

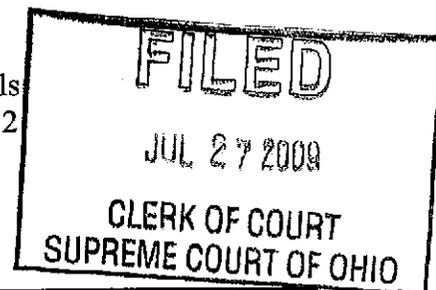
IN THE SUPREME COURT OF OHIO

HIN, LLC)
)
 Appellee,)
 vs.)
)
 CUYAHOGA COUNTY)
 OF REVISION, et al.,)
)
 Appellee,)
)
 and)
)
 BEDFORD BOARD OF)
 EDUCATION)
)
 Appellant.)

CASE NUMBER
2008-2408

Appeal from the Ohio Board of
Tax Appeals

Board of Tax Appeals
Case No. 2006-A-712



BRIEF OF APPELLEE HIN, LLC

Jay P. Siegel (0067701) (Counsel of Record)
 Nicholas M. J. Ray (0068664)
 SIEGEL SIEGEL JOHNSON &
 JENNINGS CO, LPA
 25700 Science Park Drive, Suite 210
 Cleveland, Ohio 44122
 (216) 763-1004

COUNSEL FOR APPELLEE
HIN, LLC

Timothy J. Kollin (0030062)
 William Mason (0037540)
 CUYAHOGA COUNTY
 PROSECUTOR'S OFFICE
 Courts Tower – Eighth Floor
 1200 Ontario Street
 Cleveland, OH 44113
 (216) 443-7795

COUNSEL FOR APPELLEES
CUYAHOGA COUNTY BOARD OF
REVISION AND AUDITOR

Thomas A. Kondzer (0017096)
 John P. Desimone (0062330)
 KOLICK & KONDZER

24500 Center Ridge Road, Suite 175
 Westlake, Ohio 44145-5697
 (440) 835-1200

COUNSEL FOR APPELLANT
BEDFORD BOARD OF EDUCATION

Richard Cordray (0038034)
 OHIO ATTORNEY GENERAL
 Lawrence D. Pratt (0021870)
 State Office Tower, 25th Floor
 30 East Broad Street
 Columbus, OH 43215-3428
 (614) 466-4320

COUNSEL FOR APPELLEES
TAX COMMISSIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
<u>TABLE OF AUTHORITIES</u>	ii
<u>STATEMENT OF FACTS</u>	1
<u>LAW AND ARGUMENT</u>	3
<u>Proposition of Law Number 1</u>	3
The best evidence of value is a recent arm’s length sale of the subject property.	
<u>Proposition of Law Number 2</u>	5
Under Ohio law, a leasehold interest in real property is not subject to taxation.	
<u>Proposition of Law Number 3</u>	7
Where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indicator of value.	
<u>Proposition of Law Number 4.</u>	11
The Supreme Court’s standard of review upon appeal from the Board of Tax Appeals is to determine whether the BTA decision is reasonable and lawful.	
<u>Proposition of Law Number 5:</u>	13
Because it was not identified as an assignment of error in the notice of appeal, the Supreme Court has no jurisdiction to consider the School Board’s allegation that the BTA erred in failing to order the \$7,400,000 sale price to be carried forward as identified in its Proposition of Law Number 1, C. (<i>Brief of Appellant, 22.</i>)	
<u>Proposition of Law Number 6:</u>	14
Even if the School Board had properly invoked this Court’s jurisdiction, a complaint challenging the assessment for a particular tax year continues as a valid complaint into subsequent tax years until the initial complaint is resolved.	
<u>CONCLUSION</u>	14

APPENDIX

APPENDIX PAGE NO.

Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision
(Aug. 12, 2008), BTA Case No. 2006-H-2152, unreported. 1

Princeton City School District v. Butler Cty. Bd. of Revision
(May 8, 1992), BTA Case No. 1990-C-820, unreported. 8

Real Estate Income Program 1986-I Limited v. Cuyahoga
Cty. Bd. of Revision (Aug. 31, 2001), BTA Case Numbers
1999-N-1030, 1053, 1053, unreported. 11

Williams v. Columbiana Cty. Bd. of Revision (Apr.4, 1997),
BTA Case No. 1996-M-644, unreported. 19

Ohio Const. Art. XII, Sect. 2 24

R.C. 5713.03 25

R.C. 5717.04 26

The Appraisal of Real Estate, 13th Edition, page 114 27

TABLE OF AUTHORITIES

Case Law

AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision
(2008), 119 Ohio St. 3d 563, 568 2008-Ohio-5203. 8

Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision (1988), 37 Ohio St.3d 16. 6

Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision
(Aug. 12, 2008), BTA Case No. 2006-H-2152, unreported. 7

Berea City School District Bd. of Edn. v. Manlaw Investment Co, Ltd.
(2005), 106 Ohio St. 3d 269, 2005-Ohio-4979. 4

Cincinnati School District Bd. of Edn. v. Hamilton Cty. Bd.
of Revision (1997), 78 Ohio St. 3d 325. 10

<i>Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> (2001), 90 Ohio St.3d 564.	11
<i>Columbus Bd of Edn v. Franklin Cty. Bd. of Revision</i> (1999), 87 Ohio St.3d 305, 1999-Ohio-69.	14
<i>County of Franklin v. Lockbourne Manor, Inc.</i> (1958), 168 Ohio St. 286.	6
<i>Cummins Property Services, LLC v. Franklin Cty. Bd. of Revision</i> (2008), 117 Ohio St.3d 516, 2008-Ohio-1473.	8, 9
<i>Dayton-Montgomery Cty. Port Authority v. Montgomery Cty. Bd. of Revision</i> (2007), 113 Ohio St.3d 281, 2007-Ohio-1948.	12
<i>EOP-BP Tower, LLC v. Cuyahoga Cty. Bd. of Revision</i> (2005) 106 Ohio St.3d 1, 2005-Ohio-309.	11
<i>First Baptist Church of Milford v. Wilkins</i> (2006) 110 Ohio St.3d 496, 2006 -Ohio-4966.	11
<i>Knust v. Wilkins</i> (2006), 111 Ohio St.3d 331, 2006-Ohio-5791.	11
<i>Princeton City School District v. Butler Cty. Bd. of Revision</i> (May 8, 1992), BTA Case No. 1990-C-820, unreported.	10
<i>Real Estate Income Program 1986-I Limited v. Cuyahoga Cty. Bd. of Revision</i> (Aug. 31, 2001), BTA Case Numbers 1999-N-1030, 1053, 1053, unreported.	9
<i>State, ex rel. Park Investment Co. v. Bd. of Tax Appeals</i> (1964), 175 Ohio St. 410.	4
<i>Target Corp v. Greene Cty. Bd. of Revision</i> (2009), Slip Opinion No. 2009-Ohio-2492.	11
<i>Victoria Plaza Ltd. Liability Co. v. Cuyahoga Cty. Bd. of Revision</i> (1999), 86 Ohio St.3d 181.	8
<i>Visicon, Inc. v. Tracy</i> (1998), 83 Ohio St 3d 211.	6
<i>Walters v. Knox County Bd. of Revision</i> (1989), 47 Ohio St. 3d 23.	4, 5
<i>Williams v. Columbiana Cty. Bd. of Revision</i> (Apr.4, 1997), BTA Case No. 1996-M-644, unreported.	7

<i>Zutkowski v. Franklin Cty. Bd. of Revision</i> (1994), 70 Ohio St.3d 503, 1994-Ohio-168.	12
--	----

Statutes

Ohio Const. Art. XII, Sect. 2	6, 7
R.C. 5713.03	3, 7, 15
R.C. 5715.19(D)	14
R.C. 5717.04	13

Other

<i>The Appraisal of Real Estate</i> , 13 th Edition, page 114	6
--	---

STATEMENT OF CASE AND FACTS

The subject of the instant appeal is the Cuyahoga County Auditor's 2004 real estate tax assessment of permanent parcel number 812-16-005.

The subject property, located at 17500 Rockside Road in Bedford, consists of a 1993 vintage +/- 78,500 square foot office building on 34.5784 acres. (Appellee's Supp. 3). It was originally designed as a regional headquarters for the Tops Supermarket chain, together with a contiguous warehouse distribution center not part of the instant appeal. The subject property is located in a primarily industrial area, considered to be a secondary office location, far from the primary office corridors that serve the greater Cleveland market (Appellee's Supp, 59-60).

On December 30, 2003, Tops sold the fee simple interest in the subject property for \$4,900,000 to JBK Properties ("JBK").¹ US Bank, which had originally negotiated with Tops to buy the subject property, instead nominated JBK as the buyer. US Bank, in turn decided to lease the subject property from JBK for a period of fifteen years. In April of 2004, the subject property sold subject to referenced lease for \$7,400,000.²

¹ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject. This 2.3911 acres later sold again for \$110,000, or \$46,004 per acre, in a separate transaction from the April 2004 transfer for \$7,400,000. The unit price in the \$110,000 sale is supported by the land value for the subject determined by appraiser Roger Ritley of \$40,000 per acre. (Appellee's Supp 104).

² US Bank, the party initially interested in buying the subject property from Tops, decided instead to lease the subject property from JBK, the buyer [Appellant's Supp. 64 (Depo Tr. 5-6); Appellant's Supp. 117-151]. The purchase by JBK included the contiguous 2.3911 acre parcel, which was originally intended to be developed by JBK for US Bank as a build-to-suit storage facility. [Appellant's Supp. 65 (Depo.Tr.7); Appellant's Supp. 80-84]. When US Bank backed out of the agreement for the development of the contiguous parcel, US Bank agreed to an increase in the lease for the subject property as compensation to JBK. [Appellant's Supp. 66 (Depo Tr., 13-14); Appellant's Supp. 152-187, 226-227]. The US Bank lease for the subject property also included a \$739,000 allowance to be utilized at the discretion of the tenant, [Appellant's Supp. 65-66 (Depo Tr., 10-11)]; as well as a contingency dependent on a \$22,500 annual grant plus \$50,000 in moving expenses from the City of Bedford [Appellant's Supp. 65 (Depo. Tr. 8-9); Appellant's Supp. 80-83, 85-113, ¶ 3.1.2]. The subject property later sold subject to the referenced lease [Appellant's Supp. 67-68 (Depo Tr. 17-19); Appellant's Supp. 197-216]

[Appellant's Supp. 67-68 (Depo Tr. 17-19), Appellant's Supp. 197, 207]. As outlined in the record, and admitted by the BOE in its brief, the only difference between the first sale two days before the tax lien date and the second sale the BOE urges this Court to accept, was the long-term lease to US Bank. The fee simple real estate did not change in any way over the intervening four months between the two sales.

For tax year 2004, the Taxpayer, HIN, LLC ("HIN" or "Taxpayer") filed a decrease complaint with the Cuyahoga County Board of Revision ("BOR"), requesting that the fair market value of the property be lowered to \$5,000,000. The Auditor's original true value for the parcel was \$7,848,400.³ The Bedford Board of Education ("BOE" or "School Board") filed a counter-complaint seeking to maintain the Auditor's assessment.

At the Board of Revision ("BOR") hearing, the Taxpayer submitted a conveyance fee statement establishing that the subject parcel, together with the contiguous 2.3911 acre parcel not part of the instant appeal, sold on December 30, 2003, two days before the tax lien date, for \$4,900,000. (Appellant's Supp. 192-196). In a decision dated May 18, 2006, the BOR maintained the Auditor's value (Appellant's Supp, 26). On June 14, 2006, the Taxpayer appealed the decision to the Board of Tax Appeals ("BTA").

By agreement of the Taxpayer and School Board and with the consent of the BTA, the deposition of John B. Kuhn was submitted in lieu of Mr. Kuhn's personal appearance at the BTA hearing. Mr. Kuhn, on behalf of JBK Properties, was a principle involved in the leasing, purchasing, and selling of the subject property. [Appellant's Supp. 65 (Depo. Tr. 8)].

³ Taxable value of \$2,746,940.

At the BTA hearing, in addition to the evidence in the statutory transcript and the deposition of Mr. Kuhn, the Taxpayer submitted the appraisal report and related testimony of Roger Ritley, MAI, of Charles M. Ritley and Associates. [Appellee's Supp. 1, *et seq*; Appellant's Supp. 32 (Hrg. Tr. 12)]. Consistent with the sale price, Mr. Ritley valued the subject property at \$4,900,000 as of the January 1, 2004 tax lien date. (Appellee's Supp. 2). The BOE did not offer any appraisal evidence at the BTA hearing. (Appellant's Supp. 29, Hrg. Tr.).

The BTA found that the arm's length sale of the property on December 30, 2003 for \$4,790,000⁴ was the best evidence of value as of tax lien date. The School Board subsequently filed the present appeal with this Court. (App. 1).

LAW AND ARGUMENT

I. Proposition of Law Number 1:

The best evidence of value is a recent arm's length sale of the subject property.

R.C. 5713.03 states, in pertinent part:

In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes.

This Court has long held that the "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's length sale transaction.

⁴ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject. The BTA decision reflects the \$4,900,000 sale price less the value of the 2.3911 acres not part of the subject property.

State, ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410. *Berea City School District Bd. of Edn. v. Manlaw Investment Co, Ltd.* (2005), 106 Ohio St. 3d 269, 2005-Ohio-4979.

An arm's length sale is characterized by the following elements: "it is voluntary, i.e. without compulsion or duress; it generally takes place in an open market; and the parties act in their own self interest." *Walters v. Knox County Bd. of Revision* (1989), 47 Ohio St. 3d 23, 25.

On December 30, 2003, the subject property sold in an arm's length transaction for \$4,900,000⁵ (Appellant's Supp. 192-196). Before it transferred, the property was extensively marketed for sale by Grubb & Ellis (Appellant's Supp. 80-84). Initially, the buyer was to be US Bank, but because US Bank ultimately preferred to lease the property, it assigned its purchase rights to JBK Properties. [Appellant's Supp., (Depo.Tr. 5-6)]. There is no evidence that indicates the parties were not dealing at arm's length, were acting under any duress or coercion, or were not acting in their own interests. Even the BOE states in its *Brief* that the arm's length nature of the December sale is undisputed (*Brief of Appellant*, 10).

The BOE makes the inconsistent argument later in its *Brief* that the December sale does not have the characteristics of an arm's length sale because US Bank initially negotiated the sale price, arguing that the transaction did not take place between a willing buyer and a willing seller. This argument is without merit.

The willing requirement concerns the absence of duress or coercion: "in other words, between one who is willing to sell but not compelled to do so and one who is

⁵ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

willing to buy but not compelled to do so.” *Walters, supra* (citing *In re Estate of Sears* (1961), 172 Ohio St. 443, 178 N.E.2d 240). There is no evidence in the record that either Tops or JBK were not acting voluntarily.

There is also no legal significance to the fact that it was US Bank who initially negotiated the purchase price with Tops. There is no dispute that the sale price was negotiated by parties acting in their own self interests. There is also no evidence that US Bank was acting under duress when it assigned its purchase rights to JBK, or that JBK was compelled to act against its own interests in assuming those rights, or that any of the parties were not dealing at arm’s length. The December 2003 sale bore all the characteristics of an arm’s length transaction and was correctly found to be so by the BTA. (App. 5-14).

Proposition of Law Number 2:

Under Ohio law, a leasehold interest in real property is not subject to taxation.

The subject property was the subject of a fee simple sale on December 30, 2003.⁶ In April of 2004 it sold again, subject to a long term lease in a leased fee sale. It is undisputed that the only change in that short period of time was the lease encumbrance. “Kuhn testified that the only change that occurred to the property between the time when he signed the purchase agreement with Tops Markets, LLC and when Hanna Neumann made her offer to purchase...was the lease with US Bank...”(*Brief of Appellant*, 8). Nothing in the property’s condition, improvements (the “bricks and sticks”), or location changed. The BOE admits in its *Brief*, “...the only change between when [Kuhn’s]

⁶ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

company, JBK, purchased the property and when it sold it was the lease to US Bank” (*Brief of Appellant*, 18). *There was no change in the underlying real estate.* Therefore, the only conclusion is that the difference in the two sale prices was due exclusively to the lease contract (an intangible asset), and the corresponding existence of a leasehold interest. As this Court states when discussing another intangible asset, transferable tax shelter advantages, in *Alliance Towers*, “These intangible items do not make the real estate more valuable.” *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St.3d 16, 23.

The Appraisal of Real Estate defines a leasehold interest as the “right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.” (Appraisal Institute, 13th ed. 2008, 114). Under Ohio law, there is no provision for the taxation of a leasehold interest for real estate taxes. Some jurisdictions have such a provision; Ohio does not. “The present law of Ohio does not provide for a tax on leaseholds.” *County of Franklin v. Lockbourne Manor, Inc.* (1958), 168 Ohio St. 286, 287. This Court again confirmed in *Visicon*, “With one exception...which is not relevant here, Ohio law still does not impose a real property tax upon leaseholds.” *Visicon, Inc. v. Tracy* (1998), 83 Ohio St 3d 211, 216.

The second sale upon which the BOE relies includes a significant leasehold interest, and is a leased fee sale. Ohio law requires that it is the fee simple interest that is taxed. To do otherwise results in a non-uniform assessment where some taxpayers are taxed on the leased fee value of their real property, while others are taxed on the fee simple value. Such non- uniform assessment violates the Ohio Constitution which

mandates that “land and improvements thereon shall be taxed by uniform rule according to value.” Ohio Const. Art. XII, Sect. 2.

Proposition of Law Number 3:

Where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indicator of value.

R.C. 5713.03 includes a time requirement that the sale must be within a reasonable length of time before or after the tax lien date. While there is no bright line test for what constitutes a “recent” sale for purposes of *ad valorem* taxation, where a property is the subject of multiple arm’s length transfers, the sale closest to the tax lien date is considered to be the better indicator of value. *Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision* (Aug. 12, 2008), BTA Case No. 2006-H-2152, unreported. *Williams v. Columbiana Cty. Bd. of Revision* (Apr.4, 1997), BTA Case No. 1996-M-644, unreported. “This rule applies regardless if the subsequent sale is for a significantly higher amount...” *Williams* at 4.

The December 30, 2003 transfer for \$4,900,000⁷ occurred just two days before tax lien date. Pursuant to *Ballantrae*, even if the April 2004 sale is also considered a recent arm’s length sale, the December 30th one is closer to the lien date; and therefore, a better indicator of value.

The BOE also argues that the BTA incorrectly looked to the recording dates of the deeds instead of looking further into the alleged timing of the negotiations. This argument is based on a faulty understanding of the BOE’s burden before the BTA. Once the December 2003 sale, which appears on its face to reflect a recent, arm’s length

⁷ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

transaction was presented, the BOE, as the opponent of using the sale price, must shoulder the burden to rebut the sale and show that the elements of a recent, arm's length transaction were not present. *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision* (2008), 119 Ohio St. 3d 563, 568 2008-Ohio-5203 (citing *Cummins Property Services, LLC v. Franklin Cty. Bd. of Revision* (2008), 117 Ohio St.3d 516, 2008-Ohio-1473). All that is required by the Taxpayer is that the sale "on its face appears to be recent and at arm's length." *Cummins Property Services, LLC v. Franklin Cty. Bd. of Revision* (2008), 117 Ohio St.3d 516, 2008-Ohio-1473 at 526.

As this Court continues, "[W]ere we to require a definite showing by the proponent [of the sale] that no evidence controverted the recency and arm's length character...then most cases involving a sale price would require the proponent to introduce appraisals and other extrinsic evidence showing the *absence* of any reason *not* to use the sale price...." *Id.* at 526 (emphasis in original). The BOE is advocating precisely such an approach.

The December 2003 sale is, on its face and as supported by the evidence in the record, recent, and at arm's length.⁸ The Taxpayer has sustained its burden and the BTA was correct to decline to adopt the standard the BOE is expounding.

Additionally, the BOE argues that the true date of the first sale was September of 2003 instead of December of 2003, and that therefore the April 2004 sale is "closer in time to the tax lien date." (*Brief of Appellant*, 20) The BOE argues that the critical time is when the parties arrived at the sale price not the recording of the deed. First, it has never been the law that the timing of the negotiations or the execution of the purchase

⁸ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

agreement was determinative. Such distinctions would be impractical and irrelevant as a sale cannot be deemed to have occurred before it closes.⁹ It is a factual impossibility and ignores the possibility that either party, for whatever reason, may fail to perform. Even if such a proposition were true, the offer in January 2004 resulting in the April 2004 sale that the BOE argues is critical (*Brief of Appellant*, 20), was not accepted until April of 2004. A contract for sale did not exist until April 2004. As the BTA has observed in the past, many things can happen to impede closing even once a contract exists: there may be environmental and structural inspections, financing contingencies, contract terms (including price) may be altered based on contingencies; or a contract could be terminated in its entirety. *Real Estate Income Program 1986-I Limited v. Cuyahoga Cty. Bd. of Revision* (Aug. 31, 2001), BTA Case Numbers 1999-N-1030, 1053, 1053, unreported. Accordingly, the April sale cannot have occurred in January 2004 as alleged by the BOE.

In short, the BOE is arguing that the April 2004 sale is more reflective of true value than the December 2003 sale (*Brief of Appellant*, 10, Proposition of Law Number 1), and requests that this Court look at other evidence beside the December 2003 sale price to make such a determination.¹⁰ As this Court stated in *Cummins*, “Under *Berea*, such a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm’s length character between a willing seller and a willing buyer are genuinely present for that particular sale.” *Cummins* at 519. The BOE has not offered any evidence that any of these elements are missing.

⁹ See, also, *Victoria Plaza Ltd. Liability Co. v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181, 183. To have standing to file a valuation complaint, the owner must have legal title to the property, and not simply an equitable interest.

¹⁰ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

The BOE had the opportunity at the BTA to show that its evidence is “more reflective of fair market value” and has already lost this argument.

This Court has held that a presumption exists that the sale price reflects the true value of the property, and that the sale has met all the requirements that characterize true value. *Cincinnati School District Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 325. The BTA has previously held that a copy of a real property conveyance fee statement, or deed, not otherwise controverted, is competent and probative evidence of the value in an arm’s length sale. Once a deed or conveyance fee statement is introduced into evidence, the opposing party must overcome the presumption that the sale price is the true value of the property. *Princeton City School District v. Butler Cty. Bd. of Revision* (May 8, 1992), BTA Case No. 1990-C-820, unreported. The School Board has failed to offer any evidence that rebuts this sale or in any way questions its arm’s length nature.

Furthermore, the record below indicates that the April 2004 sale was heavily subsidized by the both the landlord and the City of Bedford, and that the price was increased in part as a settlement for an unrelated contract that was broken. [Appellant’s Supp. 69-70 (Depo. Tr. 25-29)].¹¹ The BTA did not abuse its discretion in disregarding such a sale. Nor does the BTA’s allegedly improper speculation regarding changes to the market and/or property between the tax lien date and the second sale constitute an abuse of discretion. Considering all the evidence presented, the BTA found that the December

¹¹ When US Bank backed out of the agreement for the development of the contiguous parcel (not part of this appeal) US Bank agreed to an increase in the lease for the subject property as compensation to JBK. [Appellant’s Supp. 66 (Depo Tr., 13-14); Appellant’s Supp. 152-187, 226-227]. The US Bank lease for the subject property also included a \$739,000 allowance to be utilized at the discretion of the tenant, [Appellant’s Supp. 65-66 (Depo Tr., 10-11)]; as well as a contingency dependent on a \$22,500 annual grant plus \$50,000 in moving expenses from the City of Bedford [Appellant’s Supp. 65 (Depo. Tr. 8-9); Appellant’s Supp. 80-83, 85-113, ¶ 3.1.2].

2003 transfer was arm's length: "clearly JBK was not required to accept any of the terms of the deal and could have walked away from the prospective purchase and not agreed to the assignment, including the purchase price, if it was not satisfied with it. Accordingly, without any evidence in the record to the contrary, we find that the December 30, 2003 sale was arm's length." (App. 12).¹²

Proposition of Law Number 4:

The Supreme Court's standard of review upon appeal from the Board of Tax Appeals is to determine whether the BTA decision is reasonable and lawful.

The BTA determination of value for a property is a finding of fact. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, (citing *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13, 336 N.E.2d 433). As such, if the record contains reliable and probative support, this Court will affirm. *Target Corp v. Greene Cty. Bd. of Revision* (2009), Slip Opinion No. 2009-Ohio-2492 (citing *Satullo v. Wilkins* (2006), 111 Ohio St. 3d 399, 2006-Ohio-5856). This Court has stated repeatedly that it is not a super-BTA or trier of fact *de novo*. *EOP-BP Tower, LLC v. Cuyahoga Cty. Bd. of Revision* (2005) 106 Ohio St.3d 1, 2005-Ohio-309 (citing *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398). Upon appeal from the BTA, this Court's scope of review is to determine whether the BTA decision is reasonable and lawful. *Knust v. Wilkins* (2006), 111 Ohio St.3d 331, 2006-Ohio-5791. *First Baptist Church of Milford v. Wilkins* (2006) 110 Ohio St.3d 496, 2006-Ohio-4966.

¹² Because the sale occurred within two days of the tax lien date, the BTA also found that it was recent. (App. 6, FN 2). Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

In the present case, the BTA determination of value is supported by reliable, probative evidence: the arm's length sale for \$4,900,000 two days before tax lien date.¹³ The BTA found that that sale constituted a valid, recent, arm's length sale, and "as such, the transfer should be considered the best evidence of value." (App.10). The BTA determination is reasonable and lawful.

It is the burden of the appellant to show that the BTA determination of value was not supported by sufficient probative evidence. *Zutkowski v. Franklin Cty. Bd. of Revision* (1994), 70 Ohio St.3d 503, 1994-Ohio-168. The BOE has failed to meet its burden on appeal to this Court. It did not offer any evidence to rebut the arm's length nature of the December sale. It has not shown that the BTA finding of value was not supported by sufficient evidence.

In addition to the December sale, the Taxpayer offered the appraisal of the subject property by Roger Ritley at the BTA in support of its opinion of value. (Appellant's Supp. 32 *et seq.*, Hrg. Tr.12-79). Mr. Ritley's opinion of value also constituted competent, probative evidence of the value of the subject property.

Therefore, even if both the sale occurring two days before the lien date and the sale roughly four months after tax lien date were equally valid, the two sales would rebut each other, leaving the appraisal of Roger Ritley as the only evidence of value. The School Board has not offered any appraisal or other rebuttal evidence of its own. Mr. Ritley's appraisal remains competent, probative evidence of the value of the subject property.

¹³ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

The BTA determination of value is supported in the record by an arm's length sale price occurring two days from tax lien date, as well as by the Taxpayer's appraisal evidence. There is sufficient, probative evidence for its finding of value. The BTA determination of value is supported by the record; it is reasonable, lawful, and does not constitute an abuse of discretion. Its decision should be affirmed.¹⁴

Proposition of Law Number 5:

Because it was not specified as an assignment of error, the Supreme Court has no jurisdiction to consider the School Board's allegation that the BTA erred in failing to order the \$7,400,000 sale price to be carried forward as identified in its Proposition of Law Number 1, C. (*Brief of Appellant*, 22).

R.C. 5717.04 requires that the appellant set forth in its notice of appeal to this Court the errors complained of in the BTA decision. "Failure to so specify deprives the court of jurisdiction to grant a party relief on that ground." *Dayton-Montgomery Cty. Port Authority v. Montgomery Cty. Bd. of Revision* (2007), 113 Ohio St.3d 281, 2007-Ohio-1948 at 289 (citing *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337).

None of the errors contained in the School Board's Notice of Appeal include the allegation that the BTA erred in failing to carry forward the \$7,400,000 sale price to subsequent tax years (App. 1-4). Consequently, this Court is without jurisdiction to grant any relief based on this alleged error.

¹⁴ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject. The BTA determination of value of \$4,790,000 for the subject reflects the \$4,900,000 sale price less the value of the 2.3911 acres not part of the subject property.

Proposition of Law Number 6:

Even if the School Board had properly invoked this Court's jurisdiction, a complaint challenging the assessment for a particular tax year continues as a valid complaint into subsequent tax years until the initial complaint is resolved.

The BOE argues that the BTA should have determined the property's true value for the 2005 tax year as well, relying on the continuing complaint provisions of R.C. 5715.19(D).

The tax year at issue in this case is 2004. R.C. 5715.19(D) simply provides that a complainant will not need to file a complaint for each subsequent tax year while the matter is being decided. *Columbus Board of Education v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, 1999-Ohio-69 ("*Inner City*"). The BTA has no statutory duty to make a separate value determination for each year in the triennial period, unless complaints have been filed for more than one tax year. (The filing of a fresh complaint will halt the automatic carryover provisions. *Inner City* at 307). The transfer upon which the school board relies occurred in April 2004, well before the filing period for complaints contesting 2005 tax year values. The BOE could have filed a fresh complaint for tax year 2005 if it wished to contest the valuation as of January 1, 2005, but did not.

CONCLUSION

The subject property sold in an arm's length transaction for \$4,900,000 two days before tax lien date.¹⁵ The Taxpayer offered evidence of this sale as the best evidence of value. The BOE did not offer any evidence that would rebut the validity or reliability of the \$4,900,000 sale price or otherwise overcome the presumption that it reflected true

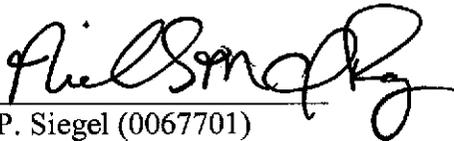
¹⁵ Included in the December 30, 2003 transfer was 2.3911 acres of land (not part of this appeal) adjacent to the subject.

value. The BTA found that the sale was recent and at arm's length and determined the sale price to be the true value pursuant to R.C. 5713.03 and the case law of this Court.¹⁶

For all the reasons above, the Taxpayer submits that the BTA decision was reasonable and lawful, and supported by sufficient, probative evidence in the record. The BOE has not sustained its burden before this Court to show that the BTA acted arbitrarily, capriciously, or abused its discretion. The BTA finding of value should be affirmed.

Respectfully submitted,

SIEGEL SIEGEL JOHNSON &
JENNINGS CO, LPA

By: 

Jay P. Siegel (0067701)
Nicholas M. J. Ray (0068664)
25700 Science Park Drive, Suite 210
Cleveland, Ohio 44122
(216) 763-1004

ATTORNEY FOR HIN, LLC

¹⁶ The BTA determination of value of \$4,790,000 for the subject reflects the \$4,900,000 sale price less the value of the 2.3911 acres not part of the subject property.

OHIO BOARD OF TAX APPEALS

Ballantrae Investments, LLC,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Hamilton County Board of Revision,)
 Hamilton County Auditor, and)
 the Cincinnati School District)
 Board of Education,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co., LPA
Property Owner Nicholas Ray
3001 Bethel Road, Suite 208
Columbus, Ohio 43220

For the County Appellees - Joseph T. Deters
Hamilton County Prosecuting Attorney
Thomas J. Scheve
Assistant Prosecuting Attorney
230 East Ninth Street
Cincinnati, Ohio 45202

For the Appellee - David C. DiMuzio, Esq.
Board of Education 1900 Kroger Building
1014 Vine Street
Cincinnati, Ohio 45202

Entered August 12, 2008

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

Appellant Ballantrae Investments, LLC (property owner) appeals from a decision of the Hamilton County Board of Revision (“BOR”). The subject property is improved with a Wal-Mart store located in the city of Cincinnati taxing district and is further identified as permanent parcel number 248-2-33. The BOR determined the

subject property's true value to be \$15,919,000 for tax year 2005, which is consistent with the subject's October 2004 transfer price. The property owner argues that, based on an appraisal of the subject, the correct true value should be \$6,000,000. Appellee Cincinnati School District Board of Education ("BOE") asserts the correct true value should be \$17,800,000, which is the amount originally assigned by the Hamilton County Auditor ("auditor") based on the subject's subsequent transfer in September 2005.

At the hearing before this board, the parties stipulated that the hearing record from a prior appeal before this board involving a determination of value for the same property as to tax year 2004 be incorporated into the record in this case. See Joint Exhibit 1 regarding *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (June 8, 2007), BTA No. 2005-M-1069, unreported, affirmed 118 Ohio St.3d 263, 2008-Ohio-2450; H.R. at 7-8. The parties presented the same witnesses that testified in the prior case and both confirmed that their prior testimony applied to this case. H.R. at 16-18, 33, 87.

In support of its position that the BOR overvalued the property in question, the property owner offered the testimony and appraisal report of Robin Lorms, MAI, a state-certified general real estate appraiser in Ohio.¹ Lorms testified that he arrived at a \$6,000,000 opinion of value for the subject as of the 2005 tax lien

¹ Lorms also testified and presented his appraisal report at the BOR hearing. Statutory transcript at Ex. IV-A; transcript of BOR hearing.

date. H.R. at 32, appellant's Ex. 1. Lorms also testified that he did not consider the subject's 2004 and 2005 transfer prices indicative of value for the reasons given in the prior case. H.R. at 16-18. Appellant's Ex. 1 at 3. See also, for example, joint Ex. 1 at 36, 38, 66-67, 86, 136 ("The sales of the subject property and the current lease at the subject property are not given any consideration in providing an opinion of market value for the fee simple estate because the property is subject to a build-to-suit lease agreement.").

The auditor presented Antoinette Ebert, an employee of the Hamilton County Auditor's office. Ebert, a state-certified general real estate appraiser, testified as to a \$17,800,000 opinion of value for the subject as of the 2005 tax lien date that was supported by a written appraisal.² H.R. at 91; appellee's Ex. A. The BOE relied on the record of the sale presented at the BOR to support its claimed value of \$17,800,000. H.R. at 109-110.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the BOR, the record of the hearing ("H.R.") before this board, and the briefs submitted by the parties.

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

² Ebert also testified and presented another appraisal report at the BOR hearing that included a copy of a real property conveyance fee statement evidencing the transfer of the subject property on September 7, 2005 for a total purchase price of \$17,800,000. Statutory transcript at Ex. IV-1; transcript of BOR hearing.

the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence 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. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must proceed to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, 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.

A review of the record indicates the subject property transferred before and after the January 1, 2005 tax lien date. The first sale of the subject occurred in October 2004 and this board has found that transfer to be an arm's-length transaction. *Cincinnati School Dist. Bd. of Edn.*, supra (finding October 2004 transfer of the subject property the best evidence of its 2004 value despite appraisal evidence that property was encumbered with long-term build-to-suit lease). The second sale of the

subject occurred in September 2005. S.T. at Ex. IV-1; transcript of BOR hearing. After consideration of both sales and the appraisal evidence, the BOR determined that the October 2004 sale constitutes a valid arm's-length sale, and, as the transfer closest to the tax lien date, that transfer price remains the best evidence of the value of the subject property as of January 1, 2005. Id. We agree.

R.C. 5713.03 provides, in pertinent part, that:

“In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.”

As the party asserting that the valuation determined by the BOR should be decreased, the property owner bears the burden of proving that the value it alleges should be the true value. The property owner's evidence does not meet that burden. The record establishes that the property transferred in October 2004 for \$15,918,900 in an arm's-length transaction. *Cincinnati School Dist. Bd. of Edn.*, supra. The property owner then acquired the subject in a second transfer in September 2005 for \$17,800,000. The Ohio Supreme Court has consistently held that when property has been the subject of a recent arm's-length sale between a willing buyer and a willing seller, the sale price of the property shall be the true value for taxation purposes. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *Berea City School Dist. Bd. of Edn. v. Cuyahoga*

Cty. Bd. of Revision, 106 Ohio St.3d 269, 271-272, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus.

Although the presumption exists that the sale price is the best evidence of true value, that presumption may be rebutted where the sale is not an arm's-length sale. *Cleveland Municipal School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St. 3d 250, 253, 2005-Ohio-6434, citing *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 544. However, we find the property owner presented no competent or probative evidence in this matter that would disturb the board's previous finding as to the arm's-length nature of the October 2004 sale to rebut the presumption that a sale price is the best evidence of value. We make the same finding as to the September 2005 sale.

The property owner's appraiser, Lorms, testified that he did not view either of the subject's transfers indicative of true value because the property is encumbered with a long-term build-to-suit lease. That opinion has been rejected by this board and the Ohio Supreme Court. *Cincinnati School Dist. Bd. of Edn.*, supra. See, also, *Rhodes*, supra; *Dublin City Schools Bd. of Edn.*, supra; *Cummins*, supra; *Berea*, supra. Consequently, without evidence to controvert the validity of the arm's-length nature of the sales, we must conclude that the best evidence of the property's true value for taxation purposes is one of the sale prices. *Id.*

Generally, where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indication of value. See, e.g.,

Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision (1993), 67 Ohio St.3d 575; *Williams v. Columbiana Cuyahoga Cty. Bd. of Revision* (Apr. 4, 1997), BTA No. 1996-M-644, unreported, at 4 (“[T]his Board has, in the past, held that when a property transfers more than once during the same triennial period, the sale closest to the tax lien date is considered the better indication of value as of the tax lien date. *** This rule applies regardless if the subsequent sale is for a significantly higher amount as is the case here.”). See, also, *Bd. of Edn. of Worthington City Schools v. Franklin Cty. Bd. of Revision* (Sept. 28, 2007), BTA No. 2005-K-1564, unreported; *Plazamill Ltd. Part. v. Franklin Cty. Bd. of Revision* (Jan. 11, 2008), BTA No. 2006-M-398, unreported. Under this rule, the sale closest to tax lien date is the October 2004 sale, when the property sold for \$15,919,000.

Accordingly, based upon the preponderance of competent and probative evidence before this board, the value of the subject parcel as of January 1, 2005 shall be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 6,101,000	\$2,135,350
BUILDING	<u>9,818,000</u>	<u>3,436,300</u>
TOTAL	\$15,919,000	\$5,571,650

The Auditor of Hamilton County is hereby ordered to cause his records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

ohiosearchkeybta



1 of 1 DOCUMENT

Board of Education of Princeton City School District, Appellant, vs. Butler County Board
of Revision, and Home Life Insurance Co., Appellees.

CASE NO. 90-C-820 (REAL PROPERTY TAXATION)

STATE OF OHIO -- BOARD OF TAX APPEALS

1992 Ohio Tax LEXIS 480

May 8, 1992

[*1]

APPEARANCES:

For the Appellant - Rendings, Fry, Kiely and Dennis, By: John W. Hust, Esq., 900 Central Trust Tower, Cincinnati, Ohio 45202

For the Appellee Taxpayer - Home Life Insurance Co., 11311 Cornell Trust Tower, Cincinnati, Ohio 45242

For the Appellee Board of Revision - John F. Holcomb, Butler County Prosecuting Attorney, 130 High Street, Hamilton, Ohio 45011

OPINION:

DECISION AND ORDER

This appeal was filed with the Board of Tax Appeals on July 16, 1990 by the appellant Board of Education of Princeton City School District from a decision of the appellee Butler County Board of Revision rendered on June 4, 1990, wherein said body valued certain real property owned by the appellee Home Life Insurance Co. for tax year 1989.

The real property in question is a 9.553 acre parcel which is improved with an industrial building. It is located in the Union Township-Princeton City School Taxing District of Butler County, Ohio. It appears upon the Butler County Auditor's records as permanent parcel number M5810-031-000-028.

The fair market and taxable values determined by the County Auditor and the Board of Revision for tax year 1989 are as follows:

	Fair Market Value		Taxable Value
Land	\$ 525,300	Land	\$ 183,860
Building	\$4,502,500	Building	\$1,575,880
Total	\$5,027,800	Total	\$1,759,740

[*2]

In its notice of appeal, the appellant claims the correct total fair market value is \$7,000,000 and the correct taxable value is \$2,450,000.

The matter is submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript provided by the appellee. We held an evidentiary hearing in this matter on May 22, 1991. No one appeared on behalf of the appellees. Counsel appeared on behalf of the appellant. No evidence was offered on behalf of appellant. Appellant relied upon the evidence contained in the statutory transcript provided by the appellee Board of Revision.

It is a well-established principle that the Board of Revision's determination of value is presumptively correct. The appellant has the burden of showing that it is incorrect. *Alliance Towers, Ltd. v. Stark County Board of Revision* (1988), 37 Ohio St. 3d 16, 25. Further, it is well-established that the best evidence of the fair market value 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; *Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Here, appellant alleges [*3] that the Board of Revision's determination of value is incorrect because said body reached its determination of value without taking into consideration a December, 1989 sale of the subject property. Appellant alleges that the subject property sold for \$7,000,000 and that the sale price is the best evidence of its fair market value for tax year 1989. We agree.

This Board recently journalized an entry in the case of Board of Education of the Princeton City School District v. Bd. of Revision of Butler County, and Apparelmaster, Inc., (December 20, 1991), B.T.A. Case No. 90-J-829, unreported. In that case the Princeton City Board of Education appealed from a decision by the Butler County Board of Revision. That decision ignored an arm's length sale of a property evidenced by a conveyance fee statement. The Board of Revision rejected the conveyance form as the sole indicator of value, stating that the tools to increase or decrease real property value should be the Tri-Annual update and the Revaluation. This Board rejected that argument:

"The board of revision had no evidence before it indicating that the January 3, 1990 conveyance fee statement was anything other than authentic. [*4] It was error for the board of revision to reject this evidence where nothing was offered to rebut it. The revaluations and triennial updates which are conducted pursuant to Revised Code section 5713.01 require the auditor to take recent sales into consideration. That section provides:

"The auditor shall revalue and assess at any time all or any part of the real estate in such county, . . . , where he finds that the true or taxable values thereof have changed, . . ."

"The county auditor is free to seek a property's correct value at any time. Where the value is challenged before the board of revision the auditor can review it and assert the correct value. *R.R.Z. Associates v. Cuyahoga Cty. Bd. Revision* (1988), 38 Ohio St. 3d 198."

In the case before this Board the statutory transcript contains a copy of the real property conveyance fee statement of value and receipt which evidences that the subject property sold in December, 1989 for \$7,000,000 and that a \$7,000 conveyance fee was paid to the Auditor on the transaction. Also, pursuant our request, this Board has received from Jo Ann Jonson, chief Deputy Recorder of Butler County, a copy of a Limited Warranty Deed filed [*5] December 18, 1989, evidencing transfer of the subject property to the Equitable Life Assurance Society of the United States. The Board finds that the subject property sold on December 18, 1989 for a sales price of \$7,000,000, in an arm's length transaction. That sale is the best evidence of the fair market value of the real property and should have been accepted by the board of revision.

While this Board received a copy of a Limited Warranty Deed evidencing transfer of the subject property, the receipt of that deed is not essential to our holding. A copy of a conveyance fee statement signed by a deputy auditor is valid evidence, as an exception under the hearsay rules, to prove the existence of the matter asserted and is self authenticating Evid. R. 803(8); Evid. R. 902(2). The submission of such a document requires the county appellee to bring forth some evidence to rebut the presumption that the sale price is the best evidence of value. *Zazworsky v. Licking County Board of Revision* (1991), 61 Ohio St. 604; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990) 53 Ohio St. 3d 57.

Upon consideration of the foregoing, it is the Decision [*6] and Order of the Board of Tax Appeals that the fair market and taxable values of the subject property for tax year 1989 were as follows:

	FAIR MARKET VALUE	TAXABLE VALUE
Land	730,880	255,980
Building	6,269,200	2,194,020
Total	7,000,000	2,450,000

The Butler County Auditor is ordered to give effect to this decision and order.

Legal Topics:

For related research and practice materials, see the following legal topics:

Tax LawState & Local TaxesAdministration & ProceedingsAudits & InvestigationsTax LawState & Local
 TaxesAdministration & ProceedingsJudicial ReviewTax LawState & Local TaxesReal Property TaxAssessment &
 ValuationValuation

OHIO BOARD OF TAX APPEALS

Real Estate Income Program)	
1986-I Limited,)	CASE NOS. 99-N-1030
)	99-N-1052
Appellant/Appellee,)	99-N-1053
)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Cuyahoga County Board of Revision,)	
And Cuyahoga County Auditor,)	
)	
Appellees,)	
)	
and)	
)	
Cleveland Municipal School District)	
Board of Education,)	
)	
Appellee/Appellant.)	

APPEARANCES:

For the Appellant	-	Todd W. Sleggs Todd W. Sleggs & Associates 3 rd Floor – 1015 Euclid Avenue Cleveland, Ohio 44115
For the County Appellees	-	William Mason Cuyahoga County Prosecuting Attorney Gregory Rowinski Assistant Prosecuting Attorney Courts Tower – 8 th Floor Cleveland, Ohio 44113
For the Board of Education	-	David Seed Britton, McGown, Smith, Peters & Kalail Co., L.P.A. Suite 450 - Summit One 4700 Rockside Road Cleveland, Ohio 44131

Entered August 31, 2001

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

These appeals are considered by the Board of Tax Appeals pursuant to notices of appeal filed by Real Estate Income Program 1986-I Limited ("REIP") and the Cleveland Municipal School District Board of Education ("BOE"). The appeals are taken from a final decision of the Cuyahoga County Board of Revision ("BOR") determining the value of the subject real property for tax year 1997. The subject property is identified on the Cuyahoga County Auditor's records as parcel number 117-10-001. The Auditor determined the true and taxable values of the subject property as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 221,600	\$ 77,560
Building	\$ 1,660,800	\$ 581,280
Total	\$ 1,882,400	\$ 658,840

Subsequently, a complaint was filed with the BOR by REIP, contending the property had a fair market value of \$1,000,000. The BOE filed a counter-complaint seeking no change in value. The BOR decreased the valuation to a true value of \$1,300,000. REIP asserts in its notice of appeal that the BOR improperly valued the subject property, stating the true value of the subject property is \$1,000,000. The notices of appeal filed by the BOE seek to reestablish the Auditor's valuation.

An evidentiary hearing was held before this Board. REIP's general partner, Mr. Richard Desich, testified, and presented an exhibit. Counsel for the BOE was also present. The county appellees made no appearance. REIP and the BOE filed briefs subsequent to the hearing. This matter is submitted upon the notices of appeal, the statutory transcripts certified by the Auditor pursuant to R.C. 5717.01, the record of the evidentiary hearing and the briefs.

Turning to the merits of this matter, we first note a party asserting a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging a decision of a board of revision to come forward and offer evidence demonstrating 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. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra*.

In interpreting the meaning of "true value," the Supreme Court has traditionally held the best evidence of a property's fair market value or "true value in

money" for tax purposes is that amount for which the property would sell on the open market between willing parties. *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In the later case of *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, the Court further expounded upon its view of the use of a sale to establish the fair market value of real property. In paragraph one of the syllabus, the Court stated:

"The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction."

The Court again stressed that the sale price represents the best indication of value in *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543. Therein, the Court stated:

"Nevertheless, we have always insisted that the sale price of an arm's-length transaction occurring within a reasonable time of the tax lien date was the value of the property as of the tax lien date." (Citation omitted.)

See, also, *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62.

Mr. Desich testified the subject property was purchased in 1986. The building became vacant in 1992. Since then, it has been listed with several real estate companies for sale or lease. There have been advertisements and open houses. Several prospective purchasers and tenants have viewed the building. Mr. Desich identified REIP's exhibit, a real estate purchase contract, dated October 12, 2000, for sale of the subject property. The sales price is \$1,000,000. As of the date of the hearing, the closing had not taken place. Mr. Desich testified the condition of the

property did not change between tax lien date and the date of the contract or hearing. He also testified that the market for this type of property had not changed during this period.

The BOE's counsel filed a motion in limine prior to the hearing "to exclude the admission of additional evidence consisting of a Real Estate Purchase Contract." Reasons given are that there are no documents evidencing that the property has actually sold, and that the contract is only an offer to purchase. Counsel cites *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397 as authority that offers for sale are generally not accepted as evidence of a property's fair market value. *Gupta* does state that unaccepted offers to purchase do not constitute a sale price and do not reflect the true value of the property. However, in the instant matter we have a signed offer and acceptance. The fact that the closing had not occurred as of the hearing date certainly goes to the weight of the evidence; but we will not exclude evidence relative to an executory real estate purchase contract. The motion in limine is denied.

Mr. Desich also testified regarding an appraisal identified as Exhibit D in the statutory transcript. This appraisal is for the date of January 1, 1993, whereas the tax lien date in the instant matter is January 1, 1997. As the BOE points out in its brief, the appraiser was not present to testify either at the hearing held here or the hearing before the BOR. We are reluctant to accept an appraisal under such circumstances, where we cannot examine the appraiser and the basis of his opinion.

Nordonia Hills Bd. of Edn. v. Summit Cty. Bd. of Revision (Nov. 9, 1995), B.T.A. No. 94-K-1227, unreported; *Carlyle Management Co. and L & P Valley Forge Limited Partnership v. Cuyahoga Cty. Bd. of Revision* (Apr. 25, 1997), B.T.A. No. 96-T-49, unreported. In addition, the date of the appraisal is four years prior to the relevant date in the instant matter, and we do not give the appraisal any significant weight for the reasons expressed in *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26:

“R.C. 5715.19(D) requires that the determination of a complaint filed for a particular tax year ‘shall relate back to the date when the lien for taxes * * * for the current year attached.’ R.C. 323.11 provides that the lien for real estate taxes is the first day of January. Likewise, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment for taxation of all real property, provides that ‘[t]he commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year * * *.’ Thus, the first day of January of the tax year in question is the crucial valuation date for tax assessment purposes. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, ***.

“The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. Becker’s approach to valuation was not based upon the facts as they existed on January 1, 1994, the tax lien date. Becker’s appraisals were based upon facts as they existed on December 30, 1991 and April 5, 1996, the dates of his appraisals. Evidence of the valuation as of these two dates is not evidence of the valuation as of January 1, 1994. The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact. The BTA may accept all, part, or none of the testimony presented to it by an expert. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155* * *. In

this case, the BTA chose not to accept Becker's valuation, and we agree." *Id.* at 29-30.

See also *Carlyle Management Co., supra; Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision, et al.* (1996), 75 Ohio St.3d 552.

The BOE presented no evidence at the hearing. In its brief, the BOE asserts that the real estate purchase contract and Mr. Desich's testimony are not indicative of the true value of the property because the sale had not closed by the hearing date, and because tax lien date is January 1, 1997, forty-five months prior to the contract date. Pursuant to the terms of the October, 2000 contract, the closing was to take place within ninety days after execution. As of the February, 2001 hearing before this Board, the sale had not closed. As the BOE asserts in its brief, many things can happen to impede the closing. The purchase contract calls for environmental and structural inspections. There is also a financing contingency. The parties may bilaterally alter the terms of the contract based upon these contingencies, and one of the items altered may be the sales price. Or the contract could be terminated in its entirety. REIP's brief counters that the contract is binding, and if it should fall through it is because of a contingency the buyer invokes, which means the property is worth less than the contract price to the buyer.

Here, we must agree with the BOE's analysis. The case law holds that a sales price is the best indication of value. However, we do not have a sale in evidence, only negotiations and a contract which may or may not be performed. REIP has offered no statutory or case law indicating we should rely upon a real estate

purchase contract for value. In these instances, when there is not sufficient evidence to support a different value we may adopt the determination of the BOR. *South Park Apts. v. Lorain Cty. Bd. of Revision* (Oct. 27, 2000), B.T.A. No. 98-A-740, unreported; *Forsythe v. Tuscarawas Cty. Bd. of Revision* (Oct. 13, 2000), B.T.A. Case No. 99-A-741, unreported.

The true and taxable values of the subject property for tax year 1997 remain as determined by the BOR, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 221,600	\$ 77,560
Building	\$ 1,078,400	\$ 377,440
Total	\$ 1,300,000	\$ 455,000

It is hereby ordered that the Auditor of Cuyahoga County shall cause his records to reflect the values herein determined.

ohiosearchkeybta

Eugene W. Williams,)	
Appellant,)	CASE NO. 96-M-644
vs.)	
)	(REAL PROPERTY TAX)
Columbiana County Board of)	
Revision and Columbiana)	
County Auditor,)	DECISION AND ORDER
Appellees.)	

APPEARANCES:

For the Appellant	-	Eugene W. Williams, <u>Pro Se</u> 15743 State Route 45 Lisbon, Ohio 44432
For the County	-	Robert L. Herron Columbiana County Prosecuting Attorney By: Daniel J. Solmen Assistant Prosecuting Attorney Court House 105 South Market Street Lisbon, Ohio 44432
Appellees		

Entered April 4, 1997

Mr. Johnson, Ms. Jackson, and Mr. Manoranjan concur.

This matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed under date of June 14, 1996, by appellant, Eugene W. Williams. Appellant appeals from a decision of the Columbiana County Board of Revision, (BOR), wherein that board determined the taxable value of certain real property for the year 1995.

The notice of appeal and the corresponding statutory transcript certified to this Board set forth that the subject real property is located in Columbiana County and is identified in the County Auditor's tax records as parcel number 40-01165-000.

Both the Columbiana County Auditor and the Columbiana County Board of Revision determined the true and taxable values of the subject property to be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$9,150	\$3,200
Building	-0-	-0-
Total	<u>\$9,150</u>	<u>\$3,200</u>

Appellant disagrees with the above-stated values and claims in his notice of appeal that the correct values for the subject property should be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$6,000	\$2,100
Building	-0-	-0-
Total	<u>\$6,000</u>	<u>\$2,100</u>

The Board of Tax Appeals now considers this matter upon the notice of appeal and the Statutory Transcript certified to this Board by the BOR. An evidentiary hearing was not held in this matter, as both counsel for the county and the appellant informed this Board that they preferred not to attend and would instead rely on the notice of appeal, the Statutory Transcript, and documentation attached thereto.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove 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; and Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St. 3d 318, 319. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its rights to the value sought. Cleveland Bd. of Edn., supra; and Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St. 3d 493. 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 and Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision, supra.

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 ***."

Both this statute and case law recognize that one of the best indicators of value is a recent, arm's length sale. R.C. 5713.03; State, ex rel. Park Investment Co., v. Bd. of Tax Appeals (1964), 175 Ohio St. 410.

When, as in the present case, there has been no recent sale of the property, we must consider the other evidence before us in determining its value.

In this regard, the appellant argues that the Columbiana County Auditor valued his property more than its actual market value. In support of this claim, the appellant presented evidence to the BOR of the sales of various properties located in the vicinity of the subject. Appellant sought to compare the prices garnered by these sales to his property in order to demonstrate what the actual market value of his property should be.

The BOR rejected the evidence on the grounds that the sales used as comparables were not arm's length sales and thus were not valid for determining the value of appellant's property. On the sales between family members, we must agree. While the appellant presented evidence that certain transfers of land occurred and testified before the BOR that the transferred properties were similar to his own, appellant failed to recognize a defect in the "comparable" sales. A sale cannot be considered "arm's length" unless it meets the test set forth in Walters v. Knox Cty. Bd. of Revision (1989), 47 Ohio St. 3d 23. Walters defined an "arm's length" sale as:

"one which encompasses bidding and negotiation on the open market between a ready, willing and able buyer and a ready, willing and able seller, both being mentally competent and neither acting under duress or coercion."

The Court proceeded to list the elements of an "arm's length sale" as:

"In sum, an arm's length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." Walters at 25.

All but one of the sales presented by the appellant involved transfers between related parties. These transactions were sales between one family member and another. Sales between related parties are generally not considered arm's length for valuation purposes. Henry P. and Esther Ziegler v. Hamilton Cty. Bd. of Revision (May 11, 1990), B.T.A. Case No. 89-F-503 unreported;

see also Columbus Board of Education v. Franklin Cty. Bd. of Revision, et al. (Feb. 17, 1989), B.T.A. Case No. 87-F-703 unreported. Consequently, such sales would generally be invalid for comparison purposes.

While sales between family members would not be evidence of fair market value, Mr. Williams included in his evidence one sale that does not appear to involve a transaction between family members. This sale involved the transfer of 1.159 acres of land for \$3,000. The cost per acre was \$2,590. The BOR did not criticize this sale because of any relationship between the parties or because of its lack of comparability to the subject.

Instead, the BOR's criticism was based on the fact that this property was the subject of a subsequent sale in the same year. The second sale was for the much higher price of \$11,000. Although the price included a small amount of additional acreage, the price per acre equalled \$9,210. While the BOR placed weight upon this subsequent sale taking place in April of 1995, this Board has, in the past, held that when a property transfers more than once during the same triennial period, the sale closest to the tax lien date is considered the better indication of value as of the tax lien date. Bd. of Edn. of Hilliard City School District v. Franklin Cty. Bd. of Revision (Jan. 4, 1991) B.T.A. Case No. 89-B-155 unreported; see also Bd. of Edn. of Dublin Local Schools v. Franklin Cty. Bd. of Revision (Oct. 12, 1989), Franklin App. No. 89AP-347, unreported. This rule applies regardless if the subsequent sale is for a significantly higher amount as is the case here.

In the present case, the first sale for \$3,000 occurred on January 3, 1995. The second sale for \$11,000 occurred on April 14, 1995. Both the subject and the comparable are unimproved ¹ and both appear to be located in a similar neighborhood. Consequently, absent any showing that this sale did not constitute an arm's length transaction or was not comparable to the subject, the January sale will be viewed as being an accurate indicator of the true value of the property.

Therefore, considering the fact that the BOR did not in any way criticize the arm's length nature of the January 3, 1995 sale or the comparability

¹ mobile homes, assessed separately, sit on both sites. While Mr. Williams testified before the BOR that the \$11,000 sale included the value of the mobile home, a BOR member referred to the conveyance statement which indicated that the sale price included only the homesite.

of the two properties, this Board finds that said sale is the best indication of value. Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 1995 was as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$2,590	\$ 910
Building	<u>-0-</u>	<u>-0-</u>
Total	\$2,590	\$ 910

It is ordered that the records of the Auditor of Columbiana County shall reflect the values determined above. It is further ordered that the values determined shall be carried forward in accordance with the 1 ohiosearchkeybtaaw.

Article XII: Finance and Taxation

§2 No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

(1851, am. 1906, 1912, 1918,
1929, 1933, 1970, 1974, 1990)

5713.03 County auditor to determine taxable value of real property.

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 and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. He shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. He shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Effective Date: 09-27-1983

5713.04 Tracts to be valued separately - split listing for tax exemption - deductions.

Each separate parcel of real property shall be valued at its taxable value, excluding the value of the crops, deciduous and evergreen trees, plants, and shrubs growing thereon, and taking into account the diminution in value as the result of the existence of any conservation easement created under sections 5301.67 to 5301.69 of the Revised Code. The price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value. If the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest listed, and be taxed to the parties owning the different interests.

If a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.

The county auditor shall deduct from the value of each separate parcel of real property the amount of land occupied and used by a canal or used as a public highway at the time of such assessment.

Effective Date: 03-14-1980

related interests—the leased fee interest and the leasehold interest. Additional economic interests, including subleasehold (or sandwich) interests, can be created under special circumstances.

Leased Fee Interests

A leased fee interest is the lessor's, or landlord's, interest. A landlord holds specified rights that include the right of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the lessee (leaseholder) are specified by contract terms contained within the lease. Although the specific details of leases vary, a leased fee generally provides the lessor with the following:

- Rent to be paid by the lessee under stipulated terms
- The right of repossession at the termination of the lease
- Default provisions
- The right of disposition, including the rights to sell, mortgage, or bequeath the property, subject to the lessee's rights, during the lease period

When a lease is legally delivered, the lessor must surrender possession of the property to the tenant for the lease period and abide by the lease provisions.

The lessor's interest in a property is considered a leased fee interest regardless of the duration of the lease, the specified rent, the parties to the lease, or any of the terms in the lease contract. A leased property, even one with rent that is consistent with market rent, is appraised as a leased fee interest, not as a fee simple interest. Even if the rent or the lease terms are not consistent with market terms, the leased fee interest must be given special consideration and is appraised as a leased fee interest.

Leasehold Interests

The leasehold estate is the lessee's, or tenant's, estate. When a lease is created, the tenant usually acquires the rights to possess the property for the lease period, to sublease the property (if this is allowed by the lease and desired by the tenant), and perhaps to improve the property under the restrictions specified in the lease. In return, the tenant is obligated to pay rent, surrender possession of the property at the termination of the lease, remove any improvements the lessee has modified or constructed (if specified), and abide by the lease provisions. The most important obligation of a tenant is to pay rent.

The relationship between contract and market rent greatly affects the value of a leasehold interest. A leasehold interest may have value if contract rent is less than market rent, creating

fee simple interest

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

leased fee interest

The ownership interest held by the lessor, which includes the right to the contract rent specified in the lease plus the reversionary right when the lease expires.

leasehold interest

The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.

CERTIFICATE OF SERVICE

A copy of the foregoing *Brief of Appellee and Appendix* was sent via regular U.S. mail, postage prepaid this 27th day of July 2009 to: Thomas A. Kondzer, Esq., Kolick & Kondzer, 24500 Center Ridge Road, Suite 175, Westlake, OH 44145-5697, Timothy J. Kollin, Esq., Cuyahoga County Assistant Prosecuting Attorney, Courts Tower - Ninth Floor, 1200 Ontario Street, Cleveland, OH, 44113, and Lawrence D. Pratt, Section Chief, Taxation, Ohio 30 E. Broad Street, 25th Floor, Columbus, OH 43215-3428


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

ATTORNEY FOR HIN, LLC

13132-04