

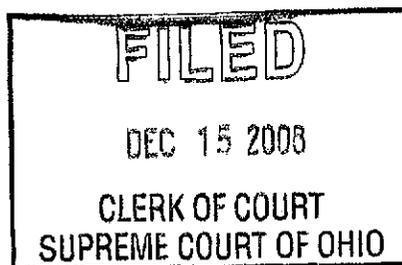
IN THE SUPREME COURT OF OHIO

Meijer Stores Limited Partnership,)
)
 Appellant,)
)
 vs.)
)
 Franklin County Board of Revision,)
 Franklin County Auditor, Licking Heights)
 Local School District, and the Tax)
 Commissioner of the State of Ohio,)
)
 Appellees,)
)
 and)
)
 Marvin J. & Ursula F. Siesel, Shops at)
 Waggoner LLC, and Fifth Third Bank,)
)
 Appellees.)

Case No. 2008-1248

Appeal from the Ohio
Board of Tax Appeals

BTA Case Nos. 2005-T-441 & 443



APPELLANT MEIJER STORES LIMITED PARTNERSHIP APPENDIX I

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

Counsel for Appellant
Meijer Stores Limited Partnership

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

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

Counsel for Appellee
Licking Heights Local School
District

Nancy Rogers (0002375)
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

IN THE SUPREME COURT OF OHIO

Meijer Stores Limited Partnership,)
)
 Appellant,)
)
 vs.)
)
 Franklin County Board of Revision,)
 Franklin County Auditor, Licking Heights)
 Local School District, and the Tax)
 Commissioner of the State of Ohio,)
)
 Appellees,)
)
 and)
)
 Marvin J. & Ursula F. Siesel, Shops at)
 Waggoner LLC, and Fifth Third Bank,)
)
 Appellees.)

Case No. **08-1248** 2008 JUL 26 PM 4:15

Appeal from the Ohio
Board of Tax Appeals

BTA Case Nos. 2005-T-441 & 443

FILED
 JUN 20 2008
 CLERK OF COURT
 SUPREME COURT OF OHIO

NOTICE OF APPEAL MEIJER STORES LIMITED PARTNERSHIP

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 & Dittner, LLC
 300 East Broad Street
 Suite 300
 Columbus, OH 43215
 (614) 228-5822

Counsel for Appellant
 Meijer Stores Limited Partnership

Counsel for Appellee
 Licking Heights Local School
 District

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

Nancy Rogers (0002375)
 Ohio Attorney General
 30 E. Broad Street, 17th Floor
 Columbus, OH 43215-3428
 (614) 466-4320

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

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

IN THE SUPREME COURT OF OHIO

Meijer Stores Limited Partnership,)	
	)	Case No. _____
Appellant,)	
)	
vs.)	
)	
Franklin County Board of Revision,	)	Appeal from the Ohio
Franklin County Auditor, Licking Heights	)	Board of Tax Appeals
Local School District, and the Tax)	
Commissioner of the State of Ohio,)	
)	
Appellees,	)	BTA Case Nos. 2005-T-441 & 443
)	
and)	
)	
Marvin J. & Ursula F. Siesel, Shops at)	
Waggoner LLC, and Fifth Third Bank ¹ ,)	
)	
Appellees.)	

NOTICE OF APPEAL MEIJER STORES LIMITED PARTNERSHIP

Appellant Meijer Stores Limited Partnership, hereby gives notice of an appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, journalized in case numbers 2005-T-441 & 443.

on May 27, 2008

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 appellants complain of the following errors in the Decision and Order of the Ohio Board of Tax Appeals:

¹ The present case involves the January 1, 2003 lien date value of the subject property. After that date three outparcels that were part of the property as of January 1, 2003 were sold. These Appellees are the current owners of those outparcels. Consistent with the jurisdictional requirements, these owners are being joined to this appeal and are receiving notice thereof.

ASSIGNMENT OF ERROR NO. 1:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably assumes that the continued occupancy of the subject property by the first generation tenant the property was designed and built for proves that there is no obsolescence associated with the property and that such a property is therefore comparable to other properties which are also occupied by the first generation tenant that such comparable properties were designed and built for.

ASSIGNMENT OF ERROR NO. 2:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably assumes that if the first tenant to occupy a comparable property has vacated such property, that such property is therefore inferior and less comparable than a comparable property still occupied by its first generation tenant.

ASSIGNMENT OF ERROR NO. 3:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals relies upon appraisal evidence which is not supported under appraisal standards by relying upon an element of comparability based upon first and second generation occupancy of real estate.

ASSIGNMENT OF ERROR NO. 4:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals relies upon appraisal evidence which is not supported under appraisal standards by utilizing comparable transactions that are based upon lease transactions which do not meet the accepted definition of market leases and therefore the comparable transactions are not reliable arm's length indications of value.

ASSIGNMENT OF ERROR NO. 5:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals relies upon appraisal evidence which is not supported under appraisal standards by adjusting comparable transactions upward based upon the business success of the occupant of the real estate contrary to the Ohio Supreme Court's holding in *Higbee Co. v. Cuyahoga Cty. Bd. of Revision* (2006), 107 Ohio St. 3d 325.

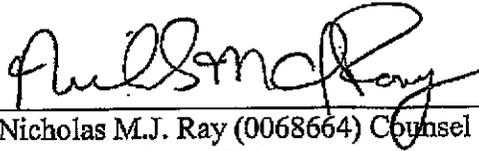
ASSIGNMENT OF ERROR 6:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful, and arbitrary because the Board relies on an appraisal that values the subject property in use rather than in exchange as required by Article XII, Section 2 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution.

ASSIGNMENT OF ERROR NO. 7:

The Decision and Order of the Board of Tax Appeals violates Article XII, Section 2 of the Ohio Constitution which requires that property should be taxed by uniform rule according to value.

Respectfully submitted,

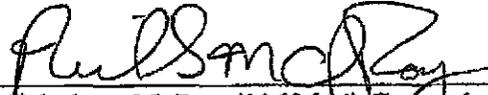


Nicholas M.J. Ray (0068664) Counsel of Record
Jay P. Siegel (0067701)
Siegel, Siegel, Johnson & Jennings Co., LPA
3001 Bethel Rd., Suite 208
Columbus, Ohio 43220
Tel: (614) 442-8885
Fax: (614) 442-8880

COUNSEL FOR APPELLANT
MEIJER STORES LIMITED PARTNERSHIP

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

This is to certify that the Notice of Appeal of Meijer Stores Limited Partnership 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.

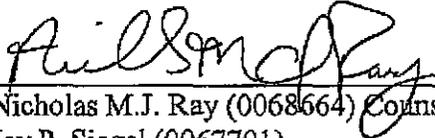


Nicholas M.J. Ray (0068664) Counsel of Record
Jay P. Siegel (0067701)

COUNSEL FOR APPELLANT
MEIJER STORES LIMITED PARTNERSHIP

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of June 2008, 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 & Dittner, LLC 300 East Broad Street, Suite 300, Columbus, OH 43215, Counsel for Licking Heights Local School District, William Stehle, Franklin County Assistant Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, OH 43215, Counsel for Franklin County Auditor and Franklin County Board of Revision, Nancy Rogers, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, OH 43215-3428, Counsel for the Tax Commissioner of Ohio, Marvin J. and Ursula F. Siesel, 2868 Hartford Court, San Diego, CA 92117, Shops at Waggoner LLC, 25 Buckingham Court, Burlingame, CA 94010, and Fifth Third Bank, 38 Fountain Square Plaza, Cincinnati, OH 45263.


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

COUNSEL FOR APPELLANT
MEJER STORES LIMITED PARTNERSHIP

OHIO BOARD OF TAX APPEALS

Meijer Stores Limited Partnership,)
)
) Appellant,)
)
 vs.) (REAL PROPERTY TAX)
)
) DECISION AND ORDER
)
 Franklin County Board of Revision,)
 Franklin County Auditor, and the)
 Licking Heights School District)
 Board of Education,)
)
) Appellees.)

APPEARANCES:

For the Appellant - Siegel, Siegel, Johnson & Jennings Co., L.P.A.
Nicholas M.J. Ray
3001 Bethel Road, Suite 208
Columbus, Ohio 43220

For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
William Stehle
Assistant Prosecuting Attorney
373 South High Street
20th Floor
Columbus, Ohio 43215-6310

For the Appellee Bd. of Edn. - Rich, Crites & Dittmer, L.L.C.
Mark H. Gillis
300 East Broad Street, Suite 300
Columbus, Ohio 43215-3704

Entered May 27, 2008

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

The Board of Tax Appeals considers this matter pursuant to two notices of appeal filed by Meijer Stores Limited Partnership. Meijer appeals from two decisions of the Franklin County Board of Revision, in which the BOR found the true

value of permanent parcel numbers 515-254556-80 and 515-254556-90 to be \$13,290,000 for tax year 2003 and \$12,949,500 for tax year 2004. Meijer claims that the correct true value should be \$8,800,000.

The subject consists of approximately 32.5080 acres of land. The land is improved with a one-story building of tilt-up concrete construction. Since its opening in July 2002, the 192,977-square foot building is used as a retail discount storeroom. The subject is also improved with a 2,500-square foot concrete block building, which is used as a convenience store with gas pumps ("service station"). Other site improvements include a 934-space parking area, signage, and lighting.

All parties were represented by counsel at this board's evidentiary hearing. Meijer offered the testimony of an appraiser and his appraisal report into evidence. The board of education also introduced an appraisal for our consideration. The county offered no additional evidence of value.

In support of its contention of value, Meijer relies upon the testimony and written appraisal report of Mr. Robin L. Lorms, an Ohio-certified general appraiser and a member of the Appraisal Institute. Mr. Lorms utilized all three of the traditional approaches to value: (1) the cost approach; (2) the market data approach (also known as the sales comparison approach), and (3) the income approach. See, generally, Ohio Adm. Code 5703-25-07.

In applying the three approaches, Mr. Lorms began his analysis with the knowledge that the subject represented what is commonly known as a "big-box" retail store. Retailers that utilize the big-box concept construct single-use properties that

have a large footprint. These retailers construct buildings of their own design so that they may use them to merchandise their products according to their unique business plan. H.R. at 21. Mr. Lorms testified that the supply of big-box retail space is growing; however, the market demand for such properties is limited. H.R. at 22.

In contrast to the growth in available big-box space, represented Mr. Lorms, the demand for this type of space in the market by potential purchasers is limited. H.R. at 23. Mr. Lorms indicated that other competing retailers capable of operating on such a large scale are typically not interested in another entity's property because of differences in merchandizing plans. H.R. at 23-26. "These retailers *** thrive on efficiency, knowing that their stores are of specific dimensions for purposes of store design, product and display placement and restocking. Costs to retrofit existing big boxes to accommodate the needs of 'first generation' retailers are too high for financial feasibility ***." Appellant's Ex. A at 29. Mr. Lorms further opined, "Big box retail has significant inherent obsolescence because supply continues to outpace demand and the space lacks functionality in both size and design." Appellant's Ex. A at 34.

The result, Mr. Lorms testified, is that big-box properties tend to have an extended marketing period before they sell or rent and, because demand for such space is limited, they tend to sell for less or rent at a lower rate than would be supported by the cost of developing a similar property. H.R. at 79-81.

Mr. Lorms describes the subject as being in what he calls a "1st-tier market," i.e., one that is considered to be a primary retail destination with a high concentration of national retailers. Appellant's Ex. A at 35.

Under the cost approach, real property value is derived by estimating the current cost of replacing or reproducing the improvements, deducting from that cost the estimated physical depreciation and all forms of obsolescence, if any, and then adding the market value for land. Ohio Adm. Code 5703-25-07(D)(3); The Appraisal of Real Estate (12th Ed. 2001), at 50. Mr. Lorms' cost approach began with an estimation of land value. Mr. Lorms divided the subject into three basic areas: a 26.025-acre primary site, a 2.0-acre site for the service station, and a 2.0-acre outparcel.¹ For the primary site, he reviewed the sales of four parcels of unimproved land. For the other two areas, Mr. Lorms looked at three sales of unimproved land, including the sale of the outparcel for \$312,122 per acre on January 29, 2003. After adjustments, Mr. Lorms determined a total land value of approximately \$5,600,000.²

Mr. Lorms next determined a replacement cost for the subject's improvements by utilizing construction costs from the Marshall Valuation Service. From this service, he determined a replacement cost new of \$8,780,399, including hard and soft costs. Mr. Lorms did not include an entrepreneurial profit in his calculations, as he determined that "sale and lease data support the conclusion that the market value

¹ The outparcel was sold to a regional restaurant chain after the 2003 tax lien date.

² Mr. Lorms valued the primary site at \$3,903,750. Appellant's Ex. A at 69.

is significantly less than development costs. Therefore, no entrepreneurial incentive would be achieved.” Appellant’s Ex. A at 71.

Under the cost approach, simply adding all of the costs does not necessarily reflect the value of an improvement. “In determining the value of property for the purposes of taxation, the assessing body must take into consideration all factors which affect the value of the property.” *The B.F. Keith Columbus Co. v. Franklin Cty. Bd. of Revision* (1947), 148 Ohio St. 253, at paragraph one of the syllabus. Factors such as depreciation, deficiencies, superadequacies, and other forms of obsolescence may be present. The determination of obsolescence is a two-step inquiry. First, the appraiser must identify the causes of the obsolescence. Second, the appraiser must quantify the amount of obsolescence to be applied. See *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181, 186. See, also, *Clark v. State Bd. of Tax Comm’rs* (Indiana Tax Ct. 1999), 694 N.E.2d 1230.

Using an effective age of two years from a useful life of thirty-five years, Mr. Lorms found the total physical depreciation present to be 5.7 percent for the retail building.³ For the service station, he found a ten percent physical depreciation rate based upon an effective age of two years out of a useful life of ten years. He also found a physical depreciation of ten percent present for other site improvements that have a shorter economic life and depreciate more rapidly.

³ Although Mr. Lorms’ appraisal report utilizes an effective age of two years, he agreed that, given the subject’s opening date, the actual age would be one year. H.R., Vol. I, at 134, 145.

Mr. Lorms then concluded that the subject also suffered from functional and external obsolescence.⁴ He based this conclusion upon the size and design of the big-box property. Mr. Lorms concluded that the size and design of the subject property make it difficult to sell to another user because "few retailers are capable of occupying such a large space and these tenants pay rents which are much lower than rents which would make new construction financially feasible. *** In summary, the market value of the fee simple estate of these properties is substantially lower than replacement costs not only due to physical depreciation but also obsolescence." Appellant's Ex. A at 73.

To quantify the amount of obsolescence applicable to the subject, Mr. Lorms relied upon two methods. The first is known as the "capitalization of income loss" approach. The approach requires two steps. First, market rents are analyzed to quantify the income loss. Second, the income loss is capitalized to obtain the value loss affecting the property. The Appraisal of Real Estate, at 414. In his calculations, Mr. Lorms began by limiting his analysis to the primary site, and the storeroom, as he did not believe the service station and outparcels to be subject to the same obsolescence factors affecting the retail store. This left a replacement value, including land, of \$12,382,882. He next determined that a rental rate needed to support this value would be 10 percent of value, or \$1,238,288 per year. Next, Mr. Lorms turned

⁴ Functional obsolescence is a flaw in the structure, materials, or design that diminishes the function, utility, and value of an improvement. The Appraisal of Real Estate, at 363. External obsolescence is a loss in value caused by factors outside the property. These factors may be either economic or locational in nature and are not usually considered curable by an owner, landlord, or tenant. The Appraisal of Real Estate, at 412.

to his income approach to value, which demonstrates that market rents for properties similar to the subject produce approximately \$771,908 in rental income. This difference in income is \$466,380. To this figure, he applied the 10 percent overall capitalization rate derived in his income approach to arrive at a total depreciation factor for the subject of \$4,196,624.

The second method applied by Mr. Lorms was the "allocation of market-extracted depreciation" approach. In its simplest terms, the approach compares the sale price (excluding land value) of properties similar to the subject with their estimated reproduction cost to derive a total depreciation factor, including physical deterioration and obsolescence. See *The Appraisal of Real Estate*, at 413. Mr. Lorms compared the sale prices of seven properties to their estimated reproduction costs to derive a total depreciation rate of between 67 percent and 88 percent. Based upon this information, he concluded that a total depreciation of \$4,549,675 would be most applicable to the retail portion. Of this amount, Mr. Lorms allocated \$439,278 to physical depreciation and the remaining \$4,110,397 to obsolescence.

After removing depreciation from all sources, Mr. Lorms determined the depreciated value of the subject's retail improvements to be \$3,576,973. To this he added the \$983,726 depreciated value of all other site improvements, including the service station, to arrive at a total depreciated replacement cost of \$4,560,699. The \$5,600,000 land value was then added to arrive at a value under the cost approach of approximately \$10,200,000.

The sales comparison approach, often referred to as the market data approach, derives an estimate of value by comparing the subject property to the sale prices of similar properties. The sale prices of properties considered most comparable generally establish a range in which the value of the subject will fall. The Appraisal of Real Estate, at 417; Ohio Adm. Code 5703-25-05(G). Mr. Lorms analyzed sales of eight retail properties that he found to be similar to the subject. The sales occurred between March 2001 and August 2005 and ranged in price from a low of \$34.92 per square foot to a high of \$60.74 per square foot. Noting what he determined to be "the superiority of the other sales and their sale prices," Mr. Lorms opined a value for the retail space of \$35.00 per square foot, or a total of \$6,754,195. Appellant's Ex. A at 84. To this, he added a value for the outparcels, as determined in his review of sales under the cost approach. He further added the depreciated value of the service station using the value he determined in the cost approach. This yielded a total value under the market data approach of \$8,800,000.

In employing the income approach, Mr. Lorms found value under the direct capitalization method. Direct capitalization converts a single year's income expectancy into a value by estimating a net income for the property and dividing it by a market-derived income factor, known as an "overall capitalization rate." The Appraisal of Real Estate, at 529.

To arrive at income expectancy, an appraiser reviews the subject property's historical income and expenses. These are then combined with an analysis of typical income and expense levels found for comparable properties. The Appraisal

of Real Estate, at 493. To determine an income, Mr. Lorms estimated a market rent for the subject by surveying rental rates being asked at six properties, which he considered to be comparable to the subject. The leases yielded lease rates between \$3.00 and \$4.80 per square foot. After consideration for size, location, and condition, Mr. Lorms determined that a market rental rate for the subject would be \$4.00 per square foot. To this figure, he added expense reimbursement income of \$1.75 per square foot to arrive at a potential gross income for the subject of \$1,109,241. A ten percent vacancy and credit loss was deducted to arrive at an effective gross income of \$998,317. From this amount, expenses of \$415,527 were deducted to arrive at a net operating income for the subject of \$582,790. Income was capitalized at 10 percent. The overall capitalization rate was derived from investor surveys and the band-of-investment method. When applied to the net operating income, this equated to a value under the income approach of \$7,800,000.

In reconciling his approaches to value, Mr. Lorms placed greatest weight upon the sales comparison approach. Mr. Lorms also placed weight upon the income approach, as he concluded that an investor would be the likely purchaser of the subject property. Thus, he found the income approach to be a "supporting consideration" to his sales comparison approach. Appellant's Ex. A at 101. He gave the least weight to the cost approach, finding that the significant amount of obsolescence, combined with the obsolescence factors from data contained in the other approaches, limited the reliability of the value conclusion. *Id.* Accordingly, Mr. Lorms opined a final true value for the subject property of \$8,800,000 for tax year 2003.

Also at our evidentiary hearing, the BOE offered into evidence the testimony and written appraisal report of Samuel D. Koon, an Ohio-certified general appraiser and a member of the Appraisal Institute. Mr. Koon also utilized all three of the traditional approaches to derive his opinion of value.

Under his cost approach, Mr. Koon began by dividing the subject into a 24.03-acre main site for the retail space and four outparcels, ranging in size from 1.7 acres to 2.483 acres. For the main site, Mr. Koon reviewed the sale of seven parcels, which sold for a price between \$118,741 per acre and \$280,468 per acre. After adjustments, Mr. Koon determined a value for the main site of \$145,000 per acre, or a total of \$3,480,000. For the outparcels, Mr. Koon looked at five sales of similar outparcels, which sold for a price between \$215,054 per acre and \$515,221 per acre. Mr. Koon varied the value of the subject's outparcels based upon location, noting that frontage upon the main road would be more desirable than frontage along a side road. Next, Mr. Koon adjusted the sale prices to account for the need to divide the outparcels from the subject and place them on the open market. He concluded to a total value of \$1,700,000 for the outparcels.

Mr. Koon next estimated a reproduction cost for the storeroom of \$41.55 per square foot, or \$8,026,479. To this, he added site improvements and miscellaneous costs of \$1,050,000 for a reproduction cost of \$9,080,000. Finally, Mr. Koon added an entrepreneurial profit of ten percent, making a total reproduction cost for the retail storeroom of \$10,332,651. Mr. Koon undertook a similar analysis for the service station improvements, concluding to a total reproduction cost of \$484,697.

To calculate depreciation, Mr. Koon took a 5.7 percent deduction for the storeroom and a 5.0 percent deduction for the service station to account for physical depreciation. Mr. Koon made no adjustments for functional and economic obsolescence. He noted that the "design of the subject property is functional and provides current amenities sought by tenants within the subject's market." Appellee's Ex. 2 at IV-9. As to economic factors, Mr. Koon testified that the subject is located in an area where several retailers are attempting to establish themselves. H.R. Vol. II, at 40. Based upon local rental rates, occupancy rates, and changes occurring within the subject's market, Mr. Koon concluded that the subject did not suffer any economic obsolescence. Appellee's Ex. 2 at IV-9. Mr. Koon opined, "Everything is in good shape, and population is coming here to shop." H.R, Vol. II, at 40.

After depreciation and inclusion of the land value, Mr. Koon determined a total value for the subject under the cost approach of \$16,000,000.

Under the market data approach, Mr. Koon looked at the sales of seven properties he considered to be comparable to the subject's retail improvements. The sales took place between May 1998 and August 2005. Sale prices ranged from \$47.59 per square foot to \$81.63 per square foot. After adjustments for time, location, condition, age and size, Mr. Koon determined a value for the storeroom of \$62.50 per square foot, or \$12,100,000. Mr. Koon then compared sales of eight service stations. The sales ranged in price from \$416.67 per square foot to \$833.33 per square foot. After adjustments, Mr. Koon determined a value for the service station of \$450 per square foot, or \$1,300,000. To his values for the storeroom and service station, Mr.

Koon added the \$1,700,000 of the outparcels. Based upon all of this information, Mr. Koon concluded to a total value under the market data approach of \$15,100,000.

To derive value under the income approach, Mr. Koon looked at the rental rates of several first-generation properties and second-generation properties. Mr. Koon referred to new or build-to-suit properties leased to big-box retailers as first-generation properties. He reviewed seven properties he considered similar to the subject. These properties rented from a low of \$6.45 per square foot to a high of \$14.50 per square foot. Second-generation properties, generally, were those that had been vacated by their original user and leased to another retailer. These properties rented from \$3.00 per square foot to \$9.00 per square foot.

In reconciling these rental rates, Mr. Koon placed greater reliance on the first-generation comparables:

“The subject property was in excellent physical condition as of the lien date. The date of the appraisal was virtually new. We felt that the first generation lease comparables were much more comparable, being new when they were leased, than the second generation comparables, which have a myriad of ages but substantially older and in lesser physical condition.” H.R., Vol. II, at 19.

After adjustments, Mr. Koon concluded to a rental value for the storeroom of \$6.75 per square foot, which yielded a potential gross income of \$1,303,898. From this, he deducted a vacancy and credit loss of ten percent to derive an effective gross income of \$1,173,508. After deducting expenses of \$70,662, he arrived at a net income for the storeroom of \$1,102,846.

Next, Mr. Koon applied an overall capitalization rate of 9.5 percent to derive a storeroom value of \$11,600,000. To this he added the value of the outparcels and the service station (as found under the market data approach) to opine a value under the income approach of \$14,600,000.

In reconciling his approaches to value, Mr. Koon placed the greatest weight on the income and market data approaches. He found the cost approach to be a "good benchmark," but determined that it should be a secondary consideration because "the cost approach does not reflect the thought process of a typical purchaser." H.R., Vol. II, at 27. Thus, after reconciliation, Mr. Koon opined a value for the subject property as of January 1, 2003 of \$14,850,000.

We now begin our review of this matter by noting that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its right to the value asserted. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564; *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 that demonstrates its 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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Here, we have been presented with two expert opinions of value, each of which utilizes differing theories as to the forces impacting the subject property. In this regard, we note that the valuation of real property is an inexact science. In addition to specific data, ultimate conclusions involve hearsay, suppositions, and subjective mental impressions. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported, at 6. "Valuations of real property *** are inherently imprecise. Opinions realistically may differ, depending upon the method of

valuation used and the nature of assumptions adopted." *In re Montgomery Court Apts. of Ingham Cty.* (Bankr. S.D. Ohio 1992), 141 B.R. 324, at 337.

Because the valuation process often involves our analysis of conflicting appraisal evidence, we must assign weight to the opinions based upon our review of the qualifications and credibility of the expert appraisers. *Cardinal Fed.*, supra, at 19. See, also, *Hibschman*, supra, at 48 (holding that the BTA is not required to adopt the valuation fixed by any expert appraiser); *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, at paragraph 3 of the syllabus; and, *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609 (BTA may accept all, part, or none of the offered opinions of value). In weighing conflicting appraisal evidence, we generally evaluate a number of factors, including, but not limited to, the appraiser's training, experience, familiarity with the subject property, underlying theories of valuation as applied to the subject, the methods employed in conducting the appraisal, the testimony before this board, and the overall ability to substantiate the basis of the opinion of value. See *In re Smith* (Bankr. S.D. Ohio 2001), 267 B.R. 568, at 572, and *Buckland v. Household Realty Corp.* (Bankr. S.D. Ohio 1991), 123 B.R.110, at 112.

We find that the appraisers essentially agree on a number of aspects. Their valuation of land is similar, with Mr. Lorms at \$5,643,480 and Mr. Koon at \$5,817,500. Both agree that the highest and best use of the subject property is its continued use as a retail storeroom. Both also agree that the subject's market area is both vibrant and growing. The key difference between the two opinions of value before us is essentially the impact of obsolescence on the subject property. Mr. Lorms

has taken the view that the subject suffers from significant inherent obsolescence because the supply of big-box retail space continues to outpace demand and because the space lacks functionality in both size and design. As demand for such space is limited, big-box retail space tends to either sell for less or rent at a lower rate than would be supported by the cost of developing a similar property.

The BOE argues that Meijer's appraisal evidence is unreliable because Mr. Lorms' theory that first generation big-box retail properties would sell to or be leased by second generation users, as applied to the subject, is unsupported in the market. We have previously considered Mr. Lorms' theory in other cases involving big-box retail space. For example, in *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported, we held:

“Next, the county argues that, by eliminating other first generation users such as Target, Meijer, and Lowe's from the pool of potential buyers of a property like the subject, Mr. Lorms has been able to lower both the subject's potential gross income and its potential sale price. The county asserts that this is nothing more than unsupported opinion used to artificially lower the value of the subject. We disagree.

“Mr. Lorms testified that his research did not disclose any sales between first generation users. In addition, he testified that discussions with several first generation users suggested that such a user would not be interested in an existing big-box property. Finally, Mr. Lorms gave specific examples of this phenomenon, including the case where one retailer had a recently completed big-box storeroom razed because the building, developed by a competitor, did not meet its marketing strategy. We find Mr. Lorms' evidence to be competent and well corroborated.

“The county may speculate as to the reasons why there are no sales between first generation users. However, these conjectures are without substance. Ultimately, we cannot ignore the fact that the county has not offered into evidence any sale or lease between first generation users that would either impeach Mr. Lorms’ testimony or rebut the evidence presented by Wal-Mart.” Id. at 12. (Footnote omitted.)

See, also, *Meijer Stores L.P. v. Wood Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-A-1204, unreported.

We must stress, however, that this theory has not always been accepted by this board where it has been shown that the obsolescence factors advanced by the appraiser do not exist in a particular market. The issue before us in any appeal is the true value of the subject property. We must weigh the evidence on a case-by-case basis, taking into account differences in both the property at issue and the circumstances specific to its place in its market. Thus, in *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 15, 2005), BTA No. 2002-R-1929, unreported, we declined to limit the valuation of a big-box retail storeroom to only second-generation lease and sale comparables where the building continued to be utilized by a first-generation user and where evidence was introduced indicating that comparable first-generation leases and sales existed.

Also germane is *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181. Similar to the matter now before us, *Meijer* concerned the valuation of a big-box retail storeroom that was less than a year old as of tax lien date. *Meijer* argued before the court that we had erroneously failed to account for functional

and economic obsolescence in adopting the cost approach advanced by the county's appraiser. The court found, however, that the burden was on Meijer to prove obsolescence. The court reflected that, as the "facts and figures which Meijer needed to prove obsolescence were rejected by the BTA," Meijer "did not meet its burden of proof." *Id.* at 186.

The court's decision in *Meijer*, *supra*, relied heavily upon its earlier pronouncement in *Rollman & Sons Co. v. Hamilton Cty. Bd. of Revision* (1955), 163 Ohio St. 363. In *Rollman*, the court held, "Where a taxpayer asserts that functional depreciation [i.e., obsolescence] should be considered in valuing his property for the purpose of taxation, the burden is upon the taxpayer to prove such depreciation. *** Where the only evidence as to functional depreciation is the opinion of the taxpayer's witness, which opinion the witness fails to substantiate with facts or figures, a decision of the Board of Tax Appeals that the taxpayer failed to sustain his burden of proof as to functional depreciation and excluding such depreciation in valuation for tax purposes is neither unreasonable nor unlawful." *Id.* at paragraphs one and two of the syllabus.

Under *Meijer*, and *Rollman*, *supra*, Meijer now has the burden to present sufficiently probative evidence to support both the existence and the extent of the claimed obsolescence. We are unable to conclude, however, that Meijer has met this burden. Instead, we find that Mr. Lorms' facts and figures have been successfully refuted by the facts and figures presented by the BOE. Mr. Koon testified that he was able to find sales of big-box retail stores that were also leased to the first-generation

tenant. H.R., Vol. II, at 27. He used several of these properties when reaching his opinion of value. In doing so, he noted that the subject was a newer property located in an area where external and functional obsolescence had not developed. Thus, the use of first-generation leases and sales was appropriate:

“Of primary focus in the analysis of market rent for a first-generation user occupied facility such as the subject property is the singular fact that second-generation rents will never adequately reflect market rent for such a property. This is true in the case of the subject property in particular, which was constructed in 2001, is in very good condition, and is located in a neighborhood which is a viable retail corridor and is expected to continue to experience burgeoning growth into the foreseeable future. In addition to these considerations, the fact that the subject facility continues to operate under the auspice of its first generation user indicates that it possesses certain attributes which make it inherently more desirable than second-generation space. Second generation retail properties are available due to circumstances which generally tend to indicate functional or economic deficiencies. The continued operation of the subject property by its first generation user is material proof that it does not suffer from such deficiencies.

“In general, the first generation leases profiled herein all represent leases of new buildings (as of the respective dates of lease) which provide a much better indication of market rent than do the second generation lease comparables. ***” Appellee’s Ex. 2 at V-25.

Upon review, we concur with Mr. Koon that the subject property does not suffer from the same market and obsolescence factors considered in *Wal-Mart*, supra. The subject is a property with nearly new improvements. It is located in a retail corridor that is both flourishing and growing. Moreover, we find that the existence of comparable first-generation sales and leases successfully refutes any

evidence that suggests that the subject is marketable only to second-generation users. While it is possible that such obsolescence could creep in over the life cycle of the subject and its market, we are not persuaded that such factors are present for the tax years before us.

Mr. Lorms' opinion of value is based upon the assumptions that a big-box storeroom is (1) subject to a large amount of obsolescence due to an overabundance of these large properties in a market and (2) is marketable only to smaller, second-generation lessees. While such factors may be proper for consideration in some markets, we find the evidence insufficient to support this approach in the matter now before us. *Meijer and Rollman, supra*. As the application of this theory underlies all three of Mr. Lorms' approaches to value, we must conclude that his opinion of value is not probative of the subject property's value; rather, it undervalues the subject by artificially limiting its market to only second-generation properties. Accordingly, we find that Meijer has not met its burden of persuasion. *Columbus, Cleveland, and Mentor Exempted, supra*.

In reaching this determination, we are cognizant that we have today issued two other decisions involving big-box retail storerooms, in each of which we found that the property owner had established its right to a decrease in value based upon the existence of obsolescence factors similar to those fostered by Meijer in the present appeal. See *Target Corporation v. Greene Cty. Bd. of Revision*, BTA No. 2006-V-751, and *Lowes Home Centers, Inc. v. Fairfield Cty. Bd. of Revision*, BTA No. 2006-R-801.

The Ohio Supreme Court has repeatedly held the determination of fair market value to be a question of fact that is primarily within the province of this board to decide. *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299; *Fawn Lake Apts.*, supra. In making such determinations, we reiterate that we must weigh the evidence before us on a case-by-case basis, taking into account how the evidence relates to the specific property at issue. Thus, our decision in this matter is not inconsistent with our other determinations. Our decision recognizes that there is competent and probative evidence before us that establishes a fair market value for the subject real property specific to the property's characteristics and marketplace.

In both *Target* and *Lowes*, supra, we considered the valuation of big-box storerooms that were several years old as of the tax lien dates at issue. In *Target*, the improvements were seven years old. In *Lowes*, the storeroom had been erected eight years prior to tax lien date. In both cases, we were also faced with properties located in smaller markets, where the demand for similar big-box space is significantly more limited when compared to the market in which the subject property competes. Additionally, in *Target*, the only evidence before us was the appraisal submitted by the property owner. The parties had waived hearing before this board. Upon review, we found that the owner's appraisal evidence, being uncontroverted and sufficiently supported by the market, met the owner's burden of proving value. We noted that the appellees had "elected not to provide us with any competing market information that could allow us to come to a different conclusion regarding the subject's value." *Id.* at 12. See *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37

Ohio St.3d 318 (holding that failure of an appellee to present rebuttal evidence may, upon the BTA's finding that the appellant has presented credible and probative evidence, result in the BTA's adoption of the appellant's evidence as the subject property's true value). Cf. *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision*, Summit Cty. App. No. 22238, 2005-Ohio-1951 ("By not presenting any evidence, the BOR and county auditor do risk that the court will find the appellant's evidence competent and probative, and therefore, determinative of value.").

Our decision in *Lowes*, supra, further differs from the instant matter in that, while both the property owner and the county did present appraisal evidence, we found the county's evidence to be insufficiently competent to rebut the evidence presented by Lowes. We noted several deficiencies in the county's evidence, including a lack of detail about the comparable properties used, an over-reliance on the cost approach despite the age of the improvements, and the appraiser's failure to state the basis for his calculations and conclusions. See *Lowes*, supra, at 11.

In the matter now before us, we find that the BOE has presented competent and probative rebuttal evidence. Mr. Koon's appraisal took into consideration first and second generation properties. He carefully considered the market in which the subject is located and used leased properties that are comparable to the subject. We find his income and expense rates to be reasonable, and we further conclude that his capitalization rate is supported by the record. Mr. Koon's appraisal provided a significantly detailed analysis to not only demonstrate the basis of his opinion of value but also to show the limitations in Meijer's evidence. Thus, we find

that the BOE has established the true value of the subject property to be \$14,850,000 for tax year 2003.

Finally, we note that the BOE devoted a great deal of its brief asserting the application of the cost approach to the subject property, given that the improvements were approximately one year old on tax lien date. The BOE's arguments mirror those advanced by its counsel in similar cases before this board, wherein it has been argued that the court's opinion in *Meijer*, supra, establishes that the cost approach is the only valid approach that can be used to determine the true value of a big-box storeroom. Like the real property now before us, *Meijer* considered the valuation of a discount storeroom that was constructed less than one year prior to tax lien date. In that case, the cost approach was indeed found to be the best evidence of that property's value.

However, we disagree with the BOE's inference that *Meijer* stands for the proposition that we are limited to the cost approach whenever we value new improvements. The *Meijer* court made no such finding. At issue in that case was the property owner's claim that we had misapplied the concepts applicable to the cost approach. After reviewing our decision, the court concluded that we had demonstrated a "clear understanding of the theory of substitution." *Id.* at 187. Thus, while accepting our reliance on the cost approach, the court did not direct this board to apply only the cost approach to all new construction. In fact, the *Meijer* court reiterated that the BTA "has wide discretion to determine the weight given to evidence and the credibility of witnesses before it." *Id.* at 185.

Additionally, in *Wal-Mart*, supra, we considered - and rejected - a similar argument:

“[T]he county’s position runs counter to the well-established principles that (a) this board is vested with wide discretion in determining the weight to be given to the evidence that comes before it, (b) this board may accept all, part, or none of the evidence presented, and (c) this board is not required to adopt the valuation fixed by any expert or witness. *Cardinal*, supra, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, and *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. In *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, the court determined that to require this board to adhere to one particular method of value, as the county now urges us to do in this matter, runs contrary to the above-stated principles. The court stated, ‘We decline to bind the BTA to a particular method of valuation because the imposition of rigid methodological strictures would necessarily impinge upon the BTA’s wide discretion to weigh evidence and assess the credibility of witnesses.’ *Id.* at 402.” *Wal-Mart*, supra, at 18.

While it was determined in *Meijer*, supra, that the best indication of value for that property was found under the cost approach, our review of the evidence in this matter, including a consideration of the market factors introduced, leads us to conclude that Mr. Koon’s market data and income approaches provide a reliable indication of value for the subject property. We also cannot overlook the fact that, in this matter, both appraisers gave the least amount of weight to their cost approaches to value. Mr. Lorms found that the significant amount of obsolescence considered by him limited the reliability of the approach. Appellant’s Ex. A at 101. Mr. Koon determined that the cost approach, while a “good benchmark,” did not reflect the

thought process of a typical purchaser of a property like the subject. H.R., Vol. II, at 27.

In conclusion, we find that Meijer has failed to meet its burden of persuasion and that the BOE has demonstrated through competent and probative evidence that the true value of subject property is \$14,850,000 for tax year 2003. The Board of Tax Appeals therefore finds the true and taxable values of the subject property to be as follows for tax year 2003:

	TRUE VALUE	TAXABLE VALUE
Parcel 515-254556-80		
LAND	\$5,817,500	\$2,036,120
BUILDINGS	<u>\$2,712,900</u>	\$ <u>949,520</u>
TOTAL	\$8,530,400	\$2,985,640

	TRUE VALUE	TAXABLE VALUE
Parcel 515-254556-90		
LAND	\$ -0-	\$ -0-
BUILDINGS	<u>\$6,319,600</u>	<u>\$2,211,860</u>
TOTAL	\$6,319,600	\$2,211,860

	TRUE VALUE	TAXABLE VALUE
All Parcels, Combined		
LAND	\$ 5,817,500	\$2,036,120
BUILDINGS	\$ <u>9,032,500</u>	<u>\$3,161,380</u>
TOTAL	\$14,850,000	\$5,197,500

The Board of Tax Appeals further finds that that such values should carry forward to tax year 2004, with one adjustment.⁵ The record establishes that a

⁵ We need not address the propriety of the BOR's decision to find different values for the subject property for tax years 2003 and 2004 where (1) no complaint had been filed on behalf of either Meijer or the board of education for the second of these years and (2) no complainant has presented evidence specific to the January 1, 2004 tax lien date. See *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, 304, at fn. 1 ("We decline to address the issue of whether the BTA has the authority to determine different valuations for succeeding years in the same triennium in this case, where no competent, probative evidence supporting different valuations was offered.").

2.48-acre outparcel was sold after the 2003 tax lien date. The value of this outparcel, which was included in the appraisal evidence submitted to us, should be removed from the subject property's value for tax year 2004. As the outparcel was transferred in an arm's-length sale, its \$775,000 purchase price shall be deducted, resulting a true value for the subject property of \$14,075,000 for tax year 2004. See *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

The true and taxable values of the subject property shall therefore be as follows for tax year 2004:

	TRUE VALUE	TAXABLE VALUE
Parcel 515-254556-80		
LAND	\$5,042,500	\$1,764,880
BUILDINGS	<u>\$2,712,900</u>	<u>\$ 949,520</u>
TOTAL	\$7,755,400	\$2,714,400
Parcel 515-254556-90		
LAND	\$ -0-	\$ -0-
BUILDINGS	<u>\$6,319,600</u>	<u>\$2,211,860</u>
TOTAL	\$6,319,600	\$2,211,860
All Parcels, Combined		
LAND	\$ 5,042,500	\$1,764,880
BUILDINGS	<u>\$ 9,032,500</u>	<u>\$3,161,380</u>
TOTAL	\$14,075,000	\$4,926,260

The Auditor of Franklin County is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.

ohiosearchkeybta

OHIO BOARD OF TAX APPEALS

Lowes Home Centers, Inc.,	)	CASE NO. 2006-R-801
)	
Appellant,	)	(REAL PROPERTY TAX)
)	
vs.	)	DECISION AND ORDER
)	
Fairfield County Board of Revision and)	
Fairfield County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Siegel, Siegel, Johnson & Jennings Nicholas M.J. Ray 3001 Bethel Road, Suite 208 Columbus, OH 43220
For the County Appellees	- David L. Landefeld Fairfield County Prosecuting Attorney Roy E. Hart Assistant Prosecuting Attorney 201 South Broad Street, Fourth Floor Lancaster, OH 43130

Entered May 27, 2008

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Lowes Home Centers, Inc. ("Lowes"). Lowes appeals a decision of the Fairfield County Board of Revision ("BOR"), in which the BOR determined the taxable value of the subject property for tax year 2005.

The Fairfield County Auditor and the BOR determined that the true and taxable values for the subject property for 2005 should be as follows:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
053-22401.00		
Land	\$2,253,250	\$ 788,640
Building	<u>\$6,296,890</u>	<u>\$2,203,910</u>
Total	\$8,550,140	\$2,992,550

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
053-22402.00		
Land	\$ 24,090	\$ 8,430
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$ 24,090	\$ 8,430

Lowes, however, according to its notice of appeal, contends that the true and taxable values of the subject property should be reduced as follows:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
053-22401.00		
Land	\$1,287,690	\$ 450,690
Building	<u>\$3,598,540</u>	<u>\$1,259,490</u>
Total	\$4,886,230	\$1,710,180

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
053-22402.00		
Land	\$ 13,770	\$ 4,820
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$ 13,770	\$ 4,820

The subject property is comprised of two contiguous parcels, containing approximately 16.5 acres, with an acre for a retention basin, which is not able to be developed. Appellant's Ex. 1 at 2, 32; Appellees' Ex. A at 1, 28; H.R. at 25. The

improvements were constructed in 1997 and consist of a single-story, warehouse/discount retail building containing approximately 138,771 square feet of space. Appellant's Ex. 1 at 36; Appellees' Ex. A at 1, 30; H.R. at 25. It also has over 90,000 square feet of paving for parking. Appellees' Ex. A at 31; H.R. at 121. This property is owned and operated by Lowes Home Centers, Inc. The property is located at 2240 Schorrway Drive, Lancaster, Fairfield County, Ohio, in the Lancaster City Local School taxing district. S.T.

On March 21, 2006, Lowes filed a complaint against the valuation of real property at the BOR, requesting a reduction in value for tax year 2005. After a hearing on June 1, 2006 and due consideration, the BOR issued a decision June 6, 2006, retaining the auditor's value for the subject property, from which Lowes appealed on June 30, 2006.

This matter is now submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the BOR, the record of the evidentiary hearing before this board ("H.R."), including exhibits, and the briefs of counsel. At the hearing before the board, the property owner called Robin M. Lorms, an MAI appraiser, who testified and presented a complete, narrative appraisal report. See Appellant's Ex. 1. The BOR called Richard H. Hoffman, also an MAI appraiser, who also testified and presented a complete, narrative appraisal report. See Appellees' Ex. A.

We begin our review of this matter by noting that a party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has 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.

It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

Once competent and probative evidence of true value has been presented by the appellant, the other party to the appeal has a corresponding burden of providing evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn. and Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must examine the available record and then determine value based upon the evidence before it. *Coventry Towers*, supra; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we determine the weight and credibility to be accorded the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Mr. Lorms, an appraiser with Integra Realty Resources – Columbus, testified before this board on behalf of Lowes that despite a large supply, the demand for big-box space in the market by potential purchasers is limited. Appellant's Ex. 1 at 19, 21; H.R. at 19-20. Mr. Lorms indicated that other retailers capable of operating on such a large scale are typically not interested in another entity's property because of differences in merchandizing plans. Appellant's Ex. 1 at 26; H.R. at 18. National retailers, such as Lowes, Meijer's, K-Mart, Wal-Mart, and Sam's Club, thrive on efficiency, knowing that their stores are of identical dimensions for purposes of store design, product placement, and restocking. They would rather own the land and build the building, designed for their specific operating needs. H.R. at 17. They want to determine where the loading docks are, where the entrances are,

the depth of the building, and the spacing of the aisles. Therefore, there is only a limited pool of big-box buyers, and they are usually second generation users. H.R. at 19.

In addition, Mr. Lorms criticized the use of build-to-suit properties as comparables. In his opinion, build-to-suit values are not open market transactions. H.R. at 24, 34. He has never seen a big-box built on a speculative basis. H.R. at 24.

In his appraisal, Mr. Lorms found that the subject property had high visibility and above average highway access. Appellant's Ex. 1 at 18, 39. He determined that the highest and best use of the subject property would be a continuation of its current use as retail. Appellant's Ex. 1 at 42; H.R. at 26. He performed all three approaches to value: cost, sales, and income. In addition, Mr. Lorms personally viewed the subject property and all comparable properties used as sale and rent comparables. H.R. at 76.

In his cost approach, Mr. Lorms examined seven land sales, ranging from \$165,000 an acre to \$219,000 an acre. H.R. at 44-45. Based on these sales, he derived a cost per acre of \$210,000, for a land value of \$3,500,000. Appellant's Ex. 1 at 58; H.R. at 46. He then calculated the replacement cost of the structure, using Marshall's Valuation Service. Id. Because of the structure's limited rough finish, Mr. Lorms classified the property in the warehouse/discount store category, Class C property. Appellant's Ex. 2; H.R. at 46, 51. It has an unfinished ceiling, shell-type construction, few partitions, and concrete floors. He added the land value, the replacement cost of the building, and the site improvements, then reduced that value for depreciation and obsolescence, using a thirty-year useful life. H.R. at 53. His opinion of value for the subject property as of the tax lien date of January 1, 2005, was \$5,800,000, using the cost approach. Appellant's Ex.1 at 67.

In his sale comparison approach, Mr. Lorms utilized eight comparable sales, ranging from \$14.69 per square foot to \$40.78 per square foot. Appellant's Ex. 1 at 70-71. Mr. Lorms found these to be good retail locations, although many of these sales involved failed businesses. H.R. at 54, 58-59.

Comparable sale 1 was formerly an Ames store, located in Canal Winchester, Ohio. H.R. at 54. It was sold to Home Depot, which tore it down and built a new building. It sold for \$40 a square foot.

Comparable sale 2 was a K-Mart store, located at Lexington-Springville Road in Mansfield, Ohio, a strong retail corridor. Appellant's Ex. 1 at 54; H.R. at 55. It is just now going into contract for sale at the time of the hearing. The asking price was \$28 a square foot.

Comparable sale 3 was a K-Mart in Washington Courthouse, Ohio. Id. This is an inferior location, according to Mr. Lorms. It was available at \$20 a square foot.

Comparable sale 4 was also a K-Mart. H.R. at 56. This property is located in Hamilton, Ohio. It was sold to a developer and subdivided. It sold for \$15 a square foot.

Comparable sale 5 was a K-Mart, located in Summit County, Ohio. Id. It was sold to Kohl's for \$33 a square foot.

Comparable sale 6 was a K-Mart in Maple Heights, Ohio. Id. This became a Liberty Ford dealership and sold for \$36 a square foot.

Comparable sale 7 was a Wal-Mart in Huber Heights, Ohio. H.R. at 57. It sold for \$35 a square foot, but had deed restrictions. In Mr. Lorms' opinion, however, these deed restrictions did not affect the value. Appellant's Ex. 1 at 69; H.R. at 57.

Comparable sale 8 is the sale of the old Lowes store in Lancaster, Ohio. It sold to U-Haul for \$27 a square foot. Although Mr. Lorms included it as one of his comparable properties, he testified that he did not rely on this sale. H.R. at 58.

He found comparable sales 5, 6, and 7 to be the most comparable to the subject property. Appellant's Ex. 1 at 73. They ranged from \$33.50 a square foot to \$35.95 a square foot. Comparable sales 2, 3, 4, and 8 were inferior and ranged from \$14.69 a square foot to \$28.16 a square foot. Id. Comparable sale 1 was superior to the subject and sold for \$40.78 a square foot. Id. After adjusting the sale prices of the comparables for location, size, age, and condition, Mr. Lorms used \$35.00 a square foot for the subject property. Based on that, Mr. Lorms opined the value of the subject property to be \$4,900,000 as of January 1, 2005, using the sales comparable approach. Appellant's Ex. 1 at 73; H.R. at 58.

It should be noted that Mr. Lorms did not consider any of these sales to be distressed. H.R. at 60. Although K-Mart filed for bankruptcy, it was only a tenant of the properties utilized, and not the owner.

In his income approach, Mr. Lorms looked at market rents for nine properties, ranging from \$0 to \$5 a square foot. Appellant's Ex. 1 at 77; H.R. at 53. These properties included an Ames store, Garden Ridge, Burlington Coat Factory, and Old Time Pottery. H.R. at 63-65. He determined that \$4 rent would be appropriate for the subject property. Appellant's Ex. 1 at 79; H.R. at 65. This resulted in a gross potential rent of \$555,084. To that amount, Mr. Lorms added \$256,825 for reimbursed expenses. He subtracted ten percent for vacancy and credit loss. H.R. at 66, 95. The result was \$701,018 in effective gross income. Id. He then subtracted \$279,548 for expenses, which he derived from an expense

study of K-Mart stores, for a projected net income of \$421,470. Appellant's Ex. 1 at 80; H.R. at 66. Using a 9.5 percent capitalization rate, which he derived from three sources, including national surveys and talking with brokers, Mr. Lorms arrived a value of \$4,400,000 using the income approach. Appellant's Ex. 1 at 85, 87; H.R. at 68.

In reconciling these three methods, Mr. Lorms gave the most weight to the sales comparison approach, supported by the income approach. Appellant's Ex. 1 at 4, 44; H.R. at 72, 97. He relied least on the cost approach. Mr. Lorms determined that the subject property should be valued at \$4,900,000 as of January 1, 2005. Appellant's Ex. 1 at 2, 89; H.R. at 72.

Mr. Richard H. Hoffman of Appraisal Research testified on behalf of the county appellees. He appraised the subject property as of the tax lien date of January 1, 2005. H.R. at 113. Mr. Hoffman found this property to be relatively typical of a big-box retail store with minimum interior finish. H.R. at 121. Like most big-box properties, it has an entry way, an office area, a customer service area, a sales area with wide aisles and high ceilings, a dock area, a customer door, and a contractors' door. H.R. at 122-123. He also found it to have good visibility. H.R. at 121. Mr. Hoffman determined that the highest and best use of the property is commercial, its current use. Appellees' Ex. A at 38.

Appraisal Research is the mass appraisal firm for Fairfield County. H.R. at 113-114, 127. In Mr. Hoffman's opinion, Lancaster, Ohio is a very positive community, with good economic growth, and parcels in Fairfield County have been experiencing a substantial increase in property values. H.R. at 118-119, 127. It is further Mr. Hoffman's opinion that deed restrictions can drastically affect the value of real property. H.R. at 131.

Based on seven comparable land sales, Mr. Hoffman opined that the subject property's land would sell for \$150,000 an acre, for a total land cost of \$2,434,500. Appellees' Ex. A at 42-48, 51; H.R. at 132. Using the Marshall & Swift commercial estimator, Mr. Hoffman determined the replacement cost of the building to be \$6,953,200. Appellees' Ex. A at 54; H.R. at 132. To that, he added the cost of paving, canopies, and truck wells. *Id.* Then, he depreciated the building to \$6,060,000. Appellees' Ex. A at 55. Adding the land value to that equates to a value of \$8,495,000 for the subject property as of January 1, 2005, using the cost approach. Appellees' Ex. A at 56; H.R. at 132, 138. It was Mr. Hoffman's opinion that nothing in the design suggests there is obsolescence. H.R. at 134.

For his sales comparison approach, Mr. Hoffman examined four sales, and those sales ranged from \$44 per square foot to \$95 per square foot. Appellees' Ex. A at 58-61; H.R. at 140. He concluded that \$60 per square foot should be used for the subject property, which resulted in a value of \$8,326,000 using the sales comparison method. Appellees' Ex. A at 65; H.R. at 141.

In his income approach, Mr. Hoffman included six rent comparables. Appellees' Ex. A at 68. Using an 8.3443% capitalization rate, Mr. Hoffman arrived at a value of \$8,463,000. Appellees' Ex. A at 70, 72; H.R. at 142.

In reconciling the three approaches to value, Mr. Hoffman relied most heavily on the cost approach, since he considered it almost a new building. H.R. 142. The value arrived at using the cost approach was supported by the sale comparison and income approaches. H.R. at 142. Based on this, Mr. Hoffman concluded that the final value of the

subject property as of the tax lien date of January 1, 2005 was \$8,495,000. Appellee's Ex. A at 73; H.R. at 147.

The board is presented with the appraisal reports and testimony of two competent appraisers. However, the board finds flaws in each appraiser's report.

First, in Mr. Lorms' report, he uses listing prices per square foot for some of his sales and rent comparables. We do not find these listings to be persuasive evidence of value. *Meijer Stores L.P. v. Defiance Cty. Bd. of Revision* (Mar. 3, 2006), BTA No. 2003-T-2035, unreported; *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported. Cf. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397, at 400. Therefore, we do not find these properties to be comparable.

Second, Mr. Lorms acknowledged that at least one of his sales may have been subject to deed restrictions. Although a deed-restricted sale could be reflective of the market, it would not be considered to be the best evidence of value. *Tuller Square Northpointe, LLC v. Delaware Cty. Bd. of Revision* (Aug. 18, 2006), BTA No. 2003-H-1549, unreported; *Meijer, supra*; *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (June 30, 2003), BTA Nos. 2002-A-2014, et seq., unreported. Thus, we must disregard the Wal-Mart sale included in the sales comparison approach.

The county argues that Lowes' evidence is unreliable because Mr. Lorms' theory that first generation big-box retail properties would sell to or be leased by second generation users is unsupported opinion. We have previously considered this issue, in detail. Just as in *Tuller Square* and *Meijer, supra*; *Meijer Store L.P. v. Montgomery Cty. Bd. of*

Revision (Oct. 14, 2005), BTA No. 2003-A-2160, unreported; *Meijer Stores L.P. v. Wood Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-A-1204, unreported, and *Wal-Mart*, supra, we find the appellant's arguments to be credible and persuasive. The issue of a limited pool of investors is a proper issue to be weighed and, if found probative, considered. Since Mr. Hoffman was unable to relate to the board the specific details concerning his sales and rent comparables, we must agree that Mr. Lorms' credible testimony regarding the limited pool of investors for big-box properties is probative.

The board finds that the appraisal of Mr. Hoffman has several deficiencies. First, Mr. Hoffman did not view the non-public areas of the subject property. H.R. at 150. Second, Mr. Hoffman does not know what class of property was used for valuing the subject. H.R. at 162. Third and most importantly, Mr. Hoffman relies most heavily on the cost approach, even though the building is already eight years old by the tax lien date. See *Agree L.P. v. Wood Cty. Bd. of Revision* (Sept. 23, 2005), BTA No. 2003-T-1205, unreported; *Meijer* (Montgomery Cty.) and *Wal-Mart*, supra. Fourth, Mr. Hoffman ignores obsolescence in his appraisal. Fifth, Mr. Hoffman did not personally inspect his comparables, so he does not know whether his comparables are single or multi-tenant, vacant or leased, or the status of the surrounding retail location. H.R. at 175-202. In addition, Mr. Hoffman does not know the lease rates or terms, or whether the comparable properties were built to suit. *Id.* Sixth, Mr. Hoffman's income approach does not give a basis for his credit loss and vacancy rate. Appellees' Ex. A at 69.

Where parties rely upon appraisers' opinions of value, this board may accept all, part, or none of those appraisers' opinions. *Witt Co. v. Hamilton Cty. Bd. of Revision*

(1991), 61 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609. Further, we have often acknowledged in cases where competing appraisals are offered, that the appraisal of real property is not an exact science but is instead an opinion, the reliability of which depends upon the basic competence, skill, and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. Therefore, we must weigh the evidence on a case-by-case basis, taking into account differences in both the property at issue and the circumstances specific to its place in its market. Depending upon the specific circumstances of the property and the varying evidence in different cases, this can lead to differing results. E.g., *Meijer Stores Limited Partnership v. Franklin Cty. Bd. of Revision*, BTA, Nos. 2005-T-441 and 443, unreported, issued this same day.

Disregarding Mr. Lorms' sales comparables that are only asking values, comparable sales 2 and 3, and the one that has deed restrictions, comparable sale 7, we find Mr. Lorms' sales price of \$35 dollars per square foot to be reasonable based on the remaining most comparable sales, comparable sales 5 and 6. Therefore, we find that Mr. Lorms' sales comparison approach is still a valid indicator of value. The value derived using the sales comparison approach is also supported by the value and determined by Mr. Lorms' income approach.

Based on the discussion set forth above, the board finds Mr. Hoffman's appraisal to be unreliable. Therefore, we give it no weight.

Based upon the foregoing, the board finds the existing record supports the valuation as advocated by Lowes. Consequently, the Board of Tax Appeals finds the value of the subject property as of January 1, 2005 to be as follows:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
053-22401.00		
Land	\$1,287,690	\$ 450,690
Building	<u>\$3,598,540</u>	<u>\$1,259,490</u>
Total	\$4,886,230	\$1,710,180

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
053-22402.00		
Land	\$ 13,770	\$ 4,820
Building	<u>\$ -0-</u>	<u>\$ -0-</u>
Total	\$ 13,770	\$ 4,820

Accordingly, it is the order of the Board of Tax Appeals that the Auditor of Fairfield County list and assess the subject property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

ohiosearchkeybta

OHIO BOARD OF TAX APPEALS

Board of Education of the)
Columbus City Schools,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision, the)
Franklin County Auditor, and)
Target Corporation,)
)
Appellees.)

CASE NO. 2005-V-211

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

- For Appellant - Rich Crites & Dittmer, LLC
BOE Mark H. Gillis
300 East Broad Street
Suite 300
Columbus, OH 43215

- For the County - Ron O'Brien
Appellees Franklin County Prosecuting Attorney
Paul M. Stickel
Assistant Prosecuting Attorney
373 South High Street
20th Floor
Columbus, OH 43215

- For the Appellee - Siegel, Siegel, Johnson
Target Corporation & Jennings Co., LPA
Nicholas M.J. Ray
3001 Bethel Road
Suite 208
Columbus, OH 43220

Entered July 28, 2006

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the Board of Education of the Columbus City School District (“BOE”) from a decision of the Franklin County Board of Revision (“BOR”).

For tax year 2002 the Franklin County Auditor (“auditor”) valued the subject property as follows:

Parcel 010-219083	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,831,600	\$ 641,060
BLDG	\$5,938,400	\$2,078,440
TOTAL	\$7,770,000	\$2,719,500

After considering a complaint filed by the appellee property owner Target Corporation (“Target”), the BOR determined the true and taxable values of the subject property should be reduced as follows:

Parcel 010-219083	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,831,600	\$ 641,060
BLDG	\$2,868,400	\$1,003,940
TOTAL	\$4,700,000	\$1,645,000

On appeal the BOE requests that the subject property’s total true valuation be increased back to the original valuation of \$7,770,000. We now consider this matter upon the notice of appeal, the statutory transcript (“S.T.”) certified by the auditor, and the evidence presented at this board’s evidentiary hearing (“H.R.”).

The subject property is located in Franklin County, Ohio and is identified on the auditor’s records as parcel number 010-219083. The subject property is improved with a 134,106-square-foot retail facility constructed in 1991 and is located on 13.898 acres of land. S.T., Ex. 7.

Before the BOR, Target presented the appraisal report and testimony of Mr. Robin Lorms, MAI. S.T. Ex. 8.

Before this board, all parties to the instant appeal waived their

opportunity to present evidence concerning the valuation of the subject.

We begin our review of the evidence 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 its 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 the board of revision to come forward and offer evidence that demonstrates its 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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v.*

Strongsville (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13. We proceed by examining the evidence of the subject's true value as presented by the parties.

When determining value, the Ohio Supreme Court has long held that "the best evidence of 'true value in money' of real property is an actual, recent sale of the 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. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Because the parties have elected to waive hearing before this board, it is particularly important for this board to review the existing record consistent with the Supreme Court's decision in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11:

"The requirements of R.C. 5717.05, as interpreted by *Cleveland [v. Bd. of Revision]* (1953), 96 Ohio App. 483], establish that the common pleas court has a duty on appeal to independently weigh and evaluate the evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court's review of the evidence should be thorough

and comprehensive, and should ensure that its formal determination is more than a mere rubber stamping of the board of revision's determination. ***." Id. at 13-14.

See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, 1996-Ohio-432 ("We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.").

In support of its contention of value, Target offered the testimony and written appraisal report of Mr. Lorms before the BOR. Mr. Lorms developed two approaches to value, the income and sales comparison approaches, to arrive at an opinion of value for the subject property. Counsel for the BOE declined to cross-examine Mr. Lorms. S.T., Ex. 12.

Mr. Lorms's appraisal report was prepared with an "as of" date of January 1, 2002. H.R., Ex. 8. Mr. Lorms ultimately arrived at an opinion of value of \$4,700,000 for the subject property. Id.

Mr. Lorms conducted a sales comparison approach, in which he identified ten comparable big-box retail buildings. Seven of the comparables reported actual sales that occurred between May 1998 and April 2004. Three of the comparables were characterized as "in contract," and one of the comparables was listed as "available." S.T., Ex. 8 at 62-63. The unadjusted price per square foot of the ten comparables ranged from \$19.52 to \$51.92. After considering differences based

upon physical characteristics, location, and age, Mr. Lorms opined that the applicable value of the subject property is \$35.00 per square foot, or \$4,700,000 for the subject property. *Id.* at 66.

In his income approach, Mr. Lorms developed a pro forma market analysis of the subject property's projected income and expenses, which were capitalized to arrive at an opinion of value. Mr. Lorms began by considering the rental rates of eight comparable retail stores, which provided a range of unadjusted rental rates from \$2.57 per square foot to \$4.55 per square foot. After considering the differences between the comparable rental properties and the subject, Mr. Lorms concluded to a market rental rate of \$4.00 per square foot for the subject. *Id.* at 72.

Mr. Lorms then made adjustments for expense reimbursements (\$1.73) per square foot, vacancy and collection losses (-10%), management fees (-3%), general and administrative expenses (\$.10) per square foot, and replacements for reserves (\$.15) per square foot. After making said deductions, Mr. Lorms arrived at a projected annual net operating income of \$405,242 for the subject. *Id.* at 75.

In selecting a capitalization rate, Mr. Lorms derived rates based upon the band-of-investment method, published surveys, and from interviews of market participants. *Id.* at 76-78. Mr. Lorms concluded to a rate of 10%.

After applying the capitalization rate to the projected net operating income, Mr. Lorms arrived at a value of \$4,100,000 (rounded) for the subject under his income approach. *Id.* at 78.

In his final analysis, Mr. Lorms stated that he relied most upon the

valuation conclusion in his sales comparison approach, reasoning that the income approach was less reliable because of the lack of second-generation leases to singular tenants. Mr. Lorms reconciled his opinion of value at \$4,700,000 based upon the adequate number of sales found in his sales comparison approach. *Id.* at 79.

In his testimony before the BOR, Mr. Lorms testified to the build-up associated with the subject's immediate marketplace, the Brice Road corridor. Mr. Lorms further detailed the competition that has surfaced from nearby competitive developments that are closer to the consumers who formerly frequented the retail establishments in the Brice Road corridor. Mr. Lorms explained that said marketplace influences guided his opinion when making adjustments to comparable sales, rental rates, and the like. S.T., Ex. 12.

We are persuaded by Mr. Lorms's analysis, abundance of comparable sales, and his focus upon the economic conditions which affected the subject as well as its immediate market in 2002.

The Board of Tax Appeals is given great discretion in what weight to give the evidence presented before it. *Cardinal Fed. S. & L. Assn.*, *supra*. The board may accept or reject any and all evidence presented. Therefore, for the above-mentioned reasons, this board finds that the opinion of Mr. Lorms constitutes competent and probative evidence of value.

Therefore, we hold that Target has met its burden of demonstrating the subject property's fair market value as of tax lien date before the BOR. We further find that the BOE failed to respond with any evidence of value, nor did it attempt to

refute Target's. Therefore, we find the value of the subject as of January 1, 2002 to be:

Parcel 010-219083	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$1,831,600	\$ 641,060
BLDG	\$2,868,400	\$1,003,940
TOTAL	\$4,700,000	\$1,645,000

It is the decision and order of the Board of Tax Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this decision. It is further ordered that this value be carried forward in accordance to law.

ohiosearchkeybta

OHIO BOARD OF TAX APPEALS

Meijer Stores Limited Partnership,)
)
 Appellant,) CASE NO. 2003-A-2160
)
 vs.) (REAL PROPERTY TAX)
)
 Montgomery County Board of Revision,) DECISION AND ORDER
)
 Montgomery County Auditor, and the)
)
 Northmont City Schools Board of)
)
 Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co., LPA
Annrita S. Johnson
3001 Bethel Road, Suite 208
Columbus, Ohio 43220

For the County Appellees - Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
Douglas Trout
Assistant Prosecuting Attorney
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422

For the Appellee Bd. of Edn. - Rich, Crites & Dittmer, LLC
James R. Gorry
300 East Broad Street, Suite 300
Columbus, Ohio 43215

Entered October 14, 2005

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a decision of the Montgomery County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2002.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript provided to this board by the county board of revision, the record of the hearing before this board, and the briefs submitted by counsel to the appellant and counsel to the board of education.

The subject real property consists of one parcel measuring approximately 42 acres. Located thereon are two buildings, a discount department store/supermarket and associated service station. The property, built in 1991, is located in the city of Englewood taxing district and is identified in the auditor's records as parcel number M57-8-21-1. The real property tax values for the subject, as determined by the auditor and retained by the board of revision, are as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 3,107,690	\$1,087,690
Bldg	6,694,210	2,342,970
Total	\$9,801,900	\$3,430,660

Appellant contends that the auditor and the board of revision have overvalued the parcel in question and claims that the total true value of the subject property is \$7,800,000, based upon an appraisal of the subject.

A review of the statutory transcript indicates this appeal originated at the board of revision with the property owner, Meijer Stores Limited Partnership

("Meijer"), filing an original complaint with the Montgomery County Board of Revision. Meijer sought to decrease the subject's value to \$8,400,000, based upon an owner's opinion of value which included an income approach to value and a sales comparison approach to value. The Northmont City Schools Board of Education filed a counter complaint. The board of revision went on to retain the auditor's valuation of the subject for tax year 2002.

In making our determination herein, we initially note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

Further, when determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the 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. Absent a recent sale, as in the instant case, true value in money can be calculated by applying any of three alternative methods provided for in OAC 5703-25-07: 1) the market data approach, which compares recent sales of

comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Before this board, Meijer offered the appraisal and testimony of Robin M. Lorms, MAI, CRE, a state-certified general real estate appraiser. He described the subject as a freestanding service station behind which is located a discount store/supermarket, containing “a total of 194,707 square feet.” H.R. at 14. He indicated that the subject building was in average condition and “well laid out in terms of its functionality.” H.R. at 14. He also indicated that there was additional land along the subject’s frontage and another out parcel (which sold after tax lien date), as well.

Mr. Lorms, in discussing the subject’s market/neighborhood, indicated that in “the immediate vicinity of the subject, land uses primarily include a mix of retail and residential.” Ex. 1 at 15. Further, “[d]uring the last five years, the area has remained stable with minimal development activity.” Ex. 1 at 17. He stated that “expected growth should provide an economic base that supports demand for real estate in the subject neighborhood and for the subject property.” Ex. 1 at 13.

In valuing the subject, Mr. Lorms indicated that an overriding consideration for him in his analysis was the fact that the supply of big box retail space is growing (due to the bankruptcies of some big box retailers and the abandonment of existing big box space for even larger spaces), yet its absorption has been very slow. He said, “there’s a supply – an ever increasing supply of big box space not unique to Columbus or Ohio but around the country because of these

trends. *** [T]here's a demand for big box space, but the majority of all those users have prototypical stores that they build for their own use, their own occupancy, with specific floor plans and merchandising strategies that accommodate their business. So the demand side is good for big box, but they build and operate their own facilities." H.R. at 16-26. Accordingly, his approach to the instant appraisal problem takes this occurrence in the market into consideration.

As we begin our review of Mr. Lorms' appraisal, we start with his analysis of the subject's highest and best use. He indicated that considering the site as vacant, "retail use is the maximally productive use of the property." Ex. 1 at 35. Further, considering the site, as improved, Mr. Lorms indicated that "continued discount storeroom use is maximally productive as improved and therefore the highest and best use of the site as improved." Ex. 1 at 36.

Specifically, in considering the valuation of the subject, Mr. Lorms completed a land value analysis as well as a cost approach when valuing the service station and out parcel located on the parcel, and a sales comparison approach and an income approach when valuing the main store facility. First, Mr. Lorms began his valuation analysis by determining a value for the service station and out parcel, separate and apart from the remainder of the parcel. In valuing the service station/out parcel, he compared it to four sales of commercial property between April 1999 and August 2004, including the sale of the subject out parcel by Meijer in August 2004. Based upon such sales, he developed an unadjusted range of \$345,978 to \$380,811 per acre. Based upon the most recent sale, i.e., the sale of the

subject out parcel, Mr. Lorms concluded to a final unit value of \$370,000 per acre for the subject, or \$624,000 (rounded) for the vacant land and \$300,000 (rounded) for the service station site. Ex. 1 at 41-43.

Next, the replacement cost new of the service station's improvements was estimated using Marshall Valuation Service, which included all of the applicable direct costs and some of the indirect costs. Mr. Lorms utilized the "convenience store" category to estimate the service station's cost estimate. Specifically, Mr. Lorms concluded to a replacement cost estimate of \$176,191, from which he made a deduction for age/life depreciation of \$74,592, which resulted in a depreciated replacement cost of \$101,599. To that figure, he added the previously derived land value of \$300,000, to arrive at final value for the service station, via the cost approach, of \$400,000 (rounded). Ex. 1 at 44-47.

Using the sales comparison approach, Mr. Lorms analyzed four sales and two offerings of properties on a price per square foot of gross leasable area basis. The comparable properties sold between March 2001 and April 2004. The sales/offering comparables ranged in price from \$34.86 per square foot to \$43.69 per square foot, unadjusted, and in building size from 80,714 square feet to 186,480 square feet of gross leasable area. Mr. Lorms adjusted the sales for differences, if any, from the subject, including size, location and other retail influences. Ex. 1 at 49-51. After making such adjustments, Mr. Lorms concluded to an adjusted value of \$35 per square foot, or \$6,814,745, for the main building. To that value, he added \$400,000 for the service station (based upon a depreciated replacement cost)

and \$624,000 for the vacant land for a total value, via the sales comparison approach, of \$7,800,000 (rounded). Ex. 1 at 51.

Finally, in completing an income approach, Mr. Lorms first estimated market rent by analyzing eight comparable rentals, specifically focusing on discount department stores that have been developed and vacated by the owner-occupant or leased fee occupant and later re-leased to a second generation tenant. The eight comparables indicated a market rental range of \$3.00 to \$5.50 per square foot. Giving the rental rates of the comparables that listed between \$4.00 and \$4.55 per square foot more weight, Mr. Lorms determined that a rental rate of \$4.50 per square foot, or \$876,182, would be most appropriate. To that figure, he added \$339,313 for expense reimbursement income, to arrive at a potential gross income of \$1,215,495. Vacancy and credit loss of 10% was deducted and an effective gross income of \$1,093,945 resulted. From that amount, Mr. Lorms deducted total expenses, including replacement reserves, of \$420,808 based upon an analysis of historic expenses at comparable properties, which rendered a net operating income of \$673,137. The NOI was capitalized at 10%, based upon investor surveys, personal interviews of investors, and the band of investment method, for a final value indication of \$6,731,369. After adding the value of the service station (\$400,000) and the vacant land (\$624,000), Mr. Lorms concluded to an overall value for the subject, via the income approach, of \$7,800,000 (rounded). Ex. 1 at 57-63.

In reconciling the foregoing value conclusions, Mr. Lorms indicated that the sales comparison approach was given the greatest weight, with the income approach considered to be supportive of the sales approach value. Accordingly, Mr. Lorms' final value for the subject property was \$7,800,000. Ex. 1 at 64-65.

Neither the county (which did not appear at the hearing) nor the board of education offered any evidence of the value of the subject. The board of education chose to primarily rely upon its cross-examination of appellant's witness to establish that the appraisal appellant offered did not constitute competent, probative, and credible evidence of value of the subject.

In reviewing the evidence before us, we first note that where parties rely upon appraisers' opinions of value, this board may accept all, part, or none of those appraisers' opinions. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609. Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

At the outset, the BOE criticizes Mr. Lorms' overall approach to the instant appraisal problem by claiming that he is unable to prove the truth of his underlying theory, i.e., that there is no demand in the market for first generation big box properties from first generation users. The BOE contends that Mr. Lorms' claim

that no other first generation user would be interested in purchasing or leasing the subject property is simply unsupported opinion. We have recently considered these same contentions in *Meijer Stores Limited Partnership v. Wood Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-A-1204, unreported. In the instant matter, as in *Meijer*, supra, we disagree and believe that Mr. Lorms' report is sufficiently supported with evidence from the market to confirm the theories contained therein. Mr. Lorms' research did not uncover any sales between first generation users, e.g., Meijer, Wal-Mart, Lowe's, Target. The BOE speculates as to the reasons why there are no sales between first generation users, but we find those reasons are somewhat irrelevant to the appraisal problem herein. Whether it is because first generation users prefer to build to suit their specific needs when opening a store or it is related to concerns over allowing competitors to occupy space previously owned by them, in recent years, first generation users appear to rarely purchase and/or rent other previously owned first generation locations. The bottom line is that no sales or leases between first generation users have been offered into evidence to rebut Mr. Lorms' position. As demonstrated by Mr. Lorms' survey of the market and sales/leases, and the lack of evidence to the contrary, there are no sales or leases between first generation users, which establishes, for purposes of the instant appraisal problem, that second generation users are the most viable potential buyers/renters of big box space.

Looking at Mr. Lorms' appraisal, we will first consider his sales approach, as that is the analysis upon which he placed the greatest weight in arriving at his final conclusion of value. First, the BOE argues that the sales comparables that

Mr. Lorms utilized are abandoned and vacant properties which are not truly comparable to the subject. We disagree. Just because the sales comparables are vacant and/or abandoned does not render them inapplicable to the analysis of the subject. All of the comparables are considered similar, big box properties, warehouse department stores, built within five years of the subject. Mr. Lorms clearly stated that he adjusted the sales for differences and, arguably, he compensated for any differences between the properties.

The BOE also contends that the presence of deed restrictions in the sales of big boxes prevents these sales from being used as comparable sales. We would agree that even though, arguably, a deed-restricted sale could be reflective of the market, it would not be considered the best evidence of value. See, e.g., *Muirfield Assn. Inc. v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio St.3d 710; *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16; *National City Bank of Cleveland v. Cuyahoga Cty. Bd. of Revision* (Oct. 29, 2004), BTA No. 2003-R-453, unreported; *Jefferson Savings Assoc. v. Madison Cty. Bd. of Revision* (Dec. 28, 2001), BTA No. 2000-E-1332, unreported; *Bd. of Edn. of the Columbus city School Dist. v. Franklin Cty. Bd. of Revision* (June 30, 2003), BTA Nos. 2002-A-2014, et seq., unreported; *Society Bank v. Franklin Cty. Bd. of Revision* (Nov. 24, 2000), BTA No. 1999-M-204, unreported, remanded on appeal to the Ohio Supreme Court, Sup. Ct. No. 00-2237, on Feb. 20, 2001. However, while Mr. Lorms acknowledged that it would not be unusual for the sales of big box properties to include deed restrictions, he indicated that, to his knowledge, only the Wal-Mart sale, i.e., sale #2, involved deed

restrictions. H.R. at 73-74, 100, 126. Thus, we will disregard sale #2 in our review of Mr. Lorms' sales comparison approach. In addition, we will disregard the offerings listed in the sales comparison approach, as an offering is not sufficient to establish market prices since the sale was not consummated. See *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397. Accordingly, we are left with three comparable sales to be considered.

Further, we note that by acknowledging that some big boxes are sold with such deed restrictions, Mr. Lorms' theory that the big boxes are only being sold or leased to second generation users is factually bolstered, i.e., we already have well-supported testimony in the record that first generation users are generally not interested in purchasing or leasing big box properties anyway, as their business plans/needs require that they build their own stores to suit their specific requirements and, in addition, now, in some instances, due to deed restrictions, second generation users are the only viable buyers/lessees in the big box market.

Finally, we do not agree with the BOE's further contention that Mr. Lorms has artificially limited the market for the subject property by excluding, for example, Meijer, and other first generation users from consideration. Mr. Lorms credibly testified that generally, big box properties are not sold or leased to first generation users and provided evidence to support that position. If the BOE believes that there is evidence in the market to the contrary, it needs to come forward with it and substantiate its position. Thus, Mr. Lorms has provided us with three sales of big box-type properties within fifteen months of the tax lien date under consideration. He

made adjustments to the sales to bring them in line with the characteristics of the subject, and, as such, we find Mr. Lorms' sales approach reasonably reflects the value of the subject property as of tax lien date.

As we consider the other approaches to value utilized by Mr. Lorms, we first find that his income approach provides competent support for the sales approach. There is nothing in the record to refute the rent¹/expense comparables and capitalization rate that were employed in the analysis.

The BOE also asserts that several earlier cases have established the applicable principles which govern the instant case and demonstrate that we have previously rejected the specific theory now put forth by Mr. Lorms. See *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181; *Lefkowitz v. Wayne Cty. Bd. of Revision* (Feb. 2, 2001), BTA No. 1998-L-688, unreported, value stipulated upon remand of appeal (2001), 91 Ohio St.3d 1516; *Forest Park City v. Hamilton Cty. Bd. of Revision* (June 20, 2003), BTA No. 2003-V-76, unreported, appeal dismissed (2003), 100 Ohio St.3d 1427, 2003-Ohio-5370. We disagree. At issue in *Meijer* was the value, for tax year 1992, of what virtually was a brand new store, constructed in 1991. Herein, we are considering the value of a store that was built in 1991 for tax year 2002. Further, market conditions have changed with each succeeding tax year after 1992, as the phenomenon of build-to-suit big box properties has become more prevalent in the market. While this board found that the cost approach was the best appraisal methodology to utilize in valuing the brand new property in *Meijer*, for the

¹ Asking rents, not unlike asking sale prices, are not necessarily considered market rents, so we have focused our review of Mr. Lorms' income approach on the seven actual lease rates listed.

reasons stated by Mr. Lorms in his appraisal, the cost approach is not the best or most reliable method herein. Further, in this case, Mr. Lorms, unlike the appraiser in the prior *Meijer* case, was able to identify the outside forces that support a finding of functional and external obsolescence. Further, as we stated in *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported:

“We find *Lefkowitz* to be inapposite. In that case, we did indeed reject the appraisal evidence offered by the property owner. However, we did so by finding the background material relied upon by the appraiser to be unpersuasive. Among our findings, we concluded that many of the comparable sales and properties used to develop market rents used in *Lefkowitz* were not sufficiently comparable to the property at issue. While we did determine that the appraiser had failed to accurately estimate “the potential of the subject property and its market,” we neither addressed nor expressly rejected the theory now advanced by Wal-Mart. [Meijer] In *Forest Park*, we again criticized the appraisal evidence, finding that the underlying data used to develop an opinion of value did not adequately compare to the property in issue. We also found specific flaws in the method employed in developing the appraiser’s approaches to value. As in *Lefkowitz*, *Forest Park* did not expressly address the theory that the market of big-box property would be limited to second and third generation users.” *Id.* at 11.

Thus, upon review of appellant’s appraisal report, we find that the appellant has offered sufficient, probative evidence of the subject’s value. Accordingly, based upon the preponderance of evidence currently before this board,

we have determined the value² of the subject property, as of January 1, 2002, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$2,496,000	\$ 873,600
Bldg	5,304,000	1,856,400
Total	\$7,800,000	\$2,730,000

It is the decision and order of the Board of Tax Appeals that the Montgomery County Auditor shall list and assess the subject property in conformity with this decision.

ohiosearchkeybta

² The subject land and building values have been assigned in the same proportion as that which the auditor utilized in the subject's initial valuation.

OHIO BOARD OF TAX APPEALS

Agree Limited Partnership,)	
	)	CASE NO. 2003-T-1205
Appellant,)	
	)	(REAL PROPERTY TAX)
vs.)	
	)	DECISION AND ORDER
Wood County Board of Revision)	
and Wood County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant - Siegel, Siegel, Johnson & Jennings Co., L.P.A.
Jay P. Siegel
25700 Science Park Drive
Suite 210
Cleveland, Ohio 44122

For the Appellees - Rich, Crites & Dittmer, L.L.C.
James R. Gorry
300 East Broad Street
Suite 300
Columbus, Ohio 43215-3704

Entered September 23, 2005

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Agree Limited Partnership. Agree appeals from a decision of the Wood County Board of Revision, in which the BOR found the true value of certain real property to be \$5,273,300 for tax year 2002. Agree claims that the correct true value should be \$3,300,000.

The subject property is listed in the Wood County Auditor's records as permanent parcel number Q61-400-090109004000 and is located in the city of Perrysburg taxing district. The subject consists of approximately 11.52 acres of land.

The land is improved with a one-story building of steel and concrete block construction. The 94,106 square foot building was erected in 1983 and is used as a retail discount storeroom. Other site improvements include a parking area, with lighting. All improvements are considered to be average in condition.

In support of its contention of value, Agree relies upon the testimony and written appraisal report of Mr. Robin L. Lorms, an Ohio-certified general appraiser and a member of the Appraisal Institute. Mr. Lorms utilized two of the three of the traditional approaches to value: (1) the market data approach (also known as the sales comparison approach), and (2) the income approach. See, generally, Ohio Adm. Code 5703-25-07. Mr. Lorms chose not to use the cost approach because the age of the improvements, over nineteen years as of tax lien date, made the application of the approach too speculative. Appellant's Ex. 1 at 30; H.R. at 29.

In applying the two approaches, however, Mr. Lorms testified that an important element of his analysis was the fact that the subject represented what is commonly known as a "big-box" retail store. Retailers who utilize the big-box concept construct single use properties that have a large footprint. H.R. at 21.

Mr. Lorms indicated that the supply of big-box retail space is growing; however, the market demand for such properties is limited. H.R. at 25. Mr. Lorms indicated that a recent string of bankruptcies by some big-box users has placed several big-box properties on the market. H.R. at 23. At the same time, as marketing strategies shift, current users may leave one property for another. As an example, Mr. Lorms testified that Wal-Mart is in the process of developing stores known as "super centers." These properties combine both retail and grocery operations in one building.

As it does so, Wal-Mart vacates smaller properties, placing them on the market for sale or lease. H.R. at 22.

In contrast to the growth in available big-box space, represents Mr. Lorms, the demand for this type of space in the market by potential purchasers is limited. H.R. at 25. Mr. Lorms indicated that other retailers capable of operating on such a large scale are typically not interested in someone else's property because of differences in merchandizing plans. H.R. at 24. "National retailers *** thrive on efficiency knowing that their stores are of identical dimensions for purposes of store design, product placement and restocking. Costs to retrofit existing big-boxes to accommodate these user's [sic] store design is too high for financial feasibility ***." Appellant's Ex. 1 at 19.

Mr. Lorms noted that the result of the big-box phenomenon is that demand for existing space is limited to "2nd and 3rd generation users." Appellant's Ex. 1 at 19. These users are typically specialty type retailers, whose product demand is not large enough to support a building of the size in question. As a result, "[r]etailers interested in occupying the former [big-box] space are not interested in paying a rental rate based on the replacement costs because the store format does not meet their needs and the costs to conform to their own prototype are too high." Id. at 20. The result, Mr. Lorms testified, is that big-box properties tend to have an extended marketing period before they sell or rent and, because demand for such space is limited, they tend to sell for less or rent at a lower rate than would be supported by the cost of developing a similar property. H.R. at 23-24 and 28.

In addition, Mr. Lorms testified that the subject suffers from further obsolescence in that it is located on a side street and thus away from the main area where a significant amount of retail space is located. He also noted that another retail building sits between the subject and the main thoroughfare. Mr. Lorms stated that he took this situation into account when applying his approaches to value. H.R. at 28.

Mr. Lorms describes the subject as being in what he calls a "1st tier market," i.e., one that is considered a major metropolitan area with a total population in excess of 200,000. Appellant's Ex. at 30.

The sales comparison approach, often referred to as the market data approach, derives an estimate of value by comparing the subject property to the sale prices of similar properties. The sale prices of properties considered to be most comparable generally establish a range in which the value of the subject will fall. The Appraisal of Real Estate (12th Ed., 2001), at 417; Ohio Adm. Code 5703-25-05(G). Mr. Lorms analyzed sales of six properties that he found similar to the subject. He also reviewed two other properties that are currently listed for sale in the market. The sales occurred between November 1999 and November 2004 and ranged in price from a low of \$27.64 per square foot to a high of \$43.69 per square foot. Those properties listed were offered at a price between \$34.86 and \$34.92 per square foot.

Mr. Lorms placed no weight upon the highest sale, finding that the \$43.69 per square foot price was a reflection of a superior property "along a more in-filled commercial artery where development opportunities are limited." Appellant's Ex. 1 at 36; H.R. at 31. Mr. Lorms also gave no weight to the lowest sale because he found it to be inferior to the subject in all respects. H.R. at 35. This left four sales and

two listings, each indicating an average price per square foot of \$35.19. Noting that the sales “are both superior and inferior to the subject, based on location, size and quality,” Mr. Lorms applied the rounded average price of \$35.00 per square foot to the subject property. Applying this information, he determined a total value under the market data approach of \$3,300,000.

In employing the income approach, Mr. Lorms found value under the direct capitalization method. Direct capitalization converts a single year’s income expectancy into a value by estimating a net income for the property and dividing it by a market-derived income factor, known as an “overall capitalization rate.” The Appraisal of Real Estate, at 529.

To arrive at income expectancy, an appraiser reviews the subject property’s historical income and expenses. These are then combined with an analysis of typical income and expense levels found for comparable properties. The Appraisal of Real Estate, at 493. Mr. Lorms testified, however, that he was not familiar with the subject’s lease terms. H.R. at 62. To determine an income, Mr. Lorms estimated a market rent for the subject by surveying rental rates being asked at four properties, which he considered to be comparable to the subject. Each of these available properties had been developed as a discount storeroom, which had been vacated by the owner-occupant. The four comparables indicated a market rental range between \$3.50 to \$4.50 per square foot. Mr. Lorms also looked at three actual leases, which yielded lease rates between \$3.00 and 4.06 per square foot. Mr. Lorms gave primary weight to comparable numbers 1, 2, and 3. Based upon this, he determined that a market rental rate for the subject would be \$4.00 per square foot. To this figure, he added expense

reimbursement income of \$1.81 per square foot to arrive at a potential gross income for the subject of \$546,756. A ten percent vacancy and credit loss was deducted to arrive at an effective gross income of \$492,080. From this amount, expenses were deducted to arrive at a net operating income for the subject of \$203,916. Income was capitalized at 10.5%. The overall capitalization rate was derived from investor surveys and the band of investment method. When applied to the net operating income, this equated to a value under the income approach of \$2,750,000.

In reconciling his approaches to value, Mr. Lorms placed greatest weight upon the sales comparison approach. Mr. Lorms also placed weight upon the income approach, as he concluded that an investor would be the likely purchaser of the subject property. Thus, he found the income approach to be a “supporting consideration” to his sales comparison approach. Appellant’s Ex. at 45. Accordingly, Mr. Lorms opined a final true value for the subject property of \$3,300,000 for tax year 2002.

The county appellees did not offer any additional evidence of value in response to Agree’s appraisal evidence. Rather, the county chose to rely primarily upon its cross-examination of Agree’s witness to establish that the appraisal report and related testimony do not constitute competent and probative evidence of value.

We begin our review of this matter by noting that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its right to the value asserted. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564; *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 that demonstrates its 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.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Initially, the county argues that the appraisal evidence is unreliable because Mr. Lorms' theory that first generation big-box retail properties would sell to or be leased by second and third generation users is unsupported opinion. We have previously considered, in detail, the arguments raised by the county. In *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported, we held:

“Next, the county argues that, by eliminating other first generation users such as Target, Meijer, and Lowe’s from the pool of potential buyers of a property like the subject, Mr. Lorms has been able to lower both the subject’s potential gross income and its potential sale price. The county asserts that this is nothing more than unsupported opinion used to artificially lower the value of the subject. We disagree.

“Mr. Lorms testified that his research did not disclose any sales between first generation users. In addition, he testified that discussions with several first generation users suggested that such a user would not be interested in an existing big-box property. Finally, Mr. Lorms gave specific examples of this phenomenon, including the case where one retailer had a recently completed big-box storeroom razed because the building, developed by a competitor, did not meet its marketing strategy. We find Mr. Lorms’ evidence to be competent and well corroborated.

“The county may speculate as to the reasons why there are no sales between first generation users. However, these conjectures are without substance. Ultimately, we cannot ignore the fact that the county has not offered into evidence any sale or lease between first generation users that would either impeach Mr. Lorms’ testimony or rebut the evidence presented by Wal-Mart.” (Footnote omitted.)
Id. at 12.

See, also, *Meijer Stores L.P. v. Wood Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-A-1204, unreported.

Mr. Lorms has provided similar testimony and evidence in this matter, and we find them to be persuasive. Issues of oversupply in a market that has limited investors are proper issues to be weighed and, if found probative, considered. See, e.g., *The Appraisal of Real Estate*, at 472 (“*** if the demand for space is less than the existing supply, rents may decline and vacancy rates may increase.”). The county has

provided no evidence to rebut the evidence presented by Agree. Thus, in the absence of evidence to the contrary, we must agree that Mr. Lorms' survey of market sales and leases indicates that second and third generation users are the most likely potential users of big-box space.¹ *Wal-Mart*, supra.

Turning specifically to Agree's appraisal evidence, we note that the market data approach was the one most heavily relied upon by Mr. Lorms in reaching his final opinion of value. The county argues that the sales used by Mr. Lorms are abandoned and vacant properties, which should not be considered comparable to the subject. We disagree. The vacant condition of a property does not, in and of itself, render it unrepresentative in determining the value of the subject property. The comparables used are all considered to be big-box properties that are similar to the subject.

We do concur with the county that two of the comparables relied upon by Mr. Lorms were not actual sales. They are properties that are currently listed for sale. We do not find these listings to be persuasive evidence of value. *Wal-Mart*, supra. Cf. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397, at 400. In addition, sales 5 and 6 involved situations in which the buyer received a lease buyout after the sale. In each of these cases, Mr. Lorms subtracted from the sale price the amount of the lease buy-out. Property encumbered by a lease is a sale of rights other than the fee simple. *The Appraisal of Real Estate*, at 420. The ability to clearly

¹ The county also argues that lease and deed restrictions placed on big-box properties owned by entities like Wal-Mart may also create problems with later sales and leases. However, while discussed at hearing, the county has presented no information, such as a specific example of such a restriction, concerning this issue. We therefore decline to address the supposition raised thereby.

separate the value of the physical assets from such a transaction involves a thorough knowledge of the terms of the lease and of the tenant. *Id.* at 420. Particular economic situations that have little to do with the value of the leasehold interest may influence the amount a tenant is willing to pay and the amount a landlord is willing to accept. Moreover, “[e]ven when the components of value can be allocated, it must be understood that because of the complexity of the mix of factors involved, the sale may be less reliable as an indicator of the subject’s real property value.” *Id.* at 420. Here, Mr. Lorms has not offered sufficient evidence to corroborate his conclusion that the lease buy-out should be subtracted, dollar for dollar, from the purchase price.

Nevertheless, even after removing the listings and the lease buy-out transactions from consideration, Mr. Lorms’ value under the market data approach falls within the range of values suggested by the remaining actual sales. Upon review of those sales, we find Mr. Lorms’ market data approach to be reliable. The sales utilized to determine value were all located in markets similar to the subject’s and appear to be sufficiently comparable.² Mr. Lorms’ adjustments to account for differences in age, location, and condition appear to be reasonable and are supported by his testimony and the remainder of the record. While the county has criticized some of the sales utilized by Mr. Lorms, it has offered no specific evidence to rebut the reliability of the data. See *Parmalat Bakery Group v. Ashland Cty. Bd. of Revision* (Aug. 12, 2005), BTA No. 2004-M-792, unreported, at 9 (holding that “it is common

² Mr. Lorms did admit that many of the sales are from second tier areas. However, he stated that the particular local markets he used are so strong that they may be considered comparable to a first tier area. *H.R.* at 37-39. The county has offered no evidence to rebut this testimony.

practice for an appraiser who is struggling to find comparable sales to widen his search to adjoining neighborhoods, cities, counties, and at time, states, to assist in arriving at an opinion of value.”).

We place minimal weight on the income approach to value. In developing his income approach, Mr. Lorms mainly relied upon asking rental rates rather than actual rentals. While we agree that the income approach seeks to consider the anticipated future benefits generated by a property and to estimate their present value, see *The Appraisal of Real Estate*, at 471, the use of asking rents is more speculative than probative. See *Wal-Mart*, supra.

As to the three actual rentals, we do not find rental number 6 to be comparable to the subject property. Its size and location are significantly different from that experienced by the subject. The other two rentals appear to be comparable in terms of size but are for properties that are significantly newer than the subject. Finally, we find the reliability of the income approach to be limited, given Mr. Lorms’ admission that he is unfamiliar with the details of the subject’s lease agreement. Upon review, we find that Mr. Lorms’ income approach lends support to his market data analysis by verifying a range of value for the subject property. However, we do not find it to be persuasive of value on its own.

Upon review of all of Agree’s appraisal evidence, we find that the most reliable evidence is presented by the market data approach. We conclude that Agree has satisfied its burden of persuasion and has come forward with competent and probative evidence that the value for the subject property was \$3,300,000 for tax year 2002. *Cincinnati*, supra.

Where we determine that an appellant has come forward with competent and probative evidence of value, the appellees have a corresponding burden to present evidence that this board must review to determine whether it is competent and probative in rebutting the appellant's evidence. *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, 70; *Springfield and Mentor Exempted*, supra. Failure of an appellee to present rebuttal evidence may, upon our finding that the appellant has presented credible and probative evidence, result in our adoption of the appellant's evidence as the subject property's true value. *Mentor Exempted*, supra. See, also, *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision*, Summit Cty. App. No. 22238, 2005-Ohio-1951 ("By not presenting any evidence, the BOR and county auditor do risk that the court will find the appellant's evidence competent and probative, and therefore, determinative of value.").

As we have previously stated, the county appellees have elected not to provide us with any additional evidence of value. Moreover, our review of the transcript certified to this board by the county auditor discloses no other evidence upon which we may base an opinion of value.

As a final matter, however, the county argues that the case of *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181, establishes that the cost approach is the only valid approach that can be used to determine the subject's true value. As Mr. Lorms did not use the cost approach, the county argues, we must ignore Agree's remaining evidence of value and affirm the value found by the BOR.

In *Wal-Mart*, supra, we considered – and rejected- this same argument:

"*Meijer* considered the valuation of a discount storeroom that was constructed less than one year prior to tax lien date. In that case, the cost approach was indeed found to be the best evidence of that property's value. Here, we are dealing with an older property. Moreover, market conditions have changed, and the development of build-to-suit big-box properties has become prevalent in the market. Along with this increase in the number of properties has come the difficulty in reabsorbing such properties back into the market as the first generation users move on.

"Moreover, the county's position runs counter to the well-established principles that (a) this board is vested with wide discretion in determining the weight to be given to the evidence that comes before it, (b) this board may accept all, part, or none of the evidence presented, and (c) this board is not required to adopt the valuation fixed by any expert or witness. *Cardina*, supra, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, and *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. In *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, the court determined that to require this board to adhere to one particular method of value, as the county now urges us to do in this matter, runs contrary to the above-stated principles. The court stated, 'We decline to bind the BTA to a particular method of valuation because the imposition of rigid methodological strictures would necessarily impinge upon the BTA's wide discretion to weigh evidence and assess the credibility of witnesses.' *Id.* at 402." *Wal-Mart*, supra, at 18.

While it was determined in *Meijer*, supra, that the best indication of value for that property was found under the cost approach, our review of the evidence in this matter, including a consideration of the market factors introduced, leads us to conclude that the market data approach provides the best, most reliable indication of value for the subject property. The subject is also nearly twenty years old as of tax

lien date, making the cost approach highly speculative given the amount of obsolescence affecting the property.

In conclusion, we find that Agree has demonstrated through competent and probative evidence that the true value of the subject property should be \$3,300,000 for tax year 2002. We further find that the county appellees have failed to put forward evidence sufficiently competent to prove value and to rebut that presented by Agree. *Cincinnati, Springfield and Mentor Exempted*, supra. The Board of Tax Appeals therefore finds the true and taxable values of the subject property to be as follows for tax year 2002:³

	TRUE VALUE	TAXABLE VALUE
Parcel Q61-400-090109004000		
LAND	\$1,320,000	\$ 462,000
BUILDINGS	<u>\$1,980,000</u>	<u>\$ 693,000</u>
TOTAL	\$3,300,000	\$1,155,000

The Auditor of Wood County is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.

ohiosearchkeybta

³ In the absence of evidence to the contrary, we shall allocate land and building value using the same ratio applied by the BOR.