



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

APPELLANT: Twin Lakes Senior Villas Limited Partnership
DOCKET NO.: 15-00117.001-C-3 through 15-00117.002-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Twin Lakes Senior Villas Limited Partnership, the appellant, by attorney Rebecca E. P. Wade, of Meyer Capel, P.C. in Champaign, and the Champaign County Board of Review.

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

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
15-00117.001-C-3	14-03-35-454-005	16,880	3,022	\$19,902
15-00117.002-C-3	14-03-35-454-006	72,520	239,278	\$311,798

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed this two-parcel appeal from decisions of the Champaign County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments of the parcels for the 2015 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Preliminary Pending Motion(s)/Response/Reply

As part of rebuttal previously filed in this matter, appellant's counsel moved for a determination that the Champaign County Board of Review was in default in this proceeding. As part of that filing appellant's counsel argued that the appellant had submitted an appraisal of the subject property to support the contention that the property was overvalued. In contrast, it was argued that the evidentiary submission by the Champaign County Board of Review did not constitute competent evidence of market value. Therefore, the request for default asserted the only evidence of market value contained in the record was submitted by the appellant and a reduction in the subject's assessment is warranted.

Citing to the Property Tax Appeal Board's procedural rules that the board of review is required to submit evidence in support of its valuation position, the appellant contended that no such evidence was submitted. (See 86 Ill.Admin.Code §1910.40(a)) Additionally, counsel for the appellant argued that the board of review's "commentary" concerning the appellant's appraisal evidence was not competent evidence of market value and was not signed or certified by the author. Since there is no party who may be cross-examined at hearing regarding these remarks, the board of review should be found in default with a citation to Section 1910.69(a) of the Property Tax Appeal Board's rules. (86 Ill. Admin.Code §1910.69(a))

For its response to the appellant's default request, the board of review submitted a letter signed by board of review member, Dianne G. Hays, MAI, SRA, who also identified herself as an Illinois Certified General Real Estate Appraiser. First, Hays indicated that she prepared the commentary that was filed by the board of review and did so within the mandated timeframe. Second, Hays noted that she signed the form "Board of Review Notes on Appeal" which included "see additional comments attached." Third, Hays argued that the commentary raised questions about the appellant's appraisal. She further acknowledged it was not a formal appraisal review, but noted that she has been a certified general appraiser in Illinois for more than 20 years with experience in preparing appraisals and reviews of many types of properties. Given the timely filing, the board of review argued that there was no default in this proceeding in accordance with the procedural rules of the Property Tax Appeal Board.

As a reply, counsel for the appellant filed a Motion to Strike Evidence concerning the board of review's response to the appellant's default motion. For the motion to strike, counsel cited Section 1910.40 of the procedural rules and summarily asserted that in the absence of a request for additional time to submit evidence, the board of review's response to the default request should be stricken as it is inadmissible additional evidence. (See 86 Ill.Admin.Code §1910.40)

For its response to the appellant's Motion to Strike Evidence, the board of review argued that its previous filing was merely "in response to the claimant's request for default." The board of review further argued that even if its previous response to the motion for default were stricken from the evidence, the fact remains that the board of review's evidentiary filing was timely made and no default should issue.

As advised at the time of the in-person hearing in this matter, the foregoing motions made by the appellant were taken under advisement by the Property Tax Appeal Board (PTAB) and ruling would issue with this Final Administrative Decision. As to the appellant's request to default the Champaign County Board of Review in this proceeding, the PTAB finds that by its letter issued on February 11, 2016, the board of review was granted until May 11, 2016 to file its Notes on Appeal and supporting evidence. (86 Ill.Admin.Code §1910.40(a)) In accordance with the Board's procedural rules, the Champaign County Board of Review timely submitted its "Board of Review – Notes on Appeal" and supporting evidence that was postmarked on March 29, 2016. In light of the foregoing facts, the appellant's motion for default of the board of review is denied. (86 Ill.Admin.Code §1910.69(a))

As to the appellant's motion to strike the board of review's response to the request for default, the PTAB finds that the substance of the filing, i.e. the name and qualifications of the individual who prepared the critique/supporting board of review evidence concerning the appellant's appraisal, is

new evidence that should not be considered in this proceeding. Additionally, due to the nature of the record in this proceeding, even after the in-person hearing, the PTAB finds it is not necessary to strike the board of review's filing as the purported author of the critique filed by the board of review did not appear at hearing and did not testify or become subject to cross-examination. Therefore, the sum and substance of the filing by the board of review consists of unsupported assertion(s) that were not presented at hearing by any testimony. Since the author and former Champaign County Board of Review member did not appear at hearing to provide testimony to further articulate the comments of the memorandum, the late submission of evidence issues raised by the filing are deemed to be moot.

Also, at the time of the hearing and as part of appellant's opening statement, counsel noted the absence of Dianne Hayes, author of the board of review's narrative, for purposes of testimony at the hearing. Counsel for the appellant therefore orally amended the pending motions set forth above to include a motion for summary judgment on the grounds that no weight can be given to the board of review's submission due to hearsay. This motion was similarly taken under advisement.

The Property Tax Appeal Board recognizes that the appellant's default, striking and summary judgment motions at their core concern the quality of the evidence filed by the Champaign County Board of Review and/or presented at hearing by the board of review. The quality of evidence is to be judged by the trier of fact as part of a hearing under the Property Tax Appeal Board's procedural rules. See People ex rel. Thompson v. Property Tax Appeal Board, 22 Ill. App. 3d 316 (2nd Dist. 1974) (only authority and power placed in the Board by statute is to receive appeals from decisions of boards of review, make rules of procedure, conduct hearings, and make a decision on the appeal). By issuance of this decision and based on the weight and equity of the evidence of record, the PTAB denies the appellant's oral motion for summary judgment.

Applicable Statutory Provisions

There is no factual dispute on the record between the parties that the subject property is operated as a Senior Low-Income Housing project. Section 10-235 of the Property Tax Code (the Code) provides that it is the policy of the State of Illinois that low-income housing projects that qualify for low-income housing tax credits under Section 42 of the Internal Revenue Code (Section 42) shall be valued based on their economic productivity to their owners to ensure that high taxes do not result in rent levels that cause excess vacancies, loan defaults, and loss of rental housing facilities to those that are in most need of them, low-income families and the elderly. (35 ILCS 200/10-235). Sections 10-245 and 10-260 of the Code establish the method of valuing Section 42 low-income housing projects in accordance with this policy. Section 10-245 of the Code provides in part:

. . . to determine 33 and one-third percent of the fair cash value of any low-income housing project developed under the Section 515 program or that qualifies for low-income housing tax credit under Section 42 of the Internal Revenue Code, in assessing the project, local assessment officers must consider the actual or probable net operating income attributable to the property, using a vacancy rate of not more than 5%, capitalized at normal market rates. The interest rate to be used in developing the normal market value capitalization rate shall be one that reflects the

prevailing cost of cash for other types of commercial real estate in the geographic market in which the low-income housing project is located. (35 ILCS 200/10-245)

Section 10-250(b) of the Property Tax Code provides the method that Section 42 property is to be assessed stating:

Beginning with taxable year 2004, all low-income housing projects that qualify for the low-income housing tax credit under Section 42 of the Internal Revenue Code shall be assessed in accordance with Section 10-245 if the owner or owners of the low-income housing project certify to the appropriate local assessment officer that the owner or owners qualify for the low-income housing tax credit under Section 42 of the Internal Revenue Code for the property. (35 ILCS 200/10-250(b))

Section 10-260 of the Code further clarifies that the income approach is to be given greatest weight in valuing Section 42 housing, providing:

In determining the fair cash value of property receiving benefits from Low-Income Housing Tax Credit authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42, emphasis shall be given to the income approach, except in those circumstances where another method is clearly more appropriate. (35 ILCS 200/10-260)

The Code also provides as part of the definition of real property that "not included therein are low-income housing tax credits authorized by Section 42 of the Internal Revenue Code, 26 U.S.C. 42." (35 ILCS 200/1-130(a)).

Findings of Fact

The subject property, consisting of two adjacent parcels, has been developed as a low-income housing project for seniors commonly known as Twin Lakes Senior Villas. The improvements were constructed in 2013. One of the improvements is a one-story office/community building containing 1,544 square feet of building area. The residential improvements consist of seven buildings making up 42 ranch-style residential units/villas with vinyl siding, brick trim and concrete slab foundations. Each unit has central air conditioning, an attached one-car garage, a small concrete porch and a patio. Five of the units are ADA accessible and one is designed for the hearing impaired. There are ten one-bedroom units of 856 square feet of living area and 32 two-bedroom units of 915 square feet of living area. The two parcels have a combined land area of 8.87-acres and include a covered picnic area along with a pond behind the buildings. The property is located in Rantoul, Ludlow Township, Champaign County.

The appellant appeared before the Property Tax Appeal Board by counsel claiming overvaluation as the basis of the appeal. In support of the overvaluation argument, the appellant submitted an appraisal which estimated the subject's market value, fee simple unencumbered interest for property tax purposes to be \$1,000,000 as of January 1, 2015, noting that legislation regarding the valuation of low-income housing under Section 42 must be considered along with the standard definition of market value. The appraiser, J. Edward Salisbury, was present and testified regarding the appraisal methodology and value conclusion contained within the report.

The sole witness called by the appellant was appraiser J. Edward Salisbury, a state licensed appraiser, who began working in the appraisal field in the mid-1970's. Salisbury testified he has experience teaching in the appraisal field and has been writing appraisals since 1991 when he formed his own appraisal business.

As part of his testimony, Salisbury provided a short history of the development of Section 42 properties due to the Tax Reform Act of 1986. According to Salisbury, with this new provision, the law effectively eliminated the previous developments of Section 8, Section 235, Section 236 and Section 515 projects. Under the former programs, rent was subsidized with the tenant paying a very minimal amount of rent. Under Section 42, there were no longer rent subsidies and instead the program was based upon tax credits which were based upon the cost of the facility; Section 42 developments were either approved or disapproved by the federal government. Additionally, the tax credits were transferrable; the developer selling tax credits can use the proceeds to reduce the financial burden of construction loans for the property. (See also Appraisal, p. 36)

Given the preliminary arguments of the board of review in this proceeding, Salisbury further opined that the cost approach to value was not an appropriate method of valuing a low-income housing project because the developer "would have never built that building. They wouldn't have been able to afford to without the tax credits." (TR. 11)¹ At page 17 of the appraisal report, Salisbury reiterated that the Property Tax Code ("the Code") provides that tax credits are not to be included in the valuation process. He wrote, in pertinent part, that "if the cost approach is used, the tax credits are, in fact, being taken into consideration."² Furthermore, he noted Section 10-260 of the Code provides "emphasis shall be given to the income approach" except where another method is clearly more appropriate. Given these provisions, Salisbury determined the cost approach to be of little probative value. (Appraisal, p. 17, 38-39)

The appellant's appraisal report also sets forth that comparable sales data was researched, but no sales of Section 42 properties were found. Salisbury testified that there are a lack of sales of Section 42 properties as most of the properties are in the program for 15 years with an extended term of an additional 15 years. He contended that when the property reaches the end of the program, either the owner applies for more tax credits for purposes of rehabilitation of the property or the owner seeks to sell the property as a conventional apartment building, not under Section 42. Additionally, Salisbury again cited the provision of the Code that prefers use of the income approach to value for Section 42 properties and thus, he did not include the sales comparison approach to value in the appraisal report. (TR. 12-13; Appraisal, p. 38)

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

² Prior to the adoption of the statutory provisions of the Code concerning Section 42 properties, Salisbury asserted an appraisal would account for the value of the tax credits by adding them, because that was effectively what the developer would sell the property for; that process is no longer allowed by definition in the Code. As part of the appraisal report, Salisbury described the Low-Income Housing Tax Credit (LIHTC) program established to provide housing for low to moderate income families. While the overall program is regulated by the Internal Revenue Service, in the state of Illinois regulation and administration is done by the Illinois Housing Development Authority. Salisbury described that each year, the federal government sets aside tax credits that are allocated to the controlling state agencies and developers are then allowed to submit proposals for acceptance into the program. (Appraisal, p. 35)

For purposes of this appraisal report, Salisbury only used the income approach to value. Given construction of the subject in 2013, Salisbury's report and testimony was that as of the time of the appraisal there was one full year of operating history for 2014 and the available data for 2015 was annualized with a 'guesstimate' of the amount of expenses as depicted on page 43 of the appraisal report. (TR. 17-18)

For purposes of the income approach to value, Salisbury's appraisal described the subject property as having all of the units in the tax credit program for a period of 30 years with tax credits received in equal increments for 10 years; of the 42 units, all of the units must be rented to tenants who earn a maximum percentage or less than the area's median income (AMI) with 11 of the units at 30% and 31 units at 60% of AMI.³ Salisbury opined that the owner is charging market rents, but it is a trial and error basis to find where the tenants can actually pay and will stay in the complex; for this reason, Salisbury noted these rents are significantly below the maximum allowable rent or AMI figures. (Appraisal, p. 37, 40-58)

In analyzing the subject's rental rates for the income approach to value, Salisbury testified that the data was reviewed against other Section 42 properties which he had previously appraised and opined that the subject's rents reflect market rent. In reviewing the subject's 2014 actual rents as depicted on page 45 of the appraisal, Salisbury reported the maximum HUD rents for one-bedroom units was either \$308 or \$713 per month and the actual rents for one-bedroom units was either \$308 or \$565 per month. Similarly, Salisbury reported the maximum HUD rents for two-bedroom units was either \$364 or \$850 per month and the actual rents for two-bedroom units was either \$364 or \$725 per month. Thus, on page 46 of the appraisal report, Salisbury summarized the potential gross income (PGI) of the subject property as \$302,292 annually reflecting all 42 units at the current asking rental rates where three units were at \$308 per month, eight units were at \$364 per month, seven units were at \$565 per month and twenty-four units were at \$725 per month. (Appraisal, p. 46)⁴

Salisbury noted that the subject property had a very low vacancy rate which he opined was common for a new property. He further noted that statutorily, the appraiser is only allowed to use a 5% vacancy rate. As part of the appraisal, Salisbury reported the subject had a 4.4% vacancy rate in 2014 and for the first eight months of 2015 had experienced a vacancy rate of approximately 2%. For the appraisal, Salisbury estimated vacancy loss at 2% for the subject resulting in a deduction of \$6,046 from PGI. (TR. 18; Appraisal, p. 47)

For miscellaneous income derived other than from apartment rent, Salisbury outlined the sources on page 47 of the report which for 2014 totaled \$3,502 and the annualized 2015 estimate totaled \$3,972. The sources of miscellaneous income included pet rent, application/administration fees, bad debt non-rent/buyout/late fees, turnover reimbursement, renter's insurance/reimbursement and a deduction for bad debt write-off/non-rent. Based upon the data at the subject property, Salisbury stabilized his estimate of miscellaneous income at \$3,500 which resulted in an estimated effective gross income (EGI) of \$299,746 as depicted on page 48. (TR. 18; Appraisal, p. 47-48)

³ At hearing, Salisbury referred to the AMI of the tenants or "average median income" for the area. (TR. 13-14)

⁴ At hearing, the record was clarified that the handwriting on page 46 of the appraisal report was done by appellant's counsel of record, Ms. Wade; Ms. Wade made the notations in the course of the local hearing with the Champaign County Board of Review. The handwritten data does not consist of edits by the appraiser and does not modify the appraisal report. (TR. 19)

Salisbury reported that occupancy of the subject began in 2013 and there was historical expense data available for 2014 and along with annualized expenses for 2015. On page 49 of the appraisal, Salisbury reported the subject's actual operating expenses, excluding real estate taxes and reserves for replacement with a breakdown for each unit year by expense. The listed expenses were advertising/marketing, administrative, building/services, grounds, maintenance, management fees, payroll, turnover, utilities, insurance, accounting/audit fees and service coordinator. Each of the expense line items were further detailed on pages 49 and 50 of the report. The 2014 total expenses were \$206,552 and for 2015 total annualized expenses were reported as \$166,486 or per unit expenses for 2014 of \$4,918 and for 2015 of \$3,964. The appraiser contended that the reduction in total operating expenses was due primarily to the subject being new and requiring more expenses in its first year of operation. For instance, the report noted that as occupancy increased, the need for advertising decreased. The appraisal report also asserted that payroll costs were to be reduced in 2015 with the difference being attributable to "getting the property occupancy levels to a normal level." The payroll expense in 2014 included money spent on leasing agents to find and secure eligible tenants. (TR. 19-20; Appraisal, p. 49-51)

The subject's expenses were compared to the actual 2014 expenses of 14 other Section 42 senior housing projects located around the country that were owned or managed by the owners of the subject property and which comparables were similar in design and number of units. The comparable expense data is depicted on page 52 of the appraisal report with total per unit expenses ranging from \$2,759 to \$4,455, excluding real estate taxes and reserve for replacement. The graph also depicts the average per unit expense of the comparables of \$3,578 and reiterates the per unit 2014 and 2015 expenses of the subject for comparison. Salisbury also noted that the actual expenses were influenced by the subject's age; since the subject was new, he opined that a number of the expenses should be stabilized at lower amounts. Based upon a review of the data, Salisbury opined that the most reliable indicator was the dollar amount of expenses per unit and estimated those to be \$3,750 which when multiplied by 42 units resulted in a stabilized expense of \$157,500. (TR. 20; Appraisal, p. 52-53)

On page 54 of the appraisal report, Salisbury estimated the subject's reserves for replacement which is earmarked for necessary component replacements, such as roof, floor covering, appliances, furnaces, air conditioners, and water heaters. Office data banks and national data were used by Salisbury to estimate reserves for replacement on a straight-line, age-life method resulting in an opinion of \$300 to \$500 per unit. Salisbury reported that \$300 per unit was considered typical and appropriate resulting in an annual reserve for replacement figure of \$12,600.

In summary, from the gross annual income calculation of \$302,292 Salisbury next deducted 2% or \$6,046 for vacancy and credit loss. To this, Salisbury added the miscellaneous income he estimated of \$3,500 for an effective gross income (EGI) determination of \$299,746. From this EGI, the appraiser deducted \$157,500 for operating expenses and then deducted an additional \$12,600 for reserves for replacement which resulted in a net operating income (NOI) figure for the subject of \$129,646, excluding real estate taxes. (Appraisal, p. 54)

Salisbury chose to develop an overall capitalization rate from the market and used the direct capitalization method. He opined this method was appropriate since it reflects the actions of buyers and sellers in the market. In developing the overall capitalization rate, Salisbury researched

RealtyRates.com as a national source which reflected an overall rate for the subject's region of 8.9% for West North Central region and apartments. The band of investment technique survey data reflected a range of 4.20% to 13.08% with an average of 8.64%. Salisbury also researched his office data banks with an overall rate ranging from 8% to 12% for conventional apartment buildings between 2009 and 2014. He further noted that newer complexes located in larger communities tend to fall in the lower half of the range, while older properties and those in smaller communities tended to fall in the upper half of the range. In testimony, Salisbury expounded that additional survey sources include PricewaterhouseCoopers which he opined was a good source for Class A or B buildings in metropolitan areas since that is where their data is from; those metropolitan areas included Chicago, St. Louis, Milwaukee, Indianapolis and Kansas City. He further opined that risk in real estate investments was lower in metropolitan areas and result in a lower rate of return. In light of his analysis of all available data, Salisbury chose an overall capitalization rate of 9% to which the effective tax rate of .0389 had to be added. Applying this loaded capitalization rate of 12.89% to the net operating income of \$129,646 resulted in an estimated market value under the income approach for the subject property of \$1,000,000, rounded. (TR. 21-23; Appraisal p. 58)

Based upon this evidence and testimony, the appellant requested that the Property Tax Appeal Board reduce the subject property's 2015 assessment to reflect its appraised value. (35 ILCS 200/10-235, 10-245, 10-250).

Under cross-examination, the appraiser was questioned about the subject property choosing to charge less than the maximum allowable rent. Salisbury explained that he has seen the scenario numerous times where a tenant moves in and soon discovers that after paying the rent, there is insufficient money for food and other necessities. Therefore, the tenant ends up staying for a short period of time before moving out; thus, the appraiser opined that the owners of the low-income housing complex are better off to reduce the rental rate so the tenant stays for a longer period of time and the owner can keep better tenants for a longer period of time. Upon further questioning, Salisbury drew a distinction between conventional apartment buildings and Section 42 subsidized housing noting that in conventional units, the landlord seeks to get the most out of each unit and tenants who accept that rental rate typically have experience with budgets and can afford the rent they are agreeing to pay. In contrast, the managers of Section 42 properties must be more sophisticated due to the additional paperwork required to qualify tenants and make sure that the tenant can afford the rent before they move in. (TR. 24, 28-30)

As to the rents being charged at the subject, Salisbury acknowledged that this experienced owner may have on the high-end started out low, but the rents that were being charged were reasonable rents for this complex. Salisbury also testified that the owner of a property such as the subject will look at revenues and expenses on an annual basis to determine if rent increases are warranted by perhaps \$5 or \$10 per month per unit; likewise on expenses, the owner may seek out a different lawn care service to get a cheaper rate. (TR. 25-26)

On redirect examination, Salisbury further expounded that with subsidized housing properties, there is a limited tenant pool. It was Salisbury's opinion that one of the biggest mistakes a new owner of subsidized housing can make is "selecting what type of AMI tenants they want"; for instance, if the owner wants 60% of AMI, there may not be a sufficient number of persons in the community that qualify at that level. The witness described it as a blend of the number of people

who qualify and how many of those qualified potential tenants wish to move to the subject complex. In contrast, in a conventional apartment building, the question is how many people have an income level capable of paying the rent being asked and how many are willing to do so. (TR. 30-31)

With additional cross-examination, Salisbury noted that there are two fundamental questions with the tenants: how much income do the tenants have so they qualify to move into the complex (what is the pool) and secondarily, what can those tenants actually afford to pay in order to stay in the complex long-term.

The board of review filed its "Board of Review Notes on Appeal" wherein the subjects' final assessments for the two parcels totaling \$1,228,210 were disclosed. The subject parcel's total assessments reflect an estimated market value of \$3,702,774 using Champaign County's 2015 three-year median level of assessments of 33.17% as determined by the Illinois Department of Revenue.

In support of the subject property's assessment, the board of review submitted a memorandum critiquing the appellant's appraisal report along with additional documentation. As part of its submission, the board of review contended that the appellant's appraisal "lacks sufficient support to justify reducing the assessed value of the property by 73%." The memorandum argued, in light of the subject's age of 1 or 2 years old as of the assessment date, the cost approach to value would be relevant in developing the subject's estimated market value. In this regard, the unsigned/undated memorandum outlined that the use of a cost manual would result in a value for the subject of \$3,416,771 or \$84.62 per square foot of total building area which includes 42 units each of which also has a garage.

As to the appraisal's income analysis, the memorandum pointed out that the subject, while permitted to have maximum rentals at 60% of AMI, the subject's actual rents are lower. The memorandum asserted that if the permitted rents were charged for seven of the one bedroom units and for 24 of the two bedroom units there would be an additional potential gross income annually of \$48,432 or a new higher PGI of \$350,724, an effective gross income (EGI) of \$347,210 and a net operating income after reserves of \$177,110.

As to the overall capitalization rate, the memorandum of the board of review argued that 9% as determined by Salisbury was "high" and cited to 2013, 2014 and 2015 third quarter apartment survey data from PricewaterhouseCoopers suggesting an average overall rate of 5.51%. The board of review's memorandum contended that a 7% capitalization rate would be more appropriate. Once the tax rate is added, the loaded capitalization rate would be 10.89% which when applied to the newly calculated net operating income figure of \$177,110 would result in a final value of \$1,626,354.

Solely through its memorandum, the board of review reported that it did not agree with the assumptions in the appellant's appraisal report. The board of review acknowledged the Code provision emphasizing the income approach, "except in those circumstances where another method is clearly more appropriate." It was this written assertion of the board of review that this provision of the Code did not permit an appraiser to completely ignore the cost approach, noting that the

buildings were less than 2 years old, were functional in design and materials and did not suffer from unusual physical depreciation.

At hearing and based upon questions posed by appellant's counsel, the board of review representative asserted that given the new construction of the subject property, the cost approach should be given some weight in the valuation of the property; the board of review was not contending, in accordance with Section 10-245, that the cost approach was "clearly appropriate," but rather was arguing the cost approach would be relevant. Finally, as to the questions regarding the appropriate market rent of the subject property, the board of review representative acknowledged that the board of review had no research or data to suggest that the actual rents were not appropriate market rents or that 60% of AMI was the appropriate rent to be charged to the tenants of the subject property. (TR. 37)

The seven-page written rebuttal filed by appellant's counsel in this matter reiterated the Code provisions concerning Section 42 low-income housing projects and argued that the appellant's appraisal report was based upon audited financial statements and the subject's rent rolls. Moreover, the appellant submitted in rebuttal and argued that the attached additional documentation of the subject's financial records had been previously provided to the Champaign County Board of Review during the local appeal process.

As to the board of review's purported cost manual calculation of the subject's value as determined by the township assessor, counsel in written rebuttal argued that no evidence was provided to support the valuation. Furthermore, counsel argued that the value of tax credits received in the construction of a Section 42 low-income housing development would be necessary in the development of an estimated construction cost new of buildings under the cost approach although the Code does not permit consideration of tax credits; thus the appellant's appraiser considered, but disregarded, the cost approach as a permitted valuation method. Although the board of review has argued that the cost approach in this matter would be "relevant," appellant's counsel contends that nothing has been offered to suggest that any method other than the income approach is clearly more appropriate under the circumstances as mandated by the Code.

Besides arguing that the subject property should be charging higher rental rates and thus would have a higher speculative potential gross income, counsel also noted that the board of review's submission questioning the appraiser's chosen capitalization rate was based upon national survey data and failed to consider the more specific Rantoul area. The Code mandates the use of normal market value capitalization rates in the subject's geographic market (35 ILCS 200/10-245). In conclusion, the appellant contends that the board of review's contrary opinions on the income approach are not consistent with the statutory mandate for low-income housing projects as provided with the Code.

The remaining arguments set forth by appellant's counsel in rebuttal have been disregarded by the Property Tax Appeal Board. As stated in the Board's procedural rules, rebuttal evidence is restricted to that evidence to explain, repel, counteract or disprove facts given in evidence by an adverse party. (86 Ill.Admin.Code §1910.66(a)). The Board finds the remainder of the appellant's rebuttal filing consists of a legal argument reiterating the appellant's opinion of the validity of the appellant's appraisal evidence in light of the applicable statutory provisions which is not truly rebuttal as defined by the procedural rules.

Conclusion of Law

The Board finds the subject property is entitled to be assessed according to the dictates provided by Article 10, Division 11 of the Property Tax Code. (35 ILCS 200/10-235 through 10-260). The Board further finds only the appellant offered an appraisal report valuing the subject as a Section 42 low-income housing project designed for seniors in accordance with Section 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-245 and 10-260). Finally, the Board finds both the appellant's appraisal report and the unsupported evidentiary arguments made by the board of review support a reduction in the subject's assessed valuation.

The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal, the value 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); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). After analyzing the evidence submitted and considering the testimony at hearing, the Board finds the appellant has overcome this burden.

The Property Tax Appeal Board finds there was no substantive dispute on the record that the subject property qualifies as a Section 42 low-income housing property designed for seniors. The Board gave no substantive weight to the board of review's written memorandum arguing the application of the cost approach to value because the data was not an appraisal of the subject property, the data was not supported by any evidence nor presented at hearing by its author and finally because the data did not properly take into account the subject's status as a Section 42 low-income housing project and the applicable provisions of the Property Tax Code. Although no substantive weight has been given to the board of review's submission, the Property Tax Appeal Board does recognize that the board of review's analysis also supported a reduced assessment for the subject property.

The Property Tax Appeal Board finds the best evidence of the subject's fair market value in this record is found in the appraisal report submitted by the appellant which appeared to follow the directives of Section 10-245 of the Property Tax Code. The appellant's appraiser in this appeal formulated an income approach to value estimating a fair market value for the subject property. The income approach to value was calculated in accordance with Sections 10-235, 10-245 and 10-260 of the Property Tax Code. (35 ILCS 200/10-235, 10-245 and 10-260). The subject property's total assessment of \$1,228,210 reflects an estimated market value of \$3,702,774, which is considerably greater than the valuation evidence submitted by the appellant. The standard for determining the fair cash value of property is the price at which ready, willing, and able buyers and sellers would agree. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1, 16 (1989). A property's income-earning capacity is the most significant element in arriving at its fair cash value for assessment purposes. Kankakee County, 131 Ill.2d at 15. A taxing authority must weigh both the positive and negative aspects of a subsidy agreement and adjust the actual income figure to accurately reflect the true earning capacity of the property in question. Kankakee County, 131 Ill.2d at 17. In Kankakee County, the Supreme Court held a subsidy agreement affecting a property's income-earning capacity must be considered in calculating fair market value if the property is designed for use as subsidized housing, its best and

highest use is subsidized housing, and it is transferable to others for use as subsidized housing. Kankakee County, 131 Ill.2d at 18-19.

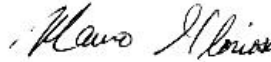
In Rainbow Apartments v. Illinois Property Tax Appeal Board, 326 Ill.App.3d 1105 (4th Dist. 2001) the court followed Kankakee County in holding that the positive and negative aspects of a subsidy agreement must be considered by taxing authorities in valuing properties designed, developed and used with Section 42 restrictions. Furthermore, the Property Tax Code contains provisions relating to Section 42 low-income housing as set forth earlier in this decision.

The Property Tax Appeal Board finds that only the taxpayer's witness valued the subject property considering the positive and negative aspects as Section 42 low-income housing and in accordance with the provisions of the Property Tax Code. The record is clear that the subject property was designed as Section 42 low-income housing for seniors and its highest and best use is rental property in compliance with Section 42 restrictions. Thus the impact of the Section 42 restrictions must be considered in estimating the fair cash value of the property for assessment purposes. The appellant's appraiser further recognized and considered the subject property is operated as a Section 42 low-income housing project in deriving his estimate of value and considered the rentals charged by the subject along with analysis of other properties. Ignoring the effects of the Section 42 restrictions or presuming different rental rates would distort the earning capacity and fair cash value of the subject property.

The appellant's appraiser, a certified appraiser licensed in Illinois, with many years of experience, used the subject's actual income and expenses to derive a final conclusion of value for the subject of \$1,000,000. The record is clear that the appellant's appraiser based his estimation of value on the subject being Section 42 low-income housing property designed for seniors. The Board finds the testimony and analysis of the appellant's appraiser was logical and credible. He determined the market rents for the subject which were ultimately based upon the rent rolls and vacancy data of the subject and other Section 42 properties. The appellant's appraiser used the actual income of the subject (\$302,292), and from this he deducted 2% (\$6,046) for vacancy. Additional miscellaneous income of \$3,500 was added resulting in the subject's effective gross income (\$299,746). Deducting the expenses (\$157,500) and reserves for replacements (\$12,600), the appellant's appraiser then calculated the net operating income for the subject of \$129,646. The appraiser developed an overall capitalization rate from the market and the use of the direct capitalization method. He then divided the net operating income by an overall capitalization rate of 12.89% to arrive at an estimated final value conclusion for the subject of \$1,000,000, rounded.

Based on this analysis, the Property Tax Appeal Board finds the appellant has proven overvaluation by a preponderance of the evidence. The Board further finds the best evidence of the subject's fair market value in this record is the appraisal submitted by the appellant. Since fair market value has been established, the 2015 three-year median level of assessments for Champaign County of 33.17% shall apply.

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



Chairman



Member



Member



Member



Member

DISSENTING: _____

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:

April 17, 2018



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

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

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

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

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

PARTIES OF RECORD

AGENCY

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