



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

APPELLANT: Central Nursing Realty, LLC
DOCKET NO.: 11-31329.001-C-3 through 11-31329.010-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Central Nursing Realty, LLC, the appellant(s), by attorney John B. Wolf, of Ashman & Stein in Skokie; the Cook County Board of Review; the Chicago Board of Education, intervenor, by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
11-31329.001-C-3	13-29-431-013-0000	17,458	92,623	\$ 110,081
11-31329.002-C-3	13-29-431-014-0000	12,206	255,868	\$ 268,074
11-31329.003-C-3	13-29-431-015-0000	12,206	256,246	\$ 268,452
11-31329.004-C-3	13-29-431-016-0000	12,206	257,538	\$ 269,744
11-31329.005-C-3	13-29-431-017-0000	12,206	255,952	\$ 268,158
11-31329.006-C-3	13-29-431-018-0000	12,206	255,868	\$ 268,074
11-31329.007-C-3	13-29-431-019-0000	12,206	254,363	\$ 266,569
11-31329.008-C-3	13-29-431-020-0000	12,206	200,646	\$ 212,852
11-31329.009-C-3	13-29-431-021-0000	12,206	383	\$ 12,589
11-31329.010-C-3	13-29-431-022-0000	12,206	710	\$ 12,916

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2011 tax year. The Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject consists of a four-story skilled-nursing facility of masonry and steel construction with 52,157 square feet of building area, and is commonly known as the Central Nursing and

Rehabilitation Center. The facility has 3 private rooms, 55 semi-private rooms, and 33 wards, for a total of 245 beds. The building is 38 years old. The property has a 32,334 square foot site, resulting in a land-to-building ratio of 0.62:1, and 45 paved parking spaces. The subject is located in Chicago, Jefferson Township, Cook County. The subject is classified as a class 5-97 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant made five alternative arguments in support of a reduction.¹ The appellant first asserts that that subject is inequitably assessed. In support of this argument, the appellant submitted varying degrees of information for 11 equity comparables. Comparables #1 through #8² ranged: in age from 13 to 49 years old; in improvement size from 36,000 to 85,984 square feet of building area; in land to building ratio from 0.503:1 to 2.419:1; and from 117 to 208 beds. These comparables had improvement assessment that ranged from \$10.39 to \$28.83 per square foot of building area, or \$5,377.89 to \$7,700.04 per bed. The appellant also submitted limited information on three additional equity comparables.³ Comparable #9 is a 54 year old building with 7,500 square feet of building area, and has an improvement assessment of \$38.41 per square foot of building area, or \$6,000.98 per bed. Comparable #10 has 164 beds. Comparable #11 is a 50 year old building with 35,000 square feet of building area and 157 beds. No assessment information was submitted for comparables #10 and #11.

On the day of the hearing, but prior to the commencement of the hearing, the appellant made an oral motion to substitute the final assessments for several of the equity comparables submitted by the appellant and several of the comparables submitted by the board of review.⁴ According to the appellant, these comparables' final assessments were adjusted after specific objection

¹ The arguments put forth by the appellant are discussed in a different order than the order in which they are presented in the appellant's evidentiary submission.

² The Board notes that the appellant's initial evidentiary submission can be described as nothing less than convoluted. The descriptions of appellant comparables #1 through #8 have been gleaned from the various documents, charts, and graphs submitted by the appellant. In doing so, the Board found numerous discrepancies within the appellant's own evidence. For example, on the first page following the appellant's brief, there is a non-paginated and untitled chart with information for appellant comparables #1 through #8. This chart states that comparable #1 has 176 beds; however, the chart titled "Nursing Homes – 2011 Board of Review Assessments" and the chart titled "Nursing Home Descriptions," both state that comparable #1 has 146 beds. This discrepancy, in turn, resulted in an improvement assessment per bed for comparable #1 of \$5,075.64 (using 176 beds), and this figure is what the appellant asserts is the low end of the range. However, when using the latter descriptions, which state comparable #1 has 146 beds, the improvement assessment per bed is \$6,118.58. The Board has done its best to ascertain the correct information for each comparable based on the data submitted by the appellant, and the description and assessment information found in this Final Administrative Decision are reflective of the Board's discernment of that data.

³ For ease of reference, appellant comparables #1 through #8 are identified as delineated on the previously mentioned non-paginated and untitled chart immediately following the appellant's brief (i.e., Comparable #1 has PINs 13-11-300-008-0000 and 13-11-300-009-0000). Comparable #9 was only found in the chart titled "Nursing Homes – 2011 Board of Review Assessments," and is named "Alshore House." Comparables #10 and #11 were only found on the chart titled "Nursing Home Descriptions," and are named "Northwest Home for" and "Covenant Home," respectively.

⁴ The appellant submitted assessment information for the board of review's comparables in its rebuttal submission, which is discussed *infra*.

proceedings in the circuit court were concluded. The intervenor objected to the admission of the updated assessment information, because it was not timely disclosed, and it was not relevant. The board of review adopted the intervenor’s argument. The Board overruled the objection, and granted the appellant’s motion to substitute the updated assessment information for the assessment information that was originally submitted in the appellant’s initial evidentiary submission and rebuttal. A chart with the updated assessment information was admitted into evidence as Appellant’s Exhibit A. The chart showed the new assessment information for appellant comparables #1, #2, #3, #5, and #7, and board of review comparables #1, #2, and #5. The board of review and intervenor requested an opportunity to submit a written response to the chart, and the Board granted these parties 14 days to submit a written response. The board of review timely submitted a response, which described several alleged errors in the assessment information contained in the chart. The intervenor adopted the board of review’s response. The appellant requested time to reply to the response, and the Board granted the appellant seven days after receipt of the response to do so. The appellant did not file a reply. Based on this evidence, the appellant requested that the subject’s improvement assessment be reduced to \$5,500 per bed, or \$1,347,500, for a total assessment of \$1,474,812.

The appellant also contends overvaluation as the basis of the appeal. The appellant put forth four different market values for the subject, with each based on a different argument. The appellant calls the first of these market value arguments the “Economic Approach to Value.” In support of this argument, the appellant submitted an Accountants’ Review Report as of December 31, 2009, and a second Accountants’ Review Report as of December 31, 2010. The appellant’s attorney took the total revenue for calendar year 2010 of \$10,222,798, as found in the second Accountants’ Review Report, and deducted 90.00% for expenses, to arrive at a net operating income of \$1,022,280. The Board notes that the second Accountants’ Review Report lists actual expenses for the subject to be \$8,953,807, or 87.59% of total revenue. The appellant’s attorney then used a capitalization rate of 10.00%, and a load of 4.07% for real estate taxes, for a total loaded capitalization rate of 14.07%, to arrive at a market value for the subject of \$7,265,672.⁵ Thus, the appellant requested a reduction in the subject’ total assessment to 25.00% of this estimate of market value, or \$1,816,418, as corrected.

The second market value argument proffered by the appellant is called “Medicaid Real Estate Reimbursement.” Under this argument, the appellant states that the Medicaid reimbursement rate has been set at \$13.98 per bed per day since 2007, and that \$5.08 per bed per day of that overall rate is attributable to real estate. The appellant calculated that the subject’s market value under this argument is \$4,351,530, after using 245 beds, a 95.79% occupancy rate, 365 days in

⁵ The Board notes that the appellant’s brief states that the subject’s market value under this approach was \$7,266,664; however, the Board’s own calculations resulted in a market value of \$7,265,672, calculated as follows:

Revenue		\$ 10,222,798
Expenses (90.00% of revenue)	-	\$ 9,200,518
Net operating income		\$ 1,022,280
Loaded capitalization rate	÷	14.07%
Market value		\$ 7,265,672

the year, and a capitalization rate of 10.00%.⁶ The appellant cites a trial court decision from New York as support for this method of valuing the subject. Tarrytown Hall Care Center v. Board of Assessors, Index No. 14267/98 (Sup. Ct., Westchester County, N.Y., March 4, 2004) (Rosato, J.).⁷ Based on this argument, the appellant requested that the subject’s total assessment be reduced to 25.00% of the estimate of market value, or \$1,087,883, as corrected.

The third market value argument proffered by the appellant is based on a recent purchase of the subject. The appellant asserts that the subject was purchased in August 2009 for \$8,982,500, and that \$7,491,488 of the purchase price is attributable to the real estate, while the remaining \$1,491,012 is attributable to personal property. In support of this argument, the appellant submitted the Illinois Real Estate Transfer Declaration, PTAX-203 Form. In addition to the sale date, sale price, and the breakdown of real and personal property attributable to the total sale price, this form includes a list of the personal property items included in the sale. The appellant also submitted a printout from the Cook County Recorder of Deeds’ website showing that the subject was sold on August 24, 2009 for \$7,491,500. Based on this argument, the appellant requested that the subject’s total assessment be reduced to 25.00% of the sale price attributable to real estate, or \$1,872,872.

THE APPELLANT’S APPRAISAL AND TESTIMONY OF RYAN T. KORTH, M.A.I.

The fourth and final market value argument proffered by the appellant is based on an appraisal of the subject property. The appellant submitted a copy of a summary appraisal report of the subject property prepared by John W. VanSanten, M.A.I., M.R.I.C.S., and Ryan T. Korth, both of Stout Risius Ross (the “Korth Appraisal”). The appellant began its case-in-chief by calling Mr. Korth as an expert witness. Mr. Korth testified that he is the director of the real estate group at Stout Risius Ross, where he is responsible for producing appraisals, managing employees, reviewing appraisals, and developing business. Mr. Korth stated that he is an Illinois certified general real estate appraiser, and holds the M.A.I. designation from the Appraisal Institute.⁸ He

⁶ The Board notes that the appellant’s brief states that the subject’s market value under this approach was \$4,349,987; however, the Board’s own calculations resulted in a market value of \$4,351,530, calculated as follows:

Medicaid Reimbursement for real estate per bed per day		\$ 5.08
Beds	×	245
Medicaid Reimbursement for real estate per day at 100% occupancy		\$ 1,244.60
Occupancy	×	95.79%
Medicaid Reimbursement for real estate per day at asserted occupancy		\$ 1,192.20
Days in the year	×	365
Income		\$ 435,153
Capitalization rate	÷	10.00%
Market value		\$ 4,351,530

⁷ The appellant did not submit a copy of this decision, and the Board was unable to locate a copy of it by searching Westlaw. The Board’s search of Westlaw, however, did show that other New York trial courts have cited this case for the proposition that the appellant asserts. The Board also notes that, while the cited case is from the “Supreme Court,” in the State of New York, the “Supreme Court” is a trial court and a court of original instance. It is not a sister court to the Supreme Court of Illinois.

⁸ The Board notes that the Korth Appraisal states that Mr. Korth is a “Candidate for Designation of the Appraisal Institute.”

further opined that he has been an appraiser since 2008, and that he has appraised approximately 50 nursing care facilities or hospices. Mr. Korth also testified that he has reviewed approximately 20 appraisals of nursing care facilities. He stated that he testified as an expert witness on one prior occasion, and that the case was a bankruptcy proceeding in a federal court in Wisconsin. After *voir dire* of Mr. Korth, counsel for the appellant offered Mr. Korth as an expert in real estate valuation. The Board accepted Mr. Korth as an expert in real estate valuation without objection from the board of review or the intervenor.

The Korth Appraisal was identified for the record as Appellant's Exhibit B. The Korth Appraisal addressed all three of the traditional approaches to value, while opining an estimated market value for the subject of \$5,300,000 as of January 1, 2012. The appellant also submitted a letter from the appraisers stating that the value of the subject would be \$5,400,000 as of January 1, 2011. The Korth Appraisal states that the subject was purchased in August 2009 for \$25,000,000, and that the sale price represents the subject's going concern value.

Mr. Korth testified that he inspected the interior and exterior of the subject in December 2013. Mr. Korth described the subject property and its environs, including that the subject was built in 1973 and that it has 91 rooms and 245 beds. The witness testified that the subject contains four private rooms, but that a majority of the subject's beds are found in semi-private rooms or wards. Mr. Korth stated that, since it was built, the subject has had some "cosmetic-type" renovations, but that the larger physical components (i.e., windows, flooring, and HVAC) of the building were original.

Highest and Best Use

The Korth appraisal concluded that the subject's highest and best use as vacant would be to hold the property for future development as a multi-family building, and that the subject's highest and best use as improved was continued use as a nursing home facility.

The Cost Approach

The initial step under the cost approach was to estimate the value of the land. In doing so, Mr. Korth testified he considered four sales of vacant land that had similar highest and best uses. Mr. Korth testified that, as of the effective date of the appraisal, the market lacked significant activity, and that it was necessary to look outside the subject's neighborhood to find adequate land sale comparables. The Korth Appraisal states that these properties sold from August 2008 to July 2011 for prices ranging from \$13.21 to \$34.23 per floor area ratio square foot. The Korth Appraisal describes the floor area ratio as the maximum ratio of potential building area to site area allowable under the City of Chicago Zoning Ordinance. The subject's floor area ratio of 2.0:1 was used in calculating its land value, as opposed to its actual site size of 32,334 square feet. After making pertinent adjustments, Mr. Korth stabilized the subject's land value at \$16.00 per floor area ratio square foot, or \$1,000,000, rounded.

Using the Marshall Valuation Service ("MVS") for a class "C-Average" Convalescent Hospital, the appraisers estimated the replacement cost to be \$11,485,825. In establishing a rate of depreciation, Mr. Korth testified that he used the age/life method. The Korth Appraisal states that the subject's effective age was 25 years, while its remaining economic life, according to the

MVS, was 40 years. Mr. Korth testified that based on this analysis, he estimated the subject property's total depreciation to be 62.5% (25 years ÷ 40 years = 62.5%). Thus, the depreciated value of the improvements was estimated to be \$4,307,184.⁹

Mr. Korth testified that, in developing the cost approach, he considered entrepreneurial incentive, but ultimately did not find this factor applicable to the subject property. Mr. Korth testified that he considered the subject a special use property, and implied that special use property is not built on speculation which would generate an entrepreneurial incentive. The witness stated that, in reaching this conclusion, he relied upon The Appraisal of Nursing Facilities by James K. Tellatin, which states, "Because nursing facilities can have significant and tangible value, much of the entrepreneurial profit may be interpreted as intangible value." Mr. Korth also relied upon The Appraisal of Real Estate, 14th Edition, which states on page 575, "For certain types of specialized owner occupied improvements such as public buildings, no entrepreneurial profit may ever be realized because the owner neither anticipates nor wants a profit." Mr. Korth reiterated that he considered the subject a special use property that was built for a specific end-user, and, as such, entrepreneurial incentive is considered an intangible value.

The land value of \$1,000,000 and site improvements of \$40,000 were added to the depreciated value of the improvements of \$4,307,184 to arrive at a final estimate of value under the cost approach of \$5,300,000, rounded.

The Income Approach

Under the income approach, Mr. Korth testified that he reviewed the subject's operating history. The Korth Appraisal shows that the subject had: in 2007, total revenue of \$9,888,190, total operating expenses of \$4,648,210, and a net operating income of \$5,239,981; in 2008, total revenue of \$9,854,127, total operating expenses of \$4,711,625, and a net operating income of \$5,142,502; in 2010, total revenue of \$10,222,798, total operating expenses of \$6,520,303, and a net operating income of \$3,702,495; and in 2011, total revenue of \$10,895,898, total operating expenses of \$6,816,077, and a net operating income of \$4,079,821. The subject's actual historical revenue and operating expenses were then adjusted to estimate the subject's future net operating income. The adjustments for each source of revenue and operating expense were then compared to four expense comparables. This analysis resulted in total estimated revenue for the subject of \$10,576,742 and total estimated operating expenses of \$6,690,108, for an estimated net operating income of \$3,866,634. A deduction of \$248,681 was subtracted from the net operating income to account for the return of and on personal property. Thus, the net operating income less personal property returns was \$3,637,953.

Mr. Korth next testified that he looked to market transactions and an investor survey to determine an appropriate capitalization rate. The ten market transactions that were analyzed had overall capitalization rates ranging from 6.9% to 13.5%. Of these ten market transactions, four were located in Illinois, which had overall capitalization rates ranging from 6.9% to 10.85%.

⁹ The Board notes that the Korth Appraisal states that the depreciated value of the improvements was \$4,307,547; however, the Board's own calculations yielded \$4,307,184, calculated as follows:

$$\$11,485,825 - (\$11,485,825 \times 62.5\%) = \$4,307,184.$$

The other six market transactions were located in either Ohio, Iowa, Nebraska, North Carolina, or Texas. The Korth Appraisal also looked to the Senior Housing Investment Survey (Spring 2011), and found that the capitalization rates for “Licensed Skilled Nursing-Long Term Care” facilities ranged from 10.00% to 15.00%, with an average capitalization rate of 12.50%. The Korth Appraisal states that, typically, capitalization rates derived from market transactions are given the most weight in determining a capitalization rate; however, “these rates are often skewed in the case of nursing homes.” The Korth Appraisal goes on to say that many buyers of nursing homes purchase the property with the goal of improving business operations immediately, and turning a profit in the near term. Thus, according to the Korth Appraisal, market derived capitalization rates that are based on low historical financial performance that occurred prior to the transaction would be low or non-existent; and that the property’s true capitalization rate is actually based on the buyer’s own internal projected performance, which is not readily available. Therefore, investor surveys are more appropriate to use in determining the capitalization rate of a nursing home. As such, Mr. Korth gave more weight to the investor survey, and determined that the subject’s capitalization rate was 13.5%. An effective property tax rate of 0.94% was added to the capitalization rate to arrive at a loaded capitalization rate of 14.44%. Capitalizing the net operating income less personal property returns of \$3,637,953 by the capitalization rate of 14.44%, Mr. Korth arrived at a total value for the subject’s going concern to be \$25,200,000, rounded.

To extract the subject’s real estate from the going concern value, the Korth Appraisal looked to two methodologies: the cost approach comparison methodology, and the capital cost methodology. Under the cost approach comparison methodology, the value of the real estate of \$5,300,000, as determined in the cost approach, was deducted from the subject’s going concern value to arrive at a value of the subject’s business/personal property of \$19,900,000.

Under the capital cost methodology, the appraisers looked to the Medicaid reimbursement rate for the subject for 2012 (Q3), as set by the Illinois Department of Public Health (“I.D.P.H.”). The total rate for this period was \$114.55 per patient per day, and \$9.44 of this total rate was attributable to capital costs. The Korth Appraisal states that, based on information from I.D.P.H., \$4.98 of the reimbursement for capital costs is attributable to equipment, working capital interest costs, and real estate taxes. The remaining \$4.46 is, thus, attributable to the land and building. The appraisers then multiplied this figure by 365 days per year, 245 total beds, and a 95.00% occupancy rate to arrive at a net income attributable to the land and buildings of \$378,847. A capitalization rate of 9.00% was utilized to arrive at a value for the real estate of \$4,210,000, rounded. The value of the real estate was then subtracted from the subject’s going concern value of \$25,200,000 to arrive at a business/personal property value of \$20,990,000.

In reconciling these two methodologies to determine the subject’s business value, the appraisers utilized only the cost approach comparison methodology, and set the subject’s business/personal property value at \$19,900,000. Mr. Korth testified that the percentage of the subject’s going concern value attributable to the real estate, approximately 20.00% is not atypical for buildings like the subject. The subject’s business/personal property value of \$19,900,000 was then subtracted from the subject’s going concern value of \$25,200,000 to arrive at a final estimate of value for the subject’s real estate under the income approach to value of \$5,300,000.

The Sales Comparison Approach

The Korth Appraisal states that the appraisers utilized four sale comparables in the sales comparison approach. These comparables ranged: in size from 52,917 to 92,769 square feet of building area; in age, from 16 to 38 years old; and in number of beds from 229 to 396. These comparables sold from January 2008 to May 2011 for between \$20,000,000 and \$22,250,000, or \$71,086 to \$95,238 per bed. After making adjustments for average size per bed, condition, and “other/economic factors,” the appraisers concluded that the subject’s market value was \$105,000 per bed, or \$25,700,000, rounded. The subject’s business/personal property of \$19,900,000, as determined in the income approach, was then subtracted from the concluded market value to arrive at a value for the subject’s real estate under the sales comparison approach to value of \$4,700,000.

Reconciliation and Final Estimate of Value

In reconciling the three approaches to value used, Mr. Korth testified that he gave secondary consideration to the sales comparison approach, moderate consideration to the income approach, and the most emphasis to the cost approach. The appraiser further testified that the income and sales comparison approaches both captured business value/personal property above and beyond the value of the subject’s real estate, and that these approaches required the additional business value/personal property to be extracted. Mr. Korth also opined that the cost approach did not require the extraction of any business value/personal property, and that this approach warranted the most consideration. Mr. Korth further testified that the cost and income approaches were both required to ascertain the value of the real estate of a nursing home. The income approach was used, in part, to ascertain whether the value of the real estate exceeded the subject’s going concern value. Under his analysis, Mr. Korth determined that this was not the case. Mr. Korth also testified that a Certificate of Need (“CON”) is necessary to operate a nursing home in Illinois. There are a finite number of CONs issued by the State of Illinois, and, as such, a CON has an intrinsic value separate and apart from the nursing home’s real estate. Ascertaining the value of the subject’s real estate separate from the subject’s total business value/personal property was best accomplished by the cost approach, and Mr. Korth accorded this approach the most weight in reconciling the three approaches to value. After reconciling the three approaches to value, Mr. Korth concluded that the subject’s market value as of January 1, 2012 was \$5,300,000.

Cross-Examination

During cross-examination from the intervenor’s attorney, Mr. Korth testified that the subject was purchased in August 2009 for approximately \$25,000,000, and that, according to the Illinois Real Estate Transfer Declaration, PTAX-203 form, the parties attributed approximately \$7,500,000 of the sale price to the subject’s real estate.¹⁰ Mr. Korth further testified that PTAX-203 forms are affidavits that are signed by the parties under oath.

¹⁰ The Board notes that the Korth Appraisal lists the total sale price of the subject to be \$25,000,000, while the PTAX-203 form states that the total purchase price was \$8,982,500. It appears that the PTAX-203 form represents only the price paid for the real estate and personal property, and excludes the price paid for the business, including the CON.

The witness testified that the subject has historically been approximately 95.00% occupied, and that most of the patients pay for their nursing home care via Medicaid. Based on the large portion of Medicaid patients, Mr. Korth admitted that the subject is more of a “need based” facility, than a “lifestyle choice” facility. Mr. Korth admitted that the subject is located in Health Service Area (“HSA”) 6B, and that HSA 6B is the only HSA in the City of Chicago that has more demand than supply of beds. The appraiser further admitted that it would be reasonable to assume that the lack of available beds in HSA 6B may explain the subject’s high level of occupancy. Mr. Korth also admitted that the Korth appraisal states that statewide occupancy rates for nursing homes ranged between 79.00% and 86.00%, which is lower than the subject’s occupancy rate.

Mr. Korth admitted that the subject could not be constructed on land sale comparables #1, #2, or #3 because the subject’s footprint is larger than the land size of those comparables.

Mr. Korth testified that, if developers were building nursing homes, they would expect a return on their investment; however, he further testified that developers are not building nursing homes.

The appraiser testified that the cost approach looked to 21 different attributes of the subject, and that the MVS provides guidelines for all 21 of these attributes; however, the unit cost for each of these attributes was ultimately decided by the appraisers.

Mr. Korth reiterated that the cost and income approaches were prepared independently, but admitted that the value of the subject’s real estate was not developed independently within the income approach. The witness opined that the capital cost approach based on Medicaid reimbursement rates would be unreliable in ascertaining the value of the subject’s real estate because the Illinois Medicaid reimbursement rates have not been rebased in many years, and that he did not, in fact, rely on this method.

Counsel for the intervenor then presented Intervenor’s Exhibit B, which was the Illinois Real Estate Transfer Declaration, PTAX-203 form, for sale comparable #1 found in the Korth Appraisal. Counsel for the appellant objected to the use of this document during cross-examination. Upon questioning from the Board, Mr. Korth stated that he relied on public records in completing the Korth Appraisal, but that he was not sure whether he relied on this particular public record. The Board overruled the objection, and allowed Mr. Dalianis to use this PTAX-203 form for impeachment purposes only. Mr. Korth admitted that Intervenor’s Exhibit B shows: that the sale of comparable #1 did not include a ground lease that was in place; that the total sale price was \$11,000,000 while the Korth Appraisal states that the sale price was \$22,000,000; that \$3,000,000 of the total sale price was attributed to the CON; that \$266,782 of the total sale price was attributable to personal property; that the remaining \$7,733,218 was attributable to the real estate; and that approximately 30% of the total sale price was attributable to business/personal property value, while the Korth Appraisal allocates approximately 80% of the subject’s going concern value to business/personal property value.

Mr. Korth testified that he was unaware if sale comparable #2 in the Korth Appraisal changed its name after the date of sale. He did testify that the grantor was Washington Heights Property, LLC, and that the Korth Appraisal refers to the facility as Southpoint Nursing and Rehabilitation

Center. Mr. Korth admitted that the name of a nursing home is a portion of the facility's business value, but that there is no set percentage of going concern value that can be attributed to a name.

Mr. Korth testified that sale comparable #3 in the Korth Appraisal was located in HSA 6A, and that HSA 6A has a surplus of beds when compared to demand.

Mr. Dalianis then presented Intervenor's Exhibit C, which was the Illinois Real Estate Transfer Declaration, PTAX-203 form, for sale comparable #4 found in the Korth Appraisal. The Board allowed Mr. Dalianis to use this exhibit for impeachment purposes only. Mr. Korth admitted that this PTAX-203 form shows that sale comparable #4 was not advertised for sale on the open market, and that the parties attributed approximately 30% of the total sale price to business/personal property value, including the CON. The appraiser further stated that he would typically give less weight to a sale if the property was not advertised for sale on the open market.

During cross-examination from the board of review, Mr. Korth testified that older properties generally have a higher going concern value relative to the real estate value. He also admitted that certain aspects of the income and sales comparison approaches used conclusions developed in the cost approach, but that all three approaches were developed independent of each other.

Re-Direct

During re-direct testimony, Mr. Korth stated that, in his opinion, the value of the subject's real estate would not be significantly different between January 1, 2011 and January 1, 2012. He further testified that, while there is some discretion in using the MVS, he used the single point unit costs provided in that service when developing the subject's replacement cost new. Mr. Korth further testified that he would not rely on the market value provided in a PTAX-203 form, since it is the parties to the transaction that complete the form, and not certified appraisers. The witness also testified that it would not be improper to use land comparables that were unable to accommodate the subject's footprint if there were no available sales and the proper adjustments were made. Mr Korth stated that he did make the proper adjustments to the land comparables in the Korth Appraisal.

BOARD OF REVIEW'S EVIDENCE

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$2,057,354. The subject's assessment reflects a market value of \$8,229,416, or \$157.78 per square foot of building area, including land, when applying the 2011 statutory level of assessment for commercial property under the Cook County Real Property Assessment Classification Ordinance of 25.00%.

In support of its contention of the correct assessment, the board of review submitted information on five comparable sales from the CoStar Comps Service. Two of these comparables were skilled nursing facilities and the remaining three were rehabilitation centers. The skilled nursing facilities sold on June 29, 2009 (comparable #2) and September 1, 2006 (comparable #3) for \$3,500,000 and \$4,600,000, or \$232.08 and \$192.76 per square foot of building area,

respectively. The rehabilitation centers sold from January 1, 2008 to December 31, 2009 for \$13,038,000 to \$22,250,000, or \$201.68 to \$307.18 per square foot of building area.

At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. As a result of its analysis, the board of review requested that the subject's assessment be maintained at \$2,057,354.

THE INTERVENORS' APPRAISAL AND TESTIMONY OF ERIC W. DOST, M.A.I.

The intervenor, the Chicago Board of Education, submitted a copy of a summary appraisal report of the subject property prepared by Eric W. Dost, M.A.I., of Dost Valuation Group, Ltd (the "Dost Appraisal"). The appellant began its case-in-chief by calling Mr. Dost as an expert witness. Mr. Dost testified that he is the president of Dost Valuation Group, which is a commercial real estate appraisal group he founded in 2003. Mr. Dost stated that he is an Illinois certified general real estate appraiser, and holds the M.A.I. and A.I.-G.R.S. designations from the Appraisal Institute. The A.I.-G.R.S. designation is the professional designation for review appraisers. He further opined that he has been an appraiser since 1986, has been designated an M.A.I. since 1993, and that he has appraised approximately 400 skilled nursing care facilities. He stated that he has testified as an expert witness on 50 prior occasions, primarily before the Board. After *voir dire* of Mr. Dost, counsel for the intervenor offered Mr. Dost as an expert in the appraisal of senior housing and health care properties. The Board accepted Mr. Dost as an expert in the appraisal of senior housing and health care properties without objection from the appellant or the board of review.

The Dost Appraisal was identified for the record as Intervenor's Exhibit A. The Dost Appraisal addressed all three of the traditional approaches to value, while opining an estimated market value for the subject of \$10,500,000 as of January 1, 2011. The intervenor specifically requested that the Board increase the subject's assessment consistent with the Dost Appraisal's final conclusion of value. Mr. Dost testified that the Dost Appraisal was prepared in accordance with the Uniform Standards of Appraisal Practice ("U.S.P.A.P."). The Dost Appraisal states that the subject was purchased in August 2009 for \$25,000,000, and that the sale price appears to represent the subject's going concern value.

Mr. Dost testified that he inspected the exterior of the subject on February 13, 2015, and the interior and exterior of the subject on March 4, 2015. He further testified that he sent a letter to counsel for the appellant on February 6, 2015 requesting a floor plan of the subject with square footages and a copy of the purchase contract, but that he did not receive these requested documents. Mr. Dost described the subject property and its environs, including that the subject is located in a mixed-use urban area, was built in 1973, has 245 beds, and has 65,888 square feet of building area. The appraiser testified that the subject's exterior appeared to be in very good condition, and that the subject's interior was of good quality construction and well maintained. Based on his observations, Mr. Dost testified that he classified the subject as a class "C-Good" Convalescent Hospital under the MVS criteria, and emphasized that the subject's HVAC system was relevant in making this determination.

Mr. Dost testified that the subject is located in HSA 6B, and that, according to data released by the I.D.P.H., there is a shortage of beds in HSA 6B. He further stated that approximately 95.00%

of the subject's patients pay via Medicaid, while approximately 4.00% pay via Medicare. There is very little, if any, private paying patients at the subject. Mr. Dost testified that Medicaid patients typically do not get to pick what type of room they want to be housed in when moving to a nursing care facility, and that these types of patients typically end up in ward rooms with two or three other patients.

Highest and Best Use

Mr. Dost testified that the subject's highest and best use as vacant would be to hold the property for future development as a multi-family building, and that the subject's highest and best use as improved was continued use as a nursing home facility.

The Cost Approach

The initial step under the cost approach was to estimate the value of the land. In doing so, Mr. Dost testified he considered five sales of vacant land that had similar highest and best uses. He further stated that these properties sold from December 2009 to November 2010 for prices ranging from \$4.27 to \$32.79 per square foot of land. After making pertinent adjustments, Mr. Dost testified that he stabilized the subject's land value at \$20.00 per square foot of land, or \$650,000, rounded. The Dost Appraisal included a grid with the adjustments made, and a map showing the location of the subject relative to the comparables.

Using the MVS for a class "C-Good" Convalescent Hospital, Mr. Dost testified that the replacement cost new of the subject was \$14,776,623. The appraiser further testified that he included an allocation of 15.00% for entrepreneurial profit, or \$1,927,386. Mr. Dost explained that basic appraisal textbooks state that entrepreneurial profit is a fundamental component of the replacement cost new, and that appraisal textbooks that discuss senior housing state that an entrepreneurial profit ranging from 5.00% to 15.00% is reasonable under certain circumstances in determining the replacement cost new. Mr. Dost further opined that an investor investing in building a nursing care facility would expect a return on their investment in excess of the interest rate for 10-year U.S. treasury bonds, which yielded 3.36% in the first quarter of 2011. Also, based on the subject's significant profitability (according to the income approach found in the Dost Appraisal), including entrepreneurial profit would be appropriate.

In establishing a rate of depreciation, Mr. Dost testified that he used the age/life method. The Dost Appraisal states that the subject's effective age was 20 years, while its total economic life was 50 years. Mr. Dost testified that based on this analysis, he estimated the subject property's incurable physical depreciation to be 40.0% (20 years ÷ 50 years = 40.0%). No deferred maintenance or external obsolescence was noted. Functional obsolescence was found to be nonexistent, due to the subject's high occupancy rate and apparent acceptance into the market. Thus, the depreciated value of the improvements was estimated to be \$8,864,974.

The land value of \$650,000 and site improvements of \$42,000 were added to the depreciated value of the improvements of \$8,864,974 to arrive at a final estimate of value under the cost approach of \$9,600,000, rounded.

The Income Approach

Under the income approach, Mr. Dost testified that he reviewed the subject's operating history. The Dost Appraisal shows that the subject had: in 2008, total revenue of \$9,791,535, total operating expenses of \$4,608,408, and a net operating income of \$5,183,127; in 2010, total revenue of \$10,222,798, total operating expenses of \$6,645,174, and a net operating income of \$3,577,624; and in 2011, total revenue of \$10,874,212, total operating expenses of \$6,951,451, and a net operating income of \$3,922,761. The subject's actual historical revenue and operating expenses were then adjusted to estimate the subject's future net operating income. In making these adjustments, Mr. Dost testified that he looked at four expense comparables. This analysis resulted in total estimated revenue for the subject of \$10,301,760 and total estimated operating expenses of \$8,039,564, for an estimated net operating income of \$2,262,196.

Mr. Dost next testified that he looked to an investor survey, the band of investments technique, and sale comparables to determine an appropriate capitalization rate. The Dost Appraisal looked to the Senior Housing Investment Survey (Spring 2011), and found that the capitalization rates for "Licensed Skilled Nursing-Long Term Care" facilities ranged from 10.00% to 15.00%, with an average capitalization rate of 12.50%. Under the band of investment technique, the Dost Appraisal assumed a mortgage interest rate of 6.08% (according to the Realty Rates Investor Survey (Q1, 2011), a term of 25 years, a 70.00% loan-to-value ratio, and an equity dividend of 15.00%. The annual mortgage constant was 0.07790. Based on these assumed figures, Mr. Dost testified that he concluded a capitalization rate of 9.953%, or 10.00% rounded, for the subject using the band of investment technique. The five sale comparables in the sales comparison approach were analyzed, and had capitalization rates ranging from 1.5% to 23.6%. Mr. Dost testified that the comparables with lower capitalization rates were either located in HSA 6A, which has an oversupply of beds, or had high operating expenses that the purchaser(s) intended to decrease. Sale comparables #3 and #5 had capitalization rates of 1.5% and 23.6%, respectively. Mr. Dost stated that these two comparables had capitalization rates outside the normal range, and they were not considered in the analysis. The remaining comparables had capitalization rates ranging from 3.9% to 11.6%, with an average of 8.29%. In reconciling these three methods, Mr. Dost determined that the subject's capitalization rate was 10.5%. An effective property tax rate of 4.0512% was added to the capitalization rate to arrive at a loaded capitalization rate of 14.5512%. Capitalizing the net operating income of \$2,262,196 by the capitalization rate of 14.5512%, Mr. Dost arrived at a total value for the subject's going concern to be \$15,500,000, rounded.

To extract the subject's real estate value from the going concern value, Mr. Dost testified that he looked to two methodologies: the quantification of business value methodology; and the cost approach comparison methodology. Under the quantification of business value methodology, Mr. Dost testified that 15.00% to 25.00% of a skilled nursing facility's total net income is derived from proprietary earnings. The appraiser stabilized the income derived from proprietary earnings at 15.00% for the subject, and concluded that \$339,329 of the subject's net operating income was attributable to proprietary earnings. Mr. Dost testified that he used a 20.00% business capitalization rate to ascertain the subject's business value to be \$1,700,000, rounded. Mr. Dost explained that the 20.00% business capitalization rate was warranted because it was used to capitalize business value (not real estate value), and that business value is the riskiest

portion the subject's cash flow. Thus, it required a significantly higher capitalization rate than the capitalization rate used in determining the value of the real estate (which was 10.5%).

Under the cost approach comparison methodology, the value of the real estate of \$9,600,000 and the value of the personal property of \$612,500, as determined in the cost approach, was deducted from the subject's going concern value to arrive at a value of the subject's business to be \$5,287,500.

In reconciling these two methodologies to determine the subject's business value, the Dost Appraisal states that both methodologies were useful, and that the subject's business value was \$3,500,000. The subject's business value of \$3,500,000 and value of personal property of \$612,500, was then subtracted from the subject's going concern value of \$15,500,000 to arrive at a final estimate of value for the subject's real estate under the income approach to value of \$11,400,000.

The Sales Comparison Approach

Mr. Dost testified that he utilized five sale comparables in the sales comparison approach. These comparables ranged: in size from 40,497 to 93,768 square feet of building area; in age, from 31 to 41 years old; and in number of beds from 180 to 313. These comparables sold from February 2008 to August 2011 for between \$9,227,236 and \$22,250,000, or \$48,564 to \$71,086 per bed. After making adjustments for age/condition, location, building area per bed, and "economic characteristics," the appraiser concluded that the subject's market value was \$60,000 per bed, or \$14,700,000, rounded. The subject's business value of \$3,500,000, as determined in the income approach, and personal property of \$612,500, as determined in the cost approach, were then subtracted from the concluded market value to arrive at a value for the subject's real estate under the sales comparison approach to value of \$10,600,000, rounded.

Reconciliation and Final Estimate of Value

In reconciling the three approaches to value used, Mr. Dost testified that he gave primary emphasis to the cost and income approaches, and "some consideration" to the sales comparison approach. After reconciling the three approaches to value, Mr. Dost concluded that the subject's market value as of January 1, 2011 was \$10,500,000.

Cross-Examination

During cross-examination from the appellant's attorney, Mr. Dost admitted that non-receipt of a floorplan with square footages or a copy of the purchase contract did not impede his ability to appraise the subject. He further admitted that he received a fire plan, but that it did not include the subject's square footage measurements.

Mr. Dost also testified that the useful life he selected for the subject of 50 years was a typical useful life for the subject, and that the useful life applied only to the improvements upon the subject, and not as to whether the subject was licensed as a nursing care facility. Mr. Dost did admit that his value of the subject's real estate was related to the CON being a part of the subject's going concern value because the subject's highest and best use, as improved, is as a

nursing care facility, which requires a CON to operate. He also admitted that the useful life guideline found in the MVS for a class “C-Good” Convalescent Hospital is 45 years, and that he selected a useful life that was five years more than this guideline. He further stated that, while he requested information from counsel for the appellant regarding any capital improvements upon the subject, he did not receive any such information; and that, based on his interior inspection of the subject, he was not aware of any recent renovations.¹¹ Mr. Dost admitted that the cost reports he reviewed for the subject show that approximately \$400,000 was spent on capital improvements from 2000 to 2010.

Mr. Dost further testified that the subject’s effective age of 20 years is contingent on the subject being properly maintained, and that the subject should be able to continue to operate as a nursing care facility if the operator(s) comply with all applicable laws. The witness also opined that the effective age was selected based primarily on the building itself; and that cosmetic components are less important, while mechanical devices are assumed to be properly maintained. He further stated that, assuming the subject had a new HVAC system installed, his effective age would decrease slightly. Mr. Dost testified that the routine maintenance and reserves for replacements portions of the income approach account for these factors, and that he stabilized these factors at market rates, which were higher than the subject’s actual rates. The appraiser reiterated that he derived the expenses in the income approach based on the subject’s historical expenses and market rates.

The appraiser reiterated that he accounted for entrepreneurial profit in the cost approach, and that he selected 15.00% for this factor based on an appraisal textbook which presented a range of 5.00% to 15.00%. He stated that this textbook presented only a guideline, and that he selected 15.00% because, in his opinion, that was the appropriate percentage to apply based, in part, on treasury bond yields in the first quarter of 2011. Mr. Dost did admit that developers typically do not build nursing care facilities to sell, and he was unable to identify any such instance in the market from 2010 to 2012; however, entrepreneurial profit is a fundamental component of the cost approach, even if the developed property is a “special use” property, such as a nursing care facility. Mr. Dost testified that if certain figures were changed in the cost approach (such as the subject’s useful life or effective age), the final conclusion of value under that approach could change; but that the figures he selected were appropriate in his opinion. When asked by Mr.

¹¹ Mr. Dalianis objected to this line of questioning based on 86 Ill.Admin.Code § 1960.94(a), which states, in its entirety:

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.

The Board overruled the objection, finding that Mr. Dost testified earlier that he had, in fact, been granted access to inspect the subject, which is all that this Rule requires. However, the Board noted that counsel for the appellant was questioning Mr. Dost about information he requested, but which was withheld; and that his lack of personal knowledge as to this line of questions would not be construed by the Board in a way that inferred a lack of due diligence on Mr. Dost’s part in ascertaining this information.

Wolf if it was possible that his opinion was “wrong,” the board of review analyst objected, and the Board sustained the objection.

Mr. Dost admitted that two of his sale comparables were located outside the City of Chicago, and that the City of Chicago has a higher population density than the locations of these two comparables. He also stated that these two comparables were within the Chicago metropolitan area. The appraiser testified that he used these five sales because they recently sold, but that he was unaware if any of the expense comparables he used in the income approach were recently sold. He stated that he selected the expense comparables in the income approach because they were located closer to the subject, and had a similar ratio of Medicaid patients. The sale comparables, according to Mr. Dost, had different ratios for Medicaid patients, and were located further away, rendering them less relevant as expense comparables.

Re-Direct

During re-direct testimony, Mr. Dost testified that appraisers draw on many sources in developing an opinion regarding any particular point found in an appraisal. Such sources include the subject’s historical performance, market data, investor surveys, textbooks, mortgage information and databases such as CoStar. Mr. Dost also testified that he stabilized the subject’s net operating income below the subject’s actual net operating income, and that doing so led to a significantly lower market value for the subject.

Re-Cross

During re-cross-examination from the board of review, Mr. Dost testified that, in his opinion, since the subject was approximately 95.00% funded through public aid (i.e., approximately 95.00% Medicaid), it would, for the most part, be a safe investment.

**THE APPELLANT’S REBUTTAL EVIDENCE, APPRAISAL REVIEW, AND
TESTIMONY OF BRADLEY R. BRAEMER, M.A.I.**

In written rebuttal, the appellant submitted the Illinois Real Estate Transfer Declaration, PTAX-203 form, for each of the board of review comparables. For board of review comparables #1, #2, #3, and #5, the PTAX-203 forms show that the sale price of the real estate is the same as the sale price in the board of review’s evidence (although several of the PTAX-203 forms show that personal property was included in the sale price, but then subtracted out of the total sale price to arrive at the sale price for the real estate). For board of review comparable #4, the PTAX-203 states that the sale price was \$7,192,118, and that no personal property was included in the sale transaction; however, this form later states that the “[s]ale of real estate is part of the acquisition of a business.” The board of review’s evidence states that comparable #4 sold for \$22,250,000.

The appellant also submitted the face sheets for each of the appellant’s equity comparables and the board of review’s comparables. The appellant submitted a chart detailing the information for each of these comparables with data from the CoStar listings submitted by the board of review and the face sheets submitted by the appellant. The chart listed the descriptive and assessment information for each of the comparables. The number of beds for the board of review’s

comparables was listed in the chart, but no underlying data was submitted to verify the number of beds, except with regard to comparable #1, which has 300 beds according to the CoStar listing. The board of review's comparables ranged: in age from 37 to 52 years old; in improvement size from 15,081 to 74,375 square feet of building area; and in land to building ratio from 0.691:1 to 2.393:1.¹² These comparables had improvement assessments that ranged from \$22.68 to \$44.60 per square foot of building area. Comparable #1 had an improvement assessment of \$11,058.00 per bed. Using the appellant's unverified figures for each comparables' number of beds, comparables #2 through #5 had an improvement assessment of \$4,751.21 to \$8,843.38 per bed.

After considering the updated assessment information submitted by the appellant just prior to hearing (discussed *supra*), the appellant's equity comparables #1 through #8 had improvement assessments that ranged from \$7.77 to \$28.61 per square foot of building area, or \$4,191.14 to \$7,700.04 per bed. The board of review's equity comparables had improvement assessments that ranged from \$21.01 to \$44.55 per square foot of building area, or \$4,400.89 to \$8,886.91 per bed (using the appellant's unverified figures for number of beds for these comparables).

After the Board granted the appellant an extension of time to submit additional rebuttal evidence, the appellant submitted a desk review of the Dost Appraisal undertaken by Bradley R. Braemer, M.A.I. and Michael J. Kelly, M.A.I., S.R.P.A., both of the Real Estate Analysis Corporation (the "Braemer Review"). The appellant began its rebuttal by calling Mr. Braemer as an expert witness. The parties stipulated to Mr. Braemer's qualifications, and the Board accepted Mr. Braemer as an expert in real estate valuation. The Braemer Review was marked for the record as Appellant's Exhibit C.

Mr. Braemer began by testifying that he did not prepare an appraisal report with an opinion of the subject's market value, and that the Braemer Review does not contain any such opinion of value. Mr. Braemer stated that he prepared the Braemer Review in compliance with U.S.P.A.P., and that he inspected the subject on May 20, 2015. In reviewing the Dost Appraisal, Mr. Braemer first looked to whether it complied with U.S.P.A.P., and Mr. Braemer concluded that the Dost Appraisal complied with U.S.P.A.P.

Next, Mr. Braemer analyzed the Dost Appraisal for what he considered "material errors." In the cost approach, Mr. Braemer identified one such material error with regards to the entrepreneurial profit. As discussed *infra*, Mr. Dost concluded that entrepreneurial profit of 15.00% was warranted in determining the subject's replacement cost new, and that he relied on an appraisal textbook in reaching this conclusion. Mr. Braemer testified that the appraisal textbook relied upon is titled The Analysis and Valuation of Healthcare, which was published in 1997. He further testified that this textbook looked at national entrepreneurial profit on a nationwide basis, and that it was dated. Thus, he concluded that it was unreliable as a source in ascertaining the subject's appropriate level of entrepreneurial profit, if any. Mr. Braemer testified that he then looked to the Appraisal of Real Estate, 14th Edition, which states that relevant market data may

¹² The ages and lot sizes (used in calculating the comparables' land to building ratios) for the board of review's comparables were drawn from the face sheets submitted by the appellant. The Board notes that the appellant's chart utilized the ages and lot sizes from the CoStar listings submitted by the board of review, which varied slightly from those listed on the face sheets.

be lacking to indicate an appropriate estimate of entrepreneurial profit. Mr. Braemer looked to the market and the Dost Appraisal, and was unable to find any market transactions of newly built nursing homes that were constructed and sold by a developer. Mr. Braemer concluded that such transactions rarely, if ever occur, due to the need for a CON to operate a nursing home. Therefore, Mr. Braemer concluded that the inclusion of entrepreneurial profit in the Dost Appraisal's cost approach was not supported by market data, and should not have been included. Mr. Braemer opined that the inclusion of entrepreneurial profit resulted in a higher replacement cost new for the subject than if entrepreneurial profit was not included.

Mr. Braemer next testified that he found Mr. Dost's useful life for the subject of 50 years to be a material error. He testified that the subject is properly classified as a class "C-Good" Convalescent Hospital under the MVS, and that the useful life for such a property under the MVS is 45 years. Mr. Braemer stated that the Dost Appraisal does not include any market data to show that the useful life should be anything other than the MVS guideline of 45 years. He further stated that he personally never strays from the MVS guideline for the useful life of a property, unless there is market data to support such a deviation. The witness testified that, if there was any such market data in this case, that data is not included in the Dost Appraisal, rendering the deviation unsupported and less credible.

The review appraiser then testified that he found Mr. Dost's effective age for the subject of 20 years to be a material error. Mr. Braemer testified that the subject's actual age was 38 years, and thus, the Dost Appraisal's effective age was 18 years younger than the subject's actual age. The Dost Appraisal states that the subject's effective age of 20 years was supported because it had \$190,207 in capital improvements done from 2009 to 2010, and that from 2000 to 2010 (excluding 2008), a total of \$393,586 had been spent on capital improvements. Mr. Braemer found that approximately \$39,000 per year over ten years for capital improvements was minimal for a nursing home that operated 24 hours a day and 365 days a year. During his inspection, Mr. Braemer also spoke with the subject's manager, who stated that the recent capital improvements to the subject had been retiling the hallways. Thus, Mr. Braemer concluded that the Dost Appraisal's effective age of 20 years was not reasonable.

Mr. Braemer concluded that the use of 50 years for the subject's useful life, and 20 years for its effective age rendered the Dost Appraisal's depreciation calculation unreliable using the age/life method. The Braemer Review also included an illustration to show what the subject's calculated depreciation would be if the subject's useful life was 45 years (as stated in the MVS guideline), and the subject's actual age of 38 years was used for its effective age. Mr. Braemer clarified that these figures were not what he thought was appropriate for the subject, but were included simply to illustrate the effect of the Dost Appraisal's use of unreliable figures.

Mr. Braemer stated that the cost approach to value was very important in determining the value of the real estate of a nursing home, because such properties have a going concern value above and beyond the real estate, and the cost approach values only the real estate. The witness further opined that the CON is not included in the value of the real estate.

The witness next testified that he reviewed the sale comparables found in the Dost Appraisal's sales comparison approach. He stated that certain relevant information was not included in the

Dost Appraisal that was found on the PTAX-203 form for sale comparable #2, and the CoStar listing for sale comparable #3.

Mr. Braemer stated that he did not find any material errors in Mr. Dost's income approach to value, as it relates to the subject's going concern value. However, the witness stated that he found material errors with regard to Mr. Dost's extraction of the subject's business value. Mr. Braemer first found that using the quantification of business value methodology, Mr. Dost failed to first find that the subject has business value above and beyond the value of the real estate; however, he found this error to be minimal. Mr. Braemer then explained that he found it to be a material error to place equal weight on the quantification of business value methodology and the cost approach comparison methodology. The witness testified that the errors in the cost approach that he previously testified about, rendered any calculation based on that erroneous approach skewed, and, thus, the subject's business value would be understated.

Cross-Examination

During cross-examination from counsel for the intervenor, Mr. Dalianis introduced the PTAX-203 form for sale comparable #2 found in the Dost Appraisal. This PTAX-203 form was marked for the record as Intervenor's Exhibit D, and the Board allowed Mr. Dalianis to use it for impeachment purposes only. Mr. Braemer admitted that the form states that, "Seller gives no opinion about the fair market value of the real property," and that he did not include this statement in the Braemer Review. Mr. Braemer stated that he was not "cherry-picking" information from the PTAX-203 form to include in his desk review, but was simply reviewing the Dost Appraisal.

Mr. Braemer also stated that he did not develop an opinion of value of the subject, including the components used in ascertaining the subject's market value under the cost approach. He emphasized repeatedly that his illustration regarding the subject's useful life, effective age, and resulting level of depreciation using the age/life method, were included in the Braemer Review to show the effect changing those figures can have on the ultimate conclusion of value. He did admit that, in selecting a useful life, an appraiser has discretion to deviate from the MVS guideline; but that in doing so, the appraiser should include information as to why deviating from the guideline is appropriate, and that the Dost Appraisal does not do so with regard to the subject's useful life.

Re-Direct

During re-direct testimony, Mr. Braemer testified that he did not develop an opinion of value for the subject, and that the age/life method calculation in the Braemer Review is clearly identified as a hypothetical calculation.

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 (3d Dist. 2002); 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.

In determining the fair market value of the subject property for tax year 2011, the Board considered the Korth Appraisal, the "Board of Review Notes on Appeal," the Dost Appraisal, the Braemer Review, as well as the testimony from all witnesses to determine the best evidence of the subject's market value.

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

In determining the subject's going concern value, the Board finds the best evidence to be the sale of the subject in August 2009 for \$25,000,000. Both the Korth Appraisal and the Dost Appraisal state that the subject's sale price was \$25,000,000, but that this was the subject's going concern value. The Board finds this to be the case. However, the main contention in the parties' evidence is the business value that must be extracted from the subject's going concern value to ascertain the value of the subject's real estate. Several methods were developed by counsel for the appellant, as well as in the Korth Appraisal and Dost Appraisal. The Board will address each method in turn.

The first argument raised by the appellant is that the subject's real estate should be valued according to the "Economic Approach to Value." This argument essentially uses the subject's actual historical income and expenses to calculate a net operating income that is then capitalized with a capitalization rate. This analysis was purportedly prepared by the appellant's attorney, who did not testify at the hearing. The Board accords this argument no weight. In Springfield Marine Bank v. Prop. Tax Appeal Bd., 44 Ill.2d 428 (1970), the Illinois Supreme Court stated:

[I]t is clearly the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value". Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes.

Id. at 431.

As the Court stated, actual income and expenses can be useful when shown that they are reflective of the market. Although the appellant made this argument, the appellant did not demonstrate, through an expert in real estate valuation, that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value

using income and expenses one must establish, through the use of market data, the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. The appellant did not provide such evidence in the attorney prepared "Economic Approach to Value" and, therefore, the Board gives this argument no weight.

The second market value argument raised and developed by counsel for the appellant is the "Medicaid Real Estate Reimbursement" method. This argument takes the Medicaid reimbursement attributable to the land and buildings (which the appellant asserts is \$5.08 per patient per day), and calculates the value of the subject's real estate after figuring in certain variables (i.e., number of beds, occupancy, etc.). The appellant cites Tarrytown Hall Care Center v. Board of Assessors, Index No. 14267/98 (Sup. Ct., Westchester County, N.Y., March 4, 2004) (Rosato, J.) for the proposition that this method is appropriate in ascertaining the subject's real estate value. The Board is not persuaded.

First, Mr. Korth presented a nearly identical analysis in his appraisal, which he called the "Capital Cost Component from Medicaid Reimbursement Rate." This analysis was undertaken to identify the value of the subject's real estate to be extracted from the going concern value conclusions in the income and sales comparison approaches. The Korth Appraisal states that the Medicaid reimbursement rate attributes \$4.46 per patient per day to the land and buildings. Furthermore, the Korth Appraisal states, and Mr. Korth testified, that no weight was given to this analysis because the Medicaid rate in Illinois has not been rebased in over 20 years. Thus, the appellant's own expert witness found this method unreliable. The Board agrees with Mr. Korth, and finds this method unreliable. Furthermore, the appellant's rate for the land and buildings of \$5.08 per patient per day is different than the Korth Appraisal's rate of \$4.46. Therefore, the Board finds the appellant's analysis lacks credibility, as its own expert witness disagrees as to the appropriate reimbursement rate for the land and buildings.

The fact that a trial court in New York has found this method appropriate is not persuasive. First and foremost, a trial court in New York is not binding authority on the Board. Second, the appellant failed to submit a copy of the case so that the Board could analyze it. Third, as the Korth Appraisal states, the Illinois Medicaid reimbursement rate has not been rebased in over 20 years. No evidence was submitted regarding if, when, or how the New York Medicaid reimbursement rate was calculated. Without such information, the Board is unable to determine if the appellant's citation to the Tarrytown case is an appropriate comparison. As such, the Board accords this argument no weight.

The third market value argument proffered by the appellant is premised on the sale of the subject in August 2009. The appellant submitted the PTAX-203 form in support of this argument, which states that \$7,491,488 of the subject's sale price was attributable to the real estate. The Board does not find this argument persuasive.

Much was made during the experts' testimonies regarding the information on various PTAX-203 forms for the subject and several sale comparables. The information provided on these forms is done so under penalty of perjury, and is provided "to the best of [the buyer's and seller's] knowledge and belief" (according to the attestation paragraph at the beginning of "Step 4" of these forms). Only when a person "willfully falsifies or omits" any required information, do

criminal penalties become plausible. While the Board makes no finding as to whether any information was willfully falsified or omitted, the Board also does not accord the value conclusion in the PTAX-203 forms any weight. To “the best of [the buyer’s and seller’s] knowledge and belief,” the value of the subject’s real estate was \$7,491,488. However, no evidence was submitted as to how the parties to the transaction arrived at this value. There was no testimony from any of the parties to the transaction at hearing, and no foundation was laid as to these parties’ qualifications for valuing the real estate of a nursing home. Thus, while the parties to the transaction may have reasonably and honestly believed the subject’s real estate value was \$7,491,488, this conclusion was not supported in any way in the evidence provided by the parties, and the Board accords it no weight.

The appellant’s fourth market value argument was based on the Korth Appraisal. The intervenor argued that the subject is undervalued, and submitted the Dost Appraisal in support of this argument. The appellant submitted the Braemer Review to show that the Dost Appraisal contained several material errors, and was, therefore, unreliable. All three of the authors of these reports testified at hearing as experts. Mr. Korth testified that he gave primary emphasis to the cost approach. Mr. Dost testified that he gave primary emphasis to the cost and income approaches. Mr. Braemer testified that, in valuing the real estate of a nursing home, the cost approach is very important. Moreover, in extracting the business value of the subject from its going concern value, both Mr. Korth and Mr. Dost relied, at least in part, on the cost approach comparison method. Mr. Braemer testified that this is an appropriate way to extract the subject’s business value from its going concern value. This somewhat circular method takes the going concern value as determined under the income or sales comparison approach, and subtracts out the value of the subject’s real estate as determined under the cost approach. The difference is the value of the subject’s business value. The subject’s business value is then deducted from the subject’s going concern value to arrive at a value for the subject’s real estate. In short, the value of the subject’s real estate under the income and sales comparison approaches is predicated on the value of the subject’s real estate under the cost approach when using the cost approach comparison method.

The Board accorded diminished weight in varying ways and degrees to the cost approaches in the Korth Appraisal and the Dost Appraisal. The Board finds that both appraisals lack sufficient evidence to support their respective conclusions under the cost approach to value. However, the Board also finds that, using the credible and reliable evidence provided in these two appraisals, the Board can craft an appropriate conclusion of value.

In determining the subject’s land value, the Board finds the Dost Appraisal more reliable. Mr. Dost credibly testified that he looked for land comparables with similar highest and best uses as the subject. The Dost Appraisal also included adjustments, and a map showing the location of the subject relative to the comparables. The map shows that the comparables are located near the subject. Moreover, these sales took place between December 2009 and November 2010, and the lien date in this appeal is January 1, 2011. While the land valuation analysis found in the Korth Appraisal was credible, the Board accorded it diminished weight because the sales mostly occurred in 2008 and 2009, with one sale from June 2011. It was also accorded diminished weight because it used the floor area ratio square foot as the unit of measure instead of the actual square footage of the comparables and the subject. Therefore, the Board finds that the subject’s land value is \$650,000, as set forth in the Dost Appraisal.

The appraisers agreed that the subject was a class “C” building under the MVS guidelines, but disagreed as to the condition of the subject. Mr. Korth testified that the subject was an average quality building, while Mr. Dost testified that the subject was a good quality building. Mr. Braemer testified that he did not find Mr. Dost’s conclusion to be in error. The Board finds Mr. Dost more credible on this point. While some of the subject’s mechanicals have not been updated recently, the testimony elicited at hearing showed that the subject has been adequately maintained. Indeed, both appraisers concluded that the subject’s effective age is lower than its actual age, suggesting that it is in good condition. Using the class “C-Good” Convalescent Hospital unit costs provided in the MVS, Mr. Dost found that the subject’s replacement cost new was \$12,849,237 (excluding entrepreneurial profit, which is discussed *infra*). Therefore, the Board finds that the subject is a class “C-Good” Convalescent Hospital with a replacement cost new of \$12,849,237.

In determining whether entrepreneurial profit is appropriate, the Board finds the Korth Appraisal more reliable. Mr. Korth credibly testified that entrepreneurial profit is not always appropriate to include, especially when the property being valued is a “special use property.”¹³ Mr. Korth relied on two appraisal textbooks in reaching this conclusion. Mr. Dost, on the other hand, testified that entrepreneurial profit is a “fundamental component” of the cost approach, and applied a 15.00% factor for it in his replacement cost new. Mr. Braemer pointed out that Mr. Dost relied on an appraisal textbook published in 1997 in reaching the 15.00% factor, and that this textbook suggested a range of entrepreneurial profit from 5.00% to 15.00%. Most importantly, none of the experts were able to identify a single market transaction where a developer built and then sold a nursing home to an end user. Such a lack of market activity would suggest that entrepreneurial profit is small or even non-existent, as Mr. Korth testified. The Board is certainly not persuaded that it is at the high end of the range found in the dated textbook Mr. Dost relied upon. Therefore, the Board finds that Mr. Korth is more credible on this point, and that no factor for entrepreneurial profit is applicable.

The Board does not find either appraiser reliable in determining the subject’s useful life. The MVS provides guidelines for determining the useful life of a building, which are based on the subject’s class and condition. Mr. Korth used the guideline of 40 years for a class “C-Average” Convalescent Hospital. However, as discussed above, the Board finds that the subject is a class “C-Good” Convalescent Hospital, rendering Mr. Korth’s useful life unreliable. Mr. Dost used the guideline of 45 years for a class “C-Good” Convalescent Hospital, and then added five additional years. Mr. Braemer testified that, in determining a building’s useful life, he does not deviate from the MVS guideline unless special circumstances are present in the market. He

¹³ The Board notes that the term “special use property” is a term of art in Illinois real estate tax law, which was first defined a century ago by the Supreme Court of Illinois in City of Chicago v. Farwell, 286 Ill. 415, 420 (1918) (“There are a few exceptional cases in which market value cannot be the legal standard because the property is of such nature and applied to such special use that it cannot have a market value, such as a church, college, cemetery, clubhouse, or terminal of a railroad.”) (overruled on other grounds by Forest Preserve Dist. of Du Page County v. First Nat. Bank of Franklin Park, 2011 IL 110759); see also Cook County Bd. of Review v. Property Tax Appeal Bd., 384 Ill.App.3d 472, 481 (1st Dist. 2008) (discussing Farwell and other appellate court cases that define “special use property.”). The Board posits that Mr. Korth was not stating that the subject is a “special use property” as the Illinois courts have defined that term, because he presented several sale comparables of nursing homes that were sold. Indeed, the subject was sold just more than a year prior to the lien date.

further testified that the Dost Appraisal provides no market evidence to show that a deviation from the guidelines was warranted for the subject. The Board agrees with Mr. Braemer, and finds that Mr. Dost's additional five years is unsupported and not credible. The Board, therefore, finds that the subject's useful life is properly set at the MVS guideline for a class "C-Good" Convalescent Hospital, or 45 years.

The Board finds the Dost Appraisal more reliable in determining the subject's effective age. Both appraisers testified that the subject's effective age was less than its actual age of 38 years. However, Mr. Dost selected an effective age of 20 years, while Mr. Korth selected an effective age of 25 years. Mr. Dost testified that he selected this effective age based on the subject being well maintained, and having \$190,207 worth of capital improvements done from 2009 to 2010. Mr. Braemer testified that Mr. Dost's concluded effective age was a material error when taking into consideration the subject's condition and apparent lack of significant capital improvements in the decade prior to the lien date. The Board finds Mr. Dost's conclusion reliable on this point, as the subject had significant capital improvements done just prior to the lien date as compared to the eight prior years. It is apparent to the Board that the new owner and/or operator of the subject after its sale in August 2009 is willing to spend significantly more on capital improvements than the prior owner and/or operator. Moreover, even while selecting an effective age below the subject's actual age, Mr. Korth testified that the subject was a class "C-Average" Convalescent Hospital. While these two conclusions are not necessarily incongruent, the Board does not find them credible in this particular instance. Thus, the Board finds the Dost Appraisal more credible, and that the subject's effective age is 20 years.

Both appraisers used the age/life method in determining the subject's level of depreciation. Mr. Braemer found this method to be appropriate. Thus, the Board finds that the age/life method is the proper way to determine the subject's depreciation. In doing so, the Board will use the subject's useful life of 45 years and the subject's effective age of 20 years, both of which were determined in the previous paragraphs. Thus, the Board finds that the subject's level of depreciation is 44.44% ($20 \text{ years} \div 45 \text{ years} = 44.44\%$). Applying this level of depreciation to the subject's replacement cost new of \$12,849,237 (discussed *supra*), the Board finds the subject's depreciated replacement cost is \$7,139,036 ($\$12,849,237 - (\$12,849,237 \times 44.44\%) = \$7,139,036$).

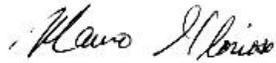
The Korth Appraisal found that the subject's site improvements were valued at \$40,000, while the Dost Appraisal found the site improvements were valued at \$42,000. The Board finds that the site improvements upon the subject are properly set at \$41,000.

When adding the subject's land value of \$650,000, depreciated replacement cost of \$7,139,036, and site improvements of \$41,000, the subject's total market value is \$7,830,036.

The income and sales comparison approaches to value completed by the appraisers were given diminished weight in the Board's analysis. In both appraisals, the value of the subject's real estate was substantially reliant on the value of the subject's real estate as determined under the appraisers' respective cost approaches, as both appraisers employed and, at least in part, relied on the cost approach comparison method. As such, the Board finds that the subject's market value, as determined above using a composite of the appraisals' cost approaches, is \$7,830,036. The subject's assessment reflects a market value of \$8,229,416, which is above the Board's

market value determination; and, therefore, a reduction in the subject's assessment is warranted. Since market value has been established, the 2011 statutory level of assessment for commercial property of 25.00% under the Cook County Real Property Assessment Classification Ordinance shall apply. 86 Ill.Admin.Code §1910.50(c)(3). Additionally, since market value has been determined, the Board finds that the subject is fairly and equitably assessed, and no reduction is warranted based on the appellant's equity argument.

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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.



Chairman



Member



Member



Member



Member

DISSENTING: _____

CERTIFICATION

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:

April 17, 2018



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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

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