



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

APPELLANT: SKN 3 Family LLP  
DOCKET NO.: 20-05648.001-C-3  
PARCEL NO.: 09-28-378-156

The parties of record before the Property Tax Appeal Board are SKN 3 Family LLP, 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 ***a reduction*** 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:** \$628,960  
**IMPR.:** \$1,536,840  
**TOTAL:** \$2,165,800

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 assessment for the 2020 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 consists of a site containing 227,818 square feet or 5.23 acres of land area that is improved with six, 3-story multi-family/apartment buildings of masonry exterior construction. Each building contains twelve, 2-bedroom, 2-bathroom units for a total of 72 units. The improvements have a total of 81,144 square feet of gross building area, and a total of 69,552 square feet of living (rentable) area for a land-to-building ratio of 2.81:1. The improvements were constructed in 1989. The property contains 170 parking spaces including 70 covered spaces housed in 10 garage structures located along the perimeter of the buildings, and 100 uncovered parking spaces. Other common area amenities include a swimming pool and a tennis/basketball court. Each apartment unit features a wood-burning fireplace and in-unit laundry. The property is located in St. Charles, St. Charles Township, Kane County.

The appellant appeared before the Property Tax Appeal Board through its counsel, attorney William J. Seitz, contending overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal estimating the subject property had a market value of \$6,500,000 or \$90,278 per unit as of January 1, 2020. The appraisal was prepared by real estate appraisers Ibi Cole, MAI, AI-GRS and James Worden, both of Cole Consulting.

The appellant called as its first witness James Worden, a Certified General Appraiser in the state of Illinois. At the time of the appraisal, Worden was employed by Cole Consulting as the Director of Appraisals. Worden testified that he has been an appraiser for approximately 35 years and has been doing commercial appraisals and appraisal reviews for a majority of that time. The witness testified that he signed the appraisal report dated February 10, 2021. He described the subject property as a multi-building property containing six “identical” buildings and a total of 72 apartment units. Worden testified that he conducted a personal observation of the subject property which included all six buildings and a “walk-through” of the interior of three vacant apartment units. Worden testified that due to Covid-19 restrictions, he was not able to inspect any tenant-occupied units.

During his inspection, Worden took photographs of the interior of three units, as well as the exterior of the buildings and noted a number of issues that he characterized as “deferred maintenance” and “functional obsolescence.” Referencing pages 75 through 89 of Appellant Exhibit No. 1 (the appraisal report), Worden testified to observing “considerable flood damage” to the kitchen floor, laundry room and bathroom, minimal upgrading, very worn/outdated carpeting/underflooring, water damage to drywall, baseboards, countertops, and possible presence of mold. With respect to the exterior and common areas, the appraiser noted many of the garage units suffered from moderate to high levels of deterioration including deteriorated wood frames, rusted and dented doors, and deteriorated soffits. Worden also noted in the appraisal report that portions of the paved parking and common area walkways have been replaced, but much work is still needed to repair large cracks and deteriorating concrete. Also noted was evidence of foundational settling of some buildings. Additionally, Worden observed ice buildup around the roof perimeter and in the gutters suggesting a potential problem with lack of ventilation, clogged gutters, and possible damage to the roof underlayment. The witness opined that these conditions hurt the subject’s competition for prospective tenants as well as appeal with existing tenants. The appraiser also noted functional obsolescence including a wood-burning fireplace in each unit and lack of storage area within the units or building. Worden testified that the wood-burning fireplaces have become virtually obsolete with the increased federal regulations of wood burning stoves/fireplaces, increased cost of fire insurance, and impracticality of carrying wood up three flights of stairs with no elevators. With regard to amenities, the subject property has a pool and basketball/tennis courts, but the amenities are not properly maintained or updated compared to other similar properties with common recreation areas. Finally, the apartment complex has only one ingress/egress road which is located behind the garages and is not convenient for access to the main road particularly in wintertime during snow plowing. Based upon his inspection, Worden opined that the condition of the paving was fair, roof covering was fair to average, and the remaining building components were average.

Under cross-examination, Worden testified that he conducted very limited online research with regard to the listings of the subject units and stated that to the best of his recollection, the listing photos of the subject units were stock photos and not of the actual unit available. Worden

acknowledged that there may have been some units that had more updating and interior renovations, but he rated the overall condition of the apartment units as “average” when taking into account the units that were considered to be well below average condition, in addition to the observable exterior of the buildings. The witness acknowledged that the presence of washers and dryers within the units was a plus, however this amenity is somewhat offset by the presence of a wood burning fireplace which is more of a nuisance rather than a positive amenity when compared to a gas or electric fireplace.

The appellant next called Ibi Cole as its second witness. Ms. Cole testified that she holds an MAI designation from the Appraisal Institute, which is the highest designation of study for appraisers, the AI-GRS designation which is the highest designation for appraisal review, and she is a Certified General Appraiser. She has been appraising various types of commercial properties since 2003 and has testified in many court proceedings as well as before the Property Tax Appeal Board. Cole also signed the appraisal report dated February 10, 2021. (Appellant Exhibit No. 1 at page 145). The stated purpose of the appraisal in her report was to estimate the market value of the property for ad valorem taxes in the State of Illinois with an effective date of January 1, 2020. She appraised the fee simple interest of the subject property, which includes the entire bundle of rights of said property or absolute ownership unencumbered by any other interest or estate, subject only to governmental powers such as taxation, eminent domain, etc. Upon the motion of the appellant’s counsel, Cole was accepted as an expert witness in real estate valuation and the appraisal was marked as Appellant Exhibit No. 1.

Cole testified that she is familiar with the subject property. Although she did not personally view the subject property, she reviewed Mr. Worden’s photographs and observation analysis. Based on the condition of the property, Cole opined that the subject property being self-titled “luxury” apartments is a bit of “false advertising.” In an era where people prefer comfort over amenities, Cole contended that competition in the market would steer potential tenants to properties that are more updated, higher graded and cleaner. Even considering the common area amenities such as a swimming pool and basketball/tennis court, Cole opined that the desire to use these amenities is negatively affected by their outdated condition. She further testified that the subject property overall is of average quality condition at best. The appraisal report at page 94 stated that the highest and best use of the site as improved was determined to be the existing use by the current user.

The appraiser testified that she considered all three approaches to value and found that the cost approach was not applicable in this case as it is less of an indicator of market value that’s used in the general market for this type of property with income approach being a more reliable indicator of market value due to the subject being an income-producing property. Cole stated that she developed the income approach and the sales comparison approach to arrive at her opinion of market value for the subject property.

The appraisal report discloses on page 13 that the subject property sold in September 2011 for a price of \$6,600,000 and again in April 2017 for a price of \$8,280,000. The appraisal report further states that the value opinion of \$6,500,000 is more in line with the sale price in 2011 rather than the 2017 sale price due to the subject’s condition with the improvements not being renovated or updated over the past several years in order to warrant increased rent. Cole argued that a combination of deferred maintenance items, functional obsolescence, and lack of updates

to the units hinder the subject's ability to collect higher rents. Cole further opined that in 2017, the subject property failed to generate the anticipated net operating income due to the aforementioned factors and thus the sale price in 2017 is not indicative of the subject's value as of the January 1, 2020 lien date at issue. In support of her claim, Cole referenced the subject's listing source associated with the 2017 sale which depicted the subject's asking monthly rent of \$1,275 per unit in 2017 which is very similar to the appraisers' estimated monthly rental rate of \$1,250 in calculating the potential gross income. Cole testified that similarly, the capitalization rate of approximately 8.3% at the time of the 2017 sale based on historical net operating income (NOI) performance is fairly close to her estimated capitalization rate of 8% (prior to the addition of the load factor for the effective tax rate). Cole added that as an investor herself, she felt that in hindsight the purchaser in 2017 highly underestimated the cost of repairs and renovations, and the level of functional obsolescence, in addition to the tenant turnover that was affected by the unforeseen pandemic in 2020 all of which translated into large financial losses for the investor.

In terms of functional obsolescence, Cole testified that functional obsolescence is typically first mathematically monetized by determining what's wrong with the property and then calculating the cost to cure the deficiencies. Next, one would calculate how much it would cost to build this building new versus trying to retro-fit it or fix it. Usually, the cost to fix it as it stands is far greater than the cost to build it at the time of construction. In this sense, the functional obsolescence is used as a risk factor that is loaded into the capitalization rate. The witness explained that in the case of the subject property, when considering the lack of storage, outdated amenities, deteriorating garages, building settling, cracks in pavement, outdated appliances, cabinets, and bathroom fixtures, clogged gutters with ice damming, wood-burning fireplaces, etc., all these things translate into loss of revenue due to the cost of repair and loss of revenue. Cole testified that historically there is a downward trend with the subject property since the purchase in 2017 considering the capitalization rate that was occurring in 2017, and the failure to update and renovate the subject property in a way that is going to improve the revenue as of the January 1, 2020 lien date at issue. Cole opined that as a result of the above factors, the market value of the subject property declined since its purchase in 2017.

In arriving at the market value of the subject property, Cole developed the income approach and the sales comparison approach to value. Cole did not develop the cost approach to value due to the fact that when the improvements such as the subject buildings are substantially aged with a significant amount of deferred maintenance and functional obsolescence, the cost approach to value is less effective in determining the value of said property. However, Cole added that there is one element of the cost approach that is "somewhat of an equalizer" between depreciated cost and market value which is external obsolescence. This is a measure of what the buyers and sellers are doing in the marketplace when utilizing the sales comparison approach value to determine whether the cost repairs/upgrade for this property outweigh the amount for which you could sell it, and that deduction is taken as a depreciation item.

As to the income approach to value, Cole explained that the first step was to determine the potential gross income that the subject property is capable of generating. In this step, the appraiser considered seven comparable rental properties, four of which were located in the subject's immediate area on the West side of the Fox River, and three properties located on the East side of the Fox River. The four rental comparables that are more proximate in location to the subject were more heavily weighted. The rents for 2-bedroom apartments ranged from \$900

to \$1,730 per month. Cole testified that one of the main goals in comparing the rent for these properties was to understand the disparity between the “highly-performing updated apartment buildings” versus the apartment buildings that are in similar condition to the subject property. Cole noted that the disparity is quite remarkable. The rental comparables which are more up-to-date, newer in construction, and have nicer interiors when compared to the subject were at the high end of the rent range, whereas rental comparables #1, #2, #3, and #4 which were more like the subject, had a rent range between \$900 and \$1,275 per month. (Appellant’s Exhibit No. 1 at page 102). Cole weighed rent comparables #1 through #4 more than rent comparables #5 through #7 based on being more similar to the subject in terms of location, age, condition, and amenities to estimate the subject’s achievable rents at \$1,250 per unit per month. Comparing the subject’s rent role to the subject market, Cole determined that the subject rents fluctuate around the market rents and therefore deemed the subject’s performance at market. Since 4 of the 72 units were vacant, Cole “stabilized” these vacant units at \$1,250 per month per unit which is in line with market rents to arrive at the annual rent of \$60,000 for the 4 vacant units. Cole also examined and compared the rent roll for the 68 occupied units as of January 2020 which averaged to \$1,237 per unit per month or \$1,053,696 annually which is consistent with the estimated market rent of properties most similar to the subject. Adding the two figures, Cole arrived at a potential annual rent income of \$1,113,696. (Appellant’s Exhibit No. 1 at page 108). Based on historical data for the subject property, the appraiser then added the additional income from application fees, convenience fees, move-in fees, parking income, pet rent, repairs income, and utility income to arrive at a potential gross income (PGI) of \$1,153,021 annually.

Since the vacancy and collection loss factor varies widely in multi-family residential dwellings, the appraiser stated in her report that the investor must determine what length of time it would take to find a new occupant when a tenant vacates the unit. Based on the trends in vacancy for multifamily properties within a five-mile radius of the subject, the vacancy rate for the area fluctuated between 6% and 11%. Taking into consideration the subject’s overall condition, the appraiser utilized a vacancy and collection loss of 7.5% of potential gross income or \$86,477, which was deducted from the PGI to arrive at an effective gross income (EGI) of \$1,066,544. The appraiser next estimated expenses for the subject property of \$23,000 for insurance; \$2,500 for legal/professional fees; \$97,000 for utilities; \$65,000 for repairs; 4% of EGI or \$42,662 for management fees; \$30,000 for cleaning/maintenance; \$30,000 for landscaping/snow removal; \$25,000 for commissions; \$15,000 for supplies; \$2,500 for miscellaneous other expenses; and 4% of EGI or \$42,662 for reserves for replacements, resulting in total expenses of \$375,324 or 35.19% of the total EGI. In calculating the expenses, Cole testified that she compared a mixture of measurements of expenses of similar operating buildings in the subject’s immediate area against the subject’s actual historical expenses, (some figures being on a percentage basis and others on an estimated dollar amount basis), on a price per unit. Cole stated that she utilized the numbers that are most representative of the market trends and noted that some numbers are rounded. This data also confirmed that the calculated EGI is in line with subject’s historical performance according to Cole. Deducting the total expenses from the EGI resulted in a net operating income (NOI) of \$691,221.

The next step was to determine the capitalization rate to be used to translate the NOI into an estimated market value. Cole explained that capitalization rate is an expected rate of return on an investment, in this case the investment would be the NOI. In other words, if an investor had roughly \$700,000 to invest, what is the best investment to put that money toward so one can

compare one type of investment against other available investment options. Cole expounded that a way of measuring a selection of a capitalization rate is to look at what other businesses, other investment options and other pieces of real estate are procuring in cap rates that are similar in risk to the subject property. The appraisal report states that there are three methods for extracting an applicable capitalization rate for the subject property: 1) Market Derivation; 2) Band of Investment; and 3) Investor Survey. In this case, Cole applied the first and the third methods. Under the Market Derivation, Cole analyzed the sales of other similar multi-family properties as well as the subject's sale in 2017 to gauge the market performance for this type of investment and extract an estimate of the capitalization rate to be utilized for the subject property. In doing so, the appraiser selected a sample of 25 multi-family properties that sold within a 5-mile radius of the subject as of January 1, 2017. Said sales reported capitalization rates ranging from 5.1% to 6.9%. In addition, Cole also considered the capitalization rates extracted from the sales analyzed as part of the sales comparison approach to value and determined the range of the capitalization rates to be from 5.5% to 8.52%.

Using the Investor Survey method to develop an applicable capitalization rate, the appraiser conducted a market survey using the PwC Real Estate Investor Survey report for the third quarter of 2020 as published by PricewaterhouseCoopers that reported overall capitalization rates for the national apartment sector ranged between 3.5% and 8.00% with an overall average pre-tax yield capitalization rate of 5.22%. Based on the analysis using the aforementioned two methods for developing an applicable capitalization rate, Cole estimated a base capitalization rate of 7.00% which she contended is reasonable to reflect the risk associated with an "optimally-functioning" property. She further argued this base rate was within the overall national average range and within the range of the sales-derived capitalization rate. To the base capitalization rate of 7.00%, Cole added 50 basis points (or .5%) due to the subject's "moderate to high level of deferred maintenance" plus another 50 basis points (or .5%) for "moderate level of functional obsolescence" as previously elaborated. As a result, the appraiser arrived at a capitalization rate of 8.00%. To this rate, the appraiser added 2.75% for the effective tax rate to arrive at a total (loaded) capitalization rate of 10.75%. Capitalizing the NOI of \$691,221 by the capitalization rate of 10.75% resulted in an estimated market value under the income approach of \$6,430,000, rounded, or \$89,306 per unit. (Appellant's Exhibit No. 1 at page 123).<sup>1</sup>

Under the sales comparison approach to value, the appraiser testified to selecting comparable properties focusing her search within the boundaries of Kane County using the parameters of multi-family properties with a minimum of 30-apartment units with sale dates after January 1, 2017. The initial search yielded 30 sales within said parameters. She narrowed down the search to only those properties located in the City of St. Charles which resulted in 20 properties. After excluding any sales with less than 50 units and no more than 160 units, 8 comparable sales were left. Of those 8 sales, three were further excluded due to inferior market area, special-needs units, large building age discrepancy, and/or dissimilar land-to-building ratios. The remaining five comparable sales were considered to be most similar to the subject in most relevant characteristics. The five comparable buildings were built from 1960 to 1974. They have sites ranging from 173,804 to 495,619 square feet of land area that are improved with multi-family apartment buildings ranging in size from 56,270 to 144,796 square feet of gross building area

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<sup>1</sup> The appraiser's stated price per unit of \$89,298 is based on the using the actual calculated market value of \$6,429,445 rather than the rounded figure of \$6,430,000.

and ranging from 56 to 160 units. The comparables have land-to-building ratios ranging from 1.63:1 to 3.59:1. The properties sold from December 2017 to July 2020 for prices ranging from \$6,700,000 to \$20,100,000 or from \$86,667 to \$125,625 per unit. The appraiser then considered adjustments for differences from the subject such as market conditions, location, age, condition, quality, land-to-building ratio, parking, number of units/unit mix, common amenities, and unit features. (Appraiser report pages 137-139). Comparing these 5 properties to the subject, Cole assigned an overall ranking to comparable #1 as inferior, #2 as similar, #3 as superior, #4 as inferior and #5 as superior. After applying qualitative adjustments to the comparable properties for differences from the subject, the appraiser arrived at a price per unit of \$95,000 or a market value for the subject property of \$6,840,000 under the sales comparison approach to value.

In reconciling the two approaches to value, the appraiser gave dominant consideration to the income approach to value as this approach more closely reflected the elements and factors which affect the ultimate income-generating capacity of the subject property. The appraiser arrived at a final estimated market value of \$6,500,000 or \$90,278 per unit as of January 1, 2020.

The appellant requested the subject's total assessment be reduced to \$2,166,450 to reflect the appraised value. Appellant's counsel argued that not only is the appraiser's value opinion an accurate indicator of the subject's market value as of the lien date at issue, but the requested total assessment amount is also in line with the decisions of the Property Tax Appeal Board for the tax years 2015 and 2016 involving the subject property that lowered the subject's total assessment to \$2,105,856 and \$2,273,270, respectively, based on the agreement of the parties at those times and dates.

Under cross-examination by board of review member Timothy Sullivan, Ms. Cole was asked about the letter she wrote to the taxpayer's counsel dated February 4, 2021 wherein she estimated the market value of the subject property to be between \$7,920,000 and \$8,640,000. Cole explained that this letter was generated before the appraisers were able to personally observe the subject property and the stated numbers were merely an estimate of a range based on available online information and listing photos on unknown date(s). After physically observing the property and being able to analyze the condition, they (Cole and Worden) arrived at a lower market value than previously anticipated. Cole added that the said letter does not include a certification because the letter itself is not an appraisal. When asked if she spoke with the owner of the subject property regarding any renovations, Cole stated that most likely it was James Worden (co-appraiser) who spoke with the owner, Mr. Sarju Nair.<sup>2</sup> Worden testified that from his recollection of his conversation with the taxpayer, the main improvements made since purchasing the property in 2017 was the renovation of the apartments vacated by the tenants and that there were no capital improvements to the common elements and the buildings' exterior such as roof issues, settlement issues, garages, paving, etc. Worden acknowledged that he did not specifically calculate the cost to cure the defects and deferred maintenance issues but that it was a qualitative consideration taken into account in forming the opinion of the subject's market value. Worden acknowledged that he did not recall being furnished with any documentation with regard to an inspection report or having a conversation with the owner as to whether a building inspection was done prior to the 2017 purchase, but he stated that this would be a

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<sup>2</sup> In the interest of expediency and there being no objection from the appellant's counsel, the board of review was allowed to cross-examine both appraisers simultaneously.

typical question asked of the owner. On further cross-examination, both appraisers were asked about the stated opinion on page 13 of the appraisal report that the future value from updating the units and generating higher rents in the future was a consideration in the 2017 sales price. Cole replied that being a property investor herself, and based on speaking with numerous property owners and investors, it is a very commonly shared sentiment for an investor to enter into a transaction with high hopes of what they want to accomplish with their investment property and, in doing so, they make future projections which sometimes turn out to be wrong. The appraisal report discloses that the value opinion does not take into account any future values but rather the "AS-IS, FEE SIMPLE" interest in the property as of January 1, 2020. Both witnesses acknowledged that neither of them spoke with any broker or real estate agent regarding the 2017 transaction. Cole contended that speaking with a broker or agent is typically not advisable due to biases as the broker's commission directly correlates to the sale price. Cole stated that she did not consult with attorneys, lenders, or anyone else involved in the 2017 sale of the subject property. With respect to deferred maintenance, Cole explained that, more often than not, this is a reflection of maintenance and management; that failure to maintain the premises can drive down the market value over time which appears to be the case with the subject property. Regarding the rent comparables utilized in the income approach to value, Cole acknowledged that all but one rent comparable were older in age relative to the subject, and the three lower-end units which rented in the \$900 range were smaller units with one less bathroom relative to the subject units. Cole further explained that in computing the market rent and the PGI for the subject, in addition to considering the subject's historic rent roll, she also took into account the rent comparables after making adjustments for these properties for differences from the subject. Cole also stated that she interviewed brokers and other "market participants" with regard to rental listings in the subject's market area, although she does not have independent recollection of specific conversations other than what is stated in the appraisal report. When asked about collection losses of approximately 2.5%, Cole opined that the estimate for collection losses between 2% and 3% is reasonable. The witness explained that this is partially due to a trend of some tenants to delay paying rent in lieu of applying for various government subsidies which allowed some tenants to suspend rent payments for several months while their applications are being processed. Upon further cross-examination regarding the addition of 100 basis points (or 1%) to the base capitalization rate, Cole was questioned whether she had any knowledge of any of the comparable sale properties having deferred maintenance issues or planned expenditures subsequent to the sale and whether this is typically built into the base capitalization rate. Cole testified that notwithstanding the units themselves, the subject property's external amenities and buildings alone, e.g., pool, tennis court, common areas, roofs, landscaping, etc., have in excess of \$500,000 in needed repairs and/or upgrades. Additionally, considering the units themselves in terms of needed upgrades such as cabinets, appliances, carpets, and bathrooms, the 100 basis points added to the base rate which translates into approximately \$17,000 to \$25,000 per unit is reasonable and even conservative.

The appraiser was next challenged as to why the 2017 sale of the subject property was not included in the analysis of comparable sales as summarized on pages 127 and 128 or the appraisal report. Cole reiterated that she has indeed taken the sale of the subject property in 2017 into consideration and added that the subject's sale in 2017 is not included in the grid analysis because she doesn't consider the subject sale as a "comparable" property in terms of something external that can be "compared" with the subject property. Cole likened including a subject sale in the grid analysis as defining a word by including that word in the definition. Cole was also



questioned whether she considered the comparable sales with respect to rentable area or gross living area versus using the gross building area to calculate the price per square foot of building area per unit. Cole explained that the gross building area per unit in this case more accurately reflects efficiency ratio and loss factor as long as the same calculation is used with all the comparables as it was in this case. Lastly, Cole was questioned whether she reviewed the CoStar analytics with regard to occupancy levels over the last 5 years, the direction of the market capitalization rates, and the price per unit trends. Cole testified that she surveyed approximately 25 to 30 properties which are included in the analysis of the capitalization rate, but they were not heavily weighted due to these properties being less similar to the subject than the five comparable sales that were used in the sales approach which were more closely analyzed, found to be more comparable to the subject, and ranked in terms of emphasis given.

On re-direct examination, Cole confirmed that she reviewed the operating history of the subject property and made her value conclusion based on market rent. Her value opinion is as of January 1, 2020 and is based on a one year projection of cash flow and expectation of income taking into account the market conditions. When asked by the Administrative Law Judge whether she reviewed the existing leases, Cole stated that they generally do not review individual leases when there is a higher number of units such as in this case, but rather she relied on the rent rolls provided. When calculating the PGI, Cole measured the rent roll against the market rent to determine whether the subject rents are reasonable and in line with the market rent and found that the subject rents fluctuate around the market-derived rental rates and, therefore, she deemed the subject's performance at market as noted on page 108 of the appraisal report, Exhibit #1.

The appraiser was next questioned by the Administrative Law Judge regarding the addition of 100 basis points to the base capitalization rate and, specifically, why she does not consider this to be loading the base rate prior to the addition of the effective tax rate. Cole responded that in calculating the base capitalization rate, she is looking to the market rents or achievable market rents as stabilized and in good operating condition. Cole explained that she determined the measure of risk factor associated with the condition of the property. The subject was considered to have a measurable amount of risk due to deferred maintenance and functional obsolescence which could be quantified as between \$500,000 and \$1,000,000 as noted previously. Rather than making a percentage deduction on rental rate to account for these expenses, the deduction was applied in the capitalization rate in the form of basis points which in the appraiser's opinion represents a better overall level of risk over a 12-month period. Cole acknowledged that it is somewhat unusual to have the basis points broken down or analyzed in this manner and adding it to the base capitalization rate of 7% as opposed to the more typical method of just starting with the base (unloaded) capitalization rate of 8% which would include the 100 basis points or 1% for deferred maintenance and functional obsolescence but without explanation. Finally, Cole stated that with regard to the sale of the subject property in 2017, she did not review any documentation such as the deed, Illinois Real Estate Transfer Declaration (PTAX-203) form, settlement statement, or contract for purchase associated with said sale. Upon request by the Administrative Law Judge, the board of review provided copies of the Special Warranty Deed documenting the conveyance of the subject property in 2017 (marked as PTAB Exhibit #1) and the PTAX-203

form associated with the same transaction (marked as PTAB Exhibit #2). This latter exhibit, PTAX-203 form disclosed that the subject property was NOT advertised for sale.<sup>3</sup>

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$3,344,904. The subject's assessment reflects a market value of \$10,038,727 or \$139,427 per dwelling unit, land included, when using the 2020 three-year average median level of assessment for Kane County of 33.32% as determined by the Illinois Department of Revenue.

In support of its contention of the correct assessment, the board of review submitted a comparable sales grid analysis containing information on ten comparables located in St. Charles, Warrenville, or Geneva where comparable #3 is the 2017 sale of the subject. The board of review comparables #5, #7, and #9 are the same properties as appellant's appraisal comparable sales #5, #2, and #3, respectively. The comparables are improved with two-story, three-story, or four-story multi-family/apartment buildings of frame, masonry, or brick exterior construction that range in size from 67,200 to 498,140 square feet of gross building area. The comparable properties range from 1 to 37 buildings containing from 71 to 400 apartments/units. The buildings were constructed from 1964 to 2018. The comparables have sites ranging in size from 197,185 to 1,247,558 square feet of land area resulting in land to building ratios ranging from 1.8:1 to 3.6:1. The sales occurred from March 2017 to June 2019 for prices ranging from \$6,700,000 to \$74,250,000 or from \$94,366 to \$276,000 per unit, land included. The grid also contains a report on six of the ten comparables with respect to purported effective gross income (EGI), annual expenses, net operating income (NOI), expense ratio, expenses per unit, NOI per unit, overall capitalization rate, and gross income multiplier (GIM). No documentation submitted by the board of review supports this latter data. Lastly, the grid contains previous sale dates of six comparables and a calculation of the percentage of annual increase in value of said comparables from prior to the most current sale. The grid did not contain operational income and expense data with respect to the subject property.

In further support of its contention of the correct assessment, the board of review through its member, Timothy Sullivan called as its witness David Medlin, Deputy Assessor with the St. Charles Assessor's Office. Medlin testified that he started appraising commercial properties in 1992 and he worked as an appraiser until 2009 at which time he began his employment with the St. Charles Assessor's Office. He obtained an MAI designation in 2005. Medlin testified that there has been a trend of increasing values of apartment buildings over the past 5 to 10 years as noted on the board of review grid analysis. Medlin further testified that the income and expense data with regard to the comparable properties was derived from multiple public sources. Medlin acknowledged that at the Board of Review hearing and prior to filing at the Property Tax Appeal Board, he recalled seeing "very limited" rental information regarding the operations of the subject property but the information did not give "whole lot of analysis."<sup>4</sup> Medlin also testified that he reviewed the Special Warranty Deed (PTAB Exhibit #1) and the PTAX-203 form (PTAB Exhibit #2) associated with the subject's sale in April 2017 and he saw nothing in those

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<sup>3</sup> Paragraph 7 of the PTAX-203 form (questioning whether the subject property was advertised for sale via media, sign, newspaper, or realtor) is marked "no."

<sup>4</sup> The Property Tax Appeal Board recognizes that the proceeding herein is *de novo* and, as such, the Board will only consider the evidence, exhibits and briefs submitted to it, and will not give any weight or consideration to any prior actions by a local board of review. *See* 86 Ill.Admin.Code §1910.50(a)

documents that would lead him to believe that the sale price was not representative of market value. Medlin added that the deed itself contains a notation that the person signing the instrument indicated that the sale price was a fair market value.<sup>5</sup> With respect to the board of review grid, Medlin indicated that in addition to the sale prices and descriptive information of the comparable properties, six comparables also contain financial information such as income and expense data, capitalization rate, and gross income multipliers which was obtained from appraisal reports that become available to assessing officials due to the property tax appeals process. Medlin next identified three common comparables contained in the board of review grid that were also utilized by the appellant's appraiser. Based on the available sales data history, Medlin testified that comparable sales #1, #2, #3, #4, #5 and #7 ranged from 3% to 14% in annual market value increases.

At this time, appellant's counsel raised an objection as to the admissibility of the income and expense data and testimony thereof, arguing that although sale comparisons are appropriate, there is no allowance in the statute or the Property Tax Appeal Board rules allowing for comparison of "gross appreciation of sale prices" to determine market value. Moreover, the subject's sale in April 2017 is too remote in time from the lien date in question and, thus, not indicative of the subject's market value as of the January 1, 2020 lien date. Finally, even if the income analysis complied with the PTAB rules, it is not relevant to the subject's market value as of the lien date at issue. The board of review member, Timothy Sullivan, responded that the information in the grid is relevant in showing improvement in the market over the relevant time period. Sullivan admitted that this is raw data and requested an opportunity to further inquire of Mr. Medlin as to his methodology and interpretation of said data.

The Administrative Law Judge overruled appellant's counsel's objection finding that Medlin's testimony regarding the data contained in the board of review grid analysis goes to the weight of the evidence and not to its admissibility. The Administrative Law Judge took under advisement counsel's motion to exclude said data from the evidence to be ruled upon in this decision. The witness, David Medlin, was thereafter allowed to testify regarding the data contained in the board of review grid analysis. Medlin next focused specifically on board of review comparables #5, #7, and #9, the common comparables, and described in detail the similarities and differences of these properties in relation to the subject. Medlin concluded that he tried to provide all the recent sales within the township, some of which were "much better" than the subject (such as comparable #10) as well as some that were in much "rougher shape" and in need of a lot of renovation. Based on these comparables and the annual increase in property values as reflected by prior versus most recent sale histories, Medlin opined that the subject's estimated market value of \$10,000,000 or \$139,000 per unit as reflected by the assessment was reasonable.

Under cross-examination, Medlin acknowledged that the subject property has a quality designation "C" reflected on the property record card. Medlin stated that the subject property is listed as sale #3 on the board of review grid and acknowledged that he did not have any financial information with regard to the subject property such as EGI, expenses, NOI, expense ratio, overall capitalization rate, or GIM which is recorded for six of the ten comparable sales in the grid. Medlin acknowledged that he did not request the financial information regarding the

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<sup>5</sup> PTAB Exhibit #2 includes "Supplemental Form A" which disclosed that in the opinion of the person completing the form, the net consideration is "a fair reflection of the market value on the sale date."

subject property. As to one of the three common comparables, (appraiser's comparable sale #5/board of review comparable sale #5), Medlin testified that he obtained the financial information data from an appraisal report that was provided to the board of review in connection with a property tax appeal concerning this property. Neither the appraisal report nor the name of the appraiser was provided by the board of review and is not part of the record in this appeal. Similarly, as to the second common comparable, (board of review sale #7/appraiser sale #2), the financial information was obtained from an appraisal report which has not been provided by the board of review. Medlin further testified that as to the third common comparable, (board of review comparable #9/appraisal comparable #3), he did not have any financial data available but described this property as a single 4-story building with 118 apartment units which has an elevator. Based on his personal observation of this property, Medlin described it as being in "below average condition" but that it was renovated after the sale in March 2018.

With respect to non-common comparables, Medlin further testified under cross-examination that board of review comparable #1 has a quality designation "B" which is superior to the subject's quality "C," and it is made up of twenty-five 2-story buildings with a total of 208 apartment units; board of review comparable #2 is located in Geneva which is outside of the subject's township; board of review comparable sale #3 is the subject property; board of review comparable sale #4 has a quality designation "C +10" which is superior in quality to the subject and consists of five 2-story buildings with a total of 220 apartment units, dissimilar to the subject's 3-story design and a total of 72 apartment units; board of review comparable sale #6 has a quality designation "B" and the sale is not considered an arm's-length transaction; board of review comparable sale #8 is located Warrenville which is outside of the subject's township and is comprised of twenty-five 2-story buildings with a total of 343 apartment units; and finally, board of review comparable sale #10 has a quality designation "B" which again is superior to the subject, and is comprised of twenty-six 2-story buildings with a total of 250 apartment units that were built in 2018.

Upon questioning by the Administrative Law Judge, Medlin opined that the three best comparables are board of review comparable sale #9 which is a 4-story building that needed some renovation after the sale, the previous sale of the subject in 2017, and board of review sale #5/appraisal sale #5. In addition, the witness stated that board of review comparable sale #7 is very similar to the subject, but it lacks the amenities that the subject has. With regard to the financial data supplied for six comparable sales, the witness was unable to state the dates of those appraisals, the identity of the preparers, or whether or not there were multiple appraisal reports for any of the board of review comparable sales. Based on the documentary evidence and testimony, the board of review requested that the subject's assessment be confirmed.

### **Conclusion of Law**

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal, the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). 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 the evidence in the record supports a reduction to the assessment of the subject property.

Initially, with respect to the appellant's motion to exclude from evidence Medlin's testimony with respect to the various financial data and percentage market value change over time of certain comparable properties in the board of review grid analysis, the Property Tax Appeal Board finds after due consideration that the appellant's motion is denied. The Board finds that the Property Tax Code clearly provides that the assessing officials as well as the board of review have broad authority in any year to review the assessment of any property, and to revise and correct that assessment as appears to be just. See e.g. 35 ILCS 200/9-80. Part of that valuation process includes analyzing various sales data and market trends in order to determine market value. The Board finds that the prior sales data, income and expense data, and calculation of percentage change in market values over a number of years that is reflected in the board of review grid analysis goes to the weight of the evidence and not to its admissibility. Therefore, the Board will admit in its entirety into evidence the grid submitted by the board of review and will give the information contained therein its appropriate weight.

Next, the Property Tax Appeal Board gives little weight to the subject's sale in April 2017 for a price of \$8,280,000. The Board finds that the subject's sale in April 2017 did not contain the key fundamental elements of an arm's-length transaction which would reflect fair cash value. Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970).

The Board finds the PTAX-203 form associated with the subject's April 2017 sale (PTAB Exhibit #2) reveals that the subject property was **not advertised for sale**. Paragraph 7 of the PTAX-203 form (questioning whether the subject property was advertised for sale via media, sign, newspaper, or realtor) is marked "no." The Board recognizes that there appears to be inconsistencies in the PTAX-203 form as the Supplemental Form A of the said form is marked that the subject was "for sale on the market" for 1 month. However, being for sale and being **advertised on the open market** are not necessarily synonymous as the latter implies that the general public had the same opportunity to purchase the subject property at any negotiated sale price. At the very least, this inconsistency raises a question as to whether or not the subject property was advertised and whether the sale price truly represented fair cash value on the sale date. Additionally, given the problematic uncertainty as to whether the subject property was advertised for sale which consequently calls into question the subject's fair cash value in April 2017, the Board gives little weight to the board of review's argument with respect to annual market value increases of similar properties from 2017 to 2020 as support for the subject's actual market value on January 1, 2020 assessment date at issue.

Second, with respect to the subject's sale date, the Board finds that the subject's sale in April 2017 is thirty-two months removed in time from the January 1, 2020 assessment date in question and, thus, is not likely to be reflective of the subject's market value as of said lien date as other

evidence in the record such as the appraisal report which reflects an opinion of value of the subject property as of January 1, 2020.

Finally, the Board finds the uncontroverted testimonies of the appellant's experts, James Worden and Ibi Cole, credible in opining that the subject's sale price in 2017 is not indicative of the fair cash value as of the January 1, 2020 lien date due to a combination of deferred maintenance, functional obsolescence, and lack of updates to the buildings' exteriors, common areas, and some units, which hindered the subject's ability to generate higher rents and, therefore, negatively affected the subject's market value. Consequently, the Board gives little weight to the subject's April 2017 transaction for market value consideration.

The record contains an appraisal report estimating the subject property had a market value of \$6,500,000 or \$90,278 per unit as of January 1, 2020. The record also contains information on ten comparable sales submitted by the board of review in support of its position, three of which were also utilized by the appellant's appraisers in their report and one of which depicts the 2017 sale price of the subject.

The subject property has a total assessment of \$3,344,904 which reflects a market value of \$10,038,727 or \$139,427 per apartment unit, land included, when using the 2020 three-year average median level of assessment for Kane County of 33.32% as determined by the Illinois Department of Revenue. The appellant contends the subject property is overvalued for assessment purposes and requested the subject's assessment be reduced to \$2,640,000 to reflect the appraised value of \$6,500,000 or \$90,278 per unit as of January 1, 2020. The board of review contends the subject property's assessment is supported by the ten comparable sales that it submitted and requested that the assessment be confirmed.

With regard to the financial data that was drawn from appraisal reports and listed in the board of review grid analysis for the six comparable sales, the Property Tax Appeal Board gives this data little weight. The witness for the board of review, David Medlin, Deputy Assessor with the St. Charles Assessor's Office who was in charge of compiling said data was unable to state the dates of the appraisals reviewed, the identity of the preparers, or whether or not there were multiple appraisal reports provided in connection with the appeals of any of the six aforementioned comparable sales. Moreover, the submission consisted of merely summarized data, lacking the underlying supporting documentation. As such, the Board finds this financial data including income and expenses, expense ratios, overall capitalization rate, etc. is inherently unreliable and has very little probative value.

Similarly, the data regarding the annual percentage of market value increases with respect to six of the board of review comparables which was calculated by Mr. Medlin using the difference between the two most recent sales of each comparable property provides at best a very unreliable and flawed picture of market activity during said time period for a handful of selected properties in the jurisdiction. The sales reported ranged from September 2011 through February 2018 which is far too removed in time from the January 1, 2020 assessment date at issue to provide a reliable indicator of market value movement. Additionally, the difference in the last two raw sale prices for any given property does not take into consideration the conditions of the properties, deferred maintenance, functional obsolescence, or renovations made during the time between the sales.

Therefore, the data regarding the annual percent increase has been given no substantive weight by the Board.

In the final analysis, what is left are ten unadjusted (raw) comparable sales provided by the board of review (three of which were also utilized by the appellant's appraisers) and an appraisal report submitted by the appellant. Based on this record, the Board gives more weight to the value opinion developed by the appellant's appraisers. In arriving at the value opinion for the subject property, the appellant's appraiser, Ibi Cole, relied predominantly on the income approach to value. In developing this approach, the appraiser first analyzed market rents of comparable rental properties to determine the amount of potential gross income that the subject property can generate. The appraiser also examined the subject's rent rolls as well as the subject's income and expenses, and trends in vacancy and collection loss for multi-family properties within a five-mile radius of the subject in order to calculate the annual net operating income for the subject property. Next, the appellant's appraiser calculated the capitalization rate by analyzing a sample of 25 multi-family properties that sold within a 5-mile radius of the subject as of January 1, 2017 as well as the subject's sale in April 2017 to gauge the market performance for this type of investment and extract an estimate of the capitalization rate to be utilized for the subject property. She also conducted a market survey using the industry publication reports in finally arriving at the base overall capitalization rate for the subject property. In her final calculation of the overall capitalization rate, the appraiser considered the subject's "moderate to high level of deferred maintenance" and "moderate level of functional obsolescence." The Board finds the appraiser's testimony and analysis of the income approach to be reasonable, credible, and persuasive.

As to the sales comparison approach to value, notwithstanding the three common comparable sales in this record, the Board finds the appellant's appraiser selected comparable properties that were more similar to the subject in terms of proximity to the subject, number of apartment units, and number of buildings. The Board gave little weight to board of review comparable sale #1 based on being of higher quality grade relative to the subject and based on being comprised of 25 buildings containing 208 apartment units compared to the subject's 6 buildings and 72 units. The Board gave little weight to board of review comparable #2 based on its location outside of the subject's market area and further based on having 30 buildings containing 226 units; board of review comparable #4 is of higher quality grade relative to the subject and has 220 apartment units; board of review comparable #6 is likewise of higher quality grade when compared to the subject and is not an arm's-length transaction; sale #8 is located outside the subject's township, is of higher quality and is made up of 25 buildings containing 343 apartment units; and comparable #10 is of higher quality, has 26 buildings and 250 units. For the foregoing reasons, the Board has given the aforementioned comparables little weight in its analysis.

Most importantly, unlike the board of review's unadjusted (raw) comparables outlined above, the appellant's appraiser made qualitative adjustments to each comparable (including the three common comparables) for differences from the subject in market conditions, location, age, physical condition, quality, land-to building ratio, parking, number of units, unit mix, and amenities which appear to be reasonable and logical. The Board finds that this lends more credence to the appraiser's opinion of value than the raw unadjusted sales submitted by the board of review. After adjustments, the appellant's appraiser determined that a market value of approximately \$95,000 per apartment unit is appropriate. Giving more credence to the sales and

analysis developed by the appellant's appraiser, the Property Tax Appeal Board finds that the subject property had an indicated value under the sales comparison approach of \$6,840,000, land included, rounded. ( $\$95,000 \times 72 \text{ units} = \$6,840,000$  rounded). The best overall improved comparable sale in the record appears to be one of the parties' common comparables, appraisal sale #2/board of review sale #7, that is very similar to the subject in apartment unit count, number of buildings, location, and condition, and presented with a recent sale in February 2018 for a price of \$6,700,000 or \$94,366 per unit which further supports the appellant's appraisers' value conclusion.

Based on the evidence in this record, the Board finds the subject property had a market value of \$6,500,000 or \$90,278 as of January 1, 2020, which is less than the market value reflected by the subject's assessment of \$10,038,727 or \$139,427 per dwelling unit, land included. Since market value has been determined, the 2020 three-year average median level of assessments for Kane County of 33.32% as determined by the Illinois Department of Revenue shall apply.



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



Chairman



Member



Member



Member

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: February 21, 2023



Clerk of the Property Tax Appeal Board

**IMPORTANT NOTICE**

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

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

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

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

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