



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

APPELLANT: Peterson Health Care VII, Inc.
DOCKET NO.: 12-04366.001-C-3
PARCEL NO.: 09-09-05-000-106

The parties of record before the Property Tax Appeal Board are Peterson Health Care VII, Inc., the appellant, by attorneys Jason M. Crowder of The Petersen Companies in Peoria and William A. McNutt of Moore, Susler, McNutt & Wrigley, LLC, in Decatur, and the Moultrie County Board of Review by Special Assistant State's Attorney Christopher E. Sherer of Giffin, Winning, Cohen & Bodewes, P.C., in Springfield.

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 **Moultrie** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$128,950
IMPR.: \$831,820
TOTAL: \$960,770

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Moultrie County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2012 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

Pursuant to Property Tax Appeal Board rule §1910.78 (86 Ill.Admin.Code §1910.78) due to the common issues of law and fact, Docket No. 11-04294.001-C-3 was consolidated with Docket No. 12-04366.001-C-3 for purposes of a single oral hearing. The Property Tax Appeal Board shall issue separate decisions for each docket number.

The subject property consists of a 46.11-acre campus operated as a continuing care retirement community [CCRC] which offers diverse

levels of residential elderly care from independent living arrangements progressing through the continuum of care, up to and including, nursing home care.

The subject CCRC is commonly known as Mason Point and consists of approximately 41 buildings/structures, some of which are attached and some of which are free-standing, were built between 1904 and 2006. The 170 beds for nursing home care consist of 48 licensed shelter care beds, 50 licensed intermediate nursing care beds and 72 licensed skilled nursing care beds. The campus also offers a total of 27 independent living apartment units, 13 duplex dwellings for independent living (26 units) and two additional single-family rental dwellings. There are also amenities of a chapel, an administrator's single-family residence, and an activity building, including a coffee shop, ice cream shop and full service restaurant, along with structures devoted to physical therapy, laundry, administrative offices, boiler, generator, maintenance, warehouse, storage and a water tower. The property is located in Sullivan, East Nelson Township, Moultrie County.

Appellant's Case-in-Chief

The appellant appeared before the Property Tax Appeal Board through counsel contending overvaluation on grounds of "recent sale" as the basis of the Commercial Appeal petition. The appellant only included page one of the four-page appeal petition and attached various documents to support to the overvaluation contention.

In support of the sale transaction, the appellant submitted a copy of the one-page Warranty Deed; a copy of the PTAX-203 Illinois Real Estate Transfer Declaration which reflected on Line 11 a purchase price of \$3,900,000 and an amount of personal property included in the purchase on Line 12a of \$1,000,000 resulting in Line 13 "net consideration for real property" of \$2,900,000 which was also subject to the transfer tax.

The appellant also submitted a copy of the PTAX-203-A Illinois Real Estate Transfer Declaration Supplemental Form which depicts that the subject property had been on the market for 6 months and the property was "100 Percent" occupied or leased on the sale date. Although the PTAX-203-A requires a "list of personal property transferred," no such list was provided with the filings before the Property Tax Appeal Board as part of this appeal. (See also testimony of appellant's witness infra) On line 7 of the PTAX-203-A, "did the seller's financing arrangements affect the sale price on Line 11 of Form PTAX-203?," the answer was "no." Line 8 of the PTAX-203-A to the question, "In your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?," the answer was "yes."

The appellant also provided a copy of the Seller's Settlement Statement and the Buyer's/Borrower's Settlement Statement both reiterating the sales price of \$3,900,000 and both documents depict a closing date of December 31, 2008. The appellant also submitted

a copy of a three-page Letter of Intent dated July 1, 2008 signed by Mark Petersen with an acceptance deadline of 5:00 p.m. CDT on July 10, 2008. Beneath Petersen's signature is a signature that the offer was "agreed to and accepted" by the Grand Lodge of Illinois, A.F. & A.M. which was dated July 9, 2008.

Lastly for documentation, the appellant submitted a copy of the nine-page listing of the subject property made by Jeff Binder of Senior Living Investment Brokerage, Inc. in St. Louis, Missouri. The listing provides some details about the facility of 210 beds/units with a list price of \$5 million. Among the details of the subject property provided in the listing, on the fourth page with page number "5" in the lower right corner, is a section entitled "Financial Overview":

Mason Point is a full CCRC that offers multiple care levels through their campus. These care levels are further complicated by the variety of payor sources found in their Statement of Operations. In addition to traditional revenue sources like Medicaid, Medicare, and Private Pay, Mason Point cares for residents under life contracts, an endowment assistance program, and a discounted private pay rate for residents who have a Mason affiliation. Because the endowment assistance program and the life contracts are paid by the Masons they do so at a significant discount. Once the facility is sold these residents will be shifted to a market Private Pay rate which will be paid by the Masons. This applies to nearly 60% of the current residents. . . .

Obviously the financial condition of the facility will drastically change after the sale and while it will not be operating in the black, it will not be as difficult of a property to turn around as it appears in the financials above. A cost conscious operator will likely be able to turn a profit because as with many non-profit facilities the expenses for Mason Point are significantly higher than what is seen in their market.

The sole witness called for testimony by the appellant was Marikay Snyder, general counsel of the appellant, Petersen Health Care VII, LLC. Snyder described herself as a transactional attorney for the appellant as of the date of purchase of the subject property and was "responsible for the transaction." (TR. 7)¹ At the hearing, Snyder identified the Warranty Deed, the PTAX-203 documents and the closing statements from both participants to the transaction.

Snyder also identified the three-page letter of intent which she testified was issued to the broker by Petersen Health Care as an offer to purchase the subject property from the Masons. She further identified the listing information which the witness

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

characterized as "a brokerage package, the offering memorandum from Senior Living Investment Brokers, who were the brokers who represented the sellers in this transaction." (TR. 8)

Snyder acknowledged that in the PTAX-203 there was an allocation made between real estate and personal property of just under 25%. The allocation was negotiated with the Masons' attorneys. She further stated that it was industry standard at the time in purchases of this type of nursing home that personal property would be valued at a percentage of between 15 percent and 25 percent of the total purchase price. In determining that the subject's allocation should be on the high end of the range, Snyder stated that Mason Point was "an excellently outfitted building." She also remarked that the basements were full of equipment which "basically indicated to us that there was a greater percentage of equipment." Furthermore, she testified that inventory was very high as the Masons had stocked it "very, very well, compared to other transactions that we had been in in the past" and the seller agreed this was an appropriate amount of personal property. (TR. 8-9)

The acquisition of the subject property was unique according to Snyder in that "the Masons actually had a collection" which was called their museum consisting of collections of personal property which had been donated to the Masons by members. Furthermore, the museum still exists and is still full of those personal property items and collections of mementos from travels of the members over the years which the witness characterized as "a very large room full of very unique items." (TR. 9-10)

Snyder further testified that there was no additional consideration paid by the appellant to the seller for the purchase of Mason Point. (TR. 10) Directing the witness' attention to the fourth page of the listing with page "5" in the lower right corner [quoted verbatim supra], the issue of revenue sources, life contracts and endowment assistance referred to the fact that the Masons had been providing a stipend to individual residents of the facility who were members of the Masons or the family members of the Masons. As to those residents, if they qualified for Medicaid, they did not apply to Medicaid and instead, the Masons allowed them to stay simply for the amount of their personal participation, which would have been required to be paid. (TR. 10-11) Snyder testified that Medicaid recipients are required to pay all of their income toward their own care before State government picks up the difference. For Mason-affiliated residents, the arrangement was that the resident does not have to apply for Medicaid and the Masons issued a stipend or a credit for that Medicaid amount. Through this arrangement, the Mason-affiliated residents only paid their personal income as opposed to actually obtaining State assistance. (TR. 11) Additionally, Snyder testified that the life contracts referred to individuals who had "given their estate, for lack of a better word, to the Masons for the right to live in the building for the remainder of their lives, assuming that they could continue to live in those buildings with their medical condition, if they were not required to move out due to deterioration of their

physical or mental condition." (TR. 11) As part of the purchase transaction, the appellant was not assuming any liability for the life contracts because "the Masons continued to have full responsibilities for all of those." (TR. 11-12) Furthermore, the appellant still receives payments from the Masons to offset those life contracts. (TR. 12)

Next, turning to page 2 of the three-page letter of intent, Snyder testified regarding a portion of the Purchase Agreement provision stating:

. . . The Purchase Agreement will also contain provisions for subsidy payments from the Seller on behalf of the residents currently entitled to discounted or reduced charges due to their relationship or membership in the Seller.

According to Snyder, the foregoing provision and the contract provided a requirement that Mason Point pay the subsidies for the individuals for whom the Masons had been giving the offset. She further testified that for any individual who was paying below market rates, the Masons would "continue to pay whatever they had been paying to the Masons, their income, and the Masons would make up to the difference up to our private pay rates." Snyder also gave a hypothetical that a Mason-affiliated resident who receives \$1,000 in Social Security and the appellant's private pay rate was \$3,000 per month, the Masons would pay the other \$2,000 in order to equalize those residents to market. (TR. 12-13)

Based on the foregoing evidence, the appellant requested a reduction in the subject's assessment to be reflective of a market value of \$2,900,000 which would reflect the purchase price less the value of the personal property for real property assessment purposes.

Cross-examination

On cross-examination, Snyder testified that the appellant is still receiving income from the Masons for the residential care of Masons at the facility although she has no idea how much has been received since the date of purchase. Snyder was also unable to testify with regard to the amount received for calendar years 2011 or 2012; "it would have been based upon the daily rate for those individuals in the building." As of the time of the hearing in this appeal [which was February 2015], Snyder did not know how many life contracts were still in place at the facility nor did she know how many life contracts existed in years 2011 or 2012 without speculating. (TR. 13-14)

A copy of the Note was not provided by the appellant as part of the appeal. Snyder acknowledged that the lender in the sale was actually the Masons; the interest rate was variable beginning at approximately 8% and then was "a prime or a LIBOR or something of that nature." (TR. 14) Snyder was not aware of a different reported amount for personal property such as to the Illinois

Department of Healthcare and Family Services [hereinafter "HFS"]. (TR. 14-15) As to the agreed amount for personal property arrived at by the parties to transaction, Snyder stated, "It's very rare that any nursing home would have cataloged its equipment to the extent necessary to itemize." (TR. 15)

Prior to the purchase of the subject property, Snyder acknowledged that actuarial tables were prepared regarding the anticipated stipends from the Masons for the life contracts, although the witness was unaware of what that calculation was. (TR. 15-16) As to more recent actuarial tables on the issue, Snyder testified that the appellant bills the Masons monthly; the witness was unaware of the current monthly billing, but testified that initially it was somewhere around \$100,000 per month. She noted that many of those initial residents have since passed away, although she does not know how many specifically. (TR. 16)

Redirect-examination

On re-direct examination, Snyder testified that the loan made by the seller to the buyer at the time of purchase was no longer in existence as it has been paid off. The loan was intended to be for one year at the market interest rate. Snyder further stated, "The facility was not performing adequately in order to obtain financing at the time that we purchased it based upon its historic performance, and, therefore, the Masons agreed that they would allow us to have that note in order to be able to increase the performance so that we could finance it out from under them." The witness also asserted that there was no adjustment in the purchase price as a result of the Masons providing the loan to the appellant. (TR. 16-17)

Board of Review's Case-in-Chief

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$1,822,150. The subject's assessment reflects a market value of \$5,500,000, land included, when using the 2012 three year average median level of assessment for Moultrie County of 33.13% as determined by the Illinois Department of Revenue.

In response to the appeal and as required by the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.40(a)), the board of review submitted a copy of the 173-page property record card of the subject. While no testimony was provided concerning the property record card, the Property Tax Appeal Board notes that under the category "sales" on page 1 of the document, a January 1, 2009 purchase price of \$3,120,000 is depicted.

In support of its request for an increase in the assessment of the subject property to \$2,929,700, the board of review submitted a 99-page appraisal of the subject property prepared by Howard B. Richter with an estimated market value of \$8,790,000 as of January 1, 2012.

The appraiser was called as the board of review's sole witness in this proceeding. Richter is president of Howard B. Richter & Associates, Inc. of Deerfield, Illinois, and has been engaged full-time in the appraisal of real estate for 40 years. He is an Illinois Certified General Real Estate Appraiser and holds the Member of the Appraisal Institute (MAI) designation. (TR. 18-19; Appraisal, p. 95-97)

Richter testified that he was "retained by Moultrie County"² for the appraisal assignment(s) of market value for the subject property as of January 1, 2011 and 2012 with a subsequent assignment for 2013. (TR. 20)

For purposes of the report, Richter inspected the subject property on August 29, 2013 for approximately 4 hours. As part of the inspection, the appraiser was accompanied by the facility manager who advised any changes to the building(s) were "basically cosmetic, ordinary repairs and upgrades" with no substantive change impacting value. In this regard, the report includes an extraordinary assumption that the subject's condition as of the date of valuation was substantially unchanged from that evident on the date of inspection. In testimony, Richter further specified that he inspected the majority of the subject facility (nursing home and shelter care facility). Several of the buildings, which were not unique to the operation and which were more similar to conventional residential or two-flat properties, his colleague Robert L. Elder, a local expert, inspected; according to Richter, the portion inspected by Elder was approximately 10% of the entire facility. (Appraisal, p. 4; TR. 21-23) Both Richter and Elder executed the Certification for the subject appraisal report. (Appraisal, p. 86)

The witness acknowledged that the subject is commonly referred to as a nursing home, but Richter contends it is more accurately described as a continuous care community (see above, CCRC). Richter further expounded that an individual may enter the facility under an independent living arrangement with the future capability to move up to the highest level of skilled nursing home care. (TR. 24)

As part of the demographics of Sullivan, a community with a population of 4,440 as of the 2010 census, the appraiser reported that in addition to the subject facility, "there are five other licensed facilities for different levels of elderly care in Sullivan." (Appraisal, p. 11)

Subject's Sales History

Richter testified that he "very briefly" reviewed the sales history of the subject property. Citing to page 9 of the appraisal report,

² The cover letter of his appraisal report was addressed to Cindy Kidwell, Chief County Assessment Officer of Moultrie County referencing her request for an appraisal. The report also specifies that Kidwell made the request for an appraisal. (Appraisal, p. ii & p. 4)

Richter acknowledged that he was aware of the recorded purchase "and the testimony which I heard a few minutes ago absolutely reinforced my understanding that what was recorded as a sale here is a totally artificial price in no way reflecting the consideration that was paid. Just looking at the statements made today, in point of fact, this property was conveyed for a net price of less than zero dollars." Richter further testified to his opinion that the recorded price of \$3.9 million does not represent the total financial consideration between the buyer and the seller. "The buyer continues to receive cash payments from the seller today five years after the purchase." He further discussed the previous testimony that initially payments were made of \$100,000 per month which in the first year would have a present value in that year on the order of more than \$1 million. He then also acknowledged that the residents do die off such that it diminishes, but Richter stated, "if their average age at that time was 70 . . . or 75, over the last six years . . . the present value would be on the order of \$3 million. Pick a number. I don't know the number. She didn't know the number. But it's certainly substantial when compared to a 3.9 million purchase price." (TR. 26-28) The appraisal report described the historical operation of the property as a "Life Care Community" in which "many of the nursing home patients, who tend to be those who have resided at the facility for the most years, are not responsible for any current charges, having paid for life care when they moved into the facility many years ago." (Appraisal, p. 51)

Richter continued to opine that there was an arbitrary number allocated to the real estate of \$3.12 million meaning there may have been no net value to the real estate in the purchase contract. He contended that the \$3.9 million reported on the transfer declaration did not, as it should, reflect the total consideration between buyer and seller. Richter asserted the parties' allocation on the transfer declaration includes the real estate and the ongoing business. "Yet, the parties agreed that the ongoing business had a negative value. That's why the Masons are continuing to make payments. So at the very least, the value of the real estate would be the price paid, plus the value of whatever payments are received from the Masons as compensation for the negative value of the real estate." The appraiser opined that the actuarial computation plus the \$3.9 million paid "would be a threshold number for the value of the real estate." (TR. 28-29)

When questioned further about the subject's recorded sale price, Richter cited his experience in the valuation of more than a dozen nursing homes within Illinois and testified that "the price paid represented the value of the total going concern business, and while usually the price paid is higher than the value of the real estate alone, as I knew this was a life care facility with an obligation going forward that had to be met for residents in place and knowing that the purchaser was picking up that obligation, I knew that the value of the business was a negative at the time of acquisition." He continued in testimony that he did not know the Masons were making continuous payments and further asserted that Mason Point at the time of purchase was generating net income in

excess of \$1 million per year based on annual data published by HFS. (TR. 29-31)

Page 9 of the appraisal report set forth Richter's review of public records reflecting the January 2009 sale of the entire facility for a reported consideration of \$3.9 million of which \$780,000 was "self-reported as attributed to non-real estate interests included in the sale on the Transfer Declaration, or \$3,120,000 attributed to the real estate alone." (Appraisal, p. 9)³

Next, Richter made reference in his appraisal to a report of the subject's sale made in a "Financial and Statistical Report for Long-Term Care Facilities" filed with HFS. No copy of the document was provided with the appraisal. Richter asserted on pages 11 and 12 of the subsequent HFS filing, the facility reported "\$309,300 paid for the land and \$2,045,700 paid for the buildings, or a total consideration of \$2,350,000⁴ allocated to the real estate only for the licensed skilled and intermediate care portion of the larger facility." (Appraisal, p. 9) Within the appraisal, Richter described these HFS filings as "the price attributable to the real estate derived for most facilities by summing the reported price allocated to the land and the building for accounting purposes." (Appraisal, p. 6)

The appraiser further stated at page 9 of the appraisal report:

At the time of that sale, however, the facility had been operated by a not-for profit entity as a "life care facility", which is a type of multi-level elderly residential care facility in which residents sign-over all or a specified substantial portion of their financial assets at the time of their entry into the care facility, in return for which they are assured continuous care for their remaining life. Typically, residents enter this type of facility while still requiring only minimal supportive services, such as those provided to residents of the subject's unlicensed independent living apartments. Then, as their needs increase, they are moved into those on-site facilities offering additional supportive services, either to shelter care or skilled nursing services, all at no additional charge to the resident.

In light of the foregoing, Richter in the appraisal acknowledged that the buyers were "assuming the obligation to provide full services to residents in place who had already paid in full for services they would receive for many years into the future. . . . the obligation to residents already in place had to be met. The substantial unreimbursed cost thus incurred to provide future services to those residents already in place could not be

³ The appraisal report did not include a photocopy of this purported Transfer Declaration reflecting a personal property allocation of \$780,000 as reported by Richter.

⁴ Mathematically the two figures total \$2,355,000.

determined at the time the property was acquired, as neither their life expectancy nor the level of care they would require could be determined. The price paid would, however, have to be substantially discounted from that which would be attributed to the facility if sold without this on-going obligation, the full adverse economic impact of which would be attributed to the operating business and not the real estate interest, which is the subject of this appraisal." In discussing the foregoing portion of the appraisal, Richter testified that he was not valuing the going concern, consisting of the real estate and business together, but instead was looking only to the real estate. (Appraisal, p. 9; TR. 31-32)

At the hearing, Richter characterized "the consistency" between his opinion of market value for the subject of \$8.79 million and the \$3.9 million reported purchase price: "I refer again to what is the value of those payments being made by the Masons, which we're told were initially a hundred thousand per month, and now six years later are still continuing at some price level. We don't know what it is." The witness then opined about the present value of money and recognized that he had no specific figures to analyze, but suggested that the value of the payments overtime might have a present value of \$4 million which he stated "is certainly not unreasonable." (TR. 41-42)

Appraisal Valuation Methodology

Richter wrote, in part: "As we know of no cases of recent sales of a CCRC with this many levels of elderly care facilities in a non-urban setting, we have separately estimated the contributory value of the three primary operating components of the subject complex, which together comprise the fee simple interest in the real estate commonly known as Mason Point." (Appraisal, p. 84) In summary, Richter valued the facility based upon (1) the licensed capacity of 122 beds for skilled and intermediate nursing home care, (2) 48 licensed shelter care beds "consistent with its income-earning potential" and (3) the non-licensed facilities of apartments, duplex buildings and three single-family homes. As to a category in the appraisal called "Ancillary Buildings," which Richter described as "used to support the entire property," including operation and storage buildings, he did not value those individually, but "rather, they are valued only as a part of the entirety." (Appraisal, p. 6 & 44)

After he arrived at values for the three components, Richter combined the components into a single opinion of market value with cautionary language that "[n]othing contained herein is implied to be, or should be inferred as, the value of any component, if marketed separately, however." (Appraisal, p. 56)

Valuation of the Nursing Home Component

For purposes of the appraisal, Richter grouped the 72 licensed skilled nursing beds⁵ and the 50 licensed intermediate care nursing beds⁶ at the subject facility together as one nursing home component totaling 122-licensed beds.

The 72 skilled care beds are located in a three-story building built in 1983 with a full basement and containing 47,547 square feet. All resident rooms are for single bed occupancy with semi-private washrooms of a toilet and sink. The 50 intermediate care beds are located in a three-story building that was constructed in 1926 and contains 25,047 square feet; this building was remodeled in 1986. The intermediate care rooms are for single-bed occupancy, with semi-private washrooms of a toilet and sink.

Richter asserted both types of care, intermediate and skilled, differ from one another only in the medical services provided; the physical characteristics do not differ. Richter also acknowledged that the special-purpose buildings of the subject property cannot be utilized except in conjunction with the furnishings, equipment and business considerations; he further noted that for *ad valorem* tax purposes any removable personal property or on-going business interest are not to be included in the valuation. (Appraisal, p. 18-27 & 57)

For analysis, Richter sought to look "only at transfers of the real estate and not the way most nursing homes or shelter care facilities are conveyed, which is as a total package of the real estate, the operating business, and the personal property as a going concern." As comparables, Richter contends that he analyzed "only the consideration paid for the real estate component of each operating comparable property - relying upon the price attributable to the real estate reported by the parties to the sale, or the rent paid for the real estate of a property to be operated by an independent lessee providing their own personal property" (Appraisal, p. 57) According to Richter, the appraisal therefore reflected the market value opinion of the fee simple interest in the subject "excluding any on-going business interest as well as removable equipment and furnishings." [Emphasis in original.] (Appraisal, p. 6; TR. 26)

Richter performed both a sales comparison approach and an income capitalization approach to value to arrive at his value conclusion for the nursing home component.

For the sales, Richter selected sales of nursing home properties outside the major metropolitan areas of Illinois (Chicago, the St. Louis suburbs, Springfield and Peoria). The comparable properties were located in Frankfort, Granite City, Effingham, South Beloit

⁵ Skilled nursing care was defined in the appraisal report as providing continuous skilled nursing care and observation under professional direction, with frequent medical supervision. (Appraisal, p. 51)

⁶ Intermediate nursing care was defined in the appraisal report as providing basic nursing care and services for patients with long-term illnesses or disabilities at a stable level, under periodic medical supervision. (Appraisal, p. 51)

and Roseville. To acquire the comparable sales data, the appraisal report sets forth that reliance was placed upon the PTAX-203 Illinois Real Estate Transfer Declaration and/or the annual Financial and Statistical Report for Long Term Care Facilities filed with HFS. In each case, there was a discrepancy between the two documents and Richter chose to place greatest reliance on the HFS cost figures for land and the building combined as reported on pages 11 and 12 of the applicable report. (Appraisal, p. 57-65)

Richter acknowledged that referencing the HFS reports was not a widely used technique to value facilities like the subject. He learned of the existence of the HFS reports by accident through his wife's work and then opined on his own that he now had a way to extract the real estate of a purchase from the going concern. He has done appraisals in six counties with this method. (TR. 35-36)

The information on the individual sales was reported on pages 59 through 64. The sales occurred between March 2010 and June 2012 for prices as reported on the PTAX-203 Illinois Real Estate Transfer Declaration ranging from \$3,195,506 to \$7,481,124, including land, "with no allocation to personalty at that time," except for comparable sale #1. Sale #1 had a total consideration of \$7,799,285 with an allocation to personalty of \$318,161 for a recorded consideration of \$7,481,124, "which included an assumption of an existing mortgage with a remaining balance of \$6,820,596" These PTAX-203 sales prices reflect prices per bed ranging from \$38,100 to \$62,343, including land. (Appraisal, p. 59-64)

The HFS data gathered by Richter reflected purported sales prices ranging from \$2,520,190 to \$5,769,507, including land. In a chart on page 65, Richter summarized the five comparable sales using the sale price for sale #1 and the HFS data for sales #2 through #5 characterizing the information as "prices allocated to the fee simple interest in the real estate only" [emphasis in original; Appraisal p. 65], with a price per bed ranging from \$32,310⁷ to \$62,343,⁸ including land, and utilized this data to develop his opinion of value for the nursing home portion of the subject property.

After detailing the comparable data, Richter performed an adjustment process to the price per licensed bed and price per square foot of gross building area as to differences between the comparables and the subject property. Adjustments were considered for characteristics of building size, age and design; and market factors which relate to the operation of the real estate, regardless of historical operations, such as location. (Appraisal, p. 58)

⁷ There was a typographical error in the chart as to the price per bed for comparable sale #4 which was incorrectly reported as \$32,320.

⁸ At the bed count of 127 in the chart for comparable sale #3, the price per bed was \$45,429 using the HFS sale price; in the chart, however, Richter utilized a 141-bed count since after the sale the number of beds increased and he therefore reported a price per bed of \$40,918.

Given the range of data, Richter determined the nursing home portion of the subject property to be of lesser overall quality due to its age and its location in a relatively small community. In light of those considerations, Richter opined a value for the subject nursing home portion of the property at the very low end of the range of \$34,000 per bed or \$4,150,000, rounded, as of January 1, 2012. (TR. 37; Appraisal, p. 67)

Next, Richter prepared an income capitalization approach to value as to the licensed nursing home beds. To perform this analysis, he relied upon the net rental paid for the real estate (and, in only a few cases, limited personalty but not the ongoing business) as reported to HFS in the cost reports for those properties leased from a completely unrelated organization. Based upon this data, he arrived at an estimate of the economic rent for the subject real estate. (Appraisal, p. 7, 68-76)

For purposes of the appraisal, the subject's complicated fee structure was "disregarded in its entirety." The rationale in part is that only a small portion of the fees charged to a nursing home resident is related to the real estate (i.e., attributable to the land and building). Richter instead stabilized the economic annual income for the subject based on net leases of comparable properties as reported to HFS in annual reports filed by facility operators "using data only for properties that were reportedly leased to parties unrelated to the owner(s)." (Appraisal, p. 68)

Initially Richter sought comparable properties from the sales comparison approach "for which arm's length leases were either in place when sold or negotiated shortly after the sale." In this regard, the appraiser examined comparable sale #2. Upon analyzing the data, Richter found the property reflected an overall capitalization rate of 11.2%. (Appraisal, p. 68-69)

Richter reported on another lease of an Illinois nursing home located outside of a major metropolitan area. The 130 bed nursing home in Rockford was reported as Rent Comparable #2. According to the HFS report data, the property developed an overall capitalization rate of 11.5%. (Appraisal, p. 69)

The appraiser next reported on selection of nine additional leases of Illinois nursing homes located outside of major metropolitan areas. Richter selected leases of net annual rentals of facilities and grounds only, as reported on Line #34 of Page 4 of the 2010 through 2012 HFS filings for each property set forth in a grid on page 70 of the appraisal report. As part of the discussion of the data, Richter noted one of the figures for 2012 "may be a clerical error" since it is inconsistent with other information in the filing and in filings for prior years. (Appraisal, p. 70)

Next, the appraiser sought data on net annual rentals being negotiated at or about the date of valuation and, thus, included a broader geographic search for licensed skilled and intermediate care facilities outside metropolitan Chicago which were summarized

on pages 71 and 72 of the report. In summary, the additional data revealed 2012 leases ranging from \$3,963 to \$6,777 per bed. (Appraisal, p. 70-72)

After considering the comparable lease data, Richter stabilized the economic rental for the subject property at \$4,200 per bed resulting in \$512,400 per year, net to the lessor. Next the appraiser deducted vacancy and collection loss of 5% or \$25,620 resulting in an effective gross annual income of \$486,780. From this amount Richter deducted 3% or \$14,603 for lessor's expenses resulting in a net annual income of \$449,692. Applying an overall capitalization rate⁹ of 11.2% resulted in an estimate of value under the income approach of \$4,215,000, rounded. (Appraisal, p. 72-76)

As part of reconciling the two value conclusions for the nursing home component, on pages 77 and 78 of the appraisal, Richter characterized the HFS documentation upon which he relied for both the sales and rental data as available and readily confirmed from "audited financial statements available from public records." The appraiser gave greater weight to the sales comparison approach as the sale prices attributed to the real estate by the purchasers develop values within a relatively narrow range and all the sales closed within 22 months of the date of valuation. In summary, Richter opined a market value of the fee simple interest in the real estate only for the nursing home component, subject to the extraordinary assumption concerning property condition, of \$4,150,000 as of January 1, 2012. (Appraisal, p. 77-78)

Valuation of the Licensed Shelter Care Component

Pages 79 through 81 of Richter's appraisal report are dedicated to valuation of the subject's 48 licensed shelter care beds.¹⁰ These beds are located in a single three-story building (two-story in front; four story at the rear) constructed in 1908 containing 18,680 square feet and featuring a basement; the building was renovated in 1981 and/or 2005. The interior features a broad entry lobby, with a common lounge to one side and 48 individual apartments, each with a private bath but no kitchen. There are only minimal common areas and a single central hall on each floor. (Appraisal, p. 1 & 15)

For valuation purposes, Richter noted that there are only a small number of licensed shelter care facilities within Illinois, most of which were recently licensed. A review of HFS filings revealed no sales of stand-alone shelter care facilities in the two years preceding the date of valuation. Additionally, the HFS filings did not reflect any shelter care facilities that were leased to an

⁹ As part of the development of a capitalization rate in the appraisal, Richter described the subject property as "an older facility, with an only average location and below average design efficiency, even though it would almost certainly be long-term leased to an experienced operator, in an industry relatively assured of government-sponsored income sources." (Appraisal, p. 74)

¹⁰ By Illinois law, shelter care residents cannot require more than 1.4 hours per day of service. (Appraisal, p. 55)

operator on an arm's length basis. Therefore, Richter reported that the contributory value of the shelter care units will be developed "by a less direct - and frankly less reliable - means of analysis." In testimony, Richter noted that most shelter care facilities are not operated under a licensed situation. (Appraisal, p. 79; TR. 39-40)

The appraisal detailed three facilities located in Peru, Princeton and Danville that were built in 1999 or 2005 with both licensed skilled nursing care beds and licensed shelter care beds. The facilities had from 98 to 140 total beds of which 22 to 70 were shelter care beds. The sales occurred from March 2008 to July 2009 based on HFS filings depicting costs for land and building totals ranging from \$5,422,183 to \$13,991,000 or from \$55,328 to \$107,623 per licensed bed. While he was unable to allocate the price between skilled nursing beds and shelter care, based on the price per bed paid, Richter did assert it was reasonable to conclude the contributory value per shelter care bed was greater than that attributable to the nursing home component. (Appraisal, p. 79-80)

The appraiser also outlined recent construction cost data for a facility in Morton consisting of 12 shelter care beds and 116 skilled nursing care beds which was built in 2008. HFS filings reflected a land cost of \$402,810 and a building cost of \$15,081,596. Richter concluded he could not rely upon the construction cost data, but determined the data does support a conclusion that the value is not less than that of nursing home beds. (Appraisal, p. 80)

Based on the aforesaid data, Richter opined a market value for the real estate only of the subject's licensed shelter care beds of "not less than \$34,000 per bed" which would mathematically reflect a market value of the 48 shelter care beds of \$1,632,000. (Appraisal, p. 80)

As set forth in the appraisal a market value of the fee simple interest in the real estate only for the 48 licensed shelter care beds as of January 1, 2012, under the extraordinary assumption concerning property condition, was determined to be \$1,625,000, including land. (TR. 40; Appraisal, p. 81)

Valuation of the Non-Licensed Residential Housing

As reported in testimony by Howard Richter, it was appraiser Robert L. Elder who performed this portion of the appraisal assignment. Elder did not testify; his resume is presented on page 98 of the report and Elder signed the certification on page 86. He has been an appraiser since 1997 and is a Certified General Real Estate Appraiser.

The following data reflects a summary of the appraisal report describing the various non-licensed residential housing facilities and, in particular, pages 82 and 83 of the appraisal report which address the valuation of four types of non-licensed residential

units at the subject property utilizing only the sales comparison approach to value.

Hart and Miller Apartments

The subject facility includes two, two-story buildings containing a total of 27 independent living apartments. The 15-unit 12,563 square foot building (Hart) was constructed in 1904, renovated in 1997 and contains four efficiency units, 10 one-bedroom units and one two-bedroom unit. Each unit has a small kitchenette and bathroom. The 14,613 square foot building (Miller) was built in 1906 and converted to 12 one-bedroom apartment units in 2000; the basement includes the kitchen for the entire facility (except the duplexes and single-family dwellings) and the first floor has a dining room for the "active living" residents whose meals are included. (Appraisal, p. 2 & 37-38)

For valuation of these apartment buildings, the appraisal report presented three suggested comparable sales of 8 and 12-unit apartment buildings located in Arthur and Charleston. The comparable buildings range in size from 4,455 to 7,072 square feet. The sales occurred between February 2011 and April 2013 for prices ranging from \$165,000 to \$200,000 or from \$28.28 to \$37.04 per square foot of building area, including land, or from \$13,750 to \$25,000 per apartment unit, including land.

The appraisal report stated that sales #1 and #2 in Arthus were better representations of the subject than sale #3. The appraisal report next depicts the market value of the subject's two apartment buildings as \$30.00 per square foot of building area resulting in values of \$375,000 and \$440,000, rounded, respectively. (Appraisal, p. 77) Applying these value conclusions to the number of apartment units for each building reflects market values for the subject of \$25,000 and \$36,667 per apartment unit, including land.

Duplexes

As part of the subject complex, there are 13 duplex dwellings consisting of a total of 26 units for independent living. The dwellings were constructed in 1997, 1998 and 2004. The units vary slightly in size with units containing 1,247, 1,280, 1,306 or 1,337 square feet of living area. Each duplex has been assigned a site area of 16,800 square feet and each of the 26 dwelling units consists of a living room, kitchen, two bedrooms, two bathrooms and an attached one-car garage. (Appraisal, p. 2, 40)

On page 82, the appraisal report sets forth three comparable sales of duplex properties located in Sullivan, Decatur and Charleston. The comparables range in size from 1,266 to 1,976 square feet of living area.¹¹ These properties sold between June and November 2010 for prices ranging from \$101,000 to \$152,500 or from \$53.39

¹¹ The appraisal does not identify if the square foot size is for the entire duplex, or a per-unit dwelling size.

to \$117.31 per square foot. On a per-unit basis, the sales reflect prices of \$50,500 to \$72,250 per unit, including land.

The appraisal report stated that sale #1 located in Sullivan was inferior to the subject; sale #2 in Decatur was built in 2004 with equivalent quality and location to the subject; and sale #3 is equivalent in quality, but superior in location being in Charleston. (Appraisal, p. 82)

Next, based on this data, the appraisal report concludes a value as of January 1, 2012 for the subject duplex project of \$100,000 per unit or \$2,600,000, including land. The report stated that "since there are age restrictions to be able to rent or purchase in this complex, a discount of 30% is appropriate (\$780,000)" which results in a "discounted" market value of \$1,820,000, including land, or \$70,000 per unit. (Appraisal, p. 82)

Single Family Dwelling (Administrator's Residence)

As part of the "Description of Improvements," the administrator's residence was described as a one-story single-family dwelling with stone veneer exterior construction that was built in 1956. The dwelling contains 1,983 square feet of living area with a 1,743 square foot basement and an attached two-car garage. The dwelling was assumed to be in average condition. (Appraisal, p. 41) The appraisal report described the dwelling as traditionally and currently occupied by the Administrator of Mason Point. (Appraisal, p. 2)

On page 83 of the appraisal report, the dwelling size was stated to be 1,936 square feet of living area without explanation as to the change in size. Three comparable sales located in Sullivan were set forth in a chart. The "styles" were two "ranch" dwellings and a "brick ranch." One home has a basement and each has a two-car garage. The homes range in size from 1,870 to 1,996 square feet. The sales occurred between February and August 2011 for prices ranging from \$118,000 to \$175,000 or from \$60.98 to \$93.58 per square foot of living area, including land.

Next, the appraisal presented a market value for the subject administrator's residence of \$82.00 per square foot of living area or, as set forth at 1,936 square feet,¹² a market value of \$160,000, rounded. (Appraisal, p. 78)

Single Family Rental Dwellings (2)

The subject property has two single-family two-story rental dwellings, each of which was built in 1920. One dwelling is brick and one is of frame exterior construction. Each home has a basement with either a one-car garage or a two-car garage. Both dwellings are reported to be in average condition. One home contains 1,458

¹² At the originally reported dwelling size of 1,983 square feet, the value conclusion of \$82 per square foot would be \$162,606.

square feet of living area and the other home contains 2,592 square feet of living area. (Appraisal, p. 2, 42 & 43)

On page 83, the appraisal report states that each of these residences has a two-car attached garage with one-acre lots for each home. The report depicts a chart of three comparable sales of two-story dwellings located in Sullivan. One comparable has a basement and each has either a one-car or a two-car garage. The dwellings range in size from 1,448 to 2,520 square feet of living area. The sales occurred in April or August 2010 for prices ranging from \$85,000 to \$124,300 or from \$48.41 to \$68.15 per square foot of living area, including land. (Appraisal, p. 83)

Next, based upon the sales data, the appraisal report opined a market value for the 1,458 square foot dwelling of \$61.00 per square foot or \$90,000, rounded, and for the 2,592 square foot dwelling of \$50.00 per square foot or \$130,000, rounded. (Appraisal, p. 83)

Valuation Conclusion

On page 84 of the appraisal report, Richter summarized the three value conclusions of the components that were established for the subject property: the licensed nursing home at \$4,150,000; the licensed shelter care at \$1,625,000; and the non-licensed residential dwellings at \$3,015,000.

Richter noted that for most types of income property, the larger and more complex the property, the lower the market value, if all other factors are equal given the difficulty in finding a purchaser with the means and expertise to undertake the larger investment. He contended, however, that the health care industry in general and elderly housing facilities in particular are well recognized exceptions to this trend. (Appraisal, p. 84)

Richter wrote, "'continuity of care' is a well-recognized marketing factor in this industry, which has been largely immune from price-shopping and other competitive factors in recent years." He contended that various practices affiliate in the hospital, medical, rehabilitation and nursing home fields which results in economic advantages to refer clients "up the ladder" with deteriorating health and increased care needs. The appraiser next cited a survey reporting an overall capitalization rate of 9.8% and average equity dividend rate of 13.6% for CCRC facilities versus an overall capitalization rate of 12.5% and an equity return rate of 15.8% for licensed skilled nursing homes. A second survey reported a capitalization rate average of 10.1% for CCRC facilities versus 13.1% for nursing homes as of the quarter ending June 30, 2010. (Appraisal, p. 84)

On page 85 of the appraisal, it was stated that no discount has been applied for the complexity of the subject property in combining the contributory value of the three components, nor has a premium been applied since an income approach was only performed for the nursing home component and therefore there is no ability

to project the income advantage to the rest of the subject complex. In conclusion, the appraisal opined a market value for the subject facility as of January 1, 2012, subject to the extraordinary assumption related to condition, of \$8,790,000. (Appraisal, p. 85)

Based on the foregoing evidence and argument, the board of review requested an increase in the assessment of the subject property to \$2,929,700 in order to reflect the appraised value.

Cross-examination

Under cross-examination, as to the sale of the subject property, Richter testified that he has no knowledge of the motivation of the Masons, whether maximizing the sales price or whether time was a more important consideration. Without evidence of the motivation for the sale, Richter asserted his lack of knowledge is one of the reasons that he did not use the sale as the primary consideration in the opinion of value. He also offered that, "It was apparent to me that the reported sale price was not the full and complete consideration in the transaction." (TR. 55-56)

The appraiser was informed by the facility manager, at the time of the inspection of the property, of the need for the purchaser to provide full services to residents in place who had already paid in full for services they would receive for many years into the future. The facility manager was not aware of the financial considerations as he did not deal with the financial aspects and Richter remarked it was not necessary to pursue the inquiry further "since I was not valuing the business." At the time of inspection, Richter was also informed, for purposes of a general description, that the facility was now operated more traditionally as a conventional facility and no longer operated as a life care facility for new residents. "Again, we're not trying to analyze the economics because it's not pertinent to the real estate." (TR. 57-59)

As to the PTAX-203 Illinois Real Estate Transfer Declaration concerning the subject's sale transaction, Richter testified that he knew from the form itself that "it was not the purchase of only the real estate" as there was additional consideration which was also "consistent with the economics as reported to the State of Illinois." For this latter assertion, Richter relied upon the fiscal year 2008 filing with HFS and he reported that, in preparation for the hearing, he prepared an analysis of the business which he did not do in his appraisal report; Richter testified that as part of this HFS filing, the subject reported income from all sources of \$8,977,756 with total expenses of \$8,569,119 where expenses include ownership expenses of \$688,320 which Richter stated include "many items which do not relate to the real estate, such as amortization, interest expenses, their mortgage expenses, etc., so they must be excluded." After making modifications to the reported HFS expenses, Richter stated the net income from operations was \$1,065,098 based on the HFS filings. (TR. 59-63)

Upon further questioning about this new analysis, Richter testified that he prepared certain pages "today," but that at the time he prepared the appraisal report, he did the analysis "to see if the \$3.9 million purchase price could in any way reflect the true value of the business, because of the operating business and real estate together, to verify whether the manager's statement that there was a further obligation by the purchaser when they bought it was reasonable. That's all I was trying to test." (TR. 63-64)

When questioned, the witness asserted he was confident in his statement on page 9 of the appraisal report concerning the sale and the continuation of care of certain residents because it was "both consistent with my experience and consistent with my abbreviated financial analysis." (TR. 64-65)

Prior to hearing the testimony in the appellant's case, Richter was not aware that the listing reported the obligation for the life care contracts or that the Masons were going to maintain liability for those life care contracts. (TR. 66) Additionally, prior to being shown the document at hearing, Richter had not seen the broker's listing of the subject property. While the sale of the subject occurred within approximately three years of the date of valuation, Richter testified that he reported the sale but he "did not investigate the offering." (TR. 70-71)

As to the listing, Richter testified that the Masons were offering "a package of the real estate, a going concern business, and personal property for five million dollars. They are not offering the real estate alone." Richter further expounded that both the seller and the purchaser knew due to the ongoing obligation that the operating business has a negative value and that "they believed that the value of the real estate was more than five million dollars, and, therefore, they were offering the package for less than the value of the real estate." The witness also acknowledged that the listing of the subject related a purchase price per bed of approximately \$22,000 for the going concern. (TR. 72-73)

As to the recorded sale price of the subject property, Richter reiterated his contention that what was purchased was not representative of the value of the real estate alone; "the purchase price is unrelated to the value of the real estate." He further asserted that the amount on the transfer declaration does not represent the full consideration between the parties nor does it represent the value of the real estate. Richter further agreed that his valuation of the business as a negative concern was relevant because that then discloses a higher value for the real estate. (TR. 92-93)

The appraiser testified that his engagement with Moultrie County was to only value the licensed portions of the subject property. "So I at no time attempted to value the entire property conveyed as a single entity." (TR. 95)

During questioning about his methodology, Richter testified that for any nursing home appraisal prepared for assessment purposes, he values the real estate and his methodology has been used in six counties for both appellants and property owners; never before in those prior situations did the business have a negative value. The witness acknowledged the subject was unique in his experience, but the same method has been used whether representing the owner of the property or the taxing district and in all other cases the business had a positive value. (TR. 96)

As to the payments made by the Masons after the sale, Richter opined that "it significantly depreciates the net consideration paid to a number which makes the allocated value to the real estate on the transfer declaration ludicrous." (TR. 97) He further contended that knowledge of these payment details would only be important to consideration of the price paid, but it is not an important consideration as to the value of the real estate. He further opined that, "The value of the real estate is unaffected by the amount of the consideration being paid for non real estate. It helps explain the gap between the purchase price and the value of the real estate, but that's not a relevant question to me. My opinion stands unchallenged. It just helps explain the gap." (TR. 98)

Negotiations for the purchase and sale of nursing home properties are driven by how much money the facility will make after the purchase. Richter acknowledged that the purchaser is primarily motivated by the net income generated by the purchaser's interest in the property. (TR. 100-01) Richter acknowledged that the Masons were totally unrelated to the appellant Petersen, the purchaser. (TR. 107)

When asked about the differences in the data provided between the 2011 appraisal report and the 2012 appraisal report regarding additional details related to the ancillary buildings/building areas, Richter responded that it was a clerical error that excluded pages 45 and 46 from the 2011 report that were present in the 2012 report. (TR. 110-11)

Next the Administrative Law Judge made several inquiries of the appraiser. The witness was asked to explain why the listing of the subject property with an asking price of \$5 million was not a valid estimate of fair market value as compared to the appraisal's value conclusion. Richter responded that the key is "the property" and what comprises "the property." The offering according to Richter was a single entity the real estate, the personal property, the going concern and an outstanding obligation. In contrast, the witness stated his assignment was to value only the real estate. Richter further testified that the PTAX-203 Illinois Real Estate Transfer Declaration requires differentiating between the property conveyed and the portion attributable to the real estate, "the reason . . . is so that the assessor can assess, based on the real estate only." However, as to the subject, Richter opined that the document was unreliable and thus an appraisal has to take precedence over the transfer declaration. "I'm showing the

difference between the totality and its price and the appraised value for the real estate. Had I appraised the package, my appraisal may very well have been 3.9 [million dollars]. I don't know. I didn't investigate it." He further noted that the listing made it clear that the going concern at that time was not profitable. (TR. 111-13)

Redirect-examination

Under redirect examination, the appraiser testified that the subject appraisal project was a fairly unique assignment. While continuing care is not unique, he asserted that the number of levels of care located in a non-urban area was unique. Moreover, he noted that there were too few facilities to find sales of multiple level elderly care comparables. (TR. 119-20)

At the hearing was the first time Richter had seen the brokerage listing of the subject property. On page 5 at paragraph 2, it stated, in part: Obviously the financial condition of the facility will drastically change after the sale and while it will not be operating in the black, it will not be as difficult of a property to turn around as it appears in the financials above. (TR. 122; Listing exhibit to appellant's petition) The appraiser contended that this statement in the listing makes clear that the offering for sale was a business based on the financial statements and that a buyer would not expect to make money in the first year and the business had a negative value at the time of purchase, but the real estate has a positive value. "So, clearly, they realized and knew any purchaser would realize that the value of the business would diminish the value of the real estate when they were offering the entire package for five million dollars." (TR. 122-23)

Cross-examination

Upon further cross-examination, when the appraiser was asked if the Masons would have been well served to merely close down the operation and sell the real estate standalone, Richter said "not when they have a legal obligation to the residents, they can't walk away from that obligation." The appraiser further testified that he did not know if the residents could have been moved into other facilities for care nor did he know the value of that obligation, but the five million dollars did not reflect the value of the real estate; "All I know is there was an obligation, which had to be met within that five million dollar offering price." (TR. 123-24)

Previous Ruling

The Order of the Property Tax Appeal Board issued in this matter on February 5, 2015 and prior to the hearing is adopted in whole in this decision. As background, the appellant, as part of the appellant's rebuttal submission, filed an appraisal of the subject property prepared by Donna J. Howard. As set forth in the written Order, having heard the arguments of the parties previously in a conference call and in light of the Board's procedural rules, the

Property Tax Appeal Board struck the appellant's appraisal report as the submission was inappropriate rebuttal evidence; the document offered an appraised value, and not merely a review or critique of the opposing party's appraisal, which is not permitted in rebuttal. (See 86 Ill.Admin.Code §1910.66(a) & (c)).

Moreover, in the conference call and in order to address the appellant's response to the board of review's request for witnesses, the Administrative Law Judge advised that in the absence of a timely filed appraisal review report, it would be inappropriate for the appellant to present an appraiser at hearing to give an oral appraisal review report. (Order dated 2-5-15; TR. 128-29)¹³

In light of the foregoing ruling, at hearing, appellant's counsel made an oral offer of proof that if allowed to testify, appraiser Howard would have stated that there was insufficient market data regarding sales of multifaceted long-term care facilities on one parcel to develop a credible estimate of market value based on the sales comparison approach. Moreover, she would have testified that the best way to determine market value, other than the recent sale of the property, was the income capitalization approach and she would describe her methodology in which she developed a net income before taxes of \$524,000, to which an appropriate capitalization rate would be applied.¹⁴ Furthermore, to solely rebut the board of review's request to increase the subject's assessment, the appraiser would have presented her opinion of market value of the subject property as set forth in the appraisal report as of January 1, 2012. (TR. 127-28)

Conclusion of Law

The issue before the Property Tax Appeal Board is the determination of the correct assessment of the subject property as of January 1, 2012. Both of the parties to this proceeding contend the market value as reflected by the assessment is incorrect - the appellant seeks a reduction and the board of review seeks an increase. The subject's assessment reflects a market value of \$5.5 million, land included, when using the 2012 three year average median level of assessment for Moultrie County of 33.13% as determined by the Illinois Department of Revenue.

In this proceeding, the appellant presented the recent sale of the subject property to support a reduction in the assessment to reflect a purchase price of \$2.9 million whereas the board of review presented an appraisal of the subject property to support an increase in the assessment to reflect an appraised value of \$8.79 million.

¹³ Appellant included appraiser Donna J. Howard as a potential witness to testify regarding her appraisal report and she was also to be called "to testify regarding the flaws in the appraisal submitted by Respondent [Moultrie County Board of Review] in this matter." (Petitioner's Response to Rule 1910.93 Request for Witnesses, postmarked on November 13, 2014)

¹⁴ The Howard appraisal report developed a net income before taxes figure of \$452,513 as of January 1, 2012.

Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); see also 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).

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds the appellant met this burden of proof and a reduction in the subject's 2012 assessment is warranted.

Furthermore, the Property Tax Appeal Board finds that the appraisal presented by the board of review seeking an increase in the assessment of the subject property lacks credibility in the methodology employed and further lacks support in the record for the appraised value conclusion presented.

The parties agree that the subject property is a large, complex entity. There is no dispute between the parties on the record that the purchaser of Mason Point would be acquiring the responsibility to care for numerous residents of the facility through the end of their life. For purposes of valuation, however, the Board finds the existence of the "life contracts" and the endowment assistance program for residents who have a Mason affiliation (see Listing, p. 5) with the corresponding post-purchase payments by the Masons, is irrelevant and has no direct impact on the valuation of the subject property.

The Board finds appraiser Richter was inconsistent in his position concerning the post-purchase payments by the Masons to the appellant. On the one hand, Richter argued that the subsequent payments resulted in a false reporting of the sale price on the PTAX-203 Illinois Real Estate Transfer Declaration which was therefore not a true reflection of the fair market value of the property. On the other hand, however, Richter testified that the majority of resident payments would be attributable to costs and expenses of care and would not be related to the costs of the real estate. Additionally, Richter repeatedly noted that he was not valuing the business/ongoing concern, but on the other hand, he continued to assert or imply that the post-sale payments for care

impacted the purchase price. The Board finds these various assertions by the witness to be at odds.

The Property Tax Appeal Board accepts Richter's proposition that only a minor fraction of post-purchase payments would actually be attributable to costs related to the land and buildings. As a further analysis of these payments, Richter opined the payments had a substantial present day value, further diminishing the actual purchase price. The Board finds that there was no evidence as to what portion of the payments was related solely to the land and building portion of resident care. In this regard, even if Richter presented a valid proposition, the Board finds there is no substantive record evidence upon which to discount the subject's sale price due to the post-purchase payments for Mason affiliated residents of the facility related to land and building costs. In summary, the Board finds that the after purchase payments by the Masons are not relevant to a determination of the correct assessment of the subject property and consequently to consideration of the actual sales price.

Upon further examination by counsel, Richter also opined income figures for the subject property prior to the sale based on HFS filings indicated net income of more than \$1 million. On the other hand, Richter also made a contradictory statement that his negative valuation of the business concern was relevant to the valuation, because it discloses a higher value for the real estate. Once again, the Board finds there were shifting articulations in valuation between the real estate and the going concern.

At hearing, Richter was clear that he did not review the listing of the subject property for purposes of the appraisal report, despite the proximity in time of the sale and valuation date at issue. Moreover, in the appraisal report, the Board finds Richter may not have reviewed the actual recorded sale documents either and perhaps merely relied upon the subject's property record card recitation of the sale price. The Property Tax Appeal Board finds these actions of Richter to be reflective of inadequate appraisal practice for a licensed appraiser when analyzing recent sale data of the appraised property.

The foregoing contradictory propositions made by Richter and concerns with appraisal practice in combination result in a determination by the Property Tax Appeal Board that the board of review's appraiser was biased and not credible in his dismissal of the purchase price of the subject property. The Board finds that appraiser Richter inappropriately discounted the subject's sale price without justification or complete investigation and thus incorrectly dismissed consideration of the sale price in his valuation analysis. Furthermore, the Board finds this underlying lack of credibility and factual support for various propositions carried forward into his appraisal methodologies of the entire subject property.

In the sales comparison approach for the nursing home component, despite asserting that comparables in the "St. Louis suburbs" would

not be appropriate comparables (Appraisal, p. 57), Richter utilized sale #2 located in Granite City, Madison County, Illinois which the Board finds is part of the metropolitan St. Louis area and not an appropriate comparable under Richter's own limitation placed upon comparables by location. Similarly, the Board finds it problematic that Richter specifically excluded comparable properties in both Springfield and Peoria as "major metropolitan areas," but then inconsistently included sale comparable #4 located in South Beloit, which the Board finds to be ancillary to Rockford, a "major metropolitan area" within the State of Illinois, that is in essence no different than the metropolises of Springfield or Peoria. Additionally, the Board finds problematic the consideration of sale #1 in Frankfort, Will County, as this area is part of the Chicago metropolitan area, contrary to the appraiser's testimony that the property was outside of urban Chicago (TR. 74, 117; see also Appraisal, p. 60 & 65). Thus, the Board finds that three of the five selected comparable sales do not comply with the location limitation imposed by the appraiser.

Most importantly in the valuation of the nursing home component, the Board finds the appraiser utilized data and a technique both in the sales and income approaches which is unique to Richter and which is not a recognized valuation methodology for use by appraisers regarding nursing home properties as he admitted in testimony. As to the data which was relied upon as published in filings with HFS, the Board finds there is no evidence in the record as to the substantive basis for the figures that were reported. There were no copies of the reports relied upon presented with the appraisal report. At hearing, the witness testified that anyone could look up the HFS data on-line. In the appraisal report, Richter justified his reliance upon these HFS figures for the sale prices of his comparables on grounds that the reporting "carries the greater punishment for mis-reporting and is the more difficult to conceal, due to multiple reporting requirements," (Appraisal, p. 58) however, he provided no citation to statute, administrative rule and/or Federal code to support this contention of potential sanctions. Also, on page 77 of the appraisal report in reconciliation, for the first time, Richter characterized the HFS filings as "audited financial statements available from public records" although the Board finds that there are no facts whatsoever in the record to support this characterization that the filings are in fact audited or, if audited, by whom and/or for what purpose. Furthermore, Richter wrote, "We note that, for both state reimbursement and federal income tax purposes, if an arbitrary allocation was to be made by the purchaser, it would be in their financial interest to understate the allocation to the real estate, both for cost reimbursement and federal income tax purposes." (Appraisal, p. 58)

In summary, the Property Tax Appeal Board finds there is nothing in the record to indicate that the filings made by the operators with HFS have any actual relationship to the fair cash value of the properties as that term is used for valuation of real estate in Illinois. Moreover, Richter reported taking selective lines

from these reports and combining them for his own purposes in the appraisal report as the equivalent of sale prices. (Appraisal, p. 6) There is no support in the record for this approach which the Board finds results in unreliable data and therefore unreliable value conclusions.

Further detracting from the reliance upon the HFS filings that is unsupported is the fact that for the sales, Richter reported the monetary difference between the actual PTAX-203 recorded document and the figure which Richter developed from the HFS filings. Without foundation and/or articulating what the respective facilities were reporting or why they were reporting the various figures, Richter simply gathered unexplained and unsupported data from various lines of multi-page reports filed by the respective nursing home facilities with HFS and relied upon that data without factual support for four of the sales. The one exception was sale #1 where Richter utilized the PTAX-203 sale price and not the HFS filing data, stating the HFS filing "contrasts sharply with the consideration shown." (Appraisal, p. 59-60)

The Board also finds it problematic in Richter's methodology to rely statewide on "two or three sales a year" that meet his limited criteria when "only the non real estate is conveyed simultaneous with the sale." (TR. 32-33) The Board finds this self-imposed limitation on the selection of comparable properties has no support in valuation theory or support in the record of this matter.

The Board further finds Richter's sales price analysis for nursing home facilities to be further compromised by a flawed analysis of the price per bed for comparable sale #3. The sale occurred in July 2010. Richter reported that the property was a licensed 127-bed skilled care nursing home at the time of sale. He further noted that the purchasers were able to increase the facility's licensed capacity to 141 beds prior to the end of 2010 and stated, as to the increase in the number of beds "presumably by prior agreement with regulatory authorities." The Board finds that Richter utilized the higher number of beds in analyzing the sale price, thereby artificially lowering the price. (Appraisal, p. 62) The Board finds this to be an inappropriate analysis when at the time of purchase there were only 127-beds at the facility. There also is no factual basis in the record for Richter's "presumption" that regulatory authorities had approved a higher bed count prior to the sale. Lastly, there was no evidence in the record that the sale price was reflective of an anticipated higher bed count.

In addition as to comparable sale #1, the Board finds that Richter mixed his "real estate only" value with "ongoing business" value in the analysis on page 65 of the report. As part of the comparable sales analysis for the nursing home portion of the subject facility, Richter opined that sale #1 was similar in facility size, age and building design efficiency to the other comparable sales, "but has a much lower average daily income in spite of a very high occupancy rate, and thus must be considered an underperforming facility in spite of its very strong location in the path of

Chicago's expanding suburban sprawl." The appraiser further opined that sale #1 would have been excluded from the analysis but for its time of sale. (Contra, TR. 117) Based upon his own discussion of this data in the appraisal, the Board finds that Richter retreated from his notion that analysis of a sale of a nursing home property can be separated into the real estate only and instead, established that the real estate and the going concern are virtually inseparable in this type of property.

The Board finds the income approach analysis for the nursing home component was similarly flawed by reliance upon selective data gathered by Richter from the HFS filings without documentary or factual support for the propositions the appraiser was drawing from the data. In his reconciliation, however, Richter placed no weight on the income approach in developing the valuation of the nursing home component. As an income producing property, the Board finds this determination by Richter to be highly problematic. Given the questionable nature of the data which the appraiser gathered, perhaps it was the best course of action, but the Board finds it curious that a licensed appraiser would dismiss an income approach to value in making a market value conclusion for a nursing home component of a property such as the subject.

Due to limitations in data, Richter on page 79 of the appraisal characterized his determination for the shelter care component to be "frankly less reliable." Having considered the report, the Property Tax Appeal Board finds the valuation of the shelter care component to be unreliable, not supported by the data and consisting entirely of conjecture. The appraiser utilized three properties, only one of which was equally divided between shelter care beds and skilled nursing care beds. Next, the appraiser again relied upon selective portions of the unsupported HFS filings previously discussed for these three properties. Given this self-created data, Richter arrived at sales prices of the properties "per bed." Richter acknowledged, without any mechanism to allocate the prices between the shelter care beds and the skilled nursing care beds, he simply summed up the analysis as shelter care beds being more valuable and concluded that these beds should be valued at "not less than \$34,000 per bed." (Appraisal, p. 79-80) In light of the foregoing, the Board finds for the shelter care component, the appraiser arrived at an unsupported conclusion.

The Property Tax Appeal Board also finds numerous flaws in the valuation of the non-licensed residential units of the subject property as prepared by appraiser Elder. As to the apartment buildings valuation, the Board finds the unit of comparison of square foot to be an erroneous analysis which is further compounded by the lack of comparability in building size between the subject buildings and the comparables.

For the valuation of the duplex dwellings, the Board similarly finds the valuation to be unsupported and unreliable. The comparable sale duplexes analyzed by the appraiser range in size from 1,266 to 1,976 square feet of living area whereas the subject property duplexes range in size from 1,247 to 1,337 square feet of

living area "per unit." Additionally, Elder's sales analysis indicated a 30% discount to the subject was necessitated by the age restriction, but when analyzed on a per-unit basis, the Board finds that discount is virtually non-existent. The highest sale price of a unit in a superior location was \$76,250 whereas as set forth in the appraisal report, the subject has an estimated market value per unit of \$70,000.

The valuation of the administrator's residence is not well supported in the record when giving due consideration to the subject dwelling's basement feature in addition to the questionable dwelling size data in the appraisal report. The Board further finds that the limited characteristic information provided concerning the comparables does not support the value conclusion that was presented.

Finally, as to the rental dwellings, the Board finds it problematic that an income approach to valuation was not performed when the subject structures were described as "rental dwellings." A pure comparable sales comparison approach was presented in the appraisal report which the Board finds to be unsupported in the record and lacking in credibility given the nature of the subject complex as a single entity.

Based on the foregoing analysis and criticisms of the board of review's appraisal report, the Property Tax Appeal Board finds no reliance may be placed upon the value conclusion in the appraisal and/or the sales data presented within the report. As a consequence, the Board further finds that an increase in the subject's assessment is not justified on this record.

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

The evidence in this record indicates the subject's transaction was a voluntary sale where the seller was ready, willing, and able to sell but not compelled to do so, and the buyer was ready, willing and able to buy but not forced to do so. The board of review put forth no evidence challenging this issue. The property was exposed on the open market. A copy of the listing is part of the record. While the board of review's appraiser did not review the listing as part of his appraisal report, the board of review put forth no evidence challenging the legitimacy of the listing or

the fact that the property was placed on the open market. The Board further finds the subject's sale price of \$3,900,000 was negotiated from the original asking price of \$5,000,000, including negotiation of the allocation of the value of personal property of \$1,000,000 as reflected in the testimony of an attorney involved in the contract negotiations. The board of review presented no substantive evidence challenging the final sale price. The Board also finds the sale transaction occurred between unrelated parties; this fact was acknowledged in testimony by the board of review's sole witness. The Board further finds that the seller was represented by a broker. All of the foregoing facts lead to the Property Tax Appeal Board's conclusion that the subject sale transaction was an arm's-length sale.

The Property Tax Appeal Board further finds the deduction for personal property of \$1,000,000 is supported by the evidence and testimony in this record. Moreover, the board of review presented no evidence to challenge this allocation to personal property. Also, as discussed previously, the Board finds that the subsequent payments for perpetual care that were made by the Masons to the buyer after the sale have no impact on the purchase price reported for the land and buildings. Based on this analysis, the Board finds the best evidence of the subject's fair market value is its January 2009 net sale price of \$2,900,000.

Therefore, the Property Tax Appeal Board finds the appellant has proven that the subject property is overvalued by a preponderance of the evidence and since fair market has been established, Moultrie County's 2012 three-year median level of assessment of 33.13% 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.

Mario Alvares

Chairman

K. L. Ferr

Member

JR

Member

Jerry White

Acting Member

Robert Hoffmann

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: April 22, 2016

A. Proctor

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.