FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT:	Petersen Health Systems, Inc.
DOCKET NO.:	15-00693.001-C-2
PARCEL NO.:	18-07-281-014

The parties of record before the Property Tax Appeal Board are Petersen Health Systems, Inc., the appellant, by attorneys Jason M. Crowder, of The Petersen Companies, in Peoria and William A. McNutt of Moore, Susler, McNutt & Wrigley, LLC in Decatur; the Peoria County Board of Review; and the Board of Education of Peoria Public School Dist. #150, intervenor, by attorneys C. Frazier Satterly and Antonio J. Senagore of Hodges, Loissi, Eisenhammer, Rodick & Kohn LLP, in Arlington Heights.

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

LAND:	$210,680
IMPR.:	$539,333
TOTAL:	$750,013

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

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

Applicable Statutory Provision & Regulation

The parties agree that the subject property is to be assessed in accordance with Section 10-390 of the Property Tax Code (hereinafter "Code") concerning "Valuation of Supportive Living Facilities" (35 ILCS 200/10-390) which states:

> (a) Notwithstanding Section 1-55, to determine the fair cash value of any supportive living facility established under Section 5-5.01a of the Illinois Public Aid Code, in assessing the facility, a local assessment officer must use the income capitalization approach.

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

Furthermore, statutorily the Public Aid Code (305 ILCS 5/5-5.01a) mandates that the Department, now known as the Department of Healthcare and Family Services [HFS], shall establish and provide oversight for a program of supportive living facilities which seek to promote independence, dignity, respect and well-being for residents in the most cost effective manner. These facilities are regulated in creation and operation, including, but not limited to, 89 Ill.Admin.Code §146.200 through 146.300 and §146.600 through 146.710.

As defined by rule (89 Ill.Admin.Code §146.200(b)), a supportive living facility is:

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

The "Illinois Supportive Living Program" is described, in part, as an alternative to nursing home care for low-income older persons and persons with disabilities under Medicaid. Residents can be both Medicaid and non-Medicaid eligible persons. Each facility designates one of two service populations: (1) persons with a disability age 22 to 64 years old or (2) persons 65 years or older who meet requirements set forth in Section 146.220 (89 Ill.Admin.Code §146.220). (89 Ill.Admin.Code §146.200(a))[1]

On its website, HFS states, in pertinent part, that the agency:

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[1] See also 89 Ill.Admin.Code §146.205, definition of a "Medicaid Resident":

> a person with a disability (as determined by the Social Security Administration) age 22 years and over or a person who is age 65 years and over, who has been determined eligible for Medicaid payment for SLF [supportive living facility] services. Eligibility for a person residing in an SLF shall be determined in accordance with 89 Ill.Admin.Code 120.10 and 120.61 (excluding subsection (f) of Section 120.61). . . .

> . . . has obtained a 'waiver' to allow payment for services that are not routinely covered by Medicaid. These include personal care, homemaking, laundry, medication assistance, social and health activities, recreation, and 24-hour staff to meet residents' scheduled and unscheduled needs.
> (www.illinois.gov/hfs/medicalprograms/slf/Pages/default.aspx)

As a final matter, the HFS website concerning the Illinois Supportive Living Program provides that the resident is responsible for paying the cost of room and board at the facility.

The sole issue before the Property Tax Appeal Board is how to apply Section 10-390, a statutory provision, to an income capitalization approach to value. Both parties to the proceeding presented appraisal reports relying solely upon the income approach to value.

Findings of Fact

The subject property consists of two buildings connected by a covered walkway. The building improvements have a total of 117,115 square feet of above-grade area with a 12,513 square foot basement. The building(s) were constructed in 1970 as a German/Bavarian hotel/restaurant known as Jumer's. In 2011, the property was extensively renovated and converted to a 100-unit supportive living facility known as Courtyard Estates of Peoria. This facility is licensed by the State of Illinois. The facility features 31 efficiency units (300 to 476 square feet), 45 one-bedroom units (530 to 620 square feet) and 24 one-bedroom deluxe units (620 to 750 square feet). Each unit features its own heating and cooling unit, a small refrigerator, microwave and single-drain kitchen sink. The building is fully sprinkled and is equipped with an emergency call system. Additional features of the facility include several common areas, a central kitchen and dining room, activity rooms, wine garden, library, theatre room, beauty/barber shop, gift shop, recreation room, gym and administrative areas. The property has a 4.64-acre or 202,811 square foot site which includes paved parking areas, patios and landscaping. The subject property is located in Peoria, Peoria Township, Peoria County.

In opening statement, appellant's counsel asserted the issue in the hearing will be a value determination based upon the amount of payments that must be removed as published by HFS in an online bulletin that has been provided in evidence in this proceeding. Counsel contended that Section 10-390 provides payments from Medicare [*sic*] for services provided to residents must be removed from the income capitalization formula. Therefore, the appellant argued through its appraisal analysis that the subject property should be valued at $2,255,000 for assessment purposes. (TR. 6-7) [2]

While the Peoria County Board of Review filed evidence in this proceeding, as will be discussed in this decision, it did not take an active role in presenting its evidence when arguing for confirmation of the subject's assessment.

In opening statement, the intervenor's counsel asserted the subject's assessment should be increased to reflect the opinion of value developed by the appraiser retained jointly by the Peoria

[2] References to the transcript of the proceedings will be denoted by "TR." followed by page number citation(s).

County Board of Review and the intervening taxing district. Intervenor's counsel contended that their retained appraiser, Joseph M. Webster, correctly applied the methodology found in Section 10-390 to the subject property's income and expenses in order to arrive at a value conclusion of $5,600,000.[3] In the alternative, counsel argued that the subject's assessment should be sustained. (TR. 7-8)

The appellant appeared before the Property Tax Appeal Board by one of its attorneys, William A. McNutt, contending overvaluation as the basis of the appeal. In support of this argument, the appellant submitted a 44-page appraisal, including addenda pages, prepared by Donna J. Howard, an Illinois Certified General Real Estate Appraiser. The appraisal indicates that it is subject to the statutory criteria for a supportive living facility and opined that the subject's assessment as of January 1, 2015 should be $750,000 at the statutory level of assessment of 33.33%. As a Special Limiting Condition, Howard reported that since the subject was a supportive living facility, the market value was estimated utilizing the income capitalization approach and, in accordance with State statutes, "the analysis should not include any payment received for services, but rather just payments for the real estate only." (See transmittal letter accompanying the report & Howard Appraisal,[4] p. 3 & 6; TR. 10-11)

Howard was called as a witness for the appellant. She is a self-employed General Real Estate Appraiser, certified in the State of Illinois and operates the firm DJ Howard & Associates, Inc. in Highland. Howard has been an appraiser since 1993 and has taken all of the advanced classes for the MAI designation from the Appraisal Institute. (TR. 9-10)

In order to appraise the subject property, Howard visited the property and inspected both the interior and exterior on March 24, 2015. Howard also gathered property records in Peoria County. Next, Howard examined the subject property's operating history, including expenses, and she further examined comparable expenses. She testified that in the course of another appraisal assignment, she learned from an operator that Medicaid provides facilities with an annual statement of the amount being paid for services. Thereafter, Howard found this Medicaid information online in a chart identifying Medicaid payments for services with an assigned dollar amount. (See Howard Appraisal, Addenda p. 43-44) As set forth in the chart, the facility receives a set amount from Medicaid of $2,901 less services and SNAP,[5] resulting in $737 per month as non-service revenue, according to Howard. Based upon Howard's understanding of the law, as an appraiser she is to exclude payments made by Medicaid for services in order to arrive at the money paid for real estate only. (TR. 11-12, 15-19; H. Appraisal, p. 4 & Addenda p. 43-44)

The appraiser recited Section 10-390 of the Code (35 ILCS 200/10-390) on page 28 of the report. Also, in the report beginning on page 28, Howard explained why only the income capitalization approach was used. The premise of the income approach to value is a deduction of expenses from revenues which is then capitalized into a value conclusion. She described the subject as a supportive living facility where, in addition to the apartment unit itself, the monthly rental rate

[3] In light of a math error that Webster discovered shortly before hearing, the appraised value conclusion was modified downward at hearing to $5,350,000, rounded. (See Intervenor's Exhibit 9)

[4] For ease of reference to pages of the Howard Appraisal, it will be referenced as "H. Appraisal" followed by page citation(s).

[5] Refers to "Supplemental Nutrition Assistance Program."

includes utilities, three meals per day, housekeeping and laundry services, as well as activities and scheduled transportation. In addition, the residents are at the facility all the time and the facility provides call buttons to which on-site staff must be responsive, which is all part of the services provided and shall not be included in a valuation for assessment purposes. (H. Appraisal, p. 28; TR. 13-16, 27)

As part of the assignment, Howard checked on the subject facility's expenses and rental rates although the data is not presented in the summary report. For the income approach to value, she also examined the subject's income which Howard contended is set by the State of Illinois. As depicted on page 29 of the report, Howard checked on the occupancy rates of area facilities to derive a market-based occupancy rate and found the subject was "in line." The facility's location in Peoria County places it in the 'Central Region' on the applicable Medicaid schedule (Addendum, p. 43-44) where the monthly total for single occupancy residents is $2,901. The document sets forth that $2,164 per month is Medicaid payments for services which leaves non-service revenue of $737 per month for the single rooms.[6] Since the statutory provision also mandates that the payment made for services that would be paid by Medicaid if the resident were Medicaid-eligible should also be excluded; therefore the calculation which Howard made for income was utilized regardless of whether the resident was or was not Medicaid qualified. In summary for the income, Howard calculated the maximum potential gross income (consisting only of the non-service income) or PGI for the subject 100 units at a rate of $737 per month multiplied by twelve months resulted in an annual potential gross non-service revenue of $884,400. (H. Appraisal, p. 28-29; TR. 12-13, 14, 20, 26-27)

Howard did opine that based upon the age of the subject facility, the utility costs and maintenance costs are higher than typical as there is extra space that is not being utilized but must be heated. She noted that there is part of the building that works for the facility and there are "a lot of parts that make it not as functional so the utility costs are higher." For instance, she said there is a large multi-story atrium that is expensive to heat. Although these additional expenses are caused by the functional nature of the building, Howard opined the expenses are still real estate expenses and not service expenses. (TR. 24-25)

Next, the appraiser reported as of the inspection date in March 2015, the subject facility was 94% occupied and for 2014 occupancy was an average of 93.27%. As part of the report, Howard also set forth, in a chart, 2013 occupancy rates for six facilities located in surrounding counties which was the most current available market data drawn from Medicaid Cost Reports. Those six area facilities had occupancies ranging from 84.4% to 99.8% with an overall occupancy rate of 90.3%. The subject had overall occupancy rates in 2013 of approximately 85% which was lower than average. From this data and given the physical attributes of the subject along with the market area competition, Howard opined a stabilized occupancy level of 95% for the subject. Therefore, Howard applied a vacancy and collection loss of 5% to the subject's potential gross non-service revenue which resulted in effective gross non-service income or EGI of $840,180. (H. Appraisal, p. 29 & 33; TR. 20, 28)

[6] Documentation supporting the figures was presented in the Addenda to the appraisal consisting of a printout from HFS/Illinois Supportive Living Program with an effective date of July 1, 2014. (Addenda, p. 43-44)

The appraiser next reconstructed the subject's actual expenses for the prior three years of 2012 – 2014 from historical operating statements and set forth the data in a chart on page 30 of the report. Howard's operating expense analysis also included consideration of the operating history of similar facilities to estimate market derived operating expenses. In testimony, Howard noted that much of the operating expenses of similar facilities are derived from services that have been excluded in the analysis of the subject property. A chart on page 31 of the appraisal sets forth the operating expenses of six area facilities for 2013 which was the most recent data available from the published State of Illinois Medicaid Cost Reports. Howard displayed these operating expenses based upon total potential resident days at each facility as well as per occupied days. The appraiser further calculated the mean and the median expense for each expense category based upon total potential resident days and based on occupied days. Although displayed in the respective charts, in her expense calculation Howard did not consider operating expenses for service items such as dietary, housekeeping/laundry, or health care/personal care and instead, only accounted for non-service expenses or what she terms to be real estate expenses. (H. Appraisal, p. 30-31; TR. 14, 27-29)

In testimony, Howard noted that for comparison in value when considering the subject an appraiser would look to other supportive living or assisted living as "other market rate properties." She further opined that it would not be appropriate to consider apartment rent data because apartments do not offer all the services the subject has and also, there are significant common areas to the subject that do not exist for an apartment. Additionally, the units in the subject are quite small so there will not be many apartments that are comparable to the subject. (TR. 29-30)

The respective expense items that were utilized by Howard are set forth in detail on pages 32 and 33 of the appraisal report. Administrative expenses were described as a mixture of fixed and variable expenses; in 2014, the subject had an administrative expense of \$6.02 per day, but some of the administrative tasks are reportedly associated with service items. Howard also considered survey data from the Institute of Real Estate Management (IREM) that median administrative costs for garden style apartments were \$703 per unit[7] for 2014. Howard chose to use the IREM data or \$70,300 per year as the administrative expense. Comparable data on the maintenance expense is also mixed with housekeeping and laundry expenses. For 2014, the subject property had maintenance costs of \$152,487, excluding housekeeping and laundry, or approximately \$1.18 per square foot of gross building area which she found to be reasonable. For the analysis, Howard inflated the amount by 3% to \$157,062 per year. The utility expense for the market comparables ranged between \$2.70 and \$6.02 per occupied day with a mean of \$4.07 and a median of \$3.91 per occupied day; the subject's most recent utility expense was \$6.69 per occupied day. Howard inflated the utility expense by 3% to an expense of \$6.89 per occupied day or \$251,511 per year. The employee benefits expense item as reported in the market data and by the subject also includes employee benefits for nursing staff, dietary staff and activity directors. The comparables had mean and median employee benefit expenses of \$4.95 and \$5.69 per day, respectively. The subject's most recent employee benefits expense was \$4.44 per day. Howard reported that approximately 20% of the total payroll costs in 2014 were attributable to administrative and maintenance staff. Therefore, for the analysis, Howard applied \$.88 per total patient day for the applicable employee benefit expense or \$32,120 per year. The insurance

[7] Based upon a year of 365 days, the \$703 per unit expense would be approximately \$1.93 per day.

expense for the market data ranged from $.30 to $1.48 per day with a mean and median expense of $.80 and $.77 per day, respectively. The three-year average insurance expense for the subject was $.27 per day and for this appraisal, Howard applied an insurance expense of $.30 per total day or $10,950 per year. Given the subject's historical expense data, Howard applied a rent expense of $.22 per day or $8,030 per year. The charge against income for the replacement of short-lived building items, such as major structural components or mechanical equipment, is known as reserves for replacement; Howard accounted for $250 per unit for the reserves for replacement expense or $25,000 per year. As a result of the foregoing data and analysis in the income approach to value, Howard opined applicable expenses totaled $554,972. Deducting these expenses from the potential gross income (PGI) calculation resulted in the appraiser determining the net operating non-service income or NOI to be $285,208. (H. Appraisal, p. 32-33; TR. 21-22)

The next step in the income approach to value was determination of a capitalization rate to be applied to the projected net operating income (NOI) determination. The appraiser described the chosen rate as one that is "appropriate for the quantity, quality and durability of the income stream." Howard also reported that there was limited information for sales of assisted living facilities similar to the subject that sold during the date of value, therefore, the appraiser relied upon published survey data. Howard wrote that for the 1st Quarter 2014 Realty Rates.com on Health care and Senior Living – assisted living facilities reported rates ranging from 5.26% to 12.42% with an average survey rate of 8.32%. Based on examination of market conditions through surveys of local loan officers, Howard also reported a band of investment analysis concluding a rate of 9.25% and a debt coverage ratio method of 7.5%. (H. Appraisal, p. 33-35; TR. 22)

Howard reported the subject was currently not operating at the market stabilized occupancy levels projected in her pro-forma analysis. As such, Howard found there was additional risk in achieving the projected net operating income which made use of a rate at the higher end of the range reasonable. Based on the foregoing data and analysis, Howard determined an overall capitalization rate of 9%. Since the appraisal is performed for assessment purposes, real estate taxes are accounted for by adding a tax load which Howard determined was 3.03% to the chosen rate of 9% for an overall capitalization rate of 12.03%. Applying this rate to the net operating income (NOI) resulted in an estimated value of $2,370,000, rounded. (H. Appraisal, p. 35-36; TR. 22-23)

Next, based on the most recent HFS Cost Report, the original cost of the furniture, fixtures and equipment (FF&E) was estimated as $458,286. Howard examined Marshall & Swift's Valuation Guide for residential property life expectancy and determined total economic life for FF&E was between 10 and 15 years. As of the date of value, the subject's FF&E was approximately 4 years old or between 26% and 40% depreciated. Howard further noted that the market value of used furnishings decreases more quickly "with substantial discounts." Therefore, Howard opined that a 75% reduction for FF&E was reasonable or an estimated current market value of FF&E of $115,000, rounded. (H. Appraisal, p. 36; TR. 23)

Howard next deducted the estimated depreciated market value of the FF&E from the value estimate of the subject of $2,370,000 to arrive at an estimate of the subject's market value allocated to real estate of $2,255,000 in accordance with the criteria in the Illinois statutes for supportive living facilities. This value conclusion excludes services and business value, thereby reflecting only the real estate according to Howard. As depicted on page 37 of the appraisal, Howard applied the statutory level of assessment of 33.33% to her value conclusion to arrive at her opinion of the appropriate assessment of the subject property of $750,000. (H. Appraisal, p. 36-37; TR. 23)

Based on this evidence, the appellant requested a reduction in the subject's assessment commensurate with the appraisal evidence.

On cross examination conducted by counsel for the taxing district, when discussing the statutory mandate (Section 10-390), Howard stated the statute is a jurisdictional exception telling the appraiser how to arrive at fair cash value. As such, fair cash value in this instance is not necessarily synonymous with market value. (TR. 31-33)

Upon questioning about another appraisal assignment for a supportive living facility located in Moultrie County, Howard acknowledged that even though she had deducted service income from the revenue, she had also deducted service-related expenses in that appraisal because that was her understanding at the time. She also acknowledged that the Property Tax Appeal Board disagreed with Howard's valuation approach on that property and her statutory interpretation of Section 10-390.[8] (TR. 33-34)

Expense data for comparables was collected by Howard from the State of Illinois Medicaid Cost Reports as set forth in the appraisal at page 30. The witness acknowledged that the subject's Medicaid Cost Reports are likewise published on the internet. Intervenor presented its Exhibit 1 consisting of the 2012 Medicaid Cost Report for the subject property.[9] (TR. 35-37)

Utilizing Intervenor Exhibit 1 and page 30 of the Howard appraisal report, counsel asked a series of questions that established differences in figures between Exhibit 1 and the subject's expenses as reported by Howard in the appraisal. For instance, the cost report reflected an adjusted Dietary and Food Purchase cost of $321,805 whereas Howard reported the 2012 dietary and food purchase expense was $342,334. Exhibit 1 displays a housekeeping, laundry and maintenance cost total of $256,358 whereas Howard reported this expense as $319,317. For healthcare and personal care in Exhibit 1 the adjusted total reported is $426,717 whereas Howard reported this expense as $565,023. While acknowledging that her expense figures differ from what was set forth in the 2012 cost report for the subject, Howard noted that these particular expenses were not deducted in the income approach that was utilized. (TR. 36-39)

Intervenor's counsel presented Intervenor Exhibit 2,[10] the 2014 Medicaid Cost Report for the subject property which the witness noted was not available as of April 2015 when the appraisal was prepared. Exhibit 2 displays a Dietary and Food Purchase adjusted cost total of $516,080 whereas Howard reported Dietary and Food Purchase total "from the Medicaid statement" of $524,809. Exhibit 2 for housekeeping, laundry and maintenance both the general ledger and

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[8] This was referring to PTAB decisions issued in Docket Nos. 10-01578.001-C-3, 12-04340.001-C-3 and 13-04297.001-C-3 which were appealed to the 4th District Appellate Court which issued a Rule 23 Order in 2017 IL App (4th) 150985-U known as Petersen Health Care II, Inc. v. Property Tax Appeal Board, et al.

[9] Admitted at hearing for impeachment purposes. (TR. 145-146, 148)

[10] Admitted at hearing for impeachment purposes. (TR. 145-146, 148)

adjusted total cost was reported as $372,519 whereas Howard reported this same expense as $369,348 based upon income statements according to the appraiser. As to heat and other utilities, Exhibit 2 displays both a total and adjusted total cost of $214,349 whereas Howard reported heat and other utilities expenses of $227,769 based upon income statements. Howard acknowledged that there were discrepancies between the cost report and the figures presented in the appraisal for the same expense category. (TR. 39-42)

On page 32 of the appraisal, Howard referenced analysis of IREM survey data for garden-style apartments; she testified that she was not aware of survey data for supportive living facilities. Howard inflated the maintenance expense on page 32 of the report by an inflationary factor. Page 33 of the appraisal summarizes the expenses and Howard testified that both the marketing expense and the management expense were contained within the administrative expense line item. (TR. 42-43,45-46, 48)

The Administrative Law Judge (ALJ) asked Howard to differentiate the income approach to value performed for *ad valorem* market value purposes as compared to the mandates set forth by Section 10-390 of the Code. Howard testified that an appraisal for a bank client, for instance, would consider all revenues, all expenses and arrive at a value as a going concern. In that process, however, the appraiser still would have to allocate for just the real estate, as there is also business value or intangible assets such as in the accounting methods, experience and such.[11] She opined that the statutory provision calls for a valuation of just the bricks and mortar (just the real estate) and thus requires the removal of all the service revenue which is business value. A supportive living facility also has "several businesses running" within them such as a beauty shop, restaurant and nursing care; the statutory provision seeks to ascertain the value of the 'bricks and mortar,' if none of those businesses were operating. (TR. 50-51)

The ALJ inquired about the subject's rental rate discussed on page 21 as "rent plus utilities" and on page 28 which indicated the "monthly rental rate includes utilities, three meals per day, housekeeping and laundry services, as well as activities and scheduled transportation." Howard testified that the market rate (rental) includes everything, including assistance with activities of daily living; not included would be items such as beauty shop services. (TR. 52)

While Howard did not report the actual monthly market rate charges for individual units, she agreed with the opposing parties' appraisal report describing 31 efficiency units, 45 one-bedroom units and 24 one-bedroom deluxe units. Howard also agreed that market rate charges for the subject were $2,525 per month for an efficiency, $2,825 per month for a one-bedroom and $3,125 per month for a deluxe. In her appraisal report, Howard utilized a rental rate of $2,901 per month for each of the 100 units from which she deducted $2,164 per month per unit based upon her understanding of the Medicaid schedule set forth in the addendum of the report. Howard further opined that the net result of $737 per month per unit for a 'regular apartment without any services' in that market appeared to be reasonable. The rental rate utilized did not vary among unit-types, but was an "overall blended" rate. (TR. 52-54, 56)

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[11] For a bank appraisal, for instance, the appraiser may perform a cost approach and an income approach with the difference in the two conclusions being attributable to business value. Alternatively, considering sales of closed supportive living facilities would also provide data on just the real estate. (TR. 51)

As further cross-examination, counsel for the intervenor questioned the provisions of the Medicaid chart in the addendum, pages 43 and 44. Howard acknowledged the subject facility has private pay residents. The Medicaid chart specifies its purpose is "to give estimated monthly revenue for operational supportive living facilities for providing housing and services to Medicaid-eligible residents." Howard contended that the statutory provision calls for treating the income and expenses similarly for both Medicaid and non-Medicaid eligible residents. (TR. 57-58, 59-60)

On redirect examination, Howard characterized the Medicaid payment chart as a statement of actual amounts paid by Medicaid, not market data. Howard also reiterated the portions of the statutory provision mandating "payments from Medicaid for services provided to residents" or "payments by a resident that would be paid by Medicaid if the resident were Medicaid-eligible." Therefore, for both types of residents, the statutory provision calls for the exclusion of services income as the value is for the real estate, not the value of services. (TR. 58-59)

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of $1,036,530. The subject's assessment reflects a market value of $3,116,446, land included, when using the 2015 three year average median level of assessment for Peoria County of 33.26% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review and the intervening taxing district, the Board of Education of Peoria Public School Dist. #150, each submitted a 63-page appraisal report prepared by Joseph M. Webster, an Illinois Certified General Real Estate Appraiser who also has the Member of the Appraisal Institute (MAI) designation.

The board of review representative at hearing agreed that the intervening taxing district's counsel should take the lead in presenting the appraisal evidence through testimony. As such, the following testimony is deemed to be the evidence presented at hearing jointly on behalf of the Peoria County Board of Review and Peoria Public School District #150 as elicited by Attorney Senagore. (TR. 61-62)

Joseph M. Webster was called as a witness. He is employed at Webster & Associates, Ltd., a real estate appraisal firm and began appraising property in 2006. Webster estimated that thus far in his career, he has completed perhaps 2,000 appraisals; of those assignments, ten or twelve have been appraisals of supportive living facilities. (TR. 62-63)

Webster prepared a retrospective appraisal of the subject property for clients identified as the Peoria County Board of Review, Peoria Township Assessor and Peoria School District 150. The Webster appraisal report[12] was prepared for *ad valorem* purposes seeking to establish the fee simple market value of the subject property as of January 1, 2015. Webster performed an exterior inspection of the property on August 19, 2016 and both an interior and exterior

[12] For ease of reference the Webster appraisal report will be referred to as the "W. Appraisal" followed by page citation(s).

inspection on September 19, 2016. In the report Webster concluded a value for the subject of $5,600,000.[13] (W. Appraisal, p. 2-5, 8, 10; TR. 64-66, 73-74)

As part of the appraisal, Webster set forth at page 4 the definition of market value as:

> . . . the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeable [*sic*], and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
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> [paraphrased as] Both the buyer and seller were typically motivated; the parties were well informed or well advised, acting in their own best interests; a reasonable time for exposure in the open market; payment in U.S. dollars or in terms of financial arrangements equivalent thereto; and the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions. (W. Appraisal, p. 4)

Webster also testified to familiarity with the definition of fair cash value found in the Property Tax Code[14] and contended that his definition of market value was the same. (TR. 66-67)

At page 5 of the Webster appraisal as a supportive living facility and for the scope of the assignment, "the following regulation" was relevant. Webster then recited Section 10-390 of the Code (35 ILCS 200/10-390) in its entirety. Webster also described the subject property as being licensed by the Illinois Department of Healthcare and Family Services [HFS] for a 100-unit supportive living facility. The appraiser testified that such a facility is targeted towards either seniors or disabled residents offering Medicaid "as an option for payment by the residents." (W. Appraisal, p. 6; TR. 67)

Webster testified that the income capitalization approach is a method where the net operating income is capitalized into value. The appraiser further testified to his understanding of this valuation method as provided in Section 10-390 of the Code; the statute limits the valuation to the income capitalization approach and provides "for the appraiser or assessor to exclude income from services provided to the residents." Webster asserted that his appraisal report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), although there was one jurisdictional exception superseding USPAP "due to the regulations and statutes provided by the State of Illinois." (TR. 67-69, 72; W. Appraisal, p. 10-11)

The USPAP jurisdictional exception affected Webster's valuation of the subject property in two ways: (1) the analysis was limited to the income approach and (2) the statutory provision specified the way the property is to be valued in the income approach. Webster wrote in the

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[13] In the course of hearing, Webster presented documentation that made a downward modified the value conclusion to $5,350,000. (Intervenor's Exhibit 9)

[14] "The amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." 35 ILCS 200/1-50.

report that typically both the cost and sales comparison approaches to value would be relevant, but due to the scope of the assignment, the income capitalization approach was the sole method used to value the subject property. (TR. 72; W. Appraisal, p. 10-11)

There were also four extraordinary assumptions used in the analysis that lead to an opinion of value: (1) financial data regarding the property was shown on the HFS website, as well as an appraisal prepared by DJ Howard & Associates, Inc., both of which were assumed to be reliable; (2) a random sampling of the interior units was made and assumed to be representative of the remaining units concerning condition, layout and finish; (3) inspections were made on August 19, 2016 and September 19, 2016, and it was assumed no significant changes had been made between the effective date of the appraisal and the date of observation; and (4) the former restaurant and banquet area was not observed by the appraiser with reportedly no remodeling in the area and the area was not relied upon in the highest and best use conclusions. The financial data which Webster relied upon from the HFS website was the gross income shown in the Medicaid Cost Report. The expenses, however, were based upon what was depicted in the Donna Howard appraisal. The witness was next shown Medicaid Cost Reports for the subject facility for 2012 (Intervenor's Exhibit 1), 2013 (Intervenor's Exhibit 3) and 2014 (Intervenor's Exhibit 2). (Appraisal, p. 8; TR. 69-71)

As part of the appraisal process, Webster made determinations as to the highest and best use of the subject property where, if vacant, the highest and best use was for retail and as improved, the highest and best use is for its current or continued use as a supportive living facility. (W. Appraisal, p. 33; TR. 75-76)

Webster began the income analysis with consideration of competing properties as set forth on pages 36-38 of the appraisal report as necessary in order to determine an opinion of market rent for the subject property. The competing properties consist of both supportive living facilities and assisted living facilities. Through this analysis and, with the exclusion of one assisted living facility, Webster summarized his findings that studio units rent for $2,800 to $3,407 per month and one-bedroom units rent for $3,250 to $4,076 per month; he also found there was a wide range of level of care charges, "although based on the rents being all inclusive, a market rent of $3,000 per month for studio units and $3,600 per month for one-bedroom units is reasonable." The appraiser also concluded that the second person charges range from $750 to $1,038 per month. (W. Appraisal, p. 36-38; TR. 76-79)

Next, Webster reported the subject's contract rents as follows: an efficiency was $2,525 per month; a one-bedroom was $2,825 per month; and a one-bedroom deluxe was $3,125 per month. In addition, the appraiser reported there was a $400 per month "level of care charge" and a second person charge of either $500 per month or $800 per month, depending upon the level of care necessary. Webster testified that the second person charge is applied when, for instance, a married couple occupy the same unit; the rental rate is the unit rate plus an amount ranging from $500 to $800 for the second person in the unit which accounts for the incremental increase in operating expenses associated with services provided to the second resident. Based on the rents being "all inclusive," Webster wrote in the appraisal that he concluded that "the current rents are consistent with the opinion of market levels, and will be used in the analysis." (W. Appraisal, p. 39; TR. 79-80)

The appraiser then analyzed the subject's historical operating income statements for 2012, 2013 and 2014 as re-created by Webster on pages 40, 41 and 42 where the gross income (revenue) figure was based upon the HFS Cost Reports and the expenses were based upon the data in the Donna Howard appraisal of the subject property. When asked if the reported expenses in his appraisal differ from the cost reports (Intervenor's Exhibits 1, 2 and 3[15]), Webster stated, "It's possible that they might." When asked how he would account for differences in those figures, Webster stated, "That's essentially a scope of record question in that we – because of the circumstances and the intended use of the appraisal, I'm working with the best information that I have, and I determined what I feel to be the most reliable information, and based on that, this was the format that I chose to use." While Webster did not have access directly to the subject's income and expense statements, he characterized the HFS cost report as "effectively an income statement." (W. Appraisal, p. 40-42; TR. 80-82)

As part of the appraisal, Webster also presented five supportive living facility expense comparables on pages 43 through 47. Webster testified that the expense comparable data was drawn from the 2014 HFS Cost Reports of the five respective facilities (Intervenor's Exhibits 4, 5, 6, 7 and 8).[16] In each category set forth in the appraisal, Webster calculated the per unit income and per unit expenses as depicted on pages 43 to 47. (W. Appraisal, p. 43-47; TR. 82-86)

In the appraisal report's analysis of income and expenses, under the sub-heading of "Historical Income and Expenses," at page 48 Webster wrote:

> The appraiser viewed cost reports shown on the Illinois Healthcare and Family Services website. However, there were inconsistencies noted for the expenses listed in the 2012 statement, such that the expenses were based on an appraisal on the property prepared by DJ Howard & Associates, Inc., given that it reported that an income statement was provided. All but one of the expenses was the same between 2012 and 2013, with an extraordinary assumption being made that this information is reliable. Given that the revenue for each year was not shown in the aforementioned report, while the appraiser did not receive separate income statements, it was presented based on that reported in the Illinois HFS cost reports. It should be noted that the Illinois HFS cost report for 2015 listed revenue of $3,162,878 and expenses of $2,319,772, not including depreciation or interest.

Next, Webster developed his opinion of potential gross operating income (PGI) utilizing the base rents charged for studio ($2,525 per month) and standard one-bedroom ($2,825 per month) units as he found these rents to be consistent with market levels. In the analysis of PGI, Webster also acknowleged, "[t]he maximum rents allowed under Medicaid in Central Illinois, as of the effective date, were $2,901 per month. Therefore, the base rents charged for the one-bedroom deluxe [$3,125 per month] exceeds this level." Webster initially determined market rent before deducting for services. As part of the income approach, Webster reported the subject's 2012 through 2014 private pay mix was 31.36%, 32.39% and 38.78%, respectively. In comparison,

[15] Intervenor Exhibit 3 admitted as a document Webster utilized in his appraisal preparation. (TR. 145-146, 148)
[16] Exhibits admitted at hearing as part of the witness' documentation reviewed to prepare the appraisal. (TR. 145)

the expense comparables had private pay mixes ranging from 21% to 51.55%. Private pay reflects payment to the facility by the resident from their own funds as compared to a resident for whom Medicaid pays. Based on this data, Webster found the subject's range of private pay mix to be reasonable. Webster was not aware of any restrictions upon the amount a facility may charge a private pay resident. He also noted that there appeared to be an upward trend in the historical private pay mix which was confirmed as of 2015 which had 39% of the residents as private pay. Webster therefore stabilized potential gross income for the one-bedroom deluxe units by using a private pay mix of 37.5%, with the remainder reflecting a rent of $2,901 per month. Webster summarized his PGI calculations on page 53 of the appraisal report and presented a revised page of calculations at hearing marked as Intervenor's Exhibit 9. Upon his most recent analysis of the data, Webster opined PGI of $3,324,480 per year for the subject. (W. Appraisal, p. 48 & 53; Intervenor's Exhibit 9; TR. 87-90)

When asked how the rent paid by private pay residents affects the valuation methodology required by Section 10-390 of the Tax Code, Webster answered:

> The determination of potential gross income [PGI] was before the deduction of services of the income associated with services, and the private pay portion of the potential gross income was determined based on the market rent analysis as discussed earlier in the income capitalization approach section.

(TR. 88)

Next, Webster estimated vacancy and collection losses based upon data found in the respective cost reports. He determined the rate to be applied based upon the historical vacancy rate of the subject; the vacancy rate of 10.48% for 2015, after the effective date of valuation, was "additional evidence"; and the vacancy loss of the five expense comparables that ranged from .03% to 13.93%. The subject's historical vacancy loss for 2012 through 2014 was 23.86%, 14.84% and 10.50%, respectively. Webster further opined that the subject's 2012 vacancy loss was "likely prior to reaching stabilization." In the appraisal, Webster also wrote that, "As of the date of the report, there were reportedly 94-units occupied [in the subject]." The appraiser also asserted that Expense Comparable 3 was fully occupied on the date of the report. In conclusion, with vacancy levels apparently stabilizing, Webster determined the application of a 10.50% stabilized vacancy loss was reasonable and consistent with market levels. (W. Appraisal, p. 48; TR. 88-91)

Webster defined service income as the additional rent paid to account for the additional services provided for a supportive living facility as compared to an independent living facility or an apartment, as examples. The appraiser's determination of the portion of the subject's rental payments that is attributable to service income is discussed from page 48 to page 50. In accordance with Section 10-390, Webster understands that he should not include service income "in the analysis." Webster testified that his method for determining service income was to "consider" the second person charge as evidence and he compared that to the historical operating expenses attributable to services; those primary expenses being dietary, personal care, activities and social services. From that data, Webster found that the second person charge at the subject property did not sufficiently cover the expenses associated with providing services and "would be a net negative" which would result in a higher effective gross income (EGI). Therefore, Webster determined it was appropriate to deduct the expenses associated with dietary, personal care, activities and social services from the effective gross income prior to deducting the service costs; he found that for years 2012 to 2014, these services totaled \$9,607, \$9,717 and \$11,961 per unit, respectively. Webster also found that corresponding expense items from the expense comparables ranged from \$8,456 to \$10,729 per unit or an average of \$9,786 per unit. Those figures did not include employee benefits and payroll taxes associated with those respective services and, therefore, Webster had to factor such amounts into the calculation as well. On page 9 of the report, Webster sets forth the analysis of employee benefits/payroll taxes and the assumption that 69% is attributable to dietary, health care/personal care and activities/social services, an additional deduction of \$1,242 per unit was appropriate. Webster concluded the subject's historical dietary, health care/personal care and activities/social services expenses were relatively consistent with market levels and for his appraisal analysis, Webster chose to deduct \$10,800 per unit per year from effective gross income to account for stabilized service income. (W. Appraisal, p. 48-50; TR. 91-96)

In the appraisal report, Webster discussed the allocation of Medicaid rates as published for each region of Illinois at www.slfillinois.com. He specifically set forth the Central region allocation which includes the subject property in Peoria County reflecting room and board of \$631; SNAP of \$106 and Medicaid of \$2,164. Webster also noted that the total Medicaid rate varies by region, whereas the room and board and SNAP allocations do not vary. Webster asserted in the appraisal that the room and board rates are related to a Supplemental Security Income (SSI) payment and do not reflect market behavior. Since the published allocation for services (Medicaid) in the Central Region was \$2,164, Webster was asked why he did not rely on that figure for his analysis of services income, and he said:

> . . . if we were to value the property on this, we would disregard all market consideration. We would disregard the implied expense associated with services. We would disregard the implied charges or additional rent paid for services, and the room and board shown on that schedule is the same throughout the entire State of Illinois where there are obviously significant fluctuations in value throughout the entire State of Illinois, and in the case of a subject property, the highest and best use would not be to value the property – I mean if the property were a stand-alone facility rented for \$737 per month, a potential purchaser would most likely not analyze the property based on continued use because it fails one of the tests of the highest and best use analysis. Most importantly, that it does not bring a maximum return to the real estate, and [a] potential buyer would most likely consider converting it to an alternative use that would bring in a greater return to the real estate such as an independent living facility.

Furthermore, in the report, Webster contended that using the published allocation data "would imply that supportive living facilities throughout the state would have nearly the same unit value or it may suggest lower unit values for the locations in Illinois that have higher average rents, but also higher expenses, all else equal. Therefore, this method was not regarded as appropriate for the analysis." (W. Appraisal, p. 49-50; TR. 96-98)

As part of the income capitalization approach, Webster's potential gross income (PGI) of \$3,324,480 was reduced by a vacancy and collection loss of \$349,070 or 10.5% and then was further reduced by the appraiser's deduction of service income of $1,080,000 or $10,800 per unit per year which resulted in an effective gross income (EGI) of $1,895,410. (W. Appraisal, p. 50 & 53, as corrected by Intervenor's Exhibit 9 at hearing[17]; TR. 98-101)

Next, Webster examined and stabilized expenses for the subject property as described commencing on page 50 through page 52 of the appraisal. He determined stabilized expenses by analyzing both historical expenses as well as consideration of the expense comparables. He specifically included common area housekeeping/laundry/maintenance ($375,682), utilities ($187,841), administrative/clerical ($350,000), marketing ($32,668), employee benefits/payroll taxes ($55,800), insurance ($40,000), miscellaneous ($15,000), management (5% of EGI) and reserves for replacement ($40,000) as expenses. The appraiser's expense analysis specifically excluded any expenses for dietary, health care/personal care, activities/social services and real estate taxes, although the real estate tax expense was reflected in the loaded capitalization rate. To account for the deduction of both service income and service expenses, Webster reduced the employee benefits/payroll taxes for wages to $558 per unit as 69% was attributable to wages related to dietary, health care/personal care and activities/social services. As to the management fee, while Webster recognized that this was not an expense category on the Medicaid cost report, he contended that "it is a common expense amongst properties of this type"; therefore, Webster applied a 5% management fee as being reasonable. Total annual expenses before real estate taxes were estimated by Webster to be $1,191,761. (W. Appraisal, p. 50-52; Intervenor's Exhibit 9; TR. 101-107)

As depicted on Intervenor Exhibit 9, deducting the total stabilized expenses from the effective gross income (EGI) resulted in a net operating income (NOI) calculation of $703,649. (Intervenor Exhibit 9; TR. 107)

The next step under the income approach analysis is to arrive at an appropriate capitalization rate which Webster selected based upon consideration of market sales of assisted living facilities. Webster set forth a mortgage rate analysis and a band of investment technique on page 54 in the appraisal report. Based on the data, he found the overall rate to be 9.47% and Webster opined a loaded capitalization rate of 12.5% based on the appropriate real estate tax load. Webster contended that the subject's income stream is partially based on the contributory value of furniture, fixtures and equipment (FF&E), which he determined comprises about 5% of the total value which resulted in a downward adjustment of the real property tax load for the value contribution of this FF&E personal property. (W. Appraisal, p. 54-55; TR. 107-109)

On page 34 of the appraisal, Webster performed an analysis of the contributory value of the FF&E. For this analysis, Webster examined applying depreciation to the cost new as set forth in the HFS cost report. After examining available data, Webster determined that a cost new of $470,000 was reasonable for the subject. In light of the average useful life of equipment being 10 years and applying straight-line depreciation, Webster determined that the implied contributory value of FF&E was $280,000, rounded. (W. Appraisal, p. 34; TR. 109-110)

As shown in its corrected page as Intervenor Exhibit 9, Webster applied the 12.5% capitalization rate to the NOI of $703,649 to arrive at a value of $5,629,184 [*sic*].[18] Then, the appraiser opined

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[17] Without objection, Intervenor's Exhibit 9 was admitted at hearing. (TR. 149)

that the value attributable to the FF&E of $280,000 must be deducted resulting in a final opinion of the market value of the subject property as of January 1, 2015 by the income capitalization approach of $5,350,000, rounded. (Intervenor's Exhibit 9; TR. 110-111)

Based on this evidence, the board of review requested confirmation of the subject's assessment. The intervening taxing district requested an increase in the subject's assessment based upon the Webster appraisal, or alternatively, confirmation of the subject's assessment.

On cross-examination, Webster reaffirmed that the instant appraisal assignment was to make an *ad valorem* determination of the fair market value of the subject property. He also acknowledged that if the property were something other than a supportive living facility, Webster would have employed more than a single approach to value. Furthermore, if there were a recent sale of the subject property, such sale data may be considered as additional evidence. Webster also acknowledged that typically for a commercial property, the appraiser would employ up to three approaches to value and then reconcile those respective conclusions to arrive at a final value conclusion. (TR. 112-113)

Webster also testified that while the highest and best use analysis is performed prior to the valuation analysis, he has experienced assignments when one approach to value is substantially higher than the other approaches to value. In those instances, Webster has gone back and revised the highest and best use analysis. For the subject property, the highest and best use as improved was for continued use as a supportive living facility. In further response, Webster reiterated that his prior testimony opined that if only the rent schedule for room and board of $737 per month were to be considered, then, unless there were encumbrances or restrictions prohibiting conversion, a potential buyer would probably not consider the subject property given a belief that there is "more potential to this property than $737 per month" or would convert it to independent living or assisted living where the real estate will receive a higher return. (TR. 114-116)

While Webster's appraisal was performed to arrive at fair market value or fair cash value as used in the Code, he also acknowledged that Section 10-390 of the Code does not refer to fair market value; Section 10-390 does provide when determining 'fair cash value' certain payments shall not be considered. Webster also acknowledged that if he were performing an appraisal of the subject property without reference to Section 10-390, he would have performed the appraisal differently. (TR. 118-122)

When asked where in his analysis Webster excluded payments from Medicaid for services provided to residents as set forth in Section 10-390, he testified that it was the $1,080,000 "service income deduction" shown on page 53 of the appraisal and as revised by Intervenor's Exhibit 9 along with the discussions on pages 48 through 50 of the report. Webster's service income deduction of $1,080,000 consists entirely of the sum of his opinion of the dietary, health care/personal care, activities/social services and the employee benefits/payroll taxes expenses associated with those activities which he concluded was $10,800 per unit annually. Therefore, his calculation was not based upon payments from Medicaid, but rather upon Webster's analysis of market behavior that he found to be related to services. (W. Appraisal, p. 48-49; Intervenor's Exhibit 9; TR. 124-125, 128-129)

[18] Mathematically the result should be $5,629,192.

Next, the witness was cross-examined about his knowledge of the HFS published allocation of Medicaid payments as depicted in the addendum of the Howard appraisal report. Webster was aware of the allocation document when he prepared his appraisal report and he is aware that it is revised/updated by HFS from time to time. Webster acknowledges that the publication from HFS allocated the Medicaid payment between room and board, SNAP and the remainder being characterized as Medicaid; Webster rejected that allocation for purposes of his appraisal as set forth in pages 48 to 50. One basis to reject the allocation was the fact that room and board along with SNAP were identical throughout Illinois, even though the total Medicaid payment varied from region to region and therefore does not recognize the market. (H. Appraisal, p. 43-44; TR. 125-127, 136-138)

Webster agreed that the HFS published Medicaid allocation allows for $2,164 per month for services which would be $25,968 per year for each Medicaid resident. Applying this calculation to all 100 units of the subject property results in a total of $2,596,800 which would be applicable to service income if the logic of the HFS allocation were to be followed at full occupancy. Webster agreed that if this method were to be followed, an adjustment to the deduction for occupancy would be necessary. If this model were to be applied, the net operating income conclusion would be very similar to the net operating income derived by Donna Howard. (TR. 131-136)

Although Webster rejected the HFS allocation schedule for purposes of his appraisal report, he did rely upon data drawn from HFS cost reports for the subject and comparables as reflected in Intervenor's Exhibits 1 through 8. (TR. 137-139)

In answer to questions by the ALJ, Webster contended that functional obsolescence is a consideration typically in a cost approach to value, but also is a consideration in an income approach to value. For this assignment, the functional obsolescence was an important consideration in the utilities expense which was well above comparable properties, but the subject has an excessive amount of common areas which require additional expenses with utilities. Likewise, he contended that housekeeping, laundry and maintenance expenses would also be higher because there is more to clean and more to maintain. Webster also chose a higher capitalization rate partially due to functional obsolescence. When asked how functional obsolescence was considered in light of the mandates of Section 10-390, Webster testified that he "considered it differently," but considered it. (TR. 140-141)

The ALJ questioned the potential gross income calculations as depicted on Intervenor's Exhibit 9. The appraiser testified he applied the studio monthly asking rental rate of $2,525 and multiplied it by 12 months and multiplied that by 31 studio units for a total of $939,300 as PGI for studio units. The witness testified that the same formula would apply to the other unit types and varying rental rates. (Intervenor Exhibit 9; TR. 141-142)

In answer to questions by the ALJ concerning the housekeeping/laundry/maintenance expense, Webster reiterated this figure was drawn from the expense comparables as well as historical data. He determined an expense of $11.50 per resident day. While he acknowledged that weekly housekeeping is a service, there is also common area cleaning and potential laundry expenses in the common areas such as tablecloths. (TR. 143-144)

Conclusion of Law

The appellant contends the "fair cash value" of the subject property is not accurately reflected in its assessed valuation as mandated by Section 10-390 of the Code (35 ILCS 200/10-390). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). However, for purposes of the Code for the assessment of a supportive living facility, the income approach to value is to be utilized with the exclusions set forth in Section 10-390. The Board finds a reduction in the subject's assessment is warranted commensurate with the appellant's evidence.

The Board has given little credence to the analysis undertaken by appraiser Webster in this matter. In summary, the Board finds that Webster was unable to articulate his rationale for sometimes using published HFS cost reports, sometimes using market data, sometimes relying upon market rents and finally accepting that HFS limits (i.e., controls) the total rent that may be charged of $2,901 per month. Ultimately the Board finds that of the two reports, the appellant's appraisal report is more credible, logical and better supported given the limitations placed upon these HFS licensed facilities, the Medicaid payment limitations and the provisions of Section 10-390 of the Code.

The question before the Property Tax Appeal Board is purely an issue of statutory interpretation concerning Section 10-390 of the Code directing the valuation of supportive living facilities which is then intertwined with valuation practices, theories and methodologies. A supportive living facility is to be valued pursuant to Section 10-390 of the Code, which is one of the enumerated "special properties" set forth in Article 10 of the Code specifying the valuation technique to be utilized. Among the other "special properties" itemized in Article 10 of the Code are low-income housing properties, more commonly referred to as Section 42 housing (Section 10-235 et seq.).

The Property Tax Appeal Board finds it instructive that Section 10-390 concerning the valuation of supportive living facilities commences with the phrase "[n]otwithstanding Section 1-55, to determine the fair cash value of a supportive living facility," a local assessment officer must use the income capitalization approach and further provides that certain revenue streams for services are to be excluded in the application of the income approach. It is further important to note that Section 1-55 of the Code is the definition of "33 1/3%" as "one-third of the fair cash value of property, as determined by the Department [of Revenue]'s sales ratio studies for the 3 most recent years preceding the assessment year, adjusted to take into account any changes in assessment levels implemented since the data for the studies were collected." (35 ILCS 200/1-55) Therefore, based on the foregoing distinctions made in Section 10-390 of the Code and the differentiation of Section 1-55 of the Code, the Property Tax Appeal Board finds that the statutory method called for by Section 10-390 in regard to a licensed supportive living facility is something other than the 'traditional' definition of fair cash value or fair market value which most typically involves value derived from sales data as the best indication of value (i.e., what a willing buyer and willing seller in an open market would purchase/sell the property for).

As set forth in detail above, there are extremely divergent value opinions utilizing Section 10-390 of the Code by the two expert appraisers who were retained in this appeal. The subject property, located in Peoria, consists of a converted hotel/restaurant that is now a 100-unit supportive living facility featuring 31 studio units, 45 one-bedroom units and 24 one-bedroom deluxe units. Each unit has a kitchenette furnished with a microwave and a refrigerator, a bathroom and living/sleeping area. The property has a 4.64-acre site.

The Peoria County Board of Review's total assessment for the subject property reflects a market value of $3,116,446, land included, when using the 2015 three-year average median level of assessment for Peoria County of 33.26% as determined by the Illinois Department of Revenue. Donna J. Howard, the appellant's retained appraiser, estimated the subject's total value to be $2,250,225 as of January 1, 2015 in accordance with Section 10-390. In contrast, Joseph M. Webster, the appraiser retained jointly by the Peoria County Board of Review and the intervening taxing district, Peoria Public School District #150, estimated when applying Section 10-390 of the Code that the subject's total value to be $5,350,000, rounded, as of January 1, 2015 in accordance with a correction submitted at hearing (see Intervenor's Exhibit 9).

Both appraisers have years of experience in valuing real estate as licensed appraisers and were qualified as experts in their field. Both appraisers developed only the income approach to value following their own interpretations of Section 10-390 of the Code and seeking out relevant data concerning the subject property and comparable data for analysis as they each deemed appropriate. Both appraisers agree on the basic principles and methodologies applicable and employed in an income approach to value. Both appraisers agree that the income approach technique requires the appraiser to derive a value indication for an income-producing property by converting its anticipated benefits (such as cash flow or future rights to income) into property value. (Howard Appraisal, p. 28; Webster Appraisal, p. 35)

To begin the income analysis, each appraiser estimated dramatically different amounts as potential gross income. Howard solely relied upon the published HFS regional allocation for Medicaid residents at supportive living facilities effective July 1, 2014 (Howard appraisal addenda p. 43-44). This publication depicted a "total" of $2,901 for a single resident at a supportive living facility located in Peoria County and other counties/communities in the Central region. The allocation of the $2,901 amount was depicted as $631 for "room and board," $106 for SNAP or the Supplemental Nutrition Assistance Program and $2,164 as "Medicaid." While not specifically cited by Howard in her appraisal or in testimony, the HFS Regional allocation publication states in pertinent part at the top (see Addenda, p. 43):

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

For purposes of her income analysis and revenue determination, Howard solely applied the difference between the total allowed of $2,901 and the Medicaid allocation of $2,164 or the amount of $737 as the monthly non-service related income attributable to the subject real property. Howard applied this monthly amount of $737 to each of the 100 units for each of the 12 months of the year which resulted in a potential gross income (PGI) of $884,400.

In contrast, to determine his revenue calculation, Webster relied solely upon an analysis of the actual asking rents at the subject facility as compared to the HFS allowable charge of $2,901 per month. As part of this analysis, Webster also confirmed that the subject's actual rents were within market rates. Where the actual monthly rent was less than $2,901, Webster utilized that actual rental figure. For private-pay one-bedroom deluxe units where the rent was more than $2,901 per month, Webster applied the private-pay occupancy percentage and provided two separate calculations for the revenues for one-bedroom deluxe units separated between Medicaid residents at $2,901 and private pay residents at a higher monthly rate of $3,125. Webster then utilized the data as outlined in Intervenor's Exhibit 9 resulting in a potential gross income calculation, before deduction for service income of $3,324,480.

The next step in the income approach is to deduct the estimated vacancy and collection losses from the calculation of PGI. Howard estimated 5% of PGI or $44,220 which resulted in an EGI conclusion of $840,180. In his analysis, Webster estimated vacancy and collection losses at 10.5% of his PGI calculation or $349,070 which resulted in Webster's "effective gross income – prior to service income deduction" of $2,975,410.

The Property Tax Appeal Board finds based upon that record that Webster's income analysis calculated a PGI that was all inclusive of payments received by the facility and within the confines of the HFS guideline of $2,901 per month, but for a portion of occupancy that is private pay. The Board further finds that to remove or account for the portion of this total income or revenue that was service related, Webster calculated a deduction of $1,080,000 per year. This calculation is equivalent to $10,800 per unit per year or $900 per month per unit for services provided to the resident which includes dietary, health care/personal care and activities/social. In other words, based upon Webster's methodology, a resident of the subject facility for a one-bedroom deluxe unit would pay $2,901 per month of which $900 is attributable to "service income." The Board finds this method results in a (no more than) 750 square foot apartment renting, without any services, in Peoria, Illinois, for the equivalent of $2,000 per month. As a result of Webster's method, this service income deduction reduced the PGI to $1,895,410.

After considering both appraisal reports in their entirety along with the testimony at hearing, the Property Tax Appeal Board finds that Webster erred in his analysis and insistence that the income/revenue stream of the subject property must be market-based within the appraisal analysis. The Board further finds that Webster was not persuasive in his approach that the appraisal assignment was an estimate of the subject's "fair market value" as defined in a potential sale transaction. (See Webster Appraisal, p. 4-5) The Board finds that the provisions of Section 10-390 are not couched in terms of determining traditional fair market value, but rather "notwithstanding Section 1-55" the assessing official is "to determine the fair cash value" of a supportive living facility such as the subject using a unique, different and non-traditional appraisal analysis utilizing a modified income capitalization approach to value.

On this record, the Board finds that Howard performed the better income capitalization approach analysis in accordance with Section 10-390 which specifies that the determination of fair cash value shall exclude "payments from Medicaid for services provided to residents of supportive living facilities . . . ." The analysis which Howard employed accepted the HFS publication of the funds paid by HFS for services rendered of $2,164 per month per Medicaid-eligible resident as the best indication of services revenue. The Board finds that acceptance of the HFS publication data is much more well-supported than the calculation of $900 per month per Medicaid-eligible resident that was utilized by Webster in his appraisal analysis given all of the various services provided and/or available to residents through 24-hour call services, dietary, health care/personal care and activities/social services on a monthly basis. A supportive living facility, much like a hotel or a nursing home by its very nature consists of an income generating business that is comprised of land, building(s) and "services" whether that consists of hospitality/housekeeping for a hotel or dietary and nursing for a nursing home.

"In interpreting a statute, the primary rule, to which all other rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature. [citations omitted] Legislative intent is best evidenced by the language used by the legislature, and where an enactment is clear and unambiguous a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express. [citations omitted]" Kraft, Inc. v. Edgar, 138 Ill. 2d 178, 189 (1990).

The Board has researched the legislative history of Section 10-390 and found only one substantive discussion of Senate Bill 2185 which became P.A. 94-1086, effective January 19, 2007:

> According to Section 42 Housing Groups, the legislation changes the definition of property to indicate the -- to assessment officers that certain portions of fees paid by residents of supportive living facilities should not be included in the calculation of the building's assessment because the facility cannot include those fees as income. A portion of the monies paid by residents of supportive living facilities does not go towards the actual net operating income attributable to the property. So, this just clarifies that that should not be considered.

Speech of Senator Cullerton from Senate Transcript of the 94th General Assembly, Regular Session, 77th Legislative Day, February 22, 2006.

The Board finds the General Assembly in Section 10-390 did not include language limiting the appropriate and/or applicable expenses of a supportive living facility as part of the calculation under an income approach to value. There is no language in the provision specifically directing which expenses are to be considered. While the Property Tax Appeal Board further finds that had the General Assembly wanted to include a limitation on appropriate expenses for consideration and application in Section 10-390, it could have done so.

Having fully considered the record and the parties' evidence, the Property Tax Appeal Board finds that Howard's application and interpretation of the applicable statutory provision concerning supportive living facilities is in accord with valuation principles regarding real property and arriving at a value conclusion of the real estate as called for by Section 10-390. In conclusion, the Board finds that Howard presented the better and more logical income approach to value given the statutory provision that is at issue.

Both appraisers also applied a deduction for the depreciated value of furniture, fixtures and equipment (FF&E). While the appraisers varied in their respective deductions, the Board finds that the calculation presented by Howard was logical and consistent. In closing, the Board finds the best valuation evidence in the record to be the appellant's appraisal with an estimated market value of $2,255,000 as of January 1, 2015 after deducting FF&E.

Since the total assessment for the subject is $1,036,530 which reflects a market value of $3,116,446, land included, when using the 2015 three year average median level of assessment for Peoria County of 33.26% as determined by the Illinois Department of Revenue, the Property Tax Appeal Board finds that the subject property is overvalued when applying Section 10-390 of the Code and a revised final value opinion based on Howard's analysis of $2,255,000. Therefore, the Board finds that a reduction in the subject's assessment 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: January 15, 2019

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

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

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

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

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

PARTIES OF RECORD

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