2011 IL App (2d) 091331-U
Nos. 2—09—1331 & 2—09—1332 cons.
Order filed August 15, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

NORTHWOODS HEALTHCARE CENTER, Petitioner-Appellant, v. PROPERTY TAX APPEAL BOARD, BOONE COUNTY BOARD OF REVIEW, and THE CITY OF BELVIDERE, Respondents-Appellees.	)	On Petition for Administrative Review from the Property Tax Appeal Board. PTAB DOCKET NOS. 04—01537.001—C—3 and 05—00974.001—C—3

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

Held: Decision of Property Tax Appeal Board affirmed where the increase in assessments did not constitute a due process violation, where the petitioner did not establish that only the cost approach to valuation should have been considered and, even if it had, that using that approach alone would afford petitioner relief, and where we will not reweigh the evidence or credibility of witnesses.

¶ 1 Petitioner, Northwoods Healthcare Center, is a nursing home in Belvidere (Boone County). Petitioner appealed to the Property Tax Appeal Board (PTAB) the 2004 and 2005 tax assessments

imposed upon it by the Boone County Board of Review (collectively, respondents).[1] In two, identical, 23-page, single-space decisions, the PTAB rejected petitioner's appeals to reduce the assessments and determined, instead, that the evidence supported increasing those assessments. On appeal, petitioner argues that: (1) the PTAB's increase of assessments without notice and an opportunity to be heard deprived petitioner of constitutional due process; (2) the nursing home is a special-use property and should be valuated only under the cost approach to valuation; and (3) the PTAB's finding that the Board of Review's expert was more credible than petitioner's expert was contrary to the manifest weight of the evidence. For the following reasons, we affirm.[2]

¶ 2 I. BACKGROUND

¶ 3 Petitioner is a skilled nursing home facility that was built in 1972. The facility is two-stories high and contains 116 beds. For the tax years 2004 and 2005, the Boone County Board of Review assessed the property at $1,066,998, representing a $3,201,314 market value. Petitioner appealed each assessment to the PTAB. The PTAB consolidated petitioner's two appeals and held a hearing on February 22, 2008.

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[1]Respondents PTAB and Boone County Board of Review have appeared and filed briefs before this court. Respondent City of Belvidere has not appeared or filed a brief.

[2]We have jurisdiction over this direct appeal from the PTAB under section 16—195 of the Property Tax Code (35 ILCS 200/16—195 (West 2008)), which provides for direct appeal to the appellate court where, as is undisputed here, a change in assessed valuation of $300,000 or more is sought.

¶ 4 A. Petitioner's Expert and Opinions

¶ 5 Petitioner presented testimony from its appraiser, John VanSanten. At the time of hearing, VanSanten was a director at Wellspring Partners, a company that focuses solely on healthcare-related properties. When the report of the subject property was appraised, however, he was employed as a vice-president with Real Estate Analysis Corporation (REAC), and had been employed there about four years. Prior to that, he worked over four years for Valuation Counselors, primarily focusing on valuations of nursing homes, senior housing, hospitals, and other health care properties. VanSanten is licensed as a Certified General Appraiser and holds a Member of the Appraisal Institute designation from the Appraisal Institute. VanSanten has a bachelor's degree in finance and economics from Augustana College and a MBA in real estate finance from DePaul University. He has inspected "several hundred" nursing homes. VanSanten was accepted as an expert without objection.

¶ 6 VanSanten is one of four people who signed the REAC appraisal report of petitioner's property. Specifically, the property was inspected on May 28, 2004, by Dave Schoenike. Schoenike prepared the appraisal and performed underlying research, and VanSanten signed off on the report. At the hearing, VanSanten testified that he personally inspected the petitioner's property "yesterday." Schoenike did not testify.

¶ 7 The REAC report appraised petitioner's property as having a $2,215,000 value under the cost approach, a $2,315,000 value under the income capitalization approach, and a $2,350,000 value under the comparable sales approach.[3] Accordingly, the final opinion of value according to the

[3]Cost, income capitalization, and comparable sales constitute the three traditional methods for determining a property's value. *Board of Education of Meridian Community Unit School District*

REAC report was $2,300,000. VanSanten testified that, although all three approaches to determining the property's value were used and considered, he gave the greatest weight to the cost approach because a nursing home is a special-use property, *i.e.*, a property that is used for a specific purpose and cannot be easily converted to any other use.[4] More specifically, VanSanten opined that the other two approaches incorporate calculations of intangible business value, *i.e.*, factors such as the intrinsic value of the skilled nursing care facility's Certificate of Need, the skill of the medical personnel, and the facility's reputation. VanSanten testified that business value is an inappropriate consideration in assessing a special-use property. In contrast, VanSanten testified, the cost approach does not encompass business value; it considers only the value of the land and the building and is, therefore, the most reliable. He later agreed, however, that, while the concept of business value is widely accepted, the method for quantifying business value is still a matter of debate within the appraisal industry.

No. 223 v. Property Tax Appeal Board (Onyx), No. 2—10—0068, slip op. at 12 (June 28, 2011). The sales-comparison approach relies on sales of comparable properties in the open market to reach a determination of the subject property's fair market value and, when market data is available, it is the preferred method. *Id.* The income approach, based upon the property's income-producing potential, divides the property's net income by a capitalization rate. *Id.* The cost approach should generally be emphasized *only* where a special-purpose property is concerned. *Id.* A special-purpose property is one "of such a nature and applied to such a special use that it cannot have a market value." *Id.*

[4]According to VanSanten, other examples of special-use properties include horse racing tracks and churches.

¶ 8 VanSanten further testified that petitioner's facility was in a "typical condition" relative to other nursing homes of its age and that the facility constituted a "Class C" facility under the criteria established by the Marshall and Swift Valuation Service (Marshall Service) (a cost-estimating service used by assessors and appraisers to help estimate the cost of reconstructing a replacement facility), although he did not actually rely on the Marshall Service in his report. Further, VanSanten testified that entrepreneurial profit (reflecting the profit a developer receives when selling a property for an amount that exceeds the actual construction cost) should not be used to determine the value of a special-use property and that he is not aware of any nursing homes that were sold for a profit.

¶ 9 In his testimony regarding the income approach to value, VanSanten agreed that part of his calculation to obtain the value of the real estate involved only deducting business value.

¶ 10 Again, in his sales comparison estimate, VanSanten deducted the business enterprise value. VanSanten and his group utilized five sales comparables, adjusting for various characteristics such as location, age, net income per bed, occupancy rates, and numbers of beds. VanSanten testified that a sale of a nursing home does not typically involve just the land and the building but, rather, usually includes the business operation with its intangible value and personal property. He testified that the values of the intangibles are not typically reflected in the real estate transfer declarations that are filed upon sale.

¶ 11 At the hearing, VanSanten testified that changes and amendments to his report were necessary. For example, he amended his valuation under the cost approach to $2,100,000 (as opposed to the $2,215,000 stated in the report), purportedly based on various errors he had discovered in the report, including the use of an erroneous spreadsheet calculation of the location-factor adjustment. VanSanten stated that the actual age of the facility was the same as its effective

age, but amended his opinion of the economic life of the facility to 45 years (as opposed to the 50 years stated in the report). In addition, based upon a cost-estimating manual called the Means Cost Manual (a cost estimating service similar to Marshall Service) he increased to 25% an addition to costs for developer's overhead and profit under the cost valuation approach, as opposed to the 15% that had been added in the report. (Petitioner's attempt to introduce into evidence the corrected report and spreadsheet was denied as untimely, although it was permitted to make an offer of proof for the record.) VanSanten further amended his opinion as to the overall value of the facility to $2,150,000 (as opposed to the $2,300,000 stated in the report).

¶ 12 In addition, on cross-examination, VanSanten further admitted that: (1) he had not personally prepared the appraisal report or researched the comparables; (2) he did not discover the report's errors before he signed it; (3) he did not inspect the property to prepare the report; rather, he had inspected the property for the first time the day prior to the hearing for about one hour and without any building plans or other documentation; (4) the appraisal report did not, as required, identify the client; (5) although he relied most heavily on the cost method because he viewed the facility to be a special-use property, his report did not address or mention petitioner's purported special-use status; (6) he was not aware of how courts have defined special-use properties; and (7) the report's errors required corrections to other portions of the report, such as the tax figures, because the report internally relied upon information such that one error would create another and, further, that if there was an error calculating value under the cost approach, which there was, that would also impact the income approach conclusion which would, in turn, impact the sales comparison valuation.

¶ 13 B. Boone County Board of Review Expert and Opinions

¶ 14 The Boone County Board of Review also submitted an appraisal report to support its assessments. Michael McCann is president and general manager of William McCann & Associates, Inc., an appraisal and consulting business. McCann does not hold a college degree, but has been a real estate appraiser for 27 years, is a certified review appraiser with the National Association of Review Appraisers and Mortgage Underwriters, is licensed as a certified general real estate appraiser, is a member of several real estate organizations, and participates and is current in continuing education programs. McCann testified that he has appraised more than 36 healthcare-related properties, including nursing homes, hospitals, retirement centers, and assisted living centers, although he could not remember exactly how many of those properties were nursing homes. On May 5, 2006, with the assistance of an associate at the firm, James Foley, III, who had appraised more than 100 nursing home facilities prior to joining McCann's firm, McCann appraised petitioner's property as having a $4,100,000 value under the cost approach, a $4,200,000 value under the income approach, and a $4,350,000 value under the comparable sales approach. Accordingly, the final opinion of value for petitioner's property according to the McCann report was $4,200,000.

¶ 15 McCann testified that Foley performed research and operated under McCann's supervision and control. McCann testified that the opinions in the report are his own and that he personally inspected petitioner's property in January and May of 2006, performing both interior and exterior inspections, and that he had again inspected the property the morning of the hearing. McCann gave equal weight to all three approaches to value, noting that, although they were prepared independently, they returned values within a close range and supported each other. McCann testified that the intent of his report was to establish an appropriate market value basis for assessment of the

real property, exclusive of all business or personal property. McCann testified that his appraisal does not include any business value.

¶ 16 In his cost approach analysis, McCann developed a replacement cost of the property and testified that, based upon his personal inspection of the property, he classified it as a "Class B" facility under the criteria established by the Marshall Service. He testified that classifying the property as B or C relates to the subject's estimated value utilizing the cost approach; however, he testified, there would not be a great difference in the base cost between the two classifications. McCann performed a depreciation analysis, taking into account that petitioner is a "good quality" facility, that it still maintains all of the functional utility for which it was designed, and that its good maintenance and updated decorating give a person walking into the building (without knowing its age) the impression that it is 25 years old. Further, McCann added 10% to the base cost to account for entrepreneurial profit; he testified that he was not, however, aware of a nursing home that was built to suit and then sold to an end user with an entrepreneurial profit that was 10% the cost of construction.

¶ 17 In his comparable sales analysis, McCann used six sales, with the fifth sale constituting a three-property transaction. For each of those transactions, McCann determined the value of the real estate exclusive of all personal property and business value by examining for each sale the Illinois Real Estate Transfer Declaration, a document filed with the county recorder that states the value of the land and improvements only or lists as a separate item the personal property value.

¶ 18 In his income analysis, McCann considered petitioner's net income and further compared the market rate lease income of 11 comparable properties. He conceded that nine of the leases were between related parties. However, McCann confirmed that the leases represented market rates by

examining the Medicaid forms for reimbursement of lease expenses that were submitted to the State because the State requires lease rates to be in line with market rates.

¶ 19 McCann defined a special-use property as one that is so unique that it is not commonly bought or sold in the market; he stated that nursing homes, in contrast, are bought and sold with regularity. McCann opined that petitioner's property is not a special-use property. Although McCann agreed that one page of his report refers to petitioner as a special-use property, he testified to his belief that Foley, who assisted in preparing the report, meant a special-purpose property. According to McCann, a special-use property is one for which there is no demonstrable market. In contrast, McCann testified, a special-purpose property is designed and used for special purposes that are not easily adapted to other kinds of uses. Here, the nursing home was designed for the special purpose of serving as nursing home and it cannot too easily be adapted into, for example, a motel. McCann testified that he recalled learning his definition of special-use property from a PTAB or supreme court decision.

¶ 20 C. Petitioner's Rebuttal

¶ 21 In rebuttal, petitioner presented Richard Hansen, an architect who owns Hansen Associates Architects and who specializes in designing nursing home and retirement facilities. Hansen inspected petitioner's property in February 2008 and had previously performed minor remodeling jobs for petitioner in 1981, 1989, 1994, 2005, and in 2008. Hansen testified the facility was in typical or average condition when compared to other nursing homes built in the 1970s. Further, he testified he would classify petitioner's building as "Class C" under the Marshall Service cost sheets, because, although it is fire resistant and has masonry, load-bearing walls and upper and lower floors

that are precast concrete, it is not a reinforced concrete frame building. Also, he agreed "Class B" and "Class C" are very similar.

¶ 22 Further, petitioner re-called VanSanten in rebuttal, who disagreed that entrepreneurial profit applied to nursing homes, disagreed that the property is "Class B," disagreed that the difference in calculations for a "Class C average" property and a "Class B good" property are anything less than substantial. He agreed, however, that the Marshall Service cost sheet states that "Class B" may include fireproof, reinforced concrete and load-bearing brick walls.

¶ 23 D. PTAB Decisions

¶ 24 On November 30, 2009, the PTAB issued decisions for both appeals. Again, the decisions were identical for the 2004 and 2005 appeals. The PTAB essentially opened its decision by rejecting VanSanten's method for incorporating into all three value approaches a business value estimate. The PTAB found that VanSanten's method was not supported "by credible testimony, substantive documentary evidence or accepted appraisal theory" and found "problematic that a method which has not been universally accepted within the appraisal field" was used and was not "sufficiently detailed to justify its credibility." The PTAB stated that it placed "little weight" on VanSanten's method for quantifying business value, particularly given that VanSanten provided no authority for acceptance of his method of quantifying business value and, in fact, conceded in his testimony that the method for quantifying business value remains a matter of debate. Further, in addition to the placing little weight on VanSanten's method for quantifying business value, the PTAB noted other factors, including substantial errors contained within the REAC report, that were significant and that caused VanSanten to change his opinion of value at the time of hearing.

¶ 25 Further, the PTAB noted that it was "not persuaded that the subject's correct classification is Class 'C' as VanSanten determined" because the evidence reflected that petitioner's building contained fire-resistant masonry, load-bearing walls with precast concrete floors, all characteristics of a "Class B" building. Therefore, rejecting VanSanten's characterization, the PTAB found that proper classification under Marshall Service is, at best, subjective and that it might require "more than just a cursory examination of the [property] prior to hearing."

¶ 26 Next, noting that both experts utilized the three traditional approaches to value in their appraisal reports, the PTAB addressed each approach and each expert's conclusion thereunder. First, the PTAB addressed the cost approach and rejected VanSanten's conclusions. It noted that the primary difference between VanSanten's cost analysis and McCann's was that, with respect to their depreciation and classification estimations, McCann's opinion was based upon his personal inspection of the property at the time the appraisal was prepared. In contrast, VanSanten's estimate was based almost entirely upon the opinions and observations of other persons who personally inspected the property when the report was prepared, *i.e.*, Schoenike and the other signatories to the report, and those persons were not present at the hearing to present testimony or be subject to cross-examination regarding their methods, experience, and observations.

> "For these reasons, the [PTAB] finds the credibility of the testimony and the final value conclusion contained within [VanSanten's] report are diminished. It was not until VanSanten inspected the subject immediately prior to the hearing that he felt his opinions required amendment. Even then, his inspection only lasted approximately one hour with no plans or specific documentation available to him. The [PTAB] finds McCann's testimony and cost approach analysis to be more credible."

¶ 27 Further, in its discussion of the cost approach, the PTAB noted that it also rejected architect Hansen's rebuttal testimony, reiterating that it placed little weight on Hansen's and VanSanten's testimonies regarding the classifications of the property (*i.e.*, Class B or C). It noted that VanSanten did not actually use the Marshall Service cost index in the REAC report, presumed the index was applicable to nursing homes, and could not determine the correct year for the index to which he was testifying. Further, the PTAB found that Hansen, an architect, did not have sufficient familiarity with the cost sheets to make an informed decision as to classification, as he had testified that the first time he had seen the Marshall Service cost sheet was one week prior to the hearing. "For these reasons less weight is accorded to the cost approach to value submitted and later revised by [petitioner's] appraiser."

¶ 28 Second, the PTAB addressed the income approach to value and it rejected VanSanten's conclusions thereunder. The PTAB explained that VanSanten's estimate was predicated on deducting a business value, and, again, the PTAB had found that VanSanten's method of allocating business value held little merit. Further, the PTAB found that VanSanten's estimate under the income approach was predicated on his estimate of value under the cost approach; therefore, it found VanSanten's estimate under the income approach unsupported with substantive documentary evidence. In contrast, the PTAB noted that "McCann was well prepared at hearing with his work file available to provide detailed answers regarding his sources of data. Therefore, the Board gives greater weight to McCann's estimate of value using the income approach."

¶ 29 Finally, the PTAB rejected VanSanten's estimates under the sales comparison approach. The PTAB found "the best evidence to estimate the subject property's market value contained in this record is in the comparison and analysis of the comparable sales contained in the market approach

to value prepared by McCann." The PTAB addressed the five comparable market sales submitted by VanSanten and the six submitted by McCann, gave little weight to three sales (that both experts submitted) that reflected a combined three-facility sale, rejected one of VanSanten's sales as suggesting that the condition of the facility sold was below average as compared to petitioner's property, and found there remained credible market sales that were similar to petitioner's property. The PTAB found credible McCann's report, finding it contained a detailed description of the comparables and a narrative analysis of the adjustment process. "The Board finds McCann used clear and logical adjustments to estimate the subject's market value using the sales comparison approach. For these reasons, the Board gives more weight to the conclusion of value contained in McCann's sales comparison approach, which support his overall value conclusion [*i.e.*, $4,200,000]."

¶ 30 The Board concluded that petitioner's property, as of January 1, 2004, had a $4,200,000 market value, resulting in a total assessment for that year of $1,406,160. Further, the Board found that petitioner's property, as of January 1, 2005, had a $4,200,000 market value, resulting in a total assessment for that year of $1,396,920. (The difference in the assessments is presumably the result of a slight difference in Boone County's three-year medial level of assessment for those years: 33.48% in 2004 and 33.26% in 2005).

¶ 31 II. ANALYSIS

¶ 32 A. Due Process

¶ 33 Petitioner argues first that the PTAB acted unconstitutionally where it increased assessments without giving petitioner notice of the proposed increase and where it did not give petitioner the opportunity for a hearing to challenge the increased assessment. Petitioner's due process argument

is a legal one requiring *de novo* review. *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 271 (2004).

¶ 34 We disagree that the PTAB denied petitioner due process where it increased assessments. First, petitioner recognizes that this court in *LaSalle Partners v. Property Tax Appeal Board*, 269 Ill. App. 3d 621, 627 (1995), held that the PTAB is charged with determining in a *de novo* fashion the correct assessment of a particular piece of property and, therefore, that it is within its statutory authority to *increase* an assessment that is the subject of an appeal. There, we discussed in detail the numerous cases in which the PTAB has increased assessments, the statutes and rules that have been interpreted in a manner to allow the PTAB to increase assessments, and the fact that the legislature, which is presumed to know how the law has been interpreted, has not, despite other amendments to the PTAB statute, invalidated any of those decisions or rules. *Id.* at 627-29.

¶ 35 Nevertheless, petitioner asks us to reconsider the decision in *LaSalle Partners*, noting that various statutory provisions require administrative agencies to provide taxpayers with notice of any proposed assessment increases and, before they become final, the opportunity to contest those increases. See *e.g.*, 35 ILCS 200/9—85, 16—25, 16—30, 16—55, 16—95, 16—120, 12—40 (West 2008). Petitioner concedes that these provisions govern county assessors and local boards of review, *not* the PTAB. However, it suggests that those statutes reflect an overall statutory intent within the Property Tax Code to provide a petitioner additional notice beyond its own appeal before an assessment may be increased.

¶ 36 Petitioner fundamentally misconstrues the purpose of an appeal to the PTAB. By arguing that due process requires, beyond its own appeal, additional notice that the PTAB might increase assessments from those that were imposed by the local board, petitioner suggests that the local

board's assessments are somehow governing and may only be departed from in a downward fashion. To the contrary, and as noted in *LaSalle Partners*, the PTAB's decision to increase assessments is not literally an increase because "an appeal to the PTAB does not afford taxpayers the right to request that a higher authority rule upon the correctness of the lower authority's findings. Rather, it affords taxpayers and taxing bodies a 'second bite at the apple,' *i.e.*, an opportunity to have those assessments recomputed by a reviewing authority whose power is not circumscribed by any previous assessment." *Id.* at 629. Accordingly, an appeal to the PTAB effectively starts anew the assessment process. Thus, and as required by due process, the hearing before the PTAB affords notice to the petitioner that the assessments will be recomputed to determine the correct assessment, and an opportunity to present evidence regarding those assessments. See *Stewart v. Lathan*, 401 Ill. App. 3d 623, 627 (2010) (due process requires notice and an opportunity to be heard).

¶ 37 Despite the aforementioned established precedent, petitioner argues that it was not on notice that the PTAB could increase assessments, and, moreover, that it does not make sense to allow the local board of review to obtain relief (in the form of increased assessments) in an appeal it did not file. First, the PTAB's position as a *de novo* determiner of the correct assessment makes clear that the chance that the PTAB's decision regarding the correct assessment will not fall in a petitioner's favor and may, in fact, result in assessments higher than those originally imposed, is a risk that the petitioner runs upon appealing to the PTAB. Second, we view this argument as one challenging the propriety of the PTAB's role as a *de novo* arbiter of assessments. In that vein, petitioner's argument is one for the legislature. We, therefore, reject petitioner's due process argument.

¶ 38 B. Special-Use Property

¶ 39 Next, petitioner argues that a nursing home is a special-use property and, therefore, that the PTAB should have considered only the cost approach to value. Whether the PTAB considered appraisals that utilized the proper methodology for valuation of the property is a legal question we review *de novo*. *Cook County Board of Review v. Property Tax Appeal Board (Omni)*, 384 Ill. App. 3d 472, 479 (2008). We reject petitioner's argument for two reasons: (1) petitioner has not established that nursing homes are special-use properties as a matter of law; and (2) in any event, even if petitioner is correct that the cost approach should have been controlling here, petitioner's valuation under the cost approach was explicitly rejected by the PTAB and, therefore, petitioner is not entitled to relief.

¶ 40 First, and as previously mentioned, there are three valuation methods used to estimate a property's fair market value; generally, none of the methods is conclusive and each provides factors to consider in determining value. *Id*. at 480. Moreover, "[t]he use of more than one method in a single appraisal serves as a check on the value reached by the other method or methods," and, theoretically, the different valuations methods should result in the same value. *Id.* Because this may not, in practice, be the case, one duty of a professional appraiser is to weigh the results to determine the best reflection of the property's true value. *Id.*

¶ 41 Here, petitioner does not challenge the methods of valuation used in the sense that both experts used the aforementioned traditional approaches to valuation. Rather, it challenges the PTAB's conclusion that the sales comparison approach as applied by McCann provided the best evidence of the value of petitioner's property. Instead, petitioner argues that it is a special-use property and, therefore, the PTAB should have considered only the cost approach. Petitioner further

asks us to determine as a matter of law that nursing homes are special-use properties and that the cost approach should, therefore, be given the most weight in determining a nursing home's market value.

¶ 42 It is clear, however, that the sales comparison approach is the preferred method and should be used when market data is available. *Id.* at 480-81. Market data reflects the sale prices of properties comparable to that of the subject property. *Id.* at 481. In contrast, where the subject property is a special-use property, *i.e.*, one that "is so unique as to not be salable, for which no market exists," no market data is available and the sales comparison approach may be omitted. *Id.* at 483. "Heavy reliance upon the reproduction cost method of valuation has been frowned upon by the courts" and "should be given great weight only when there is no actual or potential market for the property in question. Moreover, even where special purpose property is involved, the use of reproduction cost is only one proper factor in the valuation process and not the sole, conclusive method of valuation." *Chrysler Corp. v. Property Tax Appeal Board*, 69 Ill. App. 3d 207, 211-12 (1979). Thus, to succeed on its argument that only the cost approach should control and that the PTAB should not have considered the sales comparison approach, petitioner must establish that nursing homes are not salable and that no market exists. Petitioner fails to do so.

¶ 43 While petitioner emphasizes the unique nature of a nursing home facility and its accompanying business, special-use status does not rest solely on the uniqueness of the facility but, rather, on the fact that it is not salable and there is no market for it. Caselaw reflects that courts have rejected assertions that various properties, although unique, were not salable such that only the cost approach could be considered where actual or potential markets for sale existed. *See*, *e.g.*, *Omni*, 384 Ill. App. 3d at 483 (finding PTAB erred in disregarding sales comparison approach and finding that a mixed-use property that consisted of a hotel, office, and retail space was of such special

character that acquisition of comparable market data was difficult); *United Airlines, Inc. v. Pappas*, 348 Ill. App. 3d 563, 572 (2004) (rejecting assertion that, while an airport terminal was used for a special purpose, it was so unique as not to be salable, noting that there are a multitude of airlines that might pursue terminal space at a busy airport); *Chrysler Corp.*, 69 Ill. App. 3d at 213 (rejecting claim that massive size of the Chrysler plant warranted special-use designation so that only cost approach to value would be considered and noting that, while there were no other sales of similarly-sized plants sold in the area, there were numerous sales of extremely large properties that could provide market data).

¶ 44 Here, both experts found comparable lease and sales data regarding nursing homes and both were able to perform the sales comparison analysis. VanSanten submitted evidence of five sales, and McCann submitted evidence of six sales. Petitioner argues that the fact that its expert utilized the sales comparison approach reflects only that he properly performed the three analyses required by law. Petitioner misses the point. VanSanten was able to perform the sales comparison analysis because REAC found sales and leases of nursing homes that reflected that a market, albeit perhaps a specialized market, existed for those properties. Petitioner tries to circumvent this fact by stating, "if anything, sales of closed nursing homes should be used under the sales approach, because such a sale would not be based upon the value of the nursing home business," (with no citation to the record of whether any such evidence was presented) and it further asserts that the fact that a sale or lease of a nursing home usually includes the business means that there is no general market for such properties. We disagree. The fact that a unique business generally accompanies the property does not automatically render the property non-salable. For example, clearly, there is unlikely to be a general market for the sale or lease of an airport terminal as in *United Airlines*; rather, any such sale

or lease would likely occur within a specialized industry and would likely include the personal property, if any, therein. Despite the uniqueness of the property, however, the court in *United Airlines* still found that a market, albeit a unique market, existed. *United Airlines*, 348 Ill. App. 3d at 572.

¶ 45 Critically, petitioner has not established that employing the sales-comparison approach here would result in an *unreliable* estimate of the fair market value. See *e.g.*, *Onyx*, No. 2—10—0068, slip op. at 17 (PTAB did not err in discounting sales-comparison approach where sale of landfill was not a reliable indicator of fair market value because, for example, extensive adjustments were needed to determine the value of only the real estate, profitability of a given landfill differs by each locale's different local regulations, and sales that were performed were not arms-length transactions, but, rather, constituted part of a Department of Justice divestiture order); *Omni*, 384 Ill. App. 3d 485 at n.3 ("it was not demonstrated that employing the sales comparison approach would have resulted in unreliable estimates of the fair market value of the Omni property"). Petitioner asserts generally that the sales comparison approach would render unreliable results (and, therefore, the cost approach should be used) because it incorporates the intangible business value of the nursing home, requiring various adjustments to determine only the market value of the property. However, VanSanten's sales comparison analysis apparently made those adjustments, explicitly considering and deducting for business value. Petitioner does not explain how, given that VanSanten incorporated into his analysis the uniqueness of the facility and its accompanying business value, the resulting REAC sales comparison analysis is unreliable. Further, we note that VanSanten's value under the sales comparison approach, an approach petitioner asserts is allegedly unreliable, returned a value ($2,350,000) similar to the value he obtained under the cost approach ($2,215,000, later amended

to $2,100,000), the approach petitioner alleges is accurate and the only value that should be considered. If anything, this suggests that the sales comparison approach as performed by VanSanten returned a relatively reliable figure given the overall methods and calculations he performed. The PTAB simply did not find credible VanSanten's methods to arrive at those figures. Similarly, the figures the PTAB did find credible, McCann's, also sought to establish a value exclusive of any business or personal-property value, and McCann testified that his appraisal did not include any business value. Thus, petitioner's challenge to the reliability of the sales comparison approach on the basis that it incorporates business value does not prove viable here, where both experts explicitly discounted business value in their calculations.

¶ 46 Petitioner next asserts that two PTAB decisions reflect that the PTAB has recognized that a nursing home should be valued under the cost approach. Petitioner asserts that, in *In re Lakefront Health Center, Inc.*, Nos. 03—22550—001, 03—22550—002 at 15-17 (Prop. Tax Appeal Bd., May 27, 2009), the PTAB "primarily relied on the cost approach." In the other, the PTAB stated, "given the intrinsic difficulties in determining the business enterprise value to be deducted from in both the sales and income approaches to value, *in this case* the cost approach is a reliable approach to value of the real estate only." (Emphasis added.) *In re Countryside Manor Nursing Home*, No. 04—00988.001—C—3 at 30 (Prop. Tax Appeal Bd., February 29, 2008). Petitioner also asserts the use of the cost approach for valuation is supported by a decision from the Nebraska Tax Equalization and Review Commission (*Heritage of Wauneta, Inc. v. Chase County Board of Equalization*, No. 09C152 (November 24, 2010)). In those decisions, however, the evidence was either insufficient under the other two methods to rely on those valuations or the evidence did not reflect any consideration of whether the final value included business value or, in contrast, performed reliable

deductions for business value. See *In re Lakefront Health Center*, at 15-17; *In re Countryside*, at 32-33; *Heritage of Wauneta* at 10-12. In other words, those decisions were fact specific based upon the quantity and quality of the evidence presented therein. They did not broadly hold that only the cost approach should be considered in all cases involving nursing homes. Thus, whether the PTAB has in certain cases involving nursing homes decided under the facts presented therein that the cost approach was the most reliable does not establish as a matter of law that nursing homes are only special-use properties and, therefore, *only* the cost approach may be considered.

¶ 47 That the aforementioned cases selected the most reliable approach given the facts and evidence presented leads us to our second reason for concluding that petitioner's request for relief on the basis that only the cost approach should be considered must be denied. Here, the PTAB thoroughly considered the evidence before it, asked its own questions of the witnesses, made credibility determinations, and concluded that the best evidence presented here for determining petitioner's value was McCann's evidence under the comparable sales approach. It is clear, however, that even if the PTAB had considered only the cost approach, petitioner's valuation would be rejected. The PTAB evaluated VanSanten's methods of calculating value under the cost approach and, for several reasons, determined that his valuation was not credible. In contrast, it found McCann's figure under the cost approach credible. "Weighing evidence and determining the credibility of witnesses are jobs of the property tax appeal board and are uniquely in its province." *Kendall County Board of Review v. Property Tax Appeal Board*, 337 Ill. App. 3d 735, 737 (2003). As McCann's cost approach conclusion supports the PTAB's ultimate value determination of $4,200,000, we would not reverse the PTAB's decision on this basis. Accordingly, we cannot conclude that, had the PTAB considered only the cost approach, petitioner would be entitled to relief.

¶ 48 D. Expert Credibility

¶ 49 Petitioner's final argument is simply that the PTAB erred in finding McCann more credible than VanSanten. Petitioner argues that McCann's assertions lacked valid foundations.

¶ 50 Petitioner frames his arguments as foundational, but close inspection reveals that petitioner merely asserts that the PTAB should have rejected McCann's evidence because his credentials, as compared to VanSanten's, are lacking. For example, petitioner asserts that, with his extensive experience valuing nursing homes, VanSanten presented valid and credible testimony regarding overall value, "credibly stated" that petitioner is a special-use property, and, based upon his vast experience, was able to classify the facility as "Class C." In contrast, petitioner asserts, McCann does not have a college degree, could not specify exactly how many of the healthcare properties he has inspected were nursing homes, and had not been inside a nursing home for a long time.

¶ 51 The findings and conclusions of an administrative agency on questions of fact shall be held to be *prima facie* true and correct. 735 ILCS 5/3—110 (2008). An agency's findings of fact will be upheld unless contrary to the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board,* 228 Ill. 2d 200, 210 (2008). The record makes clear that all of these alleged "deficiencies" in McCann's qualifications were thoroughly presented for the PTAB at the hearing. What petitioner ignores are the several bases the PTAB found rendered VanSanten's assessment of this property not credible, including his failure to inspect the property until the day before the hearing and, even then, for a short duration and without relevant documents. The PTAB found, despite VanSanten's experience, that his opinions and his credibility were diminished by several errors in the REAC report, his changing opinions the day of hearing, and his admissions that the material from which the property was constructed might fall into the Class B category. Similarly,

the PTAB found that Hansen lacked experience with classification documents to be able to render a credible opinion thereunder.

¶ 52 In contrast, the PTAB explicitly found McCann's testimony credible, found that his multiple and personal inspections of the property enhanced his credibility, and found him prepared for the hearing and able to answer detailed questions about his methods. To the extent that petitioner challenges McCann's methods, calculations (for example, addition of 10% entrepreneurial profit), and credentials, it asks us to reweigh both the evidence and witness credibility, again, factors exclusively within the PTAB's domain. *Kendall County*, 337 Ill. App. 3d at 737. We decline to do so, and affirm the PTAB's decision.

¶ 53 III. CONCLUSION

¶ 54 For the foregoing reasons, we affirm the judgment of the Property Tax Appeal Board.

¶ 55 Affirmed.