

IN THE SUPREME COURT OF OHIO
2007 JUN 18 PM 3:08

Board of Education of the)
 Columbus City Schools,)
)
 Appellee,)
)
 and)
)
 Board of Education of the)
 South-Western City Schools,)
)
 Appellee,)
)
 vs.)
)
 Franklin County Board of Revision,)
 Franklin County Auditor, and the Tax)
 Commissioner of the State of Ohio,)
)
 Appellees,)
)
 and)
)
 Max E. Cougill,)
)
 Appellant.)

Case No. **07-1086**

Appeal from the Ohio
Board of Tax Appeals

BTA Case Nos. 2005-R-329
2005-R-330

NOTICE OF APPEAL MAX E. COUGILL

Nicholas M.J. Ray (0068664)
Jay P. Siegel (0067701)
Siegel Siegel Johnson & Jennings Co. LPA
3001 Bethel Road, Suite 208
Columbus, OH 43220
(614) 442-8885

Mark H. Gillis (0066908)
Rich Crites & Dittmer, LLC
300 East Broad Street
Suite 300
Columbus, OH 43215
(614) 228-5822

Counsel for Appellant
Max E. Cougill

Counsel for Appellees
Board of Education of the Columbus
City Schools and Board of Education
of the South-Western City Schools

FILED
 JUN 18 2007
 MARCIA J MENGEL, CLERK
 SUPREME COURT OF OHIO

William J. Stehle (0077613)
Assistant Prosecuting Attorney
373 South High Street
Columbus, OH 43215
(614) 462-3520

Counsel for Appellees
Franklin County Board of Revision
and Franklin County Auditor

Marc Dann (031514)
Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428
(614) 466-4320

Counsel for Appellee
Richard A. Levin, Tax
Commissioner of Ohio

A true copy of the Decision and Order of the Ohio Board of Tax Appeals being appealed is attached hereto and incorporated herein by reference as Exhibit A.

The appellant complains of the following errors in the Decision and Order of the Ohio Board of Tax Appeals:

ASSIGNMENT OF ERROR NO. 1:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the acceptance of the sale price as the property's value is inconsistent with the Ohio Supreme Court's holding in *Higbee Co. v. Cuyahoga Cty. Bd. of Revision* (2006), 107 Ohio St. 3d 325, wherein the Ohio Supreme Court rejected evidence of value inextricably intertwined with the non-real estate business value of the tenant which reflects the business success of the tenant rather than the value of the underlying real estate.

ASSIGNMENT OF ERROR NO. 2:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the use of a sale price based upon non-real property factors results in exactly the type of inconsistent valuation of similarly-situated properties that the Ohio Supreme Court's *Higbee, supra*, decision states is unacceptable because the price is reflective of the business success of the tenant rather than the value of the underlying real estate.

ASSIGNMENT OF ERROR NO. 3:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the acceptance of the sale price would be inconsistent with the Ohio Supreme Court's requirement that an assessment may not include elements of non-real estate business value.

ASSIGNMENT OF ERROR NO. 4:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it discriminates against businesses that are more successful financially through increased real estate tax assessments when compared with less successful businesses in similarly situated properties because the sale price is reflective of the business success of the tenant rather than the value of the underlying real estate resulting in a lack of uniformity when assessing the real property.

ASSIGNMENT OF ERROR NO. 5:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it results in the assessment of more than just the real property as defined by Ohio Revised Code section 5701.02 where the unrebutted evidence contradicts such determination and shows that the sale price reflects more than just the value of the real property.

ASSIGNMENT OF ERROR NO. 6:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it results in an assessment in use.

ASSIGNMENT OF ERROR NO. 7:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erred in failing to find that the lease encumbering the subject property was a value-in-use lease resulting in a value-in-use sale.

ASSIGNMENT OF ERROR NO. 8:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it is subjecting the property to taxation based upon the value of its leased fee interest, not the fee simple interest as required by Ohio law.

ASSIGNMENT OF ERROR NO. 9:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes violates Article XII, Section 2 of the Ohio Constitution which requires that property should be taxed by uniform rule according to value.

ASSIGNMENT OF ERROR NO. 10:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it values the property at an amount far in excess of its replacement cost new, as determined by the appraiser, when such an assessment is not supportable based upon the fundamentals of real property valuation.

ASSIGNMENT OF ERROR NO. 11:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because, as shown by expert testimony, sales of properties in the net-lease market are not reflective of the fee simple value of the property but also, reflect other, non-real estate related elements such as the creditworthiness of the tenant and the relative business success of the tenant.

ASSIGNMENT OF ERROR NO. 12:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the sale of a property with a successful tenant in place subject to a long-term lease does not capture the significant obsolescence inherent in the fee simple value of the real property, but also reflects the business success of the tenant subject to the long-term lease.

ASSIGNMENT OF ERROR NO. 13:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the Appellants have established that the lease encumbering the property does not meet the requirements established under Ohio law and appraisal standards as an arm's length, market lease, and as a result, a subsequent transfer based upon this lease cannot meet the requirements of an arm's length, market transaction.

ASSIGNMENT OF ERROR NO. 14:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the Board of Tax Appeals ignored the uncontroverted testimony that the buyer of the subject property was not typically motivated and therefore the transfer fails to meet the requirements of an arm's length, market transaction for purposes of both Ohio law and appraisal standards.

ASSIGNMENT OF ERROR NO. 15:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the Board of Tax Appeals ignored the expert appraiser's testimony as to the conditions, facts and circumstances surrounding the transfer before the Board, when such experts are competent to testify as to such matter and when the Ohio Supreme Court has just recently in

Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (2007), 112 Ohio St. 3d 309, stated that such inquiry is exactly what the Court envisioned as part of its *Berea, infra*, decision.

ASSIGNMENT OF ERROR NO. 16:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because the Board erroneously attempts to extrapolate the property owner's argument beyond the single transaction before it. Specifically, the property owner has not and does not argue that *all* build-to-suit transactions can *never* be considered qualifying sales; that *all* sales of successful retail locations should be disregarded; or, that a sale of a property encumbered with a long-term lease entered into by a developer and a user can *never* be considered an indication of fair market value. The evidence in this case demonstrates that the specific transaction before the Board does not reflect the value of the underlying real property. Attempting to hold the property owner to a standard to show that all such transactions in all cases are never reflective of fair market value is clearly erroneously.

ASSIGNMENT OF ERROR NO. 17:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it erroneously rejects expert testimony and evidence regarding the nature and reliability of the sale because the

evidence was offered by expert testimony rather than by the testimony of a principal to the sale transaction.

ASSIGNMENT OF ERROR NO. 18:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it is inconsistent with the rejection by the Ohio Supreme Court of similar sale and leaseback transactions where these transactions are non-arm's length financing transactions and not reflective of the value of the underlying real property

ASSIGNMENT OF ERROR NO. 19:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it erroneously relies upon the Ohio Supreme Court's decision in *Berea City Sch. Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision* (2005), 106 Ohio St.3d 269, when the facts and circumstances of *Berea* are not applicable, as the *Berea* case did not involve the sale of a single-tenant property sold in the net-lease market subject to a value-in-use lease influenced by the credit-worthiness and business success of the tenant and it was not shown that the sale price reflected a value in addition to the value of the real property as defined by Ohio Revised Code section 5701.02..

ASSIGNMENT OF ERROR NO. 20:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is

unreasonable, unlawful and arbitrary because it failed to find that the owner had rebutted the presumption that the sale was the best indication of value.

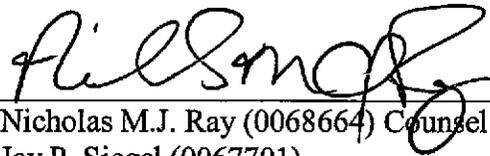
ASSIGNMENT OF ERROR NO. 21:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes is unreasonable, unlawful and arbitrary because it ignores the competent and probative evidence provided by the property owner's appraiser concerning the fee simple value of the subject property.

ASSIGNMENT OF ERROR NO. 22:

The Decision and Order of the Board of Tax Appeals adopting the sale price of the subject property as its true value in money for assessment purposes violates the right of equal protection under Article I, Section 2 and Article II, Section 26 of the Ohio Constitution and Amendment XIV, Section 1 of the United States Constitution in that it treats these property owners differently from other property owners for taxation purposes.

Respectfully submitted,



Nicholas M.J. Ray (0068664) Counsel of Record
Jay P. Siegel (0067701)

Siegel, Siegel, Johnson & Jennings Co., LPA

3001 Bethel Rd., Suite 208

Columbus, Ohio 43220

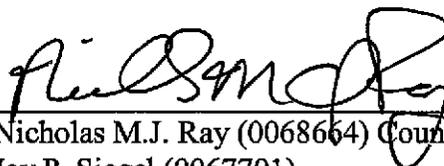
Tel: (614) 442-8885

Fax: (614) 442-8880

COUNSEL FOR APPELLANT
MAX E. COUGILL

**PROOF OF SERVICE UPON
OHIO BOARD OF TAX APPEALS**

This is to certify that the Notice of Appeal of Max E. Cougill was filed with the Ohio Board of Tax Appeals, State Office Tower, 24th Floor, 30 East Broad Street, Columbus, Ohio as evidenced by its date stamp as set forth hereon.

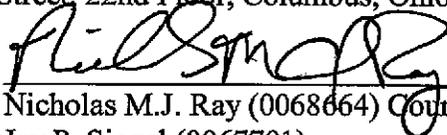


Nicholas M.J. Ray (0068664) Counsel of Record
Jay P. Siegel (0067701)

COUNSEL FOR APPELLANTS
MAX E. COUGILL

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of June 2007, a copy of the Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to Mark H. Gillis, Rich Crites & Dittmer, LLC 300 East Broad Street, Suite 300, Columbus, OH 43215, William Stehle, Franklin County Assistant Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, OH 43215, Marc Dann, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, OH 43215-3428, and Richard A. Levin, Tax Commissioner of Ohio, 30 E. Broad Street, 22nd Floor, Columbus, Ohio 43215.



Nicholas M.J. Ray (0068664) Counsel of Record
Jay P. Siegel (0067701)

COUNSEL FOR APPELLANTS
MAX E. COUGILL

OHIO BOARD OF TAX APPEALS

Board of Education of the)	CASE NO. 2005-R-329
Columbus City Schools,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
Franklin County Board of Revision,)	
Franklin County Auditor, and)	
Max E. Cougill,)	
)	
Appellees.)	

Board of Education of the)	CASE NO. 2005-R-330
South-Western City Schools,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
Franklin County Board of Revision,)	
Franklin County Auditor, and)	
Max E. Cougill,)	
)	
Appellees.)	

APPEARANCES:

- | | | |
|--------------------------------|---|--|
| For the
Boards of Education | - | Rich, Crites & Dittmer, LLC
Mark H. Gillis
300 East Broad Street, Suite 300
Columbus, Ohio 43215-3704 |
| For the County
Appellees | - | Ron O'Brien
Franklin County Prosecuting Attorney
William J. Stehle
Assistant Prosecuting Attorney
373 South High Street, 20 th Floor
Columbus, OH 43215-6310 |

For the
Property Owner

- Siegel, Siegel, Johnson & Jennings Co., LPA
Nicholas M. J. Ray
3001 Bethel Road, Suite 208
Columbus, Ohio 43220

Entered May 18, 2007

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This matter comes to be considered by the Board of Tax Appeals upon two notices of appeal, one filed by the Board of Education of the Columbus City Schools and another filed by the Board of Education of the South-Western City Schools (collectively, "BOE"), on April 1, 2005 from decisions, mailed March 3, 2005, of the Franklin County Board of Revision ("BOR").

The subject property is located in the city of Columbus taxing district of Franklin County, Ohio, and further identified as parcel numbers 010-122746 (Columbus City School District) and 570-138815 (South-Western City School District). The Franklin County Auditor found the true and taxable values of the subject property for tax year 2003 to be as follows:

Parcel No. 010-122746

	True Value	Taxable Value
Land	\$ 345,300	\$ 120,860
Building	\$ 854,700	\$ 299,150
Total	\$1,200,000	\$ 420,010

Parcel No. 570-138815

	True Value	Taxable Value
Land	\$ 50,500	\$ 17,680
Building	\$ -0-	\$ -0-
Total	\$ 50,500	\$ 17,680

Upon consideration of the complaints filed by the BOE, the BOR concluded that the auditor's values were correct and affirmed the values listed above.

The BOE asserts that the real property should be valued in accordance with a recent sale of the property and the following are the true and taxable values supported by that recent sale:

Parcel No. 010-122746

	True Value	Taxable Value
Land	\$ 345,300	\$ 120,860
Building	\$3,541,700	\$1,239,600
Total	\$3,887,000	\$1,360,460

Parcel No. 570-138815

	True Value	Taxable Value
Land	\$ 50,500	\$ 17,680
Building	\$ -0-	\$ -0-
Total	\$ 50,500	\$ 17,680

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notice of appeal, the statutory transcripts received from the Franklin County Auditor, fulfilling his duties as secretary of the BOR, and the record of the

hearing held before this board. The board also has considered the written legal argument presented subsequent to the conclusion of the hearing.

The subject property is a 2.1405-acre parcel of land located in the city of Columbus at the corner of Demorest and Clime Roads.¹ The property is improved with a one-story retail building, constructed in 2002 and containing 14,490 square feet. As evidenced by documentation presented to the BOR and affirmed before this board, the subject property transferred to the current owner in September 2002 for a transfer price of \$3,937,500. The property is leased to the Walgreen Co. (“Walgreens”). See Appellee’s Ex. 1. The lease required the original developer of the property to build the store to Walgreens’ specifications. At the time of sale, the property was encumbered by this lease.

At the hearing before this board, the BOE directed attention to the statutory transcript. Contained in the statutory transcript is documentation supporting the transfer identified above, the conveyance fee statement and the deed.

Before the BOR, the property owner presented the testimony of Mr. Curtis P. Hannah, a certified general real estate appraiser. However, Mr. Hannah did not prepare an appraisal, but prepared a “retrospective market rent study,” in which he opined that the market rent for the subject property as of January 1, 2003 was \$8.00 per square foot. This market rental rate contrasts with the lease rate of \$21.73 per square foot.²

¹ 1.729 acres are located in the Columbus City School District (010-122746), and .4015 acres is in the South-Western City School District (570-138815).

² The lease rate is found in the lease attached to Mr. Hannah’s market-rent study and also in Appellee’s Ex. 1.

That lease, entered into on November 15, 2001 by Columbus-Clime, LLC and Walgreen Co., also calls for additional rent based upon a percentage of sales. The term of the lease is seventy-five years.

Before this board, the property owner presented the testimony of Mr. John Murphy, the real estate assessment manager for Walgreens. Mr. Murphy, although he was not personally involved in negotiating this transaction, explained Walgreens' method of expansion and real estate leasing model. He also confirmed that his records indicated that the costs to build the improvements for the subject property were \$3,300,000. H.R. at 39.

At the hearing before this board, the property owner also presented the testimony and appraisal report of Mr. Robin Lorms, an MAI appraiser. It was Mr. Lorms' opinion that the subject property should be valued at \$1,300,000 as of tax lien date. To support his opinion that the subject property should be valued at far less than its original construction costs plus land purchase, the appraiser opined that when a property encumbered by a long-term lease to a successful retail establishment is valued, it is valued taking into consideration the economics of that lease, the value derived is related to the use of the property as opposed to the value of the realty itself. To prove that the value of an encumbered property is more than an unencumbered property, Mr. Lorms researched the state of Ohio and found other properties that were sold after some retail establishment no longer occupied the specific location. Mr. Lorms' retrospective supported his opinion that the property without a tenant was worth far less than a

tenanted property. Mr. Lorms testified that major retailers that enter into build-to-suit arrangements do not purchase locations no longer in use by other major retailers. H.R. at 69-70. Mr. Lorms believes that this is because the design in use by each major retailer is different from the design of the others. H.R. at 70.

As to the retailer for which the property was originally developed, Mr. Lorms opines that the leases in such transactions are not transferring an interest in real property, but rather are financing instruments. Appellee's Ex. 1, at 53. Mr. Lorms' theory underpins the appellee property owner's claim that the sale of the leasehold interest should not be found to be an arm's-length sale. The property owner then turns to other evidence of value in the record. The other evidence relied upon is Mr. Lorms' appraisal testimony and report.

On the other hand, the BOE argues that *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979 requires this board to find that the sale price controls the outcome of this appeal. The BOE argues that the only "evidence" in the record that would support a finding that the sale was not arm's length is Mr. Murphy's testimony, which the BOE argues is not probative since Mr. Murphy has no personal knowledge of the sale transaction at issue here, and Mr. Lorms' testimony, which the BOE argues is not evidence at all, but a theory upon which to disregard a market sale.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the

right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates his right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

Having noted the appropriate standard of review, we now proceed to determine the taxable value of the subject property. We first turn to the Ohio Revised Code for guidance. R.C. 5713.01 provides, in part:

“The auditor shall assess all the real estate situated in the county *** at its true value in money ***.”

It has long been established that the best evidence of “true value in money” of real property is an actual recent sale of property in an arm's-length transaction. *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Further, R.C. 5713.03 provides:

“In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time,

either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.”

Thus, where there is an actual sale of real property which is both recent and arm’s length, the county auditor, as well as this board, must consider such a sale as evidence of the property’s true value. *Conalco and Park Investment, supra.*

There is no argument that a sale taking place in September 2002 is recent to the tax lien date of January 1, 2003. Thus, the issue which this board must consider is whether the sale of the property in issue in this appeal meets the legal definition of arm’s length. That definition is characterized in *Walters v. Knox County Board of Revision* (1989), 47 Ohio St.3d 23, as being “voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self interest.” *Id.* at 25.

In making a determination regarding the arm’s-length nature of the sale, this board is guided by recent Ohio Supreme Court decisions. In *Berea City School Dist. Bd. of Edn.*, *supra*, the court reaffirmed the provisions of R.C. 5713.03, holding that “when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’” *Id.* at 13. See, also, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

In *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6, the court held, “[i]f no arm’s-length sale occurred, the [sales]

price does not necessarily represent the property's true value, and reliance on appraisal evidence for valuation is appropriate." *Id.* at 311. This finding was made after reviewing the circumstances surrounding a sale-leaseback transaction. In that appeal, a representative of the property owner testified as to the dire circumstances surrounding the need to refinance his business as well as the fact that the owner had been forced to reject a different offer because the terms could not be met quickly enough for the property owner to meet other financial obligations.

Thus, the board must look to the evidence and determine whether the sale meets the definition of "arm's length," sufficient for it to be used as an indicator of value. In the present appeal, there has been no direct testimony from a principal to the sale transaction. The property owner's appraiser did not confirm in his testimony that he spoke with an employee of the seller or buyer. Rather, his conclusions seemed to be based upon his personal opinion of what happened in this transaction to reach the conclusion that the buyer and the seller were not typically motivated. No reliable testimony was elicited that special considerations were involved in motivating the buyer and the seller and establishing the sales price. Such speculation is not sufficient for this board to conclude that the parties were not acting in their own self-interests.

There is a rebuttable presumption that the price for which a property sells reflects the true value of a property. *Cincinnati School District Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. The presumption extends to all the elements which characterize true value. *Id.* at 327. Having no evidence regarding the sale

itself sufficient to conclude that the circumstances surrounding this particular sale removed it from qualifying as a market transaction, this board cannot conclude that the sale was not market driven.

The property owner argues that the build-to-suit nature of the original lease is sufficient in and of itself to remove the sale of the leased fee interest from consideration. In essence, the property owner seeks a finding that all sales following build-to-suit transactions can never be considered qualifying sales.

The valuation of real property is fact intensive and rarely are there theories that fit every situation. The only case cited to support the property owner's claim that a sale following a build-to-suit lease is not indicative of value is *Dayton School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Sept. 2, 2005), BTA No. 2004-V-76, unreported. However, that case was decided prior to *Berea*, supra. After *Berea*, this board has had occasion to review the valuation of four freestanding drugstores. On three occasions, the board has concluded that the sale price of the leased fee interest controls value for ad valorem tax purposes. The board has made this determination, despite testimony contained in each record from Mr. Lorms that the sale price is predicated upon the manner in which the property is used. *Hon. Dusty Rhodes v. Hamilton County Bd. of Revision* (Mar. 9, 2007), BTA No. 2005-M-1098, unreported; *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 30, 2006), BTA No. 2005-A-381, unreported, appeal pending Sup. Ct. No. 06-1429; *Dayton School Dist. Bd. of*

Edn. v. Montgomery Cty. Bd. of Revision (Jan. 6, 2006), BTA No. 2004-V-73, unreported.

The value of a fourth freestanding drugstore was considered in *RX Bedford Investors, LLC vs. Cuyahoga Cty. Bd. of Revision* (Feb. 3, 2006), BTA No. 2002-R-2509, unreported, settled upon appeal, Sup. Ct. No. 06-448. In that case, the record contained testimony from persons related to the parties involved in a sale of a drugstore location. This board, after fully reviewing the record, including the circumstances surrounding the sale, concluded that the costs of construction, as found by the board of revision, indicated the best evidence of the property's value. It is the testimony of persons knowledgeable of the transaction involved that allowed this board to determine that the sale was not the best evidence of value, and not an appraiser's hypothesis that all sales of successful retail locations should be disregarded.

Given the earlier decisions of this board, we are unable to conclude, as a matter of law, that a sale of a property encumbered with a long-term lease entered into by a developer and a user can never be considered indication of the fair market value of a property. Properties encumbered by leases are purchased and sold regularly in the real estate market. The record does not contain evidence regarding the unique nature of the building itself or the special costs involved in construction of the property. Some build-to-suit properties may require the developer to add unique features to a property which would not be valued in the general marketplace; others may not. See discussion regarding build-to-suit properties in *Camelot Distribution Co. v. Stark Cty. Bd. of*

Revision (Nov. 12, 2004), BTA No. 2003-M-24, unreported. As stated above, the specifics regarding the subject have not been disclosed.

In the present matter, the property owner did not come forth with evidence rebutting the presumption that the sale of the subject meets the indices of an arm's-length transaction. Therefore, the board finds that the record supports a valuation finding as of January 1, 2003 as follows:

Parcel No. 010-122746

	True Value	Taxable Value
Land	\$ 345,300	\$ 120,860
Building	\$3,541,700	\$1,239,600
Total	\$3,887,000	\$1,360,460

Parcel No. 570-138815

	True Value	Taxable Value
Land	\$ 50,500	\$ 17,680
Building	\$ -0-	\$ -0-
Total	\$ 50,500	\$ 17,680

It is the order of the Board of Tax Appeals that the Auditor of Hamilton County list and assess the subject real property in conformity with this decision and order. It is further ordered that these values be carried forward in accordance with the law.

ohiosearchkeybta