FINAL ADMINISTRATIVE DECISION ON REMAND
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: DSI Manteno Owner, LLC
DOCKET NO.: 13-00178.001-C-3
PARCEL NO.: 03-02-26-201-192

The parties of record before the Property Tax Appeal Board are DSI Manteno Owner, LLC, the appellant, by attorney Thom Moss, of Bickes, Wilson & Moss in Decatur; the Kankakee County Board of Review; and Manteno C.U.S.D. #5 intervenor, by attorney Scott L. Ginsburg of Robbins, Schwartz, Nicholas, Lifton, & Taylor in Chicago.

Based on the directions of the Appellate Court of Illinois, the Property Tax Appeal Board hereby finds ***No Change*** in the assessment of the property as established by the **Kankakee** County Board of Review is warranted. The assessed valuation of the property is:

LAND:	$52,964
IMPR.:	$1,635,201
TOTAL:	$1,688,165

Subject only to the State multiplier as applicable.

On June 19, 2018, the Property Tax Appeal Board issued a decision in this appeal finding that the subject property had a market value of $2,156,681, for the assessment year 2013 and a total assessment of $714,077 utilizing the Illinois Department of Revenue's 2013 three-year median level of assessment for Kankakee County of 33.11%.

The intervenor, Manteno C.U.S.D. #5 appealed the decision of the Property Tax Appeal Board to the Appellate Court of Illinois, Third District (Appellate Court No. 3-18-0384) under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and Section 16-195 of the Property Tax Code.

In Manteno Community Unit School District #5 v. The Illinois Property Tax Appeal Board et al., 2020 Ill.App.3d 180384 (Aug. 17, 2020, as modified upon denial of rehearing, September 22, 2020) the Appellate Court reversed the decision of the Property Tax Appeal Board and ordered the Property Tax Appeal Board to reinstate the assessment as determined by the Kankakee County Board of Review.

In accordance with the directions of the Appellate Court, the Property Tax Appeal Board finds the subject's assessment as established by the Kankakee County Board of Review is reinstated and no reduction is warranted.

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:

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: December 15, 2020

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.

PARTIES OF RECORD

AGENCY

State of Illinois
Property Tax Appeal Board
William G. Stratton Building, Room 402
401 South Spring Street
Springfield, IL 62706-4001

APPELLANT

DSI Manteno Owner, LLC, by attorney:
Thom Moss
Bickes, Wilson & Moss
P.O. Box 1700
Decatur, IL 62525

COUNTY

Kankakee County Board of Review
County Administration Building
189 East Court Street 1st Floor
Kankakee, IL 60901

INTERVENOR

Manteno C.U.S.D. #5, by attorney:
Scott L. Ginsburg
Robbins Schwartz Nicholas Lifton Taylor
55 West Monroe Street
Suite 800
Chicago, IL 60603

FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: DSI Manteno Owner, LLC
DOCKET NO.: 13-00178.001-C-3
PARCEL NO.: 03-02-26-201-192

The parties of record before the Property Tax Appeal Board are DSI Manteno Owner, LLC, the appellant, by attorney Thom Moss, of Bickes, Wilson & Moss in Decatur; the Kankakee County Board of Review; and Manteno C.U.S.D. #5 intervenor, by attorney Scott L. Ginsburg of Robbins, Schwartz, Nicholas, Lifton, & Taylor 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 **Kankakee** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$52,964
IMPR.:	$661,113
TOTAL:	$714,077

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Kankakee County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2013 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

The subject property consists of a two-story supportive living facility with frame and reinforced concrete construction containing 66,482 square feet of above-grade building area. The subject was built in 2005 with an addition completed in 2006. The subject features 37 studio units, 44 one-bedroom units and 6 two-bedroom units for a total of 87 units. The subject has two passenger elevators and is situated on approximately 3.49-acres or 151,969 square feet of land area. The subject has a land to building ratio of 2.29:1, is zoned I-2 Industrial and is located in Manteno, Manteno Township, Kankakee County, Illinois.

Applicable Statutory Provision & Regulation

There is no dispute on this record between the parties that the subject property is to be assessed in accordance with Section 10-390 of the Property Tax Code (hereinafter "Code") concerning "Valuation of Supportive Living Facilities." (35 ILCS 200/10-390) The provision states:

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

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

> . . . a residential setting in Illinois that provides or coordinates flexible personal care services, 24 hour supervision and assistance (scheduled and unscheduled), activities, and health related services with a service program and physical environment designed to minimize the need for residents to move within or from the setting to accommodate changing needs and preferences; has an organizational mission, service programs and a physical environment designed to maximize residents' dignity, autonomy, privacy and independence; and encourages family and community involvement.

[1] All parties stipulated that Section 10-390 (35 ILCS 200/10-390) of the Property Tax Code governs the methodology of valuation of the subject property, which is the income capitalization approach to value.

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

> . . . has obtained a 'waiver' to allow payment for services that are not routinely covered by Medicaid. These include personal care, homemaking, laundry, medication supervision, social activities, recreation and 24-hour staff to meet residents' scheduled and unscheduled needs. (www.slfillinois.com)

The appellant appeared through counsel before the Property Tax Appeal Board contending the fair market value of the subject was not accurately reflected in its assessed value. In support of this overvaluation argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraiser Keith Honegger. The appraiser estimated the fee simple interest value for the subject property of $2,041,225 as of January 1, 2013. (Appellant's Ex. B).

The first witness called by appellant's counsel was David John Mitchell who works for Gardant Management Solutions, Inc. (hereinafter "Gardant"). Mitchell testified Gardant manages approximately 45 supportive living communities throughout the State of Illinois and elsewhere, including the subject property. He has worked for Gardant for 14 years in property management as their Chief Financial Officer and Vice President. Mitchell stated he is associated with risk management and oversees all financial reporting, general ledger activity, insurance, healthcare, many legal matters and the property tax valuations as well, for all Gardant community property. He described the subject, aka "Heritage Woods Manteno" (hereinafter "Heritage Woods") as a supportive living facility.[2] Mitchell testified that Heritage Woods was certified by the Department of Healthcare and Family Services.

Mitchell then described the differences between a supportive living facility and an assisted living facility. Mitchell stated an "assisted living facility" is a "market rate" facility and does not follow the same guidelines as a supportive living facility. He then testified a supportive living facility, on the other hand, is certified by the HFS with specific guidelines for the care and service plans that are performed within their communities. Under a supportive living facility, there are many guidelines with respect to reimbursements they will receive and accept as full payment. He stated that under a supportive living facility program, it is agreed that rent payments from a resident will be equivalent to their social security income less $90. He stated, the operator also agrees they will accept in full, the Medicaid payment that is paid, based on seven different regions within the State of Illinois. Mitchell testified, that conversely, an assisted living community does not, and cannot, accept any Medicaid residents. He stated the assisted living facility will not be paid for Medicaid residents unless they have a receipt of certificate provided by the HFS. He testified an assisted living facility can charge whatever they want for the services portion.

Mitchell then testified that HFS sets the amount of the monthly revenue that comes into the facility. He stated that every year, the supportive living program releases a statement on what rates are used and accepted for the daily rate for Medicaid services. In addition, the supportive

[2] All parties of record agreed the subject is a supportive living facility.

living program releases a chart every year that reflects the stated rent that is accepted from each resident. Mitchell testified these guidelines must be followed. A schedule from the supportive living program was marked and entered into the record as Appellant's Exhibit #1. The schedule depicted a region which included Kankakee County. The schedule further depicted $620 as room and board. Mitchell testified that the schedule was in effect for the year 2013 and that the amount ($620) was based on the Social Security for that year ($710 less $90 for personal expenses). The schedule (Appellant's Exhibit #1) states in relevant part:

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

(Appellant's Exhibit #1, Illinois Supportive Living Program Chart, effective January 1, 2013,)

Mitchell testified that Social Security is based on an individual's historical income and if an individual's income is in excess of the $710 ($620 rent + $90 personal portion), then under the supportive living program all excess is applied to the Medicaid services portion of their stay and their services received. Mitchell stated that amount is also verified by the Medicaid program when they make monthly payments. Mitchell testified the Medicaid Department performs calculations on every individual and, based on the same figures, pays a reduced monthly amount in proportion to the excess to account for the excess over the $620. He testified they reduce the services they pay so all excess over the rent plus the personal portion is kept and applied to services. The excess is paid to the facility for the services, but, is not allowed to be applied to any rent whatsoever. Mitchell testified that it is strictly applied on all financial records to the services only; it cannot be applied to any rent. When asked to provide the response if a person were to call the facility regarding what the price would be, Mitchell testified as follows. The total package price would be quoted depending on the type of room selected, which could be a studio, one-bedroom or two-bedroom. The total package price, depending on location might be $3,200 on a studio. Mitchell further stated, most families want to know what their payment obligations were, what it is they can afford if they are private pay and if they have the ability to wind down their assets and potentially qualify for Medicaid support. However, the price that is quoted is generally always the total package price, which includes rent or room and board, and the full services that are provided, if they meet certain requirements under the supportive living program. The total package price is allocated between room and board, services and private pay. Mitchell explained that the resident payments are processed electronically and are broken down between room and board and services. They also record the services portion for each Medicaid-supported resident. Mitchell testified by way of example that the individuals that receive their social security check, and are qualified under the Medicaid Supportive Living Program, if an individual receives a $750 social security check on a monthly basis, $620 is deducted and applied for the room and board rental income, $90 is kept for personal expenses and the excess of $40 is applied towards the resident's Medicaid services that are paid by Medicaid, and thereby, that $40 is then a reduction to which the Medicaid program has to pay for that individual's services. Mitchell testified that under the supportive living program, there is a list of services that are provided in a service plan that are required to be provided for every resident.

Each resident goes through a medical assessment that determines what level of assistance they need, and those services have to be available for all residents. Every resident, whether a private pay resident or not, if they run out of funds and only have social security income, everybody receives the exact same services based on their need, not their ability to pay. The rates are set by the supportive living program and the operator must agree to accept whatever the rate is that Medicaid provides. Mitchell testified that all costs are documented every year and the Medicaid rates typically pay for approximately 75% of actual costs of services. Therefore, it is not unheard of to have a higher rate for the market itself, which the market supports based on those services. It is not unheard of to have a higher rate that is paid by private pay individuals, but in no shape or form do they receive better care just because they are private pay. The residents all pay the same room and board ($620) with any excess going towards the true costs of services provided by the certified nurses, maintenance department, dietary department and housekeeping.

During cross-examination, Mitchell testified that in Section 146.225, Section C, Single Occupancy, each Medicaid resident of a supportive living program shall be allocated a minimum of $90 per month as a deduction from his or her income as a protected amount for personal use. The supportive living program may charge each Medicaid resident no more than the current Social Security Income rate for a single individual less a minimum of $90 for room and board charges. Any income remaining after deduction of the protected minimum of $90 and room and board shall be applied first towards medical expenses not covered under the Department's Medical Assistance Program. Any income remaining after that shall be applied to the charges for supportive living facility services paid by the Department. Mitchell agreed the Social Security Income rate varies from individual to individual. Mitchell stated they also receive a certain amount of revenue from the Supplemental Nutrition Assistance Program (hereinafter "SNAP"), which is basically, food stamps. Every resident that participates in the SNAP program receives a card, the amount of which can be varied based on an individual's income level, which can then be used by the resident to pay for a portion of their food. Mitchell stated that for 2013, the listed Medicaid rates set the amount received by the facility for each Medicaid occupant and are based on 60% of the nursing home rates compiled from cost reports submitted by nursing home operators in the State of Illinois. Mitchell did not agree that the Medicaid rates were calculated including a capital component that estimates value based upon the real estate for nursing homes. Mitchell testified that, to his knowledge, the rates are strictly per diem rates based in part on seven different regions in the State of Illinois and are specific to those regions based on income levels. The daily rate is based on cost of services being provided in those regions. It is specific to services, not real estate.

When shown Appellant's Exhibit #1, and questioned regarding the differences in rates between a studio ($3,425 per unit) and a one-bedroom ($3,750 per unit), the $325 difference is applied to services, and not real estate, even though they both receive the same services. Mitchell agreed that an occupant could pay $325 more for the exact same services because they live in a bigger room, so there is a real estate component in the $3,425 that is not included in the $620 rate. This would also apply to a double occupancy one-bedroom versus a double occupancy two-bedroom ($600 more). Mitchell agreed that each of the single bedrooms are code certified to have two occupants (minimum 450 square feet of living area), however, it was established the one-bedrooms at the subject property contain 506 square feet of living area. Mitchell testified the room and board rate of $620 excludes services. Mitchell further stated a supportive living facility is different than an assisted living facility. Both have elderly residents, but they have

different guidelines under which they operate. They would have the same rental rates; however, the service rates would vary in a market rate community. An assisted living facility is truly a market rate facility because they do not have the ability to accept Medicaid-eligible residents because they do not seek payment from Medicaid. Mitchell stated the expenses in an assisted living facility are generally much higher and typically have higher-end amenities throughout the building. In addition, vacancy is higher in an assisted living facility, probably 13%, nationally. Assisted living communities have lower occupancy and higher vacancy rates than supportive living facilities. For Gardant, management fees would be the same for both across the board.

During re-direct, Illinois Administrative Code Sections 146.225 ("Reimbursement for Medicaid Residents") and 146.205 ("Definitions") were entered into the record as Appellant's Exhibits #2 and #3. Mitchell testified that under the Administrative Code, room and board is defined as housing, utilities and meals provided under the resident contract, room and board does not include phone or cable charges. Services is defined as personal and healthcare related services provided by a supportive living facility pursuant to Section 146.230.

Keith Honegger was next called as a witness. He is a Certified General Real Estate Appraiser and has been involved with the low-income housing market since the early 1990's. He was retained to establish the fair cash value of the subject property in conformity with Section 10-390 of the Code. Honegger testified that his definition of fair cash value required him to use the income approach to value and that he must use the actual income attributable to rents of the real estate in calculating the value. Therefore, his entire appraisal is based on the premise of using the income approach to value as prescribed in the Code for valuation of low-income supportive living facilities. Honegger stated the subject is a certified supportive living facility. He submitted a copy of the certificate in his restricted use appraisal report (Appellant's Exhibit "E"). In addition, he included a copy of the HFS schedule regarding monthly revenue that is received. Honegger testified the schedule lays out the breakdown of the total income a property takes in and it breaks it down into room and board, which he stated is the amount he used in his appraisal to calculate the income or income approach to value. Honegger inspected the subject property and described it as an 87-unit supportive living facility with typical amenities that all supportive living facilities have regarding nursing stations, recreation rooms and libraries with common areas. The subject was built in 2005 and has 37 studios, 44 one-bedroom and 6 two-bedroom units.

Honegger testified that under the Long Term Care Provider Agreement the owner agrees to charge tenants no more than the published allowances for healthcare that are published by HFS in the trade area of the subject property. In 2013, the amount was $620. His interpretation was that the existing legislation required the income approach to value using that amount ($620) as the amount of money received for room and board. In the income statement presented in his report on page 13, Honegger used $620 as rent for the 37 studio units and for the 44 one-bedroom units. Honegger used $886 for the 6 two-bedroom double occupancy units which indicated the maximum potential gross rents, including food, of $656,592. Honegger testified this is the most they could have received if they had full occupancy. He then subtracted out the food cost of $139,444 to see what the rent actually was. Honegger testified he checked the 2012 food costs amount with other supportive living facilities to see if it was within an acceptable range. He stated the subject had raw food costs of approximately $4.39 per room per day with other supportive living facilities of similar size having a range of $4.01 to $4.36 per unit food

cost per day. He subtracted out $139,444 raw food cost and added in 2012 food stamp revenue of $68,816 or $791 per unit, which indicated gross rent of $585,964. Honegger again checked this with similar size comparables, which he stated were all over the board with a range from $757 a room to $2,234 per room. Honegger used $791, which he found was at the low end of the range. Honegger then subtracted out a 2012 vacancy rate of 1% or $5,000 which depicted effective gross rental income of $580,964.

Honegger testified the State/Federal Government created these programs to provide low-income housing to people where the actual rent the client pays is below market, and yet the assessor is treating these properties as if they were market value. The laws were created because the normal market value or cost approach would not work because it was too high, so the economic value is the contract rents minus expenses capitalized. Honegger testified that was the intention and was his interpretation of the law. He did not look at assisted living rents because they were irrelevant. He used contract rents, not market rents. Honegger stated the expenses were all commingled and included expenses for services and expenses for rents and everything. There was no way to individually subtract out expenses just for rent. Because of this, he found 26% of all supportive living facilities have a Section 42 apartment component, and looking at strictly Section 42 properties that are not a part of supportive living facilities, they provide only rent without services. He then examined the expense ratios for those Section 42 properties and predicted it would be similar to Section 42 supportive living facility portions. His examination indicated that in 2012 there was a total expense ratio of 62% which closely aligned with the 63.4% of just looking at Section 42 properties. To him, this indicated that the expense side of a supportive living facility for services is similar to the expense side of the supportive living facility for rent. Honegger then used this data and decided the lower end of the range was most appropriate. He used a 61% expense ratio or a deduction of $354,388 to calculate the net income for the subject property of $226,576. Using an overall capitalization rate of .1110 derived from the Band of Investments and Surveyed Capitalization Method resulted in a market value for the subject as of January 1, 2013 of $2,041,225.

Honegger then prepared an alternative income/cost approach to value in Appendix G of his report. His report depicts supportive living facilities need more space because of the services provided. The additional building areas include: commercial kitchen and pantry, dining rooms, nursing stations, assisted bathing stations, commercial laundry, common areas for activities, additional offices and administrative areas. It was Honegger's opinion that in order to arrive at an equitable market value relative to the other types of low-income housing (Section 515 and Section 42), it should be considered that the cost value of the additional building area be added to the mandated income approach to value for the residential portion of the property. Because of this, Honegger felt it was feasible to add the cost approach to value for the additional improvements associated with the assisted living facility to the income approach to value of the rental portion of the property to arrive at a fair market value for ad valorem taxation purposes. He calculated this from a construction cost index from 2005 to 2013 at 18%. This method indicated adjusted construction cost of the subject property of $8,714,278 or $131 per square foot of building area. Based on the subject's size of 66,482 square feet, which is physically larger than would be typical for an 87-unit low-income Section 42 property, he estimated 5,600 square feet was excess building area utilized for services. Therefore, he concluded that the added building cost for the assisted living portion of the subject property is 5,600 square feet multiplied

by $131 per square foot indicated an additional value of $734,033 and when added to the income approach to value $2,041,225 resulted in an alternative market value of $2,775,258.

During cross-examination, Honegger testified he is not a member of the Appraisal Institute, has not completed 3,000 hours of peer-reviewed work, nor completed a demonstrative appraisal of a complex property. He stated, Gardant Management Solutions was not one of his property tax consultant clients. Only Section 515 properties were clients of his property tax consulting. He represents some Section 515 low-income housing owners on a contingency fee basis. Honegger admitted that he signed his appraisal report "Keith Honegger, property tax consultant." The witness was then presented with Property Tax Appeal Board decisions Evergreen Place Decatur (Heritage) and Peterson Health Care II, Inc. wherein it was explained that market rents were appropriate as opposed to contract rents. Honegger testified that even though Peterson Health Care II was affirmed by the Appellate Court, he would abide by those methods when the Supreme Court affirmed one of them. Honegger agreed the Evergreen Place Decatur case included his testimony and appraisal. Honegger further agreed that if his interpretation of the Property Tax Code is incorrect, then his entire appraisal fails because his appraisal is premised on his interpretation of the Property Tax Code.

Honegger then testified he had not done any services for the subject property three years prior to accepting the assignment as an appraiser. When presented with an appraisal of the subject property prepared October 9, 2013 (Intervenor's Exhibit #1) with an estimated value of $2,785,528 and his testimony that he prepared an appraisal for the subject property three months later in January 2014 (Appellant's Exhibit "E") with a market value of $2,041,225,[3] Honegger admitted he did not include the statement that he had not performed any services for the subject property within three prior years in his appraisal report, even though, it was a requirement of the Uniform Standards of Professional Appraisal Practice (hereinafter "USPAP"). Honegger considered the two appraisals to be the same. Honegger was questioned on his estimate that rents for a studio (330 sq. ft.) were the same as the rent for the one-bedrooms (506 sq. ft.). Regarding the issue of whether the additional monthly rates were for larger rooms or services, Honegger testified the additional $325 goes to services, even though the services were exactly the same for each. He could not explain why a person would ever want a studio apartment when they could have a one-bedroom for the same rental amount.

Honegger admitted the maximum number of occupants as shown on the certificate of the subject property was 137 occupants, not 87 occupants, because the one-bedroom apartments could be double occupancy. Honegger agreed, that using single bedroom double occupancy rents would have resulted in a maximum potential gross rental income of $806,880 or approximately 23% more than the potential gross rental income he used. Honegger admitted that all of the comparables he used were properties managed by Gardant Management Solutions and were provided to him by Gardant.

[3] The hearing officer reserved ruling on allowing the second appraisal into the record for impeachment purposes. The Board finds the second appraisal report is allowed into the record as foundation for impeachment of the witness' testimony that he had not performed any service for the client within the three-year period of accepting the appraisal assignment and as impeachment of the witness' testimony that the restricted use appraisal report was prepared in compliance with USPAP. The Board does not allow the second appraisal as impeachment regarding the subject's estimated fair cash value.

Honegger acknowledged that the average reimbursement for food stamp reimbursement for Gardant Management Solution properties was $1,086, even though he used $791 per unit for the subject. The witness was then questioned on the differences between a supportive living facility and a Section 42 housing property. When shown the PTAX-203 statement (Intervenor's Exhibit "C") regarding the subject's purchase, dated February 27, 2008, Honegger testified he did not review the document because it depicted a value for the subject business. He was then asked to state the allocated value to real estate as shown on the document, which was $5,963,000.

Honegger admitted that when preparing a typical income approach to value, market rents are used, however, in this case he had to use contract rents of $620 per monthly based on the Illinois Supportive Living Program data sheet. When asked what supported his premise of contract rents, Honegger testified that was the way 515's and Section 42's are set up. He stated there would be no purpose of having a law to reduce the property taxes on a low-income property if market rents were used. Honegger agreed that since he used expenses from all Gardant Management Solutions properties, it may create a dilemma because Gardant management may not be fulfilling its potential in cutting expenses. He agreed, the expense numbers could be skewed. Honegger admitted that the food costs he used were outside of the range, but said it was negligible because it was only $0.03 cents higher.

On re-direct, Honegger stated that he could have called his report an "appraisal" in accordance with USPAP and not a Restricted Use Report. Honegger explained that the additional appraisal report referred to by intervenor's counsel was the one used at the local board of review hearing, however, the alternative equitable consideration was removed in the appraisal submitted in this appeal. The alternative value was only submitted in Appendix "E" and not made a part of the appraisal report based on the mandate of the law of how to value the subject. Honegger testified that the alternative equitable consideration was included for the owners to review as strictly information, not as to what the market valuation was. Honegger stated that the potential gross rents he used came from the audit sheets using 87 units. Honegger testified the audits always start out with what the potential is, and then they subtract off the vacancy and concessions to come up with the actual. The audit sheets depicted potential gross rent of $656,592, same as what he used. Honegger then testified that the PTAX-203 statement presented earlier was irrelevant because it depicts the open market value of the property that was paid for the property (business value). Whereas, he was trying to figure out the market value of the subject property for ad valorem purposes, a completely different value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $1,688,165. The subject's assessment reflects a market value of $5,098,656, land included, when using the 2013 three-year average median level of assessment for Kankakee County of 33.11% as determined by the Illinois Department of Revenue. The board of review at hearing agreed with the intervenor's evidence and deferred to intervenor's counsel for presentation of its evidence.

Eric Dost was called as the first witness on behalf of Intervenor, Manteno C.U.S.D. #5. Dost has been a Commercial Real Estate Appraiser since 1986. He is a Certified General Real Estate Appraiser in five states, including Illinois. Dost has the MAI designation from the Appraisal Institute. Dost testified the MAI designation is basically the highest level of professional designation for commercial real estate appraisal. In addition, he recently received the "AIGRS"

General Review Specialist appraisal designation. Dost was a review appraiser for Wells Fargo for two and one-half years. He has prepared from 200 to 300 review appraisals. Dost stated he has experience doing appraisals and review appraisals for low-income and senior housing, and has done them for financing, construction financing and for ad valorem tax purposes.[4]

Dost prepared a review appraisal marked as Intervenor's Exhibit B. Dost testified the review appraisal was consistent with USPAP standards. Dost was asked to review the appraisal report for the subject property prepared by Keith Honegger. Dost stated the scope of his assignment was to read the report and review it for the quality of data, completeness and accuracy and the relevance of the data and analysis given the property type. Dost testified Honegger's report states it is a Restricted Use Appraisal Report, which is one of the two report options allowed by USPAP standards, rule 2-2. However, a Restricted Use Appraisal Report is intended only for a single user, the client. Dost stated, if there are other intended users such as a board of review or the Property Tax Appeal Board, Restricted Use Report is not proper. Dost testified it should be an appraisal report and that the significant difference is the level of detail that is included with an appraisal report compared to a Restricted Use Appraisal Report.

Dost stated, in the appraisal under review, there are quite a few sections that are traditional in an appraisal report that were not included such as regional analysis or neighborhood description, site description, zoning discussion and actual real estate tax information. In addition, the report does not include a highest and best use analysis. Dost testified that the starting point should look at a macro view of a region to determine the kind of supply and demand characteristics, then examination of the neighborhood, site and subject itself. Without having a good understanding of the demographics, employment, elderly age cohorts along with income levels particularly for the elderly, a reader may not be able to really understand the context of value.

Dost further testified that he was critical of Honegger for not developing the sales or cost approaches to value because, even though, Section 10-390 requires use of the income approach to value, it does not prohibit application of the other approaches. Dost stated, typically, an appraiser will apply multiple approaches for, if nothing else, as a test of the reasonableness against the primary approach. In regard to Appellant's Exhibit #1, the Illinois Supportive Living Program Chart, Dost testified that the derived rate represents 60% of the nursing facility, the average nursing facility Medicaid rate within the region. Dost testified the rate setting structure for Medicaid is basically a compilation of costs from the cost report wherein there are three primary components, the nursing component, support services and the capital component. He stated the capital component is primarily real estate oriented or ownership cost. Nursing speaks for itself and support services is a blend of dietary costs as well as facility repairs and maintenance. Dost testified that the Medicaid rates found on page 39 of Honegger's report (Appellant's Exhibit #1, the Illinois Supportive Living Program Chart) include both real estate and services because the capital component is built into that cost as well as the supportive portion that includes real estate. Dost found Honegger's report was brief, hard to follow and not well supported.

Dost's understanding of Section 10-390 states a person is required to exclude the services portion of Medicaid, but, does not state anything about specifically using contractual rents. Dost then

[4] The witness was tendered as an expert professional appraiser, without objection.

explained that the foundation of most income approaches begins with a market rent analysis. Dost testified that Social Security Income rates are not reflective of market rates. He stated clearly, for an assisted living facility, there are no services. However, if you look at the market rents for senior apartments with a lot of amenities or even an independent living facility that does not provide meals or services, the market rents would be much higher. In regard to the data utilized by Honegger for food stamp revenue and food costs, Dost testified that Honegger's data for food stamp revenue ranged from $5.18 to $2,234 with an average of $1,086, wherein Honegger used $791, a below average amount. Then on the food costs, the range was $1,464 to $1,756 per unit, for an average of $1,583, wherein Honegger used $1,603, an amount above the average. Dost testified it appeared Honegger used below average revenue and above average cost, which is not market-oriented and is skewed a little bit on both sides. Dost opined Honegger omitted $61,000 of other revenue for items like the beauty salon and nail salon, convenience store and just other regular income. Dost stated this other revenue is attributable to the real estate.

Dost also concluded that Honegger's expense analysis is insufficient and not credible because it is largely based on an overall expense ratio for apartment complexes that are Section 42 properties. The traditional method would be to itemize individual categories such as repairs and maintenance, utilities and so forth. Here, Dost stated we do not know what utilities are included in the rents, some may be all electric, some may be gas, which have different rates. He stated Honegger is also relying on an expense ratio of Section 42 properties with rent restrictions, it is unknown what the occupancy rates are. For example, Dost testified, if the properties were only 50% occupied, it would cause a very low effective gross income, skewing the expense ratio higher. The same correlation would apply with the rent restrictions. He testified that analyzing the expenses on a per unit basis would have been better. Dost testified that the subject property was leased after its sale for a 2012 annual rent of $778,967, even though, the appraisers concluded the subject net operating income to be $226,567. Dost testified that the annual rent should reflect primarily real estate rent; the owner of the bricks and mortar is leasing it to an operator for $778,967, who then operated the supportive living facility out of that structure.

Dost also felt Honegger's overall capitalization rate conclusion was not well supported. He testified the overall capitalization rates are estimated based on average amounts from the Investor Survey for apartments from RealtyRates.com which indicates two methods are employed, however, they post the same source, a RealtyRates.com survey and the Band of Investments using average mortgage terms from RealtyRates.com. Dost concluded there is no market sale capitalization rate included. Because Honegger included his equity consideration in Appendix G, wherein it states that the contributory value of the building that is associated with providing the assisted living services should be added to the income approach to value the apartments, with a value of $2,775,258; Dost found Honegger's report really depicts two different values. Dost opined Honegger's appraisal report was not credible and not reliable.

During cross-examination, Dost agreed the statute does not require a market approach or cost approach and even agreed that MaRous did not include a cost approach in his report. When asked why supply and demand was relevant in this restricted use situation, Dost replied supply and demand for a property affects the capitalization rate and rental rates. Dost testified the subject is getting higher rents for its private pay rates, payor mix. The mix could be 70% Medicaid and 30% private pay, overall, he did not know what it was. Supply and demand factors

affect the value of all real estate, including housing. Dost testified that even in a Restricted Use Report the appraiser is required under USPAP to state the highest and best use. Dost agreed that the rent schedule is the Social Security Income less $90.

Dost stated that in theory the use of a Restricted Use Appraisal Report would not change the value from an Summary Appraisal Report. Dost admitted that not having a cost approach to value for the subject property would not discredit the credibility of the appraisal. However, Dost did say that not having a sales approach prepared would discredit the credibility of the appraisal report. This would apply to both appraisers.

When questioned regarding the use of 137 units or 87 units to calculate potential gross income, Dost testified that he would analyze the subject using both considering the occupancy as a percentage of occupied units along with the licensed capacity. He explained it really depends on how the second resident is treated, whether enough of the second resident fee is added or the property is just leasing the double unit. For vacancy rates, Dost testified that the State of Illinois publishes that information for supportive living facilities, however, he would also analyze what the vacancy rates were for private pay to the best of his ability.

Dost stated that it is possible to segregate out the service costs and expenses to a certain extent from the financial statements. This would depend on the level of detail provided in the financial statements of independent living facilities, which are not going to have any healthcare services, not senior apartments or Section 42. He further stated, they may have a meal component but that it was pretty simple to segregate out the dietary component.

Dost testified that the data for the expense ratios used by Honegger did not provide enough detail of the occupancy which may skew the expense ratio high by having a lower effective gross income. Dost thought the utilities, repairs and maintenance costs should be pretty much the same. Dost testified Section 10-390 suggests the Medicaid rate includes some component of real estate because of the additional language "when such payments constitute income that is attributable to services and not attributable to the real estate." Dost opined that payments from Medicaid can and do include a real estate component. Dost testified that if you are not to consider service income, it would be absurd to include service expense.

Honegger was then called back as a witness by appellant's counsel without objection. Honegger testified that USPAP was unclear whether a Restricted Use Appraisal Report can be used by other users. Honegger opined that it could be. He explained that he put "restricted" on it because he did not want the reader to think they could take the appraisal report for market value and go out and sell it for that amount of money. He testified that the differences pointed out by Dost were irrelevant.

Honegger testified that the jurisdictional exception required the subject property to be valued by the income approach using "contract rents," so the rents of the assisted living in the area using "market rents" has nothing to do with this. The operators have to operate on $620 a month contract rent, not $800 to $900 a month market rents. Honegger stated the only low-income property wherein an appraiser could use market rents would be a HUD property because they have market value rents and the owner gets reimbursed through higher rents. However, on 515,

supportive living facilities and Section 42 properties that have below market rents, you cannot use a market rent analysis to have any meaning at all in the report.

Honegger stated that the 131 occupancy number depicted on the certificate represented a fire code number. Honegger agreed Dost had a point about other income, although, by the letter of the law, it states strictly income from rent.

Intervenor next called Michael MaRous as a witness. MaRous testified he was presented this date to provide his opinion of value of the highest and best use of the subject property as of January 1, 2013 and provide his estimate of market value for the real estate as of January 1, 2013, which he found to be $5,150,000 or approximately $59,000 per unit.

MaRous is the owner of MaRous & Company. MaRous is a real estate appraiser and consultant and is a Member of the Appraisal Institute ("MAI") and has the MAI and Senior Residential Appraiser ("SRA") designations. He has appraised property for over 40 years and has lectured probably 30 times on appraisal courses to various bar groups, public and private universities, real estate boards and appraisal groups. MaRous has published approximately five articles and has been cited in approximately 15 appraisal books, including the last three editions of The Appraisal of Real Estate. In addition, he has received awards from the Chicago chapter of the Appraisal Institute and also from the national level. MaRous testified he has experience appraising low-income housing. He has appraised over a thousand apartments and hotel properties. Further, he has experience in segregating the business value from the real estate value when appraising low-income and senior housing. He stated he has appraised property in over 30 states with a general focus on the State of Illinois. In Central Illinois, he has appraised or consulted on over $1 billion worth of real estate.[5]

MaRous prepared an appraisal report for the subject property (Intervenor Exhibit "A"). MaRous stated his full appraisal report was prepared consistent with USPAP standards. MaRous testified that he did not prepare a Restricted Use Report because a Restricted Use Report per USPAP can only be used by one party. MaRous obtained information regarding the subject property from income and expense statements from 2011 and 2012, a brochure of the property, information on the website and from the transfer sale of the real estate in 2008. MaRous described the subject as being located in an unincorporated area several miles east of Interstate 57. He considered it to be in the Bourbonnais/greater Kankakee area. The subject's immediate area has a mix of industrial, additional medical and nursing home type uses. For the subject's immediate area, MaRous explained the senior housing market held its own from 2008 to 2012 but was impacted somewhat because people could not sell their houses to be able to move into the senior facilities. He stated the market started to come back in 2012 and was on a minor upswing in 2013. He found there was as demand for functional modern housing for seniors.

MaRous described the subject site as a 3.5-acre parcel, flat and rectangle in shape. The subject building is X-shaped, zoned I-2 industrial and its use is considered legal. The subject building was constructed in 2005 with an addition in 2006. It is a two-story masonry and frame with four distinct wings. He stated the subject was a supportive living facility which provides recreation,

[5] The witness was tendered and accepted as an expert professional appraiser, qualified to appraise the subject property, without objection.

common areas, eating facilities and has outside amenity facilities. In addition, it has a game-room, beauty salon, media room, library and small fitness center. He described the interior finish as pretty typical. The subject contains 87 rooms which all have private baths and a small kitchenette that includes a sink, mini refrigerator and some with microwaves. The subject has one elevator and parking for 50 cars. He found the subject to be in good condition.

MaRous found the subject's highest and best use as if vacant to be a continuation of a senior facility, whether it be independent, supportive, assisted living or a combination thereof. He opined the land value to be $1.25 - $1.50 per square foot of land area, which is significantly lower than the value as improved. For highest and best use as improved, MaRous testified there is a demand for senior housing, the market is growing, people are living longer. He found this was supported by the transaction activity in the market, the demand, the trend of development of this type of facility and the high occupancy rate of the subject property.

For his valuation process, MaRous emphasized the income approach, but, provided the sales comparison approach as a check. He stated he also considered the cost approach to value, but did not put it in his report even though the overall conclusion of the cost approach supported the other two approaches in value. MaRous testified that he did not see anything in Section 10-390 that prohibited developing the sales comparison approach.

On page 16 of his appraisal report, MaRous depicts the subject's asking rents. The rents ranged from $3,425 to $5,150 or from $6.58 to $10.38 per month for units ranging from studio (330 sq. ft.) to two-bedroom (737 sq. ft.). It was MaRous' understanding that a portion of the rates were for services and a portion was for room and board. MaRous attempted to segregate the value of the real estate from the value for services. The allocation was basically a gross up of the income and a deduction of all service costs with a higher return on furniture, fixtures and equipment to get a bottom line for a value of the real estate. MaRous attributed the $325 difference between a studio and one-bedroom single occupancy (with exact same services) to the benefit of having a bigger apartment (real estate). He testified the subject property charges a higher fee for more real estate.

MaRous began his valuation by examination of the history of the subject's expenses and then compared that to other facilities he had either appraised or was familiar with. He stated he basically went to the market to estimate rent, looked at the asking rent, and dropped it down. He found the subject occupancy was just below 100% for the last few years and it was his understanding the subject has consistently had a waiting list. MaRous testified he looked at the comparables, looked at the market, looked at the history of the subject, the trends of development and the demand, then looked at the fact the rent levels for the subject had been increasing. He then examined the national trends and took into consideration that 50% – 55% of the subject is generally Medicaid, which he stated, has a little bit of a pricing structure. MaRous testified he projected gross rents for the studio, one-bedroom and two-bedroom units, which were lower than asking rents because of the Medicaid payment. In addition, he did not add in the second person revenue, which he considered to be allocated to service based on gross revenue. He then checked his gross revenue based on the subject's historical data, and found it was well supported.

To estimate the subject's market rent, MaRous on page 17 of his appraisal report, depicts five studio/one-bedroom rental comparables of independent and/or assisted living facilities. The

properties were located in Washington, Pekin, East Peoria and Peoria, Illinois. The studio units rented for a range of $1,350 to $3,025 or from $2.87 to $7.30 per square foot of living area. The one-bedroom units rented for a range of $1,775 to $3,950 or from $2.68 to $6.91 per square foot of living area.

MaRous testified that he considered Appellant's Exhibit #1, the Medicaid allocation spreadsheet and found it was basically an allocated rate. He found it interesting that the same rate ($620) was used for all regions, whether the property was located in Manteno, downtown Chicago or elsewhere, did not matter. He testified that the price points in the market were significantly different. It appeared to him that the total rent was most applicable and then taking out the appropriate expenses to determine a value; a market value of the real estate. After examination of survey information from MetLife and Genworth and taking into account the growth rates reported by both companies, MaRous stabilized the subject's market rental rates. The 37 studio units had a stabilized monthly rent of $2,900 for a total stabilized monthly rent of $107,300. The 44 one-bedroom units had a stabilized monthly rent of $3,500 for a total stabilized monthly rent of $154,000. The 6 two-bedroom units had a stabilized monthly rent of $3,700 for a total stabilized monthly rent of $22,200. The total stabilized monthly rent for the 87 units was depicted as $283,500 or $3,402,000 per year. The report depicts the subject's reported occupancy for years 2009 – 2012 ranged from 98.7% to 99.6%, so a 2.5% vacancy rate was used to account for collection loss and turnover.

MaRous then examined the stabilized operating expenses for the subject from 2010 to 2012. The expenses included administrative, marketing, computer, office, operating, maintenance, materials and supplies, utilities, insurance, salary, payroll and assisted care. A stabilization of the expenses for the three years indicated a stabilized expense for the subject of $2,645,000. MaRous then opined 1% of the effective gross income or $33,170 was appropriate for replacement reserves. He calculated a return on and return of the subject's furniture, fixtures and equipment, which he found to be $90,480.

In summary, potential gross income for the 87 units was estimated to be $3,402,000 less vacancy and collection loss (2.5%) or $85,050 yielded effective gross income of $3,316,950. Expenses, including reserves and return on/of furniture, fixtures and equipment depicted total expenses of $2,768,650 which were deducted from effective gross income and indicated a net operating income before accounting for real estate taxes of $548,300 (Intervenor's Exhibit A, page 23). MaRous testified that his estimated net operating income conclusion does not include income for services.

MaRous considered the RealtyRates.com Investor Survey – 2nd Quarter 2014 for Healthcare Senior Housing and the Band of Investment method which indicated a capitalization rate ranged from 7.81% to 8.41%. MaRous found this was supported by the market rate analysis. From this, based on the property containing all assisted living units and its relatively new age and good condition, he concluded a rate of 8% was appropriate. He then added a real estate tax load of 2.67% which resulted in a loaded overall capitalization rate for the subject property of 10.67%.

Dividing the estimated net operating income of $548,300 by the loaded overall capitalization rate indicated a fee simple value of the subject property by the income capitalization approach as of January 1, 2013 to be $5,140,000, rounded.

MaRous also developed the sales comparison approach to value utilizing six comparable sales consisting of assisted living and/or independent living facilities. The sales were located in Morris, Peoria, Peru, Rockford, Pekin and Washington, Illinois. The comparables contained from 58 to 171 units, had land-to-building ratios ranging from 2.45:1 to 3.77:1 and were situated on sites ranging from 117,612 to 217,800 square feet of land area. The sale comparables ranged in size from 43,142 to 79,580 square feet of building area and sold from December 2009 to May 2013 for prices ranging from $7,190,000 to $22,000,000 or from $146.48 to $276.45 per square foot of building area or from $102,740 to $182,295 per unit, including land. Various adjustments were made to the sales for property rights, date of sale, location age, quality, number of units, occupancy and/or land-to-building ratio. MaRous testified all of the sales had leases in place and a license, which he opined added value and required a 5% to 10% deduction under property rights. He adjusted the 2009 and 2011 date of sale comparables upward because he felt the markets at that time were inferior. MaRous further testified his overall adjusted value by the sales comparison approach was $60,000 to $62,500 per unit or from $5,220,000 to $5,437,500. MaRous reconciled the retrospective market value of the subject property by the sales comparison approach to be $5,350,000 as of January 1, 2013, which he found was significantly less than what the subject sold for in 2008.

MaRous testified the subject's sale price in 2008 was approximately $10,900,000 or approximately $125,000 per unit. However, the seller and/or purchaser made an allocation deducting a significant portion of the sale price out for furniture, fixtures and equipment. MaRous stated this indicated a real estate value of approximately $5,900,000, which he found was approximately 10% higher than his estimate of value. Based on the sale comparables, MaRous concluded a unit value for the subject property ranging from $60,000 to $62,500 per unit, including land. He then multiplied this by the subject's 87 units which indicated a value for the subject ranging from $5,220,000 to $5,437,500. Utilizing the middle of the range, MaRous found the subject property had a retrospective market value of $5,350,000 or approximately $80.47 per square foot of building area, including land, as of January 1, 2013. Because the unit value of the subject ($80.47) was significantly less than all improved sales comparables, MaRous found the final value via the sale comparison approach was supported.

MaRous testified that if his income approach to value estimate was significantly different than his estimate of value found in his sales comparison approach, and given his knowledge of the subject's sale on the open market, it would have raised a red flag. He stated that is why appraisers have three approaches as a check. MaRous testified that in this situation, he had a sales comparison approach checked by a cost approach reflecting a net value in the mid $5 million, and then the sale in 2008 for just under $6 million. He stated if his number was significantly higher or significantly lower, he would have to reevaluate everything.

In reconciliation, MaRous gave the income approach to value estimate a significant amount of weight and found it was well supported by the sales comparison approach he developed.

During cross-examination, MaRous testified that he considered the subject an assisted living facility, but stated, it could also be called a supportive living facility. He stated that in his opinion, the two were not totally different from each other; both were generally providing support for seniors. When asked whether or not assisted living facilities are eligible for

Medicaid payments and Medicaid residents, MaRous testified his understanding was that supportive living facilities were, but, it was a verbal interpretation. He stated he considered "assisted" and "supportive" under the same category, but from a legal standpoint of his appraisal report, in his conclusions, where he says "assisted," it would be "supportive."

When asked to point out where on page 23 of his appraisal report in the estimated income statement, he reduced the income by the service income, MaRous testified he grossed up the income and took out all expenses allocated to both real estate and service income. MaRous testified that part of running an operation like the subject is that it has a combination of expenses that handles both facets. MaRous testified that he included the projection of gross revenue as the subject is brought to market, then deducted all expenses appropriate to the real estate and to the service income to derive a net income to the real estate. When asked which properties in his rental apartment summary were supportive living facilities, MaRous could not recall. He stated, his rental comparables were part assisted living, part supportive and part independent.

MaRous then testified that he reduced the income based on the market of negotiating the leases and the lower rents for those units that may or may not be reduced because of the supportive living facility payments. Because he did not take the income from services off of the potential gross income, he treated them as an expense and stabilized them by three years of the subject's actual expenses.

MaRous testified that his interpretation of the statute was not to consider the value of service income in the overall opinion of value because it is basically intertwined in the income. He took the expenses out to net out the value of the real estate, which is why his estimated expenses were 83.5% of effective gross income before deduction for real estate taxes. Further, he stated, his revenue estimate of effective gross income of $3,316,950 is $600,000 or $700,000 less than what he believed the subject facility had been generating, which is a reflection of him basically reducing the income. When asked whether the amount of money was the same for the deduction of service income and service expense, MaRous testified that it depended on the services. He stated that, generally, with any business hopefully there is some spread between income and expenses, which is why he reduced the income. He further stated, his total of $3,316,950 was a lot less than the subject's total operational income by about $4,000,000. He took that into account by reducing the rent and putting in the full expenses, because they are intertwined. He testified that when tenants of the facility pay face rent, which is a gross amount, they do not have an allocation of real estate, they have additional services for additional help, they pay for that. The tenants have a face rate for basic services, basic meals, et cetera.

MaRous testified the supportive living facilities are contract rates, but, there are approximately 55% of market rate residents living there. MaRous agreed that if the Medicaid resident receives more than the $620, that money in effect goes to reduced services paid for by Medicaid; it does not go to the facility.

MaRous testified all of his sales were short-term leased fee sales, and agreed the lease terms, which have a value, were not supported in his appraisal. He stated the leases were generally one-year leases. MaRous further agreed it was appropriate to use leased fee sales if they were representative of market rents. MaRous stated he discussed the market rents in the sales and depicted what they were achieving, which in his opinion were at or close to market rents.

When asked to pinpoint where he deducted service income in his analysis, MaRous testified that his $283,500 (stabilized monthly rent) equates to $3,402,000 annually less vacancy of 2.5% ($85,050) to arrive at effective gross income of $3,316,950. He testified the effective gross income for the subject was approximately $4,000,000, which is approximately $700,000 higher, so he was effectively eliminating a significant amount of service income. (Transcript p-235). Because there is not an appropriate way to make that allocation, he still grossed up the income and then took out the appropriate expenses to run the real estate and the operation.

MaRous agreed that he did not allocate between maintenance or replacement costs when excluding services. He agreed the replacement costs for replacement of windows would go to the real estate, however, when a unit of the facility was cleaned up the services performed by a maintenance man would be performing real estate services while at the same time taking care of some of the problems that go with the facility. When asked why he deducted all costs of operation, MaRous testified it was because they are intertwined, except for the services of direct additional support such as daily food or daily washings for assistance. The costs for such maintenance is blended into both operations. He was not able to allocate out only the services portion.

MaRous testified that an assisted living facility is not much different than a supportive living facility, with the only real difference being Medicaid assistance. Because of that, he would also consider an assisted living facility to a supportive living facility when selecting comparable properties. He stated that a senior living facility has more common areas, more support, and the layout is a little different. In addition, the rent and expenses are a little higher for a senior living facility.

During re-direct examination, MaRous testified that his estimated net operating income before deduction of real estate taxes, does not generally include income from services, however, his estimated net operating income does include food and basic services within the monthly package.

In rebuttal, Nicholson testified the rent for a studio was $620 which was the same amount for a one-bedroom. When asked why a resident would ever want a studio when they could get a one-bedroom, which is larger for the same rent, he replied that many times the elderly residents come from an environment of being in a smaller room and preferred the same environment. It was their choice when they moved in.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of the market value of the subject property may consist of an appraisal of the subject property as of the assessment date at issue. (86 Ill.Admin. Code §1910.65(c)(1)). The Board finds the preponderance of the evidence herein indicates a reduction in the subject's assessment is warranted.

This assessment appeal concerns a supportive living facility, which is to be valued pursuant to Section 10-390 of the Code which is one of the enumerated "special properties" set forth in Article 10 of the Code specifying the valuation technique to be utilized. Section 10-390 commences with the phrase "[n]otwithstanding Section 1-55" in order to determine the fair cash value of a supportive living facility, a local assessment officer must use the income capitalization approach.[6]

The subject property consists of a two-story supportive living facility featuring 37 studio units, 44 one-bedroom units and 6 two-bedroom units for a total of 87 units situated on approximately 3.49-acres or 151,969 square feet of land area.

The board of review's total assessment for the subject property reflects a market value of approximately $5,098,656 using the 2013 three-year average median level of assessments for Kankakee County of 33.11% as determined by the Illinois Department of Revenue. Keith Honegger, the appellant's appraiser, estimated the subject's total value to be $2,041,225 as of January 1, 2013. Michael S. MaRous, the intervenor's appraiser, whose client was Manteno Community Unit School District No. 5, estimated the subject's total value to be $5,150,000 as of January 1, 2013.

Both appraisers had many years of experience in appraising real estate and were qualified as experts in their field. Both appraisers developed the income approach to value following their interpretation of the Section 10-390 of the Property Tax Code. MaRous also developed the sales comparison approach to value as a check on his income approach valuation estimate. Within the income approach, each appraiser attempted to deduct income and expenses from services using different methodologies.

Both parties' appraisers, Honegger and MaRous, agree on the basic principles and methodologies applicable and employed in an income approach to value. Both parties agree that the income approach technique requires the appraiser to derive a value indication for an income-producing property by converting its anticipated benefits (such as cash flow or future rights to income) into property value. (Honegger appraisal, p. 7; MaRous appraisal, p. A-21). One method is to convert one year's income expectancy (potential gross operating income less operating expenses) by applying a market-derived capitalization rate.

Based on the data herein and the extreme divergent opinions of the two competing experts, the Board finds it appropriate to examine the data and compute the subject's market value utilizing the income approach to value pursuant to Section 10-390 of the Code concerning "Valuation of Supportive Living Facilities" (35 ILCS 200/10-390) using proper rents which exclude income and expense from services and the appropriate rate of estimated vacancy.

Because of the extreme differences contained within each appraisal report, the Board in its initial analysis examined where the two appraisers diverged in their individual analyses and reports.

[6] Section 1-55 of the Code defines 33 1/3% for purposes of the Code as "one-third of the fair cash value of property, as determined by the Department's [of Revenue] sales ratio studies for the 3 most recent years preceding the assessment year, adjusted to take into account any changes in assessment levels implemented since the data for the studies were collected." (35 ILCS 200/1-55)

For potential gross income, the Board finds Honegger utilized the subject's 2012 actual rent revenue of $656,592 (Honegger appraisal pg. 13, 23). Honegger then added food stamp revenue ($68,816), which the facility retains from its tenants. MaRous, on the other hand, utilized surveys of market rents for nursing homes and assisted living communities along with rental properties of independent and assisted living facilities in Washington, Pekin and Peoria. (MaRous appraisal pg. 17-20.) From his analysis, MaRous then estimated the subject's total stabilized monthly rent to be $283,500 which indicated an annual potential gross income for the subject of $3,402,000. The potential gross income developed by each appraiser was significantly different. However, Honegger's estimate was better supported, but, the Board finds, based on the testimony herein, Honegger should have also included income from the incidental amenities associated with the subject, such as the beauty salon and convenience store. Per the subject's 2012 operating expense report (Honegger appraisal, pg. 23), this amounts to approximately $19,373 of additional income. With the addition of food stamp revenue, salon revenue and the convenience store revenue, the potential gross income of the subject should have been $605,337 after deduction of raw food costs.

Furthermore, the board finds the testimony herein clearly indicates the subject is a "supportive living" facility, which is significantly different when compared to an "independent living" facility or an "assisted living" facility. MaRous incorrectly lumped supportive living, assisted living, independent living and senior living facilities together. The testimony revealed he considered them to be the same, however, technically, for purposes of his appraisal he testified he should have called them supportive living facilities. The testimony depicts the latter two are not Medicaid certified facilities, offer different amenities, have different layouts, and obtain different market rents based on private pay residents. The record further depicts the subject, as a supportive living facility, has monthly rent that is dictated by the Illinois Supportive Living Program as shown by Appellant's Exhibit #1. Therefore, the Board finds MaRous grossly overstated the subject's estimated potential gross income based on the comparables used to stabilize the subject's rental income. The Board finds, absent market comparables of "supportive living" facilities and based on the unique characteristics, mandates and rental restraints of a supportive living facility, the subject's actual rents are more indicative of market rents than the market rents developed by MaRous. Therefore, the Board finds the subject has a potential gross income of approximately $605,337 as discussed above.

Honegger utilized a 1% vacancy rate or $5,000. The Board finds this was not well supported within the appraisal report. However, MaRous' appraisal depicts the subject property's reported occupancy for the years 2009 through 2012 were 99.5%, 99.6% and 98.7%, respectively (MaRous appraisal pg. 22). Therefore, based on evidence herein, the Board finds 1% for vacancy and collection losses ($6,053 of potential gross income of $605,337) appears reasonable and justified. Based on these amounts the Board finds the subject's effective gross income is estimated to be approximately $600,000, rounded.

The Board next examined the estimated expenses developed by each appraiser. The Board agrees with both appraisers, that the expenses for a supportive living facility are commingled and intertwined among the various services offered by the facility, making it difficult at best to allocate out expenses for services. Honegger testified he examined supportive living facilities and found 26% of them had a Section 42 apartment component. Honegger further testified that looking at strictly Section 42 properties, that are not a part of supportive living facilities, they

provide only rent without services. He then examined the expense ratios for those Section 42 properties and predicted it would be similar to Section 42 supportive living facility portions. His examination indicated that in 2012 there was a total expense ratio of 62% which closely aligned with the 63.4% of just looking at Section 42 properties. To him, this indicated that the expense side of a supportive living facility for services is similar to the expense side of the supportive living facility for rent. Honegger then used this data and decided the lower end of the range was most appropriate. He used a 61% expense ratio or $354,388 to calculate the net operating income for the subject property of $226,576. MaRous, on the other hand, examined the stabilized operating expenses for the subject from 2010 to 2012. The expenses included administrative, marketing, computer, office, operating, maintenance, materials and supplies, utilities, insurance, salary, payroll and assisted care. A stabilization of the expenses for the three years indicated a stabilized expense for the subject of $2,645,000. MaRous then opined 1% of the estimated effective gross income or $33,170 was appropriate for replacement reserves. He calculated a return on and return of the subject's furniture, fixtures and equipment, which he found to be $90,480. In summary, MaRous testified that he grossed up the subject's income and took out all expenses allocated to both real estate and service income. The Board finds this method was questionable. During cross-examination, MaRous was unable to indicate where he deducted service income and where he excluded service expense. MaRous testified that his method effectively eliminated a significant amount of service income (Transcript p-235). When asked if his net operating income, before deduction of real estate taxes, included income for services, MaRous testified "[g]enerally not." The Board finds Section 10-390 of the Code states that

> (b) When assessing supportive living facilities, the local assessment officer may not consider:
>
> > (1) payments from Medicaid for services provided to residents of supportive living facilities when such payments constitute income that is attributable to services and not attributable to the real estate; or
> >
> > (2) payments by a resident of a supportive living facility for services that would be paid by Medicaid if the resident were Medicaid-eligible, when such payments constitute income that is attributable to services and not attributable to real estate.
>
> (Source: P.A. 94-1086, eff. 1-19-07.)[7]

Therefore, the Board finds the method developed by MaRous is not credible because he could not definitively state nor verify with certainty that his calculations did not include service income, which is expressly disallowed pursuant to Section 10-390 of the Code. The Board further finds, the method used by Honegger to estimate the subject's supportive living expenses based on his examination of expense ratios for Section 42 properties indicated that the expense side of a supportive living facility for services is similar to the expense side of the supportive

[7] All parties stipulated that Section 10-390 (35 ILCS 200/10-390) of the Property Tax Code governs the methodology of valuation of the subject property, which is the income capitalization approach to value.

living facility for rent is more credible, verifiable and better supported through the testimony of Honegger. Therefore, the Board finds 61% ($366,0000) of the recalculated effective gross income best represents the subject's expenses, without inclusion of service expenses.

In regard to the appropriate overall capitalization rate to be used, the Board finds the appraisers were fairly in agreement. Honegger derived an overall capitalization rate of 11.10% taken from RealtyRates.com reports and investor surveys. Whereas, MaRous utilized a loaded overall capitalization rate of 10.67% which he developed by the band of investments technique after an addition of a 2.67% tax load. Based on the evidence herein, the Board finds an overall loaded capitalization rate of 10.85% is well supported based on the RealtyRates.com Investor Survey - 2nd Quarter 2014, financial information on competing investments and the analysis performed by each appraiser. Dividing the subject's net operating income ($234,000) by an overall loaded capitalization rate of 10.85% indicates the subject's estimated 2013 market value of approximately $2,156,682 or $24,780 per unit.

During the hearing the Board was requested to take notice of prior Property Tax Appeal Board decisions *Peterson Health Care II, Inc.* (Docket No. 13-04297.001-C-3) and *Evergreen Place Decatur (Heritage)* (Docket No. 13-00306.001-C-3). The Board finds the decision in this case stands on its own merits based on the testimony and evidence presented herein. Further, the Board finds *Peterson Health Care II, Inc. v. The Property Tax Appeal Board, 2017 Ill.App. (4th District)* was issued under Supreme Court Rule 23 and may not be cited as precedent. Assuming arguendo the Board were to consider the above cited cases, the Board finds *Peterson Health Care* is distinguishable from the instant case in that both appraisers herein properly attempted to exclude service income along with service expenses in their individual income approach to value analyses. The Board further finds *Evergreen Place Decatur (Heritage)* is not applicable herein because the evidence presented in that case is distinguishable from the evidence presented and testified to in the instant case.

The Board also gave little weight to the sales comparison approach developed by MaRous. As previously stated, the comparables used by MaRous in his analysis were properties with entirely different layouts, designs, features, amenities and services offered, payor mixes and rents. The Board finds these differing characteristics do not allow for a meaningful and well-reasoned comparison to the subject. Further, the Board finds the estimation of value of a supportive living facility is governed by application of Section 10-390 of the Code, not the use of the sales comparison approach to value.

The subject's assessment reflects a market value of $5,098,656, land included, when using the 2013 three-year average median level of assessments for Kankakee County of 33.11% as determined by the Illinois Department of Revenue. Based on the above analysis, and after hearing the testimony and consideration of the evidence presented herein by all parties, the Board finds the preponderance of the evidence indicates a reduction in the subject's assessment is warranted. Since market value has been established, the 2013 three-year median level of assessments for Kankakee County of 33.11% shall apply.

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:

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: June 19, 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.

PARTIES OF RECORD

AGENCY

State of Illinois
Property Tax Appeal Board
William G. Stratton Building, Room 402
401 South Spring Street
Springfield, IL 62706-4001

APPELLANT

DSI Manteno Owner, LLC, by attorney:
Thom Moss
Bickes, Wilson & Moss
P.O. Box 1700
Decatur, IL 62525

COUNTY

Kankakee County Board of Review
County Administration Building
189 East Court Street 1st Floor
Kankakee, IL 60901

INTERVENOR

Manteno C.U.S.D. #5, by attorney:
Scott L. Ginsburg
Robbins Schwartz Nicholas Lifton Taylor
55 West Monroe Street
Suite 800
Chicago, IL 60603