



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: 3S L BLDG LLC-Laura Pierson
DOCKET NO.: 11-05788.001-C-3
PARCEL NO.: 19-30-405-002

The parties of record before the Property Tax Appeal Board are 3S L BLDG LLC-Laura Pierson, the appellant, by attorney Michael Elliott of Elliott & Associates, P.C. in Des Plaines; the McHenry County Board of Review; Algonquin Township, intervenor, by attorney James P. Kelly of Matuszewich, Kelly & McKeever, LLP, in Crystal Lake, and Community Unit School Dist. #300, intervenor, by attorney Scott E. Nemanich of Hinshaw & Culbertson LLP, in Lisle.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the **McHenry** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$181,141
IMPR.: \$270,482
TOTAL: \$451,623

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed this 2011 appeal pursuant to section 16-185 of the Property Tax Code (35 ILCS 200/16-185) from a decision of the Property Tax Appeal Board concerning the 2010 assessment. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

In accordance with Property Tax Appeal Board rule 1910.78 (86 Ill.Admin.Code §1910.78), due to the common issues of law and fact despite some differences in the parties in the proceedings, Docket No. 11-05788.001-C-3 was consolidated with Docket No. 12-03005.001-C-1 for purposes of a single oral hearing. The Board shall issue separate decisions for each docket number.

The subject property is improved with a one-story brick building with a concrete slab foundation that was built in 2005. The building contains 11,990 square feet of building area and is utilized by the owner as a pre-school/day care facility. The building is sprinklered, has central air conditioning with six classrooms and administrative offices. Each classroom contains a child-sized toilet and sink. The property has an approximately 41,100 square foot site¹ with approximately 14 parking spaces and is located in Algonquin, Algonquin Township, McHenry County.

As a preliminary matter, the parties stipulated to the qualifications of their respective expert appraisal witnesses.

The appellant through legal counsel appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this market value argument, counsel for the appellant prepared a brief referring to an appraisal of the subject property and also providing two sales and a listing as additional suggested comparables. As part of the brief, counsel also contended the subject building has specific build out for the purpose of a pre-school, including child sized washroom facilities and exterior egress for each classroom, which the appellant's appraiser opined to be a special purpose building with a most likely future use similar to the current use. Furthermore, counsel argued the subject has low onsite parking with only 14 spaces or a parking ratio of 1.2:1 in comparison to a typical office with a parking ratio of 4:1. The brief also argued that the subject has extremely limited visibility and access via a service drive as the subject is located behind a community shopping center.

¹ At hearing, the board of review was ordered by the Administrative Law Judge to submit a copy of the subject's property record card (BOR Ex. 1). This document indicates a site size of .9452 of an acre. Intervenor Algonquin Township's appraiser also reported a site size of .945 of an acre, although he incorrectly stated that to be 43,325.96 square feet of land area. The appellant's appraiser reported a site size of 42,178 square feet.

The comparable sales and listing in appellant's brief were not addressed at hearing (TR. 7).² These comparables were reportedly obtained from CoStar reports and were located in Crystal Lake and Woodstock. As set forth in the documentation, the comparable parcels range in size from 30,374 to 54,450 square feet of land area and are improved with structures that range in size from 5,000 to 15,000 square feet of building area. The buildings were constructed between 1977 and 1990; one is a religious facility, one is a multi-tenant office building and one is a day care. The two sales occurred in September 2009 and March 2012 for prices of \$450,000 and \$525,000 or \$30.00 and \$17.28 per square foot of building area, including land. The listing presented an asking price of \$310,000 or \$62.00 per square foot of building area. As part of the brief, counsel argued comparable #1 was similar to the subject due to its minimal visibility from an arterial street and very limited onsite parking. The office building comparable was near a commuter rail line and had ample onsite parking. The listing of a day care building was characterized as being near a commuter rail line, but a much smaller building than the subject.

In the brief and based upon these three properties, counsel contended that various upward and downward adjustments were necessary to account for differences from the subject. After adjustments, counsel for the appellant contended the data supports a value finding for the subject of \$50.00 per square foot of building area, including land, or \$600,000, rounded, for a total assessment request of \$199,980.

Also as part of the evidence, the appellant submitted an appraisal prepared by Howard B. Richter of Howard B. Richter & Associates estimating the subject property had a market value of \$950,000 or \$79.23 per square foot of building area, including land, as of January 1, 2011.

The appellant presented the testimony of Howard B. Richter, who is a president of Howard B. Richter & Associates. He has been engaged full-time in the appraisal of real estate since 1974 and is an Illinois Certified General Real Estate Appraiser. In addition, Richter holds the Member of the Appraisal Institute (MAI) designation. (Richter Appraisal, p. 57)³

² References to the transcript of the proceedings will be denoted by "TR" followed by page citation(s).

³ Hereinafter, during Richter's testimony, referred to as "Appraisal" with page number citation(s).

Richter testified the subject parcel was unusual in that it has no frontage on a public street and fronts only a service drive at the rear of a shopping center which was built prior to the subject. The subject is not visible from the nearest public side street nor from nearby Algonquin Road, despite the subject's street address being on Algonquin Road.

The appraiser determined from his research that the subject property is zoned B2 as a planned unit development (PUD) within that classification. Under the PUD, the subject is specifically limited to use as an educational facility and is precluded from being used as a medical office building (Appraisal, p. 4-5). The applicable ordinance related to the PUD likewise required the developer to "prepare covenants to address issues including, but not limited to, cross-access, cross-parking" (Id.) Upon his inquiries, Richter determined that no cross easements for use of the parking lots have ever been created or recorded. He determined there were 14 onsite parking spaces, although one and a fraction were occupied by a trash dumpster resulting in approximately one parking space per 1,000 square feet of building area. (TR. 24) Richter further opined that the subject's parking was inadequate for a pre-school, was inadequate from a market standpoint and was also inadequate legally under the current zoning provisions of Algonquin. (TR. 24, 26)

The subject building was characterized by Richter as a fairly conventional commercial structure that was purpose built for use as a day care center with very little specialized exterior design and lacks an extraordinary amount of partition walls, except that each of the classrooms has a child-size washroom (typically a toilet and sink) which he testified are readily removable features. The building could be readily converted to an office building or retail uses including showroom space, most types of displays and sales although the parking ratio per 1,000 square feet of building area would need to be much higher such as a minimum under most zoning ordinances of 4:1 or 5:1. (TR. 25-26)

Richter further opined that as a day care center, the subject can "get away with" the small parking ratio of 1:1 because adults drop off and pick up children at non-regulated times. He contended, however, that when parents want to stay to observe, have a parent/teacher conference or attend an event there is nowhere for "people to park either on this site or nearby." Richter also testified that even if cross-easements for parking had been established with the adjacent shopping center, those

spaces are not convenient to this building as they are located around the front of the retail shopping center and the only parking at the back of the retail building consists of several delivery docks. He testified in addition the service road was not suitable for parking given its narrow dimensions. He also concluded the only way to expand the parking lot would be to remove the "tot lot" which is a major feature of having a pre-school to offer time outside, but the contour of the parcel would also require a lot of tiering to establish a parking lot including further depressing the adjacent detention area for the subdivision. (TR. 27-29)

As part of the appraisal report on pages 15 through 18, Richter reached conclusions regarding the highest and best use of the subject property. This analysis included consideration of alternate uses that were found to be limited by the lack of access other than by an unmarked service drive and lack of visibility of the property without frontage on Algonquin Road. Moreover, a cross-easement for shared use of the driveway and cross-parking easement were never legally established and recorded as required by the applicable zoning ordinance. The lack of adequate parking also was considered and determined to be minimally adequate for most retail uses. If vacant, the highest and best use was to hold the site until new commercial development would again be feasible locally. As improved, the highest and best use was continued use with cash outlays to prevent any deferred maintenance in the future.

To arrive at an opinion of value, Richter utilized two of the three traditional approaches in his report. The appraiser did not utilize the cost approach to value noting in the report that prospective purchasers do not usually consider this analysis for this type and quality of property, even if it were recently constructed, due to substantial obsolescence now evident. At hearing, he further articulated that in the current economic conditions, there is no building that would not suffer from extreme external obsolescence; to calculate this figure, the appraiser would compare the property to sale(s) of newly constructed buildings and given the absence of new construction of both commercial and industrial properties, the appraiser cannot calculate a market extracted external obsolescence. He also contended there are no comparable land sales of parcels with similar deficiencies to the subject such as lack of access and visibility. (TR. 31-32; see also Appraisal, p. 16)

Utilizing the sales comparison approach, Richter began by selecting comparables located within McHenry County with

consideration of the type and use of the property as related to the subject's zoning ordinance. (TR. 33) In his search for comparables, the appraiser found one day care facility in Kane County (sale #1) which was given the greatest weight due to being similar in size, age and being purpose-built⁴; four one-story office buildings in either Kane or McHenry Counties which are uses that are neither permitted nor prohibited under the subject's PUD; and three retail buildings located in McHenry County. Richter further testified that he included retail building comparables in an effort to be all-inclusive since retail may be a permissible use of the subject, but he also acknowledged that these were the least relevant of his comparable sales when compared to the subject that lacks street frontage visibility and access from a public street. He testified that there was "no way the subject property could be utilized for retail purposes." (TR. 44)

The comparable parcels range in size from 28,390 to 84,942 square feet of land area. The comparable buildings were constructed between 1970 and 2008 and the buildings range in size from 4,030 to 13,860 square feet of building area. The appraisal report sets forth parking data for these eight comparables ranging from 26-cars to 52-cars. The properties sold between May 2011 and June 2012 for prices ranging from \$339,900 to \$1,214,000 or from \$78.48 to \$138.68 per square foot of building area, including land. As part of the appraisal report from page 19 through page 27, Richter provided a narrative explanation of adjustments to the comparables when compared to the subject which resulted in overall downward adjustments for seven of the eight comparable sales. Upon considering this data, Richter opined a value for the subject near the low end of the range of these comparable sales due to the subject's disadvantageous location (lack of visibility, limited access) and inferior land-to-building ratio resulting in a parking to building size ratio of less than 1.25:1. Given the foregoing data, Richter opined a market value for the subject under the sales comparison approach of \$80.00 per square foot of gross building area or \$960,000, rounded, as of January 1, 2011.

Next, the appraiser prepared the income capitalization approach to value. As an owner-occupied special use building with no lease history and with a lack of leases of comparable day care centers that were not tied to a national chain or name brand, Richter utilized lease data of dissimilar retail and office buildings. As such, the appraiser gave only secondary

⁴ This was a bank REO (real estate owned) property. (TR. 48-50)

consideration to the income approach as a test of reasonableness. (TR. 53-56; Appraisal, p. 3)

Richter used rent comparables located in Algonquin, Crystal Lake and Lake in the Hills. The rental comparables ranged in size from 1,000 to 6,300 square feet. These properties had lease dates ranging from October 2011 to August 2012 with rents ranging from \$6.19 to \$15.00 per square foot either on net or modified gross basis. The appraiser contended these rents have to be substantially discounted due to the subject's lack of visibility and access necessary for retail and office uses. In consideration of this data, the appraiser estimated the subject had a market rent of \$9.00 per square foot of building area. Thus, Richter estimated the subject had a gross potential income of \$107,910. (Appraisal, p. 32 & 36)

Richter then applied a vacancy and collection loss rate of 20% or \$21,582 after considering various CoStar Property surveys and selecting a marginally higher vacancy rate given the subject's disadvantageous location and lack of parking with extended marketing periods between tenancies, resulting in effective gross income of \$86,328. (TR. 56-57; Appraisal, p. 32 & 36) Next, the appraiser estimated expenses based on 90% stabilized occupancy for real estate taxes during vacancy, management fees, structural maintenance and reserves for replacements reflecting approximately 12.9% of effective gross income or \$11,150 resulting in a net operating income of \$75,178.

The appraiser next estimated the capitalization rate for the subject to be 8.00% using a modified band of investment technique as a guide. (TR. 58; Appraisal, p. 33-35) Capitalizing the subject's net operating income resulted in an estimate of value under the income approach as of January 1, 2011 of \$940,000, rounded.

In reconciling the two approaches to value, Richter gave most weight to the sales comparison approach as it best reflects the value considerations utilized by typical market participants and the income capitalization approach was given only secondary weight. (Appraisal, p. 37) His report provided an opinion of market value of the fee simple interest as of January 1, 2011 of \$950,000.

As an alternative to counsel's comparable data in the brief and based upon the foregoing appraisal evidence, the appellant contended the subject's assessment should be reduced to \$316,635

to reflect the appraised value at the statutory level of assessment of 33.33%.

On cross-examination by Attorney Kelly on behalf of Algonquin Township, Richter confirmed his understanding that the PUD and accompanying ordinance, which has never been rescinded, required the establishment of cross-access and cross-parking easement agreement(s) which according to the operator of the pre-school have never been done; part of the ordinance requirements included the mandate to have the agreement be shown on the plat of subdivision, which it is not according to Richter. Next, the witness was questioned regarding Algonquin Exhibit 1, a color aerial photograph that depicts the subject property outlined with a blue line. Although he did not recall it, based upon the exhibit Richter acknowledged that there appears to be parking both behind and along the side of the shopping center which is located to the north of the subject and across a service roadway. (TR. 61-69) Attorney Kelly then presented an 8 ½" x 11" photocopy which counsel identified as a "section of a plat of a subdivision which shows the subject property" which within the boundaries of the subject parcel includes the phrase "access easement hereby granted." The document was marked Algonquin Offer of Proof #1. The document is undated, lacks any signatures and lacks any indication that it has been recorded. (TR. 70-72)

For the sales comparison approach, Richter testified that he used both Kane and McHenry Counties as the market area. He further opined that within McHenry County there is a difference for properties located on Randall Road as compared to areas off of Randall Road. The subject is more than a ½-mile from Randall Road. The subject is not visible or conveniently accessible from Randall Road and thus the subject is not on the Randall Road corridor. (TR. 75-77, 96)

Comparable sale #1 in Richter's report was noted as "sold by the receivers for the lender in possession in June 2012" within 30 days of first being listed. The appraiser determined this to be a market value sale which is located in Kane County and the most similar property to the subject. While this comparable is on a public street, Richter does not characterize it as a main road like Randall Road; this comparable has superior visibility and access as compared to the subject. (TR. 77-80)

Comparable sale #2 of a multi-tenant office building is a different use than the subject, but from the exterior appears quite similar to the subject and representative of what the

subject could be converted to according to the witness. (TR. 80-81)

Richter was asked about sales of other schools, such as Kindercare, located within McHenry County to which he reiterated that national chain facilities, when sold, develop substantially higher prices of two or three times that of non-chain affiliated facilities which principal was affirmed by the intervening taxing district's appraisal report which similarly did not utilize those sales. (TR. 82-83)

Richter was questioned about sale #5 which reportedly included a CPA practice (business interest) of the sellers. On the assumption that the business interest was not part of the transaction, the witness testified that the adjustment would not be altered by more than 10% as the more significant adjustments to this comparable were related to building size, land-to-building ratio, parking ratio and location with frontage on a public street. (TR. 84-86)

Richter confirmed sales #6, #7 and #8 were each multi-tenant retail buildings. He also stated that his sales #1, #2, #3 and #6 were REO or distressed properties.⁵ (TR. 86-87, 102-03)

Under questioning concerning the income approach to value, Richter noted that leases of national chain pre-schools would differ from non-affiliated facilities and a gross income approach was not utilized due to the difficulty in determining appropriate real estate taxes and typically leases would be on a net basis, not on a gross basis. (TR. 88-89)

The witness next was cross-examined by intervenor's Attorney Nemanich with regard to the land sales related in the highest and best use analysis. The witness acknowledged this was not data that he independently verified given that Richter was not performing a cost approach analysis. (TR. 92-94) The appraiser also acknowledged that he does not know if the subject facility holds events which parents might attend. (TR. 94-95) As to accessibility and ADA compliance, Richter testified that all of the comparables chosen were one-story buildings with grade level entrances, no interior stairs and with two means of entrance and egress. (TR. 98-102) Furthermore, the appraiser made no adjustment for comparables that were REO or short sales. (TR. 102) Although the subject was a relatively new building with a specialized use, Richter testified that he did not utilize a cost approach to value. (TR. 103)

⁵ See Appraisal, p. 21, 22 & 25.

As to area parking, the witness testified that he observed no restrictions or efforts to prevent use of parking on the shopping center parcel on the Saturday that he inspected the subject property; he further noted that he does not know if any parking enforcement such as having vehicles ticketed and/or towed has occurred in the past. (TR. 103-04)

Based on questions from the Administrative Law Judge, Richter distinguished the circumstances of comparable sale #6, which is an outlot property, from the subject. He testified that an outlot has more visibility than the attached shopping center itself given its location closer to the street frontage and the property gains benefits from the synergy of a shopping center; in contrast, the subject is less visible by being behind a shopping center and has the exact opposite in accessibility to an outlot property. (TR. 106-07)

On re-direct examination, Richter testified that the PUD was established in 2004 whereas the appellant/owner-operator of the pre-school did not purchase the subject property until 2006. (TR. 107-08)

As to conversion of the subject building, Richter acknowledged that the building has hallways running east/west and north/south which dissect the structure into four quadrants which are then further divided into classrooms with some plumbing fixtures for small children. For conversion to office use, the witness opined that changing partition walls would be required which is fairly standard when re-tenanting a building and there would be removal of fixtures which "perhaps would be fully compensated by the value of the fixtures themselves." (TR. 109-10)

Upon re-cross examination, Richter acknowledged that his highest and best use determination for the subject property was continued use as an educational building. (TR. 111-12)

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$828,446. The subject's assessment reflects a market value of \$2,529,606 or \$210.98 per square foot of building area, land included, when using the 2011 three year average median level of assessment for McHenry County of 32.75% as determined by the Illinois Department of Revenue.

The board of review's submission indicated that the intervening taxing district, Algonquin Township, would be filing evidence;

the board of review filed no further evidence of its own. (See Board of Review Notes on Appeal). At hearing, the board of review representative requested an assessment reduction reflective of the appraised value as presented by intervenor, Algonquin Township. The intervenor, Community Unit School Dist. #300, adopted the evidentiary submissions of both the board of review and the intervenor, Algonquin Township. (See letter dated December 12, 2013; 86 Ill.Admin.Code §1910.99).

In support of its contention of the correct assessment of the subject property, the intervenor Algonquin Township submitted an appraisal prepared by Frank E. Harrison of Harrison & Associates, Inc. estimating the subject property had a market value of \$1,379,000 or \$115.01 per square foot of building area, including land, as of January 1, 2011.

The intervenor presented the testimony of Frank E. Harrison, who is an Illinois Certified General Real Estate Appraiser and also holds the Member of the Appraisal Institute (MAI) designation. (Harrison Appraisal, cover & signature pages)⁶

The witness testified that the subject is known as the Foundations Montessori School located to the east of Talaga Road and to the south of Algonquin Road with no frontage on Algonquin Road. (TR. 115; Appraisal, p. 4-5) Harrison inspected the subject property on September 23, 2013. He found the subject's parking was "substandard to a degree" noting that for a daycare the local zoning ordinance requires three parking spaces for every 1,000 square feet of gross building area. Upon inspection, Harrison counted 15 parking spaces, although one may have been substandard due to a dumpster on it. "But a cross easement would allow parking -- additional vehicular parking in and around the retail facility to the north." (TR. 126)

Also as part of the description of the subject site, among other items, Harrison addressed easements wherein he recognized the existence of the PUD and an accompanying Ordinance No. 2004-0-10 which was adopted in May, 2004 "under the assumption that 'the developer shall prepare covenants'" related to cross-access, cross-parking and similar topics. As to these matters in the appraisal report, Harrison stated:

I have assumed for valuation purposes in this assignment that the appropriate easements and other agreements required by Ordinance No. 2004-0-19 have

⁶ Hereinafter, during Harrison's testimony, referred to as "Appraisal" with page number citation(s).

been met; access, utility, parking and stormwater drainage easements assumed to exist, as appropriate and necessary, on the subject property; . . .

(Appraisal, p. 5) As part of the appraisal report, Harrison also wrote, "Because of its access, lack of parking, and special purpose design, [the subject] does not lend itself very well to conversion into an alternative office use." (Appraisal, p. 2)

As part of the appraisal process, Harrison determined the highest and best use of the subject parcel as vacant would be to develop the site for a use permitted by the current zoning classification and the PUD adopted for the property "at such time as real estate market conditions have stabilized to the point where such development is feasible." As improved, the highest and best use of the subject property is to continue its use as a school or day care center. (Appraisal, p. 8)

In estimating the market value of the subject property, Harrison developed the three approaches to value. The first approach to value developed was the cost approach. Harrison opined this approach to value is particularly appropriate for a special purpose property like the subject school as there are frequently insufficient sales concerning such a property. (TR. 132) The appraiser estimated the value of the land using three vacant commercial development sites. The sales were located in Huntley, Crystal Lake and Algonquin and ranged in size from 75,882 to 102,485 square feet of land area. The sales occurred from September 2009 to February 2011 for prices ranging from \$675,000 to \$950,000 or from \$8.78 to \$9.70 per square foot of land area. On pages 9 and 10 of the report, Harrison commented on each of the comparable land sales regarding location "on a secondary highway," within the given block and whether controlled by a traffic light. He also reported that downward adjustments were necessary to each comparable for various characteristics including access. After considering differences, Harrison estimated adjusted sale prices ranging from \$6.95 to \$8.25 per square foot of land area and he then reconciled the estimates to arrive at an estimated land value for the subject of \$7.50 per square foot of land area or \$325,000, rounded.⁷

For the subject's improvement, Harrison estimated the replacement cost new using the Marshall & Swift Commercial

⁷ Despite the property record card for the subject depicting a lot size of .9452 or 41,173 square feet of land area, Harrison reported a land area for the subject of 43,326 square feet of land area.

Estimator system for a class C, 2.0 (good) quality day care center resulting in a replacement cost new estimate of \$1,667,330 or \$139.06 per square foot of building area. For physical depreciation, Harrison estimated 12.5% of its replacement cost new utilizing the age/life method. Harrison also stated the depreciation did not account for the special purpose design and construction of the subject to which he applied an additional 10% and for external obsolescence, as reflected by current market conditions, he applied an additional 10%. As a consequence, Harrison opined a depreciated replacement cost new for the improvement of \$1,125,448, adding site improvements of \$25,000 and adding the land value of \$325,000, Harrison concluded a value under the cost approach of \$1,475,000, rounded. (Appraisal, p. 11-12)

For the sales comparison approach, Harrison presented five improved comparable sales identified as #4 through #8, where sale #6 is the same property presented as Richter's sale #1 in his appraisal report. The appraiser reported that comparable sales #4 and #6 were leased at the time of sale and purchased by the tenants that had leased the premises; Harrison "concluded that the leased fee interest acquired was consistent with the fee simple interest of the properties." (Appraisal, p. 16) The comparable sales were located in Elgin, Carpentersville, Plainfield and Crystal Lake in Kane, Kendall and McHenry Counties. As Harrison determined the only reasonable alternative use of the subject property would be for a day care center, he confined his search to newer schools and day care centers, in the same age and size range as the subject; Harrison did not consider any alternative uses since they would be inconsistent with the highest and best use conclusion. At hearing, Harrison testified that if the subject were to be converted to office or retail use, it would be necessary to obtain modification of the PUD. (TR. 125) The comparable improvements range in size from 8,051 to 16,684 square feet of building area. The comparables were constructed from 1992 to 2007 with one having been remodeled in 2002. The comparables were one-story buildings of masonry construction with parcels ranging in size from 40,140 to 217,800 square feet of land area. The sales occurred from March 2010 to November 2012 for prices ranging from \$800,000 to \$2,550,000 or from \$98.66 to \$201.54 per square foot of building area, including land. (Appraisal, p. 12-15)

As outlined on pages 15 through 18 of the appraisal report, Harrison applied adjustments both upward and downward for various differences from the subject, for market conditions

and/or for duress. Harrison testified that upward adjustments were made to the improved comparable sales if the land value was less than the subject's land value of \$325,000 and he also made upward adjustments for short sales, like comparable #6, as he opined that area sales of this nature sell at a bit of a discount. In the report, Harrison stated that there was some duress on the part of the sellers for both sales #6 and #7. (TR. 123-24; Appraisal, p. 16) After the adjustment process, the appraiser arrived at adjusted sales prices ranging from \$104.89 to \$142.58 per square foot of building area, including land. In reconciling this range of adjusted sale prices, Harrison noted that sale #8 was the most recent sale and was the only McHenry County sale which had an adjusted sale price of \$104.89 per square foot of building area as compared to sale #4 that was larger than the subject but otherwise closest in building size to the subject with an adjusted sale price of \$114.68 per square foot of building area. Given the sales data, Harrison estimated the subject to have a market value of \$115.00 per square foot of building area under the sales comparison approach or \$1,379,000, rounded. (Appraisal, p. 12-17)

On page 18 of the appraisal report, Harrison provided four comparables identified as A, B, C and D which he characterized as informational sales that were reviewed but not incorporated into the sales comparison approach or value conclusion. Many of these properties were subject to long-term leases which Harrison believed could be helpful in projecting an income for the subject property, but would reflect the sale of the leased fee interest rather than the fee simple interest. (TR. 127-28)

Next, Harrison prepared the income capitalization approach to value. He noted the subject was an owner-occupied property with no lease history. Due to a lack of detailed information concerning leases of comparable day care centers, Harrison utilized rental information on the four informational sales comparables outlined on page 18 of the appraisal report. Three of these properties were subject to long-term leases and one was a unit within a multi-unit condominium. (TR. 128-29; Appraisal, p. 19-24)

The rent comparables were located in Huntley, Oswego, South Elgin and Grayslake and consisted of buildings that were built between 1999 and 2010. The buildings ranged in size from 6,952 to 10,000 square feet. In consideration of the available data of sales and asking rents, the appraiser estimated the subject had a market rent of \$18.00 per square foot of building area. Thus, Harrison estimated the subject had a potential gross

income of \$215,820. He further projected a five year lease with a level rent for the lease term. (Appraisal, p. 19-20)

The appraiser then next applied a vacancy and collection loss noting considerations given to its easement access, special purpose design and construction, and lack of easy adaptability to any kind of alternative use other than a day care. As a final factor, Harrison noted the applied factor must also reflect the difficulties of identifying a tenant interested in operating either a school or a day care center on the subject property. Harrison then projected a vacancy and collection loss rate of 10% or \$21,582, resulting in an effective gross income of \$194,238. (TR. 129; Appraisal, p. 21) The appraiser next estimated expenses for insurance, exterior maintenance and repairs, management fees, replacement allowance and miscellaneous expenses totaling \$25,712, resulting in a net operating income of \$168,526. (Appraisal, p. 21-22; TR. 129-30)

The appraiser next developed a capitalization rate for the subject of 8.93% using the band of investment and mortgage-equity techniques which Harrison found to be consistent with market capitalization rates for triple-net investments. Harrison then applied a tax load factor of 2.8% resulting in a loaded capitalization rate of 11.73%. Capitalizing the subject's net operating income resulted in an estimate of value under the income approach of \$1,437,000, rounded. (Appraisal, p. 22-23; TR. 130-31)

In reconciling the three approaches to value and the respective conclusions, Harrison relied upon the sales comparison approach to value which was supported by the cost approach; the appraiser gave no credence to the conclusions of the income approach as there were too many projections in Harrison's opinion. (Appraisal, p. 23-25; TR. 131)

Based on the foregoing evidence, the intervenor requested an assessment reduction reflective of the appraised value.

On cross-examination, Harrison reviewed Algonquin Exhibit No. 1 and acknowledged that the subject property has no direct access to Talaga Drive or to Algonquin Road, other than by easement. He further acknowledged that for purposes of valuation as discussed on page 5 of his appraisal report, he has assumed that there is a permanent access easement for the subject property to Talaga Drive, although Harrison has seen no documentation that an easement has been granted. When asked, Harrison did not know

if the lack of an access easement would affect his final opinion of value of the subject property; when re-phrased by the Administrative Law Judge as a hypothetical inquiry, Harrison testified the lack of legally recorded access easement(s) "might" have an impact on his opinion of value. (TR. 137-44)

The witness was questioned about his adjustments from \$8.90 per square foot to \$6.95 per square foot for land sale #1 which was described as being a corner location on a primary highway which differs from the subject parcel that is neither on a corner nor located on a secondary highway. In addition, Harrison's land sales #2 and #3 were located on secondary highways with interior configurations. The witness acknowledged that each of these comparables were superior to the subject concerning those attributes. Harrison was asked what adjustments were made to account for the subject's parking ratio of one space per 1,000 square feet of building area as compared to the comparable parcels, to which he testified that parking was necessary for teacher staff and "the cross easement that allows parking is more than adequate." The witness further contended that as a PUD, the subject was at a corner, albeit the subject building was not visible from Algonquin Road, but the signage was there and "there is an access strip" to the property. Any depreciation or adjustments for lack of access and visibility would be reflected in the land value. (TR. 146-50)

In the cost approach, the witness reiterated that a slight adjustment was made for external obsolescence as indicated by some negative market conditions. The adjustment was based upon the appraiser's experience and judgment rather than any data. (TR. 151-52)

As to the sales comparison approach, the witness acknowledged that in expanding the area to find sales, he had one sale in Kendall County⁸ and the rest of the sales were in Kane and McHenry Counties. Harrison also acknowledged that the tenants of comparable sale #4 purchased the building; the appraiser was unable to get verification as to the motivation of the tenant in the transaction other than they wanted to continue the operation. Harrison has no idea whether the tenant paid more or less for the property. As part of the analysis, Harrison reviewed an aerial photograph of sale #4 and noted there was parking although he did not count the number of spaces and did not make any adjustment as he believes there is no substandard amount of parking for the subject with the cross-easement with

⁸ The witness initially agreed the property was in Will County, but subsequently corrected his assertion. (See TR. 165)

access to 20 parking spaces across a curb. Sale #4 presented a land-to-building ratio of 13.88:1 whereas the subject is approximately 3.7:1. Due to the differing land values, Harrison deducted \$546,000 from the sale price of #4 to account for the site value difference. (TR. 153-56, 157-58) Improved sale #5 had been leased as Goddard School, was sold and become Primrose School, although Harrison does not know if the purchaser had been the operator of Goddard School. (TR. 158-60) Improved sale #6 was leased on a month-to-month basis at the time of sale and the lessee was the purchaser of the property. This comparable also has a larger land-to-building ratio than the subject. (TR. 160-63) Improved sale #7 was located in Kendall County, was not purchased by a tenant, but was also an REO resulting in an upward adjustment by Harrison because it was "probably sold at a discount." (TR. 164-65) Improved sale #8 had a higher land-to-building ratio than the subject and was leased at the time of sale, but the structure was built in 1992. (TR. 166)

As to the informational sales in the appraisal report, Harrison testified that he reviewed those properties as part of the income analysis and because he had to project an income, he placed no credence on the income approach to value. To the extent that the properties sold subject to long-term leases, the sales were of a different interest than Harrison was appraising for the subject. (TR. 166-67)

As to children being dropped off at the subject property, Harrison testified that he watched parents pull in, drop off children and pull around to exit and there were approximately six employee cars in the parking lot of the subject property. He further testified that according to the appellant, the only times those parking spaces are full is when parents and grandparents come for programs at the facility. (TR. 156) Harrison further opined that parking spaces are important for an office or retail facility with customers coming and going, but was not as important for a pre-school with teachers and support staff needing parking along with parking spaces across the way. (TR. 163-64)

Based on questions by the Administrative Law Judge concerning Harrison's improved sale #6, which is the same property as Richter's sale #1, Harrison testified that the property was listed on the market for a period of 13 months prior to its sale, but the listing time has no impact on Harrison's determination to adjust the price upward for being a short sale. Similarly for improved sale #7, Harrison's records indicate a

listing in October 2011 prior to the closing date in November 2012. (TR. 169-71)

On re-direct examination, Harrison reiterated that there was access to the subject property and associated retail center via a service road from Talaga Road. (TR. 172-73) He further testified that while you need to be able to get to the subject property, anecdotally he opined that its lack of clear visibility may be advantageous for safety issues. (TR. 174-75)

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 this burden of proof was met based upon the evidence and a reduction in the subject's assessment is warranted.

The "Board of Review Notes on Appeal" disclosed a final assessment of the subject property of \$828,446 indicating the subject property has an estimated fair market value of \$2,529,606 at the three-year median level of assessment in McHenry County of 32.75% as determined by the Illinois Department of Revenue. The board of review and the intervenor Community Unit School District #300 both adopted the intervenor Algonquin Township's retrospective appraisal evidence.

The appellant submitted an appraisal prepared by Howard B. Richter estimating the subject property had a market value of \$950,000 as of January 1, 2011. The intervenor Algonquin Township submitted an appraisal prepared by Frank E. Harrison estimating the subject property had a market value of \$1,379,000 as of January 1, 2011.

The Board finds the manifest weight of the evidence presented in this appeal supports a reduction in the subject's assessment. The Board further finds the best evidence in this record of the subject's fair market value as of January 1, 2011 is the retrospective appraisal presented by the intervenor Algonquin Township and adopted by the board of review and the intervenor Community Unit School District #300.

As an initial matter, the Property Tax Appeal Board finds the appellant's alternative valuation argument, prepared by counsel of record in the brief, with an estimated value of \$600,000 using two sales and a listing to be unconvincing, not supported by substantive market evidence in the record with appropriate support for the adjustment process and is furthermore contradictory to the appellant's own appraisal report. The appellant's legal counsel did not demonstrate as part of the brief the knowledge, experience, education and/or methodology utilized to make adjustments to the three comparables for differences from the subject in order to arrive at a value conclusion and therefore, the Property Tax Appeal Board gives this evidence no weight.

The Board further finds problematic the fact that appellant's counsel developed an opinion of the value of the subject which was contradictory to the value opinion of the appellant's retained expert in the field of real estate valuation. In addition, the Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion evidence of value for that client's property. In summary, no weight has been afforded to the value conclusion of appellant's counsel. No weight has been given to the listing and two sales presented by appellant's counsel in the brief with minimal factual support or details of the comparability of the properties to the subject.

As to the appraisal evidence in this matter, the Board finds both appraisers Richter and Harrison agreed that the subject is a special purpose property. The appraisers also agreed that the subject had a lack of visibility, a lack of access and suffered from a lack of parking on the subject premises, although the appraisers disagreed on the impact of those characteristics on the subject property's market value. Both appraisers also agreed their respective income approaches to value were not reliable indicators given the limited availability of suitable rental comparables that were used as pre-school/day care facilities and were not associated with national chain trade names.

The Board finds both appraisers concurred on the highest and best use of the subject property as improved for continued use/use as an educational facility. Both Richter and Harrison prepared comparable sales approaches to value in their respective appraisal reports. 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 (2nd Dist. 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 (5th Dist. 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.

For the sales comparison approach to value, the Richter appraisal considered the sale of one day care along with sales of four office buildings and three retail buildings. In this regard, the Board finds that, but for sale #1, the sales chosen by Richter were inconsistent with his determination of highest and best use as continued use of the subject facility. Instead, the majority of his sales required conversion of the subject property to either office or retail use. While Richter testified that conversion of the subject building was feasible to an office building, he also testified that the subject would never be converted to retail use due to its lack of access and lack of parking thus use of retail building sales would be wholly inconsistent with the characteristics of the subject property and his determination of appropriate alternative uses. Furthermore, while Richter opined that the subject property was not excessively partitioned and had some excess child-sized plumbing fixtures, for purposes of any conversion Richter did not provide any cost estimate(s) to accomplish conversion which the Board finds further detracts from his analysis of these dissimilar sales comparables. Given these inconsistencies, the Board has given little credence to the value conclusion presented by Richter in his sales comparison approach and thus his final opinion of value.

The Board also finds that detracting from Richter's conclusions are his contentions that the lack of parking and lack of cross-parking easements were crucial detriments to the subject parcel, but then in a contradictory analysis Richter presented comparable sales of office and retail buildings which would imply not only conversion of the subject building, but also sufficient, proximate and easily accessible parking to accommodate office/retail uses with the accompanying customer base. In conclusion, with the exception of his sale #1, the Board finds the majority of Richter's comparable sales were inconsistent with his stated highest and best use, as improved and were inconsistent with his determination that the subject's

immediate, legal and authorized parking would be inadequate for office or retail in the absence of a cross-parking easement.

The Board finds the appraiser, Frank E. Harrison, offered credible evidence and testimony in support of the subject's estimated market value of \$1,379,000 with primary reliance upon the sales comparison approach to value. In this value approach, Harrison analyzed the sale of five day care facilities. In light of Chrysler, *supra*, since there are credible market sales of facilities with similar use to the subject within this record, the Board has placed most weight upon this evidence.

The evidence and testimony further revealed that Harrison made upward adjustments of 10% or "slight" amounts for sales that were REO or short sales. The Property Tax Appeal Board finds that as of July 16, 2010, the Property Tax Code mandates that the Property Tax Appeal Board shall consider compulsory sales of comparable properties for the purpose of revising and correcting assessments. (35 ILCS 200/16-183) The Property Tax Code also defines a compulsory sale as a "short sale" and/or as "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) Thus, the Board finds the effective date of these statutes is applicable to the assessment date at issue of January 1, 2011.

In the final analysis as to the sales comparison approach to value, the Board finds that Harrison utilized five day care facilities located in Kendall, Kane and McHenry Counties which are most comparable to the subject in use and purpose. The Board also acknowledges that, with the exception of one comparable, these properties presented by Harrison have larger parcels when compared to the subject property and, with the exception of one of the buildings, the structures are smaller than the subject building. Despite these differences, the Board finds that the overriding similarity in use and purpose outweighs these differences and lends the most credence to the sales comparison value conclusion developed by Harrison over the dissimilar comparables considered by Richter in his sales comparison approach to value. Moreover, the Board finds the comparable sales presented by Harrison are each consistent with his determination of the subject's highest and best use as improved as continued use as a school or day care facility. Furthermore, while the Board recognizes that several of these sales included leases and/or were purchased by the tenant, the Board finds these comparable sales presented by Harrison were

the best indicator of the market value of the subject property and were the most similar comparable special purpose properties like the subject in the record.

The subject's 2011 assessment reflects a market value of \$2,529,606, which is above the appraised value conclusion of Harrison and which has been found by the Board to be the best evidence of market value in the record. The Board finds the subject property had a market value of \$1,379,000 as of the assessment date at issue. Since market value has been established the 2011 three year average median level of assessments for McHenry County of 32.75% as determined by the Illinois Department of Revenue shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Ronald R. Cuit

Chairman

K. L. F...

Member

Richard A. ...

Member

Mark ...

Member

J.R.

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: February 20, 2015

A. ...

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.