

EXHIBIT 51

WESTER
DESIGN

S1-60

TOTAL PAYMENT DUE**\$1,193.94****2018 First Installment Property Tax Bill**

Property Index Number (PIN)	Volume	Code	Tax Year	(Payable In)	Township	Classification
15-21-301-207-0000	170	31088	2018	(2019)	PROVISO	2-12

By 03/01/19 (on time)

IF PAYING LATE, PLEASE PAY	03/02/19-04/01/19 \$1,211.85	04/02/19-05/01/19 \$1,229.76	05/02/19-06/01/19 \$1,247.67	LATE INTEREST IS 1.5% PER MONTH, BY STATE LAW
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TAXING DISTRICT BREAKDOWN

Your Taxing Districts	Money Owed by Your Taxing Districts	Pension and Healthcare Amounts Promised by Your Taxing Districts	Amount of Pension and Healthcare Shortage	% of Pension and Healthcare Costs Taxing Districts Can Pay
Des Plaines Valley Mosq. Abat Dist Lyons	\$464,631	\$2,905,654	-\$464,631	115.99%
Metro Water Reclamation Dist of Chicago	\$3,475,872,000	\$2,740,910,000	\$1,193,113,000	56.47%
Westchester Park District	\$3,481,122	\$4,895,519	\$470,899	90.38%
Triton Community College 504 (River Grv)	\$97,978,704	\$29,461,982	\$29,461,982	00.00%
Proviso Township HS Dist 209 (Maywood)	\$64,953,675	\$58,976,048	\$336,855	99.43%
Westchester School District 92 1/2	\$12,816,178	\$7,468,921	\$758,132	89.85%
Village of Westchester	\$25,204,408	\$110,330,900	\$47,194,684	57.22%
Town of Proviso	\$103,814	\$7,090,600	-\$674,181	109.51%
Cook County Forest Preserve District	\$193,646,842	\$457,040,680	\$246,669,734	46.03%
County of Cook	\$6,468,096,809	\$25,197,996,698	\$16,082,338,828	36.18%
Total	\$10,342,618,183	\$28,617,077,002	\$17,599,205,302	

PAY YOUR TAXES ONLINEat cookcountytreasurer.com from your bank account or credit card today**TAX CALCULATOR**

2017 TOTAL TAX		2,170.80
2018 ESTIMATE	X	55%
2018 1st INSTALLMENT	=	1,193.94

IMPORTANT MESSAGES- Pay this bill at cookcountytreasurer.com.

The First Installment amount is 55% of last year's total taxes. All exemptions, such as homeowner and senior exemptions, will be reflected on your Second Installment tax bill.

PROPERTY LOCATION1606 WESTCHESTER BLVD
WESTCHESTER IL 60154**MAILING ADDRESS**FRANK/DARLENE BARRETT
1606 WESTCHESTER BLVD
WESTCHESTER IL 60154-4332

EXHIBIT 52

FILED DATE: 10/23/2018 3:33 PM 2018CH13221

RECORDATION REQUESTED BY:
PLAZA BANK
7460 W. IRVING PARK ROAD
NORRIDGE, IL 60706

WHEN RECORDED MAIL TO:
PLAZA BANK
7460 W. IRVING PARK ROAD
NORRIDGE, IL 60706



Doc#: 0608147247
Eugene Gene Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 03/22/2005 02:39 PM Pg: 1 of 13

4350987 74

EX 1

FOR RECORDER'S USE ONLY

This Mortgage prepared by:

Dorothy E Stalska, Loan Administrative Assistant
PLAZA BANK
7460 W. IRVING PARK ROAD
NORRIDGE, IL 60706

GIT

MORTGAGE

THIS MORTGAGE dated March 16, 2005, is made and executed between Frank J. Barrett and Darlene Barrett, his wife (referred to below as "Grantor") and PLAZA BANK, whose address is 7460 W. IRVING PARK ROAD, NORRIDGE, IL 60706 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, warrants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures, all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Cook County, State of Illinois:

PARCEL 1: LOT 1 EXCEPT THE SOUTH 34.23 FEET AND THE VACATED ALLEY LYING WEST OF AND ADJOINING IN GEORGE F. NIXON AND COMPANY'S CENTRAL ADDITION TO WESTCHESTER, BEING A SUBDIVISION OF THE NORTH 12 ACRES OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EAST 35 FEET OF LOT 3 AND THE EAST 35 FEET OF THE NORTH 25 FEET OF LOT 5 IN ISABEL, A SUBDIVISION IN THE WEST 1/2 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 2, 1956 AS DOCUMENT NO. 16626253 AND CERTIFICATE OF CORRECTION RECORDED JULY 18, 1956 AS DOCUMENT NO. 16639884, IN COOK COUNTY, ILLINOIS.

The Real Property or its address is commonly known as 1600 Westchester Boulevard, Westchester, IL 60154. The Real Property tax identification number is 15-21-301-205-0000 & 15-21-301-209-0000

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or



EXHIBIT 53

RECORDATION REQUESTED BY:
PLAZA BANK
7460 W. IRVING PARK ROAD
NORRIDGE, IL 60706

WHEN RECORDED MAIL TO:
PLAZA BANK
7460 W. IRVING PARK ROAD
NORRIDGE, IL 60706



Doc#: 0505647222
Eugene "Gene" Moore Fee: \$46.00
Cook County Recorder of Deeds
Date: 02/23/2005 02:08 PM Pg: 1 of 12

EY2

FOR RECORDER'S USE ONLY

4349847 (1/4)

This Mortgage prepared by:

GIT

Dorothy E Stalata, Loan Administrative Assistant
Plaza Bank
7460 West Irving Park Road
NorrIDGE, IL 60706

EXHIBIT 8

MORTGAGE

THIS MORTGAGE dated February 16, 2005, is made and executed between Frank J. Barrett and Darjen Barrett, husband and wife (referred to below as "Grantor") and PLAZA BANK, whose address is 7460 W. IRVING PARK ROAD, NORRIDGE, IL 60706 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, warrants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Cook County, State of Illinois:

THE SOUTH 34.23 FEET OF LOT 1 AND THE VACATED ALLEY LYING WEST OF AND ADJOINING SA SOUTH 34.23 FEET OF LOT 1 IN GEORGE F. NIXON AND COMPANY'S CENTRAL ADDITION 1 WESTCHESTER, BEING A SUBDIVISION OF THE NORTH 12 ACRES OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

The Real Property or its address is commonly known as: 1606 Westchester Blvd., Westchester, IL 6015
The Real Property tax identification number is 15-21-301-207

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable. If the Lender is required to give notice of the right to cancel under Truth in Lending in connection with any additional

EXHIBIT
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EXHIBIT 54

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

BYLINE BANK *f/k/a* North Community)
Bank, an Illinois banking corporation)
successor-by-merger to Plaza Bank,)
) No. 18 CH 13221
Plaintiff,)
) 1600 and 1606 Westchester Boulevard,
vs.) Westchester, Illinois 60154
)
FRANK J BARRETT; DARLENE A.)
BARRETT; APEX MORTGAGE CORP.;)
WELLS FARGO BANK, MINNESOTA,)
N.A.; UNKNOWN OWNERS AND NON-)
RECORD CLAIMANTS,)
)
Defendants.)

AFFIDAVIT OF ROBERT WILSON

I, Robert Wilson, being first duly sworn on oath, depose and state as follows:

1. I am a Vice President for Byline Bank (the "Bank"), which is the plaintiff in this action. I am responsible for the handling of the loan described herein, I am familiar with the Bank's business practices and procedures and in particular, the workout of delinquent loans. I have personal knowledge of the facts contained in this affidavit and in the complaint, I am authorized by the Bank to make this Affidavit, and if sworn as a witness, can testify competently thereto.

2. In my capacity as Vice President, I am familiar with the material allegations contained in the Complaint for Foreclosure (the "Complaint") filed by the Bank in the captioned case on October 23, 2018 to foreclose the mortgage on the real property and improvements located at 1600 Westchester Boulevard, Westchester, Illinois 60154 (the "Property") and the proposed amended complaint that the Bank is seeking to file on April 22, 2019. I am also



familiar with the loan documents attached to the Complaint and the payment history of the Borrowers (defined below).

3. On March 16, 2005, the Bank made a loan (the "Loan") to Frank J Barrett and Darlene A. Barrett (collectively, the "Borrowers"). The loan was evidenced by a promissory note in the original principal amount of \$282,021.59 (the "Note"), a true copy of which is attached to the Bank's Complaint as Exhibit B.

4. The Note is secured by, among other things, a mortgage (the "Mortgage") dated March 16, 2005 and recorded on March 22, 2005 against the Property attached to the Bank's Complaint as Exhibit A.

5. The Note is further secured by that certain Assignment of Rents (the "Assignment of Rents") against the Property dated March 16, 2005 and recorded on March 22, 2005. A copy of the Assignment of Rents is attached to the Complaint as Exhibit C.

6. On June 28, 2013, Plaza Bank was merged into North Community Bank. A copy of the certificate of Merger is attached to the Complaint hereto as Exhibit D.

7. The Note was modified by those certain Change In Terms Agreements (collectively, the "CIT Agreements") dated September 16, 2014, March 16, 2015 and September 16, 2015. Copies of the CIT Agreements are attached hereto as Group Exhibit E.

8. Effective February 17, 2015, North Community Bank changed its name to Byline. A copy of the change of name authorization is attached to the Complaint as Exhibit F.

9. The Borrowers defaulted under the Note when they failed to pay the sums due and owing under the Note at maturity.

10. Attached hereto as Exhibit A is a computer generated payoff screen from the Bank's computer system showing that as of September 25, 2018, the following sums (excluding

default interest and amounts advanced by Bank) were due and owing under the Note and

Mortgage:

<i>Principal Balance Due:</i>	<i>\$224,315.73</i>
<i>Interest:</i>	<i>3,299.31</i>
<i>Late Charges:</i>	<i>545.42</i>
<i>Escrow Balance:</i>	<i>(5,117.25)</i>
<i>Total Due:</i>	<i>\$223,043.21</i>
<i>Per Diem Interest:</i>	<i>\$24.92</i>

11. The payoff screen attached hereto as Exhibit A is a computer-generated loan record from the Bank's computer system that reflected the balance due and owing under the Note as of September 25, 2018.

12. On a daily basis, certain of the Bank's computer operators that are hired and trained specifically for data input, manually enter into the Bank's computer system all payments that are received by the Bank from borrowers. All payments that are received by the Bank from its borrowers are reflected as credits against the outstanding loan balance due and owing as of the date the payments are received.

13. The payoff screen attached hereto as Exhibit A reflects the foregoing information. The payoff screen which I generated from the Bank's computer system reflects the outstanding balance due and owing under the Loan as of September 25, 2018.

14. The payoff screen is a record that is prepared in the ordinary course of the Bank's business and was generated by the Bank's computer system on September 24, 2018 and it is part of the Bank's regular and ordinary business practice to prepare such a document which was prepared under my direction, supervision and control.

15. In addition, the computer-generated loan record attached hereto as Exhibit A was generated from the Bank's standard computer equipment which generates accurate records when used appropriately.

16. The Bank's standard computer equipment consists of an integrated, networking computer system that each Bank employee is able to access to varying degrees based upon clearance levels assigned to each employee. The networking system allows each employee to visualize the same information on the computer system at the same time. The computer system also consists of many different computer programs such as those relating to loans made by the Bank or deposits received from customers.

17. My day-to-day responsibilities require me to have system-wide access to the Bank's computerized loan programs which allows me to access information pertaining to any outstanding loan due and owing from a borrower to the Bank. I also receive daily computer reports showing delinquent account information pertaining to all loan files under my control.

18. The Bank's computer loan program consists of many functions and operations including, but not limited to, real time information on the payment status and payment history of all outstanding loans made by the Bank. The Bank utilizes a software program that tracks all credits and debits on all loans from information that is manually input on a daily basis.

19. When used appropriately, the Bank's computer software program generates accurate records concerning the payment status and loan history of each loan.


20. The proper use of the Bank's computer software program begins with accessing the software program. To do so, the computer user must have a recognizable username and password, both of which I have. Once the software program has been accessed, you can retrieve information pertaining to any active loan made by the Bank.

21. In this particular matter, after I accessed the computer software program by entering the foregoing information, I input the "Customer Information" and "Loan Number" which are Frank J Barrett and Darlene A. Barrett and 11147585, respectively, to access the loan information pertaining to these borrowers. Once I accessed the loan information for these borrowers, the software program allows me to perform several functions including generation of a payoff statement for these borrowers by highlighting and clicking on the requisite function.

22. In this instance, after accessing the loan information for this borrower, I requested that the computer program generate a payoff screen which is attached hereto as Exhibit A. The foregoing steps and procedures are the appropriate way to utilize the Bank's computer software program which I performed in this instance to generate the loan record attached hereto. When utilizing the Bank's computer software program in this manner, it generates accurate records. In addition, there were no error reports or system malfunctions in the Bank's computer software program on the day that I generated the loan records attached hereto.

23. This affidavit is submitted in support of the Bank's Motion to Appoint Receiver.

DATED: April 5, 2019


Robert Wilson

SUBSCRIBED AND SWORN to
before me this 5th day of April, 2019.


Notary Public





September 24, 2018

PAYOFF STATEMENT
LD

TO: RWillson@bylinebank.com
LOAN NUMBER: 11147585

BORROWER NAME: Frank J Barrett
Darlene A. Barrett

RE: N/A

COLLATERAL: 1606 Westchester Blvd., Westchester, IL 60154 (Document Nos. 0508147249 and 0508147250)
1600 Westchester Blvd., Westchester, IL 60154 (Document Nos. 0508147247 and 0508147248)

Byline Bank is responding to your request for a payoff quote to satisfy the above-captioned loan. The following figure represents the amount required to terminate the outstanding debt on or before 9/25/2018. The total amount is due by wire transfer, cashiers' check or certified check payable to Byline Bank.

If the payoff is not received on or before 10/24/2018, a new payoff letter must be requested.

Principal Balance:	\$ 224,315.73	*Per
Interest due as of 9/26/2018 :	\$ 3,299.31	Item:
Late Fees:	\$ 545.42	\$24.92
Legal Fee:	\$ 3,287.03	
Escrow Balance:	\$ (5,117.25)	
File Closing Fee:	\$ 200.00	
TOTAL PAYOFF:	\$ 226,530.24	

The payoff must be received by 3:00 pm CST; if received after 3:00 p.m. CST on the above referenced date, an additional day of per diem* will be charged.

PAYOFF CHECKS must be forwarded via overnight mail or courier to: Byline Bank, Attn: Loan Services, 180 N. LaSalle St., Chicago IL 60601 Cashier's Check or Certified Check payable to BYLINE BANK

Wire Instructions: BYLINE BANK: ABA 071001533
ATTN: LOAN SERVICES DEPARTMENT / CLIP ACCT. # (GL 130780)
BYLINE BANK
180 N LASALLE ST, CHICAGO IL 60601
RE: PAYOFF OF LOAN NUMBER: 11147585

The note holder reserves the right to adjust these figures and refuse or accept any funds which are insufficient to satisfy the full indebtedness for any reason. If the funds received for payoff are not sufficient to satisfy the full indebtedness of the above-captioned loan, any remaining balance will be deducted from the escrow/impound amount (if applicable). If funds are still not sufficient to satisfy the full indebtedness, the payoff funds will be returned. This delay will cost you (the borrower) additional interest, as interest continues to accrue on the indebtedness until the total amount required for payoff is received. In accordance with the terms of the applicable loan documentation, late charges will continue to be assessed in the event the loan is not current. The present escrow/impound balance, if any, is subject to any required disbursement to be paid on or before receiving your loan payment in full. Amounts remaining in the escrow/impound will be refunded to the Borrower. Any escrow/impound balance or overpayment of the outstanding loan balance will be mailed to you (the borrower) within thirty (30) business days after the receipt and processing of the funds required to pay the above-captioned loan in full. If the loan to be repaid is a revolving line of credit, the issuance of this loan payoff statement signifies that any available balance under such revolving line of credit is and shall be frozen effective as of the date hereof. Any in-clearing items presented on or after the date hereof will be returned unpaid. Any payments made on or after the date hereof will be processed and any overpayments will be refunded within thirty (30) days of receipt and processing of the funds required to pay the above-captioned loan in full. If you decide to cancel this request, you are required to send written notification (see address above) requesting the reinstatement of your line of credit if applicable. In addition, please make sure all signers of the original note endorse this request.

The payoff figure quoted is subject to final verification by the note holder. We reserve the right to demand additional funds, before or subsequent to, the release of the note holders' security interest in any collateral securing the loan, due to any error or omission in this payoff figure made in good faith, whether mathematical, clerical, typographical or otherwise.

Please provide us with a forwarding address where any refund/overpayments due and the executed release/reconveyance documents should be sent. To verify the payoff figures or if you have any further questions please telephone us at:

847-301-4974 Luba Doubovets
866-957-7700 Customer Solutions Department
773-244-7000 Main Number



FILED DATE: 10/16/2020 4:55 PM 2018CH13221

EXHIBIT 55



Village of Westchester

10300 ROOSEVELT ROAD, WESTCHESTER, IL 60154

(708)345-0020 FAX (708)345-2873

WWW.WESTCHESTER-IL.ORG

December 30, 2014

Frank Barrett
1606 Westchester Blvd
Westchester, IL 60154

SENT VIA E-MAIL: FRNKBARRETT@AOL.COM

RE: 1606 Westchester Boulevard, Westchester, IL 60154

Dear Mr. Barrett:

The property located at 1606 Westchester Boulevard is zoned B-1 Office Business District. The property is improved with a one story structure that has medical/dental offices and a residence on it. The structure was constructed in April 1954. Professional offices are currently a permitted use. Residential uses are currently permitted above the first floor. The property is legal nonconforming with regard to the residential use on the first floor.

If you have any questions, please feel free to contact me at (708) 345-0199 or via email at mheadley@westchester-il.org. Thank you again for your cooperation in this matter.

Sincerely,

Melissa Headley, AICP
Community Development Director

Village President
SAM D. PULIA

Village Clerk
SHERBY J. MILLER

Trustees
ANGELO A. CALCAE
PAUL GATTUSO
FRANK PERRY
CELESTINE REDA
NICK STEKER
TOM YURKOVICH

Village Manager
JANET M. MATTHY

Village Attorney
MICHAEL K. DURKI

EXHIBIT 56

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

BYLINE BANK f/k/a North Community Bank, an Illinois banking corporation successor-by-merger to Plaza Bank,)	
)	
)	
Plaintiff,)	No. 18 CH 13221
)	
vs.)	1600 and 1606 Westchester Boulevard,
)	Westchester, Illinois 60154
)	
FRANK J BARRETT; DARLENE A. BARRETT; APEX MORTGAGE CORP.; WELLS FARGO BANK, MINNESOTA, N.A.; UNKNOWN OWNERS AND NON- RECORD CLAIMANTS,)	
)	
)	
Defendants.)	

**PLAINTIFF'S REPLY BRIEF IN SUPPORT
OF ITS MOTION FOR APPOINTMENT OF RECEIVER**

Plaintiff, Byline Bank f/k/a North Community Bank, an Illinois banking corporation successor-by-merger to Plaza Bank (the "Bank"), by its attorneys Randall & Kenig LLP, files this reply brief in support of its motion to appoint receiver and in support thereof states as follows:

A. BACKGROUND

On March 16, 2007, Frank J Barrett and Darlene A. Barrett (collectively, the "Borrowers" or "Mortgagors" as the case may be) executed a promissory note in favor of Plaza Bank in the original principal amount of \$282,021.59 (the "Note"). A copy of the Note is attached to the Complaint (defined below) as Exhibit B. The Note is secured by, among other things, a mortgage (the "Mortgage") dated March 16, 2005 and recorded on March 22, 2005 against the commercial property/medical building located at 1600 Westchester Boulevard, Westchester, Illinois 60154 (the "Property") and attached to the Bank's Complaint as Exhibit A. The Note is further secured by that

certain Assignment of Rents (the "Assignment of Rents") against the Property dated March 16, 2005 and recorded on March 22, 2005. A copy of the Assignment of Rents is attached to the Complaint as Exhibit C.¹ The Bank disbursed the entire loan proceeds evidenced by the Note. The Note is in default as a result of the non-payment of the sums due and owing under the Note at maturity. On April 11, 2019, the Bank filed a motion to appoint a receiver for the Property (the "Motion"). On May 13, 2019, the Borrowers filed their response (the "Response") to the Motion. For the reasons outlined in the Motion and below, the Bank is entitled to have a receiver appointed for the Property.

B. ARGUMENT

The Property is a one-story medical office building consisting of 2,845 square feet. According to an MLS listing, there are four (4) tenants in the building and on information and belief, the Mortgagors are not one of the tenants (See, MLS Listing attached as Exhibit A). The Borrowers do not dispute that the Property is commercial (See, Response, ¶8). Instead, the Borrowers argue that since the Property is connected to their personal residence (i.e., 1606 Westchester Boulevard), the Property is considered residential real estate under the Illinois Mortgage Foreclosure Law ("IMFL") (735 ILCS 5/15-1101 et seq.) in which case the presumptive right to possession rests with the Mortgagors.

Admittedly, the Borrowers' Response does not dispute any of the arguments raised in the Motion other than the issue of whether the Property is residential or commercial. Therefore, if this

¹ The Borrowers also executed a second promissory note in favor of the Bank in the original principal amount of \$216,000.00 that is secured by a mortgage against the property located at 1606 Westchester Boulevard, Westchester, Illinois 60154. This credit facility and the motion to appoint receiver does not involve this property which is the Borrowers' principal residence.

Court determines that the Property is commercial, the Borrowers have conceded to the appointment of a receiver. Alternatively, even if this Court were to conclude that the Property is residential, the Bank is nonetheless entitled to the appointment of a receiver because it has met the requirements under §15-1701(b)(1).

(i) The Property is not residential real estate

The Borrowers make the argument that since the Property (which is commercial) is connected to their personal residence, the Property should be considered residential real estate. To support this argument, the Borrowers cite §15-1219 of the IMFL which defines residential real estate as follows:

"Residential real estate" means any real estate, except a single tract of agricultural real estate consisting of more than 40 acres, which is improved with a single family residence or residential condominium units or a multiple dwelling structure containing single family dwelling units for six or fewer families living independently of each other, which residence, or at least one of which condominium or dwelling units, is occupied as a principal residence either (i) if a mortgagor is an individual, by that mortgagor, that mortgagor's spouse or that mortgagor's descendants, or (ii) if a mortgagor is a trustee of a trust or an executor or administrator of an estate, by a beneficiary of that trust or estate or by such beneficiary's spouse or descendants or (iii) if a mortgagor is a corporation, by persons owning collectively at least 50 percent of the shares of voting stock of such corporation or by a spouse or descendants of such persons. The use of a portion of residential real estate for non-residential purposes shall not affect the characterization of such real estate as residential real estate. For purposes of the definition of the term "abandoned residential property" in Section 15-1200.5 of this Article, "abandoned residential property" shall not include the requirement that the real estate be occupied, or if zoned for residential development, improved with a dwelling structure.

The Bank does not dispute that the Borrowers' personal residence qualifies as residential real estate under the foregoing definition. And presumably, the Borrowers are relying on the highlighted portion to support their argument that although the Property is used for non-residential purposes, it does not affect the overall characterization of the real estate as residential real estate. If the analysis

ended there, the Borrowers' contention would be true. However, the IMFL demonstrates that the legislature intended that the probe into what is residential real estate should go deeper.

For example, in determining a bank's right to possession of residential real estate under §15-1701(b)(1) of the IMFL, the statute provides that "[i]f the residential real estate consists of more than one dwelling unit, then for the purpose of this Part residential real estate shall mean only that dwelling unit or units occupied by persons described in clauses (i), (ii) and (iii) of Section 15-1219. Clearly, the foregoing section of the IMFL shows the legislature's intention that in the case of mixed-use real estate (i.e., commercial and residential), the residential real estate is only the portion occupied by the mortgagor, the mortgagor's spouse or descendants.

Furthermore, the definition of residential real estate above specifically refers to what is described as "real estate" by stating as follows: "Residential real estate" means any real estate ... (emphasis added). Real estate is defined as follows:

"Real estate" means land or any estate or interest in, over or under land (including minerals, air rights, structures, fixtures and other things which by custom, usage or law pass with a conveyance of land though not described or mentioned in the contract of sale or instrument of conveyance). "Mortgaged real estate" means the real estate which is the subject of a mortgage. "Real estate" includes a manufactured home as defined in subdivision (53) of Section 9-102 of the Uniform Commercial Code that is real property as defined in the Conveyance and Encumbrance of Manufactured Homes as Real Property and Severance Act. (§15-1213).

In their Response, the Borrowers attempt to convince this Court that the Property and their personal residence constitute one piece of "real estate" and, therefore, should be defined as residential real estate thereby shifting the presumptive right to possession to the Borrowers. To the contrary, the evidence actually supports the argument that the Property and the Borrowers' personal residence should not be considered as one piece of real estate.

To support their "one piece of real estate" theory, the Borrowers list the following factors:

- the mortgaged structure is a single building containing the mortgagor's residence and offices (Response, ¶4);
- the entire building is set on:
Lot 1 in George F. Nixon and Company's Central Addition to Westchester, being a subdivision of the North 12 acres of the West ½ of the Southwest ¼ of Section 21, Township 39 North, Range 12, east of the third principal meridian, in Cook County, Illinois (Response, ¶5);
- all utilities for the entire building run through the residential part of the building (Response, ¶7);
- a door connects the residence to the commercial part of the building (Response, ¶8);
- there is a single roof for the entire building (Response, ¶9);
- the [sic] are no party wall agreements separating the properties (Response, ¶10);
- the property was acquired by a single deed (Response, ¶11); and
- the Village of Westchester considers the property to be a one story structure that has medical/dental offices and a residence on it (Response, ¶12).

The bank will address each of the foregoing items seriatim.

- (a) **The mortgaged structure is a single building containing the mortgagor's residence and offices.**

To support this argument, the Borrowers have attached four (4) pictures of the improvements on the real estate. Clearer pictures of the improvements are attached hereto as Exhibit B and Exhibit C. Exhibit B depicts the Borrowers' personal residence and Exhibit C depicts the commercial building. What the Borrowers fail to point out is that their personal residence is identified as 1606 Westchester Boulevard and the commercial building is identified as 1600 Westchester Boulevard. Both buildings have completely separate entrances which naturally makes sense since the Borrowers definitely do not want patients or employees going through their residence to access the commercial building and vice versa.

(b) The entire building is set on Lot 1 in George F. Nixon and Company's Central Addition to Westchester, being a subdivision of the North 12 acres of the West ½ of the Southwest 1/4 of Section 21, Township 39 North, Range 12, east of the third principal meridian, in Cook County, Illinois (Response, ¶5);

This argument is simply wrong. While the Borrowers fail to cite any support for their argument, the fact remains that the commercial building (1600 Westchester Boulevard) and the residential building (1606 Westchester Boulevard) have separate tax parcel numbers and separate legal descriptions. As alleged in the complaint and supported by the minutes of foreclosure issued by Stewart Title attached hereto as Group Exhibit D, the legal descriptions and tax parcel numbers for the two properties are as follows:

1600 Westchester Boulevard (commercial building):

PARCEL 1:

LOT 1 EXCEPT THE SOUTH 34.23 FEET AND THE VACATED ALLEY LYING WEST OF AND ADJOINING IN GEORGE F. NIXON AND COMPANY'S CENTRAL ADDITION TO WESTCHESTER, BEING A SUBDIVISION OF THE NORTH 12 ACRES OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 35 FEET OF LOT 3 AND THE EAST 35 FEET OF THE NORTH 25 FEET OF LOT 5 IN ISABEL, A SUBDIVISION IN THE WEST ½ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 2, 1956 AS DOCUMENT NO. 16626253 AND CERTIFICATE OF CORRECTION RECORDED JULY 18, 1956 AS DOCUMENT NO. 16639864, IN COOK COUNTY, ILLINOIS.

PIN Nos. 15-21-301-206-0000 and 15-21-301-209-0000

1606 Westchester Boulevard (residential building):

THE SOUTH 34.23 FEET OF LOT 1 AND THE VACATED ALLEY LYING WEST OF AND ADJOINING SAID SOUTH 34.23 FEET OF LOT 1 IN GEORGE F. NIXON AND COMPANY'S CENTRAL ADDITION TO WESTCHESTER, BEING A SUBDIVISION OF THE NORTH 12 ACRES OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN No. 15-21-301-207-0000

The Sidwell map for Cook County, attached hereto as Exhibit E also shows that the two buildings are on separate, distinct lots. The commercial building sits on Lot "206" and the residential buildings sits on Lot "207." A clearer picture of the same Sidwell map appears on Page 12 of the appraisal attached hereto as Exhibit F.²

(c) All utilities for the entire building run through the residential part of the building.

To support this argument, the Borrowers attach as Exhibit 4 copies of water bills and electric bills which by themselves do not evidence where the utilities are located within the two buildings. Surely, in order for the commercial building to be supplied with water and electric, there must be utility and water lines running through the commercial building. But again, what is more important is what the Borrowers have failed to point out to the Court. Exhibit 4 contains two separate water bills and two separate electric bills, one each for the residential building and commercial building, further establishing that the residential building has its own water and electric meter accounts and the commercial building has its own water and electric meter accounts. Clearly, the two buildings are separately metered for water and electric.

² The commercial building also includes Lot "209" which is the parking lot.

(d) A door connects the residence to the commercial part of the building.

Even if true, this fact alone hardly supports the argument that the improvements are one building. Rather, it merely demonstrates that the two buildings are connected. As stated previously, surely the door is locked so that patients and employees in the commercial building do not have access to the Borrowers' personal residence and vice versa.

(e) There is a single roof for the entire building.

Since the two buildings are contiguous and each one-story, it is not surprising that there is a single roof. This fact is likely more indicative of the fact that the two buildings were constructed at the same time. However, the real reason will remain a mystery since the Borrowers have chosen to only disclose facts that they believe support their argument rather than an honest full disclosure to enable this Court to make a reasoned and informed decision.

(f) The [sic] are no party wall agreements separating the properties.

Like the Borrowers single roof theory, the lack of a party wall agreement is more indicative of the fact that the Borrowers own both buildings than it is of the fact that there is only one building. A party wall agreement is customarily used in situations involving two separate, but contiguous, buildings that are separately owned. But since the Borrowers own both buildings, they do not need a party wall agreement between themselves. That being said, it certainly would not be surprising if one day the Borrowers sold the commercial building and at that time negotiated a party wall agreement with the purchaser.

(g) The property was acquired by a single deed.

While true, it is a completely irrelevant fact that neither supports nor defeats the issue of whether the two buildings should be considered as one as proposed by the Borrowers or as two as suggested by the Bank. The fact that the Borrowers may have acquired the real estate by a single deed certainly has not stopped them from listing the Property for rent to potential commercial, office and research users (See, Exhibit A).

(h) The Village of Westchester considers the property to be a one story structure that has medical/dental offices and a residence on it.

As support for the Borrowers' final argument, they attach as Exhibit 6 to their Response a letter from the Village of Westchester that purports to state that the property is improved with a one story structure that has medical/dental offices and a residence on it. This time, instead of failing to disclose information, the Borrowers spin the facts. The letter from the Village contains a "re" line that reads "1606 Westchester Boulevard, Westchester, IL 60154." As the facts have already shown, 1606 Westchester Boulevard is the Borrowers' personal residence and not the Property. Moreover, the letter indicates that the personal residence is located in the B-1 Office Business District and is improved with a one-story structure that has medical/dental offices and a residence on it. The letter further states that the professional offices are permitted uses and residential uses are permitted above the first floor. However, the residential use is considered a legal nonconforming use. The truth is, the zoning code for the Village of Westchester actually considers the entire site to be commercial that contains a nonconforming residential use on the first floor. Exhibit 6 also shows that a building permit was issued in 1954 for an office building and single family residence.

Contrary to the Borrowers' belief, the foregoing facts support the contention that the buildings are separate and not one structure.

As outlined at the outset, the issue in this case does not simply center around the definition of residential real estate which states that "the use of a portion of residential real estate for non-residential purposes shall not affect the characterization of such real estate as residential real estate." If the analysis ended there, the presumptive right to possession would rest with the Borrowers. The question to be decided here revolves around the definition of "real estate" and whether the real estate is one piece of real estate that is residential with a portion being used for nonresidential purposes as the Borrowers propose or whether the real estate consists of two separate parcels with one piece being used as residential and the other being used as commercial as the Bank proposes.

To support their one piece real estate theory, the Borrowers rely on the foregoing 8 factors which are either factually incorrect, disingenuous or tenuous at best. The only true argument that keeps the Borrowers in the game is the fact that the two buildings are contiguous. But for this fact, there would be no issue for this Court to resolve. Nonetheless, this Court need only look out the 28th floor of the Daley Center to see hundreds of examples of contiguous buildings that are still separate and distinct. To counter the Borrowers' arguments, the Bank has shown the following facts:

- Each building has its own address;
- Each building has its own entrance;
- Each building has its own legal description;
- Each building has its own tax parcel number;
- Each building sits on its own city lot;
- Each building is separately metered for water and electric;
- Each building could be sold separately;
- The Property is currently being marketed for rent to potential commercial, office and research users; and

- The Borrowers are not users or tenants in the commercial building.

Surely, the evidence weighs in favor of the Bank that the Property is a distinct piece of real estate that is being used by the Borrowers for commercial purposes.

- (ii) Even if the Property were residential real estate, the Bank has good cause to rebut the Mortgagors' presumptive right to possession.

As this Court is well aware, §15-1701(b)(2) of the IMFL creates a presumption in favor of a mortgagee's right to possession during the pendency of a mortgage foreclosure proceeding if the subject property is non-residential real property. *Home Life Insurance Co. v. American National Bank and Trust Company*, 777 F.Supp. 629, 631 (N.D. Ill. 1991). Alternatively, in residential real estate foreclosure actions, the presumptive right to possession during foreclosure rests with the mortgagor of residential real estate. *Boyd v. U.S. Bank, N.A.*, 787 F.Supp. 2d 747, 756 (N.D. Ill. 2011). In such instances, the burden shifts to the mortgagee to show good cause why a receiver should be appointed.

Even if this Court concludes that the Property is residential real estate, the Bank is still entitled to have a receiver appointed. The Motion has already demonstrated that the Bank is entitled to have a receiver appointed because it is authorized by the terms of the Mortgage and Assignment of Rents and the Bank has shown that there is a reasonable probability that it will prevail on a final hearing of this cause. The Mortgagors have not disputed these facts which the Bank contends support the Motion under §15-1701(b)(2) of the IMFL. However, in the context of residential real estate, the Bank must also show good cause pursuant to §15-1701(b)(1). In that regard, the fact that the Mortgagors are likely collecting the rents from the Property and nonetheless have stopped making payments under the Note is sufficient enough to warrant the appointment of a receiver to

protect the Property by ensuring that the rents are collected, the real estate taxes are paid and that any surplus is available to satisfy the indebtedness under the Note.

III. The Bank has demonstrated its right to possession under §15-1701(b)(2) of the IMFL.

As argued in the Motion, the Complaint alleges, in pertinent part, that *inter alia*, a default has occurred pursuant to the terms of the Note as a result of the non-payment of the sums due and owing under the Note. In addition, the Complaint specifically requests the appointment of a receiver for the Property. Pursuant to §15-1702(a) of the IMFL, “[w]henver a mortgagee entitled to possession so requests, the court shall appoint a receiver.” 735 ILCS 5/15-1702(a) (emphasis added).³ Furthermore, pursuant to §15-1701(b)(2) of the IMFL, a mortgagee is entitled to possession for purposes of the appointment of a receiver if: (i) the mortgagee is so authorized by the terms of the mortgage or other written instrument and (ii) the court is satisfied that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause, unless the mortgagor objects and show good cause. As outlined in the Motion, the Mortgage and Assignment both provide for the appointment of a receiver. Moreover, a reasonable probability clearly exists that the Bank will prevail on a final hearing in this cause. As set forth in the Complaint, a default occurred pursuant to the terms of the Note secured by the Mortgage as a result of the non-payment of the sums due and owing under the Note at maturity. And, attached to the Motion is an affidavit from the Bank’s vice president in which he verifies that he has personal knowledge of the facts underlying the default under the Note, the payment defaults under the Note and the fact that the Note is secured by the Mortgage and Assignment. The Motion itself describes the nexus between the payment

³ The use of the words “shall appoint a receiver” rather than “may” means trial courts were not intended to possess discretion once the requirements of the statute are met. *Mellon Bank, NA v. Midwest Bank & Trust Company, et al.*, 265 Ill.App.3d 859, 638 N.E.2d 640, 645 (1993).

default and default under the Mortgage and Assignment. These facts demonstrate a reasonable probability that the bank will prevail in the foreclosure action. In this regard, Illinois courts have held that a proven default establishes a reasonable probability of succeeding in the mortgage foreclosure action. *Bank of America, N.A., v. 108 N. State Retail LLC*, 928 N.E.2d 42, 51 (1st Dist. 2010). Further, "[w]hether a default in fact exists will typically turn on the interpretation of documentary evidence." *Mellon Bank, N.A. v. Midwest Bank and Trust Co.*, 265 Ill.App.3d 859, 638 N.E.2d 640, 646. In *Mellon*, the Court found that an affidavit from a mortgagee's vice president stating that mortgagor failed to pay real estate taxes, that there were mechanics liens on the property and that mortgagee had not been reimbursed for its payment to bondholders of principal and interest rendered the mortgagee in default. *Id.* at 647. The same is true here regarding the Mortgagors' failure to pay the principal and interest due and owing under the Note at maturity.

The Mortgagors did not respond to the Bank's arguments in support of its right of possession under §15-1701(b)(2) of the IMPL because they hung their hat entirely on the argument that the Property was residential real estate under §15-1701(b)(1) of the IMPL and that the Bank had failed to rebut the Mortgagors' presumptive right of possession. Hence, since the Property is not residential real estate, the Mortgagors have essentially conceded to the Bank's right of possession and corresponding right to have a receiver appointed solely as to the Property.⁴ And even if the Property is considered residential real estate, the Bank has rebutted the Mortgagors' presumptive right to possession.

⁴ The Motion requests the appointment of Drew Millard of 33 Realty as the proposed receiver. Since the filing of the Motion, the Bank has decided to use Antje Gehrken as the receiver. A copy of her resume is attached as Exhibit G.

C. CONCLUSION

As outlined above, the Bank has demonstrated, contrary to the Mortgagors' belief, that the Property is not residential real estate and has also shown that: (i) the terms of the Mortgage and Assignment authorize the appointment of a receiver; and (ii) there is a reasonable probability that it will prevail on a final hearing of this action. Therefore, the Bank is entitled to the appointment of a receiver as to the Property only and respectfully requests that this Court grant its Motion. Alternatively, if the Court considers the Property residential real estate, the Bank has rebutted the Mortgagors' presumptive right to possession.

Byline Bank f/k/a North Community Bank,
an Illinois banking corporation successor-
by-merger to Plaza Bank

By:


One of its attorneys

Scott H. Kenig
Randall & Kenig LLP
455 North Cityfront Plaza
NBC Tower -- Suite 2510
Chicago, Illinois 60611
Firm No. 40686

EXHIBIT 57

GREATER METROPOLITAN

REAL ESTATE SERVICES



Restricted Appraisal Report

Description

Two adjoining properties:

Property #1 (1600 Westchester Blvd): A 2,845 SF, 1-story over crawl space, attached medical office building with a detached-garage, situated on a 15,003 SF site.

Property #2 (1606 Westchester Blvd): A 1,320 SF, 1-story over basement, attached single-family residence, situated on a 4,231 SF site.

Location

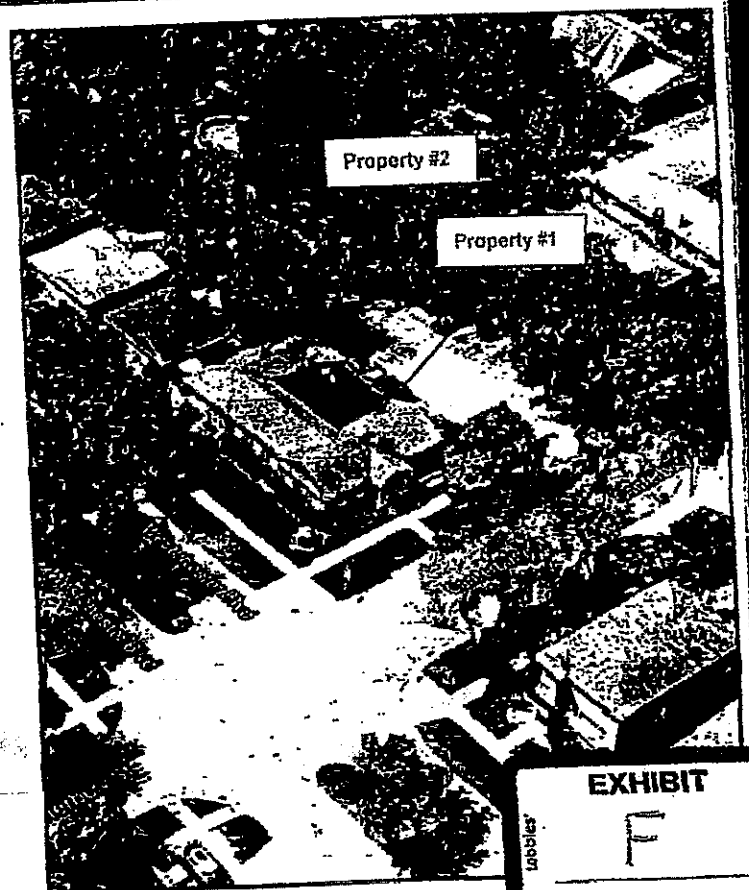
1600 & 1606 Westchester Boulevard
Westchester, Illinois 60154

Cook County
Proviso Township
15-21-301-206, 207 & 209

Prepared for

Byline Bank &
LookingGlass.cc
LTD Technical Servi
100 N. Miller Road
Fairlawn, OH 44333
LG #: 53360

EXHIBIT GROUP 6

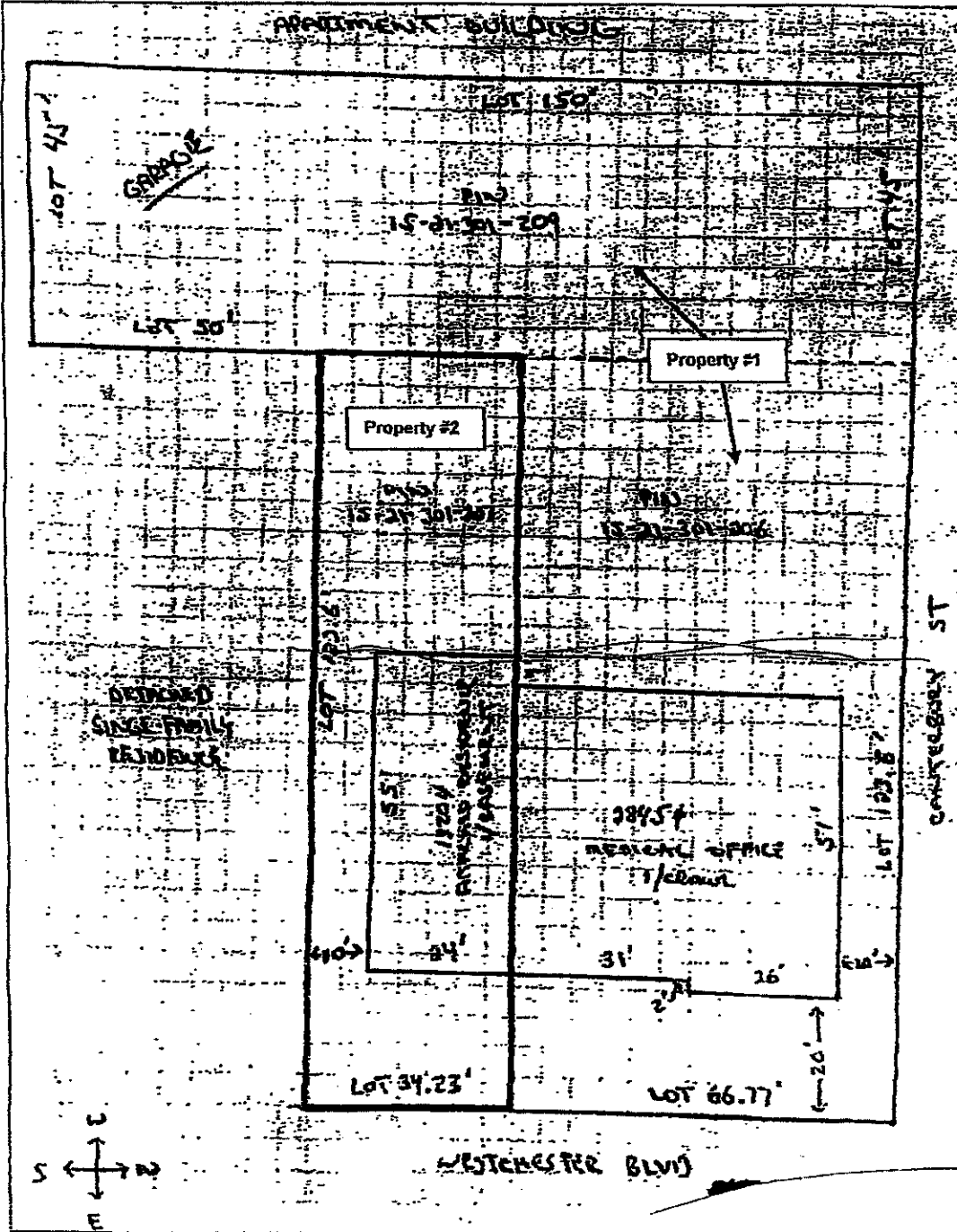


EXHIBIT

F

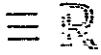
lobbies

SUBJECT PROPERTY EXHIBITS



Plot Plan

EXHIBIT 58



1606 Westchester Blvd
Westchester, IL 60154

\$220,831

Redfin Estimate

Built: 1956

Status: Not For Sale Source: Owner

3

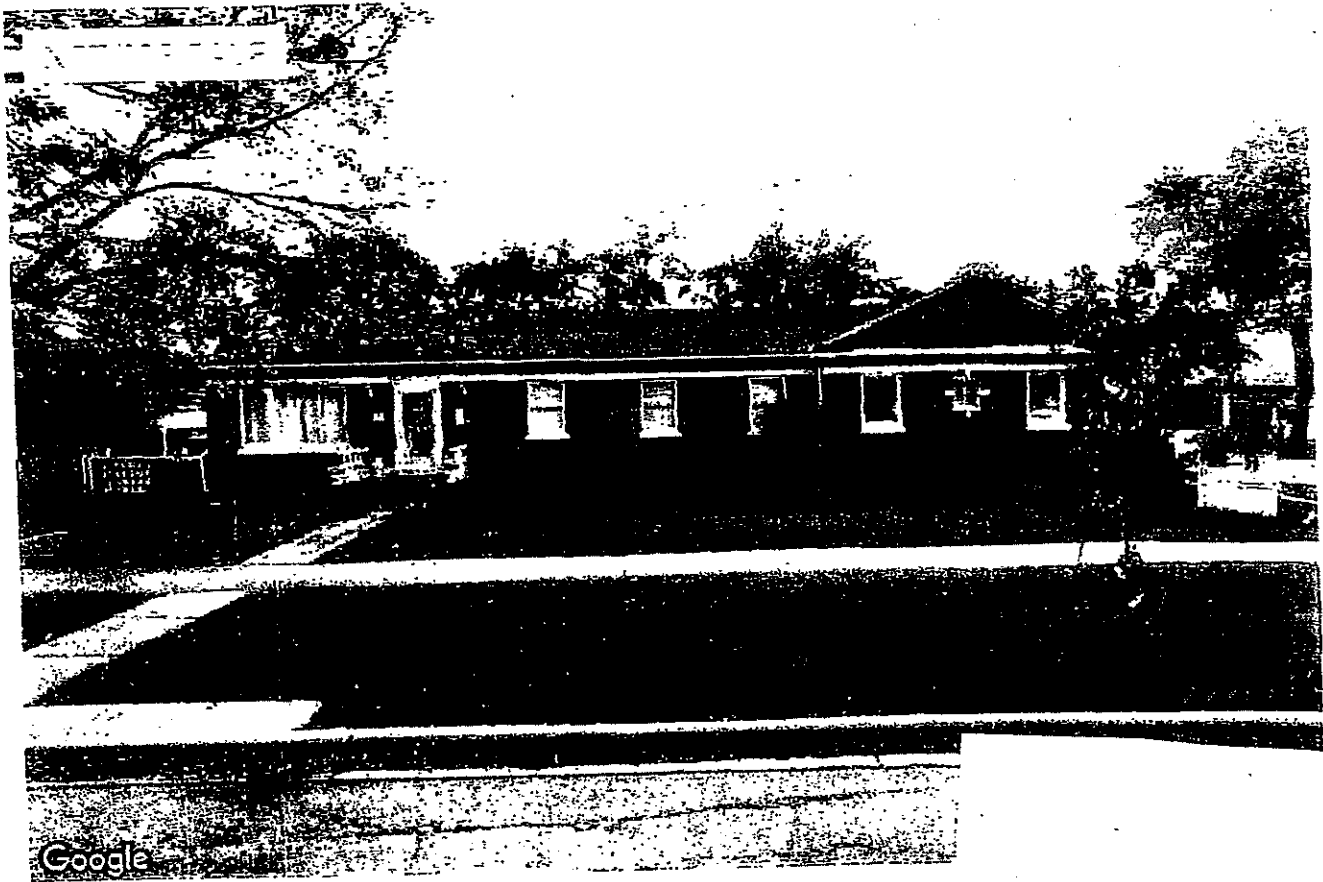
Bed's

1

Bath

1,350 Sq. Ft.

\$164 / Sq. Ft.



Is This Your Home?

EXHIBIT 9

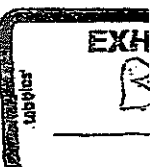


EXHIBIT 59

5/21/2019

1600 Westchester Blvd. Westchester, IL 60154 - MLS 100665. Coldwell Banker



1/81/8

EXHIBIT 10

EXHIBIT 60

1600 & 1606 Westchester Blvd, Westchester, IL 60154

Site Comments: A plat of survey was not provided to the appraiser. The inspection contact did not report deed restrictions, easements, encroachments or adverse site conditions. It is possible drainage and/or utility easements may exist and they can be typical of some property types. There are instances where more adverse site conditions can exist and only identifiable when the proper documents are supplied to the appraisers for review. Full verification of site conditions is subject to inspection by the appropriate professional and/or local municipal representative. The client should obtain a current plat of survey, current title and current flood certification for the subject property. Additionally, the client should review the title for the subject to verify easements, encroachments, deed restrictions or any adverse conditions prior to the identified Intended Use stated in the report.

Legal Description: Neither a Plat of Survey or a Title Policy was provided to the appraiser. Upon receipt of a Legal Description or Title Policy, a legal description will be forwarded to become part of the Addendum to this appraisal report.

Real Estate Tax Data (2017 taxes payable in 2018)

TAX PARCEL NUMBER	2017 REAL ESTATE TAXES
Property #1	
15-21-301-206	\$6,643.29
15-21-301-209	\$1,264.51
Total	\$7,907.80
Property #2	
15-21-301-207	\$2,170.80

Taxes are reported to be current by the Cook County Treasurer's Office.