AMENDED
FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Woodbridge Bridges SB1 LLC
DOCKET NO.: 14-03408.001-C-3 through 14-03408.002-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Woodbridge Bridges SB1 LLC, the appellant, by attorney Michael J. Elliott, of Elliott & Associates, P.C. in Des Plaines; and the DuPage County Board of Review, by Patrick C. Doody, of the Law Offices of Patrick C. Doody in Chicago, appearing as Special Assistant State's Attorney in DuPage County.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
14-03408.001-C-3	08-22-206-018	109,563	10,633	$120,196
14-03408.002-C-3	08-23-114-010	528,512	309,969	$838,481

Subject only to the State multiplier as applicable.

For purposes of this appeal and pursuant to Property Tax Appeal Board rule 1910.78 (86 Ill.Admin Code §1910.78), Docket Nos. 13-03679.001-C-3 and 13-03679.002-C-3 were consolidated with Docket Nos. 14-03408.001-C-3 and 14-03408.002-C-3 for purposes of oral hearing. A separate decision will be issued for each docket number.

Statement of Jurisdiction

The appellant timely filed the appeal pursuant to Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) 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 properties consist of two vacant parcels which function as the common area for the Main Street at Seven Bridges retail property and the common area for the Northwest Quadrant of Main Street at Seven Bridges. The two subject sites contain approximately 660,144 square feet or 15.155 acres of land area. The Main Street Common Area ("MSCA") referred to herein as parcel "010" contains 546,791 square feet or 12.553-acres of land area and was developed with

pad sites containing seven retail buildings and one mixed-use building. MSCA contains 17 pad sites (approximately the same size as the buildings built on them) with four pad sites remaining available for development. This parcel functions as the common area for the developed/undeveloped pad sites and is improved with asphalt-paved parking and driveways, decorative brick pavers, concrete walkways, lighting standards and landscaping.

The Northwest Quadrant Common Area ("NWQCA") contains 113,353 square feet or 2.602-acres of land area and is the common area for the northwest quadrant of Main Street at Seven Bridges. NWQCA referred to herein as parcel "018" is vacant, undeveloped, contains minimal site improvements and is platted for five pad sites.

The Seven Bridges retail property is part of a larger 400-acre master planned mixed-use development that includes single and multi-unit residences, a golf course, an 18-screen Cinemark IMAX theater, ice skating arena, health and fitness center, banquet facility and various other commercial properties. The development is part of the Seven Bridges Regional Planned Unit Development ("Seven Bridges RPUD") which governs the development of the properties. The Seven Bridges RPUD ordinance approved a conceptual development plan for the subject properties; a table of use and bulk regulations for the subject properties along with a number of parameters governing the development of the properties. The original annexation agreement has been amended nine times between 1988 and 2007. The properties are located in Woodridge, Lisle Township, DuPage County, Illinois.

The appellant appeared through counsel before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value. The appellant is not contesting the assessments of the building pads, but rather, the assessments placed on the common areas. In support of the overvaluation argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraisers Sarah McGurn and Michael S. MaRous of MaRous & Company. Both appraisers are Members of the Appraisal Institute ("MAI") and have the MAI designation. The appraisers estimated the fee simple interest value for the property known as MSCA of $820,000 as of January 1, 2013 and January 1, 2014. (Appellant's Ex. 1). Further, the appraisers estimated the fee simple interest value for the property known as NWQCA of $57,000 as of January 1, 2013 and January 1, 2014. (Appellant's Ex. 1).

As part of appellant's argument, counsel argued that assessing real property in Illinois requires the assessor to assess the land, buildings and all rights appurtenant thereto. Counsel argued that with respect to the building pads, one of the rights appurtenant thereto is the right to use the common areas in common with the other owners in the development. Counsel further argued that the assessor has an obligation to assess that right, and has done so, when he assessed the building pads at, near or above what they trade for. As a result, counsel argued the assessor also assessed the common areas at nearly $6,000,000. It was argued that the values of the common areas are included in the values of the building pads and are being assessed a second time to the owner of the common areas, effectively taxing them twice.

Counsel for the board of review argued that MSCA and NWQCA serve as parking lots for the improved portions of the development and that the development could not function without the parking lots, which are used to support the occupied properties, and have value. Counsel further

argued that all tenants have the right to use the parking lots to attract people to their businesses and the parking lots add value to the complex as a whole.

As its first witness, appellant's counsel called David Galowich, president of Madison Realty Group, Inc. Galowich stated that Madison Realty Group, Inc. primarily acts as real estate developers, brokers and real estate consultants. Galowich testified that Madison Realty Group was engaged on behalf of property owners to help them entitle and develop land along with consulting and brokerage for office and retail. In the last 10 years, his firm has been involved in consulting with owners of distressed debt to reposition properties and figure out how to best recover some value on the distressed property. Galowich is licensed to practice law in the State of Illinois and is also licensed by the State of Illinois as a managing real estate broker. His practice of law involved real estate development and related activities.

Galowich testified that Seven Bridges, the largest development which encompasses the subject parcels under appeal, was a several hundred-acre development which contained a golf course. The development was purchased by a joint venture with an intent to develop the property. The development was annexed to the Village of Woodridge, which created a regional planned unit development for the site. It was intended to provide a mix of uses. The golf course was reconfigured and the original annexation agreement envisioned a wide variety of improvements, including residential, multi-family residential, commercial, office and other uses.

Galowich was contacted by Starwood Capital because he was familiar with several assets that were in a pool of distressed debt that Starwood Capital was purchasing. He was asked to consult Starwood Capital to evaluate the subject property and figure out why it was in distress and what could be done to remedy the problem along with adding value with an intent of trying to resurrect the failed development. Galowich testified that based on his interviews with the Village of Woodridge, the developer and all others involved, the Village of Woodridge pushed hard for some uses that the Village of Woodridge wanted to see; they wanted to create a "Downtown Woodridge" on the subject site and wanted to create a Main Street development. The development was to contain a hotel and walkable retail.

As of the valuation dates in question, Galowich testified that Woodbridge Bridges SB1, LLC, controlled by a joint venture of Starwood Capital and Burl Real Estate Services owned the common areas at MSCA. Galowich went on to explain that the planned unit development ordinance that applied to the subject property allowed a mix of uses, including single-tenant and multi-tenant restaurants, multi-tenant retail buildings, multi-tenant office buildings, mixed use retail and residential units, a 7-12 story condominium building in the northwest quadrant along with a hotel, bank and single-story retail. The hotel was required to be built and operating before the condominium could be built. Galowich stated the subject property is accessed from two access points off Route 53. Development for MSCA began in 2004. As of the valuation dates in question, 8 of the 17 building pads were improved with buildings.

From his review of the declaration of covenants, Galowich stated the development was intended to be owned by multiple owners. As of January 1, 2013, there were five distinct property owners within MSCA: the theater, Buffalo Wild Wings, the Suparossa building, the Tilted Kilt building and Woodbridge Bridges SB1, LLC. Galowich testified that when title was conveyed for the building pads, the new owner received a deed for that lot within the MSCA. He stated that the

recorded declaration of covenants, conditions and restrictions of record gave the new owner the right to utilize the access and parking in the common areas. Galowich stated that once the pads were improved, it was highly unlikely that the subject could be converted to a single ownership.

The William Harris entity initially managed the common areas. After a foreclosure in 2011, a receiver was put in place, wherein it was decided to bring in a third party, Waveland Property Management, to manage the common areas and act as an association manager. The property manager was responsible for collecting assessments from all the owners and using that money to maintain the common areas, including landscaping, streetlights and signage. The property manager was required to account back to the owners.

Galowich testified that the subject is zoned within the Village of Woodridge "ORI" with a planned unit development, and a regional planned unit development as well. Galowich explained that a regional planned unit development is when you are trying to develop a mixed-use parcel and you have a variety of uses that do not fit cleanly into one zoning classification, you can contractually enter into an agreement with the zoning authority (the Village of Woodridge) to get some relief from the strict interpretation of the zoning and be granted additional rights. The planned unit development is another form of zoning, and in this instance set forth the uses of density, roads, parking requirements, setbacks, various uses within a parcel and an approved building site plan along with other development regulations (Appellant's Exhibit T-5). In dealing with the Village of Woodridge, Galowich testified that parking was important to the Village to make sure that with the density of the buildings and multiple owners, they wanted to be sure they all had adequate access to parking. Moreover, the proximity of parking relative to the buildings and building pad owners was very important. Galowich stated the theater owns its own parking lot, however, as part of the planned unit development, the owners at MSCA were permitted to share parking arrangements. For example, an office building would need parking during the day, but a restaurant would primarily need parking at night, so they would share a parking lot. Because of the shared parking, the Village required an association to own and manage the parking areas. Galowich stated unless the planned unit development was amended, it was not possible to build other parking or construct a building outside of the building pads. No buildings could be built within the common areas. The planned unit development was amended in 2007.

Galowich further testified that he approached the Village of Woodridge prior to the valuation date regarding the northwest quadrant, which was raw land. He stated that the uses that were dictated by the planned unit development for the northwest quadrant were not economically viable uses. Galowich stated the Village wanted a hotel, but from his conversations with multiple real estate brokers and potential hotel flags, they could not find any users. Another consideration allowed by the village was a grocery store. Again, Galowich could not find any users interested in putting a grocery store there because the northwest quadrant has no sight line to Route 53 and the nearest entrance is not signalized. Galowich testified that the Village of Woodridge rejected a multi-family residential rental development and an assisted-living facility for the northwest quadrant.

Galowich testified that the building pad owners were granted an easement within the planned unit development to use and enjoy the common areas for their intended purposes, including, but not limited to, passage, parking of vehicles, driveway areas, pedestrians to be able to walk over

and across the parking and sidewalk areas, et cetera. Galowich considered this a burden on the common areas. The planned unit development allowed the property manager to modify the parking areas if there was reasonable alternative parking. However, with respect to the Suparossa parcel and the Signature Grill parcel, those two parcel owners had to approve if their rights were restricted or hindered. An amended declaration also granted Buffalo Wild Wings additional restrictions wherein the sight lines and parking for that parcel could not be altered. As of January 1, 2013, and January 1, 2014, Woodbridge Bridges SB1, LLC owned the common areas. An association was given the common areas for free and took over control and maintenance of MSCA and NWQCA in the fall of 2016.

Galowich further testified that no parking could be built on the building pads and none of the building pads have direct access to public roads without crossing the common areas. Galowich stated that the common areas at MSCA and NWQCA are burdened by zoning, the planned unit development, easements and restrictions of record that run with the land in the event of transfer. Galowich testified that he attempted to market the building pads for sale, however, he never attempted to market the common areas. Galowich stated it was a failed development that was broken into pieces and had entitlements that were not usable. Galowich opined that the only economically viable solution was to sell the development in pieces, and, as such, the common areas had no value. He stated that the declaration did not allow the owner of the common areas to mark up the charges for the maintenance. In addition, the owner just had to pay the costs of the maintenance, there was no opportunity to create a revenue stream off the parking lots; the owner is simply reimbursed for the costs of maintenance.

On cross-examination, Galowich testified that if the pad sites did not have access to the common area parking, it would negatively impact the value of the pad sites. He stated the association that was formed to manage the common areas was a not-for profit and was not entitled to collect fees above the expenses of maintaining the parking lots. Galowich made no attempts to sell the common areas, however, they did contact brokers regarding Seven Bridges which included marketing of the Northwest Quadrant in its entirety, which was vacant land. No attempt was made to market the common areas associated with the individual improved pad sites because of the shared parking arrangements and would not have been allowed to be subdivided by the village. Galowich testified that in 2013 and 2014 the common areas were still owned by the Woodbridge Bridges SB1, LLC. When inquiry concerned the buildable/non-buildable aspects of the common areas, Galowich testified that it was virtually impossible to get the changes needed to carve out a building pad and build.

The next witness called by appellant's counsel was Michael S. MaRous, owner of MaRous & Company. MaRous is a real estate appraiser and consultant. MaRous is a Member of the Appraisal Institute ("MAI") and has the MAI and Senior Residential Appraiser ("SRA") designations. He was invited to membership to the Counselors of Real Estate 19 years ago, which is a consulting designation. He has appraised property for over 40 years.

MaRous testified he inspected the subject property on multiple occasions in the spring of 2014, then in 2016 and 2017. The purpose of his appraisal report was to estimate the fair market value of the subject properties for tax appeal purposes. Initially, MaRous requested all documents impacting the value of the subject property plats, the PUD development, multiple amendments, easements and Village of Woodridge ordinances/resolutions and planning commission minutes

along with a retail market report (feasibility analysis) prepared by Valerie Kretchmer for the Village of Woodridge published in July 2013. He also reviewed a hotel feasibility analysis prepared by T.R. Mandigo & Company around the same time frame. MaRous also reviewed market research, comparable research, demographic research, mapping programs, websites, traffic information along with interviews with brokers, developers, lending institutions and his personal files of retail properties throughout the Midwest.

MaRous described the subject properties as the larger parcel being "010" and the smaller parcel "018." He stated basically the large parcel provides roads, driveways, parking for the office development, and parcel "018" the smaller parcel, contained four pads, which were not included, but were dedicated for driveways, and potential parking areas for future development. MaRous testified that at the time of valuation, there were four [sic] pieces of ownership, the improved parcels, the main parcel for the common areas and the developer. The larger parcel contains asphalt paving, landscaped islands, curb, gutters, trees, signs, walkways and sidewalks. The Northwest Quadrant is an open field and contains no improvements. MaRous stated most of the building owners utilize State Route 53 and access the subject on Mulligan or Woodridge Drive over the common areas. MaRous testified that traditionally, if exposure and marketing time are over a year, then it's a red flag that the value is too high. However, as an additional caveat, MaRous testified that due to the restrictions that applied to the subject common areas, it was questionable if there was any market and if the marketing time was even relevant.

Regarding the Northwest Quadrant, MaRous considered the physical characteristics which included utilities, however, there were legal restrictions in place. This parcel contained undeveloped pads, but the Village of Woodridge required retail, a hotel and a bank. MaRous stated that after hundreds of solicitations with no demand from various real estate brokers, Valerie Kretchmer was commissioned and hired by the Village to consider the feasibility of supply and demand in the competitive market after the Northwest Quadrant had been sitting vacant for 9-10 years. MaRous stated he basically found retail and office on the Northwest Quadrant in mid-2013 was not feasible. Ted Mandigo, a real estate professional, was then hired by the Village to prepare an analysis. Mandigo's analysis stated the subject Northwest Quadrant was not a good site as there were better more competitive sites in DuPage County, therefore, there was no market for the Northwest Quadrant property. MaRous testified that at the time of valuation, the zoning and PUD agreement required a hotel, condominium, bank and retail be built on the Northwest Quadrant with the hotel being built prior to the condominium.

MaRous described the subject as an "in-between" location. He stated it has good demographics, a nice golf course and a variety of uses, however, it has no anchor. The retail corridors are Oakbrook to the north, Yorktown to the west with main street DuPage to the south. In addition, once Interstate 355 opened to Interstate 80 there was significant development with a mall, Bass Pro Shop and Meijer's. He stated the subject falls "in-between" with no anchor. MaRous testified that the building pad owners have rights for vehicular access, parking, pedestrian traffic for workers and clients. These rights are conveyed by deed and are stated in the RPUD. MaRous testified that the real estate market was getting better in 2013 and 2014, however, the retail market was basically being overcome by "e-commerce" and was still soft. He stated that retail in the very best locations were doing well, but the "in-betweens" and secondary locations were struggling.

MaRous testified Main Street at Seven Bridges was an attractive asset in a good location, but it is a failed retail development, having gone through foreclosure and with having vacancy of approximately 67%. The restaurants appeared to be doing better with revenue of $322 per square foot, however the retailers had revenue of $122 per square foot. In comparison, MaRous stated Apple has revenue of $5,000 per square foot in Oak Brook Mall and the retailers on North Michigan Avenue have revenue of $2,000 per square foot, which makes the subject revenue figures appear paltry. MaRous stated the occupancy costs for DuPage County was $7 per square foot, which were on the high-end for retail.

In 2013 and 2014 the zoning at Main Street at Seven Bridges was office, research and light industrial, also providing restrictions specific to the subject development. Further the subject has bulk restrictions regarding setbacks, making it harder to develop. However, MaRous testified the subject was sold as building pads under "Max Building Coverage" meaning they can sit on 100% of the lot with minimum landscaped area of 0%. MaRous stated that they could concentrate the value of the asset on the building pad because they had the benefit of the common area for their parking and other supportive services.

The appraisal MaRous prepared is for the common areas, not the pad sites. MaRous testified that based on the zoning documents, the common areas are not capable of being developed with buildings and can only be used to support the current commercial development. MaRous stated, therefore, there is no economic return to the Main Street common area subject property for its legally permissible use, as all economic value has been transferred to the pad sites.

MaRous testified that highest and best use is the foundation for an appraiser to determine, based on feasibility and legality, what the highest economic return is that a property could support. It sets the foundation for what can be done, what the market is, establishes market participants, what the demand is and what comparables are utilized. The first step in a highest and best use analysis is to look at what is physically possible, road access and utilities. Then shape and topography are examined for construction of buildings. Legality is examined based on zoning, restrictive easements or covenants and open-space restrictions.

Next, financial feasibility is examined. MaRous stated the highest economic return is examined which he found was stripped because it has all gone to the pad site, so there really is not any economic return in a conventional situation that would create the most value. Looking at the Northwest Quadrant, MaRous testified there are no improvements there, and with the restrictions in place on uses, it was not feasible to build a hotel, retail office or a bank based on its inferior location. Because of this, he found nothing would provide economic return for this parcel. He found both parcels, as if vacant and improved, their highest and best use was to provide support for the pad sites.

MaRous considered all three traditional approaches to value in his report. However, for the Northwest Quadrant, which is vacant, only the sales comparison approach was used. MaRous next discussed why he considered open-space in his analysis regarding the subject property. He stated that since the economic value of the subject has been transferred to the pad sites, in his opinion, it has some similarity to open-space; the subject is land that cannot support physical building improvements. MaRous described open-space as land that is open and clear of building improvements, and most of the time, site improvements. MaRous testified that the subject

property does not meet the definition requirements to be considered open-space. MaRous stated that under the statute, the County must determine what they are going to assess open-space land at, and DuPage County assesses open-space land at $0.11 per square foot. MaRous testified that the subject has attributes similar to open-space, such as zoning easements not allowing it to be developed. MaRous stated the perfect comparable to the subject property would be well-located suburban Chicago property that had site improvements on them with irregular shapes, where the economic value through deed restrictions or zoning had been transferred to pad sites within similar market conditions and arm's-length transactions.

MaRous utilized comparable sales that had development potential and then made a significant downward adjustment because of the subject's non-development potential. MaRous utilized five commercial land sales. Sale #1, which was also utilized by Renzi in his appraisal report for the board of review, is a 3.7-acre parcel in Woodridge, rectangular in shape near 75th Street, with good frontage, good shape and B2 zoning. This parcel sold in December 2013 for $3.42 per square foot of land area, and could accommodate a one-story office building. Sale #2 is located at the western edge of DuPage near Winfield/West Chicago. It is a 21-acre parcel, irregular in shape with minimal frontage and encumbered 10% by a fresh water pond. This parcel is zoned residential, and was purchased for mixed-use development of retail, multifamily with a lot of open land. Comparable #2 sold in April 2013 for $1.30 per square foot of land area. Land sale #3, is located in Glendale Heights in a more intensive commercial retail area. Sale #3 is a 3-acre site with good frontage, good shape and commercial zoning that sold in December 2012 for $4.56 per square foot of land area. Land sale #4, located in Warrenville, contains 4.8-acres near the Interstate with good frontage and good exposure. The site was acquired for an office, medical or strip shopping center and sold in June of 2012 for $2.76 per square foot of land area. Land sale #5, located in Bolingbrook, was in a prime commercial area. This sale was 11-acres, is rectangular in shape with retail zoning and sold in August 2008 for $5.74 per square foot of land area. The land sales had a unit range from $1.30 to $5.74 per square foot of land area before adjustments.

MaRous testified that he applied a slight adjustment downward for sale #5 for property rights with all others being equal to the subject. Locations were generally equal except sale #5 which was highly superior to the subject. Visibility was equal except for the subject parcel "018" which is inferior to the comparables. MaRous further testified that all comparable land sales required a significant downward adjustment for development potential. Various adjustments were made to the comparables as compared to the subject's larger parcel of 12.5-acres and the smaller parcel of 2.5-acres.

MaRous also examined DuPage County Forest Preserve District acquisitions for open space which could not be developed. He examined six sales. The sales were in Bartlett, Addison, Darien, Downers Grove and Warrenville. The sales ranged in size from 2.7-acres to 41.02-acres or from 117,612 to 1,794,672 square feet of land area and sold from May 2008 to July 2012 for prices ranging from $121,359 to $257,339 per acre or from $2.40 to $5.91 per square foot of land area.

MaRous then examined open space land sales in the collar counties. He examined six land sales located in Lake County, McHenry County and Will County. These sales ranged in size from 63.72-acres to 145-acres or from 2,775,687 to 6,316,200 square feet of land area and sold from

January 2006 to March 2007 from prices ranging from $12,912.74 to $100,000 per acre or from $0.30 to $2.30 per square foot of land area. MaRous testified that these sales were purchased based on their highest and best use, which was for development potential, however, they reflect the lower economic value.

In conclusion, MaRous, noting that DuPage County values open space at $4,650 per acre or $0.11 per square foot in 2013 and after looking at the above open space land sales, collectively the final land value estimate was based on the market data found in the three land data sets.

For the MSCA (12.553-acres or 546,791 square feet of land area) and the NWQCA (2.602-ares or 113,352 square feet of land area), after analyzing the comparable land sales in relation to the subject property for factors such as time, location, size, development potential, and other factors of consideration, MaRous estimated a unit land value of $0.50 per square foot of land area for the MSCA subject property of $273,396 or $273,000, rounded, and for the NWQCA of $56,676 or $57,000, rounded.

In his site improvement value conclusions, MaRous found the MSCA subject property was improved with site improvements serving as support for common area to the existing improvements. The site improvements included asphalt-paved driveways, concrete curbs and gutters, freestanding lighting with lawn and perimeter landscaping. Replacement cost new of the site improvements was estimated to be $3.50 per square foot, entrepreneurial profit of 2% and based on 546,791 square feet, it came out to a replacement cost new of $1,913,769, plus entrepreneurial profit of $38,275 for a total replacement cost new estimate for the MSCA of $1,952,044.

The site improvements were considered to be in average condition and were at least 9 years old. Physical deterioration resulting from normal wear and tear and the overall age for purposes of estimating physical deterioration was 9 years. Useful life for the site improvements was 15 years which yielded a 60% depreciation attributed to physical deterioration resulting in an estimated replacement cost new less depreciation of $1,171,226. Functional obsolescence due to design fault or lack of amenities and external obsolescence was attributed to the economic recession beginning in late 2007 observed in the industrial, retail and office sectors of the real estate market which led to lower rents, higher vacancy rates, higher expense ratios, increased overall capitalization rates and scarcity of market acquisitions. MaRous' report depicts the subject has a high turnover among the small stores and restaurants in the development due to a combination of high occupancy costs at the center and lack of visibility along with superior locations of competing properties, and because of this, MaRous estimated a 30% depreciation due to both functional and external obsolescence.

Based on the estimated cost new of the subject property and a modified age-life method of estimating depreciation, the total dollar amount attributed to all sources of depreciation for the subject property was $1,405,472 which amounts to a total depreciation estimate of approximately 72%. MaRous noted in his report that in the modified economic age-life method of estimating depreciation, the functional and external obsolescence is applied to the on-going subtotal calculations developed within the cost approach and not applied to the property's estimated cost new. After subtracting depreciation from the estimated replacement cost new indicated a

depreciated value of the MSCA subject property to be $547,000 or $1.00 per square foot of land area.

In conclusion, after adding the value of the depreciated site improvements of $547,000 to the value of the land, MaRous estimated the overall retrospective market value of the MSCA subject property to be $820,000 (rounded) or approximately $1.50 per square foot of land area as of January 1, 2013 and January 1, 2014.

As for the NWQCA, which he testified is currently vacant undeveloped land with no value added for site improvements, he estimated the overall retrospective value as of January 1, 2013 and January 1, 2014 to be $57,000 or approximately $0.50 per square foot of land area.

Testimony then turned to the differences and/or similarities between the subject property and the Oak Brook Mall which was the subject matter in the case of County of DuPage v. Property Tax Appeal Board, 660 N.E.2d 985 (1995). MaRous testified that he was involved in Oak Brook Mall as the consultant/appraiser for the County of DuPage in the appraisal of the Saks Fifth Avenue store. MaRous stated Oak Brook Mall is an extremely successful regional shopping center with major anchors probably over 40 years old and continues to adapt to the demands of the modern marketplace. Oak Brook Mall has experienced continual renovation, modernization and additions over the last 30-plus years. In contrast, the subject is basically a series of pad restaurants and small retail uses with no anchor. MaRous would characterize Oak Brook Mall as an open center as opposed to an enclosed mall like Woodfield. MaRous stated the anchors of Oak Brook Mall are in the corners within inline stores for smaller retailers in-between the anchors. Oak Brook also has sidewalks, walking paths and landscaping with parking along the periphery of the center. Oak Brook Mall also has outlots, office buildings and a hotel.

It was MaRous' understanding JMB Corporation owned most of the mall tracts or basically the entire mall except for Sears/Marshall Fields or Macy's and Neiman Marcus. He stated Neiman Marcus was basically on a pad site with Macy's and Sears having a large field of parking beside their anchor stores. The difference being, Sears and Marshall Fields owned a large parcel upon which there was the store and parking, whereas, Neiman Marcus only owned a building pad with Saks Fifth Avenue having a leasehold. Nieman Marcus and Saks Fifth Avenue built their buildings, but, the owner of the shopping center owned the pad site.

MaRous agreed with the 2nd District Appellate Court, that there was a symbiotic relationship between Saks Fifth Avenue and Nieman Marcus on the one hand and the rest of the Oak Brook Mall in that the anchors create value for the small shop space and midsize shop space and increase the value of the rents, which increases the occupancy and value of the mall. Likewise, the small shop space and restaurants and entertainment areas provide another draw to the shopping center.

At Main Street Commons, MaRous stated the common areas and parking lots are 100% located within the two lots, except for the Movie theater, which has its own. All the parking areas are within the common areas which is different than that of Oak Brook Mall. At Oak Brook Mall the owner of the shopping center had control of the parking lots to make additions or redevelopment. For example, Nordstrom's built a state-of-the-art five level parking deck on a former parking area in the northeast corner of the shopping center along with other various

building additions in places where only parking existed. At Oak Brook Mall many lots owned by JMB contained buildings, common areas and parking all within the same parcel index numbers. In contrast, the subject has building pads for buildings separate from the lots that contain common areas and parking, thereby creating a significant difference from a design standpoint relative to location of building, parking and pads being distinct from Oak Brook Mall.

During cross-examination, MaRous testified the pad sites probably could not function without the parking lots. If parcel "010" was not improved with any parking whatsoever, it would virtually have no parking. MaRous agreed that neither parcel number "010" nor "018" are open-space land under the strict definition. MaRous further agreed parcel "010" is improved with a parking lot and parcel "018" is vacant land and has no current use, except it is being held for development. MaRous testified that neither Saks Fifth Avenue nor Neiman Marcus could function without access to the parking at Oak Brook Mall. MaRous agreed the owners of the pad sites on parcel "010" have the right to let customers park on parcel "010." In fact, the owners contribute to the upkeep and maintenance of parcel "010" which includes payments of property taxes. MaRous also agreed that the entity that owns five of the eight buildings on Main Street Commons also owns the common area whose tenants have the right to use the parking. MaRous' basis for the statement that there is no economic return to parcel "010" in developing the highest and best use is that the parking spaces are not effectively rented based on market rates, cannot be rented, and the space cannot be improved with an economic commercial building like what has been built on the remaining areas of the site. MaRous testified that the pad sites are owned individually and have improvements, but need parcel "010" for their parking. He agreed the pad sites will not be able to function without access to the parking on parcel "010."

MaRous further agreed that his highest and best use estimate drove his selection of comparables. MaRous admitted that in relation to the comparables he selected for parcel "018" at least two of them had rental apartment use. Further, the first five land sales were significantly smaller than the subject property. Three of the sales were like the subject's smaller parcel, however, they were smaller than the larger parcel. Only land sale #4 was zoned like the subject. MaRous testified that his client, in preparation of the appraisal report, was Main Street at Seven Bridges, the owner of the subject parcels under appeal. The pad site owners are responsible for a percentage of the maintenance costs of the common areas on parcel "010" and "018" based on their proportionate share of ownership. MaRous testified that the economic value of the subject parcels is restricted in value because of the RPUDs, thereby making this an important consideration when selecting comparable sales. MaRous agreed only one of his comparable sales was restricted with a PUD. He stated the other four should be considered because they have commercial zoning and when they are bought, then they must go in for a development plan which is amended with a PUD after the land acquisition. MaRous further agreed, that when looking at a comparable that does not have a PUD restriction like the subject, an appraiser could make a downward adjustment if that were appropriate, however, he did not.

In his appraisal report, MaRous states the subject should be held in the interim basis for further development of retail and office. The highest and best use as vacant in the interim is for open space. He agreed that as of January 1, 2013 and January 1, 2014, the status or characteristic of the subject parcel "018" was not open space. MaRous testified it was only a hypothetical as vacant; the parcel was not vacant. When questioned about his estimation of highest and best use

as improved, he found the subject's highest and best use as improved was as currently improved as common area for the development with parking, driveways and open space.

During redirect, MaRous testified that the obligations of the developer were to maintain the subject properties and charge back to the owners for the costs without profit.

This completed the appellant's case-in-chief, wherein a reduction in the assessments for the subject parcels was requested to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessments of the subject properties were disclosed. Parcel "018" had a 2014 land assessment of $285,640 with an improvement assessment of $0. Parcel "010" had a 2014 land assessment of $1,620,960 and an improvement assessment of $50,970 for a total 2014 assessment for the two subject parcels of $1,957,570. The subject's assessments reflect an estimated market value of $5,873,297 or approximately $8.90 per square foot of land area, including improvements, when applying DuPage County's 2014 three-year median level of assessments of 33.33%.

In support of the subject's assessment, the board of review submitted an appraisal of the subject properties.[1] The appraisal report conveys an estimated market value for parcel "010" of $6,950,000 and for parcel "018" of $825,000 as of January 1, 2013. (Board of Review Exhibit 1). The appraisal was prepared by Neil J. Renzi, John K. Yelinek and Jason A. VanDevelde of Renzi & Associates, Inc. Renzi holds the MAI designation from the Appraisal Institute and is an Illinois State Certified General Real Estate Appraiser. He is also licensed in Wisconsin and Michigan and has been appraising real estate for over 40 years. A list of Renzi's professional qualifications was contained in the addendum of the appraisal report. Renzi was accepted as an expert witness.

As its first witness the board of review through counsel called Neil J. Renzi to testify before the Property Tax Appeal Board. Renzi testified that he prepared his appraisal report for Lisle Township Assessor, John Trowbridge. He inspected the subject properties on January 17, 2015. He drove through the subject properties and inspected the commercial real estate as well as the vacant land on the Northwest Quadrant. After walking around the properties, he drove the environment noting the uses of the surrounding properties to identify the trends in the area. Renzi testified there would be no significant difference in value between January 1, 2013 and January 1, 2014.

Renzi defined property rights as used in his report as fee simple, subject to the declaration of covenants. Renzi then briefly described the subject properties under appeal as the subject itself within Main Street at Seven Bridges which included 12.55-acres designated as parcel "010," which included eight improved pads and four unimproved pads. He described the common area for those pads as asphalt-paved parking, light standards and two monument display signs. The other parcel "018" was described as the Northwest Quadrant platted for five pads, which at the

[1] The Renzi appraisal report utilized in the 2013 appeal was also used as evidence by the board of review in this 2014 appeal. Renzi did not estimate a value for the subject parcels as of January 1, 2014, other than testimony that the subject's values remained the same in 2013 and 2014.

time was undeveloped other than having approximately 13,700 square feet of paving and nine light standards.

Parcel "010" was described as having 414,000 square feet of asphalt paving, approximately a hundred light standards, two monument display signs and parking that serves eight improved pads and the undeveloped pad sites. Renzi testified the highest and best use for both subject parcels was for continued use as support for the existing improved pads as well as the pads that have not been developed. Renzi based this judgment on the physical capability of the site, the underlying RPUD zoning, the general demand in the area and the fact that, in his opinion, it represents the maximum use of the site.

Renzi used the sales comparison approach to value to arrive at his estimated opinion of value for the subject parcels. Renzi stated both parcels were zoned RPUD. Renzi testified the 12.5-acres serves as parking for the abutting retail. He stated the common area parking provides access for parking for the improved parcels. Renzi testified the parking lot serving the other improved parcels has value because the commercial uses that exist on the pads could not function without it; they would be void of value. Each of the improved parcels need parking because they are of the type of market that requires parking. He then researched comparable commercial land sales within the immediate and general area to estimate a value for the subject land. He then contrasted the comparables to the subject to develop an indicated unit value for the subject.

The comparables sold from September 2011 to December 2013 for prices ranging from $3.42 to $20.56 per square foot of land area as more specifically described below.

Comparable #1 was described as an out-lot containing 57,935 square feet of land area located in Bolingbrook and sold for $1,200,000 or $20.71 per square foot of land area in October 2011. Comparable #2, described as an out-parcel, was an REO sale containing 52,455 square feet of land area located in Naperville and sold for $800,000 or $15.25 per square foot of land area in December 2011. Comparable #3 was described as a vacant site containing 41,338 square feet of land area located in Bolingbrook which sold for $850,000 or $20.56 per square foot of land area in May 2012. Comparable #4, described as a vacant site containing 52,620 square feet of land area located in Darien that sold for $512,500 or $9.74 per square foot of land area in April 2012. Comparable #5, also a vacant site contained 87,271 square feet of land area located in Woodridge, and sold for $1,100,000 or $12.60 per square foot of land area in March 2013. Comparable #6, described as a vacant site, contains 45,493 square feet of land area located in Naperville and sold for $480,000 or $10.55 per square foot of land area in September 2011. Comparable #7, also described as a vacant site, contains 38,272 square feet of land area and is in Naperville that sold for $200,000 or $5.23 per square foot of land area in March 2013. Comparable #8, also utilized by MaRous in his appraisal report, was described as a vacant site containing 160,696 square feet of land area located in Woodridge which sold for $550,000 or $3.42 per square foot of land area in December 2013.

The comparables were adjusted for commercial location, cumulative attraction, exposure, pad size, visibility, sale condition, size and type of sale. After making various adjustments, Renzi estimated a value for parcel "010" to be $6,014,701 or $11 per square foot of land area. For parcel "018" Renzi estimated a value of $793,471 or $7 per square foot of land area. Renzi determined the replacement cost new for parcel "010" had a unit replacement cost of $4 per

square foot of paved area which was derived from a *Marshall & Swift Valuation Manual* and indicated a cost new for the paving of $1,656,000. Renzi testified there were 100 light standards with a unit cost of $1,000 per light which indicated a $100,000 replacement cost. After conversations with a company that designs and manufactures signs, the two large monument display signs indicated a value of $50,000 per sign or $100,000. Renzi found the total replacement costs new for the improvements to parcel "010" was $1,856,000. He then used the age-life method and observed condition to arrive at a loss in value of 50% or $928,000. In summary, for parcel "010" Renzi found a land value to be $6,014,701, a contributory value for the site improvements of $930,000 which indicated an estimated total fair cash value of $6,944,701 or $6,950,000, rounded.

Renzi used the same methodology for parcel "018" and found it contained approximately 13,700 square feet of asphalt brick paving, two single-head and nine double-head light standards. He used $4 per square foot for paving which indicated a cost new for the paving of $54,800. The nine light standards indicated a value of $9,000 or $1,000 per light for a total replacement cost new for the site work on parcel "018" of $63,800. He then depreciated the improvements 50% which indicated a contributory value of $31,900 or $32,000, rounded. Renzi then added the land value of $793,471 to the $32,000 contributory site value, which indicated an estimated value for parcel "018" of $825,471 or $825,000, rounded.

Based on his analysis, Renzi estimated a market value of $6,950,000 for parcel "010" and $825,000 for parcel "018" of as of January 1, 2013. The board of review requested an increase in the subject's assessment, or at the very least, confirmation of the subject's assessment.

During cross-examination, Renzi agreed that the applicable zoning and development regulations for the subject properties do not permit development of building structures within the common areas. He also agreed that absent the common areas, the pad sites would lack parking, access, fail to meet applicable zoning requirements and ultimately would be rendered undevelopable and devoid of value. In his report, on page 24, Renzi states "[w]hile applicable zoning and development regulations would generally not permit development of building structures within the subject common areas, the common areas take on the same importance as the pad sites and as such should be valued in uniformity with the pad sites, . . ." In his report, Renzi gave an example to illustrate his statement. The example depicted a developer purchasing a lot which encompassed a building with support parking for one "unified price" without consideration of the building value and non-buildable value separately. Appellant's counsel pointed out that Main Street at Seven Bridges has 17 pad sites, none of which allow construction of a building and parking with a pad site.

Renzi admitted he did not include in his report a highest and best use as improved. Renzi testified that sometimes when an appraiser is dealing with land that the majority of which is vacant, the improvements contribute so little that the highest and best use is recognized the same as if vacant because the site work does not have much contribution to the whole. Renzi was evasive when asked to point to the legally permitted uses for the common areas, which was not clearly expressed within his appraisal report.

Renzi agreed that he divided the subject's land area by the number of pads to arrive at an average land size per pad of 55,203 square feet of land area. Renzi felt it was irrelevant to find

comparables like the subject's actual size, but rather, searched for comparables using the average land calculations. He agreed with the premise that typically smaller parcels have a higher sale value per unit than larger parcels with all other things being equal and the inverse also being true when sold. When Renzi made his adjustments to the comparables for size, he utilized the average land size per pad of 55,203 square feet, and not the actual size of parcel "010" which contains 546,791 square feet of land area and parcel "018" containing approximately 113,000 square foot of land area.

Renzi acknowledged that three of the pad sites were sold to a third party, therefore, in 2013 and 2014 the owner of the common areas did not own all the pad sites. Because of this, Renzi acknowledged that since the owner did not control all the pad sites along with the common area, the common area in and of itself would not have traded on an open market independently. Renzi admitted that the Uniform Standards of Appraisal Practice requires him to state the highest and best use of a property as vacant and as improved.

Renzi explained that he used an average pad size instead of the subject's actual size when selecting comparables because he wanted to reflect the dynamics of the commercial properties in the marketplace based on what the pads had available as allocated for parking. Renzi testified the value of the common area is derived from ownership of the pads. In other words, the pad sites are the channel by which the revenue from the common area is realized. Renzi stated he took demolition costs into account for his improved comparables, however, it was not stated in his report.

In rebuttal, appellant's counsel called David Galowich for further testimony. Galowich testified that the declaration of covenants, conditions and restrictions of record have a provision that allocates the costs of maintaining the common areas among the pad sites. Galowich stated the allocation in this case was different than typically seen and was tied to traffic generation. Each year, the association manager of the common areas uses a "BOMA" standard to calculate the utilization of each parcel based on use. For example, a sit-down restaurant, under the "BOMA" standard will have a different calculation than a doctor's office which doesn't generate as much traffic or a fast food restaurant which generates more traffic. After examination of each building and applying the correct standard, it is multiplied by the building size which indicates the amount of traffic a building pad site generates. The costs are then allocated without markup. Only maintenance, property taxes and administrative costs of running the maintenance could be passed back to the pad owners.

Galowich stated the condition of the pavement as of January 1, 2013 and January 1, 2014 was fairly poor, with a life span of 10 to 12 years. Galowich testified that from a real estate developer's standpoint, he did not believe the pad sites enhanced the value of the common areas because there is no one that is going to buy the common areas. He did not see how they could enhance the value of something that is not marketable. Galowich testified that they both cannot enhance the value of the other. If you do not have parking for the pad sites you have a problem, there is no income stream for the parking lot. He stated the pad sites are a marketable entity, the parking lot is not. Galowich stated the subject parcels could not be divided up into 17 individual parcels with each having its own parking because there is not enough space as designed, only shared parking will work. Galowich testified that to divide the subject up, several pad sites would be lost.

On cross-examination, Galowich testified the parking lots are essential to the pad sites and could not function without the common areas. As of January 1, 2013, the Northwest Quadrant only had sewer and water brought to the perimeter, it had no on-site improvements.

The next witness called in rebuttal was Joseph M. Ryan, owner of LaSalle Appraisal Group. Ryan is licensed as a general real estate appraiser in the State of Illinois and has the MAI designation from the Appraisal Institute. He has prepared appraisals since 1985.

Ryan prepared an appraisal review of Renzi's appraisal report marked herein as board of review exhibit #1. In his review, Ryan depicts the common areas of the subject are restricted from development to the benefit of the pad site owners; the common areas cannot be built upon. In his opinion, Ryan testified that the opinion of value found in the Renzi appraisal is not credible.

Ryan testified that in the appraisal process, the highest and best use sets what is to be appraised and the further development of the appraisal process. He went on to state that the highest and best use sets what comparable sales should be used in the report. He testified that highest and best use must meet four sequential tests: physically possible, legally permissible, economically viable and maximally productive use of the site. He testified that the last two tests are not considered unless the first and second tests are passed. Ryan felt that under the first test, the subject sites were large enough that a variety of uses could be considered. Under the legally permissible test, Ryan testified that Renzi acknowledged that the subject sites are not buildable, however, Renzi did not reach a conclusion as to what the legally permissible use was; it was not in his report. Before Renzi could evaluate whether the subject was economically viable or maximally productive, Renzi would have to reach a conclusion of legally permissible.

Ryan testified that Renzi did not mention in his report what the highest and best use of the subject was as improved. Ryan testified that Renzi never reached a conclusion as to the highest and best use as vacant nor as improved. Ryan considered this to be an error that affects the credibility of the report, and would inhibit Renzi's ability to produce a credible opinion of value.

Further, Ryan took issue with the fact that Renzi basically took the entire 21.5-acres of the subject and divided that by the 17 pad sites resulting in a hypothetical 55,203 square feet and assumes that each one of those is large enough to accommodate construction of a building and parking lot for that building. Ryan found that is not the facts of case. Renzi used a hypothetical condition without stating it in his report. Ryan testified that if the hypothetical condition is proven to be untrue, then the results are not credible. In this case, Ryan testified that the hypothetical condition is not true as the subject properties are two common area sites that are not buildable, not 17 different 55,000± square foot lots.

In addition, Ryan found Renzi's report to be misleading. Ryan pointed out that Renzi states in his report Woodridge has not escaped the current economic recession or downturn in the residential housing market. As a result, the subject and commercial/residential properties in general are enduring extended marketing time/absorption periods and more limited development potential due to the soft recovery. However, on the next page, Renzi indicates the subject property would have a marketing and exposure time of 12 months, which would indicate a stable market in direct contradiction to what he previously stated. Further, Ryan found Renzi stated

there was reasonable demand for the subject sites, but, in fact, the development had been going on for 10 years and still had not sold anywhere near all the pad sites.

Ryan also found Renzi chose to select small comparable sites relating to the hypothetical 55,203 square foot pad sites and ignored larger properties. Ryan found this to be an inappropriate method in selecting comparables as with all things being equal, smaller parcels tend to sell for a higher unit price than larger parcels. Ryan found that by using an incorrect size for the subject of 55,203 square feet instead of the actual sizes, incorrect adjustments were made to comparables #1, #2, #3, #4, #6 and #7, all smaller properties requiring a downward adjustment for size, however, Renzi did not make this adjustment.

Ryan also took issue with the fact that all of the comparables Renzi used, were buildable lots, whereas, the subject is not, and should have been adjusted for that difference, otherwise the value of the subject would be overstated.

In cross-examination, Ryan testified that the pad sites cannot function without the parking and as such the parking has some contributory value. Ryan testified that if the pad sites were divorced from the use of the parking, the value of the pad sites would be diminished and would be virtually worthless. Ryan further testified that if the subject were classified as open space for highest and best use that would be incorrect. Ryan agreed that the parcels under appeal have a value because when a person purchases a pad, it is inherent that that person is getting ingress and egress and parking associated with the pad. Ryan testified that the subject parcels have a value, but, they do not have the same value as a pad.

On re-direct, Ryan explained that Renzi used developable sites for comparison to a 55,203 square foot site without making a deduction for the developable portion and comparing the parking areas to a parking area, which the subject is. First, Renzi assumed a 55,203-square foot developable site which does not exist as applied to the subject.

In closing, appellant's counsel argued that the rights associated with the subject common areas have been transferred to the building pad sites through the various easements, RPUDs and restrictions. Further, rights were removed from the common area parcels once some of the pad sites were sold to third parties because the owner of the common areas could not now freely sell the common areas without affecting the rights of the pad purchasers. Counsel pointed out that the building pads were assessed at their fair cash value at what they are worth. However, now the common areas are being assessed again which results in a double assessment as the value of the common areas was included in the bundle of rights acquired by each pad owner. Counsel likened this case to a condominium association where there is no value to the common areas. A condominium buyer gets the right to use the common area. Pointing to testimony in the record, counsel argued that because property like the subject does not trade in the open market, it has no value.

The board of review's counsel confirmed that after hearing the testimony and after reviewing the evidence presented, the board of review was requesting an increase in the subject's assessment, or at the very least, confirmation of the subject's assessment. Counsel reiterated the burden of proof by a preponderance of the evidence was on the appellant to prove the correct value of the property.

Conclusion of Law

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

The evidence and testimony herein reveals the subject parcels, two common areas, the MSCA (12.553-acres) and the NWQCA (2.602-acres) were part of a larger Seven Bridges Regional Planned Unit Development. This planned unit development governed the development of the properties. Woodbridge Bridges SB1, LLC owned the common areas at date of valuation. The larger parcel contains 17 individual pad sites, eight of which were improved and three of which were purchased by third parties. The smaller parcel remains generally unimproved. The subject was described by Galowich as being in distress as a failed development with a history of being unable to attract tenants and has remained underdeveloped for 10 years.

Despite the differences testified to by MaRous, the Board takes notice of County of DuPage v. Property Tax Appeal Board, 277 Ill.App.3d 532 (2nd Dist. 1995). In County of DuPage, Saks Fifth Avenue and Neiman Marcus owned and operated department stores at Oak Brook Mall. The stores were freestanding and not connected to the mall, and were considered "pad parcels." Pursuant to agreements with JMB Corporation, which owned most of the mall tracts, Saks Fifth Avenue and Neiman Marcus had the right to use certain common areas of the mall, including parking lots and pedestrian walkways. It was agreed that these areas of the mall were necessary for the functional utility of the stores. The issue of double taxation was addressed in the DuPage County case and the Board finds it is pertinent to the arguments presented herein.

In DuPage County, the court found "every piece of improved real estate, whether used for residential or commercial purposes, derives some portion of its value from the fact that it is accessible by streets and sidewalks. It matters little whether the means of access are publicly or privately owned. . . ." As in the DuPage County case, both appraisers testified that without the right to use the parking and other common facilities, the stores would have no value. The court stated that if stores could be divorced from the common areas, their values would be zero, which the court found would be untenable. The court found the relationship between the stores and the common areas was symbiotic in that each has a value because of its proximity to the other and each set of parcels, that being the stores and the common areas, are worth more by being located near the other. As found in DuPage County, the Board finds the value of the stores is enhanced by having access to the parking and other common areas and does not mean those parcels have no value, in fact they have and add value to the entire center by allowing the center to attract tenants via the attraction of one-stop shopping. The parties' private agreement regarding the pro-rata share of taxes and/or maintenance costs of the common areas does not imply the stores are being taxed twice for the same property. Each parcel enhances the value of the other.

The board of review's total assessment for the two parcels under appeal reflect a market value of approximately $5,873,297 using the 2014 three-year average median level of assessments for DuPage County of 33.33% as determined by the Illinois Department of Revenue. Michael MaRous, the appellant's appraiser, estimated the subject's total value to be approximately $877,000. Neil Renzi, the board of review's appraiser, whose client was the Lisle Township Assessor, estimated the subject's total value to be $7,775,000.[2] Because of this increase in estimated value, the board of review requested an increase in the subject's assessment. Both appraisers testified the subject's value would be the same in 2013 and 2014.

Both appraisers obtained the MAI designation from the Appraisal Institute and had many years of experience in assessing real estate and were qualified as experts in their field. Both appraisers developed only one of the three traditional approaches to value real estate, that being the sales comparison approach. However, within the sales comparison approach, each appraiser applied a different methodology to determine unit value. MaRous utilized comparable sales of what he believed to be similar properties along with sales of open space properties. Renzi, applied a different methodology in that he basically took the total size of the subject and divided it up into 17 individual parcels (representing the 17 pad sites) and used a size of 55,203 square feet of land area for the subject for comparison purposes. Both appraisers generally agreed properties such as the subject do not trade on the open market. The subject common areas have no income stream and act as support for the pad owners. As found in the testimony of MaRous, three pad sites were under third party ownership. Once one of the pad sites sold to a third party, it was virtually impossible to sell the two parcels under appeal because they were also tied to the third-party owners through the easements, restrictive covenants and RPUDs.

The Board finds the estimated final opinions of value as presented by the board of review and appellant were significantly different. Both the board of review appraiser and the appellant's appraiser expressed a value which was approximately $7,000,000 apart from each other. Therefore, the Board has examined and reviewed the methodologies developed by each appraiser along with the evidence and testimony presented herein. The Board was unable to examine the methodology, if any, utilized by the Lisle Township Assessor, to assess the subject parcels, as the methodology, or support therefore was not presented herein.

The Board finds no support in this record for the assessments placed on parcel "010" and "018" by the Lisle Township Assessor. The assessor was not present at the hearing to testify nor subject to cross-examination regarding the methodology used to assess the subject parcels. In addition, no testimony was presented by the board of review regarding the assessments of similar properties within Lisle Township or within County of DuPage. Therefore, little weight was given the assessments applied to parcels "010" and "018" as shown on the board of review "Notes on Appeal." Furthermore, it has also been held there is no presumption of correctness accorded to an original assessment or that of a board of review (Western Illinois Power Cooperative, Inc. v. Property Tax Appeal Board, (1975), 29 Ill.App.3d 16, 22).

[2] Renzi estimated the subject's market value as of January 1, 2013 in his appraisal report. The same appraisal report was submitted by the DuPage County Board of Review in support of the assessment increase request for this 2014 appeal.

The Board next examined the appraisals submitted by both parties. Both appraisers had similar qualifications and experience, however, their final value opinions were significantly different and the Board finds the final opinions of value found in both appraisals were not well supported and not a credible indicator of the subject's market value as of the assessment date in question.

The Board finds all three experienced appraisers, MaRous, Renzi and Ryan agreed that establishing the subject's highest and best use sets the foundation of any appraisal report. *Property Assessment Valuation* 2nd Edition, 1996 states in pertinent part:

> The way in which property is used plays an essential role in its value. In 1894 the United States Supreme Court stated: The value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use." (Cleveland, C.C. and St. Louis Ry. Co. v. Backus, 154 U.S. 445 (1894). . . . When assessors estimate market value, they must determine which of the competing uses is the highest and best use. . . . Typically, the criteria should be considered sequentially because it would not matter if the property met the financially feasible test if the size of the property was not appropriate, or the intended use legal.

(*Property Assessment Valuation*, 2nd Edition 1996, pages 31 – 34)

An appraiser must state a subject's highest and best use as vacant and as improved. As Ryan, the review appraiser testified to, failure to properly establish highest and best use renders an appraisal misleading and not credible. It is undisputed that four tests must be sequentially met to develop highest and best use. First, an appraiser must establish what is physically possible. Second, an appraiser must establish what is legally permissible. Third, the appraiser must establish what is financially feasible, and fourth, what is the maximally productive use of the site. Ryan testified that each test must be met sequentially to advance to the next test.

The Board finds Renzi discusses the subject's highest and best use as if vacant but does not clearly express the subject's highest and best use as if vacant in his appraisal report after discussion of the four tests. For physically possible uses, Renzi states a wide variety of uses are physically possible on a site, however the size, shape, area, terrain, frontage/depth and accessibility, affect the uses under which it can be developed. He then concludes the subject site can be developed. Regarding the legally permissible use, Renzi states the subject property's use is regulated by the Seven Bridges RPUD as well as other documents including certain Declaration of Restrictions and Easements as well as a Declaration of Covenants, Conditions and Restrictions. He then states, "it is assumed the intended purpose of the subject property includes, but may not be limited to, facilitating circulation and parking of vehicles, provide driveways and access, accommodate pedestrian passage, etc.," within the MSCA and other adjacent properties which are part of the larger Seven Bridges development.

For financial feasibility, Renzi then states his review of the Village of Woodridge indicated a reasonable demand in the market place, noting the commercial real estate market had not fully recovered from the lingering effects of a recession. He then concludes by stating "giving effect to the current demand and potential uses set forth by the Seven Bridges RPUD, the financially

feasible and maximally productive use of the subject property would be for development in conjunction with the pad sites in accordance with the Seven Bridges RPUD which allows for a variety of land uses including retail, office, hospitality and residential uses when market conditions improve."

The Board agrees with Ryan in finding that Renzi never states in his report what the legally permitted uses were for the subject property as if vacant. During his testimony, Renzi testified that the legally permitted uses portion of his appraisal report was handled by his assistant to read and examine the RPUD's, easements, declarations and restrictions. After fully reviewing his appraisal, the Board finds Renzi failed to meet the second test in developing the subject's highest and best use as if vacant, which he based on an assumption of the subject's legal use, and was not well supported or defined. As stated in his appraisal report, Renzi states "[a] significant component to be considered in estimating market value is the determination of Highest and Best Use." The Board finds Renzi was not credible during his testimony on this issue, was evasive when questioned regarding this issue and did not actually determine the subject's highest and best use as if vacant.

Further, the Board finds Renzi failed to establish and define within his report, the subject's highest and best use as improved. During cross-examination, Renzi admitted the Uniform Standards of Appraisal Practice requires him to state the highest and best use of a property as vacant and as improved. When questioned regarding this issue, Renzi dismissed this omission by testifying that basically he included this inherently in his comparative analysis or that the improvements were so minimal that they did not significantly affect the subject's value. The board finds it is a significant error and omission to not state the subject's highest and best use as improved, is not in conformance with the Uniform Standards of Appraisal Practice, and undermines the foundation and credibility of the market value opinion found in Renzi's appraisal report.

MaRous also developed the subject's highest and best use. For the larger subject parcel, as if vacant, MaRous found the physically possible uses stating, "the physical limitations of the site are the lack of direct curb cuts onto Illinois Route 53, and the position as an "in-between" retail location." For legally permissible, MaRous finds that based on the ordinance, legally permissible uses include retail, or a mixed use of retail on the floor and office on higher floors. Further, to adhere to the bulk regulations and requirements for parking, the subject properties would need to remain vacant land and be improved only with parking, driveways and open space. For financially feasible and maximum productivity, MaRous states that a late 2007 recession continues to linger with the retail market for the subject remaining soft. For the smaller parcel, MaRous found that given the competitive locations of superior shopping centers in the area and lack of visibility and frontage, it would be difficult to attract a single larger retailer or multiple medium-sized retailers to the site. He then states the legally permitted uses included retail, office, hotel and a residential condominium development, concluding any proposed development would require the subject properties would need to remain vacant land and be improved for use with parking, driveways, and open space. After review of the feasibility studies obtained by the village, he opines it would be difficult to attract one large or several medium-sized retailers or a hotel to the site. In conclusion, MaRous depicts in his appraisal report that for both parcels, the subject's highest and best use as though vacant was "as a common area for the said development, at such time as construction is justified. The highest and

best use in the interim is for open space." For the highest and best use for the subject parcels as improved, MaRous states the highest and best use for both parcels as improved is as currently improved as common area for the development with parking, driveways, and open space.

The Board finds the highest and best use analysis found in the appraisal report prepared by MaRous is also flawed. The Board finds it is clear the two subject parcels under appeal have never been classified as or would qualify as "open space" under the Property Tax Code.

Section 10-155 of the Property Tax Code (35 ILCS 200/10-155) defines open space land.

> Open space land; valuation. . . . Land is considered used for open space purposes if it is more than 10 acres in area and:
> (a) is actually and exclusively used for maintaining or enhancing natural or scenic resources,
> (b) protects air or streams or water supplies,
> (c) promotes conservation of soil, wetlands, beaches, or marshes, including ground cover or planted perennial grasses, trees and shrubs and other natural perennial growth, and including any body of water, whether man-made or natural,
> (d) conserves landscaped areas, such as public or private golf courses,
> (e) enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, . . .
>
> (35 ILCS 200/10-155)

The Board finds MaRous made an extraordinary assumption without defining same in his appraisal report that the subject would or could qualify as open space. When questioned by opposing counsel that neither of the subject properties were open space, MaRous responded that no they were not, "under the strict definition." When questioned by the hearing officer on this issue, MaRous stated that the subjects have site improvements on them that are supporting the pad retail buildings and the subjects have no physical building improvements on them, which provides open space. MaRous felt it was just a clarification issue which he might modify. The Board has given thought if there might be a miscommunication between the expressed definition of the subjects' highest and best use as vacant and as improved as found in MaRous' appraisal report and the testimony given under oath during cross-examination. Based on the questions by opposing counsel, it is clear, MaRous was referring to open space as found in Section 1-155 of the Code when he testified that the subjects were not open space by the "strict definition." Again, as stated by Ryan, if highest and best use is not properly developed or defined in an appraisal report, then the foundation of the report is flawed and the credibility of the appraisal report is called into question and not credible. Based on the testimony herein, the Board finds the final opinion of value found in the appraisal report prepared by MaRous is not credible and is not indicative of the subject's fair market value as of the date in question.

Various other flaws were found in the appraisal reports prepared by both MaRous and Renzi which further undermine their credibility. In developing his sales comparison approach to value,

MaRous utilized two sets of open space comparables to compare with the subject, even though the subject is clearly not "open space" as statutorily defined. In his land value conclusion, he finds "[u]ltimately, the value of the subject properties is reflected in the value of the commercial pad sites." His ultimate conclusion is based on commercial land sales in proximity to the subject property, land sales acquired for open space use by the DuPage County Forest Preserve, and open space land sales in collar counties of Cook, Lake, McHenry and Will. He further considered that DuPage County values open space land at $4,560 per acre, or $0.11 per square foot. Collectively the final land value conclusion of $0.50 per square foot of land area was based upon the market data found in "all three" land data sets. The Board finds this conclusion erroneous, given the range of commercial land sales developed by MaRous ranged from $1.30 to $5.74 per square foot of land area. The Board finds the use of open space as a land sale comparable, of which the subject is not, unduly and significantly influenced his final opinion of unit value.

The Board finds Renzi's appraisal report was also flawed. As pointed out by Ryan, Renzi basically took the entire 21.5-acres of the subject and divided it by the 17 pad sites to reach a unit value for a parcel that contained 55,203 square feet of land area and assumed each was large enough to accommodate the construction of a building and parking lot. As testified to, this was a hypothetical condition that proved to be untrue, thereby rendering the results untrue. It is well established that, with all other things being equal, a smaller parcel has a higher unit value than a larger parcel and vice versa. If a comparable is smaller than the subject it is compared to, the comparable would require a downward adjustment. If the comparable is larger than the subject it is compared to, it would necessarily require an upward adjustment to account for the difference. The Board finds Renzi assumed the subject property to be a hypothetical 55,203 square feet of land area and then made improper upward adjustments to certain comparables (#4, #6, #7 and #8), even though the subject was much larger than the comparables used.

Further, in his appraisal report, Renzi states "that Woodridge has not escaped the current economic recession or downturn in the residential housing market. As a result, the subject and commercial/residential properties in general are enduring extended marketing time/absorption periods and more limited development potential due to the soft recovery." Then on the next page, Renzi indicates the subject property would have a marketing and exposure time of 12 months, which would indicate a stable market, in direct contradiction to what he previously stated.

For these reasons, the Board finds the final opinion of value found in the appraisal reports prepared by both MaRous and Renzi are not based on a credible foundation, are not well supported and are not credible indicators of value for the subject parcels, and are hereby given little weight.

The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate

taxes, the preferred method is the sales comparison approach. Since there are credible market sales contained in the record, the Board placed most weight on this evidence.

In regard to the site improvements, the Board finds Renzi provided the more credible estimated value of the subject's contributory site improvements. For parcel "010" Renzi estimated the replacement cost new for this parcel had a unit replacement cost of $4 per square foot of paved area which was derived from a *Marshall & Swift Valuation Manual* and indicated a cost new for the paving of $1,656,000. Renzi testified there were 100 light standards with a unit cost of $1,000 per light which indicated a $100,000 replacement cost. After conversations with a sign manufacturer, the two large monument display signs indicated a value of $50,000 per sign or $100,000. The total replacement costs new for the improvements to parcel "010" was $1,856,000. He then used the age-life method and observed condition to arrive at a loss in value of 50% or $928,000. For parcel "010" Renzi estimated a contributory value for the site improvements of $930,000, rounded.

Utilizing the same methodology for parcel "018" Renzi found it contained approximately 13,700 square feet of asphalt brick paving, two single-head and nine double-head light standards. Utilizing $4 per square foot for paving indicated a cost new for the paving of $54,800. The nine light standards indicated a value of $9,000 or $1,000 per light for a total replacement cost new for the site work on parcel "018" of $63,800. Depreciating the improvements 50% indicated a contributory value of $31,900 or $32,000, rounded.

Little weight was given the contributory site value analysis performed by MaRous. The Board finds his contributory site value analysis was not credible. First, for the Northwest Quadrant Common Area (parcel "018"), MaRous considered this parcel vacant undeveloped land throughout his report with no value added for site improvements. The Board finds this is in contradiction to the photographs and data contained within Renzi's report on pages 10 and 11 which appears to depict light standards and sidewalks located on parcel "018."

For parcel "010" MaRous estimated a base replacement cost of the site improvements to be $3.50 per square foot. On page 58 of his report, he states "[e]ntrepreneurial profit of 2 percent is included in this cost estimate." but then adds entrepreneurial profit of $38,275 to arrive at cost new of $1,952,044. The Board finds the source used by MaRous for estimating his base replacement cost new of the site improvements ($3.50) is not disclosed and not supported in the record. MaRous then states the entrepreneurial profit is included in the cost estimate, but he also appears to add entrepreneurial profit to the cost new. MaRous then uses the age-life method of depreciation to arrive at 60% depreciation, but then estimates 30% depreciation due to both functional and external obsolescence for a total depreciation estimate of approximately 72%. MaRous noted in his report that in the modified economic age-life method of estimating depreciation, the functional and external obsolescence is applied to the on-going subtotal calculations developed within the cost approach and not applied to the property's estimated cost new. Nowhere in his report or testimony does he explain why a modified age-life method was necessary. The Board finds MaRous' estimated base replacement cost new is not well supported. His development of a modified age-life method of depreciation is confusing, questionable and is not well depicted or explained in his report; therefore, the Board finds his estimated replacement cost new analysis is not a credible indicator of the value of the subject's site improvements.

Both appraisers used a common land sale located in Woodridge, DuPage County. This comparable was a 160,697-square foot site which sold in December 2013 for $550,000 or for $3.42 per square foot of land area. The Board gave this sale (MaRous sale #1 and Renzi sale #8) the most weight in its analysis. The Board also considered and gave weight to MaRous' land sales #3 and #4 based on date of sale, location, size, zoning and topography/shape. The above stated sales sold from June 2012 to December 2013 for prices ranging from $550,000 to $600,000 or from $2.76 to $4.56 per square foot of land area. The subject's assessment reflects an estimated market value of $857,006 or $7.56 per square foot of land area for parcel "018" and $4,863,366 or $8.89 per square foot of land area for parcel "010.' Based on these sales, the Board finds the assessments for the subject parcels under appeal are above the range established by the best comparable sales in this record and are excessive. The Board gave the MaRous' comparables #2 and #5 and the open space land sales along with the remaining Renzi land sales little weight based on their dissimilar characteristics, date of sale and/or size when compared to the subject.

Based on the above analysis, and after making adjustments to the comparables to account for different characteristics when compared to the subject, the Board finds the subject properties have a land market value of $2.90 per square foot of land area with a contributory site improvement value for each parcel as found by appraiser Renzi above.

In conclusion, the Board finds the evidence in the record depicts the subject properties are overvalued by a preponderance of the evidence. Therefore, the Board finds the subject properties' assessments as established by the board of review are incorrect and a reduction is warranted. Since fair market value has been established, the 2014 three-year weighted average median level of assessments for DuPage County of 33.33% shall apply.

Based on the testimony and evidence presented herein, the Board finds a preponderance of the evidence depicts the subject properties are overvalued based on their assessments and a reduction in the assessment for each subject parcel is warranted.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

Chairman

Member

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

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

Date: June 19, 2018

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year or years of the same general assessment period, as provided in Sections 9-125 through 9-225, are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for such subsequent year or years directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.

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