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

FILED
DEC 15 2008
CLERK OF COURT
SUPREME COURT OF OHIO

APPELLANT MEIJER STORES LIMITED PARTNERSHIP APPENDIX II

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

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

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

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

OHIO BOARD OF TAX APPEALS

Dayton School District Board of Education,	)	CASE NO. 2004-V-76
Appellant,	)	(REAL PROPERTY TAX)
vs.	)	DECISION AND ORDER
Montgomery County Board of Revision, the Montgomery County Auditor, and Dayton Rite Aid, LLC,	)	
Appellees.	)	Dismissed on Appeal 1/24/06 Ohio Supreme Ct.

APPEARANCES:

For Appellant BOE	-	David C. DiMuzio, Inc. David C. DiMuzio 1900 Kroger Building Cincinnati, OH 44202
For the County Appellees	-	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney Laura G. Mariani Assistant Prosecuting Attorney 301 West Third Street P.O. Box 972 Dayton, OH 45422
For the Appellee Dayton Rite Aid, LLC	-	Siegel, Siegel, Johnson & Jennings Co., LPA Annrita Johnson 3001 Bethel Road, Suite 208 Columbus, OH 43220

Entered September 2, 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 Dayton School District Board of Education ("BOE") from a decision of the Montgomery County Board of Revision ("BOR") regarding the subject property owned by Dayton Rite Aid, LLC ("Rite Aid"). In said decision, the BOR determined the true and taxable values of the subject property for tax year 2002 originally established by the Montgomery County Auditor ("auditor") should remain as follows:

Parcel R72-27-8-11	TRUE VALUE	TAXABLE VALUE
LAND	$ 16,490	$ 5,770
BLDG	$696,950	$243,930
TOTAL	$713,440	$249,700

Parcel R72-27-8-12	TRUE VALUE	TAXABLE VALUE
LAND	$16,490	$5,770
BLDG	$ 0	$ 0
TOTAL	$16,490	$5,770

Parcel R72-27-8-14	TRUE VALUE	TAXABLE VALUE
LAND	$18,560	$6,500
BLDG	$ 0	$ 0
TOTAL	$18,560	$6,500

Parcel R72-27-8-15	TRUE VALUE	TAXABLE VALUE
LAND	$12,470	$4,360
BLDG	$ 0	$ 0
TOTAL	$12,470	$4,360

Parcel R72-27-8-16	TRUE VALUE	TAXABLE VALUE
LAND	$35,560	$12,450
BLDG	$ 0	$ 0
TOTAL	$35,560	$12,450

Parcel R72-27-8-18	TRUE VALUE	TAXABLE VALUE
LAND	$15,050	$5,270
BLDG	$ 0	$ 0
TOTAL	$15,050	$5,270

Parcel R72-27-8-30	TRUE VALUE	TAXABLE VALUE
LAND	$12,470	$4,360
BLDG	$ 0	$ 0
TOTAL	$12,470	$4,360

Parcel R72-27-8-40	TRUE VALUE	TAXABLE VALUE
LAND	$240	$80
BLDG	$ 0	$ 0
TOTAL	$240	$80

	TRUE VALUE	TAXABLE VALUE
Parcel R72-27-8-44		
LAND	$1,460	$510
BLDG	$ 0	$ 0
TOTAL	$1,460	$510
Parcel R72-27-8-45	TRUE VALUE	TAXABLE VALUE
LAND	$130	$50
BLDG	$ 0	$ 0
TOTAL	$130	$50
Parcel R72-27-7-56	TRUE VALUE	TAXABLE VALUE
LAND	$68,190	$23,870
BLDG	$ 0	$ 0
TOTAL	$68,190	$23,870
Parcel R72-27-7-73	TRUE VALUE	TAXABLE VALUE
LAND	$220	$80
BLDG	$ 0	$ 0
TOTAL	$220	$80
TOTALS	$894,280	$313,000

The BOE requests that the combined total of the subject property's twelve parcels be increased to a true value of $2,570,000 based upon appraisal evidence presented to this board. 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."), and the briefs submitted by the BOE and Rite Aid.

The subject property is located in Montgomery County, Ohio and is a combination of the twelve parcels listed above that form one economic unit, a free-standing retail drugstore constructed in 1999. The building has 11,180 square feet of space and is situated upon 7.467 acres of land. S.T., Ex.7. The subject was originally built to suit for Rite Aid as a long-term tenant. On September 17, 2001, Rite Aid purchased the property for $3,035,000.

The BOE had originally filed a complaint before the BOR arguing that the 2001 sales price of the subject was the best evidence of value. Before the BOR, counsel for Rite Aid advocated that the sale was not the best evidence of value, because the sale price represented a leased fee value, as Rite Aid was the former tenant, subject to a long-term lease at an above-market rate. In support of its position, Rite Aid presented the testimony of appraiser Robin Lorms. Mr. Lorms did not provide an analysis of the subject; rather, he provided a list of comparable rental rates and comparable sales that suggested that the long-term rental rate paid by Rite Aid ($30.40 per square foot) was well above the market rate supported by his comparables of $8.00 to $9.00 per square foot. S.T. at A. Ultimately, the BOR decided not to adopt the sale price as the best evidence of value and to leave the 2002 values of the subject property unchanged.

Before this board the BOE appears to have abandoned its theory regarding the sales price and presented the appraisal and testimony of Mr. Eric Gardner, MAI and state-certified appraiser.

As a preliminary matter, Rite Aid challenges the jurisdiction of the appeal before us and alternatively argues that the decision of the BOR is in error. Rite Aid asks this board for an order to vacate the decision of the BOR for lack of jurisdiction, arguing that the original complaint filed by the BOE is insufficient to establish jurisdiction before the BOR because it was not brought in the proper name of the Dayton School District Board of Education, but instead it was brought in the name of "Dayton Board of Education." S.T., Exhibit A.

Rite Aid argues that the misnomer of the BOE's proper legal name in the complaint fails to vest jurisdiction before the BOR, relying on the decision of the Fairfield County Court of Appeals in *Pennington v. Fairfield Cty. Bd. of Revision* (Dec. 21, 1992), Fairfield App. No. 24-CA-92, unreported, holding that a complaint with a similar misnomer in the name of a board of education was properly dismissed.

In the past we have not looked favorably upon arguments based upon a mere misnomer of a proper party. *Whitehall City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 5, 1999), BTA No. 1996-N-519, unreported. *Pennington*, supra, the case which appellant cites as controlling, has been addressed by this board and accorded limited persuasive authority. See *MRSLV Alliance LLC v. Stark Cty. Bd. of Revision* (Interim Order, Dec. 18, 1998), BTA No. 1998-N-510, unreported, and *Bd. of Edn. of the Vandalia-Butler City Schools v. Montgomery Cty. Bd. of Revision* (Interim Order, Aug. 1, 1997), BTA No. 1996-P-1220, where this board declined to follow *Pennington* in jurisdictions other than that in which it was decided.

Further, the facts before us are distinguishable from *Buckeye Foods v. Cuyahoga Cty. Bd. of* Revision (1997), 78 Ohio St.3d 459, where the Supreme Court affirmed the dismissal of a complaint for failure of the complainant to properly identify itself. In *Buckeye Foods* a "fictitious name" was used in violation of R.C. 1329.10(B), which requires one to register with the Secretary of State before commencing or maintaining an action in a fictitious name. Additionally, in *Buckeye*

Foods, there were at least five other entities that used the "Buckeye Foods" name as a part of their name. Thus, it was unclear as to which entity the fictitious name made reference. In its decision, the court stated that the complainant must "be better identified than occurred here" and that one must have "the ability to discern who is complaining about the value of real property." Id. at 462. In the case before us there can be little doubt that all parties were aware that the Dayton School District Board of Education was the complaining party.

Furthermore, we distinguish the facts before us from the circumstances in *Bd. of Edn. of the Delaware City Schools v. Delaware Cty. Bd. of Revision* (June 21, 1996), BTA 1995-A-1093, 1202, unreported, where we held that a complaint brought in the name of another school district is jurisdictionally defective. See, also, *Bd. of Edn. for the Washington Local Schools v. Lucas Cty. Bd. of Revision* (Nov. 3, 2000), BTA Nos. 1997-V-1066, et seq., unreported.

Therefore, appellant's motion to dismiss for failure to name a proper party is denied.

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.

In support of its contention of value, the BOE offered at this board's evidentiary hearing the testimony and written appraisal report of Mr. Gardner. Ex. A. Mr. Gardner developed two approaches to value, the income and sales comparison approaches, to arrive at an opinion of value for the subject property. Rite Aid rested upon the record below and its cross-examination of Mr. Gardner. The county appellees did not appear at hearing before this board.

Mr. Gardner's appraisal report was prepared with an "as of" date of January 1, 2002. Mr. Gardner ultimately arrived at an opinion of value of $2,570,000 for the subject property. Id., H.R. at 42.

Mr. Gardner used sixteen comparables to arrive at his opinion of value under both the sales comparison and income approaches. Ex. A at 31. All sixteen comparables[1] are newly constructed "built-to-suit" drugstores, all subject to leases. H.R. at 26, 29, 52, 63. Four of the comparables are in Ohio; the remaining

[1] Of the sixteen comparables, four are Rite Aid drugstores; seven are CVS drugstores; and five are Walgreens drugstores. Ex. A at 31.

comparables include properties in North Carolina, Alabama, Tennessee, South Carolina, Virginia, Minnesota, Colorado, and California.

In what is titled as a "Sales Comparison Approach Leased Fee Conclusion," Mr. Gardner used each comparables' actual rental rate and deducted .20 cents per square foot to account for operating expenses, and arrived at an effective gross income (EGI) figure for each property. By dividing the EGI into the sales prices of the comparable properties, Mr. Gardner calculated an Effective Gross Income Multiplier (EGIM) for each of the sixteen properties ranging from 11.19 to 12.86. Ex. A at 31. Utilizing what he estimates to be "market rent" for the subject property (derived from his income approach to value), Mr. Gardner applies EGIM of 11.20 and 12.00 to his own estimate of market rent for the subject and estimates a low value of $2,500,000 and a high value of $2,680,000 for the subject. Mr. Gardner elects to draw a value conclusion of $2,590,000 for the subject (with a corresponding EGIM of 11.58) utilizing the gross income multipliers he extracted from the sixteen comparables.

Utilizing the 11,180 square feet of space on the subject property, Mr. Gardner then proceeds to adopt a price per square foot analysis from his comparables, estimating a low value of $225 per square foot ($2,520,000) and a high value of $250 per square foot ($2,800,000) for the subject. Id. Mr. Gardner concluded to a value somewhere between the high and low figures: $2,660,000 for the subject at $237.92 per square foot. After considering the value conclusion from his EGIM and sale price per square foot analysis, Mr. Gardner arrived at a final value conclusion of $2,600,000 under his sales comparison approach to value. Ex. A at 32.

In developing an income approach to value, Mr. Gardner again utilized the same sixteen comparable properties, which established a rental range between $16.62 to $29.84 per square foot. Id. at 35. Mr. Gardner determined that $20.00 per square foot would be an appropriate rental rate for the subject. Mr. Gardner elected not to make any reduction in the subject's pro forma operating statement for replacements for reserves or for vacancy and credit loss. Instead, Mr. Gardner made a deduction of .20 cents per square foot for operating expenses as he did for the comparable properties, estimating a net operating income of $221,364 for the subject. Id. at 36. After evaluating the capitalization rates derived from his comparables, national and regional surveys, and utilizing the band-of-investment technique, Mr. Gardner estimated a capitalization rate of 8.61% for the subject. Id. at 41. Applying the rate to the subject's net operating income, Mr. Gardner estimated a value of $2,570,000 utilizing his income approach to value. Id.

Although the subject property was only three years old on tax lien date, Mr. Gardner refrained from conducting a cost approach on the subject property, because of "the subjective nature of estimating the total depreciation associated with the improvements." Id. at 29, H.R. at 25, 50.

In his final reconciliation of value, Mr. Gardner describes that the sales comparison approach is given secondary consideration. Id. at 42. Mr. Gardner relies primarily upon his income approach, and arrives at a final value of $2,570,000 for the subject. Id.

The case before us today is different than the issues presented to the BOR. The BOR was faced with the issue of whether the September 2001 sales price of $3,035,000 was the best evidence of value. Rite Aid successfully challenged the sale price after establishing that the purchaser (Rite Aid) was subject to a long-term lease of the subject for over $30.41 per square foot. Rite Aid established that the rental rate was well above the market rates of other similar buildings through the testimony of Mr. Lorms. Mr. Lorms offered comparables rental data, primarily of former CVS and Rite Aid drugstores, which established actual rates[2] between $5.25 to $9.00 per square foot. S.T. at A. Before this board, no party has advocated that the September 2001 sales price of the subject is the best evidence of value, nor do we find it representative of the property's value for tax purposes.[3]

In reviewing Mr. Gardner's analysis, we are concerned that the comparables, and hence, his opinion, amount to a value in use. We have previously held that real estate must be valued separately, without regard to the particular business or business activities conducted within the premises. "*** Without significant 'adjustment,' there is a real risk of violating the mandate of *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision* [(1984), 12 Ohio St.3d 270], that 'value in exchange,' not 'value in use,' be determined." *Chippewa Place Dev. Co. v.*

---

[2] We have excluded those comparables characterized as "asking rates."

Cuyahoga Cty. Bd. of Revision (Sept. 24, 1993), BTA No. 1991-P-245, unreported, at 13, appeal dismissed, (June 15, 1994) Cuyahoga App. No. 66341, unreported. See, also, *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision* (1977), 80 Ohio St.3d 455 (business income must remain separate from income produced by the real estate).

Mr. Gardner refrains from relying upon the subject's 2001 sales price and former rental rate, concluding that both were above market. Specifically, Mr. Gardner testified that the following factors would explain why the subject's sale price and rental rate were above market: (1) Rite Aid is a "credit tenant," (2) the lease was for a long term at a flat rate, (3) there is a strong demand for triple net investments such as is the case with the subject, (4) record low interest rates, and (5) the lack of alternative investments with similar risks and rewards. H.R. at 43, Ex. A at 43.

Nevertheless, Mr. Gardner's opinion of value is borne from his exclusive reliance on the sixteen similar build-to-suit comparables, all of which present the same issues concerning the occupants' creditworthiness and the like. The data gleaned from the comparables appear to be tied (as is in the case of the subject) to the creditworthiness of their tenants. The difficulty in relying upon income derived from a business activity, or value in use, is that the value ultimately derived may not be the market value of the subject property. As *The Appraisal of Real Estate* cautions:

> "An important distinction is made between market value and investment value. Investment value is the value of a certain property use to a particular investor. Investment value may

---

[3] The BOE's expert (Mr. Gardner) testified before this board that the sale price as well as the underlying rental rate in place at the time of the sale was above market. H.R. at 24,43,52-53.

coincide with market value * * *, if the client's investment criteria are typical of investors in the market. In this case, the two opinions of value may be the same number, but the two types of value and their concepts are not interchangeable.

"Market value is objective, impersonal, and detached; investment value is based on subjective personal parameters. To develop an opinion of market value with the income capitalization approach, the appraiser must be certain that all the data and forecasts used are market-oriented and reflect the motivations of a typical investor who would be willing to purchase the property at the time of the appraisal. A particular investor may be willing to pay a price different from market value, if necessary, to acquire a property that satisfies other investment objectives unique to that investor." Id. at 476.

As we review the evidence of value of the subject before us, we are mindful that "certain types of transactions, albeit arm's-length transactions, call into question whether the sale price reflects the true value of the property. Among the types * * * prompting an investigation of the sale, is a sale-lease arrangement." *S. Euclid/Lyndhurst Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 314, 317. See, also, *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145; *Cleveland Hts./Univ. Hts. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1995), 72 Ohio St.3d 189; *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St. 3d 62. This board has previously held:

"[T]he details of the sale/leaseback must be reflective of market rates and terms for the sale price to be equally reflective of market value." *Corpline v. Hamilton Cty. Bd. of Revision* (May 17, 2002), BTA No. 2001-A-422, unreported, appealed to the Supreme Court of Ohio and remanded for implementation of settlement, 97 Ohio St.3d 1212, 2002-Ohio-5805.

The appraisal report and opinion of Mr. Gardner attempts to define and narrow the market in the context of "first generation" rental rates to the exclusion of secondary uses.

When asked to define a "first-generation tenant" versus a "second-generation tenant," Mr. Gardner testified:

> "First generation tenant has to do with the tenant, or user, that maybe had the property built for a build–to-suit. Maybe they incorporated some specific branding within the architecture of the real estate.
>
> "One of the best examples would be a McDonald's restaurant. When you look at their roofing, when you look at their design of the building, whether they're here in Ohio or if you travel to California, the branding of McDonald's is built into that architecture of the building.
>
> "Second-generation would be the – just refers to the second user. And the example I just gave of a McDonald's, if McDonald's were to move out, and if a Chinese restaurant were to move in, there would be some renovation to kind of de-brand that building to another user and another use." H.R. at 47-48.

When asked whether he viewed the subject property as a first- or second-generation user, Mr. Gardner responded that "the property was being occupied by Rite Aid Corporation, thus, the first-generation user." Id. at 49.

As promulgated by R.C. 5713.01, Ohio Adm. Code 5703-3-03 charges the county auditor with the duty of appraising property according to true value as it existed on tax lien date of the year in which the property is appraised. Pursuant to Ohio Adm. Code 5703-25-05, the auditor is to determine "the price at which the property should change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having knowledge of all the relevant facts." Mr. Gardner's national comparables narrowly detailing what Rite Aid, Walgreen's, and CVS are leasing (and subsequently purchasing) as built-to-suit properties amounts to a value in use. By Mr. Gardner's own admissions, the initial rental rates and prices paid for these comparables were driven by a build-to-suit scenario and the existence of a quality long-term tenant.[4] Therefore, we are not persuaded that these so-called "first generation" comparables bear any demonstrated relevance to what the subject should sell for in the open market on January 1, 2001. Mr. Gardner's analysis would only be relevant if we were seeking to value the property subject to a long-term, creditworthy tenant (such as Rite Aid).

The issue before this board is what would the fee simple interest in the subject property sell for on tax lien date based on market conditions. *Dublin Senior Comm. Ltd. Partnership v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455. Mr. Gardner's attempt to utilize other build-to-suit lease transactions, and the like, does not adequately reflect the market forces that would be in place had the subject been offered for sale on January 1, 2001, without any regard to the creditworthiness of Rite Aid.

In order to establish an estimate of what the property would actually sell for on the open market, we must look to the market for sale prices and rental rates.

---

[4] Just as Mr. Gardner and the BOR reasoned that the September 2001 sales price as well as the initial rental rate established between Rite Aid and the subject's developer is not reflective of market value for the subject property, we question Mr. Gardner's reliance upon sixteen other sales and rental rates of similarly built-to-suit drugstores. During cross examination, Mr. Gardner was asked about the comparable properties:

> "Q: If I may, in other words, that a prospective investor is more interested in the income stream and the creditworthiness of the user than the actual attributes of the property?
>
> "A: Both are strongly considered." H.R., at 70-71

That market may include purchasers and tenants of high creditworthiness, such as a Walgreen's or a CVS, and/or it may include a local business venture. Ultimately, said market analysis needs to demonstrate what value should have been achieved for the subject had it sold on tax lien date.

Even assuming that his sixteen comparables were viewed as competent probative evidence of value, Mr. Gardner fails to make any adjustments to account for differences between the subject and his comparables in his sales comparison approach. In his income approach, Mr. Gardner fails to take a reduction in the subject's pro forma for any potential vacancy loss or any reserve for replacement. Furthermore, Mr. Gardner fails to provide any support or explanation as to how he arrived at values and rates between the "highs" and "lows" found throughout his report.

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. Gardner fails to accurately reflect the value of the subject property.

We further find that neither Rite Aid nor the county appellees have responded with any evidence of value. Therefore, we find the value of the subject as of January 1, 2002 to be:

Parcel R72-27-8-11	TRUE VALUE	TAXABLE VALUE
LAND	$ 16,490	$ 5,770
BLDG	$696,950	$243,930
TOTAL	$713,440	$249,700

Parcel R72-27-8-12	TRUE VALUE	TAXABLE VALUE
LAND	$16,490	$5,770
BLDG	$ 0	$ 0
TOTAL	$16,490	$5,770

Parcel R72-27-8-14	TRUE VALUE	TAXABLE VALUE
LAND	$18,560	$6,500
BLDG	$ 0	$ 0
TOTAL	$18,560	$6,500

Parcel R72-27-8-15	TRUE VALUE	TAXABLE VALUE
LAND	$12,470	$4,360
BLDG	$ 0	$ 0
TOTAL	$12,470	$4,360

Parcel R72-27-8-16	TRUE VALUE	TAXABLE VALUE
LAND	$35,560	$12,450
BLDG	$ 0	$ 0
TOTAL	$35,560	$12,450

Parcel R72-27-8-18	TRUE VALUE	TAXABLE VALUE
LAND	$15,050	$5,270
BLDG	$ 0	$ 0
TOTAL	$15,050	$5,270

Parcel R72-27-8-30	TRUE VALUE	TAXABLE VALUE
LAND	$12,470	$4,360
BLDG	$ 0	$ 0
TOTAL	$12,470	$4,360

Parcel R72-27-8-40	TRUE VALUE	TAXABLE VALUE
LAND	$240	$80
BLDG	$ 0	$ 0
TOTAL	$240	$80

Parcel R72-27-8-44	TRUE VALUE	TAXABLE VALUE
LAND	$1,460	$510
BLDG	$ 0	$ 0
TOTAL	$1,460	$510

Parcel R72-27-8-45	TRUE VALUE	TAXABLE VALUE
LAND	$130	$50
BLDG	$ 0	$ 0
TOTAL	$130	$50

	TRUE VALUE	TAXABLE VALUE
Parcel R72-27-7-56		
LAND	$68,190	$23,870
BLDG	$ 0	$ 0
TOTAL	$68,190	$23,870

	TRUE VALUE	TAXABLE VALUE
Parcel R72-27-7-73		
LAND	$220	$80
BLDG	$ 0	$ 0
TOTAL	$220	$80

TOTALS	$894,280	$313,000

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. It is further ordered that these values be carried forward in accordance to law.

ohiosearchkeybta

OHIO BOARD OF TAX APPEALS

Meijer Stores Limited Partnership, Appellant, vs. Wood County Board of Revision and Wood County Auditor, Appellees.	)	CASE NO. 2003-A-1204 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co., LPA
Jay P. Siegel
Annrita S. Johnson
Suite 210, Landmark Centre
25700 Science Park Drive
Cleveland, Ohio 44122

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

Entered July 15, 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 Wood 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 county appellees.

The subject real property consists of one parcel measuring approximately 37 acres. Located thereon are two buildings, a discount department store and associated service station. The property, built in 1998, is located in the Bowling Green City east taxing district and is identified in the auditor's records as parcel number B07-511-210000009000. 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	$ 3,146,200	$1,101,170
Bldg	8,669,700	3,034,400
Total	$11,815,900	$4,135,570

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 $7,200,000, 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 Wood County Board of Revision. Meijer sought to decrease the subject's value to $7,200,000, based upon an appraisal of the subject, which relied primarily upon the sales comparison approach in its conclusions. No counter complaint was filed. 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 180,250 square foot "prototypical Meijers store developed and used for the sale of soft goods and grocery store related items." H.R. at 20. He indicated that the subject had adequate parking and was in good condition, with no evidence of any deferred maintenance. He also indicated that approximately four acres of the subject land were allocated to an out parcel on the corner on which a Meijer service station is located.

Mr. Lorms, in discussing the subject's neighborhood, indicated that the subject's location is somewhat "isolated" from the main retail development and activity in downtown Bowling Green, to the west of the subject. H.R. at 13, 14. Specifically, "the subject site is located at I-75 and S.R. 105, which is known as Wooster Street. *** This immediate area has primarily light industrial and rural farm land. The subject represents the only major retail development at this interchange location." H.R. at 19.

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, yet its absorption has been very slow. He said, "[s]o what's happened is in the big box phenomenon, you have more and more new development, which is – causes for vacating existing facilities. You have bankruptcies. *** So while you've got this phenomena of supply growing at a rapid pace, the absorption of this space has been very, very slow because, there's a reason, the users in the big box industry, they build-to-suit or they build for their own use." H.R. at 16. 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 "retail is concluded to be the maximally productive use and thus the highest and best use of the site as though vacant. Based on its location near the interchange and the signalized intersection, the corner site is best suited for outparcel development." Ex. A at 28. Further, considering the site, as improved, Mr. Lorms indicated that "[t]he subject improvements conform to the highest and best use as though vacant." Id.

Specifically, in considering the valuation of the subject, Mr. Lorms completed a land value analysis as well as a cost approach, a sales comparison approach, and an income approach. First, Mr. Lorms began his valuation analysis by determining a value for the subject land, comparing it to four sales between November 1994 and November 2001, including the sale of the subject acreage. Based upon such sales, he developed an unadjusted range of $25,627 to $202,020 per acre. Based upon the most recent sale, Mr. Lorms concluded to a final unit value of $75,000 per acre for the subject, or $2,800,000 (rounded). Ex. A at 31-33.

Next, the replacement cost new of the subject's improvements was estimated using Marshall Valuation Service, which included all of the applicable direct costs and some of the indirect costs. Mr. Lorms estimated that the subject's classification falls between a discount store and a warehouse discount store, and, as such, he developed two cost estimates for the subject. After developing the two estimates, $12,755,455 (including 10% indirect costs and 15% entrepreneurial incentives) and $8,742,222 (including 5% indirect costs and no entrepreneurial incentives), Mr. Lorms concluded to a mid replacement cost estimate of $10,750,000, since the subject has characteristics of both classifications. He then made deductions for age/life depreciation of $1,370,000 and functional and external obsolescence of $4,475,000, which resulted in a depreciated replacement cost of $4,900,000 (rounded). To that figure, he added the previously derived land value of $2,800,000, to arrive at a final value, via the cost approach, of $7,700,000. Ex. A at 34-37.

Using the sales comparison approach, Mr. Lorms analyzed five sales and three offerings of properties on a price per square foot of gross leasable area basis. The comparable properties sold between November 1999 and March 2003. The sales/offering comparables ranged in price from $16.54 per square foot to $40.61 per square foot, unadjusted, and in building size from 49,754 square feet to 186,480 square feet of gross leasable area. Mr. Lorms adjusted the sales for differences, if any, from the subject, including location and other retail influences. H.R. at 58. After making such adjustments, Mr. Lorms concluded to an adjusted value of $30 per square foot, or $5,407,500, for the main building. To that value, he added $1,000,000 for the service station (based upon a depreciated replacement cost of the mini-mart, canopy, and 40,000 square feet of paving and a land value for the 4-acre service station site based upon comparable sales/offerings of outparcels), and

$750,000 for the ten acres of surplus acreage, for a total value, via the sales comparison approach, of $7,200,000 (rounded). Ex. A at 38-43.

Finally, in completing an income approach, Mr. Lorms first estimated market rent by analyzing eleven 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 eleven comparables indicated a market rental range of $2.50 to $6.00 per square foot. Giving the rental rates in the subject's market area more weight, Mr. Lorms determined that a rental rate of $3.50 per square foot, or $630,875, would be most appropriate. To that figure, he added $342,475 for expense reimbursement income, to arrive at a potential gross income of $973,350. Vacancy and credit loss of 10% was deducted and an effective gross income of $876,015 resulted. From that amount, Mr. Lorms deducted total expenses, including replacement reserves, of $404,805 based upon an analysis of historic expenses at comparable properties, which rendered a net operating income of $471,210. The NOI was capitalized at 10.5%, based upon investor surveys and the band of investment method, for a final value indication of $4,487,714. After adding the value of the service station ($1,000,000) and the excess acreage ($750,000), Mr. Lorms concluded to an overall value for the subject, via the income approach, of $6,200,000 (rounded). Ex. A at 44-51.

In reconciling the foregoing value conclusions, Mr. Lorms indicated that the sales comparison approach was given the greatest weight. He viewed the income approach value as supportive of the sales approach value, stating that it was "supported by a relatively large quantity of market data regarding rental rates, expenses and capitalization rates." He gave the cost approach the least amount of weight due to the significant amount of obsolescence taken. Accordingly, Mr. Lorms' final value for the subject property was $7,200,000. Ex. A at 52.

The county did not offer any evidence but 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 county 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 county 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 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 county 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 county appellees argue 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 considered are similar, big box properties, warehouse department stores, built within nine years of the subject. Mr. Lorms clearly stated that he adjusted the sales for differences in location, age and condition and, arguably, he compensated for any differences between the properties.

The county 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, Case No. 00-2237, on Feb. 20, 2001. However, Mr. Lorms testified that not all of the sales he used under the sales comparison approach had deed restrictions; specifically, he only indicated that the Wal-Mart sales regularly involved deed restrictions. H.R. at 116.

Thus, we will disregard the one Wal-Mart sale and one offering[1] included in the sales comparison approach.

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. H.R. at 115, 116, 122.

Finally, we do not agree with the county'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 county 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 four 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

[1] We will disregard all of Mr. Lorms' "offerings" of property for sale under his sales comparison analysis, 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 four comparable sales to be considered.

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 rent[2]/expense comparables and capitalization rate that were employed in the analysis. The county contends that the "feasibility rents" which were based on actual costs and utilized by Mr. Lorms in his cost approach (to calculate obsolescence) are more reflective of what the subject's actual rents should be. It claims that the feasibility rents more accurately reflect the subject's potential, as compared to the amounts actually obtained from second and third generation users in the market. We disagree. The feasibility rents are tied to new construction and do not reflect an existing building in the tax lien year marketplace.

Finally, we agree with Mr. Lorms that the cost approach provides the least reliable valuation of the subject, considering the large deduction taken for obsolescence.

The county also asserts that an earlier case involving a different Meijer store, namely, *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181, established the applicable principles which govern the instant case and therefore, is dispositive of the issues raised herein. 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 tax year 2002 value of a store that was built in 1998.

---

[2] 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 four actual lease rates listed.

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 reasons stated by Mr. Lorms in his appraisal, the cost approach is not the best or most reliable method herein, due to the large deductions taken for functional obsolescence, which, as discussed earlier, were appropriately taken, considering the existing market conditions on tax lien date. 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.

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 value[3] of the subject property, as of January 1, 2002, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	$1,944,000	$ 680,400
Bldg	5,256,000	1,839,600
Total	$7,200,000	$2,520,000

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

[3] 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

Wal-Mart Real Estate Business Trust, Appellant, vs. Fulton County Board of Revision and Fulton County Auditor, Appellees.	)	CASE NO. 2003-T-913 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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

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

Entered July 15, 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 Wal-Mart Real Estate Business Trust. Wal-Mart appeals from a decision of the Fulton County Board of Revision, in which the BOR found the true value of certain real property to be $5,199,200 for tax year 2002. Wal-Mart claims that the correct true value should be $2,750,000.

The subject property is listed in the Fulton County Auditor's records as permanent parcel number 06-02D-013-01 and is located in the city of Wauseon-Wauseon schools taxing district. The subject consists of approximately 19.75 acres of land. The land is improved with a one-story building of steel and concrete block construction. The 109,973 square foot building was erected in 1995 and is used as a retail discount storeroom. Other site improvements include a parking area, with lighting.

In support of its contention of value, Wal-Mart 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, 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. Examples of this type of retailer are Meijer, Target, Lowe's, and Wal-Mart. Mr. Lorms indicated that many of these properties range in size from 60,000 square feet to nearly 300,000 square feet. H.R. at 16-21.

Mr. Lorms indicated that the supply of big-box retail space is growing; however, the market demand for such properties is limited. Mr. Lorms indicated that a recent string of bankruptcies by some big-box users has placed several big-box properties on the market. 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, the size of which can be between 200,000 and 300,000 square feet. As it does so, Wal-Mart vacates smaller properties, placing them on the market for sale or lease. H.R. at 17; Ex.1 at 18.

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. 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 20. "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. In support, Mr. Lorms testified about a situation in which a new building was constructed for a big-box retailer. That retailer went bankrupt before it could occupy the building. Another national retailer was interested in the site, but found the building unsuitable to its merchandising plan. Ultimately, this retailer entered into an agreement in which the retailer purchased the land, had the newly constructed store razed, and built a new building that conformed to the retailer's intended use. H.R. at 21.

Mr. Lorms noted that the result of the big-box phenomenon is that demand for existing space is limited to "2^{nd} and 3^{rd} 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 20.

Mr. Lorms describes the subject as being in what he calls a "3^{rd} tier market," i.e., one that is considered a rural market in an area with a population of less than 50,000. The subject represents one of the few major retail developments in this area. However, Mr. Lorms predicts that further development is likely, resulting in higher real estate values at some future period. Appellant's Ex.1 at 30.

Under the cost approach, 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 5703-25-05(D); The Appraisal of Real Estate (12^{th} Ed. 2001), at 50. Mr. Lorms' cost approach began with an estimation of land value. Mr. Lorms reviewed the sales of four parcels of unimproved land. The sales took place between September 1997 and September 2000, and sold for a price-per-acre of between $21,945 and $33,181. Mr. Lorms placed minimal weight on sale no. 1, as this was the purchase of the subject property by the current owner. Placing primary weight on the remaining three sales, and taking into consideration their locations and sale dates, he concluded that a value of $30,000 per acre was appropriate for the subject property. This equated to a land value of approximately $590,000.

Mr. Lorms next determined a replacement cost for the subject's improvements by utilizing construction costs from the Marshall & Swift Valuation Manual. From this service, he determined a replacement cost new of $6,110,370, including hard costs, soft costs, and additional site improvements.

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.

Based upon the subject's effective age of seven years out of a useful life of thirty-five years, Mr. Lorms found the total physical depreciation present to be 20 percent for the building. He also found physical depreciation present for other site improvements that have a shorter economic life of thirty-five percent.

Mr. Lorms then concluded that the subject also suffered from functional and external obsolescence.[1] He based this conclusion upon the size and design of the big-box property. As discussed, supra, Mr. Lorms concluded that the size and design of the subject property makes it difficult to sell to another user. He also noted that most markets cannot readily absorb this type of property, given the limited number of second and third generation users available and their inability to pay high rent. "In summary, the fee simple market value of these properties is substantially lower than replacement costs not only due to physical depreciation but also to functional obsolescence." Appellant's Ex.1 at 25.[2]

To quantify the amount of obsolescence applicable to the subject, Mr. Lorms relied upon 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 with the

---

[1] 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 (12th Ed. 2001), 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.

[2] Although Mr. Lorms refers only to functional obsolescence in his report, he testified that his obsolescence discussion also includes economic obsolescence. H.R. at 42.

total replacement cost and land value for the subject of $6,700,370. He next determined that a rental rate needed to support this value would be 10.5% of value, or $703,539 per year. Next, Mr. Lorms turned to his income approach to value, which demonstrates that market rents for properties similar to the subject produce approximately $329,919 in rental income. This difference in income is $373,620. To this figure, he applied the 10.5% overall capitalization rate derived in his income approach (discussed, infra) to arrive at a total depreciation for the subject of $3,558,284. After removing $1,320,084 attributable to physical depreciation, Mr. Lorms determined obsolescence in the amount of $2,238,200. See App. Ex. 1 at 35.

After removing depreciation from all sources, Mr. Lorms determined a depreciated value for the subject's improvements of $2,552,086. To this he added the land value of $590,000 to arrive at a value under the cost approach of approximately $3,150,000.

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 to be 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 six properties that he found similar to the subject. He also reviewed three other properties that are currently placed for sale in the market. The sales occurred between November 1999 and August 2004 and ranged in price from a low of $20.38 per square foot to a high of $37.48 per square foot. Those properties listed were offered at a price between $14.52 and $34.86 per square foot. Taking into account the dates of the sales, age, and differences in market conditions, Mr. Lorms determined a value for the subject property of $25.00 per square foot. This was based on his primary reliance upon sale no. 1 and listings nos. 6 and 9, which he found to be most comparable to the subject property. Applying this information, he determined a total value under the market data approach of $2,750,000.

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. The subject property is owner-occupied and thus does not generate rental income. To determine an income, Mr. Lorms estimated a market rent for the subject by surveying rental rates being asked at several 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 five comparables indicated a market rental range between $2.50 to $4.50 per square foot. Mr. Lorms gave primary weight to comparable nos. 3 and 5 due to their location. Based upon this, he determined that a market rental rate for the subject would be $3.00 per square foot. To this figure, he added expense reimbursement income of $1.54 per square foot to arrive at a potential gross income for the subject of $499,574. A ten percent vacancy and credit loss was deducted to arrive at an effective gross income of $449,617. From this amount, expenses were deducted to arrive at a net operating income for the subject of $244,479. 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 $2,350,000.

In reconciling his three 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. The least amount of weight was placed upon the cost approach. He noted the high obsolescence rate limited the accuracy of the approach; however, he concluded that the age of the improvements made the approach a reliable check on his other two approaches to value. Accordingly, Mr. Lorms opined a final true value for the subject property of $2,750,000 for tax year 2002.

The county appellees did not offer any additional evidence of value in response to Wal-Mart's appraisal evidence. Rather, the county chose to rely primarily upon its cross-examination of Wal-Mart'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. *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. First, the county asserts that we have previously rejected the specific theory now put forth by Wal-Mart in *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, and *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 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. 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.

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.[3] 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.

Nor do we agree with the county's implication that Wal-Mart, by abandoning smaller stores as it develops its super centers, seeks to inappropriately take advantage of a self-generated oversupply to undervalue big-box properties like the subject. We find such motivations to be irrelevant to the appraisal problem presented

---

[3] The county also argues that lease and deed restrictions placed on big-box properties onwed by entities like Wal-Mart may also create problems with later sales and leases. However, the county has presented no information concerning this issue either through cross-examination or its own direct evidence. We therefore decline to address the supposition raised thereby.

in this matter. The question before us is the true value of the subject property. 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.").

Moreover, although the county asserts that it is not likely that the situation put forth by Wal-Mart would impact all big-box stores in Ohio, appraisal practice explicitly recognizes that external obsolescence, such as that applied by Mr. Lorms, "*** usually carries a marketwide effect and influences *a whole class of properties*, rather than just a single property." The Appraisal of Real Estate, at 412. (Emphasis added.) Thus, in the absence of evidence to the contrary, we must agree with Wal-Mart 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.

We begin our review of Mr. Lorms' three approaches to value with the sales comparison, or market data, approach. This 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.

Upon review, 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. 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.

We do concur with the county that three 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. Cf. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397, at 400. Nevertheless, even after removing the three listings from consideration, Mr. Lorms' value under the market data approach falls within the range of values suggested by the remaining, actual sales. Consequently, we find that Mr. Lorms' market data approach is reasonable and is reflective of the subject property's value as of tax lien date.

We place minimal weight on the remaining two approaches to value. In developing his income approach, Mr. Lorms relied upon asking rental rates rather than actual rentals.[4] 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

[4] Mr. Lorms testified that one of his rent comparables had been leased following preparation of his report; however, he was unable to provide us with details of that lease arrangement.

than probative. In this case, 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.

As to Mr. Lorms' cost approach, we find his land valuation to be reliable. He looked at several properties that he found to be similar to the subject parcel. The sales occurred reasonably close to tax lien date. Moreover, our review of Mr. Lorms' adjustments indicates that he took location and other factors into consideration.

Mr. Lorms based his replacement cost upon valuation services. Our review of the relevant portion of the Marshall and Swift Valuation Service indicates that his cost factors are within the range suggested thereby. Mr. Lorms further included soft costs in his calculations. Mr. Lorms' physical depreciation factor appears to be reasonable. He took into consideration the age and condition of the improvements. Mr. Lorms also found that there was considerable functional and external obsolescence affecting the property. As we discussed at length, supra, we find that his decision to include obsolescence is supported by the record.

With regard to the method employed by Mr. Lorms to quantify the amount of obsolescence applicable to the subject, we find that he appropriately applied the capitalization of income loss method.[5] We note, however, that he utilized the

---

[5] We do note the use of an overall capitalization rate, such as used in Mr. Lorms' calculations, may overstate external obsolescence in situations where the external factors are to continue for a short period. See The Appraisal of Real Estate, at 414. In the absence of evidence to the contrary, however, the external factors impacting the subject do not appear to be short lived.

market rent from his income approach. We have already concluded that the rental data is of limited benefit, given that market rent was derived from asking rents. Given this, and given Mr. Lorms' own conclusion that the cost approach is of limited value due to the difficulty in estimating obsolescence, we place minimal weight upon the conclusion of value that results from the use of this approach.

Upon review of all of Wal-Mart's appraisal evidence, we find that the most reliable evidence is presented by the market data approach. We give only minimal weight to the income and cost approaches, finding them to be supportive of the conclusions reached under the sales comparison method. We conclude that Wal-Mart has satisfied its burden of persuasion and has come forward with competent and probative evidence that the value for the subject property was $2,750,000 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.

The county, however, argues that the case of *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181, establishes several legal principles that dispose of the issues in this case. Namely, the county argues that (1) the cost approach is the only valid approach that can be used to determine the subject's true value and (2) Wal-Mart is required to present evidence of comparable sales and rentals that are truly comparable to the subject in order to prove that the property suffers from obsolescence. As the appraisal evidence does not support the application of obsolescence, concludes the county, Mr. Lorms' cost approach, and thus all of Wal-Mart's evidence of value, must be rejected.

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.

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.

As to the county's second contention, we have previously concluded that the sales utilized by Mr. Lorms in his market data approach are indeed comparable to the subject property. We have also found that Mr. Lorms, unlike the appraiser in the *Meijer* appeal, has been able to identify and corroborate the external factors that contribute to the obsolescence affecting the subject. Further review of the county's contention would be supererogatory.

In conclusion, we find that Wal-Mart has demonstrated through competent and probative evidence that the true value of the subject property should be $2,750,000 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 Wal-Mart. *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:

Parcel 06-02D-013-01	**TRUE VALUE**	**TAXABLE VALUE**
LAND	$ 590,000	$ 206,500
BUILDINGS	$2,160,000	$ 756,000
TOTAL	$2,750,000	$ 962,500

The Auditor of Fulton 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

Auction Properties, Inc.,	)	
	)	
Appellant,	)	CASE NO. 2003-G-183
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Columbiana County Board of Revision	)	
and Columbiana County Auditor,	)	DECISION AND ORDER
	)	
Appellees.	)	Remanded upon Appeal 7/16/2004 Oh. Supreme Ct.

APPEARANCES:

For the Appellant	- Siegel, Siegel, Johnson & Jennings Co., L.P.A. Annrita S. Johnson 3001 Bethel Road Suite 208 Columbus, Ohio 43220
For the County Appellees	- Robert Herron Columbiana County Prosecuting Attorney Nicholas M. Barborak Assistant Prosecuting Attorney 120 South Market Street Lisbon, Ohio 44432

Entered March 5, 2004

Ms. Jackson and Ms. Margulies concur. Mr. Eberhart not participating.

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed herein by the above-named appellant from a decision of the Columbiana County Board of Revision (BOR). The BOR determined the taxable value of the subject real property for tax year 1999.

The subject property is located in the St. Clair Twp. taxing district, Columbiana County, Ohio, and appears on the auditor's records as Parcel No. 61-07848.005.

The Columbiana County Auditor and BOR found the true and taxable values of the subject property for tax year 1999 to be as follows:

	True Value	Taxable Value
Land	$ 1,736,190	$ 607,670
Building	7,084,900	2,479,720
Total	$ 8,821,090	$ 3,087,390

The appellant contends in its notice of appeal that the correct values for the subject property should be as follows:

	True Value	Taxable Value
Land	$ 1,131,740	$ 396,110
Building	4,618,260	1,616,390
Total	$ 5,750,000	$ 2,012,500

This matter is now considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the BOR, the testimony and evidence submitted at the hearing before this board, and the brief of counsel for the appellant.[1]

At the outset, we acknowledge the affirmative burden which exists in an appeal to this board from a decision of a county board of revision finding value. In its decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, the Ohio Supreme Court made it clear that in an appeal filed pursuant

[1] The original BOR decision was rendered on September 1, 2000. Appellant appealed that decision, which was assigned case number 2000-G-1579, to this board on September 27, 2000. That appeal was dismissed as premature upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. The parties agreed that the hearing record in BTA No. 2000-G-1579 be used in deciding the current appeal.

to R.C. 5717.01, there exists no presumption that the values found by a board of revision are correct. Nevertheless, an appellant has the burden of presenting evidence in support of the value which it has asserted. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts that of the appellant. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319. While this board may ultimately find that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of an independent, de novo determination which is predicated upon the preponderance of the evidence. See *National Church Residence v. Licking Cty. Bd. of Revision* (1995), 73 Ohio St.3d 397.

In assessing property at its taxable value, a county auditor must first determine the property's true value. In this regard, R.C. 5713.03 provides in part:

> "The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***."

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

> "The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do

so. Paragraph two of the syllabus in *In Re Estate of Sears* [(1961)], 172 Ohio St., 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market." Id. at 412.

The subject property consists of 22.143 acres and is improved with a Super Wal-Mart discount store. When the store was originally built in 1991, the store consisted of 110,580 square feet. In 1997, a truck well was added for a total of 123,828 square feet. In 1998, an additional 70,040 square feet was added and is utilized as a supermarket. At the hearing before this board, the appellant presented the testimony and appraisal report of Mr. Robin Lorms, MAI. Mr. Lorms considered three approaches in determining the value of the subject property: the market data approach, the income approach and the cost approach. The cost approach was used only as a check for the other two approaches and to value the land.

Mr. Lorms began his analysis by defining a three-tier market classification. The first tier he defined as a major metropolitan area such as Columbus. The second tier is just a smaller community. The third tier is more rural in nature with a small community, a small population base, less retail development, and fewer services. R. 13, 14. He determined that the subject property was located in a third-tier market.

First, he valued the land by reviewing six land sales. He focused on smaller communities, third-tier locations with larger parcels. The sales are located throughout Ohio. The intended land use for each sale was as a Super Wal-Mart. He determined that the subject property would fall in the upper range of values due to its highway exposure. Therefore, he concluded that the land should be valued at $45,000 per acre and rounded the total value to $1,000,000. To determine a replacement cost new for the primary building, Mr. Lorms utilized the Marshall Swift Valuation Service. He concluded a value of approximately $6,463,644 which equals about $33.00 a square foot. He then added the value of the site improvement, which he determined from his experience with numerous developments, and arrived at a replacement cost of $8,238,644. Indirect costs or soft costs such as planning and zoning fees, legal and closing costs, administrative and leasing commissions, in the amount of $823,864 were added for a rounded total replacement cost of $9,050,000. Fifteen percent depreciation was applied to the building and thirty-three percent to the site improvements for a total depreciation in the amount of $1,710,825. The result was a depreciated replacement cost of $7,351,675. The estimated land value of $1,000,000 was added for a rounded value of $8,350,000 by the cost approach.

For his market approach, Mr. Lorms utilized five sales as comparables. He considered the subject property to be a "big box" format; therefore, he identified stores such as Target, Kohl's, Kroger's, Lowe's and Home Depot as typical users. He stated that the typical size of a freestanding "big box" ranges from 70,000 to 100,000 square feet. The subject property is almost 200,000 square feet. Consequently, Mr. Lorms considered the subject property a very unique commodity. The comparables he utilized are located throughout Ohio. He tried to find third-tier locations when possible; however, his comparables numbered 4 and 5 are located in first tier markets. These two comparables were included in his report only because they are a size that approximates the subject property.

Sale 1 involved a vacant Wal-Mart in Jackson, Ohio that sold to a local automobile dealer for $1,450,000. The sale took place on February 13, 2001. Mr. Lorms considered the property to be superior to the subject in terms of size, but inferior based on location and condition; however, size offset any adjustments. Sale 2 involved a former Lowe's Home Improvement Center in Lancaster, Ohio which had been vacated. It sold for $1,375,000 on November 29, 1999. Again, the property was considered superior in size and is located in a second-tier market. However, in terms of quality of construction, the subject was considered superior. Again, the size of the subject, being more than twice the size of the comparable, offset adjustments. Sale 3 involved a vacant Sam's Club in Toledo, Ohio and sold for $4,500,000 on March 31, 2001. The property was deemed superior in size, location and construction; therefore, a downward adjustment was necessary. Sale 4 involved a vacated Twin Value Club in Cleveland, Ohio and sold for $8,200,000 on September 9, 1995. It was considered one of the most comparable in size, but far inferior as to location. The same was true for sale 5 which involved a vacated Twin Value Club in Cleveland, Ohio and sold for $11,000,000 on March 27, 1995. Mr. Lorms considered the subject property to be above the low end of the price range, but not near the upper end of the price range. Therefore, he concluded a value of $35.00 a square foot for a value by the market approach of $6,850,000. He relied heavily on the market approach.

For his income approach he utilized a direct capitalization method. The subject property was subject to a "build-to-suit" lease. Mr. Lorms determined that a "build-to-suit"lea se did not reflect market rents and therefore, did not reflect market value. Since the subject property was more than twice the size of other "big box" properties in the area, he included rental data from first-and second-tier locations. He utilized the rental rates for six properties in determining a rate for the subject property. The properties were located in Cincinnati, Hillsboro, Fremont, Troy, and Hamilton, Ohio. Four were third tier and two were first tier. Based on these leases, Mr. Lorms derived a net rental rate of $4.00 per square foot which equals $783,472 in annual rent. Utilizing his sale and rent comparables he determined a vacancy rate of 10%. He treated the gross income estimate on a net basis which assumes the tenant is responsible for its pro-rata share of taxes, common area maintenance, and insurance. He determined the triple net expenses would be $244,035, rounded to $240,000. He then determined management fees in the amount of $23,500; miscellaneous expenses in the amount of $9,800; and reserves for replacement in the amount of $19,500.

Mr. Lorms' income and expense pro forma starts on page 61 of his report. The base rental income of $783,472 was added to the tenant reimbursements of $240,000 for a gross income potential of $1,023,472. Subtracting a vacancy and credit loss of $102,347 resulted in an effective gross income of $921,125. To arrive at a net operating income the operating expenses totaling $292,800 were subtracted to arrive at a net operating income in the amount of $628,325. He next determined a capitalization rate to be applied to the net operating income. Mr. Lorms utilized a survey company named Korpacz. The company surveys investors who are buyers of all types of properties in various locations. The survey indicated an overall rate of approximately 12%. He also derived a rate utilizing a band of investment technique, but ultimately determined that it did not accurately reflect risk. Considering other sources and the noninstitutional rate in the Korpacz study, he determined a capitalization rate of ten-and-one-half percent. Capitalizing the net income by that percentage, he arrived at a market value of $6,000,000 by the income approach.

In reconciling the three approaches to value, Mr. Lorms determined that the value derived by the market approach was the most reliable. Therefore, his opinion of value for the subject property as of January 1, 1999 was $6,850,000.

Mr. John Cleminshaw, founder of John G. Cleminshaw, Incorporated, a mass appraisal company which specializes in reevaluations for the county, testified on behalf of the appellee county. He first noted that the appraisal prepared for this hearing had a different value than that determined in the mass appraisal. He explained that this was due to a remeasuring of the property, and the subjectivity used by an appraiser in valuing a property. Mr. Cleminshaw utilized all three approaches in valuing the property. He first prepared a cost approach.

In valuing the land of the subject property, he reviewed six land sales. Sale 1 actually abuts the subject property and is improved with a Sears store. It sold in September of 1996 for $225,000. However, due to its small size, a large negative adjustment was required. Sale 2 is located approximately one-quarter mile from the subject and is improved with a Staples store. It sold in February of 1999 for $500,000. Again, due to its small size, 5.19 acres, a negative adjustment was necessary. However, a positive adjustment was made for topography. Sale 3 is also located one-quarter mile from the subject and is improved with an Aldi supermarket. It sold in June of 1995 for $275,000. Because of this property's smaller size, a sizable negative adjustment was necessary. A positive adjustment was made for topography. Sale 4 is located northeast of the subject property in a different neighborhood. It sold in December of 1998 for $450,000. Again, the smaller size required a negative adjustment. A positive adjustment was made for topography and location. Sale 5 is adjacent to sale 4 and is improved with an Amerihost hotel. It sold in December of 1999 for $285,000. The same type of adjustments made for sale 4 were needed for sale 5. Sale 6 is the largest comparable, more than twice the size of the subject. It sold in December of 1999 for $1,050,000. Mr. Cleminshaw also looked at vacant lots that were offered for sale. However, a mere offer to buy is not an arm's-length sale and does not necessarily reflect true value of the property. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397.

The above-referenced sales indicated a value of $60.00 per acre for a total rounded value of $1,330,000 for the land. Mr. Cleminshaw chose sales closer to the subject for comparables even though the properties were much smaller because he was of the opinion that the sales would need fewer adjustments.

To value the building he used the Marshall Swift Valuation Service. Mr. Cleminshaw determined a refined square foot unit cost of $42.60 per square foot. He added indirect "soft" costs for real estate taxes, financing costs, and professional fees, which totaled 10% of the hard costs, for an adjusted total square foot estimate of $46.86. In determining the appropriate depreciation to apply, he considered physical deterioration, functional obsolescence, and external obsolescence. For physical deterioration, Mr. Cleminshaw estimated the weighted average age of the property to be five years with a total economic life expectancy of forty years. These estimates resulted in a physical deterioration adjustment of 12.5%. Functional obsolescence was estimated at 5% of the total replacement cost. He opined that the subject property is located in a desirable, established, commercial retail area; therefore, no external obsolescence was warranted.

Mr. Cleminshaw took the replacement cost new and added the site improvements, and subtracted the depreciation for a total depreciated value of $8,409,493. He then added the land value of $1,330,000, which resulted in a rounded total value by the cost approach of $9,740,000.

In his market approach to value Mr. Cleminshaw utilized six sales as comparables. The first sale was located in Cuyahoga Falls, Ohio and sold for $11,000,000 on March 27, 1995. The improvement was converted into a two-tenant building, housing "Best Buy" and "Target." A positive adjustment was required for the date of the sale and condition of the improvements. A sizable negative adjustment was required for location. Sale two is located in Boardman, Ohio and sold for $5,500,000 on December 1, 1994. The building was not completed, lacking HVAC, finished electrical and plumbing, and interior finish. Ultimately the building was used as a Kohl's department store. A positive adjustment was required for the time of sale, smaller land-to-building ratio, and incompleteness of the building. A negative adjustment was required for location and size of the improvements. Sale three was located in North Canton, Ohio and sold for $4,900,000 on June 11, 1999. The building was utilized as a discount department store. A modest negative adjustment was required due to the sale date, the location, and the size of the improvements. A positive adjustment was required due to interior finish and land-to-building ratio. Sale four was located in Stark County, Ohio and sold for $1,450,000 on April 9, 1999. The building was subsequently occupied by a carpet and tile liquidator. A large negative adjustment was required for size. A negative adjustment was also required for location and date of sale. Sale 5 was located in Toledo, Ohio. That sale was the only sale not located in northeast Ohio. Mr. Cleminshaw testified that the only reason he included that sale was because he was aware of it. The property sold for $4,500,000 on March 30, 2001. This was a "deed in lieu of foreclosure" sale. A negative adjustment was required for location. A positive adjustment was required for land-to-building ratio, warehouse-type finish, and deferred maintenance.

Based upon his analysis of the available market data and applicable adjustments, Mr. Cleminshaw determined a market value of $50.00 per square foot was applicable to the subject property. Consequently, his opinion of value by the market data approach was $9,542,600 rounded to $9,543,000.

Mr. Cleminshaw began his valuation process for the income approach by identifying the subject property as a "big box" property typically owned or leased by a large discount chain. Typically the lessee is a single tenant on a "triple-net" basis paying most of the operating expenses, while the owner generally pays exterior maintenance, insurance, and real estate taxes. However, hybrid forms of a "triple-net" lease can also be found. He initially estimated what the probable rent would be, deducting reasonable expenses for the gross rent, and capitalizing the net income to arrive at a value.

Mr. Cleminshaw examined fourteen large floor retail leases in northeast Ohio and western Pennsylvania. He took into account proximity to larger or smaller cities, and whether the rent was derived through a build-to-suit tenant. He determined that a reasonable square foot rental rate for the subject property would be $5.75 on a triple-net basis. Therefore, the gross potential annual income would be $1,097,399.

He determined a vacancy and credit loss of 5%, or $54,870, since the tenants are normally long term. He estimated operating expenses for management at 2% of gross income; insurance at $.10 per square foot of building area; and exterior maintenance at $.08 per square foot of building area. These expenses resulted in a net operating income before allowance for replacement reserves of $987,326. In his replacement reserves, Mr. Cleminshaw made allowances for roofing, heating and air conditioning, and paving surfaces and walkways. Utilizing Marshall Swift Replacement Services, the annual reserve for replacement was determined to be $46,500. He deducted the replacement reserves from the net operating income and arrived at a net income for capitalization of $940,826. Analyzing the market abstracted rates of sales in northeast Ohio, he determined an overall rate of 9.75% as most appropriate. Dividing the net income by this rate resulted in a value of the subject property of $9,650,000 by the income approach.

Considering the three approaches to value, Mr. Cleminshaw determined that greater weight should be given to the income approach and market data approach, and he considered the cost approach as supporting. Therefore, he concluded that the value of the subject property as of January 1, 1999 was $9,600,000.

Mr. Michael Smith, Deputy Auditor of Columbiana County, testified regarding the history of the property. Prior to 1999, Auction Properties was part of a tax incentive financing program with the state whereby in this instance, taxes for any new construction would go directly to St. Clair Township to take care of the roads, instead of going to the schools. In order for the taxes to go to the right entities, a second parcel was created for the new construction. However, the BOR retained the value of the property for 1999 that was determined before the construction in 1998. Mr. Smith also testified that the property, as improved with a Wal-Mart, was a busy property. Further, the property enjoys great access from the highway.

Both appraisers performed a cost approach as a check for the other two approaches to value. Neither appraiser relied heavily on the cost approach. Mr. Lorms relied most heavily on his market approach, determining that it was the best indication of value for the subject property. Mr. Cleminshaw found the market approach along with the income approach to be the most reliable indication of value. Giving consideration to both appraisal reports and the record in this matter, we find Mr. Lorms' appraisal report most closely reflects the fair market value of the property. Mr.

Lorms exhibited a vast knowledge regarding the appraisal and valuing process of "big box" properties. His comparables, although not located in the immediate area, were comparable properties in similar communities. Due to the unique size of the subject property, neither appraiser found properties that were the size and in the location of the subject property.

Mr. Cleminshaw's market approach utilized sales of properties in stronger retail locations. Further, his comparables required extensive adjustments. And his comparable No. 5 was only included because he was "aware of it." Further, we question the arm's-length nature of that sale since it was a "deed in lieu of foreclosure sale."

Giving consideration to the record in this matter, we find that the appellant has met its burden of proving the value it asserts. We find the appellant's appraisal evidence provides competent and probative evidence of the value of the property.

Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 1999, was as follows:

	True Value	Taxable Value
Land	$ 1,000,000	$ 350,000
Building	5,850,000	2,047,500
Total	$ 6,850,000	$ 2,397,500

It is ordered that the Auditor of Columbiana County shall list and assess the subject property in conformity with the foregoing decision. It is further ordered that such values shall be carried forward as provided by law.

2. In exchange. The highest and best use of the asset is in exchange if the asset would provide maximum value to market participants principally on a stand-alone basis.

The real estate appraiser may need to report both values so that the user of the report can make an informed decision.

The International Valuation Standards point out that fair value and market value are not necessarily synonymous in the International Financial Reporting Standards, where market value is used in differing contexts.

Use Value

Use value is the value a specific property has for a specific use. In estimating use value, the appraiser focuses on the value the real estate contributes to the enterprise of which it is a part, without regard to the highest and best use of the property or the monetary amount that might be realized from its sale. Real property has both a use value and a market value, which may be the same or different depending on the property and the market. For example, an older manufacturing plant that is still used by the original owner may have considerable use value to that owner but only a nominal market value for another use. Use value may vary depending on the management of the property and external conditions such as changes in business operations. For example, a factory designed around a particular assembly process may have one use value before a major change in assembly technology and another use value afterward.

Use value appraisal assignments may be performed to value assets (including real property) for mergers, acquisitions, corporate financial reporting, or security issues. This type of assignment is sometimes encountered in appraising industrial real estate when the existing business includes real property.

Court decisions and specific statutes may also create the need for use value appraisals. For instance, many states require agricultural use appraisals of farmland for property tax purposes (i.e., value based on productivity) rather than opinions of value based on highest and best use. The current IRS regulation on estate taxes allows land under an interim agricultural use to be valued according to this alternative use even though the land has development potential.[14]

Use value appraisals often involve limited-market properties, i.e., properties of a type that has relatively few potential buyers at a particular time. Large manufacturing plants, railroad sidings, and research and development properties are examples of limited-market properties that typically appeal to relatively few potential purchasers.

14. The section on special-use valuation in United States Estate (and Generation-Skipping Transfer) Tax Return (IRS Instructions to Form 706) states: "Under section 2032A, you may elect to value certain farm and closely held business real property at its farm or business use value rather than its fair market value (FMV). You may elect both special-use valuation and alternate valuation."

Use Value, Value In Use, and Investment Value or Worth

The term *value in use* is often used by appraisers synonymously with *use value*, but the former term has specific meanings in other contexts, which can cause confusion. The International Financial Reporting Standards defines *value in use* as "(t)he present value of estimated future cash flows expected to arise from the continuing use of an asset and from its disposal at the end of its useful life." This definition is quoted in the International Valuation Standards (IVS) in relation to valuation for financial reporting.

Earlier editions of the International Valuation Standards included a different definition of *value in use* as part of International Valuation Standard 2: Bases Other Than Market Value, but that definition was recently deleted, eliminating the possible confusion between *value in use* and *investment value or worth*. The current definition of *investment value or worth* is not specifically related to financial reporting as *value in use* now is in IVS.

Many limited-market properties, such as houses of worship, museums, schools, public buildings, and clubhouses, include structures with unique designs, special construction materials, or layouts that restrict their functional utility to the use for which they were originally built. These properties usually have limited conversion potential and, consequently, are also called specialized, special-use, special-purpose, or special-design properties.

Limited-market properties may be appraised based on their current use or the most likely alternative use. Due to the relatively small markets and lengthy market exposure needed to sell such properties, there may be little evidence to support an opinion of market value based on the current use. If a market exists for a limited-market property, the appraiser must search diligently for whatever evidence of market value is available.

If a property's current use is so specialized that there is no demonstrable market for it but the use is viable and likely to continue, the appraiser may render an opinion of use value if the assignment reasonably permits a type of value other than market value. Such an estimate should not be confused with an opinion of market value. If no market can be demonstrated or if data is not available, the appraiser cannot develop an opinion of market value and should state so in the appraisal report. However, it is sometimes necessary to render an opinion of market value in these situations for legal purposes. In these cases, the appraiser must comply with the legal requirement, relying on personal judgment and whatever direct market evidence is available and making explanations and disclosures that are relevant and that can fully inform the intended users of the appraisal. Note that the type of value developed is not dictated by the property type, the size or viability of the market, or the ease with which that value can be developed. Rather, the intended use of the appraisal determines the type of value to be developed.

Just as use value should not be confused with market value, it should be distinguished from investment value, which is discussed next.

Investment Value

Investment value represents the value of a specific property to a particular investor. As used in appraisal assignments, investment value is remain constant. Reconciliation should be based on the improvement that is most similar in age to the subject property. Of the three sales, the improvement closest to the subject property in age is Property 3. In light of this similar sale and the pattern indicated by the market data, the appraiser could reasonably reconcile the total economic life expectancy for the subject property at 60 years. Using the economic age-life method, which will be discussed in detail later in this chapter, the total depreciation would equal 25% (15/60) of the property's cost.

Figure 19.1 illustrates a pattern that might be exhibited by many types of buildings. As the building ages, the average annual rate of depreciation decreases, resulting in a downward curve, until total depreciation eventually levels off and the value of the improvement stabilizes at its salvage value. The economic life may be extended as routine maintenance occurs and the building continues to be used, unless or until a competing use for the site raises the land value high enough to support demolition and redevelopment of the site. The building might also be redeveloped with another use, supporting the concept that useful life may continue long after economic life has ended. Conversely, the opposite situation could occur in markets that are changing rapidly. As land value increases and as market preferences change to different designs or property types, average annual depreciation accelerates and both economic life and useful life are shortened. Both situations may occur over the life of the same improvement, which is why economic life and useful life estimates apply to a specific point in time. Figure 19.2 depicts the depreciation curve in a market that is changing rapidly and exerting upward pressure on land values.

Market Extraction Method

The market extraction method relies on the availability of comparable sales from which depreciation can be extracted. It makes use of direct comparisons with market sales. While easy to understand and explain, it should only be used if sufficient data exists and if the quality of that data is adequate to permit meaningful analysis. By considering all elements in one calculation, market extraction can be an oversimplification of the complex interplay of physical, functional, and external causes of depreciation. The technique is primarily used to extract total depreciation, to establish total economic life expectancy, and to identify other types of obsolescence or excess physical deterioration. The market extraction method includes the following steps:

1. Find and verify sales of similarly improved properties that are similar in terms of age and utility to the subject property. Although it is desirable, it is not essential that the comparable sales be current sales. They should be from the subject property's market area, but they can be from a market that is comparable (i.e., with similar tastes, preferences, and external influences).
2. Make appropriate adjustments to the comparable sale prices for certain factors, including property rights conveyed, financing, and

Figure 19.1

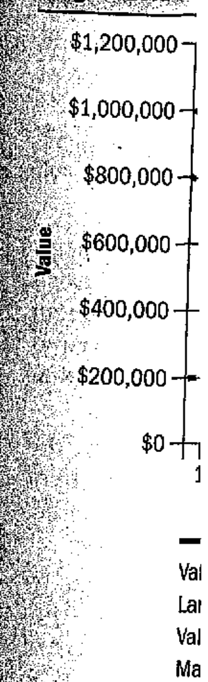
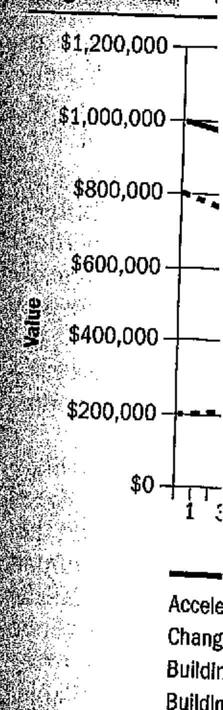


Figure 19.2



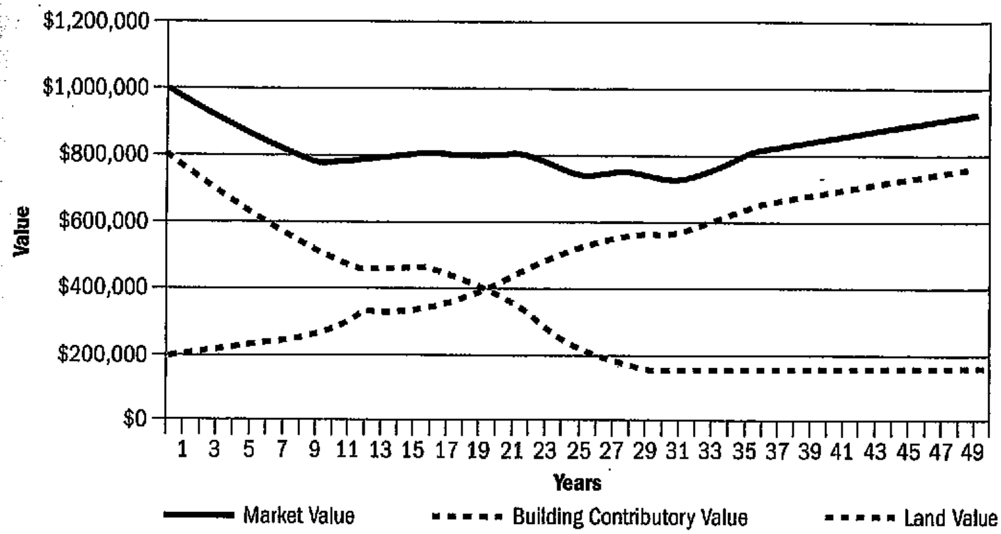
on the improvement
. Of the three sales,
in age is Property 3.
cated by the market
e total economic life
Using the economic
later in this chapter,
the property's cost.
ibited by many types
l rate of depreciation
depreciation eventu-
bilizes at its salvage
maintenance occurs
ntil a competing use
port demolition and
be redeveloped with
y continue long after
uation could occur in
reases and as market
ypes, average annual
useful life are short-
same improvement,
s apply to a specific
urve in a market that
n land values.

bility of comparable
makes use of direct
rstand and explain,
if the quality of that
By considering all
n be an oversimpli-
ional, and external
used to extract total
tancy, and to iden-
deterioration. The
steps:

erties that are simi-
perty. Although it is
le sales be current
's market area, but
e (i.e., with similar

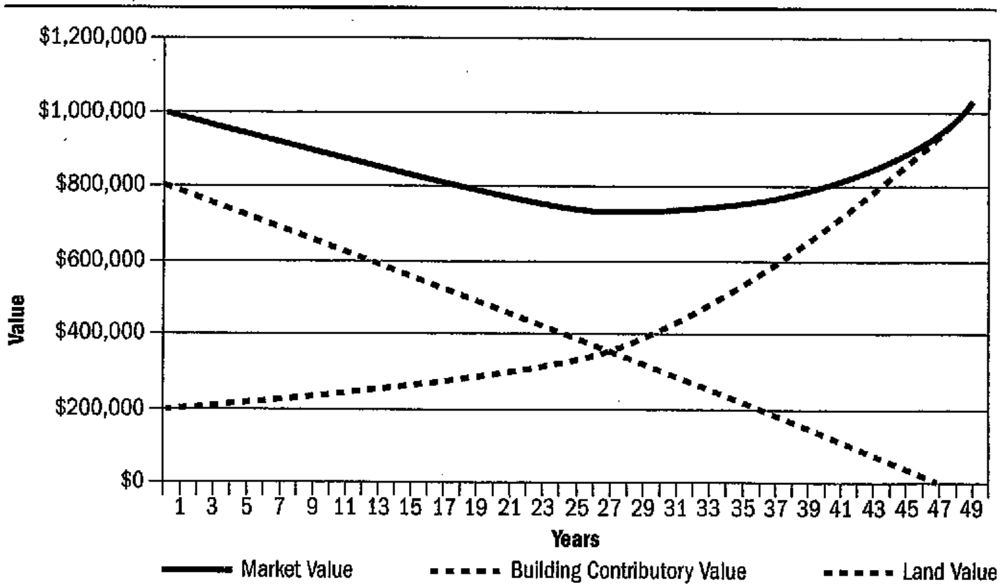
able sale prices for
yed, financing, and

Figure 19.1 Analysis of Variable Depreciation and Value Change Over Time



Value change typical of older, stable neighborhoods
Land value increase is steady but slow.
Value of the building declines and then stabilizes
Market value levels off and remains stable and later increases moderately.

Figure 19.2 Analysis of Depreciation and Value Change Over Time—Changing Market Conditions



Accelerating land values cause accelerating building depreciation.
Change in highest and best use around Year 28.
Building contribution declines to $0 around Year 47.
Building is demolished and property is redeveloped in Year 48.

conditions of sale. A market conditions adjustment is not made because the appraiser is estimating cost and depreciation at the time of the sale. No adjustments are made for physical, functional, or external impairments because these factors are the source of the depreciation that is being measured.

3. Subtract the value of the land at the time of sale from the sale price of each comparable property to obtain the contributory value of the improvements.
4. Estimate the cost of the improvements for each comparable property at the time of its sale. The cost estimates should have the same basis—i.e., reproduction cost or replacement cost. Typically replacement cost is used because the appraiser may not have sufficient information on all the sales to develop a credible opinion of reproduction cost. Also, the cost estimate should include all improvements.
5. Subtract the contributory value of all improvements from the current construction cost to determine the total dollar amount of depreciation of the improvements as of the date the sale occurred. The extracted depreciation includes all forms of depreciation.
6. Convert the dollar estimates of depreciation into percentages by dividing each estimate of total depreciation by the current construction cost. If the ages of the sales are relatively similar to the age of the subject property, the percentages of total depreciation can be reconciled into a rate appropriate to the subject property. This rate is applied to the subject's cost to derive an estimate of the subject's total depreciation.
7. If the ages of the comparable properties are different than the subject property, then develop an annual depreciation rate. This step expands the analysis to calculate annual rates of depreciation and to support an estimate of the total economic life expectancy of the subject property.

Consider the sales in Example 1 (Table 19.1). All are of fee simple interests and the ages, function, and external influences of the sale properties are similar to the subject property. In this case, the percentage range of total depreciation is so narrow that it is not necessary to annualize the calculations. The cost of the subject improvements is $240,000 (more than the price of Sale 1 but much less than the price of Sale 3), so the percentage of depreciation can be reconciled to 33% of cost. The total lump-sum dollar depreciation estimate comes to $80,000 ($240,000 × 33%).

If there are differences between the sales (e.g., location, remodeling, functional utility, degree of maintenance), total depreciation may show greater variation, and further analysis will be needed to understand the total depreciation. The appraiser converts total depreciation to an annual depreciation rate by dividing each percentage by the actual age of the sale property. Effective age may be used but requires specific knowledge about the quality of construction and physical characteristics of the improvements. Actual age is preferred because it is a fact that is readily available,

Table 19.1 Example 1

	Sale 1	Sale 2	Sale 3	Step in Procedure
Sale price	$215,000	$165,000	$365,000	1, 2
Less value of land	60,000	40,000	127,750	3
Depreciated cost of improvements	$155,000	$125,000	$237,250	3
Cost of improvements	$230,000	$195,000	$375,000	4
Less depreciated cost of improvements	155,000	125,000	237,250	5
Total depreciation in dollars	$75,000	$70,000	$137,750	5
Total depreciation percentage	$75,000/$230,000 32.61%	$70,000/$195,000 35.90%	$137,500/$375,000 36.73%	6

whereas effective age is based on the appraiser's judgment. Whether actual or effective age is used, the same age basis must be applied consistently to all sales. Then the appraiser analyzes the calculated depreciation rates and compares the comparable sale properties to the subject in order to select an appropriate annual depreciation rate for the subject improvements. Finally, the annual depreciation rate is multiplied by the age of the subject to develop an estimate of total depreciation.

The comparable sales in Example 2, shown in Table 19.2, have a wider range of ages. Suppose again that all the sales are of a fee simple interest and that no major functional or external obsolescence is evident.

In Example 2, the range of total percentage depreciation estimates is wide because of the age differences between the comparable sales. In this case, comparing annual depreciation rates provides more credible support for the depreciation estimate. Assuming that the subject improvements are 15 years old, which is closest to the actual age of

Table 19.2 Example 2

	Sale 1	Sale 2	Sale 3	Step in Procedure
Actual age of comparable property	8	14	19	
Sale price	$998,000	$605,000	$791,000	1, 2
Less value of land	140,000	100,000	125,000	3
Depreciated cost of improvements	$858,000	$505,000	$666,000	3
Cost of improvements	$950,000	$627,000	$934,000	4
Less depreciated cost of improvements	858,000	505,000	666,000	5
Total depreciation in dollars	$92,000	$122,000	$268,000	5
Total depreciation percentage	9.68%	19.46%	28.69%	6
Actual age of comparable property	8	14	19	
Average annual depreciation rate	1.21%	1.39%	1.51%	7
Total economic life expectancy	100%/1.21% 82.6 years	100%/1.39% 71.9 years	100%/1.51% 66.2 years	

Sale 2, a reasonable estimate of annual depreciation would be 1.4% per year, which is within the calculated range of 1.21% to 1.51% for the comparable sales. Applying this rate to the subject's age, total depreciation for the subject improvements is calculated at 21% (15 × 1.4%).

The model can be further expanded to support an estimate of the total economic life expectancy for the subject property. The average annual depreciation for the subject improvements equates to a total economic life of 71.4 years (100%/1.4%). This falls within the range of the total economic life expectancies of the comparables sales, 66.2 to 82.6 years, and appears reasonable for the subject property.

Applicability and Limitations

When sales data is plentiful, the market extraction method provides a reliable and convincing estimate of depreciation. However, the appraiser must be able to develop an accurate site value estimate for each of the comparable sales and a defensible estimate of replacement cost for each sale. Additionally, the comparable properties should have physical, functional, and external characteristics similar to the subject, and they should have incurred similar amounts and types of depreciation.

When the comparable properties differ in design, quality, or construction, it is difficult to ascertain whether differences in value are attributable to these characteristics or to a difference in age, and thus depreciation. The market extraction method is difficult to apply when the type or extent of depreciation varies greatly among the comparable properties due to characteristics other than age. Locational differences are assumed to be removed with the subtraction of land value. However, external conditions may affect building values as well, which is why it is important to select sales that are subject to the same (or similar) market influences. If the sales analyzed are affected by special financing or unusual motivation, the problem is further complicated.

The usefulness of the method depends heavily on the accuracy of the site value estimates and the cost estimates for the comparable properties. If the sales are located in market areas that are not comparable to the subject's, the method may not be appropriate. Market extraction considers all types of depreciation in a lump sum and does not break down the estimate into the various components of depreciation. However, this depreciation method is truly market-based and easy to understand, and for these reasons should be considered when it can be appropriately supported.

Economic Age-Life Method

The effective age and total economic life expectancy of a structure are the primary concepts used by an appraiser in measuring depreciation using age-life relationships. In the economic age-life method, total depreciation is estimated by calculating the ratio of the effective age of the property to its economic life expectancy and applying this ratio to the property's total cost. The formula is

(Effective Age / Total Economic Life) × Total Cost = Depreciation

External Obsolescence Estimated by Market Data Analysis

Using paired data analysis, consider a subject property that is a 12-unit apartment building located downwind of a relatively new asphalt batching plant. Sale A is a vacant lot adjacent to the subject that is zoned for a 12-unit apartment building and was just sold for $36,000 ($3,000 per unit). Sale B is a vacant site on the other side of town that is also zoned for a 12-unit apartment building and was recently sold for $48,000 ($4,000 per unit). Sale C is a 9-unit apartment building in the subject's neighborhood that was recently sold for $459,000 ($51,000 per unit). Sale D is a 10-unit apartment building on the other side of town that was sold for $540,000 ($54,000 per unit). Using Sales C and D, the external obsolescence attributable to the property as a whole is estimated at $3,000 per unit. The subject property would thus incur $36,000 in external obsolescence (12 units × $3,000). Sales A and B indicate that $12,000 of this external obsolescence ($1,000 per unit) is recognized in the land value. The remaining $24,000, therefore, is attributable to the building.

External Obsolescence Estimated by Capitalization of Income Loss

When a property produces income, the income loss caused by the external obsolescence can be capitalized into an estimate of the loss in total property value. This procedure is applied in two steps. First, the market is analyzed to quantify the income loss. Next, the income loss is capitalized to obtain the value loss affecting the property as a whole. If the income loss is anticipated to be permanent, it can be capitalized by applying either a gross income multiplier to a gross income loss or an overall capitalization rate to a net income loss. If the income loss is not anticipated to be permanent, it can be estimated using discounted cash flow analysis.

For example, consider a 4,000-sq.-ft. retail establishment in an oversupplied market. In a normal market, net operating income would be $8.00 per square foot. However, since the oversupply began, net operating income has fallen to $6.25 per square foot. The oversupply, which is unique to the subject's market, was caused by overbuilding. The overall capitalization rate indicated by the market is 10%. Since the oversupply is anticipated to continue indefinitely, the external obsolescence can be calculated by direct capitalization. The total income loss of $7,000 ([$8.00 – $6.25 = $1.75] × 4,000 square feet) is capitalized by the overall capitalization rate of 10%. The resulting external obsolescence of $70,000 would probably be attributed entirely to the improvements (if land value is not impacted).

If the oversupply were anticipated to continue for a relatively short period of time, the external obsolescence could be calculated by discounted cash flow analysis. Suppose that the $7,000 income loss will only last three years and that the appropriate discount rate is 13%. The external obsolescence could be calculated as the present value of $7,000 per year for three years, discounted at 13% (*PV* of $1 per period at 13% for three years = 2.361153), or $16,528. As in the previous example in which direct capitalization was used, it is likely that the entire amount of external obsolescence would be attributable to the improvement.