



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

APPELLANT: The Parc at Joliet
DOCKET NO.: 14-00290.001-C-3
PARCEL NO.: 30-07-07-304-025-0000

The parties of record before the Property Tax Appeal Board are The Parc at Joliet, the appellant, by attorney Alan D. Skidelsky, of Skidelsky & Associates, P.C. in Chicago; the Will County Board of Review; and Joliet Twp. H.S.D. #204, intervenor, by attorneys Timothy J. Rathbun and Meghan Preston of Rathbun, Cservenyak & Kozol, LLC in Joliet.

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

LAND: \$194,573
IMPR.: \$472,027
TOTAL: \$666,600

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Will County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2014 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 is improved with a part two-story and part one-story skilled nursing home of brick exterior construction on a concrete slab with 203 total beds of which 8 are in private rooms and 195 are semi-private. Besides residential rooms, the building has nursing stations, a dining room, kitchen, laundry, administrative offices, storage and utility areas along with separate therapy and dialysis areas. The property is commonly known as The Parc at Joliet. The building contains a gross building area of approximately 61,095 square feet and was constructed in 1969 with additions built in 2011. The property has approximately 63 parking spaces with an approximately 105,415 square foot or 2.42-acre site that is located in Joliet, Joliet Township, Will County.¹

¹ The appellant's appraisal described the building as containing 61,095 square feet of building area on a 2.42-acre parcel. The assessing officials originally reported a building size of 63,894 square feet with a lot size of 2.4393-

Appellant's Evidence

The appellant appeared with counsel before the Property Tax Appeal Board for a consolidated hearing contending overvaluation as the basis of the appeal.² In support of this argument, the appellant submitted a narrative appraisal report prepared by John W. VanSanten, MAI, MRICS, and Nicholas McGinn, both of Stout Risius Ross. During the hearing, the 2014 appraisal consisting of 170 pages was marked as Appellant's Exhibit 1. As set forth in the report, the appraisers estimated the value of the real property as \$2,000,000 as of January 1, 2014.

The appellant's first witness was David M. Aronin, a CPA and certified financial planner who also carries the PFS designation from the Illinois CPA Society. Aronin is a CFO of Hunter Management, LLC and a manager with both Extended Care Consulting LLC and Extended Care Clinical LLC, where his supervisor is Eric Rothner. The witness described that Extended Care Consulting performs financial consulting for a group of nursing homes and Extended Care Clinical performs clinical consulting for nursing homes. He has worked for 20 years in the long-term care industry where Rothner initially hired him to be CFO of the Rothner family of facilities. Aronin has reviewed financial information for close to a hundred facilities and currently reviews details for 20 to 25 nursing homes. He is familiar with The Parc at Joliet property as he has reviewed the financial statements, answered financial questions and discussed real estate taxes with Rothner and Mr. Slagle, both in the past and currently. The witness has been assisting the facility with financial matters since the end of 2013/early 2014. While The Parc at Joliet is not a new facility, there is a new license holder of the building (a tenant or lessee). As far as Aronin is aware, the facility has always been leased to successive tenants. In fact, the prior tenant told Aronin, given an inability to make a profit, the building was given back to the owner. The landlord of the building is Glenwood Real Estate LLC. The operating entity is The Parc at Joliet. There is a lease in place between the two entities that includes a legal obligation to pay rent. The Rothner family own both a piece of the building company and a piece of the operating company. Aronin testified that it is very common in the nursing home industry to maintain separately a real estate entity that owns the building and an operating entity that operates the nursing home facility. The rationale for this division is the litigiousness of nursing home operations. (TR. 11-14, 18-20, 32-33)³

As part of his work, Aronin has been involved in the acquisition of well over a hundred nursing homes, including reviewing and preparing six month and one-year budgets as required to acquire a nursing home license; financing information is also included in the application for the license. Aronin also noted that the State of Illinois is behind in processing Medicare applications and the State of Illinois is also behind on making payments owed for services rendered to Medicaid residents. He further opined that nursing home investors generally look for a 12% to 13% rate of return as there is greater risk than, for example, an apartment building investment. Greater risk

acres; during hearing, the assessor modified the building size to 63,684 square feet. (Transcript, pp 173-75) On this record, there was a dispute between the parties concerning both building size and lot size which was not resolved in the course of hearing. The Property Tax Appeal Board finds that based upon the evidence of record, these two disputes do not prevent a determination of the correct assessment of the subject property for the year(s) at issue.

² A consolidated hearing was conducted on Docket Nos. 14-00290.001-C-3 and 15-00588.001-C-3 although separate decisions will issue for each appeal.

³ References to the transcript of the proceedings will be denoted as "TR." followed by page number(s).

is due to the possibility that the nursing home operator could cause decertification of the facility, a worst-case scenario; in that situation, the State would have to find the operator was not caring for the residents and thus the building would lose value. (TR. 21-22, 33-34)

A Certificate of Need (CON) is issued for the development of a nursing home building and will stay with the building once issued. Need is determined by analysis of segments or regions; if an area is deemed to be 'over-bedded,' a CON would not be issued. The application process is at least a year long. A CON changes only if a major upgrade or component is added to a facility and then a new CON is sought, but the process involves significant time and money. Aronin has assisted in the past with preparation of a CON package for new construction of nursing home buildings and estimated the application process when he has been involved years ago cost approximately \$100,000. In his experience, the potential developer of the nursing home first purchases the land. (TR. 22-25)

To obtain a license to operate a nursing home, there is a six to eight-page form that is submitted to the State of Illinois, including proper finances given the State's delay in payments. Aronin also testified the operator of a leased facility must have a significant amount of money, whether the operator's own or through investors, to obtain an operator's license and provide a security deposit. Additionally, the operator is not paid for each day of service immediately, but must work to get residents qualified and then await payment; meanwhile, staff salaries must be met along with other operations. Licenses to operate nursing homes are not transferrable; a new operator must apply to the State for an operator's license. (TR. 23, 27-29)

Aronin testified that overall bed occupancy levels in Illinois were about 80%. According to the witness, major barriers to entry in the nursing home industry include finding a building with an existing CON or having financial means to obtain a line of credit, which could be significant depending upon the size of the nursing home. He also noted the individual must have the knowledge to hire a director of nursing and obtain a licensed administrator. Aronin is not aware of the issuance of any new CONs in Illinois. The witness was last involved in a CON application in approximately 2000 when there was competition for the CON. (TR. 26-27)

As to the subject facility, Aronin testified that at the end of 2014, The Parc of Joliet "broke even," but did not make any substantial money from his understanding. In his position of providing consulting services to the facility, Aronin is in contact with personnel who operate The Parc of Joliet, who have told him there are problems. As a physically older facility, the facility does not show well/is not attractive enough to attract Medicare residents. When Mr. Slagle began operating the facility, the therapy room was also not conducive to attracting Medicare residents. Aronin also opined the lack of ability to make a substantial amount of money was due in part to the shared bathroom system; the facility is not conducive to having higher-end residents and Medicare residents, as opposed to Medicaid residents for whom the State of Illinois pays significantly less. (TR. 15-18)

Appellant's counsel asked Aronin: when capitalizing net income, do nursing home investors value the real estate? He testified it is examined more from the cash flow of the facility. While there is value to a building, and some look nicer than others, despite the appearance of the building, without cash flow, "you don't have a value because you have to pay costs." When buying a nursing home building, the analysis involves return on investment through the nursing

home operations which is attributable to the residents and the type of residents or what is referred to as the payor mix, which can include Medicaid, Medicare and private pay. A purchaser of a nursing home would examine the payor mix since some patients generate more income than others. Aronin testified that, depending upon the overall skill level of a resident, the Medicare resident generates about \$450 per day (which includes all therapy and pharmacy services) as compared to a Medicaid resident who generates about \$150 per day (but for whom the facility can separately bill for therapy and pharmacy services). (TR. 29-32)

On cross-examination by the Will County Board of Review's representative it was disclosed that Aronin's analysis of the large single cost of real estate taxes lead him to discussing the matter with Attorney Skidelsky. (TR. 34-35)

Aronin became involved with this tenant of the property around November 2013. Prior to that date, he reviewed financial statements for the previous tenant, but Aronin's office did not prepare those financial statements. The witness was unsure how far back the involvement was; he acknowledged he would have had some involvement back to 2007 working for the group when the property was last sold. Aronin also acknowledged there have been infusions of money in the facility "trying to make that facility as competitive as possible." (TR. 35-37)

Concerning the litigation against the building owner and the operating owner, Aronin testified in his experience, when the building owner is sued concerning a resident issue, in the course of the litigation, the building owner is typically dismissed from the case. (TR. 39)

In terms of value, both the real estate component and the operations component each have an intrinsic value. A nursing home buyer needs to know that a certain return can be achieved. The return is the difference between the rent and the mortgage along with other direct expenses the building owner will have to pay for the property. Aronin testified that as of the date of hearing the operator of the subject facility is four months behind in paying rent; which is a receivable, although the question of collectability remains. The witness was not aware of the amount of rent that was owed; merely that the tenant was four months behind. Aronin is not aware of an operator that would buy a building based on seeking a 7% return. As of the date of hearing, the principal amount on the mortgage was approximately \$50,000 plus interest. (TR. 39-43)

Aronin was currently not aware of any CONs in this specific region. The witness indicated he would be surprised to learn of a CON in New Lenox. (TR. 43-44)

From 2013 to current date, Aronin was not aware if the subject property has been fined by the Health Facility Service Review Board. If a fine had been issued, retained counsel would review it to determine the merits and if ultimately adjudicated to owe the fine, it would be paid. (TR. 44-45)

On cross-examination by the counsel for the intervening taxing district, Aronin testified that he has been familiar with the subject property since it was purchased in 2007 by Glenwood Real Estate LLC, who remains the owner as of the date of hearing. The Parc of Joliet, also a limited liability company, became the business operator at the property as of the end of 2013. Some members of Glenwood Real Estate LLC are also members of The Parc of Joliet and some of the members are different between the two entities. Throughout the entire time of operating the

facility, a written lease agreement between Glenwood Real Estate and The Parc of Joliet has existed. The operating entity is currently four months behind in rent payments and without reference to specific financial statements, Aronin does recall the operating entity in the past year has been three to four months behind in rent from time to time. (TR. 45-48)

While Aronin does not know the specific rental amount, he described it as a base rent payment plus real estate taxes or a triple net lease. Therefore, The Parc of Joliet is obligated to pay the real estate taxes pursuant to the lease agreement. While it is not a yearly increase and without looking at the lease agreement, the witness believed that the rent has increased since 2014. (TR. 48-49)

As of the date of hearing, Aronin as a financial advisor is currently involved with about 20 to 25 nursing homes. He estimated that he was advising about 15 nursing homes in 2014 and 2015. The number varies as Rothner and his family group change holdings; occasionally Aronin reviews financial information of a tenant where he notices something unusual, such as high nursing costs. The Parc of Joliet is a Rothner group property. (TR. 49-50)

The witness opined that money can be made in the operation of a nursing home in the right area, with the right facility and which attracts a lot of Medicare residents which lends itself to making more money which is the reason to invest in such a facility that is a for-profit business. Some of the Rothner group nursing homes are not profitable. The Rothner group has been operating nursing homes in Illinois since the early 1970's. Aronin has worked for the group for 20 years and the group was a client of his for five years prior to that. (TR. 50-52)

In following up on Aronin's testimony, the Administrative Law Judge (ALJ) asked the witness to expound on the one instance where a CON was sold without the real estate. The nursing home was in Chicago and the purchase was 15 or 20 years ago for \$20 million. The State decertified the facility and there was a HUD mortgage on which the owner was defaulted. HUD took the property back and the witness believed the building was sold for \$3.5 million. Prior to being a nursing home, the building had been used as a single-family residential hotel. When the building sold, it sold without the CON. (TR. 52-53)

Upon further questioning, Aronin addressed the fact that the State of Illinois issues CONs. The State pays for nursing home care either through Medicare as a conduit or most of the expense for Medicaid. By controlling the number of beds, it assists the State and the operator based on need or demand for more nursing home beds in a given area. (TR. 55-56)

The appellant's second witness was Charles Slagle, a licensed nursing home administrator,⁴ who has been operating The Parc at Joliet facility since November 2013. As of the date of hearing, Slagle oversees two nursing home facilities and, in his career, he has managed a total of five facilities in the long-term care industry over about 15 years. He has various family members, both children and grandchildren of Eric Rothner, who are partners with him. Slagle took over day-to-day operation of the facility as the bank, which was financing the previous operator, was

⁴ In the State of Illinois, an applicant for a nursing home administrator license must pass a State board examination as well as a federal exam. Educational requirements to sit for the examinations are a bachelor's degree or alternatively, working in nursing homes for several years prior to taking the examinations. (TR. 63)

dissatisfied with the operations and there were issues also with the Department of Public Health. (TR. 58-64)

In 2014 and 2015, the subject facility had an occupancy rate of around 65% with 125 to 130 patients. Slagle attributed the occupancy rate at the time to both the age of the facility and a poor reputation in the community making it difficult to attract patients. There are no baths in resident rooms; instead, there is a common shower/bath area for patients to share at the facility. There are newer nursing home facilities in the area which offer private rooms with baths in the rooms. The Parc at Joliet has about eight 'private rooms' or special care rooms which are required by the Department of Public Health for a resident in need of isolation for an issue such as an infection with the remainder of the rooms being semi-private. (TR. 60-61)

The witness described Glenwood Real Estate LLC as the entity that owns the subject facility and The Parc at Joliet was described as the business operating the nursing home. Slagle understood the distinction between a real estate entity and an operating entity to be a common arrangement in the nursing home or long-term care industry for liability and asset management. Slagle has an ownership interest in the operating entity; the operating entity pays rent to the real estate entity. (TR. 61-62, 68)

Slagle testified that a nursing home operating license is controlled by the Department of Public Health which conducts inspections and the facility must meet requirements set by both the State of Illinois and by the Centers for Medicare and Medicaid. The witness believes that bed occupancy levels in Illinois are around 75% to 80%. Slagle opined that there is a surplus of nursing home beds in the State of Illinois as well as in the subject's area. (TR. 64-65)

The payor mix is the combination of the sources of income for each patient such as insurance, private pay, Medicare and/or Medicaid; the varying sources having differing rates. The witness was of the opinion that the payor mix impacts the value of a nursing home. The Parc at Joliet has a payor mix of 70% to 75% Medicaid, about 20% for Medicare and a few private pay residents. (TR. 66-67)

Deferred maintenance issues at The Parc at Joliet according to Slagle include that the exterior mansard needs repair as it leaks and is chipping off. The repair estimate is about \$600,000. The windows in the facility are original, single pane windows that should be updated. He also opined that the facility does not have adequate parking; during the school year, students of a nearby high school occupy available street parking spaces; the facility also had a contract to lease land from Com Ed for an area behind the facility with power lines. The facility has paid a contractor to pave the area to add parking in the back of the facility. (TR. 67-68)

For cross-examination by the board of review representative, Slagle testified that he has an interest in the license for The Parc at Joliet facility as well as another facility. The Department of Public Health has inspected the subject facility annually and occasionally more often since Slagle became the administrator. The last annual inspection included four cited tags in the area of health (non-compliance with either federal or state regulations). He further testified that fines are issued for certain kinds of tags, but the aforementioned violations did not result in issuance of fines. Since becoming the administrator of this facility, Slagle believes there has been a fine of around \$2,000. (TR. 69-72)

The witness acknowledged that there is a process in Illinois with the Health Facility Review Board that determines whether there is a need or demand for additional beds in Illinois within a particular area or region. (TR. 73-74)

The prior tenant of this facility terminated the lease in part due to bank financing difficulties. Additionally, there was a reputation issue that the facility had difficulty managing its patients. The facility at the time included a mix of psychiatric patients and geriatric patients which caused significant problems with the regulatory agencies. As to these issues, Slagle opined both management of the facility and the building's age, with a failure to show well, both played a role in these problems. Since the building did not show well, it was difficult to attract the patients with good payor sources. (TR. 74-76)

On cross-examination by intervenor's counsel, Slagle disclosed that the other nursing home in Joliet that he has managed for about four years is known as Spring Creek. The Spring Creek facility is not profitable; Slagle is also part owner of the operations of that facility. (TR. 78)

The subject facility has deferred exterior maintenance issues as previously testified. The operations entity, The Parc at Joliet, is responsible for paying for the mansard repairs previously discussed. Repair work has not been scheduled as of the hearing date. Work was done in 2016 on leased land in the back of the facility to add parking spaces and repair parking spaces for \$130,000 which was paid for by The Parc at Joliet. During Slagle's tenure as administrator significant maintenance in excess of \$10,000 has been done on kitchen plumbing in 2015 and 2016; work was also done on mechanical equipment including hot water heaters and patient room heating and cooling units. For smaller projects as needed, plumbing work has been done in 10 to 12 patient rooms due to leaking pipes and some windows have been replaced due to a safety issue. (TR. 78-83)

During Slagle's tenure as administrator, the subject facility has done some remodeling where the plumbing work was done, including about 10 patient rooms, where new flooring and wall covering were installed after the plumbing repairs. A dialysis area was moved from one area to another within the facility in 2016 for an estimated \$80,000 to \$90,000. (TR. 83)

The appellant's third witness was John W. VanSanten, an Illinois Certified General Real Estate Appraiser, who is also licensed in at least a dozen other states. He has about 26 years of experience in the appraisal field during which time he has authored thousands of appraisal reports. His professional designations include the MAI designation from the Appraisal Institute, the CRE designation from the Counselors of Real Estate and the AI-GRS designation from the Appraisal Institute which is specific to review appraisal work and has been invited to speak by various organizations at seminars on the topic of the valuation of nursing homes. VanSanten's educational background includes a Bachelor's degree in Finance and Economics with an MBA in Real Estate Finance. He is currently employed by Stout Risius Ross where 90% of his work is focused on the valuation of healthcare real estate including nursing homes, senior housing facilities such as assisted living or independent living along with memory care, hospitals, medical office buildings, surgery centers and dialysis centers. The witness estimated he has authored hundreds of nursing home appraisal reports of properties located throughout the United States of which about 30% are of properties located in Illinois. Additionally, he has testified

previously concerning nursing home appraisal reports before local boards of review, circuit court and the Illinois Property Tax Appeal Board. After establishing his qualifications, appellant moved to call the witness as an expert witness in the field of appraising real estate and an expert in the field of appraising nursing homes. Without objection from either the board of review or the intervenor, the witness was accepted by the Property Tax Appeal Board as an expert. (TR. 85-91)

VanSanten prepared appraisal reports of the subject property as of January 1, 2014 and January 1, 2015 with opinions of fee simple value of the real estate of \$2 million for each year.⁵ At hearing, VanSanten described a nursing home as a facility which is specifically designed to provide 24-hour nursing care to patients who reside there. While a number of different elements make up the value of a nursing home, in the appraisal industry the focus is on the market value of the "total assets of the business." In a nursing home, the total assets of business (TAB) consist of the land and building (the real property), but also a fair amount of personal property (beds and equipment for medical, therapy and kitchen) and the intangible assets (assets associated with the actual business of the nursing home). (TR. 85-86, 91-92; see also Appraisal, p. 6-8, 29, 61-70)

He opined that the revenue of a nursing home is attributable to more than just the real estate; it is attributable to the actual business itself. VanSanten testified that the Medicaid rates published by the State of Illinois recognize the fact that there are three different components to the revenue stream where the real estate is only a very small component and the biggest components are the nursing services and the support services. He testified that goodwill is a generic term used to refer to intangible value which in a nursing home can consist of a number of different things, including, the CON, the license, the assembled and trained workforce which includes very specialized skills necessary for nursing care along with working capital in order to operate. Without a CON, a nursing home cannot operate; the facility has to shut down operations without a CON. (TR. 92-95; see also Appraisal, p. 7, 36-37)

VanSanten testified that the most appropriate and widely accepted ways to value a nursing home's goodwill is to compare the value indication from the cost approach to the value indication in the income approach; the difference between the two approaches reflects intangible value. He gave a further example of the concept with a hypothetically newly built nursing home constructed at a cost of \$5 million which once opened for operations supports a value conclusion of \$7 or \$8 million; in that example, the value of the real estate is reflected by the recent cost of construction and the incremental income is then attributable to the intangible assets. Another method to value goodwill is analysis of the capital cost component from the Medicaid rate; through analysis one can extract the portion that is specific to the real estate and thus, a calculation of real estate value can be made from that data. VanSanten prefers the approach which compares the cost and income approaches to value. (TR. 95-97)

VanSanten described the subject nursing home as having an original construction date of 1969 with an addition in 2011 of about 3,500 square feet or 5% of the total building area. The appraisal report further describes two separate one-story additions to the original building constructed: a 2,669 square foot therapy room addition and an 888 square foot expansion of the entrance area. VanSanten concluded that 95% of the building was 45 years old and 5% was 3

⁵ As noted previously, the two years' of tax appeals were consolidated for purposes of hearing.

years old which resulted in a weighted age of 43 years in 2014. He determined the building contains 61,095 square feet of building area based on the property record card; after touring the building, VanSanten determined that the square footage stated on the property record card was erroneous in that it did not reflect the entire building. (TR. 97-98; Appraisal, p. 50)

VanSanten's report described the subject property as being in fair to average condition overall. Other than the new additions, he noted the building shows significant wear and tear, including a variety of deferred maintenance items. VanSanten also found the general condition of the facility to be "pretty rundown in most areas." He found two hallways (the 200 and 300 halls) that had received some cosmetic updates in 2011, but the rest of the facility looked essentially original. It was noted by observation and discussion with maintenance staff that there are a number of roof leaks, heating/cooling units for the rooms are near the end of their useful lives, plumbing is original and results in periodic leaks, windows are the original single-pane, metal frame at the time of construction and the mansard has deteriorated which requires repair. It was also noted the ceiling tiles in some instances were mixed, mismatched, missing entirely and/or show signs of water damage. Likewise, the report described ceramic and vinyl tile repairs were non-matching or missing tiles entirely. (TR. 101-03; Appraisal, p. 50)

The subject property, with a weighted average age of 43 years, has some maintenance and obsolescence issues which impact the property, but VanSanten determined an effective age for the subject of 35 years. The subject has maintenance issues, but also has functional obsolescence in the building design of shared rooms that are not up to current market standards which is a very big factor in the effective age estimate. The witness also viewed the building on the morning of the hearing and noted the exterior mansard roof is breaking off and peeling which detracts from curb appeal. (TR. 101-03; see Appraisal, p. 49-50)

The appraisal concluded that the subject's highest and best use as vacant would be to hold the property for future development for a healthcare use and the subject's highest and best use as improved was continued use as a nursing home facility. (TR. 99; Appraisal, p. 57-58)

VanSanten utilized all three approaches to value in preparation of the appraisal report. The appraiser ultimately gave primary consideration in his final value conclusion to the cost approach because of the nature of a nursing home which he opined is a special purpose property. The property has been designed to provide 24-hour nursing care and the cost approach, by its very nature, excludes intangible value. By comparison, when the income approach is considered with the capitalization of the cash flows from the business, VanSanten contended that the result is a value for the whole going concern, the total assets of the business, not just the real estate. This is the same issue with the sales comparison approach to value; sales of nursing homes very rarely involve only the real estate. Nursing home property sales most often reflect the going concern that is being transferred, such that the sale price reflects the real estate, the personal property and the intangibles that are associated with the property. As such the sale price is a good indication of the going concern value of the property, but it is not a good indication for the real estate value. (TR. 103, 105-06)

The first approach developed by VanSanten was the cost approach to value where the initial step is to estimate the value of the land. As depicted in appraisal pages 71 through 77 (Appellant's Exhibit 1), VanSanten estimated the value of the subject's land using five sales of vacant land

located in Joliet and Crest Hill. The land comparables range in size from 1.23 to 8.83-acres or from 53,579 to 384,635 square feet of land area. The sales occurred from July 2012 to March 2014 for prices ranging from \$245,000 to \$2,472,500 or from \$4.57 to \$12.78 per square foot of land area. He made adjustments to the comparables for location, size and configuration which resulted in adjusted sale prices ranging from \$4.57 to \$7.67 per square foot of land area. Based upon the data, VanSanten estimated the subject land had a value of \$5.50 per square foot of land area or \$580,000, rounded. In testimony, he also noted this value estimate was consistent with the 2014 land assessment of the subject parcel reflecting a market value of \$583,000. (TR. 104-05; Appellant's Exhibit 1, p. 71-77)

The next step under the cost approach was to estimate the replacement cost new of the building by use of cost estimates from the Marshall Valuation Service, including applying the estimated remaining economic life (REL) for a Class "C" average quality nursing home with an expected life of 40 years. VanSanten noted this estimate was also consistent with what is seen in the marketplace given the dramatic changes in nursing home standards, moving away from old institutional feeling buildings like the subject. The old facilities have many shared rooms whereas currently the market standard is for private rooms, not only for personal privacy but also for clinical reasons to prevent the spread of infection and a reduction in the rate of medical errors. New facilities also offer more amenities, more of a resort-type feel as opposed to the old institutional design of the subject. Many of the rooms in the new facilities have private baths whereas the subject supplies toilets in the rooms and provides separate shower rooms. As to modern developments, VanSanten also has seen a Starbucks in a nursing home. (TR. 99-101; Appellant's Exhibit 1, p. 49, 80)

Page 81 of the appraisal outlines the costs drawn from the Marshall Valuation Service totaling \$9,709,500. The appraisal report noted that architect's fees and other soft costs were not included in the cost manual data; VanSanten calculated architect's fees at 6.81% of total hard (direct) costs and other soft costs were estimated at 5%. VanSanten also considered the issue of entrepreneurial incentive, the expected profit for the entrepreneur's contribution to the development of the project, as well as the assumed risks. The appraiser asserted that entrepreneurial incentive is generally only applicable to properties built on speculation; built-to-suit or special-use properties are built for a specific end user.⁶ Since this appraisal assignment was to estimate the market value of the real estate, VanSanten determined that it would be inappropriate to add entrepreneurial profit to the cost approach and he further found there was no market evidence to support inclusion of entrepreneurial incentive. He estimated the replacement cost new to be \$10,856,175. Next, depreciation was estimated using the age/life method with effective age of 35 years divided by the 40-year remaining economic life resulting in depreciation of 87.5%. Once this accrued depreciation is deducted, the result is a depreciated value of the improvements of \$1,357,384. (TR. 103-04, 106-07; Appellant's Exhibit 1, p. 78-82)

To arrive at a final opinion under the cost approach, VanSanten summarized the estimates on page 82 for the depreciated replacement cost new of the building, the land value and the depreciated value of site improvements for asphalt parking, concrete sidewalks and the like.

⁶ He relied in part upon The Appraisal of Nursing Facilities, by James K. Tellatin, which states, "Because nursing facilities can have significant tangible value, much of the entrepreneurial profit may be interpreted as intangible value."

This resulted in a final estimate of value under the cost approach of \$2,000,000, rounded. (TR. 108; Appellant's Exhibit 1, p. 82)

The appraiser also estimated a value for the personal property (FF&E) at the subject facility. VanSanten testified that there is an industry standard for nursing homes of typically around \$5,500 per bed cost new in personal property; this includes beds, kitchen equipment, therapy equipment and the like. As the subject facility has 203 beds, VanSanten estimated the total cost new for personal property to be \$1,116,500. Based on observations during inspection of the subject property, VanSanten estimated the personal property was depreciated about 60% resulting in a depreciated value of personal property of \$446,600 or approximately \$2,200 per bed. (TR. 107-08; Appellant's Exhibit 1, p. 80)

In the report from page 83 through page 106, VanSanten displayed the analysis performed for the income approach to value on the subject property using the direct capitalization approach which involves analysis of the market rental rate, estimated market vacancy, projected operating expenses and then capitalizing the net operating income to derive an estimate of market value. He testified that he gave this approach secondary consideration in his final opinion because it is problematic when trying to estimate the value of just the real estate; it was given secondary weight because there necessarily must be a deduction for intangible value. (TR. 109; Appellant's Exhibit 1, p. 83-106)

Under the income approach, VanSanten testified that he reviewed the subject's operating history including, the payor mix (Medicare, Medicaid and private pay) along with historical occupancy rates which had been between 59% and 68%. Sources of income include, not only the daily service rates charged to residents, but also revenue from additional services. Data for the operating history was drawn from Medicaid Cost Reports filed by the facility for 2010, 2011 and 2012 with the data for 2013 was taken from the owner's financial statements. As part of this analysis, VanSanten's report also mentioned that the facility operator recently changed; the previous lessee gave the property back to the lessor in November 2013 "after prolonged financial difficulties. Since this time, the lessor has taken over operations of the facility." The appraiser also examined data on competitive properties concerning average daily rates and occupancy levels. VanSanten reported the subject property for 2010 through 2013 had either 74,095 or 74,298 available resident days and had total resident days for the same period ranging from 43,870 to 50,658 which resulted in occupancy percentages ranging from 59.21% to 68.37%. Private pay residents for the period ranged from 2.98% to 5.04% whereas Medicaid residents ranged from 64.29% to 75.08% of the total payor mix with "other" resident types ranging from 20.20% to 32.72%. VanSanten testified that "typically Medicaid is a money loser for nursing homes." He opined that nursing homes which are highly dependent upon Medicaid tend to be far less profitable than facilities with higher percentages of private pay residents. He further opined that newer, more attractive facilities, attract private pay patients whereas older, more rundown facilities are mainly left with Medicaid patients resulting in less profit than the newer facilities. VanSanten also testified to an additional dynamic in Illinois where, due to State budget problems, the State is typically from six months to one year in arrears on paying Medicaid reimbursements. The appraisal report also details five Joliet area nursing homes with occupancy rate data, number of beds and average daily rates. These facilities had occupancy rates ranging from 69.1% to 93.9%, with the number of beds ranging from 120 to 214 and with average daily rates ranging from \$99.08 to \$214.21. Using this data along with the subject's historical

occupancy levels and rates, VanSanten estimated the average daily rate for the subject to be \$135 per day with an estimated average stabilized occupancy rate for the subject of 65% resulting in potential gross income of \$6,501,836 for room and board. (TR. 109-13; Appellant's Exhibit 1, p. 84-86)

VanSanten also analyzed other revenue sources as depicted on page 87 of the appraisal report. He analyzed historical revenue earnings from physical therapy, speech therapy, occupational therapy, drugs, radiology and other outside services. Based on analysis of the 2010 to 2013 revenues for these items, VanSanten projected \$48 per patient day in these revenues or \$2,311,764. The appraiser also estimated other income generated from application fees, increased levels of care, medication/eating assistance and similar services. From this data for 2010 through 2013, VanSanten estimated other income from these services for the facility of \$10.00 per patient day or \$481,618. (Appellant's Exhibit 1, p. 87)

The appraiser next began an analysis of operating expenses, excluding real estate taxes, commencing at page 88 of the appraisal report through page 92. In testimony, VanSanten noted that the nursing care expense is "the most expensive cost component typically in any nursing home because of the level of care" providing 24-hour skilled nursing care. This expense analysis again involved historical data from the subject along with data on the comparable area properties. For the operating expenses of general and administrative, dietary, laundry and linen, professional services, employee welfare, housekeeping and plant and management fees, excluding real estate taxes, the appraiser estimated total expenses for the subject of \$8,688,380 or \$180.40 per patient day. Using the income data and expense data that VanSanten developed, he estimated net operating income of \$606,838. A deduction of \$143,951 was subtracted from the net operating income to account for the return of and on personal property as depicted on page 93 of the appraisal report. VanSanten explained at hearing since the purpose of the appraisal is to determine the value of the real estate, he wanted to ensure income attributed to the personal property was excluded. Thus, the net operating income of the business less personal property was \$462,887. The final step in the income approach to value was to estimate the capitalization rate to be applied to the subject's net income. (TR. 113-14; Appellant's Exhibit 1, p. 88-92)

In the appraisal report from page 93 to 98, VanSanten set forth the various sources used to convert a single year income projection into an indication of value by dividing the income estimate by an overall capitalization rate. The appraisal report discussed the available methods to derive a rate taken from the market (sales prices), band of investment, annuity method and straight line, among others available. VanSanten reported that overall capitalization rates derived from market sales ranged from 9.28% to 19.29%. He also reported that investor survey data indicated a range of overall capitalization rates from 10% to 13.30%, with an average overall rate of 12.10% for licensed skilled nursing long term care properties. For this assignment, "given the subject's advanced age, its fair to average condition and its consistently low occupancy and financial difficulties, an overall capitalization rate of 12.50% is considered appropriate." Next, the appraiser added 2.21% to account for an effective tax rate or tax load resulting in a total capitalization rate of 14.71%. Capitalizing the net income resulted in an estimated market value of the total assets of the business (less personal property) of \$3,100,000, rounded. From this figure, VanSanten deducted the intangible asset value of \$1,100,000 to

arrive at a total estimated value of the real estate of \$2,000,000. (TR. 114-18; Appellant's Exhibit 1, p. 93-98)

To extract the subject's real estate from the going concern value, VanSanten looked to two of three available methodologies: the cost approach comparison methodology and the capital cost methodology. Under the cost approach comparison methodology, the market value of the real estate of \$2,000,000, as determined in the cost approach, was deducted from the subject's going concern value of \$3,100,000 to arrive at a value of the subject's business/personal property of \$1,100,000. (Appellant's Exhibit 1, p. 96-98)

Under the capital cost methodology, the appraiser looked to the Medicaid reimbursement rate for the subject for 2014, as set by the Illinois Department of Healthcare and Family Services.⁷ The total rate for this period was \$147.21 per patient per day with \$12.87 of this total rate being attributable to capital costs. Reportedly \$3.50 of the reimbursement for capital costs is attributable to equipment, working capital interest costs, and real estate taxes. The remaining \$9.37 is, thus, attributable to the land and building; VanSanten multiplied \$9.37 by 365 days per year, 203 total beds and a 65.00% occupancy rate to arrive at a net income attributable to the land and buildings of \$451,190. A capitalization rate of 10% was utilized to arrive at a value for the real estate of \$4,510,000, rounded. The value of the real estate was then subtracted from the subject's going concern value of \$3,100,000 to arrive at a zero intangible asset value. VanSanten noted that the State of Illinois has not "re-based" the land and building costs in more than 20 years. VanSanten concluded that the capital cost component method did not provide an accurate estimate of the market value of the real estate. (Appellant's Exhibit 1, p. 102-03)

In reconciling these two methodologies to determine the subject's business value, he utilized only the cost approach comparison methodology and set the subject's business/personal property value at \$1,100,000 which was subtracted from the subject's going concern value of \$3,100,000 to arrive at a final estimate of value for the subject's real estate under the income approach to value of \$2,000,000. (TR. 117-19)

The final approach to value developed by VanSanten was the sales comparison approach which he gave minimal weight in his final conclusion of value because a nursing home sale includes the going concern along with intangible assets and personal property. As such, the sales comparison approach is not a good method for determining the value of the underlying real estate only, although it is a good check on the value. For the sales comparison approach, VanSanten utilized four comparable sales of skilled nursing and/or intermediate care facilities located in Wilmington, Winfield, Mattoon and Stickney. The parcels ranged in size from 10,596 to 402,930 square feet or .24 to 9.25-acres of land area and were improved with buildings that range in size from 14,676 to 43,424 square feet. The buildings were built between 1964 and 1986 and have from 51 to 171 beds. The comparables have occupancy rates ranging from 52.6% to 96.9% and sold from December 2011 to August 2013 for prices ranging from \$1,260,000 to \$6,300,000 or from \$21,622 to \$43,478 per bed. (TR. 119-21; Appellant's Exhibit 1, p. 107-112)

⁷ The Property Tax Appeal Board finds that while the text of the appraisal reported the rates were "according to the Illinois Department of Public Aid (IDPA)" in July 2014, the 'source' cited in the table within the appraisal was the Illinois Department of Healthcare and Family Services.

After making adjustments for "market conditions" ranging from 1% to 6% per property and for location, number of beds, condition and "other/economic factors" that ranged from downward adjustments of 20% to 50%, the appraiser opined adjusted sale prices per bed ranging from \$17,022 to \$22,457. In testimony, VanSanten noted investors are more concerned with cash flow from the nursing home in the course of purchase and sale transactions. In analyzing the data, he contended if a comparable has a net operating income per bed that is significantly higher than the subject, the sale price per bed would likewise be expected to be higher and thus a downward adjustment is necessary. To illustrate this point, VanSanten discussed sale #2 in Winfield that presented a net operating income per bed of \$6,281 whereas the subject has a net operating income per bed of \$1,938. After adjusting the sales, VanSanten concluded sales prices ranging from \$17,022 to \$22,457 per bed and, thus, from the comparable sales data, VanSanten concluded that the subject's market value was \$18,000 per bed or \$3,700,000, rounded. Next, the subject's business/personal property (intangible assets) of \$1,100,000 and depreciated personal property of \$446,600, as determined previously in the appraisal report, were subtracted from the concluded market value to arrive at a value for the subject's real estate under the sales comparison approach to value of \$2,150,000. (TR. 121-23; Appellant's Exhibit 1, p. 110-112)

In reconciling the three approaches to value, VanSanten as previously stated gave minimal weight to the sales comparison approach, secondary consideration to the income approach and primary emphasis to the cost approach since this latter approach does not capture business value/personal property above and beyond the value of the subject's real estate. Both the income and sales comparison approaches require the additional business value/personal property to be extracted. He also testified that the cost and income approaches were both required to ascertain the value of the real estate of a nursing home. The income approach was used, in part, to ascertain whether the value of the real estate exceeded the subject's going concern value. In summary, ascertaining the value of the subject's real estate separate from the subject's total business value/personal property was best accomplished by the cost approach and VanSanten accorded this approach the most weight in reconciling the three approaches to value. After reconciling the three approaches to value, he concluded that the subject's market value as of January 1, 2014 was \$2,000,000.

Cross-examination was first conducted by the representative for the Will County Board of Review. The witness was asked about the types of residents at nursing homes such as both geriatric patients and psychiatric patients. VanSanten has been in nursing home facilities that have a mix of both geriatric and psychiatric residents, but typically one wing is devoted to psychiatric patients so as to segregate them from the rest of the population. VanSanten agreed that goodwill may be impacted at a facility with a bad reputation. (TR. 128-30)

The witness reiterated for his final value conclusion the cost approach was given most weight, the income approach was given secondary weight and the sales comparison approach was given "even less than that." VanSanten confirmed the 2014 report included depreciation of 87.5% with an effective age of 35 years and an overall life of 40 years resulting in a remaining economic life of 5 years. (TR. 130-31)

Although on page 84 of the appellant's appraisal report, VanSanten indicated the operator of the subject facility changed in November 2013, he is not aware of the terms of the lease. (TR. 132)⁸

Next, the witness was cross-examined by counsel for the intervenor concerning the payor mix of a nursing home being Medicare, Medicaid and private pay with a preference by facilities of Medicare over Medicaid patients and a preference for private pay over Medicaid patients. VanSanten further testified that Medicare and private pay were viewed as equally profitable to a facility. He also reiterated that the age of a facility will affect the type of patients that can be obtained. Additionally, how well a facility is run will also affect obtaining one type of patient versus another. All other things being equal, a better run facility would be more likely to get more preferable types of patients. (TR. 134-35)

The ALJ made inquiries of the witness establishing that the appraisal is reflective of the fee simple value of the real estate as part of the going concern. The property is made up of real estate, personal property and intangible assets. The purpose of the appraisal report was to value the underlying real estate; this excludes the personal property and the intangible assets. A CON is required by every nursing home in order to operate and is not solely transferrable in Illinois. The revenue estimates in the appraisal report were based on a per patient day. (TR. 136-37)

Board of Review Evidence

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$1,456,659. The subject's assessment reflects a market value of \$4,383,566 or \$21,594 per bed, land included, when using the 2014 three year average median level of assessment for Will County of 33.23% as determined by the Illinois Department of Revenue.

In opening statement, the board of review representative John Trowbridge focused on an assertion that the appellant's appraised valued conclusion of \$2 million is illogical since in 2007 the subject property was purchased for \$7.1 million and subsequently the new owner invested an additional \$902,000 in renovation work. When asked by the ALJ, Trowbridge acknowledged that business value and intangibles are not assessable in Illinois as real property under the Property Tax Code. Trowbridge further responded that the board of review simply disagreed with the manner in which the appellant's appraiser made the extraction.

In support of its contention of the correct assessment the board of review submitted a seven-page narrative signed by Jim Brenczewski, Joliet Township Assessor, and Dale Butalla, Commercial Appraiser/Deputy Assessor, along with Exhibits A through I.

The board of review called Dale Butalla as its sole witness.⁹ Butalla has worked for the Joliet Township Assessor's Office since July 2014 and has worked in the assessment field since about

⁸ The board of review representative and counsel for the appellant engaged in an extended objection about the lack of record evidence concerning lease terms presented by the appellant and whether those terms were reflective of market. Counsel for the appellant asserted, in part, that any lease of the subject property is not an arm's length lease since it is between related entities. (TR. 132-34)

⁹ Appellant's counsel objected to the presentation of the witness contending that an e-mail request was made on September 4, 2018 seeking an identification of witnesses and there was no disclosure. The Administrative Law

1993. He has the Certified Illinois Assessing Officer (CIAO) Master's designation from the Illinois Property Assessment Institute (IPAI) and is a member of the Illinois Assessing Association. Butalla also holds other designations and membership positions in the assessing field. Butalla is not a licensed appraiser or licensed review appraiser. (TR. 139-41, 181; Board of Review Exhibit 1)

Counsel for the appellant engaged in *voir dire*. It was established that the witness, despite not being a licensed appraiser in the State of Illinois, testified that he has performed one full-blown appraisal of a hundred pages concerning a data center. Butalla has never appraised a residence like "you would get from a fee appraiser" although he has "used the three or four main pages to the appraisal reports and used them, but all the extra I'm going to call it fluff, no." When asked if he had ever appraised a nursing home, Butalla responded in part that is "sort of what the evidence is because I did all three approaches to value and I came up with a conclusion to value." The witness was not familiar with the phrase 'payor mix' applicable to a nursing home facility. He also opined that one way to value a nursing home would be on a per-square-foot basis which may be the best unit of comparison depending on which approach to value "has the most sound data behind it should be given most weight." Butalla prepared his cost approach from Marshall & Swift. His income approach data was taken from the VanSanten appraisal "just restructured mainly based upon what [I] felt the evidence supported." The sales comparison approach included two sales from the VanSanten report along with two additional sales. (TR. 141-45)

Upon further *voir dire*, Butalla described nursing home personal property as fixtures, furniture, equipment and "could be a ton of stuff"; items including nursing supplies, rehab center equipment such as exercise equipment, office furniture as well as kitchen equipment. The witness included in nursing home goodwill, the name, perception and the CON which is the biggest item. Butalla acknowledged that the management team could have an effect on goodwill and it could include the assembled staff and training. (TR. 145-47)

The Will County Board of Review moved to have Butalla accepted as an expert assessor and an expert in real estate valuation which request was taken under advisement. Butalla further acknowledged to the ALJ that he has never taken the course offered by the IPAI entitled "Valuation of Senior Housing Properties." (TR. 147-48)

As to the expert witness designation, the Property Tax Appeal Board hereby finds that Butalla is an Illinois assessing official with numerous years of experience in the assessment of property in Illinois. The Board finds him to be a qualified expert in real estate valuation in the assessment field; this is distinctly different from expertise as an appraiser which the witness does not have the proper certifications as a licensed appraiser in Illinois. (86 Ill.Admin.Code §110.162 compare 68 Ill.Admin.Code §1455 et. seq.)

In his capacity as a deputy assessor, Butalla has valued about five other nursing homes located within Joliet Township. In the course of placing valuations on those properties, he also has reviewed sales of about 12 properties in total located outside of the township. Butalla testified that he prepared a report on the subject property using a cost approach, an income approach and

Judge responded that by procedural rule, a party has 30 days to respond to such a request for witnesses. (86 Ill.Admin.Code §1910.93) Given a hearing date of September 18, 2018, the objection was overruled. (TR. 138)

a sales comparison approach from which for tax year 2014 he concluded an opinion of value for the subject property of about \$4.6 million. (TR. 149, 151-52)

The first three pages of the board of review's seven-page narrative contains 19 enumerated criticisms of the VanSanten appraisal report. In summary, criticisms included the building size issue which was carried over to cost approach calculations; disagreement with the REL calculation noting both purchase and remodel information and therefore "we highly disagree with nearly 90% depreciation to the subject"¹⁰; disagreement with adjustments to the land sales; disagreement with foundation cost based on square footage issues; multipliers in the cost approach were not shown; the income approach data for additional nursing and other income were believed to be based upon subject data, not market data; and for the sales comparison data criticisms were made for descriptive data disputes and dissimilarity for proximity, quality and/or number of beds along with critiques of adjustments made by VanSanten to the comparable sales. The narrative also made a point of criticizing VanSanten's use of one value approach to adjust another approach. The narrative concluded disagreement with primary reliance upon the cost approach which would be highly applicable when a property is new, but the subject is 45 years old. Given the appraiser's reliance upon the cost approach to deduct personal property value, Butalla contended that if the cost approach was in error, it would throw off the personal property adjustment and the resulting figures in the income approach and the sales comparison approaches. Therefore, Butalla contended that three approaches were not independent. Based on the foregoing criticisms, the author(s) of the narrative contended that little weight should be placed upon the VanSanten appraisal report. (TR. 183-84)

As additional support contradicting the VanSanten appraisal, the board of review through the township assessor's office provided various exhibits. For example, Exhibit D consists of a property record card which Butalla obtained from the Wilmington Township Assessor depicting a construction date of 1972 with an addition that was constructed in 1983. As further described in the memorandum, this refutes the date of construction in the VanSanten appraisal for sale #1 of 1986. For the VanSanten sales comparison approach, Butalla contended he found nothing to support "other economic factors" for which the appraiser adjusted the comparables. (TR. 160, 184)

Exhibit E was described at hearing by Butalla as an Illinois map depicting the location of the subject and VanSanten appraisal sale #3 in Mattoon. Although he did not have many details of the process, Butalla asserted that the subject property is located in Region 9 for purposes of determining whether another CON should be issued whereas appraisal sale #3 was in Region 1. Butalla further testified that a [CON] facility is currently under construction and another one was constructed in the area in the last few years. From this, the witness assumed that there is a demand in the area. (TR. 161-63)

Exhibit F consists of photographs of VanSanten appraisal sale #4 located in Cook County along with printouts from the Cook County Assessor's website due to a discrepancy in square footage. Butalla further noted that there is no parking lot for this comparable property presented by the

¹⁰ In the narrative at item 2, Butalla concedes "[t]he subject is 43 years old, according to Marshall & Swift the normal life expectancy is 40 years."

appellant. He testified that the beige building depicted in the bottom photograph was purchased later and converted for use by the existing neighboring nursing home building. (TR. 163)

In testimony, Butalla pointed out that the photograph of the front of the subject property contained in Exhibit A depicts the 2010 [*sic*] addition to the building with a canopy and one-story area. Looking to the property record card data, Butalla testified that the subject building contains 63,684 square feet of building area.¹¹ The witness disagrees with and could not confirm the building size stated in the VanSanten appraisal of 61,095 square feet. The narrative also asserts that an inspection of the subject building revealed the property to be in average condition "with no major signs of deferred maintenance"; Butalla did not provide any testimony on this point or contend that he inspected the subject property. The township's narrative also noted its opinion that the highest and best use of the subject property as improved was for continued use of the current improvement. (TR. 152-55)

Exhibit C of the board of review submission is a copy of the PTAX-203 Illinois Real Estate Transfer Declaration concerning the sale of the subject property in February 2007. The document depicts full actual consideration of \$7,146,374. As the subject property has a 2014 assessment reflecting a market value at the three year median level of assessment of \$4,383,566 or \$21,594 per bed, Butalla testified that the difference between the sale price and the estimated market value based upon the assessment "could be personal property for some," "could be depreciation for some," but he further noted that there was an addition and remodeling performed after the purchase. Exhibit C also included a copy of the PTAX-203-A for non-residential transfers with sales over \$1 million. This document at Line 8 indicates that the net consideration for real property on Line 13 of the PTAX-203 form did not reflect the fair market value on the sale date; also written in was the following: "sale of real and personal property, but buyer and seller cannot agree as to the allocation between the assets." Butalla noted these PTAX-203 documents do not specify a value of the personal property. Butalla opined that the difference in value between the current assessment of the subject property and the reported 2007 sales price of the property "could" reflect the personal property. However, when asked by the ALJ when as the assessor would he use a 2007 purchase price to determine a value for 2014 and/or 2015, Butalla responded that "in general, wouldn't." (TR. 155-58)

Exhibit G consists of cost data prepared by Butalla, but he also testified that he did not do a cost approach analysis. The data in Exhibit G was taken from Marshall & Swift cost tables which Butalla displayed in three sections: main structure, two-story portion; one-story addition; and the 2010/2011 addition with an adjustment for age. The calculations for 2014 were based upon an incorrect building size assumption of 63,894 square feet of building area. Butalla calculated depreciation based upon typical life of 60 years; he came to this opinion based both upon Joliet nursing homes and "properties in general," not the Marshall & Swift determination of 40 years. He determined effective age to be 30 years and arrived at 50% for physical depreciation for Sections 1 and 2; 10% physical depreciation was applied to Section 3. Butalla's documentation under the cost approach concluded a market value of \$3,808,212 for the building. Also presented as part of Exhibit G is a land sales spreadsheet Butalla prepared with eight sales, four of which are located in Joliet Township. The land sale comparables are located from 1 mile to 7

¹¹ Contrary to Butalla's testimony at hearing, page 4 of the narrative describes the subject building as containing 63,894 square feet as do both the property record card printout and schematic drawings contained in Exhibit A.

miles from the subject property. The parcels range in size from 20,909 to 193,406 square feet or from .48 of an acre to 4.44-acres of land area. Each comparable has water and sewer and all but one comparable are noted to have superior locations. The subject has restricted business zoning and zoning for each of the comparables is business, which is a broader zoning category. The properties sold between May 2011 and April 2014 for prices ranging from \$550,000 to \$2,472,500 or from \$9.34 to \$19.17 per square foot of land area. Butalla made adjustments for township, date of sale, size, location and shape to arrive at adjusted sale prices ranging from \$7.76 to \$17.06 per square foot of land area. From this data, Butalla set forth his opinion of value for the subject land of \$8.50 per square foot or \$900,000, rounded. (TR. 163-67, 170-71)

Butalla testified that he did not agree with the VanSanten cost approach set forth in the appellant's appraisal because it was "done based upon component in place." Butalla had a hard time understanding the VanSanten approach for a building that was built in 1969; he also enumerated difficulty in determining depth of concrete, the correct amount of concrete for the two-story portion, what is in the walls, what is in the rafters and all the other parts. While he believed the concrete calculation was excessive, Butalla also was of the opinion that costs for electrical, roofing, plumbing and similar components in place were missing from the VanSanten calculation. Butalla testified that he was not able to confirm the multipliers reported by the appraiser. In addition, he felt the depreciation applied was excessive based upon other comparable properties and based upon the addition that was built along with the remodeling "I believe has only extended the life of the property." Recognizing the effective age of 35 years and estimated life of 40 years as determined by VanSanten, Butalla testified that while the economic life of the property would be concluded in 2019, he testified that he has not seen any permits to demolish the subject property. Upon questioning by the ALJ, Butalla agreed that remaining economic life is not equivalent to tearing down a structure but stands for the proposition that the improvement "no longer produces to the value of the property." (TR. 167-70, 182-83)

Butalla further opined his disagreement with the 87.5% depreciation applied by VanSanten. The basis for disagreement was that after the purchase, the new owner constructed an addition which increased the size, replaced the roof and there have been other permits on the property, including remodeling work and extending the parking lot. Butalla testified that these actions typically extend out the life of the property and therefore, he felt the two issues were contradicting each other. Butalla also testified that VanSanten's report on condition referenced talking to maintenance personnel although there was no indication the information was confirmed; also, a roof leak was noted but there was no follow-up indicated although there is a 2010 permit for the roof. (TR. 175-77)

Exhibit I displays five individual pages depicting comparable properties along with a grid analysis depicting comparable sales #1 through #4 which Butalla gathered in response to this appeal.¹² At the bottom of the grid analysis, Butalla noted any details from the real estate transfer declaration concerning personal property/FF&E, but none of the comparables had any data on that issue. The comparables were located in Joliet, Wilmington and Winfield. Comparables #3 and #4 were the same properties as VanSanten appraisal sales #1 and #2. The comparable parcels range in size from 104,108 to 402,930 square feet of land area improved with

¹² There was no explanation why the grid did not contain five comparables as displayed in the individual sheets.

one-story or two-story masonry buildings that were constructed between 1971 and 1974. The buildings range in size from 21,712 to 55,498 square feet of building area and range from 120 to 214 beds. The properties sold between December 2011 and August 2013 for prices ranging from \$4,013,940 to \$6,664,844 or from \$18,757 to \$55,540 per bed, including land. Butalla applied adjustments for "city," land-to-building ratio and size/number of floors/number of beds ranging from no adjustment to 25% in order to arrive at adjusted sale prices ranging from \$18,757 to \$47,209 per bed, including land, from which he concluded a value for the subject of \$28,000 per bed. Butalla then applied an FF&E per bed of \$5,500 to arrive at his adjusted value for the subject of \$22,500 per bed or a market value of \$4,575,000, rounded. (TR. 172-73, 186)

Butalla testified to his disagreements with the VanSanten income approach to value as it did not reflect vacancy "and stuff like that for comparable properties." Exhibit H is entitled Operating Income Statement with the subject's parcel identification number and "name" stated as Pineview Care Center Nursing Home. Occupancy was stated as 78% and a "market/contract rent per square foot" of \$135.00. The document depicts a potential gross income of \$10,002,825 with a 22% vacancy and collection loss or deduction of \$2,200,622. Additional care income was depicted as \$48 and miscellaneous income was depicted as \$10 which resulted in an effective gross income of \$12,099,714. No expenses were depicted in the document, but then a deduction of 93% was made from effective gross income resulting in a net operating income (NOI) of \$846,980. The document next depicts a capitalization rate of 12.5% with a tax load of 3.47% added for an overall capitalization rate of 15.97% when applied to NOI results in a market value of \$5,303,569. Next, a deduction for FF&E was made of \$558,250 resulting in a "market value of real estate" which was stated as \$4,745,318.85. At hearing, Butalla provided no testimony about Exhibit H. (TR. 183; Exhibit H)

Based upon the foregoing and as part of the board of review's submission in a letter issued by Rhonda Novak, Supervisor of Assessments and Clerk of the Board of Review, the board of review requested confirmation of the estimated market value of the subject property based upon its current assessment.¹³

On cross-examination, Butalla addressed Exhibit C, the PTAX-203 concerning the 2007 sale of the subject property which depicts that the property was not advertised for sale prior to the transaction. Butalla agreed that generally it is important that a property be exposed to the market to be considered an arm's-length sale transaction. He acknowledged that the lack of advertising and the inability to determine the amount of personal property are factors that raise questions about the indication of value. As to the data in Line 8 (h) asserting the subject property is an "assisted living" facility, Butalla noted that he frequently seeks errors on PTAX-203 documentation, but noted the document "is a starting point." Also, Line 10 (m) depicts that "buyer is exercising an option to purchase" which Butalla noted would typically mean the buyer was a tenant on the property; typically such a transaction involving a tenant would probably be below market value. (TR. 187-92)

As to the building size determination of 63,684 square feet, Butalla testified the figure was based upon his physical inspection of the subject property where he measured the exterior of the

¹³ At hearing, based upon the documentary evidence, Trowbridge on behalf of the board of review briefly orally made an assertion that the assessment of the subject property should be increased.

facility with a 100-foot fiberglass tape measure and a Mite-R-Gage to address the angles. Butalla further addressed that the drawing of the subject property as part of the property record card erroneously treated a canopy/portico area as enclosed building area and thus overstated the building size. Thus, the total building area changed as a result of the measurement, but the drawings were not altered. (TR. 193-96; see also Exhibit B)

As to the witness' opinion that there is a demand for nursing home beds in Region 9, which covers more than just Will County, due to issuance of a CON for a new nursing home currently under construction outside of Joliet Township and another CON that was issued a year or two ago; Butalla did not know if a facility had been built for that second CON. Butalla does not have knowledge of the configuration of new nursing home facilities in terms of private rooms with showers and similar amenities. It was also possible that there is a need for Medicare beds, but not Medicaid beds. (TR. 196-99)

Exhibit G which depicts Butalla's cost approach, the witness testified that he used a 60-year economic life based on his observations of "what's typical for I'm going to say the Joliet area." He opined the buildings in Joliet are kept longer than the life expectancy in Marshall & Swift or similar publication; Butalla asserted that Marshall & Swift life expectancies are used throughout the United States, they are not Illinois specific. The witness expounded on the demolition of a smaller building in downtown Joliet that was replaced by a larger, five-story building for the Joliet Junior College downtown campus. Butalla also dated the Will County administration building, a former Sears, as having been built in the 1950's. (TR. 199-201, 208)

Butalla applied 10% functional obsolescence in his Marshall & Swift Cost analysis as part of Exhibit G. He based the figure upon his own opinion, "based upon the fact that I'm doing it on various things"; one reason was that the majority of the rooms in the subject facility were two-bed as opposed to one-bed rooms. Butalla acknowledged that the growing trend in area nursing homes was for one-bedroom units. In April 2015 when Butalla spoke with the administrator of the subject facility, he learned that in rehabbing portions of the facility, more one-bedroom units were being established although two-bedroom units would also remain at the facility, some of which are desirable for family members to stay together. (TR. 201-06)

Butalla's cost analysis in Exhibit G depicts an estimate for the main building of \$9.168 million, for the one-story addition of \$510,000 and for the small therapy room addition of \$560,000 which results in a replacement cost new of approximately \$10,239,474. In comparison, VanSanten's appraisal report at page 81 depicts a replacement cost new for the subject of \$10,856,175. If Butalla accepted the Marshall & Swift 40-year life expectancy for a nursing home, the resulting depreciation to his replacement cost new would be 75%, as opposed to his application of 50% depreciation to the main building and the one-story addition; depreciation for the therapy room was shown as 10%. (TR. 206-08; Exhibit G)

For Butalla's income approach to value (Exhibit H), he applied a daily rate of \$135 per bed which is identical to the rate applied in VanSanten's income approach to value. Butalla applied a 93% expense ratio by examining the four market expense comparables in VanSanten's report on page 88 which ranged from 82% to 101%. The witness explained the basis for use of market expenses is what is typical; for an income approach, the analysis should be market data, not necessarily subject data. Despite the occupancy data for the subject reported by VanSanten for

2012 and 2013 of 62.92% and 68.37%, respectively, in Exhibit H Butalla used 78% occupancy for his analysis based upon the comparable facilities in order to reflect market data. (TR. 208-11, 216-17)

As to Exhibit F depicting one of the VanSanten comparables that included a two-story building that was purchased by the neighboring nursing home facility; Butalla does not have personal knowledge as to what the two-story building is used for by the nursing home facility. (TR. 211-13)

As to Butalla's assertion that the current property owner has invested a million dollars since the purchase in February 2007, he is basing that statement on permits for the property that began in 2008 with a tear off and re-roof for \$145,000 which was classified as a remodel; to the years 2014/2015, the total reflected in permits is about \$166,000 per year. (TR. 214-16, 223-24)

In Exhibit I, Butalla set forth comparable sales data on four properties, two of which are within Joliet Township. In the analysis, Butalla made no deduction for goodwill as he did not know how to quantify it. The underlying documentation, PTAX-203s, did not depict any allocation for the sale prices such as going concern; the data also did not depict any personal property. Butalla testified that he believes the sales represent "the sale of the structure itself," but he also made an allowance of \$5,500 per bed for personal property. At hearing and without copies of the PTAX-203 documents, Butalla did not know if these sales were exposed to the market. (TR. 217-21)

In questioning from the ALJ, Butalla acknowledged that mere maintenance and repairs with use of comparable materials does not increase the value of a property for assessment purposes, but noted it would extend the life of the facility. The 2007 sale of the subject property for more than \$7 million is greater than the individual sales prices any of the four comparable sales in Exhibit I. (TR. 224-26)

Furthermore, Butalla agreed that conceptually a nursing home consists of real estate, personal property and intangible assets and under the Property Tax Code, only the real estate is to be assessed. He also agreed that removal of the value of personal property and intangible assets from an entity like a nursing home can be challenging as it is also for properties like hotels. Butalla acknowledged that what such a property sells for does not necessarily reflect what it will be assessed at. (TR. 232)

Intervenor

The intervening taxing district adopted the evidence presented by the Will County Board of Review and participated minimally in the hearing of this matter as noted in this decision. (86 Ill.Admin.Code §1910.99)

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or

construction costs. 86 Ill.Admin.Code §1910.65(c). 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 to do. 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). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The appellant submitted an appraisal along with the testimony of the appraiser to establish that the subject property was overvalued. The appraisal estimated the market value of the subject's real estate to be \$2,000,000 or \$9,852 per bed. The Property Tax Appeal Board finds the appraisal and testimony from VanSanten were persuasive that the subject property was designed for and operates as a skilled nursing home facility. The credible evidence of record established through the parties to this proceeding that a skilled nursing home include FF&E and intangibles, which are commonly known as business enterprise value, not just real estate. Furthermore, the appraiser's decision to rely primarily upon the cost approach to value with support from the income approach to value in his final reconciliation was well-stated in that, as the Property Tax Appeal Board finds that the cost approach to value typically estimates the market value of the real estate without any intangible assets. The cost approach prepared by VanSanten considered both direct (hard) costs and indirect (soft) costs as part of the approach. He articulated in detail why there was no addition for entrepreneurial profit in the cost approach analysis. VanSanten provided credible and supported testimony as to his value conclusion using the three traditional approaches to value and articulated the adjustments that were made and the bases for those adjustments.

The board of review presented criticisms of the appellant's appraisal report as developed by the township assessor along with documents depicting the efforts of the Joliet Township Assessor to perform a cost approach to value, an income approach to value and a sales comparison approach to value in order to arrive at and justify the estimated market value of the subject property as reflected by its assessment. The main thrust of the response presented by the board of review were perceived deficiencies in the appraisal submitted by the appellant. Notwithstanding those criticisms, the appraiser provided a competent response to issues raised by the board of review. The efforts of the board of review as an opposing party to refute the appraisal valuation with criticisms does not nullify or shift the burden of proof or demonstrate the subject's assessment is correct. The Property Tax Appeal Board is not to afford *prima facie* weight to the findings and conclusions of fact made by the board of review (Mead v. Board of Review of McHenry County, 143 Ill. App. 3d 1088 (2nd Dist. 1986); Western Illinois Power Cooperative, Inc. v. Property Tax Appeal Board, 29 Ill. App. 3d 16 (4th Dist. 1975). The decision of the Property Tax Appeal Board must be based upon equity and the weight of evidence. (35 ILCS 16-185; Commonwealth Edison Co. v. Property Tax Appeal Board, 102 Ill. 2d 443 (1984); Mead, 143 Ill. App. 3d 1088.) A taxpayer seeking review at the Property Tax Appeal Board from a decision of the board of

review does not have the burden of overcoming any presumption that the assessed valuation was correct. (People ex rel. Thompson v. Property Tax Appeal Board, 22 Ill. App. 3d 316 (2nd Dist. 1974); Mead, 143 Ill. App. 3d 1088.)

Additionally, as to the board of review's arguments concerning the 2007 sale of the subject property, the Board finds that the evidence in the record concerning this sale failed to isolate the *ad valorem* market value of the real estate alone. The 2007 sale of the subject property was of no help in determining the *ad valorem* market value of the subject property as there was no evidence the property was advertised or marketed and there was no allocation of the personal property and/or intangible business value that was part of the transfer. Additionally, the sale from 2007 is dated as to the assessment date at issue of January 1, 2014. The documentary evidence presented by the board of review failed in its weight and credibility to overcome the appraisal report presented by the appellant.

Furthermore, the documentary evidence presented by the board of review fails to overcome the detailed appraisal report and accompanying testimony presented by the appellant through VanSanten, an appraiser with many years of experience in both the appraisal field and specifically in the appraisal of nursing home properties. The data and documentation presented on behalf of the board of review through Butalla failed to overcome the appellant's evidence and failed to support the current assessment of the subject property.

Based upon the preponderance of the most credible market value evidence contained in this record, the Board finds the best evidence of market value to be the appraisal submitted by the appellant. The Board finds the appraisal submitted by the appellant considered the unique factors associated with the subject property in arriving at the opinion of value, VanSanten considered the fact that the subject property had a business component due to the extensive care services provided that had to be separated from the value of the underlying real estate. The Property Tax Appeal Board has given little weight to the arguments and evidence presented by the Will County Board of Review which failed to address these unique characteristics of the subject property and were not presented by a licensed Illinois appraiser. The subject's assessment reflects a market value of \$4,383,566, which is above the best evidence of market value in the record as contained in the appellant's appraisal report. Therefore, the Board finds the subject property is overvalued and a reduction in the subject's assessment commensurate with the appellant's request 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



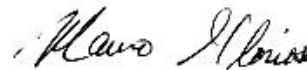
Member

DISSENTING: _____

CERTIFICATION

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

Date: July 16, 2019



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

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