



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

APPELLANT: Nicor Gas Real Estate
DOCKET NO.: 17-00444.001-C-2
PARCEL NO.: 15-01-126-015

The parties of record before the Property Tax Appeal Board are Nicor Gas Real Estate, the appellant, by attorney William J. Seitz, of the Law Offices of William J. Seitz, LLC in Northbrook; and the Kane County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds **no change** in the assessment of the property as established by the **Kane** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$152,414
IMPR.: \$347,856
TOTAL: \$500,270

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Kane County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2017 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property is improved with a part one-story and part two-story industrial building of concrete construction that was built in 2009¹ and contains approximately 34,964 square feet of gross building area.² The building is 42% finished and has an elevator to the second floor which features a break room, locker rooms and storage areas. The warehouse area has a 22-foot clear ceiling height and 10 overhead roll-up doors. The improvement is situated on a 197,327 square

¹ Appellant's appraisal states that the subject was built in 2007 while the property record card submitted by the board of review shows the building was constructed in 2009. The Board finds that the property record card is the best evidence of the age of the building.

² The record contains discrepancies in the building's square footage which are discussed at length below. The Board finds that the best evidence of building size was presented by the county's appraiser as it was based upon a physical inspection and measurement of the building and is supported by the measurements conducted by the review appraiser.

foot (4.53 acres) irregularly shaped corner site resulting in a land to building ratio of 5.64:1 and is located in Aurora, Aurora Township, Kane County.

The appellant appeared before the Property Tax Appeal Board through counsel claiming overvaluation as the basis of the appeal. At the beginning of the hearing, appellant's counsel made a Motion to Strike the Kane County Board of Review's increase of the subject property's assessment. In support of this Motion, the appellant submitted a brief along with an Appendix containing documents and exhibits in support of the motion. Counsel argued that the board of review's increase is contrary to law and that the taxpayer was not afforded notice and an opportunity to be heard as required by Sections 16-30 and 16-55 of the Property Tax Code. (35 ILCS 200/16-30 and 35 ILCS 200/16-55). Counsel stated that the board of review increased the subject's 2017 assessment from \$385,006 to \$500,270 and, according to its "Notice of Findings" dated December 28, 2017, identified the reason for the change as "revalued based on evidence submitted." Counsel argues that this is a misstatement of what happened as the increase was made on the Kane County Board of Review's own motion with no evidence being submitted to support making the change and no opportunity for the taxpayer to respond, in violation of Section 16-30 of the Property Tax Code which provides in part that the "assessment of the property of any person shall not be increased unless that person or his or her agent first has been notified in writing...and given an opportunity to be heard" and in violation of Section 16-55(f) of the Property Tax Code which provides in part that "[n]o assessment shall be increased until the person to be affected has been notified and given an opportunity to be heard."

The board of review filed a response to appellant's Motion to Strike arguing that it was the appellant who had requested the board of review hearing where the increase was made upon discovery of the square footage error, and that appellant's counsel was present via telephone at the hearing on November 30, 2017.

In its brief, the board of review's counsel provided factual background noting that appellant submitted an appraisal to the board of review which stated that the property was a one-story building with 27,960 square feet of building area, which appears to be based strictly on the first-floor footprint of the building. Kane County's appraiser measured the building and determined that the first floor contains 28,404 square feet of building area and the second floor contains 6,560 square feet of building area, for a total building size of 34,964 square feet. The board of review's counsel noted that photographs were reviewed at the BOR meeting showing that the building has a partial second story and depicting a second-floor lunchroom and tool room. The appellant's appraisal reflected that the building has an elevator, leading to the reasonable conclusion that the building has a second story.

The board of review's counsel argued that the BOR revised the assessment based upon the evidence gleaned at the meeting, after realizing that the square footage of the building had been calculated incorrectly. The board of review's counsel again noted that appellant's counsel was present at the meeting via telephone having waived its in-person presence before hearing. At the BOR meeting, upon discovery of the size discrepancy, the BOR determined it was just to revise the assessment in accordance with the plain language of Section 16-30 of the Property Tax Code. (35 ILCS 200/16-30).

The board of review's counsel further argued that appellant's reliance on Section 16-55 of the Property Tax Code as restricting the BOR's ability to revise a property's assessment is misplaced. (35 ILCS 200/16-55). Appellant cites Section 16-55(e) which reads in part that ". . . the property itself shall not be assessed at a higher percentage of the fair cash value than the assessed valuation of other property in the assessment district prior to equalization by the board or Department." Appellant's contention that the subject was assessed at a higher percentage of fair cash value ignores the discovery of the incorrect square footage.

Appellant's counsel filed a reply brief in support of its Motion to Strike arguing that Nicor is making a legal argument seeking to limit the starting number in dispute in this case. Counsel argues that the "noticed hearing" was for the presentment of a stipulation reached between the taxpayer and the county assessor, which was rejected by the board of review. The board of review could have rejected the stipulation and issued a "no change" but increasing the assessment triggered an additional obligation upon the board of review. Counsel argues that Sections 16-30 and 16-55 of the Property Tax Code require that the board of review recess the current meeting and then schedule a new meeting with the taxpayer in attendance.

The Board finds that Section 16-30 of the Property Tax Code provides in part that: "[T]he board of review . . . shall meet on or before the first Monday each June to revise the assessment of property. At the meeting, the board of review upon application of any taxpayer or upon its own motion may revise the entire assessment of any taxpayer or any part of the assessment as appears to it to be just. The assessment of the property of any person shall not be increased unless that person or his or her agent first has been notified in writing at the address that appears on the assessment books, and been given an opportunity to be heard." (35 ILCS 200/16-30).

Furthermore, Section 16-55(e) of the Property Tax Code provides in pertinent part: "The board may also, at any time before its revision of the assessments is completed in every year, increase, reduce, or otherwise adjust the assessment of any property, making changes in the valuation as may be just, and shall have full power over the assessment of any person and may do anything in regard thereto that it may deem necessary to make a just assessment, but the property shall not be assessed at a higher percentage of fair cash value than the assessed valuation of other property in the assessment district prior to equalization by the board or the Department." (35 ILCS 200/16-55(e)).

The Board finds these statutes clearly provide that the board of review has broad authority, by its own motion or upon written complaint, in any year to review the assessment of any property, and revise and correct that assessment as appears to be just. The only constraint to the board of review's action is that the revision or correction must result in a uniform assessment, that is an assessment that is at the same percentage of fair cash value as other similar property in the same assessment district. In the instant case, the assessment was increased upon the board of review's discovery that the that the subject property had a second floor which was not being included in the assessment. Appellant's counsel's argument that the meeting then should have been recessed and rescheduled is without merit as the discovery occurred at a meeting requested by the appellant and at which appellant's counsel was present via electronic means (telephone). Additionally, the Board finds that the appellant has an opportunity at the hearing before this agency to contest the assessment of the property including determining the correct size of the subject building, which was the basis for the board of review increasing the assessment of the

subject property at the county level hearing. Consequently, the Board finds that the appellant's Motion to Strike is denied.

In support of its overvaluation argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraisers, Elizabeth Halemba and Susan Z. Ulman of Zimmerman Real Estate Group, Ltd., estimating the subject property had a market value of \$980,000 as of January 1, 2017.

As its first witness, appellant's counsel called Tim Banner who has worked for Nicor for 26 years and has been facility manager at the subject property for about 10 years. Banner testified that Nicor had the building designed specifically for its needs as a fleet management facility. He explained that the building is used for repair and maintenance of Nicor's vehicles and is where new vehicles are brought for staging and old vehicles are brought prior to auction. The building features a wash bay at the back, an oil room, multiple lifts, and several storage areas. It has less office space than most buildings of its size because it is primarily used as a place to work on vehicles. The second floor of the building features two locker rooms and a break room for the employees, along with parts rooms and additional storage. Banner described the site as being primarily covered in gravel with the back part of the parcel being a wetland. Banner testified that the property has only one entrance and exit and is surrounded by wetlands. On cross-examination by Mr. Sullivan, Banner testified that although the property has two gates, they only use the one and that the other gate is fenced off and that he did not think that you could access the property from that other gate because it ends at a cul-de-sac area.

As its next witness, the appellant called Susan Z. Ulman who has been appraising commercial and industrial real estate for approximately 40 years. Ulman testified that she has the MAI designation from the Appraisal Institute and is licensed by the State of Illinois and has testified at more than 20 Property Tax Appeal Board (PTAB) hearings. Whereupon Ulman was tendered and accepted as an expert witness.

Ulman testified that the subject property is located on Beverly Court, off of Bilter Road. According to the appraisal, the property is located in unincorporated Aurora in unincorporated Kane County and is zoned F, Farming district. The appraisers "assumed that a zoning variation was obtained to construct an industrial facility, and therefore, the property is assumed to be a legal use." (Appellant's appraisal, p. 18) Ulman testified that there are wetlands located at the rear of the property and that the property is fenced at that point and not at grade. Referring to a site map included within the appraisal, Ulman testified that due to the location of the improvements, the location of the parcel, and the general layout of the property, the site does not lend itself to segmenting off excess land in terms of resale. Further, it has only one ingress and egress for vehicles which means that the vehicles have to take turns going in and out which, if there is a lot of traffic, is an issue to neighbors and other vehicles as it slows them down.

Ulman testified that she had performed an exterior inspection of the property, while Elizabeth Halemba had inspected both the interior and exterior of the property. In the appraisal, the appraisers described the subject property as being a one-story masonry industrial building that was built in 2007 and contains 27,960 square feet of building area, 15% of which is office space. The building is noted as having an elevator. The warehouse area has a clear ceiling height of 22

feet, no loading docks, and 10 overhead doors. The building is situated on a site containing 197,327 square feet of land area, with a land to building ratio of 7.06:1.

In her testimony, Ulman described the building as being part one-story and part two-story, with the second floor containing various lunchrooms and storage areas and some office space. Ulman described the warehouse as having limitations in terms of both loading and restroom facilities as there are no restrooms whatsoever in the warehouse which would not be appealing to the market as a whole, even if it works for Nicor. Ulman testified that the square footage of the building was provided to the appraisers by Nicor and that the appraisers had attempted to verify the size with the assessor's records multiple times. She testified that the first time they looked at the assessor's records, no building size was stated. The second time they looked, a building size was stated, and the third time, a different size was stated.

Ulman testified that in estimating the value of this property, the appraisers utilized two approaches to value and looked at a third. They looked at the cost approach but determined that, due to depreciation on the building and its special nature, it would not be indicative of what the market would pay.

Ulman testified that her goal in appraising this property was to look at what a willing buyer and a willing seller would pay for this property if it were on the market and that, in developing the sales comparison approach to value, her first criterion in selecting a comparable is location, her second is date of sale, and her third is the building's size and utility. She stated that most of the market participants only have first floor space while the subject has a second floor, which has less utility. In addition, the subject has issues with loading, restrooms and limited access. She testified that she believes her six comparable sales were the best indicators of value in the subject's area and support her final conclusion of value.

The appraisers chose six comparable sales of one-story single-tenant masonry or masonry and metal industrial buildings. Ulman testified that the sales comparables were located within a radius of approximately three miles from the subject, and that five of sales comparables were located in Kane County but that one of the comparables was located in West Chicago which is in the western part of DuPage County. The buildings were constructed from 1952 to 2002 and range in size from 12,410 to 55,000 square feet of building area. The comparables have sites ranging in size from 30,600 to 164,222 square feet of land area resulting in land to buildings ratios ranging from 2.40:1 to 4.12:1. Four for the comparables have 4% to 65% office space. The office space for two comparables was not available to the appraisers. The buildings have clear ceiling heights ranging from 14 to 24 feet. Five of the comparables have one or two loading docks and each comparable has either one, two or six overhead doors. The comparables sold from February 2014 to November 2016 for prices ranging from \$220,000 to \$1,539,000 or from \$12.22 to \$36.05 per square foot of building area.

The appraisal contains a summary of adjustments on which the comparables were evaluated based on differences from the subject in "Property Terms and conveyed," financing, terms and conditions of sale, market condition changes, location, building age, building size, land to building ratio, percent of office space, clear ceiling height, number of loading docks and overhead doors, and functional utility and condition. (Appellant's appraisal, p. 54) The grid characterizes the comparables as having no significant difference from the subject or being

superior or inferior when compared to the subject. The appraisers made unspecified upward and downward adjustments to some of the comparables for terms and conditions of sale and differences from the subject in building age, building size, percent of office space, clear ceiling height, and number of loading docks. (Appellant's appraisal, pp. 55 - 56)

Ulman testified that the comparables had a wide range of office space of from 4% to 65% and also varied in land to building ratio and number of loading docks, which would be an issue to another user that had products coming in and out. She again mentioned the limited access to the subject property which she opined would be difficult for big vehicles to handle. Based on these factors, Ulman testified that the appraisers made adjustments to the comparables for building area and size, land to building-ratio, office percent, ceiling height, loading and utilities. Based on their analysis of this data, the appraisers arrived at an adjusted unit price for the subject of \$35.00 per square foot of building area and, using 27,960 square feet of building area, reached a conclusion of value of \$978,600 or \$980,000, rounded for the subject property under the sales comparison approach.

The appraisers next developed the income capitalization approach to value. Ulman testified that the rental comparables were located within a three-mile radius of the subject property and were reasonably comparable to the subject in size and age as they were constructed from 1992 to 2004. Ulman testified that the comparables rented for from \$3.00 to \$8.00 per square foot with a mean rental of \$4.40 per square foot.³ (Transcript, p. 52) Based on this range, they determined a fair market rental of \$4.45 per square foot. (Transcript, p. 52) They determined a vacancy rate in the market ranging from 0% to 50% and concluded a vacancy rate of approximately 9% with a collection loss of 1% for a total vacancy and collection loss of 10%. After deducting "some expenses from there for management and leasing and reserves for legal and professional fees to conclude an NOI of approximately \$91,691 per year." (Summary chart in appellant's appraisal, p. 36 and Transcript, p. 52) They determined a market capitalization rate of approximately 9% and using the tax load on the vacant space, the vacancy and collection loss times the tax rate and equalization factor to indicate a tax load of .0035 or roughly one-third of a percent. Using a capitalization rate of 9.35%, the appraisers concluded an indicated value under the income capitalization approach of approximately \$980,000. (Transcript, p. 53) Ulman went on to testify that she would not typically use the income approach for this type of property since it would typically be owner-occupied. Further, as it contains less than 50,000 square feet of building area and was designed for the particular corporate entity, there would be a limited demand for this type of building due to the factors she previously described such as its lack of restrooms in the warehouse and the basic finish of the office space. She opined that this building would be used for another owner occupant and not for an income stream.

The appraisers were able to reconcile the two approaches to value and reached a final conclusion of value for the subject property of \$980,000. Based on this evidence and testimony, appellant requested a reduction in the subject's assessment to reflect the appraised value.

³ Page 33 of appellant's appraisal states a Fair Rental Value of \$4.50 and a calculation that $\$4.50 \times 27,960 \text{ SF} = \$113,238$. $\$4.50 \times 27,960 \text{ SF}$ actually equals \$125,820. The stabilized income statement on page 36 of the appraisal shows \$113,238 (or \$4.05 per square foot) as the total effective gross income after deducting vacancy and collections loss.

During cross-examination, Mr. Sullivan directed Ms. Ulman's attention to the transmittal letter included with her appraisal report. The transmittal letter says the property is located "near Aurora" in unincorporated Kane County. Sullivan stated that he was sure the property was within the corporate limits of Aurora and asked Ulman the source of her information. She testified that she believed she got it from the township record. Sullivan then directed Ulman's attention to the third paragraph of her transmittal letter which states that the property is a one-story building of masonry construction. In response to the exterior construction, Ulman replied "It was full EIFS, sir – based on my – I will pass on that question. It is one and part two-story." (Transcript, p. 64) Sullivan asked where her reference to a second story was in the appraisal report. Ulman testified that in the description of the improvements, they reference an elevator, and that they included photographs of second floor areas, so the second story was there by implication although it was not specifically delineated and apologized for the oversight. (Transcript, p. 64) Sullivan asked Ulman if the 27,960 square footage used in her appraisal was strictly the first-floor footprint of the building. Ulman testified that Nicor provided the square footage in a lump sum which the appraisers interpreted as including both the first and second floors of the building. She testified that neither she nor her colleague are surveyors, so they did not attempt to measure the building as they assumed their client, as the user and owner of the building, was familiar with the building. Ulman testified that no floor plans were made available to the appraisers. Sullivan next pursued a line of questioning about the value of the underlying land. Ulman testified that they did some preliminary analysis to make sure its value did not exceed the total value of the property, which she estimated was \$980,000. Sullivan asked Ulman if any part of the site was wetlands. Ulman testified that it was not, but it did adjoin wetlands. Sullivan directed Ulman's attention to page 2 of her report. He asked Ulman if she had looked at zoning maps and ordinances. Ulman replied that she had and that she determined that the property had a farm zoning which was still her contention. Sullivan then directed Ulman's attention to page 3 of the report where it is stated that the subject is leased. Ulman testified that was an incorrect statement and apologized for the error. Sullivan then directed Ulman through the regional data contained in the report which is dated through 2008. Ulman testified that they regularly update the data but that it should be further updated in light of the 2017 assessment date. Sullivan next directed Ulman's attention to page 8 of the report which describes the subject as being located in an industrial park with local and national tenants. He asked Ulman how she rationalized her description of the neighborhood with her statement that the property had a farm zoning classification. Ulman testified that she assumed a zoning variation had been obtained but did not attempt to verify the fact.

Sullivan then went on to cross-examine Ulman about the income approach to value. He asked if her comparables were single-tenant or multi-tenant buildings. Ulman testified that both single and multi-tenant buildings were used. Sullivan asked Ulman about the address of Sale Comparable #2. Ulman conceded that the photograph was incorrectly labeled but the write-up had the correct address. Sullivan questioned Ulman about her note on Comparable #3 that no brokers were involved in the transaction and what that would mean in the marketplace. Ulman replied that it might have been marketed directly to various people. Sullivan cross-examined Ulman about her various adjustments to the comparables and asked how much weight she put on the adjustments. Ulman testified that, in terms of amount, the adjustments were subjective in value.

Mr. Seitz then questioned Ulman on redirect examination. He first asked Ulman if he had given her a deadline date when he requested the appraisal report. Ulman testified that Seitz told her he needed the report in the one to two-week range so he could file his appeal with PTAB. Ulman also testified that Seitz had given her the township assessor building data.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$500,270. The subject's assessment reflects a market value of \$1,501,411 or \$42.94 per square foot of building area, land included, when using the 2017 three-year average median level of assessment for Kane County of 33.32% as determined by the Illinois Department of Revenue.

In response to appellant's evidence, the board of review submitted a memorandum dated February 28, 2019 signed by Timothy J. Sullivan, MAI, a member of the Kane County Board of Review critiquing appellant's appraisal. Sullivan asserted that several places in appellant's appraisal refer to the subject being a one-story building, despite photographs of second floor areas and reference to an elevator being made in said appraisal. Sullivan contends the discrepancy in building size, which appears to be based solely on the building's footprint and does not include any second-floor area. Sullivan points out that appellant's appraisal states that the property has F – Farm District zoning and submitted a copy of the Aurora Zoning Map which indicates the subject has PDD – Planned Development District zoning and is located within the corporate limits of Aurora. Sullivan points out that the Regional Data shown on page 8 of appellant's appraisal is identical to the Neighborhood Data found on page 16 and that the data is from 2012 which is dated relative to the assessment date at issue. Sullivan submitted more current data which he contends shows that industrial market conditions were improving prior to January 1, 2017. Sullivan argued that although the appellant's appraisers did not employ the cost approach to value, they did not include a land valuation to support their Highest and Best Use Conclusion. As to the income approach, Sullivan asserted that appellant's appraisers cited 10 rent comparables, the majority of which were from multi-tenant buildings. Further, there was no discussion of their land to building ratios and it is logical to assume that a premium might be paid for the rent of a property with a higher amount of parking. Also, appellant's appraisers included certain expense items not typical of operating expenses for net leased property. As to the capitalization rate, Sullivan contends that the 60% mortgage position used by appellant's appraisers was very low, which would result in a higher capitalization rate. Sullivan pointed out that on page 38 of appellant's appraisal the subject property is incorrectly described as a multi-tenant commercial/industrial building. In regard to the sales comparison approach in appellant's appraisal, Sullivan pointed out that four of the six comparables sold in 2014 which is dated and that market conditions have improved since that time. Further, many of the comparables are "vastly older" buildings compared to the subject and many are of partial metal construction which is "substantially inferior" to the subject's concrete construction.

In support of its contention of the correct assessment, the board of review submitted an appraisal prepared by Phillip Butler, MAI, of Phillip J. Butler & Associates, Incorporated, estimating the subject property had a market value of \$2,330,000 as of January 1, 2017. Mr. Butler testified that he has been appraising real estate for over 30 years and the bulk of his appraisals are of industrial or commercial properties. He did his undergraduate work at Loyola University, graduating number one in his class in finance. He then obtained a master's degree in real estate appraisal and investment analysis at the University of Wisconsin. He is a member of the Appraisal

Institute and the Illinois Coalition of Appraisers. Prior to his current position, he worked for a firm doing appraisals for financial institutions and institutional appraisers. He has also worked in commercial real estate evaluating and making commercial real estate investments. Butler was then tendered as an expert witness with no objection.

Mr. Sullivan directed Butler's attention to the appraisal he prepared for the subject property. Butler testified that he performed both interior and exterior inspections of the property and measured the building at that time. (BOR appraisal, p. 33) He testified that the building features a passenger elevator connecting the first and second floors of the building. He described the subject property being very typical of a suburban office warehouse property and noted that it has very good access being located less than a mile from a full highway interchange. He testified that the 22-foot clear ceiling was functional, and the building's precast exterior is of good quality, durable construction. He testified that as the building was constructed in 2009, it is of modern design and of average to above average quality in terms of floor, ceiling, walls, lighting and premier insulated glass windows and that the building is sprinklered. Butler testified that the site has two access points that provide good circulation and stated it has full functionality as a general office warehouse building and would market very well in the general marketplace. Butler described the subject's neighborhood as having buildings of primarily precast and concrete construction and of similar vintage to the subject and said the neighborhood was very typical of the west suburban marketplace.

Sullivan directed Butler's attention to the subject's 197,327 square foot site and noted that Butler had classified a portion of the site as "surplus land," which Butler characterized as different from "excess land." Butler stated that surplus land generally does not have a marketability separate from the whole of the property due to reasons such as its access or the placement of the land relative to the building. Butler contrasted it to excess land which has clear characteristics that would allow a sale of a portion of the parcel separate from the whole. He testified that he considered both excess and surplus land in valuing the subject parcel. He chose to appraise the property on the basis of it being surplus land, which is a more conservative than valuing it as excess land. (Transcript, p. 98) He opined that you could consider it as excess land and market off the portion near the cul-de-sac separately although it would involve an easement or an access strip over the remaining parcel, but, in his opinion, it would be feasible to get curb cut approval from the city to the cul-de-sac.

In his appraisal, Butler calculated the surplus land area by determining the overall average land to building ratio of the comparable sales he used in the sales comparison approach to value. He determined a market level land to building ratio of 3.50:1. He multiplied the square footage of the building by the standard land to building ratio to determine the standard allocated land square footage. (34,96 Building SF x 3.50 Standard L:B Ratio = 122,374 standard allocated land SF) (BOR Appraisal, p. 17) He then subtracted the standard allocated land square footage from the total site area to determine the amount of surplus land. (197,327 Total Site Area - 122,374 standard allocated land SF = 74,953 Surplus Land SF) He defined "Standard Allocated Land Square Feet" as the land square footage required to support the improvements based on a market standard. In the appraisal, Butler stated that due to the physical layout of the subject improvements and site, the subject land in excess of the Standard Allocated Land Square Feet is considered surplus land due to its location at the rear of the building and its limited marketability

as a separate independent land parcel. The surplus land value is contributory to the overall land parcel and is valued as part of the entire parcel. (BOR Appraisal, p. 18)

Sullivan directed Butler's attention to that part of the appraisal wherein he valued the underlying land. He concluded a value of \$5.00 per square foot of land area for the entire site based on a summary of land sales ranging in size from 60,000 to approximately 118,000 square feet of land area and ranging in price per square from \$4.49 to \$7.50. (BOR appraisal, p. 46)

Sullivan then directed Butler's attention to the summary of comparable sales he used in developing the sales comparison approach to value. (BOR appraisal, p. 59) The comparables are located in either Kane or DuPage counties in Aurora, North Aurora, Carol Stream or West Chicago. Butler testified that he does a lot of work in the western suburbs and there is no significant location adjustment between Kane County and Western DuPage County. (BOR appraisal, p. 106) The buildings range in age from 19 to 47 years old and range in size from 19,400 to 30,000 square feet of building area. The comparables have sites ranging in size from 54,000 to 121,967 square feet of land area and have land to buildings ratios ranging from 2.35:1 to 5.15:1. The buildings contain from 5% to 30% finished as office space, have clear ceiling heights ranging from 16 to 24 feet, either one, two or four loading docks and from one to eight overhead doors. The comparables sold from March 2016 to December 2017 for prices ranging from \$1,155,000 to \$1,927,500 or from \$50.00 to \$64.25 per square foot of building area. Butler made qualitative and quantitative adjustments to the comparables for time of sale and for differences from the subject in percentage finished as office space, land to building ratio, location, age or condition, clear height, utilities, building size, and docking, as discussed on pages 60 to 64 of his appraisal, to arrive at an indicated value of \$57.00 per square foot of building area, which when using a building size of 34,964 square feet, equates to an indicated value prior to surplus land of \$1,992,948, rounded to \$2,000,000. Butler then depreciated 1,427 square feet of unfinished first floor area at \$30.00 per square foot for a buildout cost of \$43,000 and added in \$370,000 as the value of surplus land at \$5.00 per square foot of land area, to arrive at a value estimate of \$2,327,000 or \$2,330,000, rounded, under the sales comparison approach. (BOR appraisal, p. 65)

Finally, Butler discussed the income capitalization approach. He stated that although not an income producing property, the subject has the potential to become so. The income approach is one where the income potential of properties is converted to value by way of capitalization. The first step in this process is to determine the market rent for the subject based on comparable data.

Referring to the grid on page 77 of his report, Butler summarized the comparable rents which ranged from \$4.25 to \$5.50 per square foot. Then he made adjustments for conditions of lease, market trends, age of the property, square footage of leased space, clear height, percentage of office finish, and square feet per dock, as reflected on the grid on page 79 of his report. After making the adjustments, Butler concluded that the appropriate rent of the subject property would be \$4.75 per square foot on a net basis which, at 34,964 square feet of building area, equates to a pro forma potential base rent of \$166,079. He then developed a potential expense recovery estimate of \$42,800. (BOR appraisal, p. 80) Next, he made provisions for factors such as vacancy, recovery of operating expenses from the tenant, common area expenses, management fees, and replacement reserves. Potential gross revenue was estimated to be \$208,679 from which loss vacancy of 7.5% of potential gross income was deducted to arrive at effective gross

income of \$193,028. From this Butler deducted operating expenses of \$47,900 which indicated a net operating income of \$145,128. (BOR appraisal, pp. 81 - 82) Using data from *Real Estate Research Corporation*, which disclosed the average going-in rate of 7.1% for warehouse property, he arrived at an overall rate of 7.0% to which he added a tax load of .26% to arrive at a loaded rate of 7.25%. He then added in the estimated \$370,000 value of surplus land as calculated under the sales comparison approach and deducted the \$43,000 estimated depreciation cost for first floor buildout and arrived at a conclusion of value of \$2,330,000, rounded, for the subject property under the income approach to value.

Butler then testified about the reconciliation process he utilized to weigh the merits of each of the two approaches to value utilized in the appraisal. He gave greater weight to the sales comparison approach because the subject property is an owner-occupied building, the value of which is most primarily indicated by the sales comparison approach. He testified that the income capitalization approach reflects the value of the subject based on its income producing potential and was given consideration as an approach providing support for the sales comparison approach. Using these factors, Butler arrived at a final conclusion of value for the subject property of \$2,330,000.

On cross-examination by Mr. Seitz, Butler was asked about the prevalence of typos in appraisal reports. Butler replied that there is a difference between a typo, like on page 84 of his appraisal where he inadvertently stated the same thing twice, as opposed to a contradiction in anything he had said within his report. Mr. Seitz asked Butler if he was given access to the property. Butler testified that he was given full access to the entire property and was given everything that he asked for. Seitz then pursued a line of questioning regarding the aspects of some of the comparable sales used in Butler's report. Seitz queried Butler about the 2017 sale dates of his sale comparables #1 and #2 and whether he was aware of the lease statuses of sale comparables #3, #4, #5 and #7 and that sale comparable #6 was purchased by the tenant. Seitz asked Butler if, when evaluating the issue of surplus land, Butler was referring to the land at the back of the property. Butler replied that he was referring to any land in excess of a 3.5:1 land to building ratio. Seitz asked Butler if it was his testimony that this land could be developed by somebody other than the person who owns the subject building. Butler testified that he was not suggesting that; he was testifying to the fact that the land has value. Seitz asked Butler if he was aware of the wetland on the other side of the parcel or surplus land. Butler testified that it was his understanding that the property is not in a wetland in any way. Upon questioning by the ALJ regarding whether he considered the issue of surplus land in his evaluation of the other comparables, Butler testified that he directly considered the issue in his land to building ratio adjustment on page 62 of his report.

Based on the above evidence and testimony, the board of review requested an increase in the subject property's assessment to reflect the appraised value of \$2,330,000.

Appellant's counsel submitted rebuttal evidence in response to two documents filed by the board of review, being the memorandum to PTAB from Timothy J. Sullivan dated February 28, 2019 to which Nicor is responding with a Rebuttal Memorandum, and the appraisal prepared by Philip J. Butler, MAI, to which Nicor is responding with a USPAP compliant Commercial Review

Memorandum prepared by Noelle McDonald and Ibi Cole, MAI, dated July 10, 2019.⁴ Seitz argued that the purpose of the USPAP Review was to determine the reasonableness of the methodology used in Mr. Butler's market value estimate and compliance of technical appraisal standards.

In response to Mr. Sullivan's letter of February 28, 2019, Seitz contends that Sullivan's suggestion that there is a "discrepancy" in the building size used in appellant's appraisal is fallacious and that the board of review had several opportunities to familiarize itself with and better understand the report, and, if they had done so, "they would not be seeking to confuse the issue here." Seitz again noted the "highly special use" of the building which was designed for Nicor's use as a fleet maintenance facility and makes reference to the two drawings Sullivan submitted with his report, which are entitled "Drawing as of 01/01/17" and "Drawing after 2017 BOR." Seitz asserted that the preparer of the documents is not identified and that changes in identifiers used on the two drawings were meant to "imply that this industrial property is more valuable than it really is." Seitz points out that there are four different building sizes contained in the record, being the sizes used in the two above-referenced drawings and the sizes used in the two appraisals, and submitted the building records for the subject property which show yet a different building size. Seitz claims the 27,960 square foot building size used by Ulman in her appraisal included approximately 4,300 square feet of office space, and was based on Ulman's determination of "how much of the building a willing buyer would deem of value in a decision to purchase this property, and how much they would pay for that space." (Appellant's rebuttal memo, p. 7)

In regard to the USPAP Review Report, Seitz cites page 3 wherein it is stated that "the review appraiser does not agree with the appraisal's conclusion that this portion of the site has additional contributory value to the overall improvements, because as-is it could not be sold off individually" and as there is no illustration of what portion of the land is surplus or could be sold off separately. The review appraisers state at page 6 of their report that they do not agree that the portion of the site deemed as surplus land can be sold off separately as-is, therefore, it has no additional contributory value and no reason to be valued separately.

At hearing, Seitz called Ibi Cole, one of the review appraisers as a rebuttal witness. Ms. Cole testified that she is an MAI Appraiser with the Appraisal Institute and has an AIGRS which is a designation for review appraisers. She stated that she has worked in the appraisal industry for 18 years and has previously testified before the PTAB. Her firm did about 300 review appraisals in the last year and the focus of the review differs based on the intended use of the review appraisal. She prepared a review report for the subject property after reviewing both appraisals presented. She looked at the methodology used in analyzing the subject property and also visited the property herself to do a comprehensive walk-through, take measurements, observe the surplus land, and ingress and egress in order to prepare her own separate appraisal report and to get an idea of how well each appraiser viewed the subject property. She testified that she thought each report was adequately considerate of the subject property in terms of its overall contribution to the marketplace but that the reports differed vastly in how they viewed the subject's market

⁴ In his memorandum, Seitz reiterates some of the information included in his Motion to Strike which having been addressed earlier in this decision will not be further considered at this juncture.

appeal. Cole testified that she has appraised several Nicor properties located in Kane, McHenry, DuPage and Cook counties, and in her experience, it is extremely difficult to find comparable sales for Nicor properties because each is so unique that they are not commonly represented in the marketplace. Nicor buildings are purpose-built for Nicor's use and the properties usually feature underground storage tanks which present an environmental issue. Also, the buildings have a super-adequate number of drive-in doors but have a functional obsolescence as they lack loading doors, loading wells, and dock-high doors which is a deterrent for your typical industrial buyer. Cole critiqued Butler's evaluation of the surplus land. She testified that she did not believe it was necessary to value the surplus land in this case in addition to the contributory value of the building improvements as the contributory value is only to Nicor. (Transcript, p. 137)

Cole testified that due to the discrepancies in the record as to the building's square footage, she went back out to the subject property in January 2019 to remeasure. She calculated 36,480 square feet of gross area and 35,000 square net of net rental area which was consistent with her prior measurement of the building. She noted that she found the 8,280 square feet of office space to be super-adequate and a great deal of the office space, both on the first and second floor, and the cafeteria were empty and unused at the time of her walk-through. She testified that one of the major differences between the two appraisals was in the respective appraisers' determination of the capitalization rate (cap rate). She found Butler's cap rate of 7% or 7.25% optimistic and noted she calculated a cap rate of about 8.5%, which was closer to the 9% cap rate used in Ulman's appraisal.

Seitz asked Ms. Cole her final conclusion in reviewing Butler's appraisal. Cole testified that she thought his appraisal was very well written and very well thought out, but the two biggest differences were in his consideration of the desirability of the subject property to the marketplace and his assessment of the surplus land. (Transcript. pp. 145 – 146) Cole opined that due to the subject's lack of flexibility, lack of loading doors, and the lack of restrooms and locker rooms in the warehouse, the property would likely fare at the middle to lower portion of the market spectrum. As part of her review, Cole found three other comparable sales not used by either appraiser and based on her analysis of those three comparables, concluded a market value of about \$37.50 per square foot which comes to a value of approximately \$1,300,000 under the sales comparison approach. She also gave some consideration to the income approach but, as the subject is owner-occupied, she put most weight on the sales comparison approach with a final opinion of value somewhere around \$1,400,000. (Transcript, p. 147) Cole testified that, in doing a review analysis, she tries to be fair to both sides and see the vantage point where each person is coming from and then also view the property from her own vantage point and come up with an analysis that kind of fairly straddles the two.

On cross-examination, Mr. Sullivan asked Ms. Cole if she confirmed that the property was zoned PDD in the city of Aurora and if that was the zoning classification for the subject in 2017. Cole replied in the affirmative to both questions. Sullivan then pursued a line of inquiry as to whether the subject property might be of interest to a contractor or a truck repair facility. Cole testified that due to access issues, the pump station, underground tanks, super-adequacy of office space, and some other factors, she did not think the property would be desirable to either type of buyer. Sullivan asked Cole if she prepared an appraisal for this property because she found either or both of the other appraisals lacking. Cole asserted that preparing an appraisal was part of the

scope of her review work. Sullivan asked Cole if her major critique of Butler's report was the inclusion of the addition \$330,000 for the surplus land. Cole testified that in her opinion that was major. She added though that after hearing Butler's testimony at hearing, she now better understood his methodology in doing so, but she still thought that the surplus land does not have contributory value. Sullivan and Cole then discussed the value of the second-floor office space which Cole believes is not desirable in an industrial building and would have a diminishing return or perhaps no value at all. Sullivan and Cole also discussed the impact of the underground storage tanks on the property, which she added was not discussed in either of the other two appraisals. Cole noted that underground storage tanks present environmental issues, they leak and need repairs, and have a useful life of about ten to 20 years and so are not desirable to a buyer.

Conclusion of Law

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c). The Board finds no change in the assessment of the property is warranted based on the evidence in this record.

The Board finds that the appellant submitted an appraisal prepared by Elizabeth Halemba and Susan Z. Ulman of Zimmerman Real Estate Group, Ltd., estimating the subject property had a market value of \$980,000 as of January 1, 2017, while the board of review submitted an appraisal prepared by Phillip Butler of Phillip J. Butler & Associates, Incorporated, estimating the subject property had a market value of \$2,330,000 as of January 1, 2017. In rebuttal, appellant submitted USPAP compliant Commercial Review Memorandum prepared by Noelle McDonald and Ibi Cole, MAI, and appraisal that estimated the property had a market value of approximately \$1,400,000 as of January 1, 2017. The subject's 2017 assessment reflects a market value of approximately \$1,501,411 or \$42.94 per square foot of building area, however, the board of review requested an increase in the subject assessment to \$775,000 to reflect the appraiser value of \$2,330,000.

The Board gave less weight to the conclusion of value reached in appellant's appraisal which contained numerous errors and inconsistencies in the description of the subject property, the location of the subject property, the zoning classification of the subject property, and utilized dated data and dated comparable sales. Further, although Ms. Ulman was aware of the issues with the building size, she testified that "neither she nor her colleague are surveyors," so they did not measure the building. The Board finds this statement without merit as both the board of review's appraiser and the review appraiser measured the building in order to ascertain an accurate building size which is a key component in determining the value of a property.

The Board give some weight to the appraisal prepared by Phillip Butler of Phillip J. Butler & Associates, Incorporated, but discounts his valuation of the surplus land based on the credible testimony of the appellant's review appraiser. The Board finds Ms. Cole's comments on the merits of each of the other appraisals credible, as well as her independent conclusion of a market value for the subject property of approximately \$1,400,000 which supports the subject's 2017

assessment, which reflects a market value of \$1,501,411. The Board finds that, based on the evidence in this case, the assessment of the subject property as determined by the board of review is correct and no change is warranted.

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



Chairman



Member



Member



Member



Member

DISSENTING: _____

CERTIFICATION

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

Date: March 15, 2022



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

State of Illinois
Property Tax Appeal Board
William G. Stratton Building, Room 402
401 South Spring Street
Springfield, IL 62706-4001

APPELLANT

Nicor Gas Real Estate, by attorney:
William J. Seitz
Law Offices of William J. Seitz, LLC
500 Skokie Boulevard
Suite 530
Northbrook, IL 60062

COUNTY

Kane County Board of Review
Kane County Government Center
719 Batavia Ave., Bldg. C, 3rd Fl.
Geneva, IL 60134