

NOTICE

Decision filed 05/17/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0031

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

WOOD RIVER-HARTFORD SCHOOL	)	Appeal from the Property
DISTRICT NO. 15, EAST ALTON-WOOD	)	Tax Appeal Board.
RIVER COMMUNITY HIGH SCHOOL)	
DISTRICT NO. 14, EAST ALTON)	
ELEMENTARY DISTRICT NO. 13, BETHALTO	)	Nos. 03-01680.001-I-3
COMMUNITY UNIT SCHOOL DISTRICT NO.	)	03-01680.002-I-3
8, VILLAGE OF EAST ALTON, MADISON	)	03-01680.003-I-3
COUNTY, EAST ALTON PUBLIC LIBRARY	)	03-01680.004-I-3
DISTRICT, WOOD RIVER TOWNSHIP, WOOD	)	03-01680.005-I-3
RIVER TOWNSHIP ROAD AND BRIDGE,	)	03-01680.006-I-3
WOOD RIVER TOWNSHIP HOSPITAL,	)	03-01680.007-I-3
ST. LOUIS REGIONAL AIRPORT	)	03-01680.008-I-3
AUTHORITY, and Illinois School Districts,	)	03-01680.009-I-3
Units of Local Government, and Other	)	03-01680.0010-I-3
Taxing Districts,	)	03-01680.0011-I-3
	)	03-01680.0012-I-3
Petitioners,	)	03-01680.0013-I-3
	)	03-01680.0014-I-3
v.	)	03-01680.0015-I-3
	)	04-01191.001-I-3
THE ILLINOIS PROPERTY TAX APPEAL	)	04-01191.002-I-3
BOARD, OLIN CORPORATION,	)	04-01191.003-I-3
THE MADISON COUNTY BOARD OF	)	04-01191.004-I-3
REVIEW, and Other Parties of	)	04-01191.005-I-3
Record,	)	04-01191.006-I-3
	)	04-01191.007-I-3
Respondents.	)	04-01191.008-I-3
	)	04-01191.009-I-3
	)	04-01191.010-I-3
	)	04-01191.011-I-3
	)	04-01191.012-I-3
	)	04-01191.013-I-3
	)	04-01191.014-I-3

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Chapman and Justice Spomer concurred in the judgment.

RULE 23 ORDER

Held: The judgment entered by the Property Tax Appeal Board reducing the property tax assessments of Olin Corporation for the tax years 2003 and 2004 and granting Olin Corporation an agricultural assessment for certain acres on its property used for farming operations was not against the manifest weight of the evidence.

The respondent, Olin Corporation (Olin), owns the subject real property (the Property) located in Madison County, Illinois, and pays property taxes to Madison County, Illinois. The additional respondent, the Illinois Property Tax Appeal Board (the PTAB), is an administrative agency of the State of Illinois created to review the assessment decisions of local boards of review (35 ILCS 200/7-5 (West 2008)). The petitioners are 11 taxing districts (the Districts) located in Madison County that have a revenue interest in the Property.

The 2003 and 2004 Madison County tax assessments for the Property reflected a total estimated market value of \$36,656,850 and \$37,350,070 respectively. Olin paid its property taxes and appealed the Madison County assessments to the Madison County Board of Review (the BOR). On March 12, 2004, the BOR determined that the Property had a market value of \$36 million for 2003 and 2004. On April 14, 2004, pursuant to section 16-160 of the Illinois Property Tax Code (35 ILCS 200/16-160 (West 2008)), Olin filed appeals of the BOR's property tax assessments for 2003 and 2004 to the PTAB. The Districts intervened in the appeals and participated in the proceedings in order to defend the BOR's assessments.

The PTAB consolidated the 2003 and 2004 appeals for hearing, and in July 2007 eight days of evidentiary hearings were held. The following evidence was heard during the evidentiary hearings. The Property consisted of 14 parcels containing 1,467 acres in 2003 and 1,463 acres in 2004, because a 4-acre parcel was omitted from the 2004 appeal. The Property contained approximately 2.5 million square feet of gross building area. The Property has a north site, where the main manufacturing complex is located, and is divided into nine zones. On the north site are 164 buildings, 92 of which are less than 5,000 square feet in size. The buildings on the north site have an average ceiling height of 20 feet. The

south site, where the casting plant is located, consists of one zone and includes 28 buildings. The north and south sites are noncontiguous and are located approximately 1½ miles apart. Additionally, there are 387 acres of land devoted to agricultural use. Olin leases the acreage to a farmer, Dennis Rapp, who receives 60% of the profits from the farming operations, while Olin receives 40%. The land is mostly used to grow corn and soybeans. This acreage has been used to grow crops since 1975.

During the evidentiary hearings, the BOR did not call any witnesses and did not present any appraisal evidence in support of its tax assessments. Olin and the Districts called witnesses and presented appraisal evidence to the PTAB. Michael Kelly and Robert Herman performed appraisals and testified on behalf of Olin. Kevin Byrnes performed an appraisal and testified on behalf of the Districts. The appraisal reports from Kelly, Herman, and Byrnes were admitted into evidence as exhibits. Kelly had been an appraiser for the Real Estate Analysis Corporation for 30 years. Herman was currently the managing director at Duff & Phelps, but he was working at Deloitte & Touche at the time he performed the appraisal for Olin. Both Kelly and Herman are members of the Appraisal Institute, and both have extensive experience in appraising industrial properties. The Districts' appraiser, Kevin Byrnes, also had considerable appraisal experience and had performed more than 1,000 appraisals.

One of the most significant differences between the parties' appraisals was their opinions regarding the Property's highest and best use, specifically, whether the Property's north site should be divided into five parcels and whether the parcels should be sold separately. Both Kelly and Herman opined that the north site's highest and best use was as a single unit. They rejected a division of the north site due to the costs of division, the lack of a market demand for the additional sites created by the division, and the topography of the north site. The zones in the north site share interconnected utilities, and a division of the

north site would render many buildings without basic utilities such as steam, water, sewer, natural gas, and electricity. Herman testified that a division of the north site would negatively impact the overall value of the Property. The north site is heated by steam. Olin also has its own water filtration system located in zone 7 and a wastewater treatment plant located in zone 6. Olin's electricity is provided by Illinois Power through a service line that runs to zone 1. From there, Olin maintains two substations that distribute power to other zones. Olin also has natural gas that runs through the south site to the north site through its own pressure-reducing station and then is dispersed to other zones.

Byrnes opined that the highest and best use of the Property was for industrial use as six separate parcels. He opined that the north site should be divided into five separate parcels and that the five parcels should be sold separately. He also opined that the south site should be sold separately also. According to Byrnes, the division would result in a higher market value of the Property. However, Byrnes admitted that his proposed division of the north site would leave zones without necessary basic utilities and that he had not determined what the potential costs would be to the seller or buyer to add the utilities.

Another significant difference between the appraisers' opinions involved their conclusions regarding the potential use of the Property for warehouses. Kelly and Herman opined that the following characteristics of the Property rendered it unsuitable for warehouse use: the limited market for the plant due to its large size, the large number of discrete buildings, the old age of the buildings, the configuration of the buildings, the low ceiling heights of the buildings, the small size of the buildings, and the predominately manufacturing nature of the Property. Kelly and Herman testified that manufacturing buildings and warehouse buildings are constructed differently. Warehouses consist of large rectangular buildings, ranging in size from 300,000 square feet to 500,000 square feet, and have ceiling heights ranging from 26 feet to 40 feet, with loading docks on each side of the building.

Warehouses allow large trucks ample room to navigate around the warehouses.

In contrast, the Property consists of 192 small buildings, 92 of which are less than 5,000 square feet and have an average ceiling height of 19 to 20 feet. Most of the buildings on the north site are grouped closely together and are accessible by narrow roads and alleys, some of which only accommodate one-way traffic or forklifts. In addition, Kelly and Herman determined that the Property's location is not conducive to warehouse use because of its distance from the interstate; the Property is approximately 19 to 23 miles from I-270. This distance from the interstate negatively impacts the marketability of the Property for warehouse use. Kelly and Herman testified to a limited market demand for industrial property in Madison County, in particular for manufacturing properties like Olin. They determined that relatively few buyers exist for the Property. In contrast, Byrnes opined that the six parcels could sell within one year of market exposure. In his evaluation Byrnes included many sales comparisons of warehouses to compare to the Property.

Olin also presented the testimony from Mark Shepard, an expert in the marketing and development of industrial property. Shepard found no evidence of market demand for manufacturing facilities such as Olin in the East Alton area. Shepard concluded that Olin's inferior location, age, and size and the ceiling heights of the buildings would severely hinder efforts to market the Property for warehouse use, particularly in light of the abundance of industrial sites in the area that are better situated for warehouse use. Shepard also concluded that the North Site should not be divided and should be marketed as one property.

The appraisers also performed sales comparisons and cost approaches to estimate the value of the Property. Kelly and Herman placed more weight on the sales comparison approach, noting that the cost approach is generally better suited for the appraisals of newer and more functional improvements. Kelly used 10 comparable sales for the north site and 10 comparable properties and one offering for the south site. The prices of the comparable

properties ranged from \$1.76 to \$6.51 per square foot. Kelly adjusted some of these prices upward or downward depending on whether the characteristics of the Property were superior or inferior to the comparable properties. Kelly also made adjustments for the age, size, number of buildings, ceiling heights, and percent of office space. Kelly noted the land-to-building ratios of the comparable properties and opined that the land-to-building ratio of the Property is greater than 25:1, which is higher than normal, so he adjusted the ratio to 4:1 for purposes of comparison.

Kelly also considered the excess land, which he concluded totaled 1,235 acres. Kelly concluded that the value of the improved north site was \$3 per square foot, or \$5.84 million, and that the value of the improved south site was \$6 per square foot, or a value of \$3.525 million. After adding the value of the excess land and making adjustments, Kelly concluded that the excess land had a value of \$5,000 per acre, or a value of \$6.175 million. Based on Kelly's sales comparison approach analysis, he concluded that the Property had a total value of \$15.675 million. Based on his cost approach, he determined the value of the land without improvements and then calculated the depreciated value of the improvements and added that to the value of the land. Using the cost approach, Kelly estimated that the Property had a value of \$15 million. In his overall estimate, using both the sales comparison approach and the cost approach, Kelly concluded that the Property had a value of \$15.5 million in 2004.

In Herman's sales comparison approach, he used data from six comparable sales and one offering for the north site and six comparable sales and one offering for the south site. The values of the comparable properties for the north site ranged from 0.23 to \$5.05 per square foot, and the values of comparable properties for the south site ranged from \$2.18 to \$7.21 per square foot. Herman also made adjustments depending on whether the characteristics of the comparable properties were superior or inferior to the Property. Herman concluded that the north site had a value of \$2.50 per square foot and that the south

site had a value of \$5 per square foot. Herman also concluded that the Property had an excess of 1,000 acres. Herman concluded that the land on the north site was valued at \$4,858,995 and that the land on the south site was valued at \$2,953,915. Herman then concluded that the value of the excess land on the north site was \$3,000 per acre, for a total of \$1.845 million and that the value of the excess land on the south site was \$3,500 per acre, for a total of \$1.225 million. After adding the excess land value under the sales comparison approach, he concluded that the Property had a value of \$10.9 million. Using the cost approach, Herman valued the north site at \$10,000 per acre or a value of \$4.989 million. Adding this to the value of the excess land produced a total value of \$8.06 million. He then came up with depreciated values of \$1.67 million for the improvements on the north site and \$2.45 million for the improvements on the south site. Based on Herman's cost approach, he concluded that the Property had a market value of \$12.18 million. After using both the sales comparison approach and the cost approach, Herman concluded that the Property had a value of \$11.7 million in 2003 and \$11.2 million in 2004.

Byrnes opined that the Property would have a higher value if sold as six separate parcels, and therefore he valued the six parcels separately and labeled them as subjects A through F. Byrnes analyzed data from 16 sales to compare to the Property. The comparison properties ranged from \$2.18 to \$24.53 per square foot. Byrnes made no adjustments for the age or size of the buildings, the ceiling heights, the availability of utilities, or the fact that many of the comparable properties had been used for warehouses. According to Byrnes, subject A was valued at \$4.125 million and subject B was valued at \$2.995 million. Subject C (primary site) was valued at \$2.18 million, and the excess land for subject C was valued at \$2.455 million. Subject D was valued at \$2.965 million. Subject E was valued at \$2.8 million. Subject F (primary site) was valued at \$2.97 million, and the excess land for subject F was valued at \$3.655 million. Using the cost approach, Byrnes added the land values to

the depreciated values for each subject's improvements, and the results were \$8.215 million for subject A, \$3.375 million for subject B, \$9.955 million for subject C, \$2.965 million for subject D, \$2.8 million for subject E, and \$15.165 million for subject F. Byrnes concluded that the six parcels of the Property had a fair market value of \$41.390 million for 2003 and \$42 million for 2004. Byrnes acknowledged that his appraisal report did not take into account the costs of providing necessary utilities. Byrnes also did not include land-to-building ratios in his evaluation.

Evidence was also presented regarding the agricultural use of the 387 acres on the Property. For the 2003 and 2004 appeals, Olin requested that the PTAB grant an agricultural assessment on the 387 acres of the Property used as farmland. Richard Mann, Olin's facilities engineer, testified that Olin's agricultural use of the 387 acres had dated back to at least 1975. He identified Olin's leases from 2001 to 2004, which authorized Olin's tenants to farm designated portions of the Property in exchange for a percentage of the profits. Mann testified that the acreage had been planted with corn and soybeans and that these crops had been harvested from the Property.

Kerry Miller, the chairman of the BOR, testified that he had no factual basis to dispute Mann's testimony. Miller acknowledged that the BOR follows the Illinois Department of Revenue guidelines for agricultural assessments, which provide that "the farm portion of a primarily commercial or industrial parcel is eligible for farm assessment provided it qualifies under the statutory definition." Miller also testified that the BOR has in the past reclassified property from nonagricultural assessment to an agricultural assessment even if the agricultural land is a part of a larger site where the primary purpose is industrial.

On December 19, 2008, the PTAB entered a 64-page final administrative decision reducing the 2003 and 2004 tax assessments. The decision contained a thorough analysis of the issues and evidence and an explanation for its decision. The PTAB first addressed the

market value of the Property, noting, "[W]hen market value is the basis of the appeal, the value of the property must be proved by a preponderance of the evidence." The PTAB found Kelly's and Herman's conclusions that the north site would produce a greater value if sold as one parcel to be more credible than Byrnes' view that it would be better to sell the north site as five separate parcels. The PTAB noted that "the various zones on the north site are integrated and dependent on each other for utilities" and that Byrnes "did not adequately account for the costs to segregate and extend utilities to the different properties."

The PTAB reviewed the value of the unimproved land and examined the issue of how much excess land existed. The improved-land sales data reported by Kelly and Herman reflected land-to-building ratios between 25:1 and 8.4:1. Byrnes did not mention the land-to-building ratio in his analysis. The PTAB concluded that the data supported Kelly's conclusion that an adjusted land-to-building ratio of 4:1 for the Property was appropriate. The PTAB also agreed with Kelly that the Property had 1,235 acres of excess land.

The PTAB also thoroughly evaluated the appraisers' costs and sales approaches and reviewed their comparable sales. The PTAB did not adopt the values of any particular appraiser but instead reached its own conclusion that the Property and excess land should be valued at \$20,000 per acre and \$10,000 per acre respectively. The PTAB noted that Byrnes had overestimated the depreciated value of the improvements, and it stated, "After considering the testimony of the witness as well as the nature and physical characteristics of the subject improvements, the Property Tax Appeal Board finds that both Kelly's and Herman's estimates of the depreciated cost are more credible and are to be given more weight." The PTAB concluded that the Property had a market value under the cost approach of \$21.3 million for 2003 and 2004.

The PTAB next examined the value of the Property under the sales comparison approaches, which Byrnes had employed for only a portion of the Property. The PTAB

concluded that Kelly's and Herman's sales comparison approaches were generally superior to Byrnes' approach. Kelly and Herman properly considered various factors that were not considered by Byrnes, such as the number of buildings, clear ceiling heights, and the percentage of office space. The PTAB concluded that the Property was generally inferior to the appraisers' comparable sales with respect to the size, age, and configuration of the buildings on the Property. The PTAB noted that the buildings "were constructed over time resulting in a jumbled configuration, which is dissimilar to modern industrial or warehouse buildings." The PTAB concluded from the improved-land sales data that the value of the North Site, not including excess land, was \$3 per square foot and that the value of the South Site was \$6 per square foot. The PTAB found that the value of the excess land was \$12.35 million and that the depreciated value of storage sheds on the Property was \$135,000. The PTAB concluded that the value of the Property under the comparable sales approach was \$21.9 million for the tax years 2003 and 2004. The PTAB adjusted the final assessments to \$18,171,150 for 2003 and \$18,203,910 for 2004. The PTAB also granted Olin's request for an agricultural assessment. The PTAB noted, "Neither the board of review nor the intervenors presented any testimony or evidence that refuted the [*sic*] Mann's testimony that the acreage in question was used for farming purposes during the assessment years in question." On January 20, 2009, the Districts filed a timely petition for a review of the decision.

On appeal, the Districts first argue that the PTAB committed reversible error for failing to expressly state in its decision that Olin bore the initial burden of proof and that the PTAB failed to identify the correct standard of proof on the reclassification issue. The applicable burdens of proof in PTAB proceedings are set forth in section 1910.63(b) of Title 86 of the Illinois Administrative Code (86 Ill. Adm. Code §1910.63(b), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000), which provides that the contesting party has the burden of

going forward and must provide "substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property. Failure to do so will result in the dismissal of the appeal." Section 1910.63(c) provides that once the contesting party has met its burden, the board of review "must provide substantive, documentary evidence or legal argument sufficient to support its assessment of the subject property or some other, alternate valuation," and "[f]ailure to do so will result in a decision by the [PTAB] based upon the information submitted by the contesting party and, if applicable, the evidence submitted by an intervening party." 86 Ill. Adm. Code §1910.63(c), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000. Any intervening party is then required to support the position it propounds with substantive, documentary evidence or legal argument. 86 Ill. Adm. Code §1910.63(d), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000. As to the standard of proof, when market value is the basis of the appeal, "the value of the subject property must be proved by a preponderance of the evidence." 86 Ill. Adm. Code §1910.63(e), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000. The rule directs that if the parties' burdens are met, the PTAB is to adopt the value that is supported by the preponderance of the evidence, even if no party advocated that particular amount as the value of the subject property. 86 Ill. Adm. Code §1910.50(c), amended at 31 Ill. Reg. 16222, 16232, eff. Nov. 26, 2007. Like other administrative regulations, the PTAB's rules have the force and effect of law and should be construed under the same standards that apply to statutory construction. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 368 (2009); *Biekert v. Maram*, 388 Ill. App. 3d 1114, 1118-19 (2009). Accordingly, if the language of the regulation is clear and unambiguous, it must be applied as written. *Biekert*, 388 Ill. App. 3d at 1119.

We first address whether the PTAB expressly stated in its decision that Olin bore the initial burden of proof. The Districts claim error because the PTAB did not expressly state

that Olin bore the initial burden of proof on the issue of market value. The record belies the Districts' argument and instead reveals that the parties agreed on the record that Olin bore the initial burden of proof. Olin proceeded first and met its initial burden of going forward by presenting, among other things, appraisals and testimony from qualified appraisers. Furthermore, because the market value of the Property was at issue, "the value of the subject property must be proved by a preponderance of the evidence" (86 Ill. Adm. Code §1910.63(e), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000). The PTAB advised the parties of this in its decision. At the outset of its findings and conclusions, the PTAB noted, "As evidence that the subject's property assessment was excessive, the appellant provided appraisals from Kelly and Herman." Thus, the PTAB recognized that Olin, the appellants, bore the initial burden of proving that the assessment of the Property was excessive. Accordingly, the PTAB applied the plain language of the regulations in the case at bar, which provide that the contesting party bears the initial burden of proof and that until that burden is met, the board of review has no obligation to defend its assessment decision.

Even if we were to conclude that the PTAB failed to expressly state that Olin bore the initial burden of proof, a reversal and remand is not required where the PTAB detailed its factual findings showing that Olin had met its burden of proof. Olin notes that its witnesses and documentary evidence, including the two detailed appraisal reports, were more than sufficient to meet its initial burden of proof under section 1910.63 (86 Ill. Adm. Code §1910.63, amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000). Had Olin not met its initial burden, the PTAB would have dismissed the appeal pursuant to section 1910.63(b) (86 Ill. Adm. Code §1910.63(b), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000). However, Olin met its initial burden of proof, and the burden of proof then shifted to the BOR to defend its assessment pursuant to section 1910.63(c) (86 Ill. Adm. Code §1910.63(c), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000). The BOR chose not to present any witnesses or appraisal

evidence in support of its decision. Accordingly, pursuant to section 1910.63(c) (86 Ill. Adm. Code §1910.63(c), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000), the PTAB was then directed to base its decision "upon the information submitted by the contesting party and, if applicable, the evidence submitted by any intervening party." The Districts then went forward to support their position with substantive, documentary evidence and legal argument pursuant to section 1910.63(d) (86 Ill. Adm. Code §1910.63(d), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000). Accordingly, we reject the Districts' argument that the PTAB committed reversible error in failing to expressly state that Olin bore the initial burden of proof.

We next address the Districts' argument that the PTAB failed to state the appropriate standard of proof that it applied on the reclassification issue. The Districts' argument is twofold. First, the Districts argue that they presented the appropriate clear-and-convincing standard of proof in their written opening and closing arguments and that the clear-and-convincing standard is more demanding than the preponderance-of-the-evidence standard. Second, they argue that the PTAB failed to expressly state the correct standard of proof in the decision.

We first address whether the clear-and-convincing standard or the preponderance-of-the-evidence standard should have been used regarding the reclassification issue. Section 1910.63(e) provides that the clear-and-convincing-evidence standard applies only where "unequal treatment in the assessment process is the basis of the appeal." 86 Ill. Adm. Code §1910.63(e), amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000. The "unequal treatment in the assessment process" language refers to situations in which the taxpayer claims that an assessment violated the uniformity clause of the Illinois Constitution and does not refer to situations in which the taxpayer merely claims that the assessment was excessive. *Winnebago County Board of Review v. Property Tax Appeal Board*, 313 Ill. App. 3d 179,

183 (2000). However, as previously noted, when market value is the basis of the appeal, the value of the subject property must be proved by a preponderance of the evidence. 86 Ill. Adm. Code §1910.63, amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000. In the instant case, Olin merely claimed that the tax assessments for 2003 and 2004 were excessive and did not bring a uniformity challenge. Thus, the clear-and-convincing-evidence standard does not apply to the reclassification issue.

We turn now to the Districts' argument that the PTAB failed to state the correct standard of proof in its decision on the reclassification issue. At the beginning of the PTAB's "Findings and Conclusions" in its decision, it stated that there were two issues before it:

- "1. The determination of the subject property's market value for assessment purposes as of January 1, 2003, and January 1, 2004; and
2. Whether certain tracts of the subject property are entitled to farmland assessments."

The PTAB then explicitly stated that the standard of proof required on the market value assessments was the preponderance-of-the-evidence standard. The PTAB was therefore aware of its duty to set forth the appropriate standard of proof. When the PTAB turned to the reclassification issue, it stated, "The next issue before the Board is to determine whether or not portions of the subject property are entitled to a farmland classification and agricultural assessment." Accordingly, the PTAB set forth the correct standard of proof when it addressed reclassification issue.

Next on appeal, the Districts argue that the PTAB failed to properly judge the credibility of the witnesses and failed to give appropriate weight to certain evidence. Weighing evidence and determining the credibility of witnesses are matters uniquely within the province of the PTAB. *Kendall County Board of Review v. Property Tax Appeal Board*, 337 Ill. App. 3d 735, 737 (2003); *National City Bank of Michigan/Illinois v. Property Tax*

Appeal Board, 331 Ill. App. 3d 1038, 1043 (2002). The admission of evidence in an administrative proceeding is within the sound discretion of the agency. *Morelli v. Ward*, 315 Ill. App. 3d 492, 497 (2000). Section 16-180 of the Property Tax Code (35 ILCS 200/16-180 (West 2008)) provides that the procedure before the PTAB shall eliminate formal rules of pleading, practice, and evidence to the extent they deem practicable. The PTAB's rules provide that hearings shall be conducted "in a manner best calculated to conform to substantial justice." 86 Ill. Adm. Code §1910.92(a), amended at 30 Ill. Reg. 7965, 7973, eff. Apr. 14, 2006. The PTAB's rulings are to be based upon "equity and the weight of the evidence," and the PTAB is charged with the task of weighing that evidence. 86 Ill. Adm. Code §1910.50(c), amended at 31 Ill. Reg. 16222, 16232, eff. Nov. 26, 2007, The PTAB's evidentiary rulings and decisions on the weight accorded to particular pieces of evidence are entitled to considerable deference and should not be set aside absent a showing of an abuse of discretion resulting in substantial injustice. 735 ILCS 5/3-111(b) (West 2008). Accordingly, this court should not reweigh the evidence or disturb the PTAB's credibility determinations unless they are an abuse of discretion or against the manifest weight of the evidence, meaning that all reasonable and unbiased persons would agree that the opposite result is clearly evident. *National City Bank of Michigan/Illinois*, 331 Ill. App. 3d at 1042-43.

The Districts first argue that the PTAB should have rejected Kelly's and Herman's appraisal evidence even though the Districts stipulated that Kelly and Herman were qualified to render their expert opinions. In any event, the Districts launch several miscellaneous attacks on Kelly and Herman. The Districts allege that Herman manipulated his appraisal due to pressure to receive an important client, that he was advertised as an appraiser with innovative methodologies that could benefit taxpayers, that he relied on bankruptcy sales in his appraisal report, and that he submitted an addendum to correct certain data contained in

his 2003 appraisal. The Districts also allege that this court disagreed with a valuation method used by Kelly to determine property value used for malls and shopping centers. See *County of Du Page v. Property Tax Appeal Board*, 303 Ill. App. 3d 538, 542-43 (1999); *County of Du Page v. Property Tax Appeal Board*, 277 Ill. App. 3d 532, 536-37 (1995). The Districts also criticize Kelly's and Herman's analyses because they relied on one sales offering in their appraisals, they used current listings of the Property, and they did not consider the Property to be a part of the St. Louis metropolitan area.

In the instant case, the PTAB was faced with an assessment of a large unique property containing many different structures and varying topography. We note that the PTAB had the opportunity to review the evidence and weigh the appraisers' credibility and that the Districts' attorney had an ample opportunity to cross-examine Olin's appraisers. The weight to be accorded to Olin's appraisers was within the purview of the PTAB. It was the PTAB's responsibility to weigh the credibility of the witnesses based on their entire testimony, not based on a few personal accusations. There is no indication that the PTAB placed any more weight on the comparison sales used by Olin's appraisers than those used by the Districts' appraiser. Herman valued the Property at \$11.2 million, Kelly valued the Property at \$15.5 million, and Byrnes valued the Property at \$42.065 million. However, the PTAB concluded that the value of the Property was \$21.9 million, an amount higher than the valuations of two appraisers and lower than the valuation of one. Thus, the PTAB properly weighed the testimony from the appraisers but did not entirely agree with any one appraiser. In two instances the PTAB gave the greatest weight to market data that was used by one of Olin's appraisers and the Districts' appraiser. Furthermore, while the PTAB agreed with Kelly about the amount of excess land on the Property, the PTAB valued the unimproved land at \$17 million, far higher than the amounts submitted by all the appraisers. The PTAB also reached its own determination of the value of the excess land and increased the estimates

provided by Kelly and Herman to a value of \$10,000 per acre. This independent analysis shows that the PTAB did evaluate and weigh the appraisers' credibility. Taking all of these determinations into consideration, we conclude that it would have been impossible for the PTAB to reach this result without evaluating the credibility of the evidence and the appraisal testimony. See *Cook County Board of Review v. Property Tax Appeal Board*, 395 Ill. App. 3d 776, 778 (2009). Accordingly, the Districts cannot prove that the PTAB's credibility determinations and weight given to the evidence caused them any substantial harm.

The Districts next claim that Olin's appraisers were not credible because they did not agree that the Property's highest and best use would be for the north site to be divided into five parcels and that those parcels should be sold individually. In tax appeal proceedings, Illinois courts treat the issue of the highest and best use of property, and in particular whether property should be appraised as one parcel or subdivided into smaller parcels, as an issue of fact. *Board of Review of Macon County v. Property Tax Appeal Board*, 295 Ill. App. 3d 242, 247 (1998). It is not this court's duty to second-guess the conclusions of Olin's appraisers regarding the highest and best use of the Property, but to merely determine whether the PTAB's factual decision to accept those conclusions as credible was supported by the evidence. *Board of Review of Macon County*, 295 Ill. App. 3d at 247.

The PTAB carefully reviewed the evidence supporting the view that the north site should be sold as a single unit primarily because the division would create substantial utility expenses. Olin's appraisers rejected a division of the north site based on the potential costs of a division. Herman concluded that a division of the north site would not produce a greater value, and he noted that any separation of the zones would leave buildings and tracts of land without necessary utilities. Herman consulted a professional engineer and cost manuals to obtain thorough estimates of the costs to provide basic utilities to the divided parcels. He concluded that the expenditure of these costs would not produce an incremental gain to the

seller and would negatively impact the overall value of the Property. They concluded that market considerations did not support the investment of substantial costs to divide the North Site. Kelly and Herman also considered the limited market for the proposed division of the North Site and concluded that relatively few buyers exist for the proposed division of the Property.

The PTAB noted "that the various zones on the North Site are integrated and dependent on each other for utilities" and that Byrnes "did not adequately account for the costs to segregate and extend utilities to the different properties." Furthermore, Byrnes admitted that his proposed division of the north site would require costs to provide utilities to the various parcels, but he made no attempt to determine what those costs would be. Similarly, Byrnes made no attempt to analyze how long it would take the market to absorb the improved or vacant lots; he simply assumed that all the parcels would sell within one year of market exposure. Essentially, Byrnes proposed a change to the current single ownership of the Property in concluding that the north site should be divided into five separate parcels and sold individually. When an appraiser proposes a change in use, such as a division of the property, the appraiser must consider the costs associated with the proposed division and whether there is a market for the proposed sites. *Board of Review of Macon County*, 295 Ill. App. 3d at 248. Byrnes admittedly failed to do so. The record reveals that Olin's appraisers presented detailed reports supporting their conclusions and that the PTAB thoroughly considered and weighed the reports. It was appropriate for the PTAB to determine which approach to value was the most persuasive and to rely on that. *Bloomington Public Schools, District No. 87 v. Illinois Property Tax Appeal Board*, 379 Ill. App. 3d 387, 397 (2008). Accordingly, we conclude that the record contains more than enough evidence to support the PTAB's factual findings supporting Kelly's and Herman's conclusions that the highest and best use of the Property was to remain as one single unit.

Next, the Districts argue that the PTAB erred in excluding an appraisal report prepared by Strategis for tax appeal proceedings which took place in 1997. The Strategis report assessed the Property with the north site divided into five separate parcels. The Districts offered the Strategis report into evidence, and the PTAB accepted the report but ultimately did not accord it any weight in determining the market value of the Property for the tax years 2003 and 2004. The Districts also assert error because the PTAB did not consider the Strategis report to be an admission by Olin regarding the highest and best use of the north site.

Although the Strategis report assessed the value of the Property with the north site divided into five separate parcels, the report did not contain any evaluation of the costs of the division or the market demand for the individual parcels. Furthermore, the Strategis report predates the valuation dates for the subject appeals by six and seven years. There was no testimony that the Strategis report was ever used or relied upon before the BOR. Thus, the Strategis report is not relevant to the question of the highest and best use of the Property for the tax years 2003 and 2004. If we were to conclude that the PTAB erred in its ruling on the Strategis report, the Districts cannot show prejudice where the PTAB considered Kevin Byrnes' appraisal evidence, which concluded that the division of the north site would result in a higher market value.

Furthermore, the PTAB stated that even if it had considered the Strategis report to be an admission, "it would only be so in connection with the 1997 assessment appeal *** and values associated with the subject property in 1997, not the instant appeals." Accordingly, the PTAB would not have accorded the Strategis report any additional weight whether it was deemed an admission or not. An evidentiary admission is not binding or conclusive; it is simply evidence that may be explained, denied, or contradicted. *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). It is for the fact finder to determine the weight to be given to

admissions. *Casey v. Burns*, 7 Ill. App. 2d 316, 324 (1955). An administrative agency's decision regarding the admission of evidence is subject to a reversal only if the agency abused its discretion and there is demonstrable prejudice to a party. *Matos v. Cook County Sheriff's Merit Board*, 401 Ill. App. 3rd 536, 541 (2010). We cannot conclude that the PTAB erred in its determination that the Strategis report was not entitled to any weight or was an admission by Olin.

We turn now to the next issue, whether Olin's request for an agricultural assessment was properly before the PTAB. The Districts argue that Olin did not sufficiently raise its request for an agricultural assessment before the PTAB or the BOR. The Districts argue that Olin's agricultural assessment request is barred under section 16-180 of the Property Tax Code (35 ILCS 200/16-180 (West 2008)), which limits appeals to only the grounds listed in the petitions filed with the PTAB. The Districts assert that Olin forfeited this claim because it brought this claim in an attachment to the PTAB petitions, rather than within the body of the petition form. Taxpayers seeking relief from the PTAB must submit the PTAB's prescribed forms. 86 Ill. Admin. Code §1910.30, amended at 24 Ill. Reg. 1233, eff. Jan. 5, 2000. The forms have one section containing boxes in which the taxpayer is required to place a checkmark in the appropriate box to identify the basis for the appeal. The form provides several selections; however, a reclassification is not a provided selection. Instead, the form contains a section for "legal contention" and instructs the taxpayer to submit a legal brief. There is no other place on the form for the taxpayer to identify an agricultural assessment as an issue for appeal.

In the instant case, the PTAB hearing officer found that Olin had complied with the PTAB's rules, putting everyone on notice that Olin's market value challenge included a claim for an agricultural assessment. Olin had raised its request for an agricultural assessment in the manner specifically directed by the PTAB's appeal forms. For the tax years 2003 and

2004 Olin checked the "legal contention" section on all the petition forms and also submitted legal briefs identifying its request for an agricultural assessment. The briefs clearly set forth the grounds and law supporting the request for an agricultural assessment. Accordingly, we conclude that the PTAB was correct in determining that Olin had properly raised this issue.

In regard to whether Olin failed to properly raise this issue before the BOR, we note that the appeal forms, briefs, and exhibits before the BOR were not made a part of the proceedings before the PTAB and are not in the record before this court. Therefore, the Districts cannot prove what issues were raised during the BOR proceedings. The appellant has the burden to present a significantly complete record to support its claim for error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

Finally, the Districts argue on appeal that Olin was not entitled to an agricultural assessment. The PTAB is charged by statute with determining the "correct assessment of property which is the subject of an appeal." 35 ILCS 200/16-180 (West 2008); 86 Ill. Adm. Code §1910.50(c), amended at 13 Ill. Reg. 16222, 16232, eff. Nov. 26, 2007. A taxpayer qualifies for a farmland assessment by showing that a parcel of property is used "solely for the growing and harvesting of crops." 35 ILCS 200/1-60 (West 2008); *Senachwine Club v. Putnam County Board of Review*, 362 Ill. App. 3d 566, 567-68 (2005). Property used for those agricultural purposes must be classified and valued according to its use as farmland. *Bond County Board of Review v. Property Tax Appeal Board*, 343 Ill. App. 3d 289 (2003). The definition of farmland does not require that the property classification be based on the primary use of the property as a whole; "[r]ather, property that is used solely for the growing and harvesting of crops is properly classified as farmland, even if that farmland is part of a parcel that has other uses." *Kankakee County Board of Review v. Property Tax Appeal Board*, 305 Ill. App. 3d 799, 803 (1999). Accordingly, courts have held that property is properly assessed as farmland when used during the tax year solely for growing and

harvesting crops, notwithstanding that the property could be used for industrial development. *Sante Fe Land Improvement Co. v. Illinois Property Tax Appeal Board*, 113 Ill. App. 3d 872, 875 (1983). The use of a parcel of land for purposes of applying the farm definition is a question of fact, and the PTAB's classification of property as farmland will be reversed only when against the manifest weight of the evidence. *Kankakee County Board of Review*, 305 Ill. App. 3d 799.

In the instant case, the PTAB heard undisputed testimony from Richard Mann, Olin's facilities engineer, that for the tax years 2003 and 2004 Olin had used the 387 acres on the Property solely for growing and harvesting crops for the preceding two years. Mann testified that he had supervised Olin's farm operations, identified the property that had been farmed, described the farming that had occurred on the acreage, and submitted reports showing the income that Olin had received from the farming operations. Olin had leased the acreage from 2001 through 2004 to a tenant, Dennis Rapp, who had farmed the property for a percentage of the profits. The agreement between Olin and Rapp provided that Rapp would receive 60% of the profits and that Olin would receive 40% of the profits. According to Mann, corn and soybeans had been planted and harvested for the years in question. In fact, these farming operations had been taking place since 1975. The Districts failed to present any evidence rebutting Mann's testimony. Instead, the Districts submitted Olin's incorporation documents noting that the documents do not list "farming" as a corporate purpose. According to the Districts, Olin should not have received an agricultural assessment on the Property because the farming operations are not listed as a corporate business practice and thus they are unlawful. We reject this argument outright and note that under Illinois law corporations have the right to sell or lease property. See 805 ILCS 5/3.10 (West 2008). After a review of the record, we conclude that the PTAB properly granted the agricultural assessment to Olin.

For the foregoing reasons, the decision entered by the Property Tax Appeal Board is

hereby affirmed.

Affirmed.