6 in addition to the appellant's Ulman appraisal property #3 as well as the board of review's property #3. These six comparable sales sold from May 2013 through July 2014 for prices ranging from $473.44 to $722.13 per square foot of living area, including land. The subject's assessment reflects a market value of $662.98 per square foot of living area, which is within the range established by the best comparable sales in the record. The Board accorded diminished weight to the remaining properties due to a disparity in date of sale, location, style, improvement age, improvement size, and/or variance in amenities. Therefore, the Board finds no reduction based upon this issue.

Lastly, the appellant contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). 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 assessment equity to be the appellant's comparables #1, #3 and #4 as well as the board of review's comparables #3, #4 and #5. These six comparables had improvement assessments that ranged from $17.48 to $30.98 per square foot of living area. The subject's improvement assessment of $59.20 per square foot of living area falls above the unadjusted range established by the best comparables in this record. However, the Board finds that appropriate adjustments are required to the comparables for sizable variances in amenities including: a range of fireplaces from zero to three, while the subject contains six fireplaces; a full unfinished basement, while the subject contains a full finished basement with a recreation room therein; a range of bathrooms from two to six, while the subject contains five baths; a range from zero to three-car garages, while the subject contains a masonry, two-car garage with a deck atop it; as well as adjustments for improvement style, age and size. After making adjustments to these comparables for pertinent factors, the Board finds that the appellant did demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed, but that the subject's improvement assessment after adjustments is appropriately cited above the comparables' unadjusted range of improvement assessments. Therefore, the Board finds that a slight reduction in the subject's assessment is justified.

APPELLANT:	**Patricia Schuler**
DOCKET NUMBER:	**16-06061.001-R-1**
DATE DECIDED:	**December, 2018**
COUNTY:	**McHenry**
RESULT:	**No Change**

Preliminary Matter

As part of its submission in this appeal, the McHenry County Board of Review reported "agent and appellant failed to respond to request for inspection of subject." The submission included a timely letter from the board of review addressed to appellant's counsel of record dated January 11, 2018 requesting an inspection of the subject property. A copy of the certified mail receipt was also submitted reflecting delivery of the letter. In accordance with the procedural rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.94(a):

> No taxpayer or property owner shall present for consideration, nor shall the Property Tax Appeal Board accept for consideration, any testimony, objection, motion, appraisal critique or other evidentiary material that is offered to refute, discredit or disprove evidence offered by an opposing party regarding the description, physical characteristics or condition of the subject property when the taxpayer or property owner denied a request made in writing by the board of review or a taxing body, during the time when the Board was accepting documentary evidence, to physically inspect and examine the property for valuation purposes.

On this record, the Property Tax Appeal Board finds that the McHenry County Board of Review failed to fully abide by the requirements of Section 1910.94(a) and (b) with regard to inspecting the subject property. Subsection (b) of the rules provides specifically that "[a]ny motion to invoke this Section shall incorporate a statement detailing the consultation and failed reasonable attempts to resolve differences over issues involving inspection with the taxpayer or property owner." (86 Ill.Admin.Code §1910.94(b)). The board of review failed to articulate what consultation(s) were made and what reasonable attempts were made to resolve differences over the issues concerning inspecting the subject property with appellant's counsel of record. As such, the provisions of subsection (a) cannot be invoked in this proceeding due to the appellant's failure to cooperate in an inspection of the property.

Findings of Fact

The subject property consists of a one-story single-family dwelling of brick exterior construction with 1,213 square feet of living area. The dwelling was constructed in 1959. Features of the home include a full unfinished basement, central air conditioning and a detached 484 square foot garage. The property has an 11,445 square foot site and is located in Wonder Lake, Greenwood Township, McHenry County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted information on six comparable sales located in Wonder Lake. The comparables consist of one-story dwellings that were built between 1959 and 1978. The homes

range in size from 912 to 1,346 square feet of living area. Five of the comparables have full basements and five of the comparables have garages of 242 or 484 square feet of building area. Supporting documentation included listing sheets reporting that comparable #1 was a short sale with an original asking price of $133,000, but sold after 309 days for $26,500; comparable #2 was a short sale with an original asking price of $50,000, but sold after 172 days for $35,829; comparable #3 was REO/Lender Owned and sold as-is without repair and a statement "seller will not activate any utilities"; comparable #4 was an REO/Lender Owned property with an original list price of $94,900; and comparable #5 was also an REO/Lender Owned property with an original asking price of $64,000. The comparables sold between June 2015 and June 2016 for prices ranging from $26,500 to $70,000 or from $29.06 to $56.28 per square foot of living area, including land.

Based on this evidence, the appellant requested a total assessment of $16,940 for the subject which would reflect a market value of approximately $50,825 or $41.90 per square foot of living area, including land.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $44,776. The subject's assessment reflects a market value of $134,503 or $110.88 per square foot of living area, land included, when using the 2016 three-year average median level of assessment for McHenry County of 33.29% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review submitted information on four comparable sales located in the same subdivision as the subject. The comparables consist of one-story frame dwellings that were built between 1962 and 1975. The homes range in size from 1,013 to 1,288 square feet of living area. Four of the comparables have full basements and three of the comparables have garages ranging in size from 406 to 747 square feet of building area. The comparables sold between August 2015 and September 2016 for prices ranging from $121,000 to $145,000 or from $105.03 to $129.73 per square foot of living area, including land.

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

In written rebuttal, counsel for the appellant noted that the board of review did not address the sales presented by the appellant. As to the comparables presented by the board of review, the appellant agreed that comparable #1 was similar to the subject, but the remaining comparables were each newer than the subject dwelling and should be given less weight. Considering all of these "best" comparable sales of appellant's comparables #1 through #5 along with board of review comparable #1, counsel argued that a reduction in the subject's assessment is warranted and further argued that an analysis of raw sales prices per square foot "does not taken into account the fundamental concept of using a median sale price to determine market value." Appellant further argued that using "a consistent statistical method or other transparent and uniform means of calculating fair market value would benefit all parties before this Board, while still allowing this Board to base its decision on equity and the weight of the evidence."

Conclusion of Law

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

The parties submitted a total of eleven comparable sales to support their respective positions before the Property Tax Appeal Board. The Board has given reduced weight to the appellant's comparables #1, #3, and #6 due to the lack of a basement and/or differences in dwelling sizes of the comparables when compared to the subject dwelling. The Board has also given reduced weight to board of review comparables #3, #4 and #5 due to the lack of a garage and/or the lack of a basement.

The Board finds the best evidence of market value to be appellant's comparable sales #2, #4 and #5 along with board of review comparable sales #1 and #2. These most similar comparables sold between June 2015 and June 2016 for prices ranging from $35,829 to $145,000 or from $32.45 to $129.73 per square foot of living area, including land. The subject's assessment reflects a market value of $134,503 or $110.88 per square foot of living area, including land, which is within the range established by the best comparable sales in this record. After considering adjustments and the differences in the five best comparables in the record when compared to the subject property, the Board finds a reduction in the subject's assessment is not justified.

APPELLANT:	**Gerry Tadros**
DOCKET NUMBER:	**15-30103.001-R-1**
DATE DECIDED:	**July, 2018**
COUNTY:	**Cook**
RESULT:	**No Change**

The subject property consists of a two-story, multi-family dwelling of frame and masonry construction. The dwelling is approximately 107 years old and has 2,504 square feet of living area. Features of the dwelling include two apartment units, a full unfinished basement and a two-car garage. The property has a 5,696-square foot site and is located in Chicago, Hyde Park Township, Cook County. The subject is classified as a class 2-11 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted evidence disclosing the subject property was purchased on September 30, 2013, for a price of $136,324. In Section IV – Recent Sale Data of the residential appeal form, the appellant stated the property was purchased from a bank; the parties to the transaction were not related; the property was sold using a realtor; and the property had been advertised for sale on the realtor's website. The appellant stated the length of time the subject had been exposed to the market was not available. To document the transaction, the appellant submitted copies of the subject's settlement statement dated September 30, 2013, and a special warranty deed dated June 7, 2013. The settlement statement revealed that commissions had been paid to realty firms. Based on the subject's recent sale, the appellant requested a reduction in the subject's total assessment to $13,632.

As part of the overvaluation argument, the appellant also submitted information on four comparable sales that sold from January 24, 2013 to July 29, 2014 for prices that ranged from $195,000 to $450,000 or from $73.75 to $121.06 per square foot of living area, land included. To document these comparable sales, the appellant submitted copies of their multiple listing service (MLS) data sheets and their property lookup reports from the Cook County Assessor's Office. The MLS data sheets revealed the properties were on the market from 9 to 301 days prior to their sales. The comparables have the same assigned classification code as the subject, but only two have the same assigned neighborhood code as the subject. Their sites range from 2,880 to 5,000 square feet of land area. The comparables are improved with two or three-story dwellings of masonry construction. The dwellings range in age from 117 to 127 years old and contain from 2,644 to 3,717 square feet of living area. The comparables have two or three apartment units. Three comparables have unfinished basements, either full or partial, and one comparable has a full finished basement. On the basis of the comparable sales, the appellant requested a reduction in the subject's total assessment to $24,742.

As part of the overvaluation argument, the appellant also submitted documentation regarding the subject property's vacancy during the 2015 tax year. In a vacancy affidavit, dated April 28, 2015, the appellant stated the "building was purchased thru foreclosure & needs extensive repairs." The appellant also submitted a copy of an occupancy affidavit, dated November 11, 2015, which revealed that the subject property was vacant from January to November 2015, and an income and expense statement affidavit which disclosed the subject property had no income but expenses of

$4,559 for the period from January 1 to April 28, 2015. On the basis of the vacancy argument, the appellant requested a reduction in the subject's total assessment to $24,932.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $46,703. The subject's assessment reflects a market value of $467,030 or $186.51 per square foot of living area, land included, when applying the 10% level of assessment for class 2 residential properties under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted information on three comparable sales that sold from December 2013 to August 2015 for prices that ranged from $685,000 to $915,000 or from $212.44 to $309.95 per square foot of living area, land included. The comparables have the same assigned classification and neighborhood codes as the subject. Their sites range from 2,500 to 6,552 square feet of land area. The comparables are improved with two-story, multi-family dwellings of masonry construction. The dwellings range in age from 70 to 123 years old and contain from 2,210 to 4,020 square feet of living area. The comparables have full unfinished basements and garages, either one-car or three-car. The board of review did not provide information on the number of apartment units; however, the comparables were described as having two or three bathrooms.

As part of the submission, the board of review also presented a supplemental brief prepared by a board of review analyst. In the brief, the analyst stated the subject sold as a compulsory sale and the appellant had not submitted enough evidence to demonstrate that the sale was an arm's length transaction. To document this claim, the analyst submitted a copy of the subject's deed history from the Cook County Recorder of Deeds' website. The analyst also objected to the appellant's vacancy argument, because the owner had not established that the subject had been "rendered uninhabitable" prior to its renovation. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant's attorney stated the appellant had "requested vacancy relief for the 2015 tax year because the subject's improvement is uninhabitable. Taxpayer submitted photos of the subject property that shows that the subject property is 100% vacant and boarded as well as completely uninhabitable on the interior of the building." Counsel also asserted that the Cook County Assessor's Office had applied a 20% occupancy factor to the subject's 2016 assessment. Counsel submitted a letter from the Cook County Assessor, dated October 6, 2016, to document the change in the subject's property assessment from $46,703 for 2015 to $24,377 for the 2016 tax year.

Conclusion of Law

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

In this appeal, the Board finds the appellant's presented an overvaluation argument that was based upon the subject's recent sale, four comparable sales, as well as a vacancy argument. The Board gave less weight to the subject's sale because it did not occur proximate in time to the assessment date at issue. The subject sold on September 30, 2013, which was over 15 months prior to the January 1, 2015 assessment date.

The appellant presented an overvaluation argument based upon the subject's vacancy during 2015. The appellant submitted a vacancy affidavit, an occupancy affidavit, and an income affidavit for the period from January 1 to April 28, 2015. In the vacancy affidavit, the appellant stated the subject needed extensive repairs after it was purchased in 2013 and was vacant in 2015 awaiting the completion of those repairs. The Board gave the appellant's vacancy argument little weight, because the appellant submitted no evidence of market value or vacancy rates for similar type properties. Without this evidence, the Board finds it is impossible to know if the vacancy rate is a result of location, economics, poor management, above market asking rents or any of a number of other relevant factors that were not disclosed. The Board finds there is no evidence in the record to indicate the market value reflected in the assessment is not indicative of the subject's value in 2015 even when vacancy is considered.

In rebuttal, the appellant's attorney stated the subject property was boarded up and uninhabitable and the appellant had submitted photos of the subject's interior to document the subject's condition. However, the Board finds no photos were submitted with the appellant's residential appeal form or with the appellant's rebuttal. The Board finds the appellant did not demonstrate that the subject property was uninhabitable as of the January 1, 2015 assessment date.

The Board finds the parties submitted sale prices for seven comparable properties. The Board gave less weight to the appellant's comparables #1 through #3 and board of review comparable #3 due to their 2013 sale dates which were not proximate in time to the January 1, 2015 assessment date. The Board finds the best evidence of market value in the record to be the appellant's comparable #4 and board of review comparables #1 and #2. These properties were described as two or three-story apartment buildings of masonry construction that were similar to the subject in varying degrees. These three properties sold from July 2014 to August 2015 for prices that ranged from $450,000 to $854,000 or from $121.06 to $309.95 per square foot of living area, land included. The subject's assessment reflects a market value of $467,030 or $186.51 per square foot of living area, land included, which is within the market values of the best comparables sale in the record. Based on this record, the Board finds the subject's assessment is reflective of market value and a reduction in the subject's assessment is not justified.

APPELLANT:	**Dean Thomas**
DOCKET NUMBER:	**15-04499.001-R-2**
DATE DECIDED:	**September, 2018**
COUNTY:	**Lake**
RESULT:	**Dismissal**

The subject property consists of a 13,566 square foot parcel improved with a 1.5-story dwelling of stucco and frame exterior construction. The dwelling was built in 2007 and contains 3,611 square feet of living area. Features include air conditioning, three fireplaces and a 718 square foot garage. The subject is located in Grays Lake, Avon Township, Lake County, Illinois.

The appellant appealed to the Property Tax Appeal Board claiming assessment inequity as the basis of the appeal.

By letter dated May 1, 2018 the appellant was given notice that the hearing for the subject appeal was scheduled for August 16, 2018 at 10:30 a.m. at the office of the Lake County Board of Review. The letter further informed the appellant of the need to provide a court reporter due to the requested change in the assessment. At the time of the hearing, all parties were present before the Board. However, the appellant failed to procure the services of a court reporter to record and transcribe the proceeding as required by Section 1910.98(a) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.98(a)). At the date and time of the hearing the appellant appeared and submitted a request for continuance due to a shortage of court reporters. Since no court reporter was present, the hearing officer cancelled the hearing.

Section 1910.98(a) of the rules of the Property Tax Appeal Board provides in part that:

> In all cases where the contesting party is seeking a change of $100,000 or more in assessed valuation, the contesting party must provide a court reporter at his own expense... 86 Ill.Admin.Code §1910.98(a).

Section 1910.69(d) of the rules of the Property Tax Appeal Board provides in part that:

> Failure of the contesting party to furnish a court reporter as required by Section 1910.98(a) of this Part shall be sufficient cause to dismiss the appeal... 86 Ill.Admin.Code §1910.69(d).

The Board finds the appellant was notified by a letter dated May 1, 2018 that a hearing would be held on August 16, 2018. The letter not only indicated the time and location of the hearing but further stated that, pursuant Section 1910.98(a) of the Board's rules, the appellant was required to engage a court reporter for said hearing. At the hearing, the appellant presented a motion for continuance of the hearing based on his inability to find a court reporter to transcribe the proceeding. Based on questioning by the hearing officer, the appellant indicated that he had only attempted to procure a court reporter immediately prior to the hearing.

Section 1910.67(i) of the rules of the Property Tax Appeal Board provides in part:

> Continuances shall be granted for good cause shown in writing, and then only on an order of a Member of the Property Tax Appeal Board, or a duly authorized Hearing Officer. Good cause shall be 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 material witness, or the serious illness or death of a witness or party. . . . (86 Ill.Admin.Code §1910.67(i)).

The Board finds, pursuant to Section 1910.67(i), the appellant failed to demonstrate good cause for the continuance of the hearing.

Additionally, the Board finds good cause was not shown for appellant's failure to provide a court reporter, since notice of the hearing was sent to him over three (3) months prior to the scheduled hearing date, allowing ample time for the appellant to obtain court reporting services. The Board finds the appellant did not act with due diligence to obtain the services of a court reporter. Based on this record, the Board finds the appellant failed to procure the services of a court reporter as required by Section 1910.98(a) of the rules of the Property Tax Appeal Board and that pursuant to Section 1910.69(d) of the rules of the Property Tax Appeal Board failure to furnish a court reporter as required in Section 1910.98(a) is sufficient cause for dismissal of the appeal.

By letter dated August 20, 2018 the appellant argued the hearing officer failed to meet the requirements of Section 1910.67(h) and Section 1910.67(g) of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.67(h) and §1910.67(g)). The Board further finds the hearing officer's denial of the Motion for Continuance does not demonstrate the hearing officer does not have the requirements to be an Administrative Law Judge.

Based on the aforementioned analysis, the Board hereby denies the appellant's request for a continuance and dismisses the appeal.

APPELLANT:	**Zaijie Wang**
DOCKET NUMBER:	**15-34973.001-R-1**
DATE DECIDED:	**January, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of a 24-year old, three-story, rowhouse of masonry exterior construction. Features of the home include two and one-half baths and a one-car garage. The property has a 951-square foot site and is located in West Chicago Township, Cook County. The subject is classified as a class 2-95, an individually owned, single-family rowhouse property under the Cook County Real Property Assessment Classification Ordinance.

First, the appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant initially submitted an appraisal estimating the subject property had a market value of $187,000 as of September 26, 2011. The appraisal indicated that the property was owner-occupied and that the purpose of the appraisal was for refinancing, while developing the cost and sales comparison approaches to value. The appraisal indicated that the subject contained 1,392 square feet of living area and included photographs and a building schematic.

Also, in support of the overvaluation argument, the appellant submitted 10 additional sale properties located within a one-mile radius of the subject. They were improved with two-story or three-story dwellings of frame or masonry exterior construction. They ranged in age from 13 to 135 years; and in building size from 1,496 to 2,700 square feet of living area. They sold from August 2009 to October 2015 for prices ranging from $79.21 to $153.08 per square foot. While eight properties were identified as rowhouses, property #5 is identified as an apartment building and property #9 is identified as a detached, one-story, single-family dwelling.

In addition, the appellant contended that there was an inequity in the assessment process for the subject. He used the above 10 sale properties, while indicating the properties also ranged in improvement assessments from $3.57 to $14.64 per square foot of living area. The subject's improvement assessment is $21.75 per square foot of living area.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $44,069. The subject's assessment reflects a market value of $440,690 or $232.55 per square foot of living area, including land, based upon 1,895 square feet when applying the 10% level of assessment for class 2 property under the Cook County Real Property Assessment Classification Ordinance.

In support of its contention of the correct assessment, the board of review submitted assessment and sales data on four suggested comparables. These properties were improved with two-story or three-story masonry dwellings that ranged in age from 17 to 27 years and in building size from 1,829 to 2,094 square feet of living area. They sold from January to November 2014 for prices that ranged from $234.00 to $316.02 per square foot and had improvement assessments that ranged from $20.70 to $27.26 per square foot.

In written rebuttal, the appellant detailed the lack of comparability of the board of review's comparable properties in comparison to the subject. Specifically, he noted that the board's comparables were not in the same vicinity as the subject and were located from 1.6 to 2 miles away from the subject. In support, he submitted a Google map reflecting the locations of the subject, appellant's comparables, and the board's comparables. Moreover, he stated that the board's properties are located East of Ashland Avenue which is a trendy and expensive area for newer, high demand homes. He asserted that the area of University Village and Garibaldi Square cater to people with high-paying jobs in the financial district, university and other downtown offices. Lastly, the appellant noted the upgraded and additional amenities in the board's properties that are not included in the subject property.

As to the appellant's evidence, the board of review's representative raised a hearsay objection regarding the appellant's appraisal due to the absence of the appraiser at hearing to testify regarding the methodology used therein. Therefore, he asserted that no weight should be accorded the adjustments and conclusions of value reflected in the appellant's appraisal. Moreover, he argued that the raw sales data therein is not relevant because the appraisal's sales occurred in tax year 2011, while the tax year at issue in this appeal is 2015.

Conclusion of Law

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

Initially, the appellant submitted a uniform residential appraisal report that included three sales properties as well as the cost approach. However, the appellant's appraiser or preparer was not present at hearing to testify as to his qualifications, identify his work, or to testify about the contents of the evidence and the conclusions or be cross-examined by the board of review and the Board.

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 appellate court found the appraisal to be hearsay that did not come within any exception to the hearsay rule, thus inadmissible against the defendant, and the circuit court erred in admitting the appraisal into evidence. Id.

In Jackson v. Board of Review of the Department of Labor, 105 Ill.2d 501, 475 N.E.2d 879, 86 Ill.Dec. 500 (1985), the Supreme Court of Illinois held that the hearsay evidence rule applies to the administrative proceedings under the Unemployment Insurance Act. The court stated,

however, hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review. Jackson 105 Ill.2d at 509. In the instant case, the board of review has objected to the appraisal's adjustments and conclusions as hearsay. Therefore, the Board finds the appraisal hearsay and the adjustments and conclusions of value are given no weight. Further, the Board gives no weight to the raw sales data located in this appraisal report due to the large disparity in markets. The three sales within that report were from tax year 2011, while the market value of the subject as of January 1, 2015 is the issue in this appeal.

In totality, the Board will consider the sales data relating to the remaining 14 comparable properties submitted by the parties. The Board finds most probative appellant's comparable sales #1, #8 and #10. The three comparables were improved with a two-story or three-story, rowhouse dwelling located within a two to four block radius of the subject. They ranged in building size from 1,718 to 2,000 square feet of living area. They sold from February 2013 to April 2015 for unadjusted prices ranging from $87.00 to $153.08 per square foot of living area. In comparison, the appellant's assessment reflects a market value of $232.55 per square foot of living area which is above the range established by these comparable sales. The Board accorded diminished weight to the remaining comparable properties due to the disparities in sales date, location, style, usage, and/or building size. After considering adjustments and the differences in the comparables when compared to the subject, the Board finds the owner-occupied subject's per square foot assessment is not supported and that a reduction is warranted.

Furthermore, the Board finds that in using these three comparables in an equity argument, the subject merits a reduction. The comparables' improvement assessments ranged from $11.04 to $12.91 per square foot. The subject's improvement assessment of $21.75 falls above the range established by the best equity comparables contained in the record. Therefore, the Board finds that a reduction is merited in either argument raised by the appellant for tax year 2015.

2018 RESIDENTIAL CHAPTER

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PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2018 FARM DECISIONS

PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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2018 FARM CHAPTER

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APPELLANT:	**Martin Merkhofer**
DOCKET NUMBER:	**15-05177.001-F-1**
DATE DECIDED:	**May, 2018**
COUNTY:	**Alexander**
RESULT:	**Reduction**

The subject property consists of a one-story dwelling of frame construction with 2,102[1] square feet of living area. The dwelling was constructed in 1969. Features of the home include a full basement that is partially finished and an attached two-car garage. The subject also has a 1,303-square foot shed. The property has 2.37 acres of land area and is located in Ringwood, McHenry Township, McHenry County.

The appellant contends overvaluation and misclassification of land as the bases of the appeal. In support of the overvaluation argument the appellant submitted information on five comparable sales. The comparables had varying degrees of similarity to the subject. The comparables had sale dates occurring from January 2014 to May 2015 for prices ranging from $89,500 to $146,500 or from $86.06 to $94.58 per square foot of living area including land.

As to the classification of land, the appellant argued that the subject lot contains 2.37 acres of land, of which .7 acres is residential land and the remainder is farmland used for raising bees and harvesting nuts and fruit. The appellant also argues that the 1,303-square foot shed is used for storage of bee equipment. The appellant's evidence included photographs of the beehives and harvested apples. The appellant submitted 2009 aerial images depicting the beehives in place. The appellant cited Sections 1-60 and 10-110 of the Property Tax Code to support the farmland classification argument. (35 ILCS 200/1-60 and 10-110)

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $64,907. The subject's assessment reflects a market value of $194,974 or $92.76 per square foot of living area, land included, when using the 2015 three-year average median level of assessment for McHenry County of 33.29% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted information on three comparable sales. The comparables had varying degrees of similarity to the subject. The comparables had sale dates occurring from June 2015 to July 2016 for prices ranging from $192,500 to $259,000 or from $73.59 to $142.00 per square foot of living area including land.

As to the appellant's argument regarding the classification of farmland, the board of review argued that six beehives on 2.38 acres falls short of a reasonable definition of farm use. The board of review cited the primary use section of 1-60 of the Property Tax Code. (35 ILCS 200/1-60)

The appellant submitted rebuttal critiquing the board of review's submission.

[1] The Board finds the best evidence of the subject's size is the sketch of the subject dwelling from the board of review.

Conclusion of Law

The appellant argued that a portion of the subject property is used for keeping bees and harvesting nuts and fruit and was entitled to a farmland assessment based on section 1-60 of the Property Tax Code. Section 1-60 of the Property Tax Code provides:

> When used in connection with valuing land and buildings for an agricultural use, any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to, hay, grain, **fruit**, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, **bees**, fish and wildlife farming. The dwellings and parcels of property on which farm dwellings are immediately situated shall be assessed as a part of the farm. Improvements, other than farm dwellings, shall be assessed as a part of the farm and in addition to the farm dwellings when such buildings contribute in whole or in part to the operation of the farm. For purposes of this Code, "farm" does not include property which is primarily used for residential purposes even though some farm products may be grown, or farm animals bred or fed on the property incidental to its primary use. The ongoing removal of oil, gas, coal or any other mineral from property used for farming shall not cause that property to not be considered as used solely for farming. (35 ILCS 200/1-60)

Section 10-110 of the Property Tax Code provides:

> The equalized assessed value of a farm, as defined in Section 1-60 and **if used as a farm for the 2 preceding years**, except tracts subject to assessment under Section 10-145, shall be determined as described in Sections 10-115 through 10-140. To assure proper implementation of Sections 10-110 through 10-140, the Department may withhold non-farm multipliers for any county other than a county with more than 3,000,000 inhabitants that classifies property for tax purposes. (35 ILCS 200/10-110)

The Property Tax Appeal Board finds that 1.67 acres of the subject property's land is entitled to a farmland assessment due to its use of keeping bees and harvesting fruit. In addition, the Board finds that the 1,303 square foot shed is used for bee equipment and should be assessed as a farm outbuilding.

The board of review claimed the subject's primary use is residential based on the definition of the farm contained in Section 1-60 of the Property Tax Code. The Board gave this argument little weight. The Property Tax Appeal Board finds a portion of a parcel may be classified as farmland for tax purposes, provided those portions of property so classified are used solely for agricultural purposes. Property that is used solely for agricultural purposes is properly classified as farmland for tax purposes, even if that farmland is part of a parcel that has other uses. Kankakee County

Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3rd Dist. 1999). Santa Fe Land Improvement Co., 113 Ill.App.3d 872, 875.

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

The Board finds the best evidence of market value to be the appellant's comparables #2 and #5, along with board of review's comparable #3. These three comparables were most similar to the subject in location, style, size, age and features. These most similar comparables sold for prices ranging from $137,500 to $259,000 or from $89.29 to $142.00 per square foot of living area, including land. After adjusting the subject's land assessment to reflect a residential lot size of .7 acres and removing the 1,303 square foot shed, the subject's non-farm assessment of $54,716 reflects a market value of $164,164 or $78.10 per square foot of living area, including land, when using the statutory level of assessment. The Board finds the subject's non-farm assessment is supported by the best comparables in this record. The Board gave less weight to the parties' remaining comparables due to their difference in style, age, size and/or sale dates not proximate in time to the January 1, 2015 assessment date. Based on this evidence the Board finds a reduction in the subject's non-farm assessment is not justified.

In summary, the Property Tax Appeal Board finds the subject's non-farm estimated market value as reflected by that portion of its assessment is supported by the evidence in this record and the subject's 1,303 square foot shed shall be assessed as a farm outbuilding. The 1.67 acres of the subject parcel that is used for keeping bees and harvesting fruit is entitled to a farmland classification as cropland in accordance with this decision.

Therefore, the Property Tax Appeal Board hereby orders the McHenry County Board of Review to compute a farmland assessment in accordance with this decision. This farmland assessment shall be certified to the Board within 15 days from the date of this decision.

APPELLANT:	**Leslie Pedder**
DOCKET NUMBER:	**16-00425.001-F-1**
DATE DECIDED:	**August, 2018**
COUNTY:	**Boone**
RESULT:	**No Change**

The subject property consists of a five-acre site improved with a two-story dwelling of frame construction with 1,830 square feet of living area that was built in 1894. Features of the home include an unfinished basement, central air conditioning, a fireplace and an attached two-car garage with 1,064 square feet of building area. The property is also improved with a metal clad pole building, a milk-house and barn. The property is located in Belvidere, Spring Township, Boone County.

The appellant contends assessment inequity with respect to the dwelling and farm buildings as the bases of the appeal. In support of this argument the appellant submitted information on three equity comparables that were improved with two-story dwellings that ranged in size from 1,526 to 1,936 square feet of building area. The appellant described each dwelling as being "older." Each comparable has a basement, two comparables have central air conditioning, one comparable has a fireplace and one comparable has a garage. The appellant further indicated the comparables had from 1 to 4 outbuildings. The appellant's analysis indicated the comparables had improvement assessments ranging from $20,395 to $33,737 or from $12.00 to $17.43 per square foot of living area. The appellant contends the subject has an improvement assessment of $35,629 or $19.47 per square foot of living area.

The appellant described the subject house as having a wrap-around porch that is falling off and is propped up with 4 x 4s. The appellant further explained the basement has limestone walls with a floor that is partially concrete and partially gravel that is wet and damp. Additionally, the appellant asserted the dwelling needs new gutters, new windows, new doors and there are no electrical switches on the walls upstairs. The appellant described the metal pole barn as having no electricity or concrete. The appellant stated the barn and milk-house each have roofs that leak, and the barn is shifting off its foundation. As a final point the appellant contends the attached garage is only 18 years old but needs a roof replacement and has water damage.

Based on this evidence the appellant requested the subject's dwelling assessment be reduced to $17,542 and the farm building assessment be reduced to $10,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $45,979. The subject property has a farmland assessment of $350, an urban land assessment of $10,000, a farm building assessment of $10,629, and a dwelling assessment of $25,000 or $13.66 per square foot of living area.

The board of review submission included an analysis of the appellant's comparables. The board of review reported the appellant's comparables had dwelling assessments ranging from $17,552 to $29,824 or from $11.33 to $15.40 per square foot of living area. The board of review submitted a statement provided by the township assessor explaining the subject's pole building was constructed in 2009 with an assessment of $10,629 and the building is assessed without any

electricity or concrete. However, copies of photographs of the subject property appear to disclose the subject's pole building has an assessment of $9,913, the barn and milk-house have assessments of $83 and $633 resulting in a total farm building assessment of $10,629. The assessor explained that appellant's comparable #1 had a farm building assessment of $1,200. Photographs of comparable #1 depict two farm buildings that are inferior to the subject's pole building. Appellant's comparable #2 has a farm building assessment totaling $2,838 composed of a milk-house ($167), a crib ($250), a barn ($333), and a pole building ($2,088). The pole building was built in 1967, has a gravel floor and electricity. Appellant comparable #3 has a detached garage with an assessment of $3,913. The board of review requested the assessment be confirmed.

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). 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 provided information on three comparables improved with older two-story dwellings with improvement assessments ranging from $17,552 to $29,824 or from $11.33 to $15.40 per square foot of living area. The subject dwelling has an assessment of $25,000 or $13.66 per square foot of living area, which is within the range and well-supported by the comparables given the subject's larger attached garage. The Board finds the appellant did not demonstrate with clear and convincing evidence that the subject dwelling was being inequitably assessed.

The appellant also contends assessment inequity with respect to the subject's farm buildings. The Board finds the subject property is improved with a newer pole barn making it superior to the appellant's comparables that justifies the subject's higher farm building assessment.

The appellant also provided a statement concerning the condition and poor state of repair of the subject dwelling as well as the farm buildings. However, the appellant provided no market data demonstrating the subject's assessment was not reflective of the subject's dwelling market value or the contributory value of the farm buildings considering their condition.

Based on this record the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject property was inequitably assessed and a reduction in the subject's assessment is not justified.

APPELLANT:	**James Powers**
DOCKET NUMBER:	**14-02707.001-R-1**
DATE DECIDED:	**December, 2018**
COUNTY:	**Jo Daviess**
RESULT:	**No Change**

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

The subject property is a 70.09-acre site which includes a .62-acre homesite and the remaining acreage is assessed under various farmland categories. The homesite has been improved with a one-story 5,940 square foot pole building of which 1,650 square feet has been finished as living area and the 4,590 square foot balance remains as an unfinished pole building. The pole building, described as a Grade D in average condition, was constructed in 2002. Features of the living area portion of the pole building include a concrete slab foundation and central air conditioning. The property is located in Elizabeth, Derinda Township, Jo Daviess County.

The appellant appeared at hearing before the Property Tax Appeal Board with his attorney contending assessment inequity as the basis of the appeal concerning the pole building/residence assessment; no dispute was raised concerning the farmland or homesite assessments. In support of this argument, the appellant submitted information on four equity comparables located within 3-miles of the subject property.[1]

The comparable buildings were described as 1.5-story or two-story frame dwellings that were 75 to 115 years old and which range in size from 1,560 to 2,274 square feet of living area. Each of the comparable homes has a basement, one of which includes finished area. In addition, one of the comparables has central air conditioning and a fireplace. Two of the comparables each have a garage of 420 or 616 square feet of building area. These four comparable dwellings have improvement assessments ranging from $9,867 to $22,288 or from $6.33 to $9.80 per square foot of living area.

Based on this evidence, the appellant contends that the improvement assessment portion of the subject pole building is inequitable and, therefore, the appellant requested a reduced improvement assessment of $18,743 or $3.16 per square foot of building area for the entire pole building; assuming, arguendo, no dispute with the non-finished area assessment of the pole building, the appellant's request for the improved living area would result in an assessment of $2,729 or $2.02 per square foot of living area.

Upon questioning by the board of review representative, counsel for the appellant conceded that the subject pole building is newer than the appellant's suggested comparable dwellings but argued similarity in location and size.

[1] In the grid analysis, the appellant applied the living area square footage to the entire pole building assessment of $28,735 to arrive at the purported living area square footage assessment of $21.28. The Property Tax Appeal Board finds that analysis on this record to be erroneous.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $34,376. The subject parcel has a farmland assessment of $974 and a homesite assessment of $4,667. The pole building has an assessment of $28,735 which consists of an improvement assessment of $12,721 or $9.42 per square foot of living area and $16,014 or $3.49 per square foot for the remainder, being the standard unfinished pole building area.

In response to the appellant's data, the board of review contends each of the appellant's comparables are dissimilar to the subject in style (story height), age, size, foundation, features and/or construction materials and differ from the subject as they are frame homes as compared to the subject pole framed building.

In support of its contention of the correct assessment the board of review submitted information on seven equity comparables located in the rural townships of Woodbine, Pleasant Valley and Berreman. Comparables #2 and #3 consist of one-story frame homes, however, comparable #2 also has a large barn which included a remodeled loft area with living quarters and the dwelling portion of comparable #3 has a concrete slab foundation. The remaining comparables #1 and #4 through #7 are described as pole buildings with living quarters. The seven comparables were built between 1948 and 2009. The living areas of the buildings range from 220 to 3,360 square feet. Comparables #1 and #6 have central air conditioning. Comparable #4 also has two fireplaces. In the grid analysis, the board of review reported the improvement assessments of the living quarters only of these comparables ranged from $3,744 to $33,597 or from $10.00 to $62.60 per square foot of living area. As to comparables #1, #2, #5, #6 and #7, the board of review also reported the non-living area assessments of the pole buildings ranged from $3,368 to $11,502 or from $4.13 to $9.83 per square foot of the standard (unfinished) pole building area.

Based on the foregoing evidence and argument, the board of review requested confirmation of the subject's disputed improvement assessment.

In written rebuttal, but which was not raised in the course of the hearing, the appellant's counsel set forth a procedural objection that a Freedom of Information Act (FOIA) request for "property record cards for all residences located in ag buildings or barns in Jo Daviess County" resulted in a response that the request was unduly burdensome and copies of record cards could be provided at a cost to the appellant of $6,824.40. Counsel's rebuttal further contended that the Chief County Assessment Officer produced at the local board of review hearing the "comparables submitted into evidence in this appeal, in violation of the Freedom of Information Act."

In surrebuttal, the Jo Daviess County Board of Review contended the FOIA response was made with the guidance of the Jo Daviess County State's Attorney and that 22,772 property record cards would need to be printed. Based on the provisions of FOIA, after 50 pages, the remainder would be charged at $.15 per page. The surrebuttal further contended that pole buildings with living quarters are not specially coded in the county's database in order to narrow the query. Alternatively, counsel was advised to provide addresses of specific parcels that could be provided, or counsel could view records in the office during normal office hours.

The board of review concluded that the comparable data submitted are not "all the pole buildings with living quarters located in Jo Daviess County and . . . were found after hours of research."

Conclusion of Law

The taxpayer contends assessment inequity as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The parties submitted a total of eleven comparable properties to support their respective positions before the Property Tax Appeal Board. The Board has given little weight to the appellant's four suggested comparable dwellings as each is a farmland frame home that is significantly older than the subject's recently constructed pole frame building that includes living area. The Board has also given reduced weight to board of review comparables #3, #4, #5 and #7 due to the differences in building type and/or the small portion of living area within the building when compared to the subject building.

The Board finds the best evidence of assessment equity to be board of review comparables #1, #2 and #6. These three comparables had living area improvement assessments that ranged from $9,753 to $25,422 or from $10.16 to $16.77 per square foot of living area. These three comparables consist of living areas ranging in size from 960 to 1,516 square feet. The subject's living area improvement assessment of $12,721 or $9.42 per square foot of living area falls below the range established by the best comparables in this record. Furthermore, these three comparables have remaining unfinished building areas ranging in size from 1,152 to 1,920 square feet of building area with the balance of the building assessment ranging from $3,775 to $11,502 or from $5.03 to $9.83 per square foot of building area. The subject's unfinished pole building area assessment of $16,014 or $3.49 per square foot of building area falls below the range established by the best comparables in this record on a per-square-foot basis with the subject also having the largest unfinished pole building area in size of 4,590 square feet.

In conclusion, based on this record and after hearing the testimony, the Property Tax Appeal Board finds the appellant did not demonstrate with clear and convincing evidence that the subject's improvement was inequitably assessed and a reduction in the subject's assessment is not justified.

APPELLANT:	**Tim Pranger**
DOCKET NUMBER:	**14-03051.001-F-1**
DATE DECIDED:	**March, 2018**
COUNTY:	**Calhoun**
RESULT:	**Reduction**

The subject property consists of 39.9 acres of farmland improved with a 5,000 square foot pole building that was built in 2010. The property is located in Mozier, Calhoun County, Illinois.

The appellant contends overvaluation of the pole building as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the pole building had a market value of $85,000 under the cost approach as of March 15, 2012.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $56,734. The pole building had an improvement assessment of $53,791, which reflects a market value of $155,600 or $31.12 per square foot of living area when using the 2014 three-year average median level of assessment for Calhoun County of 34.57% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted a copy of an appraisal estimating the pole building had a market value of $57,000 as of September 3, 2010 along with an unsigned noted stating "Old appraisal submitted by them. Property used for hunting."

Conclusion of Law

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

The Board finds the best evidence of market value of the pole building is found in the appellant's appraisal of $85,000. The subject's assessment for the pole building reflects a market value of $155,600, which is greater than the appraised value of $85,000. Although the appraisal submitted by the board of review also supports a reduction, the Board gave less weight to the appraisal due to its dated 2010 valuation date in relation to the subjects January 1, 2014 assessment date. Since market value has been established the 2014 three-year average median level of assessments for Calhoun County of 34.57% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**Gerald Shumaker**
DOCKET NUMBER:	**14-03681.001-F-1**
DATE DECIDED:	**May, 2018**
COUNTY:	**Alexander**
RESULT:	**Reduction**

The subject property consists of a parcel with both farm land and home site acreage. The subject parcel is improved with a 1.5 story frame dwelling containing approximately 2,460 square feet of living area. The dwelling is 17 years old and features an unfinished basement, central air conditioning, a fireplace and 2-car garage. There is also a 2,400 square foot metal clad building on the parcel. These improvements are on a homesite with approximately 310 feet of road frontage. The subject is located near Tamms in Alexander County.

The appellant contends assessment inequity with respect to the homesite. The remaining assessments were not contested. The appellant initially claimed the homesite measured 290 feet by 290 feet or 1.94 acres in size. The appellant submitted two assessment notices from the board of review indicating the homesite and improvements were reported on the wrong parcel identified by property number (PIN) 07-02-28-067-026 in 2014 and the error was corrected by the board of review on the same date by increasing the total assessment on the subject property to $56,785. The appellant submitted information on six comparable homesites. These homesites ranged in size from 1 acre to 4.23 acres and were located from 1.5 to 8 miles from the subject. They had land assessments ranging from $330 to $3,040 or from $186 to $977 per acre, rounded. The subject's homesite assessment is $3,625 or $1,869 per acre, rounded, based on the appellant's claim of a 1.94-acre homesite. The appellant did not submit any diagram or sketch to support the claim the homesite's size is 1.94 acres. Based on this evidence the appellant requested the homesite land assessment be reduced to $841 or $434 per acre, rounded.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the subject's homesite assessment of $3,625. The subject parcel has a total assessment of $56,785.

With respect to the appellant's evidence, the board of review submitted a letter from the assessor's office claiming the subject's homesite contains 2.60 acres of land. In support of this claim, the assessor submitted an aerial photograph of the homesite indicating it is not square but trapezoidal with dimensions of approximately 310 feet by 329 feet by 275 feet by 392 feet. The assessor also disclosed the error in 2014 in which the homesite and improvements were initially assessed on the wrong parcel but corrected in 2014. Also, in 2014 the assessor added a second homesite approximately 2.0 acres in size on the same parcel. The assessor claims a mobile home is located on this second homesite and submitted aerial photographs from 2003 and 2014 as evidence of the second home site. In support of this argument, the assessor submitted a property information sheet dated October 11, 2016 which indicated the subject's homesite contained 2.60 acres and had an assessed value of $3,625. The assessor claims that the two homesites combined actually contain 4.40 acres of land and that the second homesite was overlooked when the error involving improvements on the wrong parcel was corrected. The assessor claims the second homesite was not recorded on the property record card and the total homesite should be 4.40 acres. The assessor also claims the assessed value of $3,625 is based on the 4.40-acre size or approximately $824 per acre.

The board of review did not complete a grid analysis but submitted property information sheets for three land comparables located on the same road and in close proximity to the subject. These three homesites were 1.75 or 2.0 acres in size and had land assessments ranging from $2,000 to $5,210 or from $1,000 to $2,605 per acre of land.[1] The subject's homesite assessment is $3,625 or $1,394 per acre, rounded, based on the board of review's claim of a 2.60-acre homesite. The subject's assessment of $3,625 would equate to $824 per acre of land, rounded, based on two homesites containing 4.40 acres of land total. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In written rebuttal, the appellant claims the mobile home is located on a different parcel than the subject parcel and submitted an aerial photograph with what the appellant describes as the correct property line which excludes the land and homesite upon which the mobile home is located. The appellant also submitted a warranty deed with legal description for the subject parcel supporting the appellant's claim that the subject parcel is 19.49 acres in size. The appellant also submitted a warranty deed containing the legal description for the 30.60-acre parcel which, in the Board's opinion, describes parcel number PIN 07-02-28-067-026. This lends further support to the appellant's claim that the mobile home is not on the same parcel as the subject dwelling. The appellant also asserted he measured the subject homesite with a measuring tape and calculated the homesite as having 2.14 acres. The appellant submitted a copy of an aerial photo of the homesite with his measurements.

Conclusion of Law

The taxpayer contends assessment inequity with respect to the homesite as the basis of the appeal. When unequal treatment in the assessment process is the basis of the appeal, the inequity of the assessments must be proved by clear and convincing evidence. 86 Ill.Admin.Code §1910.63(e). Proof of unequal treatment in the assessment process should consist of documentation of the assessments for the assessment year in question of not less than three comparable properties showing the similarity, proximity and lack of distinguishing characteristics of the assessment comparables to the subject property. 86 Ill.Admin.Code §1910.65(b). The Board finds the evidence in the record supports a reduction in the assessment.

Initially, the Board finds the county GIS property lines do not agree with the legal descriptions in the record. The Board further finds the second homesite is not located on the same parcel as the subject dwelling. The Board gave more weight to the appellant's homesite measurements submitted in the rebuttal than the GIS measurements submitted by the board of review and finds the subject's homesite contains 2.14 acres of land. The evidence indicated the homesite has an assessed value of $824 per acre of land, rounded, when using 4.40 acres as asserted by the assessor. However, the subject actually has a homesite of 2.14 acres as measured by the appellant justifying a reduction in the assessment based on size.

Both parties submitted nine equity comparables for the Board's consideration. The Board gave less weight to the appellant's comparables based on their distance from the subject property. The

[1] Comparable #2 was listed as a tax sale and the land assessment was reduced from $5,210 to $2,000 by the board of review.

Board finds the best equity comparables to be the board of review comparables which had homesite assessments ranging from $1,000 to $2,600 per acre of land. Based on this record the Board finds, after considering the subject's size and the comparables, a reduction in the subject's assessment is justified.

2018 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

2018 COMMERCIAL DECISIONS

PROPERTY TAX APPEAL BOARD
Section 16-190(a) of the Property Tax Code
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)
Official Rules - Section 1910.76
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2018 COMMERCIAL CHAPTER

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APPELLANT:	**Patricia Angel**
DOCKET NUMBER:	**13-35752.001-C-1**
DATE DECIDED:	**May, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property is improved with a one-story commercial building of masonry construction with 2,446 square feet of gross building area. The building was constructed in 1952. The building has a concrete slab foundation, central air conditioning, two restrooms and a ceiling height of nine feet. The building is being used as a bar/lounge. The property has a 4,520-square foot site resulting in a land to building ratio of 1.85:1. The property is located in Dolton, Thornton Township, Cook County. The subject is classified as a class 5-17 one story commercial building under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of $50,000 as of January 1, 2012. The appraisal was prepared by Gerry D. Bertacchi, a certified general real estate appraiser. The purpose of the appraisal was to estimate the market value of the subject property. The property rights appraised was the fee simple estate. The intended use of the appraisal was to serve as an estimate of market value in order to arrive at an equitable assessed valuation for purposes of real estate taxation. The appraiser determined the highest and best use of the subject property as vacant would be for commercial type facility in conformance with applicable zoning, building codes and consistent with the surrounding land uses. The highest and best use of the property as improved is the continued use as a commercial building until such time that the improvements reach the end of the of their effective useful economic life.

In estimating the market value of the subject property, the appraiser developed the sales comparison approach to value using five comparable sales improved with one-story masonry or brick constructed commercial buildings that range in size from 2,200 to 4,100 square feet of building area. The buildings were constructed from 1951 to 1971. The comparables are located in Dolton, Chicago Heights, Flossmoor, Calumet City and Chicago with sites ranging in size from 6,098 to 12,001 square feet of land area resulting in land to building ratios ranging from 1.66:1 to 4.14:1. These properties sold from January 2010 to March 2012 for prices ranging from $37,000 to $80,000 or from $14.80 to $21.74 per square foot of building area, including land. The appraiser made qualitative adjustments to the comparables for differences from the subject property and determined each comparable required a positive adjustment. The appraiser estimated the subject property had a market value of $20.00 per square foot of building area resulting in a total market value of $50,000, rounded. Based on this evidence the appellant requested the subject's assessment be reduced to $12,500 to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $13,243. The subject's assessment reflects a market value of $52,972 or $21.66 per square foot of building area, including land, when applying the Cook County Real Property Assessment Classification Ordinance level of assessment for class 5-17 property of 25%.

In support of its contention of the correct assessment the board of review submitted information on five comparable sales improved with one-story commercial buildings that ranged in size from

704 to 2,640 square feet of building area. The data provided by the board of review disclosed comparables #2 and #4 were constructed in 1972 and 1959, respectively. The date of construction for the remaining comparables was not disclosed. These properties were located in Harvey, Dolton, Calumet City and Chicago with sites ranging in size from 12,001 to 23,048 square feet of land area resulting in land to building ratios ranging from 5.80:1 to 18.89:1. Each comparable was described as being used either for fast food or a bar. The sales occurred from June 1998 to September 2013 for prices ranging from $108,000 to $325,000 or from $71.02 to $153.41 per square foot of building area, including land.

In rebuttal the appellant's counsel argued that the comparable sales used by the board of review had no adjustments and fails to disclose whether the board of review analyst inspected the subject property. Counsel further asserted that the board of review memorandum states that it is not intended to be an appraisal and the information used is assumed to be accurate but has not been verified by the writer of the memorandum.

Appellant's counsel asserted that with respect to comparable #1 the information provided by the board of review is for the address of a vacant fast food restaurant in poor condition whereas the property index number (PIN) is for a Mobil gas station down the street. With respect to the remaining sales submitted by the board of review, the appellant's counsel asserted the transactions occurred from 5 to 15 years prior to the assessment date and noted that each comparable has a significantly larger site than the subject property.

Conclusion of Law

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

The Board finds the best evidence of market value to be the appraisal submitted by the appellant estimating the subject property had a market value of $50,000 as of January 1, 2012. The appellant's appraiser developed the sales comparison approach to value using five sales that were relatively similar to the subject in age, size and land to building ratio. These comparables also sold proximate in time to the assessment date at issue. The appellant's appraiser also adjusted the comparables for differences from the subject property, which appear reasonable. The subject's assessment reflects a market value of $52,972, which is above the appraised value. Less weight was given the board of review sales as comparables #2 through #5 did not sell as proximate in time to the assessment date as did the sales in the appellant's appraisal. Furthermore, there was an issue with respect to the actual property referenced in board of review sale #1 as being a vacant restaurant in poor condition or a Mobil gas station, which undermines the weight to be given that transaction. Finally, each of the board of review comparable sales has a significantly larger site than the subject property, which further detracts from the weight that can be given these sales. Based on this evidence the Board finds a reduction to the subject's assessment is appropriate.

APPELLANT:	**Ronald L. Boorstein**
DOCKET NUMBER:	**14-00407.001-C-1**
DATE DECIDED:	**July, 2018**
COUNTY:	**Lake**
RESULT:	**Reduction**

The subject property is improved with a one-story fast food restaurant with a masonry and siding exterior containing 3,840 square feet of building area. The building was constructed in 2008. The building has poured reinforced concrete foundation walls and footings. The floor is a poured reinforced concrete slab on grade. The windows are aluminum frame with thermopane glass. The dining area has a clear ceiling height of 9 to 10 feet and a kitchen with a clear ceiling height of 7 to 10 feet. The interior has suspended painted drywall, acoustical tile and suspended 'marlite' panel ceilings. The flooring is composed of carpeting, ceramic tiles and rubber tiles. The building has one men's and one women's restroom for customers and one unisex restroom for employees. The entire building is heated and cooled with a gas fired-heating and electric air conditioning roof-top package. The building has a 100% wet-type sprinkler system. The property has an outdoor patio, a drive-through lane and asphalt paved parking for 36 vehicles. The subject property has a site with approximately 41,002 square feet of land area resulting in a land to building ratio of 10.68:1. The property is commonly known as Culver's and is located on an outlot of the Oak Creek Plaza shopping center in Mundelein, Vernon Township, Lake County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of $750,000 as of January 1, 2014. The appraisal was prepared by real estate appraiser, Jason D. Zaley of Maresh, Zaley & Associates, Inc. Zaley is a State Certified General Real Estate Appraiser in Illinois and has the MAI designation with The Appraisal Institute. In estimating the market value of the subject property, the appraiser developed the three traditional approaches to value.

The purpose of the appraisal was to render an opinion of the retrospective market value of the fee simple interest in the land and improvements. The property rights appraised are the fee simple title, free and clear of all encumbrances subject only to the limitations of the four powers of government. The appraiser stated in the report (p. 8) that the subject property did not undergo any significant changes from the valuation date of January 1, 2014 to the date of inspection of May 28, 2015. However, according to the appraiser, the Oak Creek Plaza shopping center tenancy changed between these dates with several smaller tenants vacating space after the Menards closed in 2013. As a result, the appraiser used this hypothetical condition in the appraisal to account for this factor.

In describing adjacent land uses the appraiser stated that as of the date of inspection the Menards store and the Card and Party Store were closed. The appraiser further stated the Hobby Lobby store closed in 2013. The remaining in-line stores included Leisure World, Harabee restaurant, Golf Zone and a pizza restaurant. The appraiser stated this area of Mundelein is dominated by the Oak Creek Plaza shopping center, which is planned for redevelopment with a Super Walmart. The appraiser asserted that as of the date of valuation, the majority of the Oak Creek Plaza shopping center was vacant and deteriorating; thereby affecting the economic vitality of this section of Mundelein. (See letter of transmittal and appraisal pages 1 and 32.)

The appraiser determined the highest and best use of the subject as vacant would be commercial development that complies with C-4, Shopping Center District requirements. The highest and best use of the subject property as improved was its use as a 1-story, masonry and siding, fast food restaurant that contains approximately 3,840 square feet of gross area.

The first approach developed by the appraiser was the cost approach to value with the initial step being to estimate the value of the land using four land sales located in Vernon Hills, Libertyville, Mundelein and Lake Zurich. The comparables ranged in size from 58,370 to 87,991 square feet of land area. These properties sold from February 2010 to September 2013 for prices ranging from $4.75 to $17.13 per square foot of land area. The appraiser made qualitative adjustments to the comparables for such factors as condition of sale, location, size, zoning, and street frontages. The appraiser was of the opinion comparables #1, #2 and #4 required negative adjustments and comparable #3 required an upward adjustment. The appraiser arrived at an estimated land value of $10.00 per square foot of land area for a total land value of $410,000, rounded.

The next step under the cost approach was to estimate the replacement cost new of the improvements using the Marshall and Swift Computerized Cost Estimate Program. The appraiser estimated the replacement cost new to be $207.06 per square foot of gross building area for a Class D construction quality fast food restaurant resulting in a replacement cost new of the building improvement of $795,098. To this the appraiser added 5% of replacement cost new or $39,755 for entrepreneurial profit to arrive at a total building value of $834,853.

In estimating depreciation, the appraiser asserted the subject building has a physical age of 6 years, however, he estimated the subject building had an effective age of 15 years primarily due to the distressed nature of the Oak Creek Plaza shopping center. He further estimated the subject building had 15 years of remaining economic life and a total estimated life of 30 years. Using the age life method, the appraiser estimated the subject building suffered from 50% accrued depreciation. Using the breakdown method, the appraiser determined the subject suffered from physical depreciation of 25%; functional obsolescence of 5%; and external obsolescence of 30% due to the distressed nature of the Oak Creek Plaza shopping plaza. The appraiser ultimately concluded the subject building suffered from accrued depreciation of 60% or $500,912 resulting in a depreciated building value of $333,941. The appraiser also estimated the depreciated value of the site improvements to be $40,000. Adding the depreciated building value, the depreciated value of the site improvements, and the estimated land value resulted in an estimated market value under the cost approach of $785,000, rounded.

The appellant's appraiser next developed the sales comparison approach to value using five comparable sales improved with one-story buildings that range in size from 2,400 to 5,171 square feet of building area. The comparables were located in Mundelein, Round Lake Beach, and Lindenhurst. The comparables were constructed from 1969 to 2000 and each was used as a fast food restaurant. The comparables had land to building ratios ranging from 3.27:1 to 14.72:1. These properties sold from March 2010 to January 2014 for prices ranging from $400,000 to $1,100,000 or from $107.58 to $458.33 per square foot of building area, including land. The appraiser made a $550,000 adjustment to comparable #2 for investment value resulting in an adjusted sales price of $550,000 or $229.17 per square foot of building area, including land. The appraiser made qualitative adjustments to the comparables for various factors and differences from the subject property. The appraiser stated within the report that statistically the unit prices ranged from

$107.58 to $247.10 per square foot of building area with a mean unit price of $165.76 per square foot and a median unit price of $124.10 per square foot. The appraiser asserted that improved sale #2 with a unit price of $229.17 per square foot of building area required no overall adjustment due to offsetting factors. The appellant's appraiser estimated the subject property had a market unit value of $200.00 per square foot of gross building area, land included, for a total estimated market value under the sales comparison approach of $770,000.

The final approach developed by the appellant's appraiser was the income approach to value. The appraiser identified five rental comparables located in Lake Zurich, Lindenhurst and Wauconda improved with three fast food restaurants, a sit-down restaurant and in-line retail space ranging in size from 2,135 to 3,740 square feet of building area. The comparables were constructed from 1920 to 2000 and had net rents ranging from $10.05 to $17.87 per square foot of building area. The appraiser made qualitative adjustments to the comparables and noted rental comparables #1, #2 and #5 had offsetting adjustments, comparable #3 was much inferior to the subject requiring an upward adjustment, and comparable #4 was inferior to the subject requiring an upward adjustment.

The appraiser noted that the subject's lease, which originated in January 2012 for a 5-year term, had a contract base rent of $21.88 per square foot, semi-gross along with 7% of gross revenue from the preceding year beginning March 1, 2013. However, the lease also states the rental includes all furniture, fixtures and equipment. The appraiser concluded the contract is a business lease and not a lease of the real estate, therefore, the current contract rent is not representative of the current open market level rent.

The appraiser estimated the subject's market rent would be $17.00 per square foot on a net basis resulting in a potential gross income of $65,280. The appraiser estimated the subject property would have a vacancy and collection loss of 10% of potential gross income or $6,528 resulting in an effective gross income of $58,752.

With respect to expenses, the appraiser explained the analysis uses a net lease rate, therefore, a majority of expenses are incurred by the tenant/lessee with the exception of a management fee and reserves for replacement. The appraiser estimated the subject property would have a management fee of 3% of effective gross income or $1,763. The appraiser also estimated the reserves for replacement would be $.20 per square foot or $768. Deducting the expenses resulted in a net operating income of $56,221.

The appraiser next estimated the capitalization rate to be applied to the subject's net income. Using the band of investment technique, the appraiser arrived at an overall capitalization rate of 9.6%. The appraiser also used published sources such as *Korpacz Real Estate Investor Survey* and *Real Estate Research Corporation (RERC) Real Estate Report*. The appraiser stated that *Korpacz Real Estate Investor Survey* for the fourth quarter of 2013 the National Strip Shopping Center market for class A properties reported a range from 5.0% to 10.0% and an average of 6.98%. The appraiser further indicated *RERC* reported rates for Second Tier/Community Shopping Center properties in the Midwest region for the fourth quarter of 2013 had rates ranging from 7.0% to 12.0% and an average of 8.9%. The appellant's appraiser arrived at an estimated overall capitalization rate for the subject property of 8.0%. Capitalizing the net income resulted in an estimated value under the income capitalization approach of $705,000.

In reconciling the three approaches to value, the appraiser asserted in the report that, "It should be noted that as of the date of valuation, the majority of the Oak Creek Plaza shopping center was vacant and deteriorating; thereby affecting the economic vitality of this section of Mundelein." The appraiser gave least emphasis to the cost approach to value. The sales comparison approach was given primary emphasis. The income approach was considered reliable and was also given ample weight toward the conclusion. Based on this evidence the appraiser arrived at an estimated market value of $750,000 as of January 1, 2014.

Based on this evidence the appellant requested the subject's assessment be reduced to $246,600.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $344,599. The subject's assessment reflects a market value of $1,034,211 when using the 2014 three-year average median level of assessment for Lake County of 33.32% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment the board of review submitted information on five comparable sales improved with one-story commercial buildings that ranged in size from 3,484 to 6,380 square feet of building area. The comparables were constructed from 1986 to 2003. These comparables were located in Gurnee, Vernon Hills, and Libertyville with sites ranging in size from 39,136 to 100,887 resulting in land to building ratios ranging from 8.61:1 to 17.3:1. These properties sold from December 2013 to December 2015 for prices ranging from $1,090,000 to $3,200,000 or from $228.06 to $672.83 per square foot of building area, including land. The board of review stated that assessment records indicated the subject building has 4,047 square feet of building area. Based on these sales, the board of review contends the subject's value is supported.

To document the transactions the board of review provided copies of the property record cards, the PTAX-203 Illinois Real Estate Transfer Declaration, and a copy of the PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A for each of the comparable sales it utilized. The transfer declarations disclosed that each property was advertised for sale. The supplemental form disclosed that sale #1 had been on the market for six months and had been vacant 9 months prior to the sale. The supplemental form disclosed that comparable sale #2 had been on the market for sale for two months and was 100% occupied at the time of sale. The supplemental form associated with comparable sale #3 indicated the property had been on the market for 00 months and was 100% occupied at the time of sale. The supplemental form associated with comparable sale #4 indicated the property had been on the market for 00 months and was unoccupied for 6 months prior to the sale. The transfer declaration for board of review sale #5 disclosed the transfer was a sale-leaseback. The supplemental form associated with sale #5 disclosed the property had been on the market for 6 months and was 100% occupied at the time of sale.

In rebuttal, the board of review provided a written narrative from Martin Paulson, the Lake County Chief County Assessment Officer and Clerk of the Board of Review. Paulson asserted that appraisal land sale #3 was a bank REO sale of four parcels with 104,632 square feet. Paulson described this property as including a parking lot and three waterfront lots with significant portions of the lots being lake bottom. He noted the sale price was $2.65 per square foot of land area and contends this sale should not be considered when arriving at the land value and argued the

remaining land sales had unit values ranging from $11.65 to $17.13 per square foot of land area, which supports the current land assessment.

Paulson also questioned the effective age of the subject property as estimated by the appellant's appraiser of 15 years when the building has a chronological age of 6 years.

With respect to the appellant's sales comparison approach, Paulson asserted comparable sale #1 sold almost five years prior to the assessment date; comparable sale #3 was a dormant foreclosure due to a bankrupt franchisee; comparable #4 was a stigmatized property as the result of an on-site homicide which resulted in closing of the restaurant by the franchisee; and comparable #2 sold for a price of $1,100,000 or $458.33 per square foot of building area, as reflected on the PTAX-203 Illinois Real Estate Transfer Declaration. The board of review also contends that appellant's appraisal comparable sale #5 sold for $247.10 per square foot of building area and is supportive of the subject's assessment.

The board of review requested confirmation of the subject's assessment.

In rebuttal the appellant's counsel submitted a written statement from the appellant's appraiser, Jason D. Zaley. Zaley asserted that he personally measured the subject building and determined it had 3,840 square feet of building area. The appraiser also contends the county does not acknowledge that the distressed nature of the Oak Creek Plaza shopping center has a substantial negative influence on consumer traffic in this section of the Town Line Road retail corridor. He explained that since Menards and Hobby Lobby vacated the center it has become more distressed. Due to the loss of the anchors, the owner lost the property through foreclosure and parties interested in redevelopment are having a difficult time finding tenants.

With respect to land sale #3, the appraiser stated he was not aware if lake front properties were included in the sale. The appraiser contends that even taking this sale out, his estimated land value takes into account the subject's location as an outlot of a vacant and heavily distressed shopping center in which no activity has taken place for years.

The appellant's appraiser also asserted that effective age takes into account physical age and depreciation, functional obsolescence and external obsolescence due to the distressed shopping center. He contends his estimate of 30% for external obsolescence is reasonable.

With respect to the improved comparable sales he used, the appraiser asserted he made a strong upward adjustment to comparable sale #3 for the distressed nature of this sale. The appraiser also explained that utilizing only sales that are leased (leased fee) would not reflect the fee simple value unless a deduction for the leased fee component is made, which he did for improved sale #2 based on a conversation with the broker involved in the transaction. He also stated he found no articles indicating that there was stigma attached with his improved sale #4. The appraiser also explained that his improved sale #5 is smaller with a higher land to building ratio and higher parking ratio than the subject, all warranting a downward adjustment.

The appellant's appraiser also submitted the CoStar comp sheets associated with board of review sales #1, #3, #4 and #5. In responding to the board of review sales, the appellant's appraiser asserted sale #1 is a sit-down restaurant on an outlot of a Menards anchored shopping center

located across from Gurnee Mills Mall, and which was also a distressed property due to vacancy. CoStar stated this was an investment sale, the property was never on the market, and this was an off-market deal. The appraiser stated board of review sale #2 is a KFC on an outlot of the Hawthorn Fashion Plaza shopping center which is anchored by a Dick's Sporting Goods and across from the Westfield Hawthorn Mall, a superior retail area to the subject property. The CoStar comp sheet for board of review comparable #3 stated this was an investment sale purchased as a triple net investment, 100% leased, with a capitalization rate of 10%. The CoStar sheet provided by the appellant indicated this property previously sold in December 2013 for a price of $1,650,000 or $312.26 per square foot of building area. The appraiser indicates sale #4 was a sit-down restaurant located west of the Westfield Hawthorn Mall and appears to be a leased fee transaction. The CoStar comp sheet indicated this was an investment sale that was 100% leased. Zaley also explained that board of review sale #5 was a Culver's that was sold in a sale-leaseback transaction. The CoStar comp sheet indicated this was a sale leaseback, triple net investment that had a 6.00% capitalization rate at time of sale. CoStar also stated the tenant signed a 20-year absolute net lease.

The appraiser also provided two additional sales in rebuttal. Section 1910.66(c) of the rules of the Property Tax Appeal Board provides:

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

Based on this rule, the Property Tax Appeal Board finds the two new sales submitted are improper rebuttal evidence and will not be considered in determining the subject property's correct assessment.

Conclusion of Law

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

Initially, the Board finds the best evidence of the subject's building size was presented by the appellant. The appellant's appraiser asserted he personally measured the subject building during his inspection and arrived at a size of 3,840 square feet of gross building area. The board or review presented no evidence or statements in support of its size of the subject building of 4,047 square feet of building area. Based on this record the Board finds the subject property has 3,840 square feet of building area.

The appellant submitted an appraisal estimating the subject property had a market value of $750,000 as of January 1, 2014. The board of review submitted information on five comparable sales in support of the subject's assessment. The subject's assessment reflects a market value of

$1,034,211 or $269.33 per square foot of building area, including land, when using 3,840 square feet of building area.

The appellant's appraiser gave most credence to the sales comparison approach in arriving at his opinion of market value. In reviewing the appraisal, the Board finds two of the appellant's appraiser's sales occurred proximate in time to the assessment date at issue. Appraisal comparable sale #4 sold in March 2013 for a price of $400,000 or $107.58 per square foot of building area, including land. The board of review asserted there was stigma associated with this property due to an on-site homicide, which resulted in closing of the restaurant by the franchisee. Appraisal comparable sale #5, composed of a one-story masonry fast food restaurant with 2,934 square feet of building area built in 2000, sold in January 2014 for a price of $725,000 or $247.10 per square foot of building area, including land. The remaining comparables sold in 2010 and 2012, which are not proximate in time to the assessment date and detracts from the weight that can be given these sales. Additionally, the appellant's appraiser made a significant deduction to the purchase price to sale #2 for investment value, which was not supported with any data in the record. The board of review provided copies of the PTAX-203 Illinois Real Estate Transfer Declaration and PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form A associated with appraisal comparable sale #2 disclosing that the purchase price was $1,100,000. There was no deduction for personal property or an investment value on the transfer declaration and the parties indicated on the supplemental form that the $1,100,000 reflected as the net consideration is a fair reflection of the market value on the date of sale. These forms undermine the appraiser's deduction of $550,000 as the investment value for comparable sale #2.

With respect to the sales provided by the board of review, there is an issue with respect to the arm's length nature with respect to board of review sale #1 as the CoStar document indicated that this property was never on the market and was an off-market deal. However, the transfer declaration and supplemental form indicated this property was vacant and had been for sale on the market for six months. This property sold for a price of $438.37 per square foot of building area, including land. With respect to comparable sale #2, this property sold for a price of $312.85 per square foot of building area, but according to the appellant's appraiser this was in a superior location than the subject and would require a downward adjustment. With respect to the comparable #3 the record disclosed that this property sold in August 2014 for a price of $2,100,000 or $418.24 per square foot of building, including land. There was some issue with respect to whether this property was advertised for sale as the transfer declaration indicated the property had been advertised while the supplemental form disclosed the property had not been on the market. The appellant also provided evidence that this comparable previously sold in December 2013 for a price of $1,650,000 or $312.26 per square foot of building area, under a triple net lease, which would require a downward adjustment. With respect to board of sale #4, this property sold for a price of $1,455,000 or $228.06 per square foot of building area, including land. There is some issue whether this property was occupied at the time of sale as the supplemental form indicated the property was not occupied or leased at the time of sale while the CoStar report indicated that the property was 100% leased at the time of sale. Nevertheless, the unit price for comparable sale #4 is less than the market value reflected by the subject's assessment on a square foot basis. With respect to board of review sale #5, the documents provided by the appellant and board of review reported that this was a sale leaseback transaction where the tenant signed a 20-year absolute net lease with 10% increases every five years and four, five-year options to renew. The documentation disclosed this property had a 6.00% capitalization rate at the time of sale. This transaction appears

to be in the nature of a financial transaction and not reflective of the fair cash value of the real estate. Additionally, this property sold in June 2015 for a price of $3,200,000 or $672.41 per square foot of building area, which appears to be an outlier and not reflective of the fair cash value of the real estate when compared to the other sales in the record. As a final point, the Board finds the board of review did not address the appellant's appraiser's assertion that the subject property is negatively impacted by its location as an outlot of the distressed Oak Creek Plaza shopping center.

The two best sales provided by the appellant's appraiser had unadjusted unit prices of $107.58 and $247.10 per square of building area, including land. Excluding board of review sale #5, the remaining comparables provided by the board of review had unadjusted unit prices ranging from $228.06 to $438.37 per square foot of building area, however, these comparables appear to be superior to the subject in location and/or were leased at the time of sale, which would require downward adjustments. Based on these sales, the Board finds the subject's assessment which reflects a unit value of $269.33 per square foot of building area, including land, is excessive and should be reduced.

With respect to the cost approach developed by the appellant's appraiser, the board of review asserted that land sale #3 was a bank REO sale of four parcels with 104,632 square feet. Paulson described this property as including a parking lot and three waterfront lots with significant portions of the lots being lake bottom and the sale price was $2.65 per square foot of land area. Excluding this land sale, the three, remaining land comparables have prices ranging from $11.65 to $17.13 per square foot of land area. The subject's land assessment of $183,070 reflects a market value of approximately $549,210 or $13.39 per square foot of land area, which is well supported given these sales. The Board finds the appellant's appraiser understated the land value in the cost approach which resulted in the estimated value under the cost approach to be understated. The Board further finds the appellant's appraiser provided no support for the 5% reduction from the cost new of the improvements for functional obsolescence as he failed to identify the items of functional obsolescence associated with the building. The appellant's appraiser explained the subject's value has been negatively impacted by its location as an outlot of the distressed Oak Creek Plaza shopping center. The appellant's appraiser determined the subject property suffered from external obsolescence but provided no clear support to justify the 30% reduction for external obsolescence. After considering these issues, the Board finds the appraiser's estimated value under the cost approach of $785,000 should be revised upward.

With respect to the income approach to value, the appraiser arrived at an estimated value of $705,000. The board of review presented no evidence to challenge the estimated market rent, vacancy, expenses or capitalization rate. As a result, the Board gives some weight to the conclusion of value under the income approach to value in the appellant's appraisal.

Based on this evidence the Board finds a reduction in the subject's assessment is justified.

APPELLANT:	**Evergreen Place Chillicothe, LLC**
DOCKET NUMBER:	**15-00777.001-C-3**
DATE DECIDED:	**November, 2018**
COUNTY:	**Peoria**
RESULT:	**Reduction**

Procedural History

In order to properly understand the context of this appeal and the timely evidence of record that will be examined, it is necessary to briefly outline certain evidentiary filings in this matter.

The appellant's appeal, after a granted extension of time, was based upon comparable sales evidence. By letter dated October 4, 2016, the Property Tax Appeal Board (Board or PTAB) notified the Peoria County Board of Review of the appeal and established a 90-day deadline for the submission of its evidence. (86 Ill.Admin.Code §1910.40) In addition, due to the amount in controversy in this appeal, the board of review on October 19, 2016 filed its Certificate that taxing districts had been notified of this appeal by a mailing made on October 18, 2016. (86 Ill.Admin.Code §1910.40(f))

On December 13, 2016, counsel for the intervenor, Board of Education of Illinois Valley Central Community School District No. 321, timely filed a Request to Intervene. With the filing, counsel for the intervenor also requested a 60-day extension of time to file evidence "and review the evidence submitted at the Board of Review level to determine if an appraisal of the property is necessary." By letter dated December 15, 2016, the PTAB forwarded a copy of the appellant's evidence along with granting the intervenor a 90-day extension, or to March 15, 2017, to file its evidence.

On December 21, 2016, the Peoria County Board of Review postmarked its request for an additional 90-day extension of time to submit its evidence. By letter dated March 17, 2017, the PTAB granted a final 60-day extension of time to the board of review to submit its evidence. Postmarked on April 13, 2017, the board of review timely filed its Notes on Appeal and evidence.

On February 17, 2017, counsel for the intervenor wrote to the Board reporting that an appraiser had been hired, "but due to their current workload, they have indicated they require additional time to properly complete the appraisal." Therefore, the intervenor requested an additional extension of time of 60-days to submit its evidence. At its meeting of March 14, 2017, the Board considered the intervenor's additional extension request and by letter dated March 17, 2017, the Board granted the intervenor a final 60-day extension of time to submit its evidence.

On May 16, 2017, the intervenor's counsel postmarked a four-page letter signed by attorney C. Frazier Satterly with attachments consisting of descriptions of six comparable properties and Exhibit A, a City of Chillicothe Building Permit Application dated October 14, 2013 along with a memorandum from an architect.

On June 1, 2017, the Property Tax Appeal Board issued separate letters to each of the three parties in this proceeding. Each of those letters provided, in pertinent part, that:

> You are hereby granted a 30-day period from the postmark date of this letter to submit rebuttal evidence solely addressing any enclosed evidence.

With the aforesaid letter, the Board provided the appellant with copies of the evidence filed by both the board of review and the intervenor. Additionally, the PTAB provided the board of review with a copy of the intervenor's evidence and separately provided the intervenor with a copy of the board of review's evidence. (86 Ill.Admin.Code §1910.66)

The appellant's rebuttal, a letter dated June 30, 2017, proposed that a decision be written on the record in this matter without a hearing. The appellant also proposed an assessment reduction of $95,000 to $2,337,230 from the 2015 assessment of the subject property of $2,432,230. By a letter dated July 6, 2017, the PTAB separately forwarded the appellant's proposed assessment reduction to the board of review and to the intervenor's counsel of record; those parties were each granted until August 5, 2017 (a Saturday) to accept or reject the appellant's proposed assessment reduction. (86 Ill.Admin.Code §1910.25(a)) By a letter timely postmarked on August 7, 2017, intervenor's counsel rejected the appellant's proposed stipulation. By a letter dated August 11, 2017, the Property Tax Appeal Board forwarded copies of the intervenor's rejection of the stipulation to both the appellant and the board of review.

Lastly, postmarked on June 30, 2017, intervenor's counsel, C. Frazier Satterly, filed a four-page letter denoted as "Rebuttal Evidence of Intervenor" which asserted this "correspondence and its attachments[1] are submitted as rebuttal evidence to the taxpayer's submitted comparable sales pursuant to PTAB Rule 1910.66(a)." Copies of said purported rebuttal filing were forwarded by the Board separately to both the appellant's counsel of record and the board of review.

On this record, as outlined above, and in light of the procedural rules applicable to proceedings before the PTAB, the Board finds that the intervenor's purported rebuttal filing of June 30, 2017 was untimely and therefore will not be further considered on this record. The only evidence that was provided to the intervenor with the June 1, 2017 correspondence from the Board to intervenor's counsel was a copy of the board of review's evidence; the intervenor had 30 days to file rebuttal as to that Peoria County Board of Review evidence, if it so desired. In contrast, the intervenor had in its possession the appellant's evidence since the mailing by the Board dated December 15, 2016; rebuttal to the appellant's evidence, if any, should have been filed no later than 60 days from March 17, 2017 with its evidentiary submission. In summary, for purposes of this decision, the Board finds the intervenor's rebuttal filing as to appellant's comparable sales evidence was filed untimely and will not be considered in rendering this decision.

Findings of Fact

The subject property consists of a two-story, 73-unit, senior living facility of brick exterior construction with a concrete slab foundation. Construction on the facility commenced in 2013 and the property record card indicates the year of construction was 2013. The record further indicates the improvement was first partially assessed as of January 1, 2015 as 60% complete. The facility has 68,988 square feet of building area and consists of 53 assisted living units and 20 memory care

[1] The Board notes that there were no attachments to the letter.

units. The evidence at hearing further established that the facility was occupied as of June 5, 2015. The property has a 6.04-acre or 263,102-square foot site located in Chillicothe, Chillicothe Township, Peoria County.

The appellant through counsel appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal and also raising an issue of proration of the 2015 assessment since an occupancy permit was not issued until July 2015. Contention of law was not marked as a basis of the appellant's appeal in Section 2d of the Commercial Appeal petition and no legal brief was supplied concerning the proration argument. Additionally, no documentation of the purported occupancy permit was presented in this matter.

In support of the overvaluation argument, the appellant timely filed information on three comparable sales along with printouts further describing the properties/sales along with the Illinois Real Estate Transfer Declarations (three) for comparable sale #1. The appellant presented the sales data at hearing through the testimony of Robert W. McQuellon, Jr. The witness has held a real estate broker's license since 1973 and has been specializing in real estate tax appeal work since 1986. He was formerly a registered professional member of the National Association of Real Estate Appraisers. The witness has also taken courses concerning commercial real estate investment, commercial industrial appraisal, listing and selling among others. (TR. 11)[2]

The appellant's Section V grid analysis, along with attached documentation, consists of properties located in Bensenville (DuPage County), Highland Park (Lake County) and Coulterville (Randolph County). Comparable #1 was described as a continuing care retirement community (CCRC); comparables #2 and #3 were each said to be skilled nursing facilities. The comparable parcels range in size from 179,032 to 1,045,505 square feet of land area which have been improved with one building each as to comparables #2 and #3 and three buildings for comparable #1. Comparables #1 and #3 were constructed in 1996 and 1999, respectively; no date of construction was reported for comparable #2. These one-story or three-story brick and frame buildings range in total size from 32,660 to 201,582 square feet of building area and have from 75 to 222 units. The comparables sold between December 2013 and December 2014 for prices ranging from $4,300,000 to $17,888,500 or from $57,333 to $81,082 per unit.

At hearing, witness McQuellon, Jr. also testified to data that was not part of the appellant's evidentiary submission, namely, a calculation of the estimated market value of the three comparable sales based upon their respective assessments in the respective counties. (TR. 18-20)[3]

During cross-examination of McQuellon, Jr. it was established he is not currently nor has he ever been a licensed real estate appraiser in Illinois or any other state. Further questioning noted the differences in building size, building age, dates of sale and/or proximity of the comparable properties to the subject. The witness testified that no adjustments were made for any differences between the subject and the comparable properties, rather the Section V data in the grid analysis was completed by the witness. (TR. 20-26)

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[2] References to the transcript of the proceedings will be referred to as "TR." followed by page number citation(s).

[3] The transcript of the hearing provides data as to the estimated market values of comparables #1 and #3 purportedly based upon their respective assessments of $19,357 and $37,621 per unit; the transcription of the proceedings as to comparable #2 is either in error or the witness misspoke in testimony; mathematically the numbers appear to be in error for sale #2.

On re-direct, McQuellon, Jr. testified that the comparable sale properties were in operation at the time they sold. (TR. 26-27)

The next witness called at hearing by the appellant was Shawn Crabel, the Chillicothe Township Assessor, who has held that position since 2014 and worked with the predecessor in that office in 2013. The township assessor position is a paid part-time position. The witness testified to having a bachelor's degree in finance and a Master of Business Administration degree; he is also a Certified Illinois Assessing Official. Furthermore, he has a history of real estate investment in Chillicothe since 1992. (TR. 28-29, 43)

In order to assess the subject property for January 1, 2015, in late December 2014, Crabel went with the "appraiser for Peoria County" to check on the status of the subject property in order to determine the percentage of completion of construction as of January 1, 2015; at that time, "we" determined the subject was 60% complete. Crabel then "calculated the full cash value" consisting of the land value plus the permitted foundation cost and the permitted building cost which totaled approximately $11,956,000. Applying the 60% factor, the value was "just over $7 million" and adding in the land took the value to $7,288,000. (TR. 29)

Crabel then compared his value conclusion to a recent sale of a similar property in Peoria, the Grand View Care Center, which sold in November 2014 for $14,601,000 as an operating facility. Crabel did not know if that sale was an arm's length transaction. This comparable sale was approximately half the size and half the units as compared to the subject. At the time of inspection for January 1, there were 73 units [apartments], some of which were two-bedroom units; Crabel did not know how many beds were going to be in the subject facility. "It's my understanding that units could be number of beds." In Crabel's analysis, units consist of 73 apartments. (TR. 29-30, 42-43)

In determining the level of completion, Crabel was asked to detail what was inspected such as the interior, electrical, plumbing and/or trade fixtures. The witness testified Peoria County provides a list "so that we are applicable countywide what percent we add for what is completed." He testified to examples, such as, if drywall were completed; if electrical was roughed in; if appliances were in; and if fixtures were in. (TR. 30-31)

Crabel stated he had no knowledge of the provision of the Property Tax Code, 35 ILCS 200/9-180, governing proration of property assessments. As to the provision "from the date the occupancy permit was issued, or from the date the new or added improvements were inhabitable or fit for occupancy for this intended customary purpose," Crabel testified that he was following the policy of Peoria County as to percent complete as of January 1st. He further opined that it was a moot point because the percent occupancy was almost exactly 60% for the year and was, therefore, the same number. (TR. 31-32)

In answer to the question when the occupancy permit was issued for the subject property, Crabel testified that the Chillicothe Fire Department okayed occupancy and the zoning officer deemed it completed on June 5. Crabel had no knowledge of any survey access/inspection by the State of Illinois. (TR. 32-33)

As a township assessor, Crabel maintains property record cards of properties within his jurisdiction, including the property record that was included in the appellant's evidence. Crabel's "notes" are depicted in the lower left-hand corner of page one of the subject's property record card; that is the information Crabel "put in." Data was actually input to the record card by Adam Curry, the commercial appraiser for Peoria County. (TR. 38-40)

At hearing, with reference to the property record card in the lower left-hand corner of page one, Crabel informed the County to insert the data of permit 14-002 for $11,278,531. Crabel also testified there were two separate building permits for the subject: one for the foundation of approximately $390,000 and a second permit for the building of $11,278,531. At page two of the property record card for the subject under "Summary of Improvements," the building was reported as 60% complete with a value of $4,595,330. Crabel testified this figure came from Peoria County's ProVal System; Crabel could not explain how the ProVal system functions. In further explanation, the witness pointed to the cost ladder also depicted on page two in the upper right-hand corner of the property record card. Crabel testified that he gives "them the information, they put it in. I told them the value. I can't – I'm not able to reconcile what's on their property record card and those calculations." Crabel did not use Marshall & Swift [a cost manual]; he "felt actual cost was a pretty good indication of the cost." Crabel also compared the subject's data to the recent sale of Grand View Care Center which sold for $465 per square foot of building area, including land. As a result, Crabel felt he was being pretty conservative, and the value assigned to the subject was fair. Crabel provided data on the comparable sale property in response to the appellant's appeal for tax year 2015 before the Peoria County Board of Review; the witness had no knowledge if that sale data was provided to the Property Tax Appeal Board. (TR. 34-37, 39, 40-42)

Upon questioning by the Peoria County Board of Review representative, Crabel testified the foundation work permit for the subject was $390,200 and the building permit was $11,278,551. Crabel applied 60% for the building and foundation only with the land being separate. (See Intervenor Exhibit A, page 2 – Transmittal of Heidi Dahle, Project Architect of Worn Jerabeck Architects, P.C. to Chillicothe Zoning Administrator dated October 15, 2013; TR. 44-45)

For cross-examination by the intervenor's counsel, it was established that Crabel attended the subject Property Tax Appeal Board hearing at the request of intervenor's counsel. (TR. 45-46)

Under redirect examination by appellant's counsel, Crabel testified that a foundation is a part of a building and the witness agreed that the total cost of a building would include a foundation, a roof, walls and other features. However, as to the subject property, the City of Chillicothe required a separate foundation permit of $390,000 and a second building permit. The township assessor opined that the $11,278, 551 plus the $390,200 for a total of $11,688,751 is 100% fair valuation of the subject building, including foundation. (TR. 47-48)

Based upon the foregoing evidence and as set forth in the appeal petition, the appellant requested a total assessment of $1,216,000 which would reflect an estimated market value of approximately $3,656,043 or $50,083 per unit, including land.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $2,432,230. The subject property has a land assessment of $95,510 and an improvement assessment of $2,336,720. The subject's total assessment reflects a market

value of $7,312,778 or $100,175 per unit, land included, when using the 2015 three-year average median level of assessment for Peoria County of 33.26% as determined by the Illinois Department of Revenue.

Appearing at hearing was board of review member J. Gregory Fletcher. In support of its contention of the correct assessment, the board of review timely previously submitted a memorandum prepared by Kristina K. Clore, a now former Chairman of the Peoria County Board of Review, along with information on three comparable sales. Fletcher acknowledged at hearing that the memorandum and underlying comparable sales data were gathered by Clore.

On behalf of the board of review, Fletcher testified that board of review sale #2 was the property previously identified by Crabel as "Grand View Alzheimer's." (TR. 53)

No other testimony was provided at hearing concerning the board of review's submission. The rebuttal memorandum prepared by Clore asserted that each of the appellant's comparable sales were significantly older than the subject property. Appellant's sale #1 was not advertised for sale and Clore asserted the sale price did not exclude the personal property.[4] As to appellant's sale #2, Clore noted the attached documentation asserting the buyer planned to spend a significant amount in upgrades after purchase. The memorandum also asserted that appellant's sale #3 was a "not for profit which was purchased by the buyer to divest his business"; Clore asserted the sale was, therefore, not considered arm's-length or similar to the subject which operates for profit.

In support of the subject's assessment, the board of review set forth data in a grid analysis on three suggested comparable sales of brick or frame construction located in the cities of Chatham (Sangamon County), Peoria and Morton (Tazewell County). Comparables #1 and #2 reportedly have 13 and 38 units, respectively; no number of units was reported for sale #3 in Morton. As to comparable #1 in Chatham, the board of review provided a printout indicating the 50-bed facility sold in March 2014 for $6,567,000, which the board of review reported as a 13-bed facility sale that purportedly occurred in August 2015. The buildings were built between 1972 and 2012 and range in size from 30,573 to 46,130 square feet of building area. Comparable sale #1 also has a partial basement. The comparables were reported to have sold between November 2014 and August 2015 for prices ranging from $3,838,000 to $14,601,000 or from $125.54 to $465.43 per square foot of building area, including land; only as to comparables #1 and #2 the sales per unit are $505,154 and $384,237, respectively; as noted previously, no number of units was reported for sale #3.

On cross-examination by the appellant's counsel, Fletcher acknowledged that the property record card related to comparable sale #2 of Grand View includes a notation that the 2014 sale was "not advertised business and real estate investment sale." (TR. 54; BOR evidence page 5)

Upon further examination by appellant's counsel, Fletcher was not aware that the property address for sale #1 was erroneous and that the facility actually had 50 units, not 13 as reported in the grid.

[4] A review of the underlying PTAX-203 Real Estate Transfer Declarations actually reveals that the appellant's grid analysis did exclude the personal property, but then overstated the value less personal property by $500 as the total should have been $17,888,000. ($15,169,890 - $3,727,800 = 11,442,090; $7,243,500 - $1,281,000 = $5,962,500; $586,610 – $103,200 = $483,410)

To Fletcher's knowledge, sale #2 had "just opened" and been completed when it sold. In questioning, it was suggested that sale #3 had 106 beds (units) for a sale price of $36,208 per unit.[5] (TR. 55-57)

Intervenor's counsel upon examination established that Fletcher became a member of the Peoria County Board of Review in June 2017.

Based upon the foregoing evidence, the board of review contended that a reduction in the subject's assessment was not warranted.

Appearing at hearing on behalf of the intervenor, Board of Education of Illinois Valley Central Community School Dist. #321, was attorney Antonio Senagore.[6]

At the hearing, the intervenor called the Chillicothe Township Assessor Crabel to testify in its case-in-chief. Crabel reiterated that in order to assess the subject property for tax year 2015, he took the permitted foundation amount and the permitted building amount, applied 60% to the foundation and building since it was 60% complete as of January 1st of the assessment year, and added the land valuation to arrive at approximately $7,288,000 as a fair full value. Crabel was of the opinion that he accounted for the partial occupancy for tax year 2015 in his manner of assessing the property. He also checked his valuation conclusion by looking at the recent sale of Grand View Care Center. (TR. 58-59, 60-61)

The witness testified that to his knowledge, the subject property's income and expense statements are not publicly available and the township assessor was not given any such income and expense statements for the property. At the time the property was assessed, Crabel was not able to conduct any kind of income and expense analysis of the property. (TR. 59)

As to occupancy of the subject facility in 2015, Crabel based this determination upon the percentage complete as of January 1, 2015 and he later confirmed full completion in June when he attended an open house for the Chamber of Commerce. Crabel did not have any records from the Chillicothe Zoning Department in reaching his determination; the department had not issued anything as of January 1, 2015. Subsequently, the village forwarded a letter to Crabel from the architect that the facility was available for occupancy as of June 5. (TR. 61-63)

On cross-examination, appellant's counsel inquired whether Crabel asked any questions of the Zoning Department concerning State of Illinois occupancy permits. Crabel had not made such inquiry. Crabel also did not consider the Property Tax Code (state law) concerning the valuation of partial improvements occasioned by new construction or added buildings to be added as of the date of occupancy rather than a percentage of completion as of January 1, 2015. (TR. 63-64)

While Crabel considered the one sale, he did not check any other comparable sales data. The witness acknowledged that the subject property was not in operation as of January 1, 2015. Crabel

[5] The transcript of the proceedings indicated a price of $36,707 per bed. The Board finds that mathematically the correct calculation would be $36,208 per unit.

[6] While counsel of record with the request to intervene, Attorney C. Frazier Sattlerly did not participate in the hearing; both Ms. Sattlerly and Mr. Senagore work for the same firm.

had no knowledge as to when the facility began collecting deposits or receiving income. Crabel did not examine income data for other similar properties in the process of developing his opinion of value for the subject as of January 1, 2015. The witness acknowledged the subject is a unique property; given multiple definitions of the term, Crabel would not characterize the subject as a special use property. (TR. 64-66)

For redirect examination by the intervenor, Crabel testified that the cost of a building is one piece of evidence an assessor would use to assess property and he also relied upon a comparable sale in addition to the cost data. (TR. 59)

In support of the subject's assessment, the intervenor previously presented in evidence a narrative of six suggested comparable sales. The submitted data was prepared by the intervenor's law firm and signed by attorney C. Frazier Satterly with attached pages for each comparable which are identified as prepared by MaRous & Company along with Exhibit A consisting of a City of Chillicothe Building Permit Application and the previously referenced transmittal from the project architect. The data was reportedly gathered by Michael MaRous (phonetic). (TR. 8-10, 69-70) No witness was called to testify concerning the comparable sales presented by the intervenor and the intervenor specifically rested its case-in-chief of comparable sales evidence on the written record.

At hearing, appellant's counsel objected to the admissibility of the intervenor's comparable sales data based upon lack of testimony. In response to the objection, the intervenor contended that its data submission complies with the Board's procedural rules; no witness was brought to hearing on the belief that such testimony would be hearsay since the sales data speaks for itself and should be admitted. The objection was taken under advisement for consideration with this decision by the Property Tax Appeal Board. (TR. 70-72)

The intervenor's six comparable sales prepared by the law firm are set forth from the documentation. The comparables are located in the communities of Morris (Grundy County), Peoria, Peru (LaSalle County), Rockford (Winnebago County), Pekin (Tazewell County) and Washington (Tazewell County), respectively. The comparable parcels range in size from 117,612 to 217,800 square feet of land area and have been improved with buildings that were built between 1999 and 2009. Comparable #2 is a one-story structure and four of the comparables are two-story buildings; no story height was presented for comparable #3. The buildings range in size from 43,142 to 79,580 square feet of building area and the facilities have from 58 to 171 units/beds. The comparables sold between December 2009 and May 2013 for prices ranging from $7,500,000 to $22,000,000 or from $102,740 to $182,295 per unit, including land. The data further depicts that sales #1 through #4 were made by cash transactions and sales #5 and #6 were reportedly part of "multi-parcel transaction[s]."

Based on this evidence and argument, the intervenor requested confirmation of the subject's assessment. Furthermore, as part of its closing argument, the intervenor pointed out that the appellant's appeal was based only on comparable sales; the appeal petition did not specify an argument based upon provisions of the Property Tax Code concerning partial assessment and/or prorate valuation along with submission of a legal brief.

Conclusion of Law

Equity issue

At hearing, the appellant through its first witness orally presented assessment data as to the comparable properties used in the appellant's sales comparison analysis. Given this evidence, the appellant newly at hearing raised an assessment inequity argument. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. [Emphasis added.] As set forth in further detail below, this lack of assessment equity argument was an inappropriate argument to be made newly at hearing and, to the extent that a party could make such an argument, the data presented is irrelevant since it was not from the subject jurisdiction for purposes of a lack of assessment uniformity claim concerning a property located in Peoria County.

First, "each appeal shall be limited to the grounds listed in the petition filed with the Property Tax Appeal Board." (35 ILCS 200/16-180). The sole basis of the instant appeal was comparable sales with a notation in the evidence that the subject property did not receive an occupancy permit until July 2015 where this latter assertion could be viewed as a contention of law, although said basis was not marked in Section 2d of the Commercial Appeal petition and no specific brief asserting a contention of law was submitted.

Second, the appellant's evidentiary submission in this proceeding lacked the assessment data of the comparable properties as depicted in the grid analysis where "N/A" is typed in for each properties' assessment data. The assessment data orally presented at hearing is new evidence and not allowable under applicable procedural rules. (86 Ill.Admin.Code §1910.30(g))

Third, and more importantly, the comparable properties presented by the appellant are not located within Peoria County and therefore this lack of assessment equity argument is irrelevant. The law is clear that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989); 86 Ill.Admin.Code §1910.63(e). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. [Emphasis added.] The Uniformity Clause of the Illinois Constitution provides that: "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). Taxation must be uniform in the basis of assessment as well as the rate of taxation. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 401 (1960). Taxation must be in proportion to the value of the property being taxed. Apex Motor Fuel, 20 Ill. 2d at 401; Kankakee County Board of Review, 131 Ill.2d at 20. Fair cash value of the property in question is the cornerstone of uniform assessment. Kankakee County Board of Review, 131 Ill.2d at 20. It is unconstitutional for one kind of property within a taxing district to be taxed at a certain proportion of its market value while the same kind of property **in the same taxing district** is taxed at a substantially higher or lower proportion of its market value. Kankakee County Board of Review, 131 Ill.2d at 20 [emphasis added]; Apex Motor Fuel, 20 Ill. 2d at 401; Walsh v. Property Tax Appeal Board, 181 Ill.2d 228, 234 (1998). The subject and the three comparable sale properties

are not located within the same assessment jurisdiction and/or the same taxing district. Therefore, this portion of the appellant's evidentiary presentation will not be further addressed on this record as it was untimely and does not properly establish a lack of assessment equity under the case law. Cherry Bowl, Inc. v. Property Tax Appeal Board, 100 Ill.App.3d 326 (2nd Dist. 1981) (evidence of assessment practices of assessors in other counties was inadmissible since interpretation(s) by assessors throughout Illinois is irrelevant as to whether township assessor correctly assessed subject property).

Overvaluation - Comparable sales evidence

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

The record contains three comparable sales submitted by the appellant, three comparable sales submitted by the board of review and six comparable sales submitted by the intervening taxing district. All twelve comparables have varying degrees of similarity to the subject facility in terms of land area, age, building size and/or number of units/beds at the respective facilities. The sales occurred between December 2009 and August 2015 for prices ranging from $3,838,000 to $22,000,000 or from $57,333 to $505,154 per unit/bed as reported by the respective parties in their filings with the Property Tax Appeal Board.

Examination of the data in the course of hearing and a review of the data by the Property Tax Appeal Board in its analysis has established that certain of the sales should be given reduced weight for various reasons. The Board gives reduced weight to appellant's comparable #1 due primarily to its size both in the structure(s) and in having 222 units; furthermore, this is a continuing care retirement community which differs from the subject assisted living facility. Appellant's comparable #2 was also given reduced weight due to lack of data on its age and the large number of units when compared to the subject property. Reduced weight has been given to board of review comparable #2 since the county's property record card indicates that the property was not advertised and was a "business and real estate investment sale" which data indicates the sale was not an arm's length transaction suitable for analysis for market value purposes. The Board has also given reduced weight to board of review comparable #3 due to its age and lack of any data on the number of units/beds at the facility which prevents a complete analysis of the sale information. Having examined the documentary evidence that was presented by the intervenor and considering the lack of any testimony at hearing concerning the intervenor's sales evidence, the Board gives all six comparable properties presented by the intervenor reduced weight finding that the sales are dated since they occurred between December 2009 and May 2013, dates which are remote and/or more remote in time to the valuation date at issue of January 1, 2015 and thus, less likely to be indicative of the subject's estimated market value.

Therefore, the Board finds the best evidence of market value to be appellant's comparable sale #3 and board of review comparable sale #1. Based on the record, board of review sale #1 has 50 units, not the 13 units reported by the board of review, which results in a sale price of $131,340

per unit. These most similar comparables sold in December 2013 and August 2015 for prices of $4,300,000 and $6,567,000 or for $57,333 and $131,340 per unit, including land. The subject's assessment reflects a full market value at 100% complete for tax year 2015 of $7,312,778 or $100,175 per unit, land included, which is bracketed by the best comparable sales in this record on a per-unit basis. Furthermore, appellant's sale #3, which is at the low end of the prices, was a facility that had been built in 1999 and therefore older than the subject's new construction. After considering adjustments for differences, the result is that the Board finds a reduction in the subject's assessment is not justified for overvaluation.

Sections 9-160 & 9-180 of the Property Tax Code

In accordance with the Property Tax Code, the Property Tax Appeal Board shall make a decision in each appeal or case appealed to it, and the decision shall be based upon equity and the weight of the evidence. (35 ILCS 200/16-185) Therefore, in light of the evidence of record, the Board will consider the merits and application of partial and/or prorated assessment provisions of the Property Tax Code to the instant proceeding, despite the appellant's failure to allege a contention of law and/or file a legal brief concerning the issue.

The appellant argued in part that the Peoria County/Chillicothe Township assessment officials misapplied the Code, namely section 9-180, as it relates to the assessment of a building that was not complete as of January 1, 2015. First, the Board finds the evidence establishes that the subject was not complete and habitable as of January 1, 2015. The township assessor testified the building was almost deemed to be 60% complete as of January 1, 2015 and the township assessor therefore established an assessment at 60% complete as of January 1, 2015 based on the foundation and building permit costs as reported. The appellant contends that because the building was incomplete and not suitable for occupancy as of January 1, 2015, there was no statutory authority to assess the improvements as of that date.

As a consequence of the partial assessment issued by the township assessor, the assessing officials and the intervenor contend the subject received a partial assessment as of January 1, 2015, based on being 60% complete, which given the occupancy as of June 5, 2015 also reflects a prorated assessment from June 5, 2015 to December 31, 2015. The appellant argued that the prorated assessment allowed by Section 9-180 of the Code should be calculated from the date an occupancy permit was issued, although no specific documentation or evidence of that date was presented.

Initially, the Property Tax Appeal Board finds the board of review was correct in assessing what was present on the subject parcel as of January 1, 2015. Section 9-160 of the Code provides in part that:

> On or before June 1 in each year other than the general assessment year, in all counties with less than 3,000,000 inhabitants . . . the assessor shall list and assess all property which becomes taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which had not been previously added to or included in the valuation of the property on which such improvements have been made, specifying the property on which each of the improvements has been made, the kind of improvement and the value which, in his or her opinion, has been added

> to the property by the improvements. The assessment shall also include or exclude, on a proportionate basis in accordance with the provisions of Section 9-180, all new or added buildings, structures or other improvements, the value of which was not included in the valuation of the property for that year, and all improvements which were destroyed or removed. . . .

35 ILCS 200/9-160.

Furthermore, Section 9-180 of the Code provides in part that:

> The owner of property on January 1 also shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year. . .
>
> Computations under this Section shall be on the basis of a year of 365 days.

35 ILCS 200/9-180.

Under the facts of his appeal the township assessor clearly valued the subject as of January 1, 2015 based on the improvements being 60% complete. The Property Tax Appeal Board finds this is authorized pursuant to section 9-160 of the Code. In this regard, the subject property was to be assessed at 60% of its complete improvement value for the period of January 1, 2015 through June 4, 2015. The calculation of the partial assessment under Section 9-160 reflects 156 Julian calendar days of the 365-day calendar year. The subject's improvement assessment of $2,336,720 at the three-year median level of assessment in Peoria County for 2015 of 33.26% reflects a full market value of the improvement of $7,025,616. The partial assessment should reflect 60% of the full value or $4,215,370 and applying the fraction of 156 days over 365 days results in a full value for the period of the partial assessment of $1,801,637.

The court in Long Grove Manor v. Property Tax Appeal Board, 301 Ill.App.3d 654, 704 N.E.2d 872, 235 Ill.Dec.299 (2nd Dist. 1998) construed the workings of Sections 9-160 and 9-180 of the Code. The court held that:

> Section 9-160 requires the assessor to record any new improvements and to determine the value they have added to the property. By its terms, section 9-180, applies only after a building has been substantially completed and initially occupied. Reading these two sections together, section 9-160 clearly requires the assessor to value any substantially completed improvements to the extent that they add value to the property. Section 9-180 then defines the time when the improvement can be fully assessed. This occurs when the building is both substantially completed and initially occupied. We note parenthetically that the legislature has amended section 9-180 to provide that an improvement may be fully assessed when it is *either* substantially completed *or* initially occupied.

Long Grove Manor, 301 Ill.App.3d at 656-657. The court in Brazas v. Property Tax Appeal Board, 339 Ill.App.3d 978, 791 N.E.2d 614, 274 Ill.Dec.522 (2nd Dist. 2003) clarified its holding in Long Grove Manor. The court explained that:

> [W]e clarify that *Long Grove Manor* stands for the principle that section 9-160 allows the assessor to value any partially completed improvement to the extent that it adds value to the property, regardless of whether the improvement is "substantially complete." Furthermore, section 9-180 addresses when the assessor is allowed to fully assess the improvement, *i.e.,* when it is "substantially completed or initially occupied or initially used."

Brazas, 339 Ill.App.3d at 983.

The record also reveals that the subject was occupied on June 5, 2015. The provisions of Section 9-180 of the Property Tax Code must be applied for the period of June 5, 2015 through December 31, 2015. This is a period of 209 calendar days based upon a 365-day calendar year, at which time the subject improvement was fully assessable on a pro rata basis pursuant to Section 9-180. The full value of the subject improvement of $7,025,616 must be applied on a pro rata basis for the remainder of the 2015 calendar year. Applying this pro rata calculation, the full improvement value for the latter portion of 2015 would be $4,022,887.

Adding the uninhabited improvement value of $1,801,637 and the inhabited improvement value of $4,022,887 results in a total improvement fair cash value of $5,824,524. Next, the 2015 three-year median level of assessment in Peoria County as determined by the Illinois Department of Revenue of 33.26% is applied which results in an improvement assessment for 2015 of $1,937,237.

APPELLANT:	**Christine Okelman**
DOCKET NUMBER:	**10-36558.001-C-1**
DATE DECIDED:	**May, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property is improved with a two-story masonry constructed commercial office building with approximately 19,000 square feet of building area. The building was constructed in 2005 and has a full unfinished basement. The office area is finished with commercial grade carpet and ceramic tile flooring; the ceiling is finished with dropped acoustical tile ceiling panels that contain florescent light and recessed light fixtures; and the walls are painted gypsum board. There are individual offices/meeting rooms on the second floor. The property has a 316,000 square foot site and is located in Homewood, Thornton Township, Cook County. The subject is classified as a class 8-92 a commercial/industrial incentive property under the Cook County Real Property Assessment Classification Ordinance. The property has a 10% level of assessment for the first 10 years.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Eric Sladick, certified general real estate appraiser, estimating the subject property had a market value of $1,400,000 as of January 1, 2009. The appraisal references two permanent index numbers (PINs) 29-32-101-085-0000 and 29-32-101-086-0000.

The purpose of the appraisal was to estimate the market value of the real estate described in the report to establish an equitable ad valorem tax assessment. The interest valued was fee simple. The appraiser indicated that the property was inspected on January 1, 2009. The appraiser determined the highest and best use of the property was for commercial development.

In estimating the market value of the subject property, the appraiser developed the three traditional approaches to value. Under the cost approach the appraiser first estimated the land value using four comparable sales ranging in size from 52,272 to 491,792 square feet of land area. The land comparable sales were located in South Holland, Lynwood, Olympia Fields and Chicago Heights. The sales occurred from August 2007 to October 2009 for prices ranging from $109,000 to $850,000 or from $1.02 to $2.09 per square foot of land area. The appraiser estimated the subject's site to have a value of $2.00 per square foot of land area or $630,000, rounded.

The appraiser next estimated the replacement cost new of the improvements using the Marshall Valuation Service, costs associated with similar units and the actual costs associated with the construction of the subject building. Replacement cost new was estimated to be $2,450,870 for the building and supporting exterior improvements. The appraiser deducted $1,593,065 for accrued depreciation and external obsolescence to arrive at a depreciated value of the improvements of $857,805. The appraiser than added the land value of $630,000 to arrive at an indicated value under the cost approach of $1,490,000, rounded.

The appraiser next developed the sales comparison approach to value using five comparable sales improved with three, one-story office buildings and two, two-story office buildings that range in

size from 6,375 to 33,452 square feet of building area. The comparables are located in Olympia Fields, Crestwood and Homewood on sites ranging in size from 18,452 to 104,544 square feet of land area. The buildings range in age from 12 to 50 years old and are of masonry construction. The sales occurred from July 2007 to March 2008 for prices ranging from $450,000 to $2,032,000 or from $43.17 to $74.90 per square foot of building area, including land. The appraiser made adjustments to the comparables for differences from the subject property to arrive at adjusted prices ranging from $57.55 to $89.88 per square foot of building area, including land. Based on these sales the appraiser arrived at an estimated market value for the subject property of $76.00 per square foot of building area or $1,445,000, rounded.

The final approach to value developed by the appraiser was the income capitalization approach. The first step was to estimate the market rent using five rental comparables located in Homewood improved with commercial buildings ranging in size from 18,500 to 26,600 square feet of building area. These properties had rents ranging from $12.50 to $17.35 per square foot of building area on a gross basis. The appraiser estimated the subject property would have a market rent of $16.00 per square foot of building area resulting in a potential gross income (PGI) of $304,000. The appraiser indicated that vacancy in the subject's area ranged from 5% to 15% and estimated the subject property would have a vacancy rate of 10% of PGI resulting in an effective gross income (EGI) of $273,600. The appraiser then made deductions for expenses: management, $9,120; miscellaneous, legal and audit, $1,000; repairs and maintenance, $2,850; insurance, $3,800; replacement and reserves, $3,800; and leasing, $7,296, to arrive at a net operating income of $245,734.

Using the band of investment technique, the appraiser arrived at an overall capitalization rate 10.62%. To this the appraiser estimated the effective tax rate to be 9.01%, which was added to the overall capitalization rate to arrive at a tax loaded capitalization rate of 19.63%. Capitalizing the net operating income, the appraiser arrived at an estimated value under the income approach of $1,250,000, rounded.

In reconciling the three approaches to value the appraiser gave greatest weight to the sales comparison approach to value, secondary consideration to the income approach and the least amount of weight to the cost approach to value to arrive at an estimated market value of $1,400,000 as of January 1, 2009. The appellant requested the subject's assessment be reduced to $140,000 to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $228,497. The subject's assessment reflects a market value of $2,284,970 or $120.26 per square foot of building area, including land, when applying the Cook County Real Property Assessment Classification Ordinance level of assessment for class 8-92 property of 10%.

In support of its contention of the correct assessment the board of review submitted information on five comparable sales improved with office buildings that ranged in size from 17,350 to 29,500 square feet of building area. The comparables were located in Homewood and were constructed from 1940 to 1989. The sales occurred from March 2004 to January 2008 for prices ranging from $1,500,000 to $3,700,000 or from $84.48 to $125.42 per square foot of building area, including land.

In rebuttal appellant's counsel asserted that board of review sales #1, #2 and #4 sold in 2004 and 2005, 5 and 6 years prior to the assessment date at issue; board of review sale #3 was larger than the subject building; and asserted that it did not appear that comparable #5 was listed on the open market.

Conclusion of Law

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

The Board finds the best evidence of market value to be the appraisal submitted by the appellant. The appellant's appraiser developed the three approaches to value in arriving at a market value estimate of $1,400,000. The appraiser's discussion of the appraisal process and each of the approaches to value was credible and resulted in a value estimate that was reliable. The appraisal process employed by the appellant's appraiser followed standard appraisal techniques and was supported by market data. The subject's assessment reflects a market value of $2,284,970, which is above the appraised value presented by the appellant. Less weight was given the board of review sales as four of the sales did not occur proximate in time to the assessment date at issue. Additionally, the board of review sales were not adjusted for differences from the subject property as were the comparable sales used by the appellant's appraiser, which further detracts from the weight that can be given the board of review submission. Based on this evidence the Board finds a reduction in the subject's assessment commensurate with the appellant's request is justified.

APPELLANT:	**Prairie Winds of Urbana, LP**
DOCKET NUMBER:	**15-00068.001-C-3**
DATE DECIDED:	**July, 2017**
COUNTY:	**Champaign**
RESULT:	**Reduction**

Applicable Statutory Provision & Regulation

There is no dispute on this record between the parties that the subject property has been properly certified and is to be assessed in accordance with Section 10-390 of the Property Tax Code (hereinafter "Code") which is entitled "Valuation of Supportive Living Facilities." (35 ILCS 200/10-390; TR. 45[1]) The provision states:

> (a) Notwithstanding Section 1-55, to determine the fair cash value of any supportive living facility established under Section 5-5.01a of the Illinois Public Aid Code, in assessing the facility, a local assessment officer must use the income capitalization approach.
>
> (b) When assessing supportive living facilities, the local assessment officer may not consider:
>
> > (1) payments from Medicaid for services provided to residents of supportive living facilities when such payments constitute income that is attributable to services and not attributable to the real estate; or
> >
> > (2) payments by a resident of a supportive living facility for services that would be paid by Medicaid if the resident were Medicaid-eligible, when such payments constitute income that is attributable to services and not attributable to real estate.
>
> (Source: P.A. 94-1086, eff. 1-19-07.)

The Public Aid Code (305 ILCS 5/5-5.01a) mandates the Department, now known as the Department of Healthcare and Family Services (hereinafter "HFS"), establish and provide oversight for a program of supportive living facilities which seek to promote independence, dignity, respect and well-being for residents in the most cost-effective manner. The facilities are regulated in creation and operation, including, but not limited to, 89 Ill.Admin.Code §146.200 through 146.300 and §146.600 through 146.710. As defined by rule (89 Ill.Admin.Code §146,200(b)), a supportive living facility is:

> . . . a residential setting in Illinois that provides or coordinates flexible personal care services, 24 hour supervision and assistance (scheduled and unscheduled), activities, and health related services with a service program and physical environment designed to minimize the need for residents to move within or from

[1] References to the transcript of the proceedings will be indicated by "TR." followed by page citation(s).

> the setting to accommodate changing needs and preferences; has an organizational mission, service programs and a physical environment designed to maximize residents' dignity, autonomy, privacy and independence; and encourages family and community involvement.

The "Illinois Supportive Living Program" is described, in part, as an alternative to nursing home care for low-income older persons and persons with disabilities under Medicaid. Residents can be both Medicaid and non-Medicaid eligible persons.

The primary issue before the Property Tax Appeal Board is how to apply Section 10-390, a statutory provision, to an income capitalization approach to value. Both parties to the proceeding presented appraisal reports relying solely upon the income approach to value but with substantially differing income estimates, differing methods of determining deductible expenses and somewhat varying capitalization rates applied to the resulting net operating income figures which resulted in dramatically differing value conclusions.

To summarize the valuation issue that is before the Property Tax Appeal Board, the subject property has a current estimated market value as of the assessment date based upon its assessment of $3,851,884. The Property Tax Appeal Board recognizes that there is no presumption of correctness accorded to an original assessment or that of a board of review. (Western Illinois Power Cooperative, Inc. v. Property Tax Appeal Board, 29 Ill. App. 3d 16, 22 (4th Dist. 1975)). The evidence of record includes an appraisal presented by the appellant with a value conclusion of $2,752,074 as of January 1, 2015, whereas the board of review presented an appraisal with a value conclusion of $7,640,000 as of January 1, 2015. For this appeal, the appellant seeks a reduction in the assessment and the board of review requests confirmation of the 2015 tax year assessment.

Findings of Fact

The subject property consists of a two-story brick with vinyl siding exterior construction 94-unit supportive living facility that was built in 2007 on a concrete slab foundation. The facility contains approximately 73,944 square feet of total building area[2] consisting of 14 studio units of 425 square feet and 80 one-bedroom units ranging in size from 478 to 523 square feet. Each unit has a kitchenette which is furnished with a microwave and a refrigerator, a bathroom and living/sleeping area. Features of the building include an elevator and the building is sprinkled. Common areas of the facility include a central kitchen, dining room, activity room, library and administration offices. The property has a 4.866-acre site located in Urbana, Cunningham Township, Champaign County.[3]

[2] The subject's property record card includes a schematic drawing with a notation of a two-story addition of 930 square feet or 1,860 square feet total and a date of "2015." The board of review appraisal report indicated the addition was built in "late 2014." (BOR Appraisal, p. 32)

[3] There were descriptive disputes in the record between the parties. The appellant's appraiser described the building as containing 68,636 square feet based upon original architectural drawings. Likewise, the appellant's appraiser relied upon those same drawings to determine the land area of the subject property. The appraisal submitted by the board of review reported a total building area of 70,787 square feet. In contrast, the property record card filed by the board of review reflected a building size of 73,944 square feet. The Property Tax Appeal Board finds the board of review's property record card provides the best evidence of building size and land area, although due to the statutory mandate for assessment purposes, these size discrepancies are not critical to the determination of the correct assessment of the subject property.

The appellant appeared by its attorney before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument, the appellant submitted a 45-page appraisal prepared by Keith Honegger, an Illinois Certified General Real Estate Appraiser, with an opinion for ad valorem taxation purposes using an income approach to value as mandated by the Code with a value opinion of $2,752,074 as of January 1, 2015.

The first witness called at hearing by the appellant was Rod Burkett, President and CEO of Gardant Management Solutions located in Bradley, Illinois. His firm manages about 45 supportive living facilities along with several licensed assisted living facilities located across the State of Illinois. Burkett cofounded Gardant in 1999 which began with two properties and now has grown to 51 properties over the past 18 years. His responsibilities to the management firm involve overall operations. (TR. 10-11)

As to the subject facility, Prairie Winds of Urbana, LP, Burkett testified that his firm was involved with the owner/developer from the conceptual drawings through construction and then on to its operations. Having been involved in management operations of properties in other states, Burkett noted that Illinois is the only state which has created two licensure tracks. One track is for properties that participate in Medicaid which are within the Illinois Supportive Living Facility (hereinafter "SLF") program licensed by the Illinois Department of Healthcare and Family Services [HFS]. The other track is for assisted living facilities that cannot participate in the Medicaid program and is licensed by the Illinois Department of Public Health. (TR. 11-12)

In accordance with the SLF program, Burkett said there is a set rate for room and board and also a set rate for services that the SLF agrees to accept. By regulation Medicaid cannot pay for room and board, but the State of Illinois establishes the room and board amounts for an SLF; Medicaid pays for the resident's service package involving SNAP[4] and services. Burkett estimated that 90% to 95% of Medicaid recipient residents also qualify based upon income for food stamp benefits; the resident turns over their food stamp allotment to the facility because the SLF is required to provide three meals per day plus snacks. This results in an additional revenue source for the SLF. (TR. 12-14)

SLF's are regulated within the Illinois Administrative Code, 89 Ill.Admin.Code §146.200 et seq., which includes a provision for what may be charged for room and board (marked Appellant's "PW" Hearing Exhibit 1). The witness was directed to Section 146.215(d) which provides:

> The SLF shall accept the SSI [Supplemental Security Income] rate (less the personal allowance) for room and board for Medicaid residents. If the SLF charges a private pay rate higher than the Medicaid rate, the SLF shall reserve not less than 25 percent of its apartments for Medicaid-eligible residents. Those facilities that set a commensurate rate for both private pay and Medicaid-eligible residents are not required to reserve apartments for Medicaid-eligible residents but must accept Medicaid-eligible residents on a first come, first served basis.

[4] Supplemental Nutrition Assistance Program or food stamps.

In light of the foregoing provision, Burkett testified that the personal allowance for Illinois has been $90 of the SSI or retirement income for personal use. Burkett testified in 2014 the room and board rate set by the State of Illinois via the regulation was $631, because the SSI rate was $721 at that time [$721 - $90 = $631]. (TR. 14-16)

Burkett also testified that HFS publishes a rent schedule that the SLF is required to charge (see Appellant "PW" Hearing Exhibit 2; see also Appellant's Rebuttal filing, Appendix C). The exhibit reflects rates effective as of July 1, 2014[5]; the exhibit displays seven 'regions' consisting of specific counties within each region; Champaign County is within the Central region and provides as follows:

Daily Medicaid Rate	Occupancy	Room and Board	SNAP	Medicaid	Totals
$71.19	Single	$631	$106	$2,164	$2,901
	Double – unrelated	$451	$113	$2,164	$2,728
	Double – married	$451	$81	$2,164	$2,696

(TR. 16-18; Appellant Hearing Exhibit 2)

Burkett testified that the "Medicaid" portion from the foregoing chart refers to the payment for hands-on services that Medicaid pays. While the subject facility also has private-pay residents, the facility charges the same room and board, but with a separate/different charge for services. For example, current private pay rates as of the hearing date (which may be slightly higher than as of January 1, 2015) for a studio unit was $4,050 and a single-occupancy one-bedroom unit was $4,300; from the stated rate, the sum of $631 would be deducted for room and board with the remaining amount being attributable to services. The witness noted that from a marketing and pricing strategy perspective to maintain simplicity, the facility sets forth an all-inclusive rate to avoid prospective residents/family members feeling they are being up-charged and "nickeled and dimed." (TR. 18-20)

Turning to financial statement data, apartment rental revenue annually was $721,028 as of December 31, 2014 (Appellant Hearing Exhibit 3; see also Appellant's appraisal, p. 23-31). Farther down on the financial statement, two entries are divided between "services revenue" derived from (a) private pay residents ($1,305,849) and (b) derived from Medicaid-recipients ($1,498,500). These financial statements presented in the Honegger appraisal report are audited, typically by a CPA firm, with no reported findings about the division of room and board versus services according to Burkett. (TR. 20-23)

In testimony, Burkett next addressed the process related to prospective resident inquiries. Initially the facility seeks to determine if the prospective resident is already a Medicaid recipient; if not

[5] The top portion of Appellant Hearing Exhibit 2 states:

> The purpose of this chart is to give estimated monthly revenue for operational supportive living facilities for providing housing and services to Medicaid-eligible residents. The revenue includes funds paid by a resident for room and board, the Supplemental Nutrition Assistance Program (SNAP) allocation from a resident, and funds paid by the Department of Healthcare and Family Services for services rendered to a Medicaid-eligible resident.

currently qualified, the individual would be treated as a private pay resident and be given an all-inclusive rate quote including comprehensive service package along with room and board resulting in a full comprehensive fee quote. Once a prospective resident seeks to execute a lease, Burkett testified that there is a face sheet which identifies the $631 room and board charge and a second line covers the service package. (TR. 22-24; Appellant's Hearing Exhibit 8)

The witness was provided with a copy of Appellant's Hearing Exhibit 8, a blank Resident Lease Agreement with a 'face sheet'[6] for the subject facility establishing both resident and facility responsibilities including applicable fees for the term of the agreement, along with typical termination terms. Written leases are also mandated by HFS regulation and the SLF program. (TR. 24-26)

Upon cross-examination, Burkett stated the subject facility has around 100 units, although it began with 90-some units; Burkett noted with the number of facilities in their portfolio, he would need to check on his firm's master list for clarity. The additional units at the subject facility were put in place in the last four or five years due to conversion of both a common bathing area and some other common areas of the facility into apartment units. (TR. 26-27)

The witness confirmed that the room and board charge per unit is the same for both studio and one-bedroom Medicaid recipients. While the facility's percentage of private-pay residents varies from month-to-month, generally the facility has a 45% to 50% mix of private pay residents. For private-pay residents, there is a variance in the base rental rate between a studio and a one-bedroom unit; as of the date of the hearing in late 2017, the variance in these rate charges was $250. (TR. 27-30)

The Administrative Law Judge (ALJ) asked the witness to define what is included in the "room and board" charge, to which Burkett testified that it encompassed the apartment itself, three meals per day plus snacks and there is no additional charge for utilities although there are extra charges for cable, WIFI service and telephone. The facility is required to do laundry for a resident on at least a weekly basis by regulation or more often, if necessary; laundry is included in the service package and residents may do their own laundry if they wish. Housekeeping is also part of the service package and is done at least weekly, more often if necessary. (TR. 28-29)

The ALJ inquired if a resident may only have room and board, but Burkett testified that everyone is required to be assessed and have an individualized plan of care/plan of service created for them. The plan may be very simple or very elaborate, including assistance with bathing, medication administration, ambulation and so forth; as residents age in place, the service package may grow with their needs. (TR. 29)

On redirect, Burkett testified that HFS does not set forth private-pay rates for one-bedroom units; "theirs [HFS] is an average [$]631 regardless of the square footage." (TR. 30-31)

Next, Keith Honegger, an Illinois Certified General Real Estate Appraiser, was called as a witness for the appellant. Honegger testified that he began work in the appraisal field in 1987 and most of

[6] The witness also clarified that Gardant Management was formerly known as BMA Management, which was referenced on the face sheet.

his 25 years of experience have consisted of work on low-income apartment appraisals. The witness acknowledged that the subject property, while "similar," is not a Section 42 low-income property; Honegger described the subject as a "supportive living, low income" facility. For "tax management," Honegger prepares appraisals for all Gardant Management's SLF properties. (TR. 33-35)

Honegger described his appraisal experience with low-income properties which began in the 1990's when he had discussions with a management company with many Section 515 (rent restricted) properties, similar to SLF and Section 42 properties. Honegger worked with the participants on these various property types getting laws passed. According to Honegger, "It became apparent that there was a problem with managing these 515 properties back in the '90s because they weren't able to cash flow themselves because they had restricted rents . . . ." The assessing officials were valuing the apartment buildings based upon their cost which resulted in taxes and operating expenses that were much higher than the income generated given the mandated restricted rents of about $300 per month. In the late 1990's, the Rural Rental Housing Association, an association of owner/operators of Section 515 properties, engaged a lobbying firm to pursue legislation to provide property tax relief. As cited in his appraisal report, Honegger believes the first regulation took effect in 2000 for Section 515 properties. Similarly, the owner/operators of Section 42 properties pursued passage of legislation requiring assessors to value these properties based upon actual contract income capitalized at normal market rates. In the subsequent years, the low-income housing market greatly changed. Around 2002, the supportive living program was developed to deal with the future growing elderly population. The initial SLF buildings that Honegger is aware of all had a Section 42 housing component associated with the complex and, for assessment purposes, came within the existing Section 42 provisions of the Code. (TR. 35-38, 41; Appraisal, p. 18-20)

Honegger also asserted that some assessors recognized that SLFs were a service-oriented business and contended that service income should be added when calculating the income approach to value; this approach dramatically raised the building value and resulted in exorbitantly high property taxes as compared to the property's cash flow. Therefore, according to Honegger, another group hired lobbyists to pursue new legislation in response to the assessors who were adding value for services. Therefore, the resulting law was rather simplistic to prohibit the addition of service income as part of the valuation. Honegger opined that the intent of all these low-income housing tax laws was to value the property based upon its actual income because the property was designed to meet the needs of low-income people; in order to do this, the rents were restricted, and the owner received either tax credits or low interest loans for development/financing of construction costs. In this regard, Honegger was of the opinion that, although it is not a Section 42 property, the SLFs operate in a similar manner with a law mandating use of the income approach and providing that service income should not be used in the calculation. Although the law is not very specific, the witness contends the intent of the law was "to keep going with what the Section 42 SLFs already had." (TR. 38-40)

As part of Appendix D, p. 37, of the appellant's appraisal report, Honegger included a copy of the HFS Supportive Living Program Certification issued to the subject property on September 19, 2007 identifying the subject as having 92 units and a maximum of 171 residents. Also, part of Appendix D, p. 38, is a copy of the two-page HFS Long Term Care Provider Agreement Supportive Living Facility (Provider Type 28) that is marked as a 'new enrollment' dated April 25,

2007 for the subject facility; on page two of the form agreement, the facility administrator signed and dated the document May 2, 2007 after which HFS approved the agreement on June 1, 2007.

Honegger was retained by the appellant to prepare an estimate of the fair cash value of the subject facility for ad valorem purposes in light of the applicable statutory provision(s) for supportive living facilities. The witness characterized the applicable statutory mandate for valuation of supportive living facilities for property assessment purposes as providing for use of the income approach. Honegger has further interpreted the mandate to be one based upon contract rents which are published by HFS since the rents are restricted. He based this opinion upon the provisions of other low-income housing property statutes. (TR. 41-44; Appellant's Appraisal and marked as Appellant's Hearing Exhibit 5)

Due to the statutory mandate, the sole approach to value used in the Honegger appraisal report was the income approach to value. It was also Honegger's understanding that the charge for room and board is established by HFS with breakdowns for categories of 'room and board,' 'SNAP' and services. Honegger further understood that the subject facility utilizes those same categories in its financial statements. (TR. 45-47)

Honegger began the income approach analysis utilizing the 2014 financial statement[7] assuming 92 units rented for an average of approximately $653 per unit, including food, resulted in gross rent, including food, of $721,028. At the time the appraisal was prepared, the income figures for 2015 were not available. For his appraisal report, Honegger used the 2014 income data. He acknowledged that assuming 92 units,[8] the average rent was approximately $653 per unit, per month, but if there were 94 units the income would be approximately $639 per unit, per month. It was Honegger's opinion that the total income rather than the per unit income was the important figure. Honegger also testified he did not apply any vacancy rate since he was using the previous year's income figure. (Appellant Exhibit 5, p. 12-13 & Appendix B; TR. 47-49)

Next, Honegger calculated the Food Program Income which consists of the SNAP income or food stamp income. The prior three years of 2012, 2013 and 2014 statements reflected this income varied from $73,825 to $80,638. For his calculation, Honegger utilized a three-year average of $78,205 for the additional income to the owner from food stamps in his income approach to value. The appraiser also added a three-year average of Other Income of $74,756 in the same manner to the income analysis; Other Income was derived from sources such as a hair salon store, but the appraiser was not sure what all the sources would be for Other Income. The income analysis also had a deduction for Raw Food Expense for which Honegger utilized the 2014 reported expense which was the highest of the three years of data as shown in Appendix B, p. 25 of the 2014 Income Statement with a Food Expense of $159,075. Honegger testified this expense reflected 'raw food' coming off the truck and did not include service/preparation expenses; he got this interpretation of this line item from David Mitchell, Vice President of Gardant Management. (TR. 49-51; Appellant Exhibit 5, p. 13)

[7] The appraisal report displays the subject's actual income for gross rent, including food, for years 2012, 2013 and 2014 on page 13 as drawn from the facility's financial statements shown in Appendix B.
[8] Honegger testified the number of units was taken from the SLF certification that was issued in 2007. (TR. 69-70)

After making the foregoing additions and deductions, Honegger arrived at an Effective Gross Rental Income (apartment only – food not included) of $714,914. Next, Honegger sought to estimate the facility's operating expenses which are analyzed in detail on pages 14 through 16 of the appraisal report and then summarized as a total on page 13. (TR. 51-51; Appellant Exhibit 5, p. 13)

Honegger testified and set forth in the appraisal that an SLF has both services expenses (food services and Medicaid services provided to the tenants) and rental expenses (associated with the rental property), but the SLF's bookkeeping practices commingle these expenses. Therefore, although he discussed how to separate the expenses with Gardant personnel, Honegger determined it would be difficult to separate and would involve making certain assumptions about the division of labor between services expenses and rental expenses. The appraisal outlined two available methods to estimate expenses: (1) examining historical income and expenses of low-income Section 42 properties (which do not provide services to tenants/residents) in order to determine an appropriate expense ratio for only the rental portion of the SLF property and (2) examining the total expense percentage of comparable SLF properties to determine an appropriate percentage of expenses to allocate to both the service portion and rental portion of the subject property, since all SLFs operate similarly under the same rent structure and guidelines set by HFS. Therefore, in the appraisal an expense ratio was calculated by Honegger using the total operating income divided by the total operating expenses minus property taxes. (TR. 52-53, 56; Appellant Exhibit 5, p. 14-15)

As depicted on page 15, from an analysis of data on 18 Section 42 properties for which Honegger had audited financial statements, he had three properties consisting of the highest rents exceeding $450 per unit and placed most weight upon those three properties as depicted on a chart on page 15 of the appraisal report. The three properties reflected an expense ratio of 65% on average whereas all 18 properties had a three-year average expense ratio of 72%. From this data, Honegger concluded that a 65% expense ratio may be appropriate for the rental expense portion of an SLF. Next, as depicted on page 14, from an analysis of 2014 average data of 16 SLF properties managed by Gardant, Honegger determined the average monthly rent was $602 per unit, including food,[9] and the expense ratios ranged from 45.5% to 82.6%. After removing the two highest expense ratios and the two lowest expense ratios, Honegger determined the average 2014 expense ratio for the remaining 12 SLF properties was 65.1%. Therefore, from Honegger's analysis, both the Section 42 properties and the SLF properties, reflected 65% expense ratios for the total operation and left him to conclude that both the rental and the service sides of the SLFs are very similar in their percent ratio. (TR. 53-55; Appellant Exhibit 5, p. 14-15)

For a further expense ratio analysis, Honegger reviewed the historical expense ratio of the subject SLF. He determined the subject SLF had an expense ratio of 57% in 2012; 58% in 2013; and 53% in 2014. Noting that the subject's expense ratio was "quite a bit" lower than the expense ratios from the comparable data, Honegger determined that using an average of the subject's three-year

[9] The average rent ranged from $511 to $654 per month; the properties were located in the counties of Coles, Jackson, Kane, Lake, Macon, McDonough, McHenry, Stephens [*sic*], Tazewell, Vermilion, Whiteside, Will and Winnebago. As depicted on Appellant's Hearing Exhibit #2, these counties reflect the HFS regions of: Chicago (which includes Kane, Lake and McHenry); South Suburb (which includes Will); Northwest (which includes Stephenson, Whiteside and Winnebago), Central (which includes Coles, Macon, McDonough, Tazewell and Vermilion) and South (which includes Jackson).

expense ratio would be appropriate, which he calculated to be 56%. Therefore, at page 13 of the appraisal report, Honegger calculated an expense ratio of 56% or $400,352 for the operating expenses of General Maintenance, Utilities and Garbage, Management Fee, Legal and Accounting, Advertising, Office Expenses, Insurance and Deposit to Reserve. Deducting the expense ratio of 56% from the effective gross rental income resulted in a net income calculation of $314,562 by Honegger. (TR. 55-56; Appellant Exhibit 5, p. 16)

The next step in the income approach to value is to apply an appropriate market capitalization rate to the net operating income that was estimated by Honegger. Under the Investor Survey method depicted on pages 33-34 of the appraisal, Honegger examined the RealtyRates.com Investor Survey – 1st Quarter 2015 – Apartments – All Types and found the average overall capitalization rates were based on a 73% loan-to-value ratio and 11.64% equity dividend rate. He further reported that the Investor Survey, 1st Quarter of 2014 for apartment sales had an average overall rate of 8.10% and the average surveyed overall rate was 8.64%; Honegger noted that both rate determinations were based upon property net operating incomes that included property taxes as an expense item. The subject appraisal report assumed an average tax rate of 10% on assessed value which resulted in a 3.33% effective tax rate that must be added to the overall capitalization rate. With the addition of the effective tax rate, the survey method concluded overall capitalization rates of 11.43% and 11.97%. (TR. 56-57; Appellant Exhibit 5, p. 33-34)

The band of investment method taken from the 1st quarter 2015 investor survey for apartments depicted a 26-year fixed commercial apartment loan at 4.87% with a 73% loan-to-value ratio. The data also reflected an average buyer's return on equity of 11.64%. From this data, Honegger calculated a total discount rate of 8.099% and, with the addition of the effective tax rate, concluded an overall capitalization rate of 11.432%. (Appellant Exhibit 5, p. 34)

In reconciling the conclusions, Honegger concluded an appropriate capitalization rate of 11.43% which resulted in an estimated January 1, 2015 market value of $2,752,074 or an assessment of approximately $917,358. (TR. 57; Appellant Exhibit 5, p. 35)

On cross-examination, Honegger was asked if the subject SLF must dedicate a minimum number of rooms to Medicaid. Based on Burkett's testimony, Honegger responded that at least 25% are to be Medicaid, but he was not clear on the issue. (TR. 58-59)

As to the reported average rent in Honegger's income approach to value, the witness acknowledged that his calculation was based upon 92 units as set forth in the facility license; he was not informed that the facility had 94 units due to a remodel/conversion of existing space. The 92-unit calculation results in a rent of $653 and the 94-unit calculation results in a rent of $631. Honegger opined that one or two units may also have double occupancy with rents that are a little higher also. He further reiterated that the income figure was drawn from the 2014 actual income. Honegger stated, "it really doesn't matter what the average is in some respects because what we are looking at is a total income, total reported rent income." The witness understood that private pay and Medicare pay the same rent. Honegger further testified that the minimum SSI payment is $721 less the $90 results in $631 which is the rental figure he used in the income approach; he further noted that if the individual receives greater than the minimum SSI, such as $800 then the resident receives $90 and the remainder of $710, the amount above the rent figure of $631 "goes to pay the services and reduces the amount that Medicaid has to pay." (TR. 58-61)

When asked about changes in the facility's gross rent from 2012 to 2014, Honegger attributed the change as probably due to changes in the rent schedule which occur when there are changes in SSI and/or if there were additional double occupancy units, although Honegger's understanding was that there was "very little double occupancy in these SLF properties." Honegger utilized rental data "on the audit and what is on the rental sheet"; he did not use the private pay studio or one-bedroom rental rate of $880. (TR. 61-62)

All of the expense comparables which Honegger analyzed were properties that were managed by Gardant. As to location, it was Honegger's opinion that location did not have a lot of effect on a property's expense ratios; a function of their expense ratios might be how much they can charge in rent. Therefore, Honegger sought selection of properties that had similar rent to the SLF property. In his conclusion for the appraisal report, Honegger elected to apply an average of the subject's prior three-year expense ratio. (TR. 62-64; Appellant Exhibit 5, p. 14)

In questions posed by the ALJ, Honegger agreed that the statutory provision for the assessment of SLFs does not provide for a vacancy rate. Honegger also agreed that Section 10-390 of the Code was "vague" in describing the method of performing the income approach "if you don't consider the fact of the other laws that preceded it had specified that." Honegger further acknowledged that he is blending his understanding of Section 42 and Section 515 valuations for SLFs in his interpretation of what the legislature meant. Honegger also explained his logic in that property tax assessments are to be equitable and he opined that there should be equity between an SLF with Section 42 and an SLF without Section 42. As to the issue of contract rent versus market rent, Honegger opined that if market rents were to be used "you wouldn't need a law"; the law was made for use of contract rents. (TR. 66-67)

At page 7 of the Honegger appraisal report, the appraiser wrote in pertinent part:

> The Illinois Property Tax Code specific to Supportive Living Facilities as written in Appendix A is clear that the income approach to value must be used and that the income from Medicaid and private pay services must not be considered as income in developing the income approach to value. This is correct because the income generated from these assisted living activities is income to both the business and real estate and not just to the real estate.

When asked more specifically about this assertion, Honegger testified that he has wrestled with the distinction between services and getting at the value of the real estate. Honegger further agreed that in an income approach to value, only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the real estate are to be allowed. Although an SLF has expenses, such as nursing and support staff, Honegger contended that by analyzing the property with an expense ratio similar to Section 42 housing that does not provide the services, he has eliminated those expenses from consideration. (TR. 68-69; Appellant Exhibit 5, p. 7)

As to his description of the subject facility, Honegger took the building size data from the architectural drawings which were in effect in 2007; he noted that no one from the facility advised him that an addition had been built in 2014. The witness further defended himself asserting that the building's size is immaterial because it is the income approach that is being used. Honegger

further contended that based on Burkett's previous testimony there was not a physical addition of building area, but rather a conversion of existing building area to arrive at the additional units. As to Honegger's land area of 5.47-acres, he testified this figure probably would have also been obtained from the architectural drawing. (TR. 70-72)

As to "maximum vacancy and collection loss" of 5% stated on page 13 of Honegger's appraisal report, when questioned about the figure, he explained that this was derived from someone who wrote the law/regulations for Section 515 and Section 42 properties; Honegger said, "And, I am just using that as also being probably true for the SLF." (TR. 72-73)

As to the charges for monthly rent of $3,650 for a studio and $3,900 for a one-bedroom as reported by Joseph M. Webster, the appraiser hired by the board of review, Honegger contended those are for room and board plus service charges which are quoted on the telephone to those who inquire. As to the extra charge for a second person in the room, Honegger believed the fee was not $775 as asserted by Webster, but rather $400-something; he also asserted that HFS mandates the second person charge at an SLF. (TR. 74-75)

On redirect, Honegger reiterated the rental rates in excess of $3,000 per month are the quotes given to telephone inquiries and further relate to the written lease agreement (Appellant's Hearing Exhibit 8; TR. 75-76)

Upon additional cross-examination, Honegger was asked about expenses differing between a property in Cook County and a property in Champaign County. The witness answered that operations of SLFs are the same regardless of location and the SLFs are operated under the rent restrictions established by HFS. In examining the data in his appraisal report, Honegger noted the expense ratio for a comparable located in Will County, which is nearby to Cook County, was 67%, or an expense ratio that was similar to the one selected for the subject property. Without any data on Cook County SLFs, Honegger opined that the values of a Cook County SLF may be lower than the subject SLF as their expenses may be higher than downstate properties. (TR. 76-78; Appellant Exhibit 5, p. 14)

On further redirect examination, Honegger testified that the HFS rent schedule (Appellant's Hearing Exhibit 2) changes by location in the Medicaid amount which is for services. (TR. 78-79)

The board of review appeared at hearing by three board of review members with Zebo Zebe taking the lead in presenting the board of review's evidence. The board of review had timely submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $1,277,670. The subject's assessment reflects a market value of $3,851,884 or $40,977.49 per unit, land included, when using the 2015 three-year average median level of assessment for Champaign County of 33.17% as determined by the Illinois Department of Revenue.

The board of review's submission also included two-pages entitled "Comments" and documentation concerning the subject property including a property record card. As part of the commentary, the board of review asserted that the appellant's evidence lacks sufficient support to reduce the subject's assessment by 28%. As to the appellant's appraisal report, the board of review noted it lacked market rental rates for the various types of units and utilized a high overall

capitalization rate. The board of review submitted data and argued average overall rates for apartment buildings based on third quarter surveys of 5.51% in 2014 and 5.39% in 2015 were more appropriate and would result in a higher overall value if applied in the appellant's appraisal.

In support of its contention of the correct assessment, the board of review submitted an 84-page appraisal prepared by Joseph M. Webster with an opinion of the market value of the subject property, subject to the contingent and limiting conditions of the report, of $7,640,000 as of January 1, 2015. At hearing, the board of review specifically indicated that it was seeking confirmation of the subject's 2015 assessment, not an increase in the assessment as would be reflected by its appraisal evidence. (TR. 9)

The board of review called Joseph M. Webster, of Webster & Associates, Inc., as its sole witness. Webster is a Certified General Real Estate Appraiser in the State of Illinois and he is also a designated member of the Appraisal Institute (MAI). He has been appraising properties for 11 years and as of the hearing date had performed appraisals of ten SLFs. He was hired by Daniel Stebbins, of the Cunningham Township Assessment Office, the client, to prepare an appraisal of the subject property. (BOR Appraisal, p. 4 & 74-75)

As part of the appraisal report, Webster outlined three extraordinary assumptions that were made which, "if found to be false, could alter the appraiser's opinions or conclusions." The first such assumption was that financial data regarding the property shown on the HFS website has been assumed to be reliable. The second assumption concerned the random sampling of individual units was assumed to be representative of the remaining units and third the appraiser assumed that the observation of the property made in October 2015 reflected a similar condition as of the date of the appraisal. (BOR Appraisal, p. 7)

Webster's appraisal report set forth that Section 10-390 of the Code is an applicable "regulation" in determining the value attributable to real property of a SLF. Due to the scope of the assignment, the sole method of valuation used was the income capitalization approach. Webster's appraisal noted that the exclusion of the cost and sales comparison approaches to value were jurisdictional exceptions to the Uniform Standards of Professional Appraisal Practice (USPAP) due to the applicable statutory provision of Section 10-390. (TR. 81; BOR Appraisal, p. 5, 9)

Webster's appraisal report presents the income approach analysis from page 41 through page 64. He testified the first step in the approach is to determine market rent and he determined "the most comparable properties in the market area also provide [a] similar degree of services." Webster further explained his decision to use market rent rather than the HFS schedule for rents was because "market rent is simply based on market forces. The rents provided were derived from SSI, and they do not – it's not the actual amount collected by the owner or the lessor. That is the amount that they receive, but they also receive incremental income from Medicaid in those cases where they are using Medicaid rather than private pay." It was Webster's opinion that the owner is receiving more than the rent schedule. He also acknowledged that, in light of Section 10-390 of the Code, the additional rents include services and under the statutory provision it is necessary to segregate out the proportion of the rent that includes services, which is an analysis that Webster performed later in his appraisal report after estimating the income using market rents. (TR. 81, 84-85)

To determine the income, Webster presented data of six comparable properties detailed individually from page 42 through page 47; none of these six comparables have rent restrictions; none of those comparables are supportive living facilities as Webster did not find "any supportive living facility rentals that were comparable in this case" that he was aware of. The comparable properties are located in Urbana, Savoy or Champaign and have from 46 to 234 units. The properties consist of a continuing care retirement community (CCRC) [#5], an assisted living facility [#1], an independent living facility [#6] and three properties [#2, #3 and #4] that have both independent living units and assisted living units with no indication as to how many units of each type. Webster variously described the units of the comparables as an efficiency, a studio, a one-bedroom or a two-bedroom. For comparable #5, Webster failed to report what was included in the "average rent" figure that was reported; the remaining five comparables in the rental figure included weekly housekeeping, laundry, transportation and two or three meals per day[10]; comparable #6 also included television and telephone and comparable #2 also included utilities. Comparables #1 and #3 had two average rental rates for studio and one-bedroom units, respectively, ranging from $2,300 to $3,200 per month; comparables #2, #4, #5 and #6 had from three to eight reported average rental rates within the facility which represented price ranges from $1,525 to $5,395 per month.[11] From the data he gathered, Webster on page 48 separately summarized that studio units rent for prices ranging from $1,525 to $2,950 per month with a median of $2,350 per month and one-bedroom units rent for prices ranging from $1,704 to $3,300 per month with an average of $2,890 per month. From this comparable market data, Webster concluded a market rent of $2,600 per month for studio units and $3,200 per month for one-bedroom units was reasonable. Also, as part of his analysis, Webster reported that five of the comparables had second person charges ranging from $500 to $795 with a median of $675 per month; from this data, Webster concluded that a second person charge of $750 per month was reasonable. (TR. 81, 86; BOR Appraisal, p. 48)

When asked by the ALJ about the comparison of an independent living facility, comparable #6, to an SLF, Webster remarked that a previous decision of the Property Tax Appeal Board in which Webster had been one of the appraisers reflected a preference toward independent living rents, although the decision was issued after the preparation of the instant appraisal report. "However, because of that ruling, I reviewed what was strictly an independent living facility, which was The Inman." He noted that an independent living facility does not provide any health care/personal care. (TR. 86-87)

At page 49 under the heading of "Contract versus Market Rent" in the appraisal, Webster wrote:

> The marketing director for Prairie Winds reported current rents to be $3,650 per month for studio units and $3,900 per month for one-bedroom units. The second person charge was reported to be $775 per month. The second person charge is reasonable, although the rents are above market. The current and historical occupancy rate is high, although the percentage of private pay residents is lower than typical for this type of property. Given that ad valorem appraisals are based on fee simple property rights, market rent will be used in the analysis.

[10] Only comparable #2 provided two meals per day.

[11] On page 43 of Webster's appraisal report, he indicated that the average rents reported for comparable #2 reflected the rents for independent living units.

At hearing, Webster testified, "After the market rent opinion was determined, I examined the maximum allowable rents under Medicaid for that year for that location. The reason being because the opinion of market rent based on private pay residents was partially higher than the maximum rent allowed for Medicaid residents. As a result, it was necessary to determine an appropriate private paid [payor] mix in which a percentage of the gross income for the one-bedroom units was applied to Medicaid and the remainder was applied to private pay." (TR. 81-82)

The next section in the appraisal consisting of pages 50 through 52 depicts Historical Income Statements for years 2012, 2013 and 2014. There is no source of information referenced in the appraisal report. At hearing, Webster testified that he obtained this data from the HFS website, public records, and he also compared that data to five expense comparables of SLFs in the central Illinois market area. The data depicts total revenues for 2012, 2013 and 2014 of $3,526,153, $3,566,023 and $3,685,463, respectively. The total expenses for those same years are shown as $1,958,909, $2,025,565 and $2,035,562, respectively. Given these revenue and expense figures, the resulting net operating income is depicted as $1,567,244, $1,540,458 and $1,649,901 for the respective years. The data also depicts the occupancy for years 2012, 2013 and 2014 as 99.52%, 98.94% and 99.15% along with a reported private-pay mix depicted as 52%, 39.78% and 39.26%, respectively. (TR. 88; BOR Appraisal, p. 50-52)

After Webster acknowledged having expense comparable data on five SLFs in central Illinois, the ALJ asked why the appraiser did not likewise have rental data for SLFs. Webster testified that the SLF he is most aware of in Champaign County located in Rantoul is an inferior market and a considerably older property with more functional obsolescence; as such, Webster did not feel it was comparable. Webster further contended that his gross income estimate prior to deduction of service income of approximately $3 million was about $500,000 per year less than the subject's reported income for years 2012 through 2014. (TR. 88-89)

At pages 53 through 57 of the appraisal, Webster set forth data on "Expense Comparables" #1 through #5 located in Rantoul, Mt. Zion, Normal and Sullivan; comparable #4 does not have a location stated and is simply identified as "Eagle Ridge SLF 1." Other than comparable #4 presumably being an SLF, there is no indication in the data what type(s) of facilities these comparables operate; in testimony, Webster summarily agreed to a question that the expense data came from comparable SLFs. The comparables range in size from 38 to 99 units with occupancy ranging from 92.12% to 99.08% and with private-pay mixes ranging from 15.36% to 71.48%. The reported total revenues for these five expense comparables ranged from $1,284,367 to $3,647,981 with reported total expenses ranging from $675,761 to $2,303,805 which resulted in reported net operating incomes ranging from $349,745 to $1,344,176. (TR. 89; BOR Appraisal, p. 53-57)

Commencing on page 58 of Webster's appraisal report entitled "Analysis of Income and Expenses," the appraiser began by describing potential gross income which he opined to be $2,600 per month for studio units of which approximately 35% were reported to be private pay. The appraiser noted the private pay mix of the subject is "lower than average, although there are some supportive living facilities which have a similar or lower mix, including Expense Comparables 3 and 4." He further summarized that the subject's private-pay mix declined from 2012 to 2014 as depicted on pages 50-52 of the report; Webster opined "it is reasonable to suggest further declines." Webster wrote that he estimated that 35% of the one-bedroom units or 28 units will be based on

the private-pay market rent opinion of $3,200 per month with potential gross income for the remaining 52 [one-bedroom] units based upon the "maximum allowable rents for Medicaid in Central Illinois, or $2,640 per month." Applying these calculations, Webster opined a total potential gross income for the subject property as depicted on page 62 of his appraisal report of $3,159,360. Webster also testified that the "resulting gross income was the rents that I determined to be attributable to real property" as he noted, "there was essentially no evidence that there was additional net income obtained solely from the additional services provided which do include dietary, health care/personal care and activities/social services." (TR. 83; BOR Appraisal, p. 58 & 62)

Webster next developed a conclusion of vacancy losses to apply in the income approach to value on page 58. He reported the subject had historical vacancy losses for years 2012, 2013 and 2014 of 0.48%, 1.06% and 0.85%, respectively. Webster also noted the subject has maintained occupancy levels near 100% for multiple years with vacancy levels likely related to turnover. Webster testified at hearing that he deducted a market-oriented vacancy loss. Webster also reported the historical vacancy loss data for his five expense comparables; Webster did not report what year or years were reflected by the comparable expense data. The vacancy losses reported for expense comparables #1 through #5 range from 0.92% to 7.88%; Webster also wrote that comparable #5 located in Sullivan with the 7.88% vacancy loss was an outlier, "although this property has historically experienced a higher than typical vacancy rate." Excluding the outlier, the highest vacancy loss reported among the expense comparables was 3.99%. (TR. 82; BOR Appraisal, p. 58)

Next, and still within the discussion of "Vacancy Losses" in the appraisal report at page 58, Webster stated:

> It should be noted that market data from 2014 was considered, which includes a supply of 364-units, and there is a wait list for these units. Not including memory care, there are 252-units of additional supply that has recently come available or will be available shortly. Given the anticipated increase in the local population that may reside in independent, assisted, or supportive living facilities, there is not an oversupply.

The record reflects no support for the foregoing assertion nor any information concerning the type of data reviewed, such as regional or statewide information. Webster then wrote, "Nonetheless, a higher vacancy loss will be projected than historical levels." Webster estimated a 5% vacancy loss applied to potential gross income in his analysis or a deduction of $157,968. (TR. 82; BOR Appraisal, p. 58 & 62)

The next step in Webster's analysis of the income approach shown on pages 58 and 59 was an estimate of the "Deduction for Service Income." For this portion, Webster testified that he initially examined the second person fee as a "strong indicator of the operator's [difference] of providing additional incremental services for dietary, health care/personal care, and activities/social

services."[12] However, for the subject property, Webster found those service items, in addition to the payroll taxes and employee benefits attributable to those service items, exceeded the second person charge. For the comparable properties, the second person charge ranged from $500 to $795 per month; the subject has a second person charge of $775 per month or $9,300 per year per second person. Webster also acknowledged finding that a second person charge which did not account for the additional expenses associated with a second person was not necessarily uncommon; there are situations where the second person charge may be regarded as a marketing tool to maintain high occupancy levels. In any event, Webster found the analysis of the second person charge to be "evidence." (TR. 82-83; BOR Appraisal, p. 59)

Also, within the "Deduction for Service Income" section of the report, Webster summarized "additional rent related to services" from the subject's 2012 through 2014 Historical Income Statements. Webster added together three specific expense lines, on a per unit basis, consisting of Dietary, Health care/personal care, and Activities/social services. Mathematically Webster found the expenses for these three service related items for years 2012, 2013 and 2014 totaled $8,850, $9,025 and $9,334 per unit, respectively, or an average of $9,070 per unit per year. For comparison, Webster also reported the same expense data for five expense comparables depicted on pages 53 through 57. He reported the expense comparable data reflected a range of $5,790 to $13,168 per unit or an average expense of $10,128 per unit per year. Given the data concerning the subject and the expense comparables, Webster opined these expenses for the subject "are relatively consistent with market levels." (BOR Appraisal, p. 58)

Also, as part of the "Deduction for Service Income" section, Webster wrote:

> Further, it is necessary to adjust the employee benefits and payroll taxes to account solely for wages attributable [to] the remaining items. Shown below is the percentage of wages attributable to dietary, health care/personal care, and activities/social services in 2012 – 2014 . . .

In summary and presumably from the subject property's historical income statements, Webster then set forth the 'service-related wages' for each of the three years, the 'total wage expense' for each of the three prior years and a calculation of the '% of total' or proportion of the total wage expenses attributable to service-related wages. As set forth on page 59 of the appraisal, Webster found this calculation ranged from 68.87% and 70.25% of the total wage expense which was attributable to service-related wages. (BOR Appraisal, p. 58-59)

Webster's appraisal summarized the employee benefits/payroll taxes for the five expense comparables depicted on pages 53 through 57 as ranging from $760 to $2,716 per unit. In contrast, the subject's historical employee benefits/payroll taxes per unit for years 2012, 2013 and 2014 were $2,340, $2,124 and $1,943, respectively. Webster wrote, "Assuming a stabilized employee benefits/payroll tax of $2,100 per unit and 69% attributable to dietary, health care/personal care, and activities/social services, this would suggest $1,449 per unit should also be included in the deduction for service income." (BOR Appraisal, p. 59)

[12] As stated at page 59 of the appraisal, "A useful metric for measuring the profitability of services is to examine the second person charge, due to it reflecting the incremental increase in dietary, health care/personal care, and activities/social services."

After the extensive foregoing analysis, Webster concluded that the average historical dietary, health care/personal care, and activities/social services expense of $9,070 per unit along with the incremental increase in employee benefits/payroll taxes as attributable to services or $1,449 per unit should be deducted from the potential gross income or $10,519 per unit.[13]

At this stage of the income approach to value, Webster's determination of potential gross income of $3,011,392 was reduced both by the vacancy and collection loss of $157,968 and by a deduction for service income of $987,000 ($10,500 x 94) that resulted in an effective gross income of $2,014,392. Although as part of the income approach to value, an appraiser typically would include ancillary income derived from special services such as beauty salon, non-resident meals, and interest/investment income, Webster concluded that all of these items are regarded as being related to services, rather than from the real property and thus no ancillary income was included in this income approach to value. (BOR Appraisal, p. 59 & 62)

The next step in the income approach to value is a determination of appropriate operating expenses to be deducted from the effective gross income. Webster specifically excluded dietary, health care/personal care and activities/social services expenses since, according to Webster, that data had previously been deducted as part of the calculation of his "Deduction to Service Income." (TR. 83; BOR Appraisal, p. 59-60)

The board of review's appraisal report prepared by Webster discusses the expense data from page 59 through to page 61 in detail. For the income approach to value, the appraiser reported a total operating expenses figure of $1,038,350 as depicted on page 62 in the Reconstructed Operating Income Statement. The expenses consist of an analysis of both the subject's historical expenses and the data drawn from the expense comparables. For Housekeeping/Laundry/maintenance Webster concluded an expense of $5.25 per resident day[14] or a total expense of $171,124. The utilities expense was similarly calculated giving consideration to historical expenses of the subject and expense comparables; Webster determined the subject's utilities expense was near the low end of the market data, "which is partially attributable to the geothermal heating system." Webster concluded an expense of $3.30 per resident day or a total expense of $107,564. The "General services – other" expense item was described as including security, vehicle, garbage hauling and pest control; after examining both sets of historical expense data, Webster stabilized this expense at $0.60 per resident day or $19,557. For the administrative/clerical expense, Webster described that there was a wide variance in the data, but he stabilized this expense at $11.82 per resident day or $385,400.[15] Webster also stabilized the marketing expense at $2.80 per resident day or $91,266. For the employee benefits/payroll taxes expense, Webster reiterated that $2,100 per unit was reasonable, but then applied 69% as attributable to wages related to dietary, health care/personal care, and activities/social services which resulted in an incremental expense of $651 per unit or $61,194. For the insurance expense, Webster gave greater emphasis to an analysis on a per-unit basis and utilized an expense of $420 per unit or $39,480. The expense entitled general administration-other was described as including legal, accounting and consulting; after analysis of

[13] In the Reconstructed Operating Income Statement depicted on page 62 of the appraisal, Webster has rounded this deduction down to $10,500 per unit.
[14] On page 62, the appraiser reported that there 32,595 resident days.
[15] Mathematically, at $11.82 per resident day x 32,595 the administrative/clerical expense should be $385,273.

the subject and comparable data, Webster concluded an expense of $0.75 per resident day or $24,446. (BOR Appraisal, p. 59-60)

Determining that a management fee is a typical expense, Webster also applied a 5% fee to the effective gross income or $100,720 as a management fee to be included among the expenses. The final expense which Webster applied was a reserve for replacement which he based upon data from Realty Rates for senior housing. Webster determined a reserve of $400 per unit was reasonable or $37,600. (BOR Appraisal, p. 61)

After deducting total expenses of $1,038,350 or 51.55% of the subject's effective gross income, Webster estimated a net operating income of $976,042 for the subject property. (BOR Appraisal, p. 62)

The final step in the income approach to value was capitalization of net operating income which was presented on pages 63 and 64 of Webster's appraisal report. The appraisal depicts a typical mortgage interest rate of 4.5% and an interest rate calculation using the band of investment technique which resulted in a rate of 8.94%. The appraiser found the conclusion from the band of investment technique was consistent with data from Realty Rates for assisted living facilities that ranged from 4.95% to 12.36% with an average of 8.18%. The appraiser also reported capitalization rates that were extracted from three assisted living facilities in central Illinois between 2012 and 2014; those properties had rates of 7.4%, 8.5% and 9.06%. A fourth memory care facility sold in 2012 in southeast Urbana presenting a 9.51% capitalization rate. In light of the foregoing data, Webster determined that an appropriate interest rate was 8.94% to which was added the applicable tax rate of 3.427% resulting in a loaded capitalization rate determination of 12.37%, rounded. (TR. 83-84; BOR Appraisal, p. 63)

Webster further contended that approximately 3% of the total value of the subject facility consists of furniture, fixtures and equipment (FF&E). At page 40 of the appraisal report, Webster reported the subject facility has items such as dining room furniture, kitchen equipment, office equipment and furniture along with laundry machines and a van. In addition, the rental units each are equipped with a microwave and refrigerator.

In the appraisal at page 40, Webster reported there are two primary methods to determine the contributory value of FF&E. One method is based upon a depreciated cost analysis. Using data published on-line by HFS, Webster contends the "reported cost for the subject property is $7,895,776, of which $899,356 is equipment." The equipment also was reported as being 89.22% depreciated based upon a 7-year life implying an average age of 6.25-years for the equipment. While Webster found the average age figure to be appropriate in light of the age of the building, he asserted that a 10-year useful life was more appropriate. From his records, Webster asserted he had construction cost information for two assisted living projects that had FF&E costs of $10,769 and $6,108 per unit, respectively. Finding the lower per unit cost to be more comparable to the subject, Webster applied 62.5% depreciation to a cost new of $7,000 per unit resulting in a contributory value of FF&E of $246,750 under this method. (BOR Appraisal, p. 40)

The second method to estimate FF&E examines allocations of personal property made in transfer declarations. For this analysis, Webster reviewed his data record on five senior living sales reflecting personal property allocations of $13,650, $11,219, $10,256, $1,570 and $16,757 per

unit. As part of the appraisal report, Webster wrote that, "[a]llocations for personal property are often excessive, due to tax motivations, which appears to be the case for several of the sales." He also acknowledged in the appraisal that the property with an allocation of $1,570 appeared to be lower than typical. "Nonetheless, the depreciated cost analysis suggests a contributory value of $2,625 per unit, which is within this range." From the foregoing data, Webster concluded a contributory value of FF&E of $246,750 or $250,000, rounded. (BOR Appraisal, p. 40)

In summary, capitalizing the calculated net operating income figure of $976,042 by the loaded capitalization rate of 12.37% resulted in a value conclusion of $7,890,396 or $7,890,000, rounded, from which Webster deducted his value conclusion of FF&E of $250,000. Therefore, Webster estimated the subject's value by the income approach for the real estate only as $7,640,000. (BOR Appraisal, p. 64)

Based on the foregoing evidence, the board of review requested confirmation of the subject's estimated market value of $3,851,884 as reflected by its assessment.

On cross-examination, Webster acknowledged that none of the comparable properties he used to develop market rental data were SLF properties and most of them have some assisted living component to the property. The rentals reflected by comparables #1 through #5 would include income from a personal care element; in contrast, the rental information for comparable #6 would include dietary and activities. (TR. 90-92)

As depicted on the reconstructed operating income statement at page 62, Webster concluded an expense ratio of 51.55% of effective gross income, when excluding real estate taxes, for the subject property. While Honegger's expense ratio was 56% of effective gross income, when excluding real estate taxes, for the subject property, due to the difference in potential gross income which Honegger had calculated as compared to Webster's potential gross income calculation, Webster was of the opinion that the expense ratio calculations of the two appraisers were actually vastly different. Webster acknowledged that the market rental rate he utilized for this appraisal report includes services resulting in a revenue estimate in excess of $3 million followed by a deduction of $987,000 which Webster had calculated as "service income." (TR. 92-95)

The calculation Webster made for a deduction of service income began with consideration of the second person charge at the facility of $775 per month per unit which would be a gross income of $9,300 per unit per year. Webster also testified that the deduction of $987,000 was based upon a calculation of expenses of $10,519 per unit per year[16] which was developed from his opinion of the personal care activities, social services and dietary expenses along with payroll taxes and employee benefits for those respective departments that were included; the deduction of these expenses was necessary to determine gross rent attributable to real property. In contrast to Webster's service income deduction of $987,000, appellant's counsel noted in questioning that Honegger's appraisal in the 2014 profit/loss statement (Appellant's Exhibit 5, p. 23), reflected "supportive living services revenue – resident" was $1,305,849 and "supportive living services revenue – Medicaid" was $1,498,500. (TR. 95-97, 102)

[16] Mathematically $10,519 per unit x 94 units would result in a figure of $988,786; the calculation on page 62 appears to reflect a deduction of $10,500 per unit x 94 units for a deduction of $987,000.

Webster testified that he discussed the HFS published schedule for SLFs on page 58 of his appraisal where he reported the potential gross income for the studio units was $2,600 per month and "the remaining 52-units was based on the maximum allowable rents for Medicaid in Central Illinois, or $2,640 per month." Webster also acknowledged that he has used market rental rates rather than contract rental rates "because contract rents for private pay residents were above market"; Webster then modified his testimony noting that "maximum allowable rents indicated by Medicaid were $2,640 per month." He also asserted that his analysis has both contract rents and market rents. (TR. 99-100)

Webster has looked at the Honegger appraisal report, including the profit and loss statement data. As to Webster's choice of data for his appraisal, he was not sure if he had received a copy of Honegger's appraisal report [prior to preparing his appraisal]; Webster chose to use the information from the HFS website "that was how the historical income and expenses were determined for the subject property." Webster testified that the data from the HFS website does not breakdown the apartment rental revenue in the same manner as depicted on page 23 of the Honegger appraisal report which depicts the 2014 income/loss statement of the subject property. The HFS data simply provides a total rent figure. Webster also agreed that Honegger's income/loss statement data was not substantially different from the HFS data. (TR. 100-02)

The ALJ made inquiries of Webster concerning the individual rental comparables depicted on pages 42 through 47 questioning the difference in reporting "rent restrictions" which none of the comparables have and "subsidies and restrictions at project" also which none of the comparables have according to his data. Webster testified he believes this was referring to his "interpretation would be it was referring to Medicaid" for rent restrictions. (TR. 108)

As to rental comparable #1, the "charge in addition to rent" of $1,750 was described at hearing by Webster as the equivalent of an application fee or community fee which was not factored into the monthly rental figure; acknowledging that the appraisal did not address the treatment of this one-time fee, the appraiser did point out the one-time fee was re-stated on page 48 in the summary table as an additional charge of "$1,750 community fee" for rental comparable #1. Upon further questioning about the summary data on page 48, Webster acknowledged the "additional charges" data in the table does not specify the distinctions between rental comparable #1 having a one-time fee and rental comparable #2 having the $675 second person charge listed in that same row which is clearly not just a one-time fee. (TR. 108-09)

As to rental comparable #2, Webster acknowledged this property consists of 138 independent living units and 36 assisted living units. When asked how this breakdown in unit types factored into Webster's use of the rental data that provided six prices ranging from $2,165 to $5,395 per month, Webster stated, "That is something that it would need to be considered on determining market rent based on health care and personal care. It would, obviously, be somewhat of a floor of sorts because the initial market rent opinion did include a consideration of health care and personal care, the same as with comparable number 6." (TR. 109-10)

For rental comparable #5 which is a continuing care retirement community, the appraiser reported the average rents with eight prices ranged from $1,525 to $3,565 per month. Webster was asked how the nonrefundable after five years entrance fee that was reported as ranging from $65,600 to

$236,800 was factored into his determination of market rent.[17] In response Webster testified when the fee is non-refundable, the average rent paid per month is lowered and when the entrance fee is refundable, it results in the highest monthly rents at the CCRC. Webster provided no additional testimony to explain how this entrance fee structure factored into his determination of market rent. (TR. 110-11)

Webster did not recall why on page 48 of the appraisal report he stated studio units had a median monthly rental of $2,350 and one-bedroom units had an average monthly rental of $2,890. (TR. 111)

Data from the market rental comparables revealed second person charges ranging from $500 to $795 per month for a median of $675 per month; for analysis in his appraisal report, however, Webster chose a second person charge of $750 per month as being reasonable because "some of those second person fees would be for independent living facilities" which Webster asserted "would have a lower second person charge as there would be no health care/personal care elements" and thus it was necessary to go somewhat higher. (TR. 111-12)

To arrive at the potential gross income of the subject property, Webster utilized market rent derived from six properties, none of which were SLFs, with a conclusion of $2,600 per month for 14 studio units, $3,200 per month for 28 one-bedroom units and $2,640 per month for 52 one-bedroom units that were Medicaid. (TR. 112-13)

When asked by the ALJ how a "typical income approach to value" would differ from the one necessitated by application of Section 10-390 of the Code, Webster testified as follows:

> . . . In a normal supportive living facility appraisal, I would most likely consider the actual rents, compare the actual rents to market rents and not really cap it out unless there was a ceiling to the actual rents. I would not deduct service income, or a second person charge from the gross income side. I would deduct all the expenses, operating expenses, including dietary, health care and activities/social services. From there I would have a net operating income that would effectively be a going concern, that net operating income. At that point it would be necessary to allocate for assets including real property, personal property, and intangible assets.

(TR. 115)

As to the deduction for FF&E, Webster testified that in order to produce the gross income of the subject property, there are various items of personal property that are necessary such as laundry machines, kitchen equipment and community room furniture; it was Webster's opinion that those items would absolutely have to be deducted. (TR. 116)

As provided for in the procedural rules of the Property Tax Appeal Board, the appellant's counsel timely submitted written rebuttal. The rebuttal consists of a two-page single-spaced typed letter

[17] On page 46 of the appraisal concerning this property, Webster reported "Entrance fees are typically non-refundable after five years but may be structured to include a 50% or 90% refund."

prepared and signed by appellant's appraiser, Keith Honegger, with attachments identified as Appendix A through Appendix E. The Webster income approach to value is criticized as being flawed in that it "does a market study of non SLF assisted living properties to determine what the market rent should be for assisted living facilities in the Urbana area not subject to the rent restrictions of the subject SLF property." The rebuttal prepared by Honegger also asserted determining market rent is not appropriate for valuation of a SLF property since the rents that may be charged are mandated by a government entity and are below market rent so they are affordable to low-income renters. Attached Appendix B are prior PTAB decisions on Section 515 and Section 42 properties.

The written rebuttal further asserted that HFS sets the rents of all SLF properties within Illinois as published annually and which are based on the minimum SSI payment; attached Appendix C is a copy of this referenced rent schedule (the document is identical to Appellant's Hearing Exhibit 2).

With citation to Honegger's appraisal that presents the 2014 profit/loss statement of the subject facility with the revenue specified for apartment rent, services, financial revenue and other revenue, it was argued by the appellant that the intent of the Code as applied to SLF properties is that "the actual rental income of the subject property should be used as the income for the income approach to value, not a market rent derived from a market study of non-SLF assisted living properties."

Honegger also argued in the written rebuttal that the service portion of the income depicted in the rent schedule should not be considered as income. He argued that it is a flawed appraisal approach to begin with market derived rent which includes service income and then seek to subtract the service expenses with a hard to understand and unsupported methodology.

Lastly as to this written rebuttal, the Board finds Appendix E consisting of a grid of assessment data of 33 properties managed by Gardant, is inappropriate rebuttal evidence. Pursuant to the rules of the Property Tax Appeal Board, rebuttal evidence is restricted to that evidence to explain, repel, counteract or disprove facts given in evidence by an adverse party. (86 Ill.Admin.Code §1910.66(a)). Moreover, rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. (86 Ill.Admin.Code §1910.66(c)). In light of these rules, the Property Tax Appeal Board has not considered Appendix E consisting of assessment data for properties located in numerous different counties in Illinois as submitted by appellant in conjunction with its rebuttal argument as the opposing party did not present any assessment data in its evidence that was potentially subject to being rebutted.

At the hearing, the appellant re-called Rod Burkett for rebuttal testimony. Having heard the testimony of appraiser Joseph Webster, Burkett testified that Webster misinterprets the terms of rent and revenue in that Webster was using the terms synonymously. To the extent that Webster was pulling data from HFS cost reports to ascertain market rent, it is Burkett's opinion that the data reflects total revenue which would include service income both from private pay residents and from the Medicaid program. He further noted that Medicaid is prohibited by federal law from using any monies for rent; it can only be used for services. Burkett testified that the reason HFS was so precise in determining the amount of room and board, which includes the rent and all the costs for food, is that Medicaid monies cannot be shown as "going to supplant the physical plant." In summary, a Medicaid resident's rent is paid on the HFS formula with social security income

(SSI) less $90 which is allotted to the individual for personal spending; no Medicaid money goes toward paying rent and/or room and board. (TR. 117-19)

The board of review re-called Joseph Webster for surrebuttal testimony. As to Burkett's interpretation of Webster's market rent/revenue distinction, Webster testified that he was taking market rent with a more global view of the property. He stated, "if the property cost $10 million to build and you are receiving $631 of which roughly 45% of that may go to real property, that's not a feasible investment because you are getting roughly $300 per unit for real property, you capitalize that out at 8%, and that's $3,600." He noted when you have spent considerably more to build the property, it is not feasible; but yet these facilities are being constructed. Webster said, "This property is not going to sell with the real estate allocation being where the real estate allocation is suggested. That is infeasible despite the considerable amount of intangible assets in this case." (TR. 120-22)

Upon cross-examination by appellant's counsel, when asked about the previous statement concerning valuation based on what the property would sell for, Webster stated:

> I would – I mean you have to – in this case, you can't consider intangible assets or personal property; however, you determine what would be the appropriate allocation for real property. And so, yes, I determined market value based on the methodology of $631 per unit per month, 5% vacancy loss, 56% expense ratio, you are getting roughly $300 per unit per month. The property is not going to sell based on that formula because the net income is higher than that amount in this case.

While Webster conceded that Section 10-390 of the Code is applicable to the subject property, Webster asserted he has reviewed that statute that specifically says it is for rent attributable to real property. He further said, "The rents in this case are SSI income. That is an arbitrary number that is not based on market. It does not vary throughout the State of Illinois." (TR. 122-23)

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation as mandated by Section 10-390 of the Code (35 ILCS 200/10-390). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). However, for purposes of the Code for the assessment of a supportive living facility, the income approach to value is to be utilized with the exclusions set forth in Section 10-390. The Board finds the preponderance of the evidence meets this burden of proof and a reduction in the subject's assessment is warranted.

A supportive living facility is to be valued pursuant to Section 10-390 of the Code, which is one of the enumerated "special properties" set forth in Article 10 of the Code specifying the valuation technique to be utilized. Section 10-390 commences with the phrase "[n]otwithstanding Section

1-55" in order to determine the fair cash value of a supportive living facility, a local assessment officer must use the income capitalization approach.[18]

As set forth in detail above, there are extremely divergent value opinions utilizing Section 10-390 of the Code by the two expert appraisers. The subject property, located in Urbana, consists of a two-story 94-unit supportive living facility featuring 14 studio units and 80 one-bedroom units. Each unit has a kitchenette furnished with a microwave and a refrigerator, a bathroom and living/sleeping area. The property has a 4.866-acre site.

The Champaign County Board of Review's total assessment for the subject property reflects a market value of $3,851,884, land included, when using the 2015 three-year average median level of assessment for Champaign County of 33.17% as determined by the Illinois Department of Revenue. Keith Honegger, the appellant's appraiser, estimated the subject's total value to be $2,752,074 as of January 1, 2015 in accordance with Section 10-390. In contrast, Joseph M. Webster, the appraiser retained by the Champaign County Board of Review and the township assessor, estimated the subject's total value to be $7,640,000, rounded, as of January 1, 2015 when applying Section 10-390 of the Code.

Both appraisers have years of experience in valuing real estate as licensed appraisers and were qualified as experts in their field. Both appraisers developed only the income approach to value following their own interpretations of Section 10-390 of the Code and seeking out relevant data concerning the subject property and comparable data for analysis. Both appraisers agree on the basic principles and methodologies applicable and employed in an income approach to value. Both appraisers agree that the income approach technique requires the appraiser to derive a value indication for an income-producing property by converting its anticipated benefits (such as cash flow or future rights to income) into property value. (Honegger Appraisal, p. 7; Webster Appraisal, p. 41) One method is to convert one year's income expectancy (potential gross operating income less operating expenses) by applying a market-derived capitalization rate.

To begin the income analysis, each appraiser estimated dramatically different amounts as potential gross income. Honegger solely relied upon the subject's Profit and Loss Data for the year ended December 31, 2014 which is data maintained by the appellant; his report also included similar Profit and Loss Data for years 2012 and 2013 (Honegger Appraisal, p. 26 – 31). In contrast, Webster relied solely upon the "total revenue" the facility reported to HFS which is publicly available data for years 2012, 2013 and 2014 (Webster Appraisal, p. 50 – 52). With these differing starting points for potential gross income, Honegger began with a figure of $721,028 which reflects rental income of 94 units at approximately $639 per unit per month, whereas Webster began with a figure of $3,159,360 which included service income.

Next both appraisers considered vacancy and collection loss. Honegger determined there was none to be deducted since he was utilizing the 2014 rental income figure for 2015 valuation; Webster deducted 5% of the potential gross income or $157,968 for vacancy and collection loss. Honegger

[18] Section 1-55 of the Code defines 33 1/3% for purposes of the Code as "one-third of the fair cash value of property, as determined by the Department [of Revenue]'s sales ratio studies for the 3 most recent years preceding the assessment year, adjusted to take into account any changes in assessment levels implemented since the data for the studies were collected." (35 ILCS 200/1-55)

also added the Food Program income or SNAP of $78,205 and other income from the beauty salon of $74,756. Additionally, Honegger deducted the raw food expense of $159,075 to conclude an effective gross income of $714,914.

In contrast to Honegger, because Webster's potential gross income figure included service income, Webster engaged in a lengthy analysis process which has been previously detailed in this decision in order to deduct what he estimated to be "service income" of $987,000 per year or approximately $10,500 per unit per year. With his deduction of service income, Webster estimated effective gross income for the subject to be $2,014,392.

The Property Tax Appeal Board finds little support in Webster's appraisal for his estimate of annual service income of less than one million dollars. Moreover, the Board finds the method that Webster used to arrive at this estimate was very confusing and lacked logic when applied to the specific statutory and regulatory limitations which are placed upon a supportive living facility. Furthermore, the Board finds that the data in the record does not support Webster's conclusion of services income when looking at the three Profit and Loss Data sets for years 2012, 2013 and 2014 which are contained in Honegger's appraisal report. These Profit and Loss Data sets depict both "resident" and "Medicaid" services revenue for each of the years as follows: 2012 in excess of $1.5 million from residents and in excess of $1.1 million from Medicaid; 2013 likewise in excess of $1.3 million from residents and in excess of $1.2 million from Medicaid; and 2014 in excess of $1.3 million from residents and in excess of $1.4 million from Medicaid. As a consequence of this analysis of data in the record, the Board finds that in each of the three calendar years prior to 2015, the subject SLF recorded at least $2.5 million in services related annual revenue. Therefore, Webster's estimate of annual services income of $987,000 is severely understated and as a consequence given his potential gross income estimate of $3,159,360, overvalues the subject property due to an insufficient deduction for services income within this modified income approach to value.

Given the foregoing analysis of the record, the Board finds that Honegger and the appellant presented the best evidence of value under the analysis mandated by Section 10-390 of the Code. While accepting the Honegger appraisal as the best evidence in the record, the Board also recognizes the difficulty assessing officials may face in relying upon data provided by owners of SLFs for the breakdown of non-service related income and service-related income of the SLF property. However, the record suggests that the SLFs Profit and Loss Data closely parallels the publicly reported HFS Cost Reports that were viewed by Webster. As depicted below, the total revenue reported in each type of report set forth in the respective appraisers' reports did not vary much, if at all:

Year	Honegger	Webster
2012	3,526,153	3,526,153
2013	3,566,021	3,566,023
2014	3,685,457	3,685,463

Therefore, the Board finds that the Webster appraisal by understating the services income severely over inflated the value estimate of the subject property under the mandated income approach to value provided in Section 10-390.

To complete the analysis of the respective appraisal reports, once the Webster estimate of income is greatly reduced by the actual services income, the differences between the appraisers are relatively minor. The Board finds that both appraisers used varying methods to estimate expenses for the subject property, but neither appraiser considered expenses related to services and only estimated expenses related primarily to the operation of the real estate. Honegger concluded a three-year average reflective of 56% of his effective gross income or $400,352 as expenses not related to services. Webster applied an estimate of 51.55% of his effective gross income or $1,038,350 as reflective of expenses that were not related to services. While the percentages are somewhat comparable, the Webster expense figure is substantially higher because it was based from a percentage of an exaggerated effective gross income figure which has already been discredited in this analysis. Therefore, the Board accepts the Honegger expense calculation as the best evidence in this record.

After the deduction of their respective expense estimates, the appraisers arrived at substantially differing net operating income estimates: Honegger concluded $314,562 and Webster concluded $976,042. Both appraisers next used various research methods to arrive at capitalization rates to which each appraiser added the effective tax load resulting in overall capitalization rates as follows: Honegger 11.43% and Webster 12.37%. Again, the Board finds these loaded capitalization rates are not substantially different from one another. Given the credence that the Board has placed in the Honegger appraisal report, the Board accepts Honegger's overall capitalization rate as appropriate on this record.

Honegger applied his overall capitalization rate to his net operating income estimate resulting in a value conclusion for the subject of $2,752,074. Webster also applied his overall capitalization rate to his net operating income estimate resulting in a value conclusion for the subject of $7,890,396, however, Webster additionally deducted his calculation of furniture, fixtures and equipment (FF&E) of $250,000 for a final opinion of value of $7,640,000, rounded. Again, because the Board has previously determined that Webster presented an exaggerated effective gross income figure, all of his subsequent calculations include that same exaggeration and have been determined by the Board to lack credibility on this record giving due consideration to all of the income statement data along with the publicly available HFS cost reports. Furthermore, while Webster made an additional deduction for FF&E in his appraisal report, the Board finds that such an additional FF&E deduction if made to the Honegger report would only further reduce the value conclusion of $2,752,074 or $29,277 per unit, including land. On this record and in light of the mandates of Section 10-390, the Board finds no need to further reduce the Honegger appraisal value conclusion.

The subject's assessment reflects a market value of $3,851,884, land included, which is above the best evidence of market value in the record. Based on the above analysis and application of Sec. 10-390 of the Code to the valuation of the subject SLF, the Board finds the preponderance of the evidence indicates a reduction in the subject's assessment to reflect the Honegger appraisal report is warranted. Since market value has been established, the 2015 three-year average median level of assessments for Champaign County of 33.17% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

APPELLANT:	**St. Charles Country Club**
DOCKET NUMBER:	**13-02088.001-C-3**
DATE DECIDED:	**January, 2018**
COUNTY:	**Kane**
RESULT:	**Reduction**

The subject parcel consists of approximately 135.23 acres and is part of eight tax parcels of land owned and used by the St. Charles Country Club (SCCC) as part of a golf course with a total of approximately 218 acres. The subject parcel is improved with a parking lot, a 3,080 square foot maintenance building, a 5,344 square foot maintenance building, a 2,455 square foot pool house, a 3,444 square foot swimming pool and a clubhouse containing approximately 18,861 square feet of ground floor area.[1] The property is located in St. Charles, St. Charles Township, Kane County.

The Property Tax Appeal Board had set a consolidated hearing with Docket Nos. 13-02088.001-C-3, 14-01913.001-C-3 and 15-01241.001-C-3. The parties filed a Joint Motion for Waiver of Hearing and requested the Property Tax Appeal Board consider the matter upon the briefs submitted by the parties. Separate decisions will be issued on each appeal.

The appellant, through counsel, contends the clubhouse on the subject parcel should receive the "open space" assessment as provided by section 10-155 of the Property Tax Code (35 ILCS 200/10-155). The appellant asserted that for tax year 2013 it applied for and received "open space" designation for portions of certain parcels or the entirety of real estate under eight separate Property Identification Numbers (PINs), including the subject PIN. (See Appellant's Exhibit 1.) The open space designation, however, was not granted to the clubhouse located on the subject PIN 09-22-452-058. The appellant contends the assessment ignores the substantial nexus of these improvements to conserving the open space provided by the golf course, a relationship which entitles the clubhouse to an assessment in whole or part as open space.

The appellant argues that the improvements comprising the direct golf facilities in the clubhouse should be included in their entirety as "open space" due to their substantial nexus in supporting and facilitating use of the golf course and thereby conserving it as open space. The appellant identified these areas in the clubhouse as the "Men's Locker Room," "Women's Locker Room," the hallways and restrooms servicing the locker rooms, the "19th Hole" eating facility, the "Pro Shop" and the storage areas related to these facilities. These areas were identified on Appellant's Exhibit A-3 depicting the lower level floor plan of the clubhouse. According to the Appellant's Exhibit 5 and Appellant's Exhibit 5.a, these rooms have a combined area of 9,850 square feet of building area. The appellant contends that without these facilities the golf course would not exist.

The appellant asserted that the remaining facilities at the clubhouse also bear a substantial nexus to the golf course usage, but are also used in part by services, guests and amenities not directly serving and supporting the golf course operation. The appellant explained that the SCCC had 278 total members as of December 31, 2012. Of these members, 169 or 61% were golfing members of various categories. (See Appellant's Exhibit 6.a.) The appellant further asserted that these

[1] Appellant's Exhibit 4 is identified as St. Charles Assessor General Parcel Information for the subject property and indicates the clubhouse has three-stories with a gross building area of 57,083 square feet.

golfing members and golf related activities generated 90% of the total revenue for SCCC. (See Appellant's Exhibit 5.c.)

The appellant also explained that the banquet hall in the clubhouse is subject to a somewhat different analysis since it is the one facility that is also used by non-members on a consistent basis and generates separate revenue from the membership. The appellant asserts that 36% of the revenue and activities for the banquet hall space is generated by golfing members and golf-related activities. According to the appellant by combining the banquet hall revenue generated by golfing members with the overall rate of 90% of revenue that is golf related, there is an overall percentage of golf or golf member revenue which is 84.8% of SCCC's total revenue.

Appellant's counsel contends that those facilities used exclusively for golf-related activities and support must be assessed at the rate for "Open Space" use category afforded to the golf course itself, which includes the locker rooms, the Pro Shop, the 19th Hole Grill, and the adjacent hallways. With respect to the other spaces in the clubhouse, the appellant's counsel contends that consideration must be given to the primary use, which is to enhance and facilitate golf members and other golfers use and willingness to use the golf course even though these spaces are used to a lesser extent by non-golfing members and outside parties. The appellant argues that because golf usage substantially outweighs the non-golf usage, whether measured by proportion of membership (61%) or by revenues (84.8%), SCCC clubhouse and related improvements have a substantial nexus to the golf course and conserving its open space status and should be assessed as such.

The appellant contends that if it is determined that those facilities that are not directly golf-related should be assessed as open space only in proportion to their use or relationship to the golf course and golf activity, those multi-use spaces should be considered at least 61% golf course related (based on membership) or 84.8% golf related (based on revenues); therefore, treated as open space, since those monies generated by golfing members and golf-related activities and guests provide the funds and revenue which permit the golf course open space to exist and thrive.

In conclusion, the appellant contends that the facilities and amenities of the clubhouse used specifically and directly to enhance use of the golf course should be assessed entirely as open space. The appellant argued that the remaining portions of the clubhouse should be assessed as open space in proportion to their use by golf members or with relation to the financial impact upon use of and conserving the golf course. The percentage of use is a minimum of 61%, based on the ratio of golfing members to the members of the SCCC as a whole. The percentage based on revenue was asserted to be 84.8%. Applying the latter percentage to the improvement assessment of $1,429,545, would result in a clubhouse assessment of $217,290.

The appellant's submission also included an affidavit from Ken Vranek, the Club Manager of the SCCC. Vranek stated that Appellant's Exhibits A3 and A4 were scale drawings of the lower and upper floors of the SCCC clubhouse. The affiant stated that as of December 31, 2012, SCCC had 278 dues-paying members with 169 or 61% being "golfing members." He asserted that the following lower level rooms and facilities marked on Exhibit A3 are used exclusively for golf-related activities: (a) Men's Locker Room, (b) Ladies Locker Room, (c) Pro Shop, (d) 19th Hole Men's Golf Grill, and (e) hallways and restrooms, which comprise 9,850 square feet. The following lower level rooms were asserted to be used proportionately by golfers and non-golfers

in the same ratio as the membership: (a) food storage and coolers, (b) maintenance/storage, and (c) Pub Restaurant, comprising 6,150 square feet.

With respect to the following upper level rooms and facilities marked on Appellant's Exhibit A4, Vranek asserted they are used proportionately by golfers and non-golfers in the same ratio as membership: (a) Kitchen, (b) Member Lounge, (c) Fox Chase Dining Room, (d) Charlemagne Dining Room, (e) lobby/reception, (f) main office, (g) accounting office, and (h) hallways, server stations and restrooms, which comprise 10,893 square feet.

Vranek stated the Banquet Hall has 4,868 square feet and is used by members and outside users. The affiant asserted golf members and activities account for 36% of the revenue derived from the Banquet Hall.

Based on this evidence, the appellant requested the subject parcel with 135.23 acres have an open space market value of $5,000 per acre, which is the market value for open space used by Kane County to arrive at a land assessment of $225,383 and an improvement assessment of $217,290 for a total open space assessment of $442,673.

The Kane County Board of Review submitted is "Board of Review - Notes on Appeal" disclosing the subject property had a preferential open space assessment totaling $1,671,461 with $241,916 attributable to the land and $1,429,545 attributable to the improvements. The board of review attached an Addendum to the Board of Review Notes on Appeal disclosing the assessment of the subject property prior to the preferential assessment as open space totaling $3,957,447 with $2,486,715 attributable to the land and $1,470,762 attributable to the improvements. The addendum further described the subject parcel as being used as part of a golf course and also containing the parking lot, a 3,080 square foot maintenance building, a 5,344 square foot maintenance building, a 2,455 square foot pool house, a 3,444 square foot swimming pool, and an 18,861 square foot clubhouse with dining and social facilities, as well as locker rooms.

The addendum further stated that for the 2011 through 2014 assessment period, Kane County utilized a fair cash value of land used for open space purposes of $5,000 per acre. The board of review further acknowledged the appellant timely filed an application for the preferential open space assessment for the entire parcel under appeal. It was asserted that the Supervisor of Assessments determined that .99 acres of the subject parcel, including the clubhouse, pool house and swimming pool, did not meet the definition of open space. A copy of the open space analysis prepared by the Kane County Supervisor of Assessments was also attached to the "Board of Review - Notes on Appeal."

In that analysis, the Kane County Supervisor of Assessments stated the open space application was reviewed in light of the Appellate Court's holding in Lake County Board of Review v. Illinois Property Tax Appeal Board, 2013 IL App (2d) 120429, wherein it was noted the court held that the word "conserve" as used in section 10-155 of the Property Tax Code (35 ILCS 200/10-155) is to be construed narrowly and there must be some substantial nexus between the land for which the exemption is claimed and the landscaped area it is claimed to conserve. The supervisor of assessments also quoted language wherein the court went to state that, "the improvement in question must directly relate to and thus facilitate the existence of the golf course."

The Kane County Supervisor of Assessments concluded there was not a "substantial nexus" between the clubhouse, pool house and swimming pool and preserving open space. The Kane County Supervisor of Assessments did conclude there was a "substantial nexus" between the maintenance buildings and parking lot and preserving open space. The supervisor of assessments stated the maintenance buildings and parking lots had an equalized assessed value of $41,217, which was deducted from the non-preferential improvement assessment to arrive at an open space improvement assessment of $1,429,545. The supervisor of assessments also determined that 134.24 acres met the open space statutory requirement and were assessed at a market value of $5,000 per acre or an assessment of $1,666.50 per acre while .99 acres was assessed at $18,388.78 per acre resulting in a preferential land assessment of $241,916.

The Kane County Board of Review also submitted a memorandum prepared by Assistant State's Attorney Erin M. Gaeke in opposition to the appeal of St. Charles Country Club. The board of review contends that the improvement at issue, the clubhouse, does not have a "substantial nexus" to the preservation of the golf course. The board of review cited Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 Ill App (2d) 100388 ¶18, for the proposition that the standard for review of the open space statute *vis a vis* improvements was "whether the land, improved or not … conserves as landscaped area (that is facilitates the existence of such an area)." Counsel for the board of review further explained that the court clarified its holding in a subsequent opinion when the court held the term "conserve" as it relates to the open space statute:

> must be construed narrowly, and, in turn there must be some substantial nexus between the land for which the exemption is claimed and the landscaped area it is claimed to conserve. That is to say, the improvement in question must directly relate to and thus facilitate the existence of the golf course. Lake County Board of Review v. Illinois Property Tax Appeal Board, 2013, IL App (2d) 120429 ¶10.

The board of review contends the clubhouse does not conserve a landscaped area. It notes that the clubhouse is "mixed-use" in its operations: it has non-golfing members, the banquet halls are used by non-club members on a consistent basis, and houses dining and bar facilities for golf and non-golf members. The board of review further contends the appellant's discussion of revenue generation was misplaced in that it automatically apportions all revenue generated by the proportion of members to non-members with no direct evidence that more golf members generate more revenue than non-members at the facilities. The board of review further contends the Illinois legislature intended to classify improvements with regard to their "primary" use. Lake County Board of Review v. Illinois Property Tax Appeal Board, 2013, IL App (2d) 120429 ¶15. The board of review argued that the evidence set forth by SCCC indicates that the "primary use" of the clubhouse is not primarily used to conserve open space.

The board of review further contends that a proportional assessment as argued by the SCCC is not contemplated by the open space statute. The board of review noted that the Property Tax Appeal Board had found in its decision issued in Onwentsia III, Docket No. 06-00614.001-C-3 through 06-00614.004-C-3, P. 24, that "the plain language of section 10-155 of the [Property Tax] Code does not provide for a prorated improvement assessment" for a clubhouse on a golf course where that clubhouse is not used primarily for golf specific purposes and does not directly relate to and facilitate the existence of the golf course.

On behalf of the board of review, counsel noted the appellant argues that revenues as it relates to golf and non-golf activities should be considered. The board of review stated that in Onwentsia III, the Property Tax Appeal Board recognized that the Illinois Appellate Court held that the consideration of revenue generation by the clubhouse as a decisive factor to determine whether this improvement facilitates the existence of the golf course would be too broad and lead to absurd results. (Citing Lake County Board of Review v. Illinois Property Tax Appeal Board, 2013, IL App (2d) 120429 ¶16.) The board of review contends that when removing revenue consideration, it appears the clubhouse does not bear a substantial nexus to the golf course.

Based on the foregoing evidence and argument, the board of review requested the Property Tax Appeal Board find the clubhouse is not entitled to the open space preferential assessment.

The appellant provided a reply brief contending that the board of review argues against some inferences drawn by SCCC from the undisputed facts, however, the board of review presented absolutely no contrary facts concerning the use of the disputed structures. SCCC contends that it uses documented facts and financial analysis establishing that the majority (61%) of its membership and a substantial majority (84.8%) of its revenues are derived from golf-related activities with their genesis substantially or exclusively in the clubhouse used by golfing members and other members of the Country Club.

SCCC contends the appellate court expressed with regard to the issue of open space usage, "parts of an improvement may be easily discernable and severable for the purpose of ascertaining whether a portion conserves open space while another does not." Lake County Board of Review v. Illinois Property Tax Appeal Board, 2013 IL App (2d) 120429 ¶16, 989 N.E.2d 745. The appellant argues that those facilities within the clubhouse used exclusively for golf-related activities and support, such as the men's and women's locker rooms, the Pro Shop, the 19th Hole Grill and the adjacent hallways servicing those facilities, must be assessed at the rate for the open space use category afforded to the golf course itself. With respect to the other areas in the clubhouse, the appellant contends consideration must be given to the primary use, which is to enhance and facilitate golf members and other golfers' use and willingness to use the golf course. The appellant argued that the majority of users for the mixed-use facilities are golfers and golf members of the SCCC. The appellant asserts these facilities and amenities exist to support the golf course and enhance use of the golf course. The appellant argues that the SCCC clubhouse is primarily golf-related both by revenue and usage and should qualify for the open space designation in its entirety.

Alternatively, the appellant contends that the clubhouse is reasonably subject to apportionment between golf and non-golf activities. The appellant cited Fox Valley Airport Authority v. Department of Revenue, 164 Ill.App.3d 415, 517 N.E.2d 1200 (2nd Dist. 1987) for the proposition that a taxed parcel can be divided among multiple uses or exemptions. The appellant argued that the Property Tax Appeal Board should designate that a substantial majority of the usage of the square footage supports the golf course. The appellant reiterated the point that if it is determined that those facilities not exclusively golf-related should be assessed as open space only in proportion to the use or relationship to the golf course and golf activity, the square footage should be considered at least 61% golf related, based on membership, or 84.8% based upon monies generated by golfing members and golf-related activities.

The appellant contends that by applying the revenue percentage (84.8%) to the assessed value of the clubhouse in its entirety as set by the board of review ($1,470,762), the assessed value of the clubhouse should be $223,556. Alternatively, the appellant contends that applying the revenue percentage (84.8%) to the square footage not exclusively golf-related results in 14,452 square feet and when added to the exclusively golf-related square footage (9,850) results in a total of 24,302 square feet that should be treated as open space. The appellant contends this total represents 90% of the clubhouse, which would result in an open space assessment for the clubhouse of $147,076.

Conclusion of Law

The appellant's argument is based on a contention of law that the subject property, specifically the clubhouse, should receive the preferential open space assessment as provided by section 10-155 of the Property Tax Code (Code) (35 ILCS 200/10-155). Where a contention of law is made the standard of proof is the preponderance of the evidence. (See 5 ILCS 100/10-15).

The issue in this appeal deals with application of section 10-155 of the Code, the open space statute, to the clubhouse located on the subject golf course. Section 10-155 of the Code provides in part:

> §10-155. Open space land; valuation. In all counties, in addition to valuation as otherwise permitted by law, land which is used for open space purposes and has been so used for the 3 years immediately preceding the year in which the assessment is made, upon application under Section 10-160, shall be valued on the basis of its fair cash value, estimated at the price it would bring at a fair, voluntary sale for use by the buyer for open space purposes.
>
> Land is considered used for open space purposes if it is more than 10 acres in area and: . . .
>
> (d) conserves landscaped areas, such as public or private golf courses. . .
>
> Land is not considered used for open space purposes if it is used primarily for residential purposes.
>
> If the land is improved with a water-retention dam that is operated primarily for commercial purposes, the water-retention dam is not considered to be used for open space purposes despite the fact that any resulting man-made lake may be considered to be used for open space purposes under this Section. (35 ILCS 200/10-155).

It is undisputed that the clubhouse is part of a golf course, which is one of the enumerated uses that qualify for the open space designation as set forth in section 10-155(d) of the open space statute. (35 ILCS 200/10-155(d)).

In Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, 953 N.E.2d 1010, 352 Ill.Dec. 329, (hereinafter "Onwentsia I") the court construed the word "conserve" in section 10-155(d) of the Property Tax Code to mean "to keep in a safe or sound state . . ." or "to preserve." 2011 IL App (2d) 100388 at ¶10, 953 N.E.2d at 1013. The court in construing section 10-155(d) of the Property Tax Code stated:

> [T]he plain language of the statute indicates that the legislature intended to grant open-space status not only to land that actually constitutes a landscaped area, but also to land that facilitates the existence of (*i.e.*, conserves) a landscaped area. Id.

The court concluded that the fact that a particular piece of land has some improvement upon it - including in some cases a building - does not preclude the land from being deemed open space. Onwentsia I, 2011 IL App (2d) 100388 at ¶11, 953 N.E.2d at 1014. In construing the statute, the court determined that an improvement does not defeat the open space status unless the improvement is a commercial water-retention dam or a residential use. Onwentsia I, 2011 IL App (2d) 100388 at ¶14, 953 N.E.2d at 1014-1015. The court stated that, "the requirement that land *conserve* a landscaped area is broader and more inclusive than actually *being* a landscaped area." Onwentsia I, 2011 IL App (2d) 100388 at ¶14, 953 N.E.2d at 1015.

The court in Onwentsia I ultimately held "that land, even if it contains an improvement, may be granted open-space status if it conserves landscaped areas." 2011 IL App (2d) 100388 at ¶16, 953 N.E.2d at 1015. The court explained that "[a] golf course typically requires certain appurtenances in order to function, such as parking areas, a building in which to conduct the course business (*i.e.*, a clubhouse), and perhaps a building to support the physical maintenance of the course." Id. The court reasoned that "[s]ince they facilitate the existence of the golf course, and the course conserves landscaped areas, such improvements also can be said to conserve landscaped areas." Id.

The court explained that if an improvement contributes to the nature of the land as a landscaped area, it fits within the statutory definition of open space. The court stated that, "To the extent improved land facilitates a golf course being a golf course, it conserves a landscaped area." 2011 IL App (2d) 100388 at ¶18, 953 N.E.2d at 1016. In vacating the decision of the Property Tax Appeal Board and remanding with directions, the court in Onwentsia I determined that the Property Tax Appeal Board had applied an incorrect standard and should have considered whether the land, improved or not (so long as not improved with a residence or commercial water-retention dam), conserves a landscaped area (that is, facilitates the existence of such an area). 2011 IL App (2d) 100388 at ¶18, 953 N.E.2d at 1016.

In Lake County Board of Review v. Property Tax Appeal Board, 2013 IL App (2d) 120429, 989 N.E.2d 745, 371 Ill.Dec. 155, (hereinafter "Onwentsia II") the court again vacated the decision of the Property Tax Appeal Board and remanded the matter with directions. In Onwentsia II the court held the Property Tax Appeal Board's application of the relevant portion of section 10-155 of the Code was overbroad. In construing section 10-155(d) of the Code in Onwentsia II the court stated:

> Nothing in the statute indicates that the legislature intended to create an enormous tax shelter whereby any parcel of property associated in some way with a golf course would escape taxation. Moreover, it is axiomatic that we are to construe tax exemptions "narrowly and strictly in favor of taxation" (citation omitted) and the burden to prove a tax exemption lies with the taxpayer (citation omitted). **Accordingly, we hold that "conserve" as it is used in section 10-155 of the Code (citation omitted) must be construed narrowly, and in turn, there must be some substantial nexus between the land for which the exemption is claimed and the landscaped area it is claimed to conserve. That is to say, the improvement in question must directly relate to and thus facilitate the existence of the golf course.** Onwentsia II, 2013 IL App 2d 120429 ¶10, 989 N.E.2d at 750 (Emphasis added).

The court indicated whether such improvements "conserve" a landscaped area depend upon what portions of the club they serve. Onwentsia II, 2013 IL App 2d 120429 ¶12, 989 N.E.2d at 750. The court further noted that in some cases, different parts of an improvement may be easily discernible and severable for the purpose of ascertaining whether a portion conserves open space while another does not. Onwentsia II, 2013 IL App 2d 120429 ¶14, 989 N.E.2d at 751.

The record indicates that the clubhouse in question has a footprint of 18,861 square feet with a total building area for both floors of 37,722 square feet. Attached to the clubhouse is a canopy with 1,200 square feet and a 500 square foot addition that was added in 2009. (See Appellant's Exhibit 4). The assessment information provided by the appellant indicates that the clubhouse and attached canopy had a market ("appraised") value of $3,516,789 and the addition had a market ("appraised") value of $47,971 for a combined value for the clubhouse of $3,564,760 (See Appellant's Exhibit 4, pages 2 and 3). The clubhouse, attached canopy, and the addition have an assessment of $1,188,135 using the statutory level of assessments of 33 1/3% of fair cash value. (35 ILCS 200/9-145.)

The appellant provided an affidavit from Ken Vranek, Club Manager of SCCC, asserting that certain areas of the lower level of the clubhouse are used exclusively for golf related activities, including the men's locker room with 4,316 square feet; ladies' locker room with 2,922 square feet, Pro Shop with 1,188 square feet, 19th Hole Men's Golf Grill with 1,030 square feet; and associated hallways and restrooms with 394 square feet, for a total area of 9,850 square feet. These areas were further identified on Appellant's Exhibit A-3. The Property Tax Appeal Board finds this affidavit was not refuted with any evidence from the Kane County Board of Review. The Board finds this area within the clubhouse has a direct and substantial nexus to the golf course landscaped areas as the use of these areas corresponds with the use of the course itself, which is composed of the tees, fairways and greens. The locker rooms provide an area for the players to change clothes as they prepare to play golf, the Pro Shop provides a location to pay green fees as well as purchase golf clubs, apparel and gear used by golfers on the golf course, and the 19th Hole Men's Golf Grill provides a location for golfers to obtain food and refreshments while golfing. The Board finds these areas of the clubhouse directly serve and facilitate the use of the landscaped areas of the golf club. The area directly related to the golfing activities comprises approximately 26% of the total building area (9,850 ÷ 38,222). Using this percentage, the Board finds the subject's open space improvement assessment should be reduced by $308,915 ($1,188,135 x .26) to arrive at a revised open space assessment for the subject improvement of $1,120,630.

The Board further finds that based on the conclusion that 26% of the clubhouse is entitled to an open space designation also requires an adjustment to the subject's land assessment. Accordingly, the Board finds that 134.5 acres of the subject parcel is to be valued at the open space rate of $5,000 per acre or an assessment of $1,666.50 per acre for an assessment of $224,144. The remaining .73 acres is to be assessed at $18,388.78 per acre or $13,424. The Property Tax Appeal Board finds the revised land assessment is $237,568.

The appellant's argument that the entire clubhouse should be assessed as open space or, alternatively, that a portion of the clubhouse should be assessed proportionately based in relation to the number of golf members to the total membership of the SCCC or in relation to the revenue generated by golf members and related activities is misplaced. The remaining portions of the clubhouse include such items as food storage and coolers, maintenance/storage, kitchen, members

lounge, dining areas, lobby reception area, office area, hallways, service stations and restrooms. Although these areas of the clubhouse are used by golf members for social activities, the evidence did not demonstrate that these areas within the clubhouse directly relate to and thus facilitate the existence of the golf course. The relationship between these areas of the clubhouse and the landscaped areas is less direct and more tenuous than those areas actually devoted to the use of the golf course itself. The Board finds that there is no showing by the appellant of a substantial nexus between the remaining portion of the clubhouse and the conserving or facilitating of the landscaped areas comprising the golf course.

The Board also gives little weight to the appellant's argument that the revenue generated in the clubhouse from golf members and related activities should be used as the basis to demonstrate a substantial nexus exists between the clubhouse and the landscaped area so as to allow the clubhouse to be assessed as open space. The court in Onwentsia II held the consideration of revenue generation by the clubhouse as a decisive factor to determine whether this improvement facilitates the existence of the golf course would be too broad and lead to absurd results. Onwentsia II, 2013 IL App 2d 120429 ¶16, 989 N.E.2d at 751. Clearly, the revenue generated by the activities within the clubhouse are of benefit to the SCCC and are used in part to maintain the property, including the golf course. However, in light of the Appellate Court's findings in Onwentsia II, the Property Tax Appeal Board declines to use the revenues generated at the clubhouse from golf members and related activities as a basis to determine whether a substantial nexus exists between the clubhouse and the landscaped areas it purportedly conserves so as to confer the preferential open space designation either entirely upon the clubhouse or proportionally upon the clubhouse based upon revenues.

In conclusion, the Board finds a reduction in the subject property's open space assessment is justified.

APPELLANT:	**Woodbridge Bridges SB1 LLC**
DOCKET NUMBER:	**14-03408.001-C-3 thru 14-03408.002-C-3**
DATE DECIDED:	**May, 2018**
COUNTY:	**DuPage**
RESULT:	**Reduction**

The subject properties consist of two vacant parcels which function as the common area for the Main Street at Seven Bridges retail property and the common area for the Northwest Quadrant of Main Street at Seven Bridges. The two subject sites contain approximately 660,144 square feet or 15.155 acres of land area. The Main Street Common Area ("MSCA") referred to herein as parcel "010" contains 546,791 square feet or 12.553-acres of land area and was developed with pad sites containing seven retail buildings and one mixed-use building. MSCA contains 17 pad sites (approximately the same size as the buildings built on them) with four pad sites remaining available for development. This parcel functions as the common area for the developed/undeveloped pad sites and is improved with asphalt-paved parking and driveways, decorative brick pavers, concrete walkways, lighting standards and landscaping.

The Northwest Quadrant Common Area ("NWQCA") contains 113,353 square feet or 2.602-acres of land area and is the common area for the northwest quadrant of Main Street at Seven Bridges. NWQCA referred to herein as parcel "018" is vacant, undeveloped, contains minimal site improvements and is platted for five pad sites.

The Seven Bridges retail property is part of a larger 400-acre master planned mixed-use development that includes single and multi-unit residences, a golf course, an 18-screen Cinemark IMAX theater, ice skating arena, health and fitness center, banquet facility and various other commercial properties. The development is part of the Seven Bridges Regional Planned Unit Development ("Seven Bridges RPUD") which governs the development of the properties. The Seven Bridges RPUD ordinance approved a conceptual development plan for the subject properties; a table of use and bulk regulations for the subject properties along with a number of parameters governing the development of the properties. The original annexation agreement has been amended nine times between 1988 and 2007. The properties are located in Woodridge, Lisle Township, DuPage County, Illinois.

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. The appellant is not contesting the assessments of the building pads, but rather, the assessments placed on the common areas. In support of the overvaluation argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraisers Sarah McGurn and Michael S. MaRous of MaRous & Company. Both appraisers are Members of the Appraisal Institute ("MAI") and have the MAI designation. The appraisers estimated the fee simple interest value for the property known as MSCA of $820,000 as of January 1, 2013 and January 1, 2014. (Appellant's Ex. 1). Further, the appraisers estimated the fee simple interest value for the property known as NWQCA of $57,000 as of January 1, 2013 and January 1, 2014. (Appellant's Ex. 1).

As part of appellant's argument, counsel argued that assessing real property in Illinois requires the assessor to assess the land, buildings and all rights appurtenant thereto. Counsel argued that with

respect to the building pads, one of the rights appurtenant thereto is the right to use the common areas in common with the other owners in the development. Counsel further argued that the assessor has an obligation to assess that right, and has done so, when he assessed the building pads at, near or above what they trade for. As a result, counsel argued the assessor also assessed the common areas at nearly $6,000,000. It was argued that the values of the common areas are included in the values of the building pads and are being assessed a second time to the owner of the common areas, effectively taxing them twice.

Counsel for the board of review argued that MSCA and NWQCA serve as parking lots for the improved portions of the development and that the development could not function without the parking lots, which are used to support the occupied properties, and have value. Counsel further argued that all tenants have the right to use the parking lots to attract people to their businesses and the parking lots add value to the complex as a whole.

As its first witness, appellant's counsel called David Galowich, president of Madison Realty Group, Inc. Galowich stated that Madison Realty Group, Inc. primarily acts as real estate developers, brokers and real estate consultants. Galowich testified that Madison Realty Group was engaged on behalf of property owners to help them entitle and develop land along with consulting and brokerage for office and retail. In the last 10 years, his firm has been involved in consulting with owners of distressed debt to reposition properties and figure out how to best recover some value on the distressed property. Galowich is licensed to practice law in the State of Illinois and is also licensed by the State of Illinois as a managing real estate broker. His practice of law involved real estate development and related activities.

Galowich testified that Seven Bridges, the largest development which encompasses the subject parcels under appeal, was a several hundred-acre development which contained a golf course. The development was purchased by a joint venture with an intent to develop the property. The development was annexed to the Village of Woodridge, which created a regional planned unit development for the site. It was intended to provide a mix of uses. The golf course was reconfigured, and the original annexation agreement envisioned a wide variety of improvements, including residential, multi-family residential, commercial, office and other uses.

Galowich was contacted by Starwood Capital because he was familiar with several assets that were in a pool of distressed debt that Starwood Capital was purchasing. He was asked to consult Starwood Capital to evaluate the subject property and figure out why it was in distress and what could be done to remedy the problem along with adding value with an intent of trying to resurrect the failed development. Galowich testified that based on his interviews with the Village of Woodridge, the developer and all others involved, the Village of Woodridge pushed hard for some uses that the Village of Woodridge wanted to see; they wanted to create a "Downtown Woodridge" on the subject site and wanted to create a Main Street development. The development was to contain a hotel and walkable retail.

As of the valuation dates in question, Galowich testified that Woodbridge Bridges SB1, LLC, controlled by a joint venture of Starwood Capital and Burl Real Estate Services owned the common areas at MSCA. Galowich went on to explain that the planned unit development ordinance that applied to the subject property allowed a mix of uses, including single-tenant and multi-tenant restaurants, multi-tenant retail buildings, multi-tenant office buildings, mixed use retail and

residential units, a 7-12 story condominium building in the northwest quadrant along with a hotel, bank and single-story retail. The hotel was required to be built and operating before the condominium could be built. Galowich stated the subject property is accessed from two access points off Route 53. Development for MSCA began in 2004. As of the valuation dates in question, 8 of the 17 building pads were improved with buildings.

From his review of the declaration of covenants, Galowich stated the development was intended to be owned by multiple owners. As of January 1, 2013, there were five distinct property owners within MSCA: the theater, Buffalo Wild Wings, the Suparossa building, the Tilted Kilt building and Woodbridge Bridges SB1, LLC. Galowich testified that when title was conveyed for the building pads, the new owner received a deed for that lot within the MSCA. He stated that the recorded declaration of covenants, conditions and restrictions of record gave the new owner the right to utilize the access and parking in the common areas. Galowich stated that once the pads were improved, it was highly unlikely that the subject could be converted to a single ownership.

The William Harris entity initially managed the common areas. After a foreclosure in 2011, a receiver was put in place, wherein it was decided to bring in a third party, Waveland Property Management, to manage the common areas and act as an association manager. The property manager was responsible for collecting assessments from all the owners and using that money to maintain the common areas, including landscaping, streetlights and signage. The property manager was required to account back to the owners.

Galowich testified that the subject is zoned within the Village of Woodridge "ORI" with a planned unit development, and a regional planned unit development as well. Galowich explained that a regional planned unit development is when you are trying to develop a mixed-use parcel and you have a variety of uses that do not fit cleanly into one zoning classification, you can contractually enter into an agreement with the zoning authority (the Village of Woodridge) to get some relief from the strict interpretation of the zoning and be granted additional rights. The planned unit development is another form of zoning, and in this instance set forth the uses of density, roads, parking requirements, setbacks, various uses within a parcel and an approved building site plan along with other development regulations (Appellant's Exhibit T-5). In dealing with the Village of Woodridge, Galowich testified that parking was important to the Village to make sure that with the density of the buildings and multiple owners, they wanted to be sure they all had adequate access to parking. Moreover, the proximity of parking relative to the buildings and building pad owners was very important. Galowich stated the theater owns its own parking lot, however, as part of the planned unit development, the owners at MSCA were permitted to share parking arrangements. For example, an office building would need parking during the day, but a restaurant would primarily need parking at night, so they would share a parking lot. Because of the shared parking, the Village required an association to own and manage the parking areas. Galowich stated unless the planned unit development was amended, it was not possible to build other parking or construct a building outside of the building pads. No buildings could be built within the common areas. The planned unit development was amended in 2007.

Galowich further testified that he approached the Village of Woodridge prior to the valuation date regarding the northwest quadrant, which was raw land. He stated that the uses that were dictated by the planned unit development for the northwest quadrant were not economically viable uses. Galowich stated the Village wanted a hotel, but from his conversations with multiple real estate

brokers and potential hotel flags, they could not find any users. Another consideration allowed by the village was a grocery store. Again, Galowich could not find any users interested in putting a grocery store there because the northwest quadrant has no sight line to Route 53 and the nearest entrance is not signalized. Galowich testified that the Village of Woodridge rejected a multi-family residential rental development and an assisted-living facility for the northwest quadrant.

Galowich testified that the building pad owners were granted an easement within the planned unit development to use and enjoy the common areas for their intended purposes, including, but not limited to, passage, parking of vehicles, driveway areas, pedestrians to be able to walk over and across the parking and sidewalk areas, et cetera. Galowich considered this a burden on the common areas. The planned unit development allowed the property manager to modify the parking areas if there was reasonable alternative parking. However, with respect to the Suparossa parcel and the Signature Grill parcel, those two parcel owners had to approve if their rights were restricted or hindered. An amended declaration also granted Buffalo Wild Wings additional restrictions wherein the sight lines and parking for that parcel could not be altered. As of January 1, 2013, and January 1, 2014, Woodbridge Bridges SB1, LLC owned the common areas. An association was given the common areas for free and took over control and maintenance of MSCA and NWQCA in the fall of 2016.

Galowich further testified that no parking could be built on the building pads and none of the building pads have direct access to public roads without crossing the common areas. Galowich stated that the common areas at MSCA and NWQCA are burdened by zoning, the planned unit development, easements and restrictions of record that run with the land in the event of transfer. Galowich testified that he attempted to market the building pads for sale, however, he never attempted to market the common areas. Galowich stated it was a failed development that was broken into pieces and had entitlements that were not usable. Galowich opined that the only economically viable solution was to sell the development in pieces, and, as such, the common areas had no value. He stated that the declaration did not allow the owner of the common areas to mark up the charges for the maintenance. In addition, the owner just had to pay the costs of the maintenance, there was no opportunity to create a revenue stream off the parking lots; the owner is simply reimbursed for the costs of maintenance.

On cross-examination, Galowich testified that if the pad sites did not have access to the common area parking, it would negatively impact the value of the pad sites. He stated the association that was formed to manage the common areas was a not-for profit and was not entitled to collect fees above the expenses of maintaining the parking lots. Galowich made no attempts to sell the common areas, however, they did contact brokers regarding Seven Bridges which included marketing of the Northwest Quadrant in its entirety, which was vacant land. No attempt was made to market the common areas associated with the individual improved pad sites because of the shared parking arrangements and would not have been allowed to be subdivided by the village. Galowich testified that in 2013 and 2014 the common areas were still owned by the Woodbridge Bridges SB1, LLC. When inquiry concerned the buildable/non-buildable aspects of the common areas, Galowich testified that it was virtually impossible to get the changes needed to carve out a building pad and build.

The next witness called by appellant's counsel was Michael S. MaRous, owner of MaRous & Company. MaRous is a real estate appraiser and consultant. MaRous is a Member of the Appraisal

Institute ("MAI") and has the MAI and Senior Residential Appraiser ("SRA") designations. He was invited to membership to the Counselors of Real Estate 19 years ago, which is a consulting designation. He has appraised property for over 40 years.

MaRous testified he inspected the subject property on multiple occasions in the spring of 2014, then in 2016 and 2017. The purpose of his appraisal report was to estimate the fair market value of the subject properties for tax appeal purposes. Initially, MaRous requested all documents impacting the value of the subject property plats, the PUD development, multiple amendments, easements and Village of Woodridge ordinances/resolutions and planning commission minutes along with a retail market report (feasibility analysis) prepared by Valerie Kretchmer for the Village of Woodridge published in July 2013. He also reviewed a hotel feasibility analysis prepared by T.R. Mandigo & Company around the same time frame. MaRous also reviewed market research, comparable research, demographic research, mapping programs, websites, traffic information along with interviews with brokers, developers, lending institutions and his personal files of retail properties throughout the Midwest.

MaRous described the subject properties as the larger parcel being "010" and the smaller parcel "018." He stated basically the large parcel provides roads, driveways, parking for the office development, and parcel "018" the smaller parcel, contained four pads, which were not included, but were dedicated for driveways, and potential parking areas for future development. MaRous testified that at the time of valuation, there were four [sic] pieces of ownership, the improved parcels, the main parcel for the common areas and the developer. The larger parcel contains asphalt paving, landscaped islands, curb, gutters, trees, signs, walkways and sidewalks. The Northwest Quadrant is an open field and contains no improvements. MaRous stated most of the building owners utilize State Route 53 and access the subject on Mulligan or Woodridge Drive over the common areas. MaRous testified that traditionally, if exposure and marketing time are over a year, then it's a red flag that the value is too high. However, as an additional caveat, MaRous testified that due to the restrictions that applied to the subject common areas, it was questionable if there was any market and if the marketing time was even relevant.

Regarding the Northwest Quadrant, MaRous considered the physical characteristics which included utilities, however, there were legal restrictions in place. This parcel contained undeveloped pads, but the Village of Woodridge required retail, a hotel and a bank. MaRous stated that after hundreds of solicitations with no demand from various real estate brokers, Valerie Kretchmer was commissioned and hired by the Village to consider the feasibility of supply and demand in the competitive market after the Northwest Quadrant had been sitting vacant for 9-10 years. MaRous stated he basically found retail and office on the Northwest Quadrant in mid-2013 was not feasible. Ted Mandigo, a real estate professional, was then hired by the Village to prepare an analysis. Mandigo's analysis stated the subject Northwest Quadrant was not a good site as there were better more competitive sites in DuPage County, therefore, there was no market for the Northwest Quadrant property. MaRous testified that at the time of valuation, the zoning and PUD agreement required a hotel, condominium, bank and retail be built on the Northwest Quadrant with the hotel being built prior to the condominium.

MaRous described the subject as an "in-between" location. He stated it has good demographics, a nice golf course and a variety of uses, however, it has no anchor. The retail corridors are Oakbrook to the north, Yorktown to the west with main street DuPage to the south. In addition,

once Interstate 355 opened to Interstate 80 there was significant development with a mall, Bass Pro Shop and Meijer's. He stated the subject falls "in-between" with no anchor. MaRous testified that the building pad owners have rights for vehicular access, parking, pedestrian traffic for workers and clients. These rights are conveyed by deed and are stated in the RPUD. MaRous testified that the real estate market was getting better in 2013 and 2014, however, the retail market was basically being overcome by "e-commerce" and was still soft. He stated that retail in the very best locations were doing well, but the "in-betweens" and secondary locations were struggling.

MaRous testified Main Street at Seven Bridges was an attractive asset in a good location, but it is a failed retail development, having gone through foreclosure and with having vacancy of approximately 67%. The restaurants appeared to be doing better with revenue of $322 per square foot, however the retailers had revenue of $122 per square foot. In comparison, MaRous stated Apple has revenue of $5,000 per square foot in Oak Brook Mall and the retailers on North Michigan Avenue have revenue of $2,000 per square foot, which makes the subject revenue figures appear paltry. MaRous stated the occupancy costs for DuPage County was $7 per square foot, which were on the high-end for retail.

In 2013 and 2014 the zoning at Main Street at Seven Bridges was office, research and light industrial, also providing restrictions specific to the subject development. Further the subject has bulk restrictions regarding setbacks, making it harder to develop. However, MaRous testified the subject was sold as building pads under "Max Building Coverage" meaning they can sit on 100% of the lot with minimum landscaped area of 0%. MaRous stated that they could concentrate the value of the asset on the building pad because they had the benefit of the common area for their parking and other supportive services.

The appraisal MaRous prepared is for the common areas, not the pad sites. MaRous testified that based on the zoning documents, the common areas are not capable of being developed with buildings and can only be used to support the current commercial development. MaRous stated, therefore, there is no economic return to the Main Street common area subject property for its legally permissible use, as all economic value has been transferred to the pad sites.

MaRous testified that highest and best use is the foundation for an appraiser to determine, based on feasibility and legality, what the highest economic return is that a property could support. It sets the foundation for what can be done, what the market is, establishes market participants, what the demand is and what comparables are utilized. The first step in a highest and best use analysis is to look at what is physically possible, road access and utilities. Then shape and topography are examined for construction of buildings. Legality is examined based on zoning, restrictive easements or covenants and open-space restrictions.

Next, financial feasibility is examined. MaRous stated the highest economic return is examined which he found was stripped because it has all gone to the pad site, so there really is not any economic return in a conventional situation that would create the most value. Looking at the Northwest Quadrant, MaRous testified there are no improvements there, and with the restrictions in place on uses, it was not feasible to build a hotel, retail office or a bank based on its inferior location. Because of this, he found nothing would provide economic return for this parcel. He found both parcels, as if vacant and improved, their highest and best use was to provide support for the pad sites.

MaRous considered all three traditional approaches to value in his report. However, for the Northwest Quadrant, which is vacant, only the sales comparison approach was used. MaRous next discussed why he considered open-space in his analysis regarding the subject property. He stated that since the economic value of the subject has been transferred to the pad sites, in his opinion, it has some similarity to open-space; the subject is land that cannot support physical building improvements. MaRous described open-space as land that is open and clear of building improvements, and most of the time, site improvements. MaRous testified that the subject property does not meet the definition requirements to be considered open-space. MaRous stated that under the statute, the County must determine what they are going to assess open-space land at, and DuPage County assesses open-space land at $0.11 per square foot. MaRous testified that the subject has attributes similar to open-space, such as zoning easements not allowing it to be developed. MaRous stated the perfect comparable to the subject property would be well-located suburban Chicago property that had site improvements on them with irregular shapes, where the economic value through deed restrictions or zoning had been transferred to pad sites within similar market conditions and arm's-length transactions.

MaRous utilized comparable sales that had development potential and then made a significant downward adjustment because of the subject's non-development potential. MaRous utilized five commercial land sales. Sale #1, which was also utilized by Renzi in his appraisal report for the board of review, is a 3.7-acre parcel in Woodridge, rectangular in shape near 75th Street, with good frontage, good shape and B2 zoning. This parcel sold in December 2013 for $3.42 per square foot of land area and could accommodate a one-story office building. Sale #2 is located at the western edge of DuPage near Winfield/West Chicago. It is a 21-acre parcel, irregular in shape with minimal frontage and encumbered 10% by a fresh water pond. This parcel is zoned residential, and was purchased for mixed-use development of retail, multifamily with a lot of open land. Comparable #2 sold in April 2013 for $1.30 per square foot of land area. Land sale #3, is located in Glendale Heights in a more intensive commercial retail area. Sale #3 is a 3-acre site with good frontage, good shape and commercial zoning that sold in December 2012 for $4.56 per square foot of land area. Land sale #4, located in Warrenville, contains 4.8-acres near the Interstate with good frontage and good exposure. The site was acquired for an office, medical or strip shopping center and sold in June of 2012 for $2.76 per square foot of land area. Land sale #5, located in Bolingbrook, was in a prime commercial area. This sale was 11-acres, is rectangular in shape with retail zoning and sold in August 2008 for $5.74 per square foot of land area. The land sales had a unit range from $1.30 to $5.74 per square foot of land area before adjustments.

MaRous testified that he applied a slight adjustment downward for sale #5 for property rights with all others being equal to the subject. Locations were generally equal except sale #5 which was highly superior to the subject. Visibility was equal except for the subject parcel "018" which is inferior to the comparables. MaRous further testified that all comparable land sales required a significant downward adjustment for development potential. Various adjustments were made to the comparables as compared to the subject's larger parcel of 12.5-acres and the smaller parcel of 2.5-acres.

MaRous also examined DuPage County Forest Preserve District acquisitions for open space which could not be developed. He examined six sales. The sales were in Bartlett, Addison, Darien, Downers Grove and Warrenville. The sales ranged in size from 2.7-acres to 41.02-acres or from

117,612 to 1,794,672 square feet of land area and sold from May 2008 to July 2012 for prices ranging from $121,359 to $257,339 per acre or from $2.40 to $5.91 per square foot of land area.

MaRous then examined open space land sales in the collar counties. He examined six land sales located in Lake County, McHenry County and Will County. These sales ranged in size from 63.72-acres to 145-acres or from 2,775,687 to 6,316,200 square feet of land area and sold from January 2006 to March 2007 from prices ranging from $12,912.74 to $100,000 per acre or from $0.30 to $2.30 per square foot of land area. MaRous testified that these sales were purchased based on their highest and best use, which was for development potential, however, they reflect the lower economic value.

In conclusion, MaRous, noting that DuPage County values open space at $4,650 per acre or $0.11 per square foot in 2013 and after looking at the above open space land sales, collectively the final land value estimate was based on the market data found in the three land data sets.

For the MSCA (12.553-acres or 546,791 square feet of land area) and the NWQCA (2.602-acres or 113,352 square feet of land area), after analyzing the comparable land sales in relation to the subject property for factors such as time, location, size, development potential, and other factors of consideration, MaRous estimated a unit land value of $0.50 per square foot of land area for the MSCA subject property of $273,396 or $273,000, rounded, and for the NWQCA of $56,676 or $57,000, rounded.

In his site improvement value conclusions, MaRous found the MSCA subject property was improved with site improvements serving as support for common area to the existing improvements. The site improvements included asphalt-paved driveways, concrete curbs and gutters, freestanding lighting with lawn and perimeter landscaping. Replacement cost new of the site improvements was estimated to be $3.50 per square foot, entrepreneurial profit of 2% and based on 546,791 square feet, it came out to a replacement cost new of $1,913,769, plus entrepreneurial profit of $38,275 for a total replacement cost new estimate for the MSCA of $1,952,044.

The site improvements were considered to be in average condition and were at least 9 years old. Physical deterioration resulting from normal wear and tear and the overall age for purposes of estimating physical deterioration was 9 years. Useful life for the site improvements was 15 years which yielded a 60% depreciation attributed to physical deterioration resulting in an estimated replacement cost new less depreciation of $1,171,226. Functional obsolescence due to design fault or lack of amenities and external obsolescence was attributed to the economic recession beginning in late 2007 observed in the industrial, retail and office sectors of the real estate market which led to lower rents, higher vacancy rates, higher expense ratios, increased overall capitalization rates and scarcity of market acquisitions. MaRous' report depicts the subject has a high turnover among the small stores and restaurants in the development due to a combination of high occupancy costs at the center and lack of visibility along with superior locations of competing properties, and because of this, MaRous estimated a 30% depreciation due to both functional and external obsolescence.

Based on the estimated cost new of the subject property and a modified age-life method of estimating depreciation, the total dollar amount attributed to all sources of depreciation for the

subject property was $1,405,472 which amounts to a total depreciation estimate of approximately 72%. MaRous noted in his report that in the modified economic age-life method of estimating depreciation, the functional and external obsolescence is applied to the on-going subtotal calculations developed within the cost approach and not applied to the property's estimated cost new. After subtracting depreciation from the estimated replacement cost new indicated a depreciated value of the MSCA subject property to be $547,000 or $1.00 per square foot of land area.

In conclusion, after adding the value of the depreciated site improvements of $547,000 to the value of the land, MaRous estimated the overall retrospective market value of the MSCA subject property to be $820,000 (rounded) or approximately $1.50 per square foot of land area as of January 1, 2013 and January 1, 2014.

As for the NWQCA, which he testified is currently vacant undeveloped land with no value added for site improvements, he estimated the overall retrospective value as of January 1, 2013 and January 1, 2014 to be $57,000 or approximately $0.50 per square foot of land area.

Testimony then turned to the differences and/or similarities between the subject property and the Oak Brook Mall which was the subject matter in the case of County of DuPage v. Property Tax Appeal Board, 660 N.E.2d 985 (1995). MaRous testified that he was involved in Oak Brook Mall as the consultant/appraiser for the County of DuPage in the appraisal of the Saks Fifth Avenue store. MaRous stated Oak Brook Mall is an extremely successful regional shopping center with major anchors probably over 40 years old and continues to adapt to the demands of the modern marketplace. Oak Brook Mall has experienced continual renovation, modernization and additions over the last 30-plus years. In contrast, the subject is basically a series of pad restaurants and small retail uses with no anchor. MaRous would characterize Oak Brook Mall as an open center as opposed to an enclosed mall like Woodfield. MaRous stated the anchors of Oak Brook Mall are in the corners within inline stores for smaller retailers in-between the anchors. Oak Brook also has sidewalks, walking paths and landscaping with parking along the periphery of the center. Oak Brook Mall also has outlots, office buildings and a hotel.

It was MaRous' understanding JMB Corporation owned most of the mall tracts or basically the entire mall except for Sears/Marshall Fields or Macy's and Neiman Marcus. He stated Neiman Marcus was basically on a pad site with Macy's and Sears having a large field of parking beside their anchor stores. The difference being, Sears and Marshall Fields owned a large parcel upon which there was the store and parking, whereas, Neiman Marcus only owned a building pad with Saks Fifth Avenue having a leasehold. Nieman Marcus and Saks Fifth Avenue built their buildings, but, the owner of the shopping center owned the pad site.

MaRous agreed with the 2nd District Appellate Court, that there was a symbiotic relationship between Saks Fifth Avenue and Nieman Marcus on the one hand and the rest of the Oak Brook Mall in that the anchors create value for the small shop space and midsize shop space and increase the value of the rents, which increases the occupancy and value of the mall. Likewise, the small shop space and restaurants and entertainment areas provide another draw to the shopping center.

At Main Street Commons, MaRous stated the common areas and parking lots are 100% located within the two lots, except for the Movie theater, which has its own. All the parking areas are

within the common areas which is different than that of Oak Brook Mall. At Oak Brook Mall the owner of the shopping center had control of the parking lots to make additions or redevelopment. For example, Nordstrom's built a state-of-the-art five level parking deck on a former parking area in the northeast corner of the shopping center along with other various building additions in places where only parking existed. At Oak Brook Mall many lots owned by JMB contained buildings, common areas and parking all within the same parcel index numbers. In contrast, the subject has building pads for buildings separate from the lots that contain common areas and parking, thereby creating a significant difference from a design standpoint relative to location of building, parking and pads being distinct from Oak Brook Mall.

During cross-examination, MaRous testified the pad sites probably could not function without the parking lots. If parcel "010" was not improved with any parking whatsoever, it would virtually have no parking. MaRous agreed that neither parcel number "010" nor "018" are open-space land under the strict definition. MaRous further agreed parcel "010" is improved with a parking lot and parcel "018" is vacant land and has no current use, except it is being held for development. MaRous testified that neither Saks Fifth Avenue nor Neiman Marcus could function without access to the parking at Oak Brook Mall. MaRous agreed the owners of the pad sites on parcel "010" have the right to let customers park on parcel "010." In fact, the owners contribute to the upkeep and maintenance of parcel "010" which includes payments of property taxes. MaRous also agreed that the entity that owns five of the eight buildings on Main Street Commons also owns the common area whose tenants have the right to use the parking. MaRous' basis for the statement that there is no economic return to parcel "010" in developing the highest and best use is that the parking spaces are not effectively rented based on market rates, cannot be rented, and the space cannot be improved with an economic commercial building like what has been built on the remaining areas of the site. MaRous testified that the pad sites are owned individually and have improvements but need parcel "010" for their parking. He agreed the pad sites will not be able to function without access to the parking on parcel "010."

MaRous further agreed that his highest and best use estimate drove his selection of comparables. MaRous admitted that in relation to the comparables he selected for parcel "018" at least two of them had rental apartment use. Further, the first five land sales were significantly smaller than the subject property. Three of the sales were like the subject's smaller parcel, however, they were smaller than the larger parcel. Only land sale #4 was zoned like the subject. MaRous testified that his client, in preparation of the appraisal report, was Main Street at Seven Bridges, the owner of the subject parcels under appeal. The pad site owners are responsible for a percentage of the maintenance costs of the common areas on parcel "010" and "018" based on their proportionate share of ownership. MaRous testified that the economic value of the subject parcels is restricted in value because of the RPUDs, thereby making this an important consideration when selecting comparable sales. MaRous agreed only one of his comparable sales was restricted with a PUD. He stated the other four should be considered because they have commercial zoning and when they are bought, then they must go in for a development plan which is amended with a PUD after the land acquisition. MaRous further agreed, that when looking at a comparable that does not have a PUD restriction like the subject, an appraiser could make a downward adjustment if that were appropriate, however, he did not.

In his appraisal report, MaRous states the subject should be held in the interim basis for further development of retail and office. The highest and best use as vacant in the interim is for open

space. He agreed that as of January 1, 2013 and January 1, 2014, the status or characteristic of the subject parcel "018" was not open space. MaRous testified it was only a hypothetical as vacant; the parcel was not vacant. When questioned about his estimation of highest and best use as improved, he found the subject's highest and best use as improved was as currently improved as common area for the development with parking, driveways and open space.

During redirect, MaRous testified that the obligations of the developer were to maintain the subject properties and charge back to the owners for the costs without profit.

This completed the appellant's case-in-chief, wherein a reduction in the assessments for the subject parcels was requested to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessments of the subject properties were disclosed. Parcel "018" had a 2014 land assessment of $285,640 with an improvement assessment of $0. Parcel "010" had a 2014 land assessment of $1,620,960 and an improvement assessment of $50,970 for a total 2014 assessment for the two subject parcels of $1,957,570. The subject's assessments reflect an estimated market value of $5,873,297 or approximately $8.90 per square foot of land area, including improvements, when applying DuPage County's 2014 three-year median level of assessments of 33.33%.

In support of the subject's assessment, the board of review submitted an appraisal of the subject properties.[1] The appraisal report conveys an estimated market value for parcel "010" of $6,950,000 and for parcel "018" of $825,000 as of January 1, 2013. (Board of Review Exhibit 1). The appraisal was prepared by Neil J. Renzi, John K. Yelinek and Jason A. VanDevelde of Renzi & Associates, Inc. Renzi holds the MAI designation from the Appraisal Institute and is an Illinois State Certified General Real Estate Appraiser. He is also licensed in Wisconsin and Michigan and has been appraising real estate for over 40 years. A list of Renzi's professional qualifications was contained in the addendum of the appraisal report. Renzi was accepted as an expert witness.

As its first witness the board of review through counsel called Neil J. Renzi to testify before the Property Tax Appeal Board. Renzi testified that he prepared his appraisal report for Lisle Township Assessor, John Trowbridge. He inspected the subject properties on January 17, 2015. He drove through the subject properties and inspected the commercial real estate as well as the vacant land on the Northwest Quadrant. After walking around the properties, he drove the environment noting the uses of the surrounding properties to identify the trends in the area. Renzi testified there would be no significant difference in value between January 1, 2013 and January 1, 2014.

Renzi defined property rights as used in his report as fee simple, subject to the declaration of covenants. Renzi then briefly described the subject properties under appeal as the subject itself within Main Street at Seven Bridges which included 12.55-acres designated as parcel "010," which included eight improved pads and four unimproved pads. He described the common area for those pads as asphalt-paved parking, light standards and two monument display signs. The other parcel

[1] The Renzi appraisal report utilized in the 2013 appeal was also used as evidence by the board of review in this 2014 appeal. Renzi did not estimate a value for the subject parcels as of January 1, 2014, other than testimony that the subject's values remained the same in 2013 and 2014.

"018" was described as the Northwest Quadrant platted for five pads, which at the time was undeveloped other than having approximately 13,700 square feet of paving and nine light standards.

Parcel "010" was described as having 414,000 square feet of asphalt paving, approximately a hundred light standards, two monument display signs and parking that serves eight improved pads and the undeveloped pad sites. Renzi testified the highest and best use for both subject parcels was for continued use as support for the existing improved pads as well as the pads that have not been developed. Renzi based this judgment on the physical capability of the site, the underlying RPUD zoning, the general demand in the area and the fact that, in his opinion, it represents the maximum use of the site.

Renzi used the sales comparison approach to value to arrive at his estimated opinion of value for the subject parcels. Renzi stated both parcels were zoned RPUD. Renzi testified the 12.5-acres serves as parking for the abutting retail. He stated the common area parking provides access for parking for the improved parcels. Renzi testified the parking lot serving the other improved parcels has value because the commercial uses that exist on the pads could not function without it; they would be void of value. Each of the improved parcels need parking because they are of the type of market that requires parking. He then researched comparable commercial land sales within the immediate and general area to estimate a value for the subject land. He then contrasted the comparables to the subject to develop an indicated unit value for the subject.

The comparables sold from September 2011 to December 2013 for prices ranging from $3.42 to $20.56 per square foot of land area as more specifically described below.

Comparable #1 was described as an out-lot containing 57,935 square feet of land area located in Bolingbrook and sold for $1,200,000 or $20.71 per square foot of land area in October 2011. Comparable #2, described as an out-parcel, was an REO sale containing 52,455 square feet of land area located in Naperville and sold for $800,000 or $15.25 per square foot of land area in December 2011. Comparable #3 was described as a vacant site containing 41,338 square feet of land area located in Bolingbrook which sold for $850,000 or $20.56 per square foot of land area in May 2012. Comparable #4, described as a vacant site containing 52,620 square feet of land area located in Darien that sold for $512,500 or $9.74 per square foot of land area in April 2012. Comparable #5, also a vacant site contained 87,271 square feet of land area located in Woodridge and sold for $1,100,000 or $12.60 per square foot of land area in March 2013. Comparable #6, described as a vacant site, contains 45,493 square feet of land area located in Naperville and sold for $480,000 or $10.55 per square foot of land area in September 2011. Comparable #7, also described as a vacant site, contains 38,272 square feet of land area and is in Naperville that sold for $200,000 or $5.23 per square foot of land area in March 2013. Comparable #8, also utilized by MaRous in his appraisal report, was described as a vacant site containing 160,696 square feet of land area located in Woodridge which sold for $550,000 or $3.42 per square foot of land area in December 2013.

The comparables were adjusted for commercial location, cumulative attraction, exposure, pad size, visibility, sale condition, size and type of sale. After making various adjustments, Renzi estimated a value for parcel "010" to be $6,014,701 or $11 per square foot of land area. For parcel "018" Renzi estimated a value of $793,471 or $7 per square foot of land area. Renzi determined the replacement cost new for parcel "010" had a unit replacement cost of $4 per square foot of paved

area which was derived from a *Marshall & Swift Valuation Manual* and indicated a cost new for the paving of $1,656,000. Renzi testified there were 100 light standards with a unit cost of $1,000 per light which indicated a $100,000 replacement cost. After conversations with a company that designs and manufactures signs, the two large monument display signs indicated a value of $50,000 per sign or $100,000. Renzi found the total replacement costs new for the improvements to parcel "010" was $1,856,000. He then used the age-life method and observed condition to arrive at a loss in value of 50% or $928,000. In summary, for parcel "010" Renzi found a land value to be $6,014,701, a contributory value for the site improvements of $930,000 which indicated an estimated total fair cash value of $6,944,701 or $6,950,000, rounded.

Renzi used the same methodology for parcel "018" and found it contained approximately 13,700 square feet of asphalt brick paving, two single-head and nine double-head light standards. He used $4 per square foot for paving which indicated a cost new for the paving of $54,800. The nine light standards indicated a value of $9,000 or $1,000 per light for a total replacement cost new for the site work on parcel "018" of $63,800. He then depreciated the improvements 50% which indicated a contributory value of $31,900 or $32,000, rounded. Renzi then added the land value of $793,471 to the $32,000 contributory site value, which indicated an estimated value for parcel "018" of $825,471 or $825,000, rounded.

Based on his analysis, Renzi estimated a market value of $6,950,000 for parcel "010" and $825,000 for parcel "018" of as of January 1, 2013. The board of review requested an increase in the subject's assessment, or at the very least, confirmation of the subject's assessment.

During cross-examination, Renzi agreed that the applicable zoning and development regulations for the subject properties do not permit development of building structures within the common areas. He also agreed that absent the common areas, the pad sites would lack parking, access, fail to meet applicable zoning requirements and ultimately would be rendered undevelopable and devoid of value. In his report, on page 24, Renzi states "[w]hile applicable zoning and development regulations would generally not permit development of building structures within the subject common areas, the common areas take on the same importance as the pad sites and as such should be valued in uniformity with the pad sites, . . ." In his report, Renzi gave an example to illustrate his statement. The example depicted a developer purchasing a lot which encompassed a building with support parking for one "unified price" without consideration of the building value and non-buildable value separately. Appellant's counsel pointed out that Main Street at Seven Bridges has 17 pad sites, none of which allow construction of a building and parking with a pad site.

Renzi admitted he did not include in his report a highest and best use as improved. Renzi testified that sometimes when an appraiser is dealing with land that the majority of which is vacant, the improvements contribute so little that the highest and best use is recognized the same as if vacant because the site work does not have much contribution to the whole. Renzi was evasive when asked to point to the legally permitted uses for the common areas, which was not clearly expressed within his appraisal report.

Renzi agreed that he divided the subject's land area by the number of pads to arrive at an average land size per pad of 55,203 square feet of land area. Renzi felt it was irrelevant to find comparables like the subject's actual size, but rather, searched for comparables using the average land

calculations. He agreed with the premise that typically smaller parcels have a higher sale value per unit than larger parcels with all other things being equal and the inverse also being true when sold. When Renzi made his adjustments to the comparables for size, he utilized the average land size per pad of 55,203 square feet, and not the actual size of parcel "010" which contains 546,791 square feet of land area and parcel "018" containing approximately 113,000 square foot of land area.

Renzi acknowledged that three of the pad sites were sold to a third party, therefore, in 2013 and 2014 the owner of the common areas did not own all the pad sites. Because of this, Renzi acknowledged that since the owner did not control all the pad sites along with the common area, the common area in and of itself would not have traded on an open market independently. Renzi admitted that the Uniform Standards of Appraisal Practice requires him to state the highest and best use of a property as vacant and as improved.

Renzi explained that he used an average pad size instead of the subject's actual size when selecting comparables because he wanted to reflect the dynamics of the commercial properties in the marketplace based on what the pads had available as allocated for parking. Renzi testified the value of the common area is derived from ownership of the pads. In other words, the pad sites are the channel by which the revenue from the common area is realized. Renzi stated he took demolition costs into account for his improved comparables, however, it was not stated in his report.

In rebuttal, appellant's counsel called David Galowich for further testimony. Galowich testified that the declaration of covenants, conditions and restrictions of record have a provision that allocates the costs of maintaining the common areas among the pad sites. Galowich stated the allocation in this case was different than typically seen and was tied to traffic generation. Each year, the association manager of the common areas uses a "BOMA" standard to calculate the utilization of each parcel based on use. For example, a sit-down restaurant, under the "BOMA" standard will have a different calculation than a doctor's office which doesn't generate as much traffic or a fast food restaurant which generates more traffic. After examination of each building and applying the correct standard, it is multiplied by the building size which indicates the amount of traffic a building pad site generates. The costs are then allocated without markup. Only maintenance, property taxes and administrative costs of running the maintenance could be passed back to the pad owners.

Galowich stated the condition of the pavement as of January 1, 2013 and January 1, 2014 was fairly poor, with a life span of 10 to 12 years. Galowich testified that from a real estate developer's standpoint, he did not believe the pad sites enhanced the value of the common areas because there is no one that is going to buy the common areas. He did not see how they could enhance the value of something that is not marketable. Galowich testified that they both cannot enhance the value of the other. If you do not have parking for the pad sites you have a problem, there is no income stream for the parking lot. He stated the pad sites are a marketable entity, the parking lot is not. Galowich stated the subject parcels could not be divided up into 17 individual parcels with each having its own parking because there is not enough space as designed, only shared parking will work. Galowich testified that to divide the subject up, several pad sites would be lost.

On cross-examination, Galowich testified the parking lots are essential to the pad sites and could not function without the common areas. As of January 1, 2013, the Northwest Quadrant only had sewer and water brought to the perimeter, it had no on-site improvements.

The next witness called in rebuttal was Joseph M. Ryan, owner of LaSalle Appraisal Group. Ryan is licensed as a general real estate appraiser in the State of Illinois and has the MAI designation from the Appraisal Institute. He has prepared appraisals since 1985.

Ryan prepared an appraisal review of Renzi's appraisal report marked herein as board of review exhibit #1. In his review, Ryan depicts the common areas of the subject are restricted from development to the benefit of the pad site owners; the common areas cannot be built upon. In his opinion, Ryan testified that the opinion of value found in the Renzi appraisal is not credible.

Ryan testified that in the appraisal process, the highest and best use sets what is to be appraised and the further development of the appraisal process. He went on to state that the highest and best use sets what comparable sales should be used in the report. He testified that highest and best use must meet four sequential tests: physically possible, legally permissible, economically viable and maximally productive use of the site. He testified that the last two tests are not considered unless the first and second tests are passed. Ryan felt that under the first test, the subject sites were large enough that a variety of uses could be considered. Under the legally permissible test, Ryan testified that Renzi acknowledged that the subject sites are not buildable, however, Renzi did not reach a conclusion as to what the legally permissible use was; it was not in his report. Before Renzi could evaluate whether the subject was economically viable or maximally productive, Renzi would have to reach a conclusion of legally permissible.

Ryan testified that Renzi did not mention in his report what the highest and best use of the subject was as improved. Ryan testified that Renzi never reached a conclusion as to the highest and best use as vacant nor as improved. Ryan considered this to be an error that affects the credibility of the report and would inhibit Renzi's ability to produce a credible opinion of value.

Further, Ryan took issue with the fact that Renzi basically took the entire 21.5-acres of the subject and divided that by the 17 pad sites resulting in a hypothetical 55,203 square feet and assumes that each one of those is large enough to accommodate construction of a building and parking lot for that building. Ryan found that is not the facts of case. Renzi used a hypothetical condition without stating it in his report. Ryan testified that if the hypothetical condition is proven to be untrue, then the results are not credible. In this case, Ryan testified that the hypothetical condition is not true as the subject properties are two common area sites that are not buildable, not 17 different 55,000± square foot lots.

In addition, Ryan found Renzi's report to be misleading. Ryan pointed out that Renzi states in his report Woodridge has not escaped the current economic recession or downturn in the residential housing market. As a result, the subject and commercial/residential properties in general are enduring extended marketing time/absorption periods and more limited development potential due to the soft recovery. However, on the next page, Renzi indicates the subject property would have a marketing and exposure time of 12 months, which would indicate a stable market in direct contradiction to what he previously stated. Further, Ryan found Renzi stated there was reasonable

demand for the subject sites, but, in fact, the development had been going on for 10 years and still had not sold anywhere near all the pad sites.

Ryan also found Renzi chose to select small comparable sites relating to the hypothetical 55,203 square foot pad sites and ignored larger properties. Ryan found this to be an inappropriate method in selecting comparables as with all things being equal, smaller parcels tend to sell for a higher unit price than larger parcels. Ryan found that by using an incorrect size for the subject of 55,203 square feet instead of the actual sizes, incorrect adjustments were made to comparables #1, #2, #3, #4, #6 and #7, all smaller properties requiring a downward adjustment for size, however, Renzi did not make this adjustment.

Ryan also took issue with the fact that all of the comparables Renzi used, were buildable lots, whereas, the subject is not, and should have been adjusted for that difference, otherwise the value of the subject would be overstated.

In cross-examination, Ryan testified that the pad sites cannot function without the parking and as such the parking has some contributory value. Ryan testified that if the pad sites were divorced from the use of the parking, the value of the pad sites would be diminished and would be virtually worthless. Ryan further testified that if the subject were classified as open space for highest and best use that would be incorrect. Ryan agreed that the parcels under appeal have a value because when a person purchases a pad, it is inherent that that person is getting ingress and egress and parking associated with the pad. Ryan testified that the subject parcels have a value, but, they do not have the same value as a pad.

On re-direct, Ryan explained that Renzi used developable sites for comparison to a 55,203 square foot site without making a deduction for the developable portion and comparing the parking areas to a parking area, which the subject is. First, Renzi assumed a 55,203-square foot developable site which does not exist as applied to the subject.

In closing, appellant's counsel argued that the rights associated with the subject common areas have been transferred to the building pad sites through the various easements, RPUDs and restrictions. Further, rights were removed from the common area parcels once some of the pad sites were sold to third parties because the owner of the common areas could not now freely sell the common areas without affecting the rights of the pad purchasers. Counsel pointed out that the building pads were assessed at their fair cash value at what they are worth. However, now the common areas are being assessed again which results in a double assessment as the value of the common areas was included in the bundle of rights acquired by each pad owner. Counsel likened this case to a condominium association where there is no value to the common areas. A condominium buyer gets the right to use the common area. Pointing to testimony in the record, counsel argued that because property like the subject does not trade in the open market, it has no value.

The board of review's counsel confirmed that after hearing the testimony and after reviewing the evidence presented, the board of review was requesting an increase in the subject's assessment, or at the very least, confirmation of the subject's assessment. Counsel reiterated the burden of proof by a preponderance of the evidence was on the appellant to prove the correct value of the property.

Conclusion of Law

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

The evidence and testimony herein reveal the subject parcels, two common areas, the MSCA (12.553-acres) and the NWQCA (2.602-acres) were part of a larger Seven Bridges Regional Planned Unit Development. This planned unit development governed the development of the properties. Woodbridge Bridges SB1, LLC owned the common areas at date of valuation. The larger parcel contains 17 individual pad sites, eight of which were improved and three of which were purchased by third parties. The smaller parcel remains generally unimproved. The subject was described by Galowich as being in distress as a failed development with a history of being unable to attract tenants and has remained underdeveloped for 10 years.

Despite the differences testified to by MaRous, the Board takes notice of County of DuPage v. Property Tax Appeal Board, 277 Ill.App.3d 532 (2nd Dist. 1995). In County of DuPage, Saks Fifth Avenue and Neiman Marcus owned and operated department stores at Oak Brook Mall. The stores were freestanding and not connected to the mall and were considered "pad parcels." Pursuant to agreements with JMB Corporation, which owned most of the mall tracts, Saks Fifth Avenue and Neiman Marcus had the right to use certain common areas of the mall, including parking lots and pedestrian walkways. It was agreed that these areas of the mall were necessary for the functional utility of the stores. The issue of double taxation was addressed in the DuPage County case and the Board finds it is pertinent to the arguments presented herein.

In DuPage County, the court found "every piece of improved real estate, whether used for residential or commercial purposes, derives some portion of its value from the fact that it is accessible by streets and sidewalks. It matters little whether the means of access are publicly or privately owned. . . ." As in the DuPage County case, both appraisers testified that without the right to use the parking and other common facilities, the stores would have no value. The court stated that if stores could be divorced from the common areas, their values would be zero, which the court found would be untenable. The court found the relationship between the stores and the common areas was symbiotic in that each has a value because of its proximity to the other and each set of parcels, that being the stores and the common areas, are worth more by being located near the other. As found in DuPage County, the Board finds the value of the stores is enhanced by having access to the parking and other common areas and does not mean those parcels have no value, in fact they have and add value to the entire center by allowing the center to attract tenants via the attraction of one-stop shopping. The parties' private agreement regarding the pro-rata share of taxes and/or maintenance costs of the common areas does not imply the stores are being taxed twice for the same property. Each parcel enhances the value of the other.

The board of review's total assessment for the two parcels under appeal reflect a market value of approximately $5,873,297 using the 2014 three-year average median level of assessments for

DuPage County of 33.33% as determined by the Illinois Department of Revenue. Michael MaRous, the appellant's appraiser, estimated the subject's total value to be approximately $877,000. Neil Renzi, the board of review's appraiser, whose client was the Lisle Township Assessor, estimated the subject's total value to be $7,775,000.[2] Because of this increase in estimated value, the board of review requested an increase in the subject's assessment. Both appraisers testified the subject's value would be the same in 2013 and 2014.

Both appraisers obtained the MAI designation from the Appraisal Institute and had many years of experience in assessing real estate and were qualified as experts in their field. Both appraisers developed only one of the three traditional approaches to value real estate, that being the sales comparison approach. However, within the sales comparison approach, each appraiser applied a different methodology to determine unit value. MaRous utilized comparable sales of what he believed to be similar properties along with sales of open space properties. Renzi applied a different methodology in that he basically took the total size of the subject and divided it up into 17 individual parcels (representing the 17 pad sites) and used a size of 55,203 square feet of land area for the subject for comparison purposes. Both appraisers generally agreed properties such as the subject do not trade on the open market. The subject common areas have no income stream and act as support for the pad owners. As found in the testimony of MaRous, three pad sites were under third party ownership. Once one of the pad sites sold to a third party, it was virtually impossible to sell the two parcels under appeal because they were also tied to the third-party owners through the easements, restrictive covenants and RPUDs.

The Board finds the estimated final opinions of value as presented by the board of review and appellant were significantly different. Both the board of review appraiser and the appellant's appraiser expressed a value which was approximately $7,000,000 apart from each other. Therefore, the Board has examined and reviewed the methodologies developed by each appraiser along with the evidence and testimony presented herein. The Board was unable to examine the methodology, if any, utilized by the Lisle Township Assessor, to assess the subject parcels, as the methodology, or support therefore was not presented herein.

The Board finds no support in this record for the assessments placed on parcel "010" and "018" by the Lisle Township Assessor. The assessor was not present at the hearing to testify nor subject to cross-examination regarding the methodology used to assess the subject parcels. In addition, no testimony was presented by the board of review regarding the assessments of similar properties within Lisle Township or within County of DuPage. Therefore, little weight was given the assessments applied to parcels "010" and "018" as shown on the board of review "Notes on Appeal." Furthermore, it has also been held there is no presumption of correctness accorded to an original assessment or that of a board of review (Western Illinois Power Cooperative, Inc. v. Property Tax Appeal Board, (1975), 29 Ill.App.3d 16, 22).

The Board next examined the appraisals submitted by both parties. Both appraisers had similar qualifications and experience, however, their final value opinions were significantly different, and

[2] Renzi estimated the subject's market value as of January 1, 2013 in his appraisal report. The same appraisal report was submitted by the DuPage County Board of Review in support of the assessment increase request for this 2014 appeal.

the Board finds the final opinions of value found in both appraisals were not well supported and not a credible indicator of the subject's market value as of the assessment date in question.

The Board finds all three experienced appraisers, MaRous, Renzi and Ryan agreed that establishing the subject's highest and best use sets the foundation of any appraisal report. *Property Assessment Valuation* 2nd Edition, 1996 states in pertinent part:

> The way in which property is used plays an essential role in its value. In 1894 the United States Supreme Court stated: The value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use." (Cleveland, C.C. and St. Louis Ry. Co. v. Backus, 154 U.S. 445 (1894). . . . When assessors estimate market value, they must determine which of the competing uses is the highest and best use. . . . Typically, the criteria should be considered sequentially because it would not matter if the property met the financially feasible test if the size of the property was not appropriate, or the intended use legal.

(*Property Assessment Valuation*, 2nd Edition 1996, pages 31 – 34)

An appraiser must state a subject's highest and best use as vacant and as improved. As Ryan, the review appraiser testified to, failure to properly establish highest and best use renders an appraisal misleading and not credible. It is undisputed that four tests must be sequentially met to develop highest and best use. First, an appraiser must establish what is physically possible. Second, an appraiser must establish what is legally permissible. Third, the appraiser must establish what is financially feasible, and fourth, what is the maximally productive use of the site. Ryan testified that each test must be met sequentially to advance to the next test.

The Board finds Renzi discusses the subject's highest and best use as if vacant but does not clearly express the subject's highest and best use as if vacant in his appraisal report after discussion of the four tests. For physically possible uses, Renzi states a wide variety of uses are physically possible on a site, however the size, shape, area, terrain, frontage/depth and accessibility, affect the uses under which it can be developed. He then concludes the subject site can be developed. Regarding the legally permissible use, Renzi states the subject property's use is regulated by the Seven Bridges RPUD as well as other documents including certain Declaration of Restrictions and Easements as well as a Declaration of Covenants, Conditions and Restrictions. He then states, "it is assumed the intended purpose of the subject property includes, but may not be limited to, facilitating circulation and parking of vehicles, provide driveways and access, accommodate pedestrian passage, etc.," within the MSCA and other adjacent properties which are part of the larger Seven Bridges development.

For financial feasibility, Renzi then states his review of the Village of Woodridge indicated a reasonable demand in the market place, noting the commercial real estate market had not fully recovered from the lingering effects of a recession. He then concludes by stating "giving effect to the current demand and potential uses set forth by the Seven Bridges RPUD, the financially feasible and maximally productive use of the subject property would be for development in conjunction with the pad sites in accordance with the Seven Bridges RPUD which allows for a

variety of land uses including retail, office, hospitality and residential uses when market conditions improve."

The Board agrees with Ryan in finding that Renzi never states in his report what the legally permitted uses were for the subject property as if vacant. During his testimony, Renzi testified that the legally permitted uses portion of his appraisal report was handled by his assistant to read and examine the RPUD's, easements, declarations and restrictions. After fully reviewing his appraisal, the Board finds Renzi failed to meet the second test in developing the subject's highest and best use as if vacant, which he based on an assumption of the subject's legal use and was not well supported or defined. As stated in his appraisal report, Renzi states "[a] significant component to be considered in estimating market value is the determination of Highest and Best Use." The Board finds Renzi was not credible during his testimony on this issue, was evasive when questioned regarding this issue and did not actually determine the subject's highest and best use as if vacant.

Further, the Board finds Renzi failed to establish and define within his report, the subject's highest and best use as improved. During cross-examination, Renzi admitted the Uniform Standards of Appraisal Practice requires him to state the highest and best use of a property as vacant and as improved. When questioned regarding this issue, Renzi dismissed this omission by testifying that basically he included this inherently in his comparative analysis or that the improvements were so minimal that they did not significantly affect the subject's value. The board finds it is a significant error and omission to not state the subject's highest and best use as improved, is not in conformance with the Uniform Standards of Appraisal Practice and undermines the foundation and credibility of the market value opinion found in Renzi's appraisal report.

MaRous also developed the subject's highest and best use. For the larger subject parcel, as if vacant, MaRous found the physically possible uses stating, "the physical limitations of the site are the lack of direct curb cuts onto Illinois Route 53, and the position as an "in-between" retail location." For legally permissible, MaRous finds that based on the ordinance, legally permissible uses include retail, or a mixed use of retail on the floor and office on higher floors. Further, to adhere to the bulk regulations and requirements for parking, the subject properties would need to remain vacant land and be improved only with parking, driveways and open space. For financially feasible and maximum productivity, MaRous states that a late 2007 recession continues to linger with the retail market for the subject remaining soft. For the smaller parcel, MaRous found that given the competitive locations of superior shopping centers in the area and lack of visibility and frontage, it would be difficult to attract a single larger retailer or multiple medium-sized retailers to the site. He then states the legally permitted uses included retail, office, hotel and a residential condominium development, concluding any proposed development would require the subject properties would need to remain vacant land and be improved for use with parking, driveways, and open space. After review of the feasibility studies obtained by the village, he opines it would be difficult to attract one large or several medium-sized retailers or a hotel to the site. In conclusion, MaRous depicts in his appraisal report that for both parcels, the subject's highest and best use as though vacant was "as a common area for the said development, at such time as construction is justified. The highest and best use in the interim is for open space." For the highest and best use for the subject parcels as improved, MaRous states the highest and best use for both parcels as improved is as currently improved as common area for the development with parking, driveways, and open space.

The Board finds the highest and best use analysis found in the appraisal report prepared by MaRous is also flawed. The Board finds it is clear the two subject parcels under appeal have never been classified as or would qualify as "open space" under the Property Tax Code.

Section 10-155 of the Property Tax Code (35 ILCS 200/10-155) defines open space land.

> Open space land; valuation. . . . Land is considered used for open space purposes if it is more than 10 acres in area and:
> (a) is actually and exclusively used for maintaining or enhancing natural or scenic resources,
> (b) protects air or streams or water supplies,
> (c) promotes conservation of soil, wetlands, beaches, or marshes, including ground cover or planted perennial grasses, trees and shrubs and other natural perennial growth, and including any body of water, whether man-made or natural,
> (d) conserves landscaped areas, such as public or private golf courses,
> (e) enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, . . .
>
> (35 ILCS 200/10-155)

The Board finds MaRous made an extraordinary assumption without defining same in his appraisal report that the subject would or could qualify as open space. When questioned by opposing counsel that neither of the subject properties were open space, MaRous responded that no they were not, "under the strict definition." When questioned by the hearing officer on this issue, MaRous stated that the subjects have site improvements on them that are supporting the pad retail buildings and the subjects have no physical building improvements on them, which provides open space. MaRous felt it was just a clarification issue which he might modify. The Board has given thought if there might be a miscommunication between the expressed definition of the subjects' highest and best use as vacant and as improved as found in MaRous' appraisal report and the testimony given under oath during cross-examination. Based on the questions by opposing counsel, it is clear, MaRous was referring to open space as found in Section 1-155 of the Code when he testified that the subjects were not open space by the "strict definition." Again, as stated by Ryan, if highest and best use is not properly developed or defined in an appraisal report, then the foundation of the report is flawed, and the credibility of the appraisal report is called into question and not credible. Based on the testimony herein, the Board finds the final opinion of value found in the appraisal report prepared by MaRous is not credible and is not indicative of the subject's fair market value as of the date in question.

Various other flaws were found in the appraisal reports prepared by both MaRous and Renzi which further undermine their credibility. In developing his sales comparison approach to value, MaRous utilized two sets of open space comparables to compare with the subject, even though the subject is clearly not "open space" as statutorily defined. In his land value conclusion, he finds "[u]ltimately, the value of the subject properties is reflected in the value of the commercial pad

sites." His ultimate conclusion is based on commercial land sales in proximity to the subject property, land sales acquired for open space use by the DuPage County Forest Preserve, and open space land sales in collar counties of Cook, Lake, McHenry and Will. He further considered that DuPage County values open space land at $4,560 per acre, or $0.11 per square foot. Collectively the final land value conclusion of $0.50 per square foot of land area was based upon the market data found in "all three" land data sets. The Board finds this conclusion erroneous, given the range of commercial land sales developed by MaRous ranged from $1.30 to $5.74 per square foot of land area. The Board finds the use of open space as a land sale comparable, of which the subject is not, unduly and significantly influenced his final opinion of unit value.

The Board finds Renzi's appraisal report was also flawed. As pointed out by Ryan, Renzi basically took the entire 21.5-acres of the subject and divided it by the 17 pad sites to reach a unit value for a parcel that contained 55,203 square feet of land area and assumed each was large enough to accommodate the construction of a building and parking lot. As testified to, this was a hypothetical condition that proved to be untrue, thereby rendering the results untrue. It is well established that, with all other things being equal, a smaller parcel has a higher unit value than a larger parcel and vice versa. If a comparable is smaller than the subject it is compared to, the comparable would require a downward adjustment. If the comparable is larger than the subject it is compared to, it would necessarily require an upward adjustment to account for the difference. The Board finds Renzi assumed the subject property to be a hypothetical 55,203 square feet of land area and then made improper upward adjustments to certain comparables (#4, #6, #7 and #8), even though the subject was much larger than the comparables used.

Further, in his appraisal report, Renzi states "that Woodridge has not escaped the current economic recession or downturn in the residential housing market. As a result, the subject and commercial/residential properties in general are enduring extended marketing time/absorption periods and more limited development potential due to the soft recovery." Then on the next page, Renzi indicates the subject property would have a marketing and exposure time of 12 months, which would indicate a stable market, in direct contradiction to what he previously stated.

For these reasons, the Board finds the final opinion of value found in the appraisal reports prepared by both MaRous and Renzi are not based on a credible foundation, are not well supported and are not credible indicators of value for the subject parcels and are hereby given little weight.

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. Since there are credible market sales contained in the record, the Board placed most weight on this evidence.

In regard to the site improvements, the Board finds Renzi provided the more credible estimated value of the subject's contributory site improvements. For parcel "010" Renzi estimated the replacement cost new for this parcel had a unit replacement cost of $4 per square foot of paved area which was derived from a *Marshall & Swift Valuation Manual* and indicated a cost new for

the paving of $1,656,000. Renzi testified there were 100 light standards with a unit cost of $1,000 per light which indicated a $100,000 replacement cost. After conversations with a sign manufacturer, the two large monument display signs indicated a value of $50,000 per sign or $100,000. The total replacement costs new for the improvements to parcel "010" was $1,856,000. He then used the age-life method and observed condition to arrive at a loss in value of 50% or $928,000. For parcel "010" Renzi estimated a contributory value for the site improvements of $930,000, rounded.

Utilizing the same methodology for parcel "018" Renzi found it contained approximately 13,700 square feet of asphalt brick paving, two single-head and nine double-head light standards. Utilizing $4 per square foot for paving indicated a cost new for the paving of $54,800. The nine light standards indicated a value of $9,000 or $1,000 per light for a total replacement cost new for the site work on parcel "018" of $63,800. Depreciating the improvements 50% indicated a contributory value of $31,900 or $32,000, rounded.

Little weight was given the contributory site value analysis performed by MaRous. The Board finds his contributory site value analysis was not credible. First, for the Northwest Quadrant Common Area (parcel "018"), MaRous considered this parcel vacant undeveloped land throughout his report with no value added for site improvements. The Board finds this is in contradiction to the photographs and data contained within Renzi's report on pages 10 and 11 which appears to depict light standards and sidewalks located on parcel "018."

For parcel "010" MaRous estimated a base replacement cost of the site improvements to be $3.50 per square foot. On page 58 of his report, he states "[e]ntrepreneurial profit of 2 percent is included in this cost estimate." but then adds entrepreneurial profit of $38,275 to arrive at cost new of $1,952,044. The Board finds the source used by MaRous for estimating his base replacement cost new of the site improvements ($3.50) is not disclosed and not supported in the record. MaRous then states the entrepreneurial profit is included in the cost estimate, but he also appears to add entrepreneurial profit to the cost new. MaRous then uses the age-life method of depreciation to arrive at 60% depreciation, but then estimates 30% depreciation due to both functional and external obsolescence for a total depreciation estimate of approximately 72%. MaRous noted in his report that in the modified economic age-life method of estimating depreciation, the functional and external obsolescence is applied to the on-going subtotal calculations developed within the cost approach and not applied to the property's estimated cost new. Nowhere in his report or testimony does he explain why a modified age-life method was necessary. The Board finds MaRous' estimated base replacement cost new is not well supported. His development of a modified age-life method of depreciation is confusing, questionable and is not well depicted or explained in his report; therefore, the Board finds his estimated replacement cost new analysis is not a credible indicator of the value of the subject's site improvements.

Both appraisers used a common land sale located in Woodridge, DuPage County. This comparable was a 160,697-square foot site which sold in December 2013 for $550,000 or for $3.42 per square foot of land area. The Board gave this sale (MaRous sale #1 and Renzi sale #8) the most weight in its analysis. The Board also considered and gave weight to MaRous' land sales #3 and #4 based on date of sale, location, size, zoning and topography/shape. The above stated sales sold from June 2012 to December 2013 for prices ranging from $550,000 to $600,000 or from $2.76 to $4.56 per square foot of land area. The subject's assessment reflects an estimated market value of

$857,006 or $7.56 per square foot of land area for parcel "018" and $4,863,366 or $8.89 per square foot of land area for parcel "010.' Based on these sales, the Board finds the assessments for the subject parcels under appeal are above the range established by the best comparable sales in this record and are excessive. The Board gave the MaRous' comparables #2 and #5 and the open space land sales along with the remaining Renzi land sales little weight based on their dissimilar characteristics, date of sale and/or size when compared to the subject.

Based on the above analysis, and after making adjustments to the comparables to account for different characteristics when compared to the subject, the Board finds the subject properties have a land market value of $2.90 per square foot of land area with a contributory site improvement value for each parcel as found by appraiser Renzi above.

In conclusion, the Board finds the evidence in the record depicts the subject properties are overvalued by a preponderance of the evidence. Therefore, the Board finds the subject properties' assessments as established by the board of review are incorrect and a reduction is warranted. Since fair market value has been established, the 2014 three-year weighted average median level of assessments for DuPage County of 33.33% shall apply.

Based on the testimony and evidence presented herein, the Board finds a preponderance of the evidence depicts the subject properties are overvalued based on their assessments and a reduction in the assessment for each subject parcel is warranted.

2018 COMMERCIAL CHAPTER
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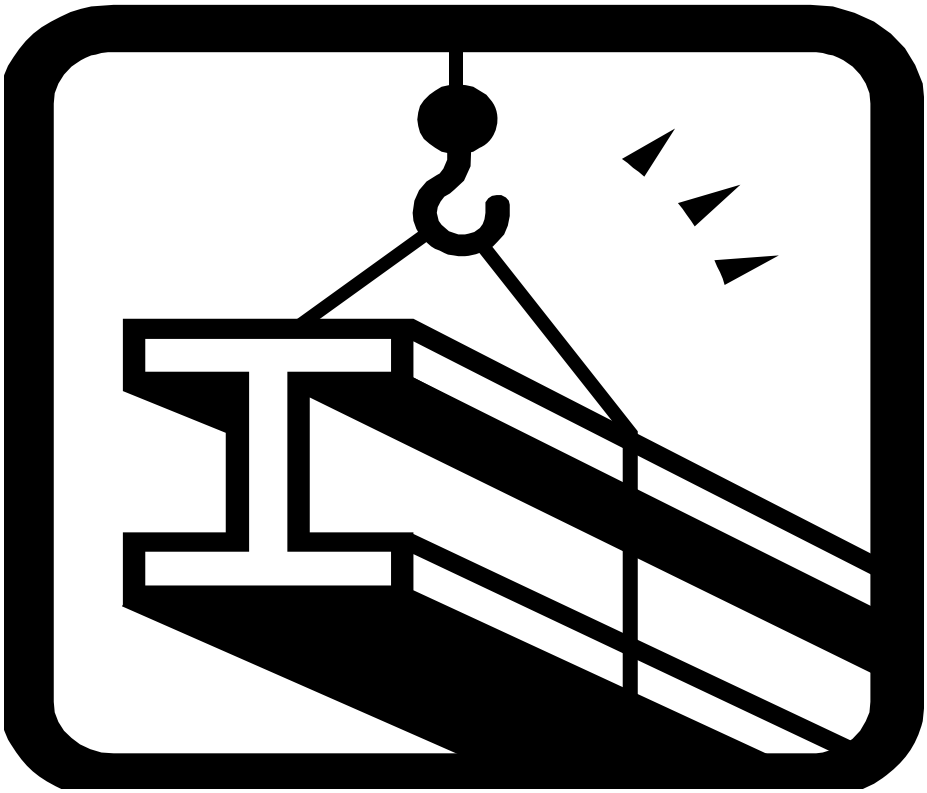
[Items Contained in Italics Indicate Arguments or Evidence in Opposition to the Appellant's claim]

PROPERTY TAX APPEAL BOARD

SYNOPSIS OF REPRESENTATIVE CASES

2018 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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2018 INDUSTRIAL CHAPTER

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APPELLANT:	**Realty Associates Properties, LLC**
DOCKET NUMBER:	**15-06087.001-I-3**
DATE DECIDED:	**January, 2018**
COUNTY:	**DuPage**
RESULT:	**Dismissal**

The subject property consists of a part one-story and part two-story, masonry-constructed single-industrial building containing 95,625 square feet of building area. The improvement was constructed in 1982. The property has a 7.11-acre site and is located in Addison, Bloomingdale Township, DuPage County.

The appellant filed an Industrial Appeal petition with the Property Tax Appeal Board that was postmarked on April 20, 2016 through attorney Brian P. Liston of Liston & Tsantilis, P.C. in Chicago, Illinois. As part of this original filing, counsel requested an extension of time to submit evidence in support of the appeal. After three extensions of time, the appellant through legal counsel timely filed evidence asserting that the fair market value of the subject is not accurately reflected in its assessed value. The evidence consisted of two Vacancy-Occupancy Affidavits for 2014 and 2015 along with an appraisal of the subject property prepared by Joseph M. Ryan, MAI, of LaSalle Appraisal Group, Inc. The appraisal estimated the fee simple market value of the subject property as of January 1, 2014 to be $3,800,000.

On April 13, 2017, the Property Tax Appeal Board notified the DuPage County Board of Review of this pending appeal and forwarded the appellant's evidence. The board of review was granted 90 days to file its evidence in response to the appeal.

On May 3, 2017, the DuPage County Board of Review filed its Certificate advising that applicable taxing districts had been notified of the pendency of this appeal as of April 27, 2017.

On May 3, 2017, intervenor Glenbard Township High School Dist. 87 through attorney Ares G. Dalianis requested leave to intervene in this matter. The Property Tax Appeal Board forwarded copies of the appellant's appeal to this intervenor and granted an extension of time to August 10, 2017 to file its evidence in response to the appeal.

On May 5, 2017, intervenors Addison Fire Protection District, Addison Park District, Addison Public Library and the Village of Addison through their attorney Scott L. Ginsburg requested leave to intervene in this matter. The Property Tax Appeal Board forwarded copies of the appellant's appeal to these intervenors and granted extensions of time to August 10, 2017 to file their evidence in response to the appeal.

On May 11, 2017, intervenor Marquardt School Dist. #15 through attorney Michael T. Canna requested leave to intervene in this matter. The Property Tax Appeal Board forwarded copies of the appellant's appeal to this intervenor and granted an extension of time to August 23, 2017 to file its evidence in response to the appeal.

On June 20, 2017, the DuPage County Board of Review filed its "Board of Review – Notes on Appeal" and evidence in response to the appeal.

On July 31, 2017, Attorney Brian P. Liston filed a Motion for Leave and Notice of Withdrawal as Counsel. Attorney Liston asserted that while he has represented Realty Associates Properties, LLC, the appellant in this proceeding, he has been "unable to establish a responsive line of communication or receive timely direction from Realty Associates Properties, LLC." Counsel withdrew as attorney of record for the appellant and provided proof of service and notice of filing upon all parties of record along with the contact address of the appellant Realty Associates Properties, LLC in Baltimore, Maryland. Attorney Liston further suggested that the appellant be granted no less than 60 days to retain other counsel.

On August 16, 2017, the Property Tax Appeal Board issued a letter to the appellant's address of record as stated by Attorney Liston. The letter acknowledged receipt of Attorney Liston's Motion and Notice of Withdrawal as Counsel and granted the appellant a 30-day extension to retain counsel in this pending appeal.

On August 28, 2017, the Property Tax Appeal Board received a letter in this matter dated August 25, 2017 and written by Charles L. Bauermann, CPA, of Bauermann Consulting Corp., on behalf of "his client" Realty Associates Properties, LLC. The letter reflected service upon both James G. Robinson at the address of record for Realty Associates Properties, LLC and the law firm of Liston & Tsantilis. The Bauermann letter began by acknowledging the withdrawal request of Attorney Liston and the reasons set forth in the motion. Bauermann stated, in part, "As the new contact person for the client in March 2017 after resignation of the client's internal CPA, I acknowledge that in March in other appeals matters subsequently resolved, counsel had warned me of the possibility of its withdrawal. In an end of day Friday in July, counsel again warned of withdrawal if I did not reply. The problem this time was a collapse of my e-mail system, but I replied early Saturday morning with instructions. On Monday, I was notified of counsel's withdrawal."

The Bauermann letter further contends that "several unusual factors" led to the lack of responsiveness of both the client and the CPA. He then outlined a request that was made of counsel "of what it would require from client re representation for counsel to reconsider its withdrawal. Client and I know what those issues are but asked for confirmation to provide some comfort to counsel." Attorney Liston has reportedly denied Bauermann's requests.

After noting the existence of a number of appeals before various tribunals, recognizing Attorney Liston's familiarity with the issues, various existing deadlines, "retaining new counsel on a long distance basis in this short period of time adds to transition difficulties" and given the potential harm to the appellant on the existing appeals and for future tax years:

> Client respectfully requests that the tribunal instruct Liston & Tsantilis to reverse its withdrawal and continue to represent its client in the matters before the Appeal Board or which are subject to appeal for underassessment.

The letter then referred to four parcel numbers, three of which are at issue in open pending appeals with the Property Tax Appeal Board under five separate docket numbers, including the instant appeal.

Each of the intervenors timely, through their respective attorneys of record, filed requests for extension of time to file evidence in response to the appeal. By letters dated September 15, 2017 extensions of time to file evidence were granted to the respective intervening parties.

A copy of the Bauermann letter was forwarded to Attorney Liston by the Property Tax Appeal Board by a letter dated October 6, 2017 along with an extension of time to October 21, 2017 to file a response, if any. No response was received from Attorney Liston.

On October 10, 2017, all intervenors through their respective attorneys filed a Joint Motion for Dismissal for Want of Attorney Representation Pursuant to PTAB Rules 1910.30(D) and 1910.70(C) or for Ruling on Deadline for Appellant to Retain Counsel. The certificate of service prepared by Attorney Ginsburg reflects that copies of the motion were mailed to Attorney Liston, the PTAB, the DuPage County Board of Review, and to Attorneys Dalianis and Canna. Noting that intervenors were not served with documentation of any deadline for Realty Associates Properties, LLC to retain new counsel and not having received an entry of appearance by new counsel for the appellant, the intervenors cite to procedural rules of the Property Tax Appeal Board that mandate limited liability companies must be represented by an Illinois licensed attorney before the Property Tax Appeal Board at all stages. (86 Ill.Admin.Code §1910.30(d) and 1910.70(c)) Since the appellant lacks counsel and the appeal cannot proceed further without new counsel for the appellant, the intervenors request that the appeal be dismissed pursuant to Sections 1910.30(d) and 1910.70(c) of the Board's procedural rules. In the alternative, the intervenors request a deadline be established for the appellant to retain new counsel of record and that the deadline for intervenors' evidence be extended an additional 90 days beyond the deadline for the appellant to retain counsel.

On October 23, 2017, the Property Tax Appeal Board forwarded a copy of the aforesaid dismissal motion to Attorney Liston and established a deadline of November 7, 2017 for a response, if any.

Contrary to the instructions of the August 16, 2017 letter, new counsel has not entered their appearance in this matter on behalf of the appellant, Realty Associates Properties, LLC. Moreover, no response has been filed to the intervenors' dismissal motion.

Conclusion of Law

After reviewing the record, the Property Tax Appeal Board finds that this appeal should be dismissed. The Property Tax Appeal Board finds that Realty Associates Properties, LLC, as a *pro se* limited liability company-appellant, does not have standing before the Board in accordance with Sections 1910.30(d) and 1910.70(c) of the procedural rules of the Property Tax Appeal Board which require a limited liability company to be represented at all stages before the Property Tax Appeal Board by a person licensed to practice law in the State of Illinois. (86 Ill.Adm.Code §1910.30(d) and §1910.70(c)) On the existing record, the appellant must be barred from any hearing and the appeal dismissed in accordance with Sections 1910.69(a) and (e) and/or 1910.70(a-c) of the rules. (86 Ill.Adm.Code §1910.69(a) & (e) and §1910.70(a-c))

Section 1910.70(a) of the rules of the Property Tax Appeal Board states in relevant part:

> A party shall have the right to represent himself or herself and to be present at and participate in any hearing before the Property Tax Appeal Board. The right to participate shall include the rights to call, examine and cross-examine witnesses and to discuss any evidence properly submitted pursuant to this Part. A party may be represented at the hearing by any person who is admitted to practice as an attorney in this State. Accountants, tax representatives, tax advisers, real estate appraisers, real estate consultants and others not qualified to practice law in this State may not appear at hearings before the Board in a representative capacity, and may not conduct questioning, cross-examination or other investigation at the hearing. However, such persons may testify at hearings before the Board and may assist parties and attorneys in preparation of cases for presentation by those parties and attorneys for the Board at hearings. *See* 86 Ill.Adm.Code §1910.70(a)

Moreover, Section 1910.70(b) of rules of the Property Tax Appeal Board states:

> As provided in subsection (a), only attorneys licensed to practice law in the State of Illinois shall be allowed to represent a party at a Property Tax Appeal Board hearing. See 86 Ill.Adm.Code §1910.70(b)

This undisputed record discloses that Realty Associates Properties, LLC, is the owner and taxpayer of the subject parcel. The owner was granted 30 days to obtain new counsel of record by a letter dated August 16, 2017. The sole response to that letter was submitted by Charles L. Bauermann, CPA, on behalf of the appellant requesting denial of the motion to withdraw filed by Attorney Brian P. Liston in this proceeding. Bauermann is not the owner of the subject parcel, is not the taxpayer of the subject parcel, and is not an attorney licensed to practice law in the State of Illinois.

The Board finds Bauermann does not have standing to represent the property owner in this appeal and based on the facts admitted to in the record concerning lack of communication with counsel, the Board finds there is no basis upon which to deny the withdrawal request of Attorney Brian P. Liston. Furthermore, the intervenors' dismissal motion appears to be meritorious on its face in light of the foregoing facts. Since dismissal of this appeal is the appropriate remedy for appellant's failure to retain new counsel as required by the Property Tax Appeal Board, on this record the intervenors' extension request is deemed moot, however, the intervenors were not entitled to any further extensions of time to submit evidence.[1]

In conclusion, the Property Tax Appeal Board finds that the appellant Realty Associates Properties, LLC has failed to secure proper representation after the withdrawal of Attorney Liston despite having been given an opportunity to do so. Therefore, pursuant to Section 1910.69(a) and (e) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.69(a) and (e)) the appellant is found to be in default and the appeal is hereby **dismissed**.

[1] The letter issued September 15, 2017 to each of the intervenors established a final extension for the submission of evidence stating, in pertinent part, "NO FURTHER EXTENSIONS OF TIME TO SUBMIT EVIDENCE WILL BE GRANTED" to the respective intervenors.

APPELLANT:	**Sherwin Williams Company**
DOCKET NUMBER:	**13-27666.001-I-3 through 13-27666.005-I-3**
DATE DECIDED:	**July, 2018**
COUNTY:	**Cook**
RESULT:	**Reduction**

The subject property consists of an industrial complex with four, one-story buildings with a total of 152,540 square feet of gross building area therein. The building was constructed in various stages from 1970 through 1998 and is located in Thornton Township, Cook County. The subject contains 329,202 square feet of land and is classified as a class 5-93, industrial property under the Cook County Real Property Assessment Classification Ordinance.

Procedurally, the Board scheduled this matter for a pre-hearing conference on January 10, 2018 with all parties sent notice to appear. Said notice was dated December 6, 2017. At the pre-hearing conference on January 10th, the intervenor's attorney failed to appear. The appellant moved to default the intervenor for failure to appear without objection from the board of review. Per Board Order dated January 19, 2018, the intervenor's attorney was accorded 10 days to respond to the Board regarding the failure to appear at the scheduled pre-hearing conference and demonstrating good cause shown pursuant to the Board's rules. The intervenor's attorney did not respond to this Order. Per a second Board Order dated February 6, 2018, the Board found that the intervenor was in default for failure to appear and for failure to show good case for this failure to appear. Section 1910.69(a) of the official rules of the Property Tax Appeal Board states that 'failure of any party to comply fully with all the rules and/or specific requests of the PTAB…shall result in the default of that party.' Therefore, any evidence previously submitted by the intervenor is accorded no weight.

In addition, a second pre-hearing conference was held on March 14, 2018 with the two remaining parties. The appellant moved to decide the case without a hearing, while including an Exhibit reflecting a copy of the board of review's Notes on Appeal that indicated that the board of review had not requested a hearing on its evidence submission. The assistant state's attorney was accorded time to consult with his client. In a written response, he responded that the board of review had no objection to the appellant's motion. Therefore, the Board granted appellant's motion to render a decision without a hearing via notice dated March 19, 2018.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal estimating the subject property had a market value of $2,275,000 as of January 1, 2011 prepared by Joseph M. Ryan who holds the designation of Member of the Appraisal Institute (MAI). The appraisal developed two of the traditional approaches to value: the income and sales comparison approaches to value. It indicated that an interior and exterior inspection was undertaken on September 28, 2011, while submitting interior photographs. The appraisal indicated that the subject property consists of two non-contiguous irregular shaped corner sites with a total area of 329,202 square feet as well as a land-to-building ratio of 2.16:1 based upon the gross building area of 152,540 square feet. The improvements were described as masonry or metal panel, one-story or two-story buildings constructed in various stages from 1970 to 1998. All the buildings were described as being in overall average condition.

The appraisal developed the subject's highest and best use as vacant for an industrial use, and as improved for the continuation of the present use. The subject was described as containing docks and overhead doors as 13/4 and containing from 9 to 21 foot ceiling heights.

In the income approach, the appraiser used four rental properties that contained asking rents from $3.10 to $4.53 per square foot with improvement square feet ranging from 170,563 to 344,300 square feet. The appraisal stated that the market rent estimate for the subject property is based on a gross basis with the landlord paying for all of the operating expenses even though the subject is an owner-occupied complex. After making adjustments, the appraisal estimated the subject potential gross income at $3.75 per square foot or $572,025. Vacancy and collection loss of 10% was deducted indicating an effective gross income of $514,822. Using market data, the appraisal estimated total operating expenses at $65,000 resulting in a net operating income of $449,822. Using the direct capitalization technique, market data reflected an overall capitalization rate ranging from 5.62% to 13.63%, while using the band of investment technique resulted in a range from 4.27% to 9.48%. The appraisal indicated that a 10% overall capitalization rate was best for the investors' criteria for the subject, which then resulted in a loaded overall capitalization rate of 19.84%. Capitalizing the net operating income indicated a market value conclusion of $2,270,000, rounded, under the income approach to value.

In the sales comparison approach, the appraisal used five improved properties that sold from April 2008 to August 2011 for sale prices that ranged from $5.85 to $20.27 per square foot. The properties ranged in year of construction from 1945 to 1975; in number of docks & overhead doors from 0/7 to 25/2; in ceiling height from 24 to 28 feet; in land area from 326,700 to 855,954 square feet; and in building area from 115,211 to 211,595 square feet. The appraisal indicated that all of the sales contained fee simple property rights. Moreover, the appraisal stated that adjustments were made for market conditions, property rights, financing terms, location, size, and other physical characteristics which were described in detail in the appraisal. After weighing these factors, the appraisal indicated a value estimate for the subject of $15.00 per square foot of building area or $2,290,000, rounded.

In reconciliation, the appraisal stated that the cost approach to value was not used because investors would not typically use this in purchasing property similar to the subject. The income approach was given secondary weight with primary consideration accorded to the sales comparison approach resulting in a market value estimate of $2,275,000.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $877,102. The subject's assessment reflects a market value of $3,508,408 or $23.00 per square foot of building area, when applying the level of assessment for class 5, commercial property under the Cook County Real Property Assessment Classification Ordinance of 25%.

In support of its contention of the correct assessment, the board of review submitted unadjusted sales data on five suggested comparable sales. The properties were identified as for industrial/warehousing or industrial/manufacturing use. Property #1 was located in South Holland and was noted as part of a multi-property sale. Properties #2, #3 and #5 were located in Chicago or Alsip, while property #4 was located in South Holland, as is the subject property. Properties #2

through #5 ranged in building size from 102,107 to 240,255 square feet and in sale price from $16.67 to $25.81 per square foot.

Moreover, the board of review's memorandum stated that the data was not intended to be an appraisal or an estimate of value and should not be construed as such. This memorandum indicated that the information provided therein had been collected from various sources that were assumed to be factual and reliable; however, it further indicated that the writer hereto had not verified the information or sources and did not warrant its accuracy. As a result of its analysis, the board requested confirmation of the subject's assessment.

Conclusion of Law

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

The Board finds the best evidence of market value to be the appraisal submitted by the appellant. Overall, the Board finds that this appraisal developed two of the three traditional approaches to value; developed a highest and best use for the subject; used market data in estimating a value under the income approach to value; and used market sales in the sale comparison approach to value while making detailed adjustments for pertinent factors. In contrast, the board of review submitted raw, unadjusted sales data on properties, while noting that this data was neither verified nor warranted its accuracy.

The Board finds the subject property had a market value of $2,275,000 as of the assessment date at issue. Since market value has been established, the level of assessment for class 5, commercial property under the Cook County Real Property Assessment Classification Ordinance of 25% shall apply. (86 Ill.Admin.Code §1910.50(c)(2)).

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

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