FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Grant Township/Kay Starostovic
DOCKET NO.: 13-01680.001-C-3 through 13-01680.003-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Grant Township/Kay Starostovic, the appellant, by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago; the Lake County Board of Review; Fox Lake Fire Protection District, intervenor, by attorney Brian J. O'Connor of Ottosen, Britz, Kelly, Cooper, Gilbert & DiNolfo, Ltd. in Elburn; and Timber Oaks Acquisition, LLC, intervenor/owner, by attorney George J. Relias of Relias & Tsonis, LLC in Chicago.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
13-01680.001-C-3	05-11-300-037	155,545	1,892,099	$2,047,644
13-01680.002-C-3	05-11-300-035	103,572	1,245,892	$1,349,464
13-01680.003-C-3	05-11-300-002	99,665	1,156,827	$1,256,492

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Lake County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) contesting 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 three parcels improved with seven, two-story over English-basement residential apartment buildings of frame and brick construction with 240,918 square feet of gross building area. The complex has a total of 235 units composed of 4 studio apartments, 129 one-bedroom and one bathroom units, 34 two bedroom and one bathroom units and 68 two bedroom and two bathroom units. Each studio apartment has 450 square feet of living area; the one-bedroom units range in size from 625 to 769 square feet of living area; and the two-bedroom units range in size from 700 to 1,095 square feet of living area. The apartment buildings were constructed in stages from 1976 to 1981. The complex also has a 1-story clubhouse with 3,720 square feet of building area and an indoor swimming pool that was built in 1998. Other improvements include three parking garage buildings and a service garage that were constructed in 1998 with a combined building area of 17,469 square feet. The property has an irregularly shaped parcel containing 598,767 square feet or 13.75 acres and is located in Ingleside, Grant Township, Lake County. The property is commonly known as the Timber Oaks Apartments.

The appellant and the Fox Lake Fire Protection District, intervenor, contend undervaluation as the basis of the appeal. By way of background Mr. Dalianis explained that the subject property sold for approximately $20.4 million with approximately $1.64 million as non-real property consideration resulting in a net consideration for the realty of $18.6 million.[1] Dalianis asserted that for the January 1, 2013 lien date the township officials placed an assessed value on the subject property of approximately $4.76 million reflecting a market value of approximately $14.3 million. The owner filed an appeal with the board of review and entered a stipulation reducing the assessment to reflect a market value of approximately $11.5 million, which is the value being challenged.

In support of the undervaluation argument the appellant and the Fox Lake Fire Protection District jointly called as their witness real estate appraiser Eric W. Dost. Dost prepared a narrative appraisal of the subject property, marked as Intervenor Exhibit #1, estimating the subject property had a market value of $14,000,000 as of January 1, 2013. Dost is a commercial real estate appraiser and president of Dost Valuation Group. Dost has the MIA designation from the Appraisal Institute and is an Illinois Certified General Real Estate Appraiser. Dost has prepared approximately 3,000 appraisals of commercial type properties and about 150 of those were multi-family residential properties with 140 being located in the Chicago metropolitan area. Dost has appraised multi-family properties for HUD financing, tax assessment and market feasibility study purposes. A market feasibility study is a preliminary step for potential financing where the lender wants to know if there is adequate demand for the proposed units. Dost testified he has taken special coursework on apartment-type properties through the Appraisal Institute. Dost was accepted as an expert in the appraisal of commercial real estate and multi-family residential real estate.

[1] The record contained a copy of the PTAX-203 Illinois Real Estate Transfer Declaration, labeled Exhibit D, recorded April 26, 2012, showing a net consideration of $18,621,592.

Dost identified Intervenor Exhibit #1 as the appraisal of the subject property he prepared on behalf of the Fox Lake Fire Protection District and the Grant Township Assessor. The purpose of the appraisal was to estimate the market value of the fee simple interest as of January 1, 2013. Dost had previously appraised the subject property in 2009 for HUD financing.

Dost is familiar with the Uniform Standards of Professional Appraisal Practice (USPAP), which outlines the guidelines for the preparation and reporting of real estate appraisals. He asserted his report was consistent with USPAP standards. The witness testified the appraisal is a summary appraisal report, which is the most common type of appraisal.

Dost conducted an exterior inspection of the property on October 1, 2014 and again the weekend prior to the hearing. Dost had requested access to conduct an interior inspection from the property owner's representative, George Relias, by letter dated August 14, 2014, but he received no response.

Dost described the subject property as being located along Route 59 with Grant Community High School to the north, the Fox Lake Police Department and vacant land to the east, recreation facilities, a grade school and parks to the west, parks to the southeast and single-family residential property in the area. He further testified the subject has a two-acre fishing pond on the site. Aerial photographs of the subject property depict eight tennis courts west of the subject property and baseball fields southeast of the subject property. Dost was of the opinion the overall location of the property is very good for an apartment property as it has good visibility because of Route 59, the nearby police station and proximity to Fox Lake and Pistakee Lake.

Dost described the property as being improved with a three-story suburban garden style apartment complex with 235 units built from 1976 to 1981 and reportedly renovated in 1999. The subject property has a clubhouse with an indoor swimming pool and fitness center. The property also has 63 parking garage spaces. The report contained data from Real Estate Investment Survey (REIS) Reports, a commercial real estate data provider, on the West Lake County Submarket. Dost determined the highest and best use of the subject property as vacant was for multi-family development and as currently improved the existing use. In estimating the market value of the subject property Dost developed the sales comparison approach, the income capitalization approach and provided an opinion of land value. The cost approach was not developed because the improvements are older and, in Dost's opinion, a buyer would not consider the cost approach. Dost estimated the land value because it is important to test the highest and best use as improved and land is part of the assessment.

In estimating the land value Dost used five comparable land sales located in East Dundee, Lake Zurich, Round Lake Beach, Crystal

Lake and Vernon Hills that ranged in size from 158,994 to 1,258,884 square feet or from 3.65 to 28.90 acres of land area. The land comparables sold from September 2011 to August 2013 for prices ranging from $480,000 to $4,968,725 or from $1.18 to $4.98 per square foot of land area. Each land sale was purchased for construction of some type of multi-family housing. The average price was $3.56 per square foot of land area and the median price was $3.95 per square foot of land area. After considering adjustments to the comparables for differences from the subject site in size, zoning, utilities, location and topography the appraiser arrived at an estimated land value of $3.00 per square foot of land area or $1,800,000, rounded.

The appraiser next developed the sales comparison approach to value using five improved sales. The comparables were located in Woodstock, Carpentersville, Waukegan, Antioch and Lake Bluff, Illinois. The comparables were improved with apartment complexes that contained from 96 to 334 units. Dost indicated these comparables had net rentable areas ranging from 77,445 to 254,508 square feet of building area while the subject has 193,787 square feet of net rentable area. Dost calculated the net rentable building area per unit for the comparables, which ranged from 717 to 920 square feet while the subject had 825 square feet of net rentable building area per unit. The comparables were constructed from 1974 to 1991, with comparable #5 being renovated in 2011. The sales occurred from April 2012 to June 2013 for prices ranging from $5,100,000 to $31,622,654 or from $47,222 to $127,679 per unit. Dost reported the mean sales price was $77,632 per unit and the median sales price was $62,521 per unit. After considering adjustments to the comparables for age/condition, size, location, building area per unit, unit features, common area amenities, construction characteristics and economic characteristics Dost arrived at an estimated value of $60,000 per unit or $14,100,000.

With respect to his comparable sale #1 identified as Prairie View Apartments in Woodstock, Dost acknowledged that the buyer and seller of this property were the same as the buyer and seller of the subject property. This property was a 334 unit apartment complex purchased about the same time as the subject property in April 2012 for a price of $94,679 per unit. Dost did not agree with the assertion that this comparable should not be used because it was a bulk or portfolio sale. In his opinion two properties don't make a portfolio and he found some independent marketing brochures for Timber Oaks with no mention of Prairie View. With respect to his comparable sale #2 the appraiser testified that CoStar reported a capitalization rate of 8.62%. This property was located approximately 20 miles from the subject property. With respect to his comparable #3 Dost testified he had previously appraised this property and it had an actual capitalization rate of 6.38%. Comparable #4 was located about 7½ miles from the subject property and no capitalization rate was reported for this property. Dost testified this property had inferior amenities when compared to the subject property having no indoor swimming pool or clubhouse and is located on a more secondary street. Comparable #5 was located in Lake Bluff approximately 15 miles from the subject property and sold in April 2013 for a price of $28,600,000 or $127,679 per unit after being renovated in 2011. Dost testified CoStar reported a pro forma capitalization rate of 6.1% with an actual capitalization rate of 5.5%. Dost testified this property was definitely superior to the subject property. Dost explained the subject property was located geographically in the middle of the comparable sales as depicted on the map on page 51 of his report. The appraiser testified he verified the sales using such sources as CoStar, public records, buyers, press releases and brokerage firms.

The final approach developed by Dost was the income approach to value. He examined the subject's financial statements for the 12-month period ending December 31st, 2010, 2011 and 2012. He also analyzed five expense comparables and did a rent survey of comparable properties in the area. In estimating the market rent Dost used five rental comparables located in McHenry, Round Lake, Lake Villa and Wauconda. These comparables had from 84 to 280 units and four were reported to have been constructed from 1977 to 2005. The subject property has four studio apartments that had actual monthly rents of $660 per unit. Only one comparable had studio units renting for $695 per month or $1.26 per square foot per month. The appraiser concluded the subject's studio apartments had a market rent of $660 per month. The subject's one-bedroom and one bathroom units had actual rents ranging from $754 to $854 per month and had a weighted average rent of $777 per month. The subject's average market rent according to the rent roll was $826 per month. The comparables' one-bedroom units had monthly rents ranging from $775 to $953 per month. The appraiser concluded the subject's one-bedroom apartments had a market rent of $800 per month. The subject's two-bedroom and one bathroom units had actual rents ranging from $876 to $953 per month with an average rent of $941 per month. The subject's average market rent for this type of apartment according to the rent roll was $973 per month. The comparables' two-bedroom one bathroom units had average monthly rents ranging from $938 to $1,255 per month. The appraiser concluded the subject's two-bedroom one bathroom apartments had a market rent of $950 per month. The subject's two-bedroom and two bathroom units had actual rents ranging from $876 to $953 per month with an average rent of $941 per month. The subject's average market rent for this type of apartment according to the rent roll was $994 per month. The comparables' two-bedroom two bathroom units had average monthly rents ranging from $900 to $1,255 per month. The appraiser concluded the subject's two-bedroom one bathroom apartments had a market rent of $960 per month. Based on this analysis the appraiser estimated the subject's gross potential rental income was $2,391,888.

Dost reported the subject's historical laundry and other income from 2010 to 2012 ranged from $87,911 to $156,370. He also indicated the five rental comparables had laundry and other revenue ranging from $28,631 to $367,570 with an average of

$176,274. Based on this data the appraiser estimated the subject's laundry and other income was $126,900.

The appraiser next estimated the subject's parking revenue noting the subject's total parking revenue from 2010 to 2012 ranged from $30,823 to $61,263. He further reported that his rental comparables #1 and #2 had garage spaces available for $60 and $75 per month. Based on this data the appraiser estimated the subject's 63 garage spaces had a stabilized revenue of $60 per space for a total of $45,360.

Adding the gross rental income, the laundry and other income and the parking revenue resulted in a potential gross income of $2,564,148.

Dost reported the REIS Reports indicated the West Lake County submarket had three-year and five-year historic vacancy rates of 4.5% and 5.3%, respectively. He also indicated that information for all of Lake County from Hendricks Berkadia reported a vacancy rate of 3% as of the first quarter of 2013. The appraiser also indicated that according to the January 1, 2013 rent roll the subject had 13 vacant and un-leased units indicating a vacancy rate of 5.5%. Based on this information the appraiser estimated the subject had a vacancy and collection loss of 6% or $153,849, resulting in an effective gross income (EGI) of $2,410,299.

In estimating expenses Dost analyzed the subject's historic expenses and also considered five expense comparables. Dost testified that according to the First Quarter 2013 PWC Real Estate Investor Survey of the National Apartment Market there is a range of management fees from 2% to 8% with an average of 3.13%. The comparables had management fees ranging from .5% to 4.1% of EGI. He estimated the subject's management fee to be 3.0% of EGI or $72,309 per year. The appraiser placed emphasis on the subject's average amount, which was supported by the rental comparables, in estimating the expenses for other administrative, lighting and miscellaneous power, water/sewer, natural gas, garbage removal, payroll, repairs and insurance, which totaled $681,500. With respect to reserves for replacements Dost stated that the First Quarter 2013 PWC Real Estate Investor Survey reported apartments have a replacement range from $150 to $2,000 per unit, with an average of $387 per unit. Dost estimated the subject's reserves for replacements to be $300 per unit or $70,500. Deducting total operating expenses of $824,309 from the EGI resulted in a net operating income (NOI) of $1,585,990.

The final step under the income approach was to estimate the capitalization rate. In estimating the capitalization rate Dost used investor surveys, the band of investment method and an analysis of the comparable sales. Dost indicated that the First Quarter 2013 PWC Real Estate Investor Survey for the National Apartment Market indicated an average overall rate of 5.73% for institutional properties and 7.29% for non-institutional properties. Dost was of the opinion that a capitalization rate near the non-institutional average was considered appropriate for the subject. The band of investment method resulted in a capitalization rate of 7.42%. Dost indicated that four of the five sales had capitalization rates ranging from 5.50% to 8.62% with an average of 6.94%. Using this data Dost determined a capitalization rate of 7.5% was reasonable for the subject. To this a tax load factor of 3.8879% was added to arrive at a loaded capitalization rate of 11.388%. Dividing the NOI by the loaded capitalization rate resulted in an estimated value under the income approach of $13,900,000.

In reconciling the two opinions of value Dost gave significant emphasis to both the sales comparison approach and the income approach to value. He testified his opinion of the fair cash value of the subject property as of January 1, 2013 was $14,000,000.[2]

Under cross-examination Dost testified that there was some assumed financing associated with comparable sale #1 and the sale of the subject property, but was not aware that it was necessarily favorable. Dost knew that the subject property had HUD financing and it was assumable but was of the opinion that does not necessarily make it favorable. He also reiterated his testimony that even though comparable sale #1 and the subject were sold at the same time and involved the same parties this does not make a portfolio.

Dost testified his comparable sale #1 was located in McHenry County and his comparable sale #2 was located in Kane County. He also testified that his comparable #5 was located in east Lake County 15 miles east of the subject property. Dost was not aware that comparable sale #1 also included a healthcare business in the transaction. Dost also agreed that his comparable sales #2, #3 and #4 had less units than the subject property. He testified, however, that he selected these comparables because they are in the same general size range as the subject property.

With respect to the capitalization rate, Dost testified that he used data from CoStar for comparables #1, #2, #4 and #5, which had capitalization rates listed. He acknowledged that CoStar did not list the income and expenses for the comparables. He also agreed the capitalization rates were listed as pro forma capitalization rates. He testified, however, if the capitalization rates were actually different it would not change his opinion because he relied on three methods in estimating the capitalization rate. Dost acknowledged that the PWC Real Estate Investor Survey is a national report that takes into consideration properties from the East Coast and West Coast. With respect to the band of investment method Dost testified that he estimated the value of the fee simple interest as of the valuation date and you are to use market financing as of that date.

[2] At page 74 of the Dost appraisal the reconciled market value estimate was reported to be $14,100,000.

Dost described the site as irregular and almost triangular. He agreed that irregular sites are less desirable than regular sites. He also agreed that the ball fields and tennis courts do not belong to and are not part of the subject property. He asserted, however, that the presence of nearby amenities affects the rents.

Under redirect examination Dost testified an appraiser is not bound to stay within the same county in selecting comparables. He explained that given how dynamic and changing the market conditions were over the past several years, he finds it better to have more current sales that might be a tiny bit further away. He testified the more current the dates of sale the better. Dost also testified that in developing a capitalization rate using three sources provides more support and all three approaches he used pointed in the same direction.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $3,832,950. The subject's assessment reflects a market value of $11,531,137 or $49,069 per apartment unit, land included, when using the 2013 three year average median level of assessment for Lake County of 33.24% as determined by the Illinois Department of Revenue. The board of review submitted no evidence in support of its assessment of the subject property.

In support of its contention of the correct assessment the intervenor/owner/taxpayer submitted an appraisal estimating the subject property had a market value of $11,750,000 as of January 1, 2013. The appraisal was prepared by John O'Dwyer of JSO Valuation Group, Ltd. O'Dwyer was called as a witness and testified he has the MAI designation and is president of JSO Valuation Group. The witness further testified he is a Member of the Royal Institute of Chartered Surveyors. The appraisal further indicated that O'Dwyer was an Illinois Certified Appraiser. The witness testified that his firm completes approximately 500 appraisals per year and about 20% are multi-family properties. The taxpayer's appraiser also testified he is a renowned speaker on low-income multi-family housing and speaks at conferences on self-storage warehousing. O'Dwyer was accepted as an expert.

O'Dwyer prepared a narrative appraisal of the subject property, which was marked as Exhibit #1 for Intervenor #2. The appraiser estimated the subject property had a market value of $11,750,000 or $50,000 per unit as of January 1, 2013. The property rights appraised were the fee simple interest and the appraiser determined the highest and best use as improved was the property's current use. The appraiser developed the three approaches as to value and placed most weight on the income approach to value. O'Dwyer was aware that the subject property sold in 2012. He described the sale as a portfolio sale along with the sale of a property in Woodstock. The appraiser asserted a portfolio sale is any sale greater than one sale. He explained both sales were negotiated together by the buyer and seller and sold in conjunction together at the same exact time. The witness testified within the sales there was favorable financial terms from HUD that covered both properties at an interest rate of approximately 4.3%. The appraiser testified at that time very few institutions were willing to lend money on properties so having the assumable mortgage was a very strong motivator for the buyer to purchase the property.

The witness described the site as a triangular site except for a small cutout and is located on the east side of Devlin and the west side of Route 59, with the pinnacle of the site on the south side. There are four buildings located along Devlin and three buildings located along Route 59. In the center of the site is an approximately 2-acre pond that was put there for firefighting purposes. The witness testified the pond is not a fishing pond or a recreation pond and no boats are allowed on it. He testified the triangular position of the site makes it less favorable for any type of development yet the site is very well developed as far as the placement of the buildings.

O'Dwyer inspected the property in June 2014 and testified that on his walkthrough inspection the property seemed slightly rundown. He testified the subject has false mansard roofs with plenty of shingles missing and gutters missing. The appraiser further testified that the kitchen suites and bathroom suites were mainly all original. Additionally, some of the double glazing windows had vacuums that had burst so the windows were clouded. O'Dwyer further testified that the interior of the property was a low cost development meaning there was noise transmission and smell transmission.

In developing the income approach to value O'Dwyer used four rental comparables located in Round Lake and Fox Lake from .4 to 4.7 miles from the subject property. The comparables had from 12 to 280 units. Three of the comparables had rental rates for one-bedroom units ranging from $725 to $995 per month or from $1.08 to $1.40 per square foot per month. Each comparable had two-bedroom units that had rental rates ranging from $795 to $1,275 per month or from $1.06 to $1.15 per square foot per month. O'Dwyer also reported the subject's units had average rents ranging from $678 to $993 per month or from $.91 to $1.51 per square foot per month. The witness testified the subject property has four studio apartments, 129 one-bedroom apartments and 102 two-bedroom apartments with the importance being that approximately 55% of the apartments are one-bedroom while one would expect more two-bedroom units because the subject is located in a "bedroom community." The appraiser concluded the subject would have an average rate of about $1.15 per square foot per unit per month resulting in a rental income of $2,403,336. The report also indicated the appraiser added $140,000 for other income, for such items as parking and late fees, to arrive at a gross income of $2,543,336. O'Dwyer testified that he was provided the subject's historical expenses for 2010, 2011 and analyzed 2012, which was set forth on page 68 of his report. He thought that the most important line was the effective gross income line that showed effective gross income of $2.5 million for 2010, $2.4 million in 2011 and $2.3 million in 2012. He testified that this shows the subject is not an institutional grade property because it does not have the ability to collect the ratio utility billing system (RUBS), which is where the tenant pays for common area expenses such as lighting and landscaping. The appraiser estimated the subject's stabilized vacancy and collection loss to be 5% of gross income or $127,167 which was deducted to arrive at an EGI of $2,416,169.

The appraiser next estimated total expenses to be $960,332, or 39.75% of effective gross income to arrive at a net operating income of $1,455,837. With respect to expenses the appraiser estimated to following: insurance costs of $191 per unit or $45,000 per year; operating or administrative expenses were stabilized at $340 per unit or $80,000; utilities at $200,000 or $851 per unit; payroll and benefits at $160,000 or $681 per unit; management fees of $120,808 or $514 per unit; supplies of $100,000 or $426 per unit; contracts of $135,000 or $574 per unit; repairs/maintenance of $25,000 or $106 per unit; commissions of $7,249 or $31 per unit; other expenses of $25,000 or $106 per unit; and reserves of $62,275 or $265 per unit. The appraisal indicated the expenses were stabilized near the historical expenses and in line with both industry and comparable standards. The appraisal also indicated that according to the 2013 Income and Expense Analysis Report for the Chicagoland area, multi-family buildings that are low-rise containing more than 24-units typically have expenses near 41% and net operating income near 59%. The report indicated that the subject is an older improvement, which would warrant a higher expense ratio. O'Dwyer also testified that the condition of the property warrants the expense ratio because there is deferred maintenance, heating units that need to be taken care of, air conditioning units that have to be taken care of, all the roofs need to be replaced, as well as siding and landscaping that are going to add to the expenses to operate the property.

In estimating the capitalization rate O'Dwyer wanted to first estimate the lowest possible rate that would be applicable to an institutional grade property. The appraiser testified PWC Real Estate Investor Survey, 1st Quarter 2013, reported rates from 3.5% to 10% with an average of 5.73%. He also testified that the PWC Real Estate Investor Survey, 3rd Quarter 2013, depicted on page 70 of the appraisal, reported rates from 5.0% to 14.0% with an average of basically 8%. The appraiser also looked at the net operating income that they were provided and used the assessor's market value and derived a capitalization rate of about 10%. He testified they had a floor as to how low the capitalization rate could go and a ceiling as to how high the capitalization rate can go. The appraiser estimated a capitalization rate of 8.5%. To this the appraiser added a tax load of 3.89% to arrive at a loaded capitalization rate of 12.39%. Capitalizing the net income resulted in an estimated market value of $11,750,000 under the income approach to value.

O'Dwyer testified that he did not use the band of investment method to estimate the capitalization rate because it can be manipulated to tell you anything. He also testified that deriving capitalization rates from sales is a great indicator but you have to be very careful due to determining the income and expenses.

The next approach to value developed by O'Dwyer was the sales comparison approach in which he used three comparable sales located in Antioch, Gurnee and Park City. O'Dwyer's sale #1 was the same comparable sale as Dost's comparable sale #4. The three comparables were improved with apartment complexes that had from 96 to 320 units and were built from 1964 to 1988. The comparables were improved with two-story or three-story buildings and had from 86,400 to 133,120 square feet of net rentable area. These properties had sites ranging in size from 257,004 to 368,064 square feet of land area or from 5.90 to 8.45 acres. Comparable #1 had 96 two-bedroom units; comparable #2 had 134 one-bedroom units and 2 two-bedroom units; and comparable #3 had 320 units that were primarily one-bedroom units at the time of sale. The sales occurred from February 2011 to June 2013 for prices ranging from $5,000,000 to $13,500,000 or from $48.36 to $101.41 per square foot of rentable building area or from $36,765 to $62,521 per unit. The appraiser reported that sale #3 included a sale condition that 60 of the 320 units were tax credit units with the local housing authority at a rate of 60% of median income, which would have an impact on unit price, requiring an upward adjustment. Sale #3 also required an upward adjustment due to its inferior location and average smaller unit size of 416 square feet as compared to the subject's 1,041 square feet. The appraiser made downward adjustments to comparable sales #1 and #2 due to their smaller unit counts relative to the subject property. Based on these sales the appraiser arrived at an estimated market value of $50,000 per unit or $11,750,000.

O'Dwyer testified these sales were selected because they were more geographically within Lake County; he did not want to go outside Lake County.

O'Dwyer also developed the cost approach to value. The appraiser first estimated the land value using three comparable land sales located in Lake Zurich and Lake Villa. O'Dwyer's land sale #3 was also utilized by Dost as his land sale #2, although they reported different sales prices. The land comparables ranged in size from 157,687 to 359,370 or from 3.62 to 8.25 acres. The comparables sold from December 2011 to March 2014 for prices ranging from $55,000 to $726,970 or from $.81 to $4.61 per square foot of land area. O'Dwyer estimated the subject had a land value of $2.00 per square foot of land area or $1,200,000, rounded.

In estimating the replacement cost new of the improvements the taxpayer's appraiser used the <u>Marshall Valuation Service Manual</u> and arrived at a cost new for the building improvements of

$23,143,824. The site improvements were estimated to have a cost new of $600,223. The total cost new was estimated to be $23,744,047. Total depreciation was estimated to be $13,195,088 and was deducted from the total cost new to arrive at a depreciated improvement value of $10,548,959. Adding the land value resulted in an estimated value under the cost approach of $11,750,000, rounded.

In reconciling the approaches to value the taxpayer's appraiser determined the income approach to value was the primary indicator of value and the sales comparison approach was considered a secondary approach to value. The appraiser estimated the subject property had a market value of $11,750,000 as of January 1, 2013.[3]

The taxpayer also submitted an appraisal review of the Dost appraisal that was prepared by O'Dwyer. O'Dwyer concluded the Dost Valuation Group, Ltd. appraisal had a valuation estimate that was too high due to the fact that no cost approach was explored to support the value, the capitalization rate of 7.50% was too low, and sales #1, #2 and #5 should not be considered as indications of value for the subject property.

Within the appraisal review O'Dwyer asserted there were major errors with the reporting of the 2012 sale of the subject property. He asserted the sale price of the subject property of $20,468,000 as reported by Dost was incorrect as the PTAX transfer declaration noted the price included $1,637,443 in personal property resulting in a net sales price of $18,830,592. He further stated that the net sales price was actually an allocation due to the fact that the subject's transfer was a portfolio sale including a separate 334-unit family property located in Woodstock, Illinois, that sold for a net consideration of $29,092,842. O'Dwyer asserted that these two sales were negotiated together and there was an allocation of a total portfolio price between the two properties.

At page 6 of the appraisal review O'Dwyer stated that an appraisal that leaves out the cost approach to value does not have the same level of support for a market value conclusion that an appraisal with all three approaches will have.

In commenting on the sales comparison approach in the Dost report, O'Dwyer stated that comparable #1 was part of the portfolio sale of the subject property and is far superior to the subject property and is located within an entirely different market area in McHenry County. O'Dwyer asserted comparable #2 is located far to the south of the subject property in Kane County, a different market area. The taxpayer's appraiser also contends Dost's comparable sale #5 is highly superior to the subject property with considerably higher rental rates and should be excluded from any value indication of the subject.

[3] The appraiser also opined the subject property had an estimate of value of $11,750,000 as of January 1, 2014 and June 27, 2014.

With respect to the income approach developed by Dost, O'Dwyer opined that the analysis of the gross rental income for the subject property was relatively good and the tax load factor of 3.8879% was correct. The taxpayer's appraiser asserted there was no source for the "non-institutional" range of capitalization rates that Dost utilizes; the band of investment method to develop a capitalization rate is relatively weak; and commented on the capitalization rates developed from the sales and concluded that sale #3 was the only sale that could possibly have a relevant capitalization rate source.

Under cross-examination O'Dwyer agreed that he described the subject property as slightly rundown, however, at page 30 of his report he stated, "The subject improvements are in good overall condition." O'Dwyer testified the appraisal was USPAP compliant. The taxpayer's witness also agreed that the ethics rules of USPAP provide that an appraiser must not perform an appraisal with bias and must not advocate the cause or interest of any party or issue. He was of the opinion that by acting as an independent appraiser and as a consultant in critiquing the Dost appraisal he was not showing bias or the interest of a party or issue. He also asserted that the technical review of the Dost appraisal was not a consulting report.

O'Dwyer also testified that he was familiar with the CoStar service and testified it is the only service available in Chicago. He also testified that every appraiser uses the CoStar service.

O'Dwyer was shown Appellant's Exhibit B, PTAX-203, Illinois Real Estate Transfer Declaration associated with land sale #1. The taxpayer objected to the document as not being entered before. The Property Tax Appeal Board overrules the objection finding the document was being offered for impeachment purposes. The document identified land sale #1 as a Bank REO (real estate owned). O'Dwyer testified he did not identify land sale #1 as a bank foreclosure in his report. O'Dwyer also testified he did not disclose the fact that land sale #2 was a bank REO sale in the report. The appraiser concluded that REO land sales that were taking place became the market because they were so freely available. O'Dwyer was shown Appellant's Exhibit C, PTAX-203, Illinois Real Estate Transfer Declaration associated with land sale #2. The taxpayer objected to the exhibit. The Property Tax Appeal Board overrules the objection finding the document was being offered for impeachment purposes. O'Dwyer testified that Exhibit C identified the land sale as an REO sale. He also agreed his only land sale that was not a bank foreclosure was his land sale #3, which was the same as Dost's land sale #2, that sold for $4.61 per square foot of land area. O'Dwyer described land sale #3 as being slightly superior to the subject.

With respect to the cost approach to value, O'Dwyer was questioned about the lack of discussion in the appraisal about depreciation, deterioration and obsolescence. On page 30 of the report the appraiser acknowledged that the subject's roof is described as being in average condition. The witness testified that the cost approach was given almost no weight whatsoever even though it does not say that in the report.

With respect to the income approach to value O'Dwyer agreed his estimate of EGI of approximately $2,416,000 was almost the same as Dost's estimate of EGI of approximately $2,410,000. The witness also agreed that the table on page 67 of the report was from the Institute of Real Estate Management (IREM). The information that the appraiser looked at was from the right-hand side of the table with the heading "Chicago, IL Low Rise Over 24 Units." The data consisted of 6 buildings with 993 units. O'Dwyer described the data as "blind" meaning one does not know the location of the buildings in the Chicagoland area, the design features of the buildings and the amenities of the buildings. O'Dwyer stated on page 66 of his report that multi-family buildings that are low-rise containing more than 24-units typically have expenses near 41%. The witness explained this was taken from the IREM table on page 67 of the appraisal that reported total of expenses to be 41.3%. However, the total expenses included the real estate taxes. O'Dwyer testified his analysis of expenses excluded real estate taxes.

With respect to the capitalization rate, the appraisal report contained a table on page 69 disclosing that the overall capitalization rate for the National Apartment Market during the first quarter of 2013 ranged from 3.50% to 10.00% with an average of 5.73%. Page 70 of the appraisal contained another table from the PWC Real Estate Investor Survey reporting the overall capitalization rate for apartments for the third quarter of 2013 ranged from 3.50% to 10.0% with an average of 5.61%, showing a decline in capitalization rates for investment grade properties. The appraisal at page 70 also reported comparable sale capitalization rates ranging between 7.10% to 11.58%. O'Dwyer testified that those were capitalization rates he developed but did not publish in the appraisal. He testified that the data was from the CoStar sheets and were probably for the three sales used in the appraisal. The witness testified that the capitalization rates might have been developed using the CoStar reports or they might have used CoStar and then developed a capitalization rate using other sources. O'Dwyer further testified that it was not common for other appraisers to develop a band of investment technique and that he never uses the band of investment technique. He did not believe that the band of investment technique would be an indication of what a capitalization rate ought to be. The witness also testified he does not have any market derived capitalization rates in the capitalization rate analysis.

O'Dwyer was shown Appellant's Exhibit D, which included a CoStar report for improved sale #2 and the PTAX-203, Illinois Real Estate Transfer Declaration associated with improved sale #2. The taxpayer objected to the exhibit. The Property Tax Appeal Board overrules the objection finding the document was being offered for impeachment purposes. O'Dwyer reported this property as having sold for a price of $5,000,000, which was reported on the transfer declaration, however, the CoStar sheet reported a sales price of $4,450,000. CoStar reported a capitalization rate for this property of 7.3%. With respect to the location of comparable sale #3, O'Dwyer agreed there are a lot of mobile homes in Park City. He also agreed that 60 of the 320 units at this comparable had tax credits and the property was to be rehabilitated. The witness thought that they wanted to increase the number of two-bedroom units at this property. He agreed that the units at the subject property were about 250% larger than the units at comparable sale #3.

The owner requested that the fair market value of the subject property should not exceed $11,500,000 as established by the board of review.

Conclusion of Law

The issue before the Property Tax Appeal Board is determining the market value or fair cash value of the subject property as of January 1, 2013. 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). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)).

The appellant, Grant Township/Kay Starostovic, and the Fox Lake Fire Protection District, intervenor, contend the subject property had a market value $14,000,000 as of January 1, 2013 based on the opinion of value developed by real estate appraiser Eric W. Dost. The owner/taxpayer, Timber Oaks Acquisition, LLC, argued the subject property had a market value of $11,750,000 as of January 1, 2013, based on the opinion of value developed by real estate appraiser John O'Dwyer. The Lake County Board of Review had established a total assessment for the subject property of $3,832,950, which reflects a market value of $11,531,137 when using the 2013 three year average median level of assessment for Lake County of 33.24% as determined by the Illinois Department of Revenue. The board of review presented no evidence in support of the assessment. Both appraisers offered opinions of value that were greater than the market value reflected by the subject's assessment.

Initially, the Board finds the record disclosed the subject property was the subject matter of a sale in April 2012 for a net consideration of $18,621,687. However, the subject sold with another property and the price was allocated in some fashion. Furthermore, the record indicated that a mortgage was assumed, which may have had an impact on the purchase price. Finally, neither appraiser found or asserted that the purchase price was indicative of fair cash value as of January 1, 2013. As a result the Board gives little weight to the sale in determining the correct assessment for the subject property as of the assessment date at issue.

Of the two appraisers only O'Dwyer developed the cost approach to value. However, O'Dwyer testified this approach was given almost no weight. The Board also finds the cost approach to value contained in the appraisal had no discussion with respect to the development of the various estimates of depreciation and obsolescence by O'Dwyer, which undermines the conclusion of value under the cost approach. With respect to the land value used by the appraiser in the cost approach, it was brought out that two of the land sales used by O'Dwyer were the results of bank foreclosures and sold for prices of $.15 and $.81 per square foot of land area. The remaining land sale used by O'Dwyer had sold for a price of $4.61 per square foot of land area. The record also contained five land sales identified by Dost, which included the one non-bank foreclosure land sale presented by O'Dwyer. The land sales provided by Dost had unit prices ranging from $1.18 to $4.98 per square foot of land area. Considering these land sales, the Board finds that O'Dwyer's estimate of land value of $2.00 per square foot of land area is too low and that Dost's estimate of land value of $3.00 per square foot of land area is better supported. In conclusion the Board gives little weight to the cost approach to value developed by O'Dwyer.

Both Dost and O'Dwyer developed the sales comparison approach to value with Dost, using five comparable sales, arriving at an estimated value of $60,000 per unit and O'Dwyer, using three comparable sales, arriving at an estimated value of $50,000 per unit. The two appraisers had a common comparable sale located in Antioch that sold in June 2013 for a price of $6,002,000 or $62,521 per unit. The Board finds that the two remaining comparables used by O'Dwyer sold in February 2011 and March 2011, not as proximate in time to the assessment date at issue as the comparable sales used by Dost. Furthermore, comparable sale #3 used by O'Dwyer was not particularly similar in unit size, was primarily improved with one-bedroom units and was also the subject of tax credits. As a result the Board finds these sales are to be given little weight. With respect to Dost's improved sale #1, this was the property that sold concurrently with the subject property in April 2012. As noted the price for the subject and this property were allocated and both appeared to involve a mortgage assumption impacting the price. The Board gives this sale less weight. Dost's comparable sale #5 was described as being superior to the subject property in age/condition, location and economic characteristics. This property sold for a unit price of $127,679 per unit, which appears to be an outlier as compared to the other sales in the record, therefore, less weight was given this sale. The Board finds the best sales in the record include Dost's comparable sales #2, #3 and #4, which includes O'Dwyer's sale #1. The Board finds that O'Dwyer stated in his appraisal review that he verified Dost comparable sale #3 and concluded that this sale appears to be a relevant data point for the valuation of the subject property. These three comparables sold for prices ranging from $47,222 to $62,521 per unit. Based on these sales and considering the testimony of witnesses, the Board finds that Dost's conclusion of value of $60,000 per unit or $14,100,000 under the sales comparison approach is better supported.

Both appraisers developed the income approach to value and were in near agreement as to the subject's EGI with Dost arriving at an EGI of $2,410,299 and O'Dwyer arriving at an EGI of $2,416,169. The appraisers differed in operating expenses with Dost arriving at total expenses of $824,309 while O'Dwyer arrived at operating expenses of $960,332. The Board finds that Dost's estimate of expenses was better supported with reference to the subject's historical expenses, surveys and, importantly, expense comparables that he identified and included in the report. Therefore, the Board finds that Dost's estimate of net operating income of $1,585,990 is better supported.

The last step under the income approach was to estimate the capitalization rate to be applied to the subject's net income. Dost arrived at a capitalization rate of 7.5% using an investor survey, the band of investment technique and an analysis of the capitalization rates reported for the comparable sales. O'Dwyer estimated a capitalization rate of 8.5% using an investor survey for investor grade properties to develop a floor and looked at the net operating income that they were provided and used the assessor's market value to develop a ceiling. The Board finds that the methods used by Dost better comport with appraisal theory. The Board also finds that Dost's estimated capitalization rate is somewhat supported by CoStar's reported capitalization rate for O'Dwyer's sale #2 of 7.30%. The record also disclosed that both appraisers were in agreement that the tax load factor to be added to the capitalization rate was 3.8879%. Based on this record the Board finds that Dost's loaded capitalization rate of 11.388% is better supported, which when used to capitalize Dost's estimate of net income results in an estimated market value under the income approach of $13,900,000. In conclusion the Board finds that Dost's estimate of market value under the income approach is better supported.

After considering the evidence and testimony presented, the Board finds the opinion of value offered by Dost is the most credible in this record and finds the subject property had a market value of $14,000,000 as of January 1, 2013. Since market value has been determined the 2013 three year average median level of assessments for Lake County of 33.24% as determined by the Illinois Department of Revenue 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.

Chairman

Member

Member

Member

Acting Member

Acting 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: January 22, 2016

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.