

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

**FIRSTCAL INDUSTRIAL  
2 ACQUISITIONS, LLC.,**

**Appellant,**

**Case No. 2009-1505**

**Notice of Appeal from the Ohio Board  
Of Tax Appeals Case Nos. 2006-B- 1789  
1790; 1791;1792 consolidated**

**vs.**

**Franklin County Board of Revision,  
Franklin County Auditor, Boards of Education  
Of the South-Western City Schools and the  
Hilliard City Schools  
Appellants.**

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**APPELLANT'S MERIT BRIEF**

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**FILED**  
NOV 23 2009  
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SUPREME COURT OF OHIO

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***STATEMENT OF FACTS***

This cause and matter is before the Court on appeals from determinations of the Ohio Board of Tax Appeals (BTA hereafter) involving several properties acquired by the appellant-taxpayer as a result of its purchase of an entire portfolio of separate buildings located in Marietta , Georgia; Roswell, Georgia; Duluth, Georgia; Norcross, Georgia; Suwanee, Georgia; Orlando, Florida; Lake Mary, Florida; Cincinnati, Ohio; Blue Ash, Ohio; Sharonville, Ohio; Fairfield, Ohio; West Chester, Ohio; Solon, Ohio; Strongsville; Ohio; Twinsburg, Ohio; Lewis Center, Ohio; Grove City, Ohio, Columbus, Ohio; Minneapolis, Minnesota; Chanhassen, Minnesota; Eagan, Minnesota; Eden Prairie, Minnesota; Edina, Minnesota; Bloomington, Minnesota; Golden Valley, Minnesota; Plymouth, Minnesota; St. Paul, Minnesota; Fridley, Minnesota; Cedar Lake, Minnesota; Crystal, Minnesota; Hopkins, Minnesota; Nashville, Tennessee; Morrisville, North Carolina; and Raleigh, North Carolina.

The properties subject to these appeals are located in *two separate taxing districts of Franklin County and ALL WERE TRANSFERRED AS PART OF THE BULK SALE OF THE ENTIRE PORTFOLIO.*

In the complaints filed by the two separate boards of education, ( districts

40 and 560), all of the properties were listed and the ONLY EVIDENCE produced by the TWO boards of education was the single conveyance form of 9-29-05 listing the following properties:

PROPERTY	PARCEL
3940 Gantz,	40-4140-80
4000 Gantz,	40-4140-89
2190-2200 Westbelt,	560-201732
2787-2805 Charter	560-189895
2829-2843 Charter	560-189895
3800 Zane Trace	560-112021
3635 Zane Trace	560-191461
Westbelt III land	560-189895

Parcel 560-191461 [ 3635 Zane Trace ] was sold within weeks of the transfer and was the subject of BTA Case 06-A-1788. This property was referenced by the BTA in a footnote as not part of its decision but sold for less several weeks after Appellant's acquisition for less than the Board of Education allocation.

*The single conveyance form listed all of the Franklin County properties transferred and listed the bulk amount of \$34,336, 121. NO ALLOCATION WAS MADE EITHER ON THE CONVEYANCE FORM OR IN THE PURCHASE CONTRACT. THE ONLY ALLOCATION THAT WAS MADE WAS THE ALLOCATION ON THE BOE'S COMPLAINTS WHICH HAD A GREATER AMOUNT ON*

*PARCEL 560-191461 than the actual subsequent arms-length sale ( BTA 06-A-1788).*

The properties are all different, and are all located in different locales, and are different in size and construction. No evidence was presented by either BOE other than the conveyance form, also in the statutory transcript, and no evidence was presented by the BOE as to a valuation of each of the separate properties in the two taxing districts.

At the Board of Revision (BOE) hearing, appellant objected to the use of the bulk transfer conveyance form as evidence as to the value of the individual properties and objected to the allocations made by the BOE as there was no collateral evidence as to the value of each separate property.

### ***LEGAL ARGUMENT***

#### ***Proposition of Law No. 1:***

***A complainant before a county board of revision has an affirmative duty to present evidence as to the valuation it asserts is proper.***

#### ***Proposition of Law No. 2:***

***Where a complainant before a county board of revision relies on a bulk sale of separate parcels, each of which is a separate and distinct economic unit, the complainant must produce reliable and competent evidence as to the proper valuation of each of the separate economic units.***

The burden of proof is upon the party asserting a valuation different from that of a county auditor before a board of revision with regard to its assertion in the complaint. *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1966), 74 Ohio St 3d 647; *Consolidated Aluminum Corp. v. Monroe Cty. Bd. of Revision* (1981), 66 Ohio St. 2d 410; *Ashley Woods, L.P. v. Hamilton Cty. Bd. of Revision* (Aug. 8, 2003), BTA 2003-V-90, unreported; *Cross Country Inns, LLC. V. Hamilton Cty. Bd. of Revision* (September 24, 2004), BTA 2003-A-1266, unreported , *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St. 3d 62 (involving the bulk sale of identical condominium units). Before the BTA, the burden of persuasion does not change to the opposing party. And a complainant has the affirmative duty to prove it's the valuation it asserts.. *SEE: Cincinnati Bd. of Education v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 325; *Bd. of Edn. of the Columbus City School Dist. V. Franklin Cty. Bd. of Revision* ( Nov. 28, 1997)), BTA No. 1996-S-93 , unreported. *SEE: Cleveland Bd. of Edn. V. Cuyahoga Cty. Bd. of Revision* (1994) 68 Ohio St. 3d 336, 337; *Springfield Local Bd. of Edn. V. Summit Cty. Bd. of Revision* (1994), 68 Ohio St. 3d 493,495.

In *Lakota Local School Dist. Bd. of Edn. V. Butler Cty. Bd. of Revision*, 108 Ohio St. 3d 310, 2006-Ohio-1059, the Supreme Court was quite clear that in instances where an Appellant board of education fails to present evidence in support of its appeal, it is error for the BTA to rule in favor of the Appellant BOE. The burden does not shift to the taxpayer in this instance, *see: Cummins property Services v. Franklin Cty. Bd. of Revision*, 2008-Ohio-1473 at paragraph 43, page 16. It was incumbent upon the BOE as an appellant challenging the BOR determination to support its claim. *Columbus City School Dist. Bd. Of Edn. V. Franklin Cty. Bd. Of Revision (2001)*, 90 Ohio St. 3d 564:

“ When cases are appealed from a board of revision to the BTA, **THE BURDEN OF PROOF IS ON THE APPELLANT, WHETHER IT BE A TAXPAYER OR BOARD OF EDUCATION**, to prove its right to an increase or decrease from the value determined by the board of revision . *Cincinnati School Dist. Bd of Edn. V. Hamilton Cty. Bd. of Revision (1977)*, 78 Ohio St. 3d 325, 328, \*\*\* . The Appellant before the BTA must present competent and probative evidence to make its case; **IT IS NOT ENTITLED** to a reduction or an increase in valuation merely because no evidence is presented against its claim. *Hibschman v. Board of Tax Appeals (1943)*, 142 Ohio St. 47 \*\*\*. “ *Id. At 566( parallel citations omitted And emphasis added)*.

The rules are the same before a county board of revision and the BTA must have competent evidence in order to endorse an action of a board of revision.

In *Columbus City School Dist. Bd. of Edn. V. Franklin County Bd. of Revision (2001)*, 90 Ohio St. 3d 564, the Court stated at page 3: “ We cannot affirm a determination of value by the BTA that is not supported by sufficient probative evidence”.

Any finding of fact by the BTA or determination of substantive merits must be based on evidence *Hawthorn Melody, Inc. v. Lindley (1981)*, 65 Ohio St. 2d 47, 417 N.E. 2d 1257, and the BTA is required to state what evidence it considered relevant in reaching its determination *Howard v. Cuyahoga Cty. Bd. of Revision (1988)* 37 Ohio St. 195, 524 N.E. 2d 887, 889.

*Columbus Bd. of Edn. V. Franklin Cty. Bd. of Revision (1996)*, 76 Ohio St. 3d 13, *Black v. Cuyahoga Cty. Bd. of Revision (1985)*, 16 Ohio St. 3d 11.

Suffice it to say it is error for the BTA to affirm the BOR’s valuation when the complainant has not presented sufficient evidence to the BOR to justify its position and the value it asserted. *Bedford Bd. of Edn. V. Cuyahoga Cty. Bd. of Revision (2007)*, 115 Ohio St 3d 449, 2007-Ohio-5237.

Unlike the parcels in *Pingue v. Franklin Cty. Bd. Of Revision (1999)*, 87 *Ohio St. 3d 62*, which involved IDENTICAL CONDOMINIUM UNITS, the parcels are not in the same place but are vastly different separate properties.

In a dissent in **Pingue**, Justice Cook pointed out: “ The presumption In R.C. 5713.03, however does not apply to Pingue’s multiple-parcel purchase because the statutory scheme prefers the valuation of *individual parcels* unless multiple parcels are shown to be a single economic unit.”

Id. At page 7. Moreover, in *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision, 118 Ohio St. 3d 330. 2008-Ohio-2454* the Court entertained jurisdiction over an appeal involving one facet of a parcel valuation- the land value- as separate from the total, *ie.* land and improvements, and found that an evidentiary basis was necessary as to BOTH land and improvements which ostensibly, could be appealed individually.

In the BTA case of *Trans Healthcare of Ohio, Inc. v. Cuyahoga County Board of Revision, et al. (May 16, 2003) BTA Case No. 2002-R-2563, attached*, the BTA rejected the bulk sale conveyance form with regard

to the 14 properties that sold 5 months after the tax lien date in issue for the bulk price of 36 million dollars as having evidentiary value.

In *Trans Healthcare*, the BTA found that there must be some evidentiary basis to delineate between the values of the various separate properties as to “ *location, land size, building size construction quality, age of improvements, special financing, and amenities for the various properties*” ( *Id.* At pages 9 and 10). The BTA finding: “ ... the board finds that *Trans Healthcare* has failed to establish that the bulk sales price is indicative of the true value for the subject property for the tax lien date.” ( *Id.* At page 11). The only allocation made herein was by counsel for the board of education in filing its complaint and no evidence supports it.

In a seminal case involving bulk transfers, *Corporate Exchange Buildings IV and V, L.P. v Franklin Cty. Bd. Of Revision* (1998), 82 Ohio St. 3d 297, at issue was the allocation of two office buildings in the same office park adjacent to each other. At the BOR, Corporate Exchange sought to have the value of both reduced to the arms-length sale price ( there was no issue that the transfer was not arms-length) of \$14,500,000 from the auditor’s combined value of \$19,030,000. The BOR refused to allocate; the BTA refused to allocate even though the president of Corporate exchange who negotiated the purchase testified how the deal was consummated and

the price arrived at. [ Copies of the BTA decision and Supreme Court decision attached hereto]. In her Dissent, Justice Lundberg Stratton stated:

*“ Because I do not understand how the BTA can insist on taxing these two properties at a combined value of \$19,030,000, while agreeing that the true value is \$14,500,000, I must strongly dissent from the majority’s affirmance of the BTA’s decision. I would find the decision to be arbitrary, unreasonable, and patently unfair”. ( Id at page 6).*

It is strongly asserted that the BTA ignored not only its decision but also the Supreme Court decision in *Corporate Exchange*, which is appended hereto. It is interesting to note that this same BOR refused to allocate between 2 adjacent buildings in the same taxing district. Is the difference in treatment predicated on additional tax revenue? How can the purchaser of property not be justified in allocating between 2 buildings he bought but a BOE who was not involved, has provided no basis for its proposed numbers, and provided no collateral evidence of value, represented by an agent who did not even see the property, be accorded such authority? And how does a board of revision, confronted by a bulk sale of the properties, make a allocation without any evidence or explanation and shift the burden of proof on the taxpayer and not on

the BOE, the original complainant, as required?

In *Corporate Exchange, supra*, the Court pointed out at page 3 that the parcels were not identical and stated clearly “However, as the appellant before the BTA, Partnership needed to show that its allocation of the purchase price between the two parcels represented the true value of each parcel.” The same burden would apply at a board of revision. How then, did the BTA in this case affirm allocations-not between two properties- but between eight separate properties in two different taxing districts without requiring the same level of proof that it applied to the taxpayer in

*Corporate Exchange, supra* ?

In the recent decision of the Supreme Court in *Knickerbocker Properties Inc. XLII v. Delaware Cty. Bd. of Revision, 2008-Ohio-3192 (April 22, 2008)*, the Supreme Court clearly discussed how actions of a BOR can shift the burden as well as deny basic due process and how it is unlawful for the BTA to allow it to happen. It is clear from the record that the action of the BOR in these cases do likewise.

***Proposition of Law No. 3:***

***The Court will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion or where there is no underlying evidence of record to support the decision of the BTA.***

In the recent *per curiam* decision of the Court in *Worthington City*

*Schools Bd. of Edn. V. Franklin Cty. Bd. of Revision, Slip Opinion No.*

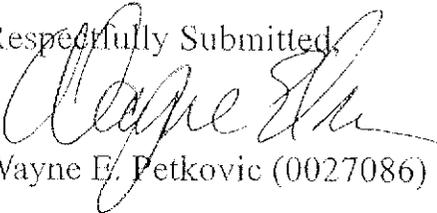
*2009-Ohio-5932* the Court was quite clear in that a review of a BOR decision by the BTA must encompass a review of the evidence and that the BTA must state what evidence it found dispositive ( slip opinion page 13).

In this matter, the conveyance form listed the various parcels, in bulk with one “price” listed for all ( BOR exhibit B, attached) and the deed listed all of the properties without any separation of value as to each ( BOR Exhibit A, attached). As a factual and practical matter it is impossible for the BTA to point to any evidence of value for each of the several separate and distinct properties as no such evidence was presented by the board of education and there is none of record. In fact the only separation of value was by some unknown calculation(s) by the attorneys for the board of education by way of an attachment to the complaints filed ( see appended attachment). This hardly rises to the level of evidence as there is no support for these numbers and the board of education had no appraisals or other evidence as to the values of each of the separate and distinct properties. It is thus impossible for the BTA to point out any evidence that lends credence to the “allocations” and the record contains no support for these numbers. The BTA decision is erroneous and unlawful in that it affirmed allocations for which there was no evidentiary basis for this unknown bulk

sale allocation , See: *HK New Plan Exchange Property Owner II, L.L.C. v Hamilton Cty. Bd. of Revision, 122 Ohio St. 3d 438, 2009-Ohio 3546.*

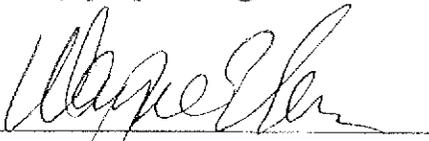
**CONCLUSION**

It is respectfully requested that the Court reverse the decision of the BTA and, upon remand to Order the valuation of the subject properties at the Auditor's original values as there was no evidentiary basis for the decision.

Respectfully Submitted,  
  
Wayne E. Petkovic (0027086)

Certificate of Service

A copy of the foregoing brief was mailed to all counsel of record this 23 day of November, 2009 by prepaid regular U.S. Mail.

  
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Attorney for Appellant

IN THE SUPREME COURT OF OHIO

FILED/RECEIVED  
BOARD OF TAX APPEALS

ORIGINAL

2009 AUG 20 AM 11:50

FIRSTCAL INDUSTRIAL  
2 ACQUISITIONS, LLC.,

Appellant,

Case No. **09-1505**

Notice of Appeal from the Ohio Board  
Of Tax Appeals Case Nos. 2006-B- 1789  
1790; 1791;1792 consolidated

vs.

Franklin County Board of Revision,  
Franklin County Auditor, Boards of Education  
Of the South-Western City Schools and the  
Hilliard City Schools

Appellants.

---

NOTICE OF APPEAL OF FIRSTCAL INDUSTRIAL 2  
ACQUISITIONS, LLC.

---

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AUG 20 2009  
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SUPREME COURT OF OHIO

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A-1

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A-2

Appellant, FirstCal Industrial 2 Acquisitions, LLC., hereby gives notice of its appeal from a final order of the Ohio Board of Tax Appeals in the matter of *FirstCal Industrial 2 Acquisitions, LLC. v. Franklin County Board of Revision, Franklin County Auditor, and Boards of Education of the South-Western City Schools and Hilliard City Schools*, being Case Numbers 2006-B-1789; 2006-B-1790; 2006-B-1791 and 2006-B-1792 on the Docket of the Ohio Board of Tax Appeals.

The final order, hereby appealed pursuant to the pertinent provisions of section 5717.04, was journalized by the Board of Tax Appeals on July 28, 2009 and a true copy of the final order is appended hereto and made a part hereof.

Appellant, FirstCal Industrial 2 Acquisitions, LLC. states that the final order of the Board of Tax Appeals is unlawful and erroneous in the following respects:

1. The final order is unlawful and erroneous in that the Board of Tax Appeals determination is contrary to *Dayton-Montgomery Cty. Port Auth. V. Montgomery Cty. Board of Revision, 113 Ohio St 3d. 281, 2007-Ohio-1948*.
2. The final order is unlawful and erroneous in that it affirmed the allocation of a bulk sale for which allocation there was no evidence presented to the board of revision contrary to *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision (1998), 82 Ohio St 3d 297*, and the BTA unreasonably and unlawfully determined that *Pingue v.*

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*Franklin Cty. Bd. of Revision (1999), 87 Ohio St. 3d 62* ( involving the bulk sale of identical condominium units in a bulk sale ) was applicable to the subject properties which are dissimilar separate properties in two separate taxing districts.

3. The final order is erroneous and unlawful in that it is contrary to the Court's decision in *Simmons v. Cuyahoga Cty. Bd. Of revision (1988), 81 Ohio St. 3d 47.*

4. The determination of the BTA is unlawful and erroneous in that it purported to make a **de novo** determination of the value of the property without probative evidence as to its conclusion. Its decision thus violated the principles stated by the Court in *Coventry Towers, Inc. v. Strongsville (1985), 18 Ohio St 3d 122* that any such review by the BTA be upon the preponderance of the evidence, the "evidence" being an unsupported allocation of a bulk sale of properties in two taxing districts.

5. The BTA decision is unreasonable and unlawful in that it ignores the dictates of *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 Ctry. Bd. of Revision (1988), 37 Ohio St. 3d 318.*

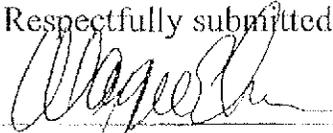
6. The BTA unlawfully placed the burden of persuasion on taxpayer contrary to *Springfield Local Bd. of Edn. V. Summit Cty. Bd. of Revision (1994), 68 Ohio St. 493.*

7. The BTA decision is unreasonable and unlawful in that it ignored the holding of the Court in *St. Bernard Self-Storage, L.L.C. v. Hamilton County Bd. of Revision, 1155 Ohio St. 3d 365, 2007-Ohio-5249* in that the allocation of the bulk sale was unsupported by evidence, and the BTA decision is contrary to *Heimerl v. Lindley (1980), 63 Ohio St. 2d 309, 408 N.E. 2d 685; Conalco, Inc v. Monroe Cty. Bd. of Revision (1977), 50 Ohio St. 2d 129, 363 N.E. 2d 722.*

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*WHEREFORE, Appellant respectfully requests the Court reverse  
the unlawful and unreasonable final order of the Board of Tax Appeals.*

Respectfully submitted:



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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon counsel for the county by certified mail #7005 0390 0001 9567 1638; upon counsel for the Tax Commissioner by certified mail 7005 0390 0001 9567 1515; and upon counsel for the Board of Education by certified mail 7005 0390 0001 9567 1522 this 20<sup>th</sup> day of August, 2009.



Wayne E. Petkovic (0027086)  
Attorney for Appellant

A-5

**OHIO BOARD OF TAX APPEALS**

FirstCal Industrial 2	)	CASE NOS. 2006-B-1789
Acquisitions, LLC,	)	2006-B-1790
	)	2006-B-1791
	)	2006-B-1792
Appellant,	)	
	)	(REAL PROPERTY TAX)
	)	
vs.	)	
	)	DECISION AND ORDER
Franklin County Board of Revision, the	)	
Franklin County Auditor and the	)	
Boards of Education of the	)	
South-Western City Schools and	)	
the Hilliard City Schools,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant -	Wayne E. Petkovic Attorney at Law 840 Brittany Drive Delaware, Ohio 43015
For the County Appellees -	Ron O'Brien Franklin County Prosecuting Attorney Paul A. Stichel Assistant Prosecuting Attorney 373 S. High Street 20 <sup>th</sup> Floor Columbus, Ohio 43215-6310
For the Appellees - Boards of Education	Rich, Crites & Dittmer, LLC Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215

Entered July 28, 2009

A-6

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

This cause and matter comes to be considered by the Board of Tax Appeals upon four notices of appeal filed by appellant,<sup>1</sup> FirstCal Industrial 2 Acquisition, LLC ("FirstCal") on November 3, 2006 from decisions, mailed October 5, 2006, of the Franklin County Board of Revision ("BOR"), appellee herein.

The subject properties are located in the City of Grove City - South-Western City School District and City of Columbus - Hilliard Local School District taxing districts<sup>2</sup> of Franklin County, Ohio, and are further identified as parcel nos. 040-004140-80, 040-004140-90, 560-112021, 560-189895, and 560-201732. The Franklin County Auditor found the true and taxable values of the subject properties for tax year 2005 to be as follows:

Parcel No. 040-004140-80

	True Value	Taxable Value
Land	\$ 947,900	\$ 331,770
Building	\$ 147,000	\$ 51,450
Total	\$ 1,094,900	\$ 383,220

Parcel No. 040-004140-90

	True Value	Taxable Value
Land	\$ 0	\$ 0
Building	\$ 6,805,100	\$ 2,381,790
Total	\$ 6,805,100	\$ 2,381,790

<sup>1</sup> Heard together and decided herein together for administrative efficiency.

<sup>2</sup> The Board of Education of the South-Western City Schools is appellee in BTA No. 2006-B-1789 whereas the Board of Education of the Hilliard Local Schools is appellee in BTA Nos. 2006-B-1790, 1791, and 1792.

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Parcel No. 560-112021

	True Value	Taxable Value
Land	\$ 277,900	\$ 97,270
Building	\$1,672,100	\$ 585,240
Total	\$1,950,000	\$ 682,510

Parcel No. 560-189895

	True Value	Taxable Value
Land	\$1,682,000	\$ 588,700
Building	\$8,118,000	\$2,841,300
Total	\$9,800,000	\$3,430,000

Parcel No. 560-201732

	True Value	Taxable Value
Land	\$ 416,200	\$ 145,670
Building	\$2,283,800	\$ 945,000
Total	\$ 2,700,000	\$1,090,670

Upon consideration of the complaints filed by the boards of education ("BOEs"), the BOR determined the true and taxable values of the subject properties for the 2005 tax year to be as follows:

Parcel No. 040-004140-80

	True Value	Taxable Value
Land	\$ 947,900	\$ 331,770
Building	\$ 147,000	\$ 51,450
Total	\$ 1,094,900	\$ 383,220

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Parcel No. 040-004140-90

	True Value	Taxable Value
Land	\$ 0	\$ 0
Building	\$ 9,897,100	\$ 3,463,990
Total	\$ 9,897,100	\$ 3,463,990

Parcel No. 560-112021

	True Value	Taxable Value
Land	\$ 277,900	\$ 97,270
Building	\$2,459,600	\$ 860,860
Total	\$2,737,500	\$ 958,130

Parcel No. 560-189895

	True Value	Taxable Value
Land	\$ 1,682,000	\$ 588,700
Building	\$11,945,900	\$4,181,070
Total	\$13,627,900	\$4,769,770

Parcel No. 560-201732

	True Value	Taxable Value
Land	\$ 416,200	\$ 145,670
Building	\$3,362,500	\$1,176,880
Total	\$ 3,778,700	\$1,322,550

In its notices of appeal, FirstCal claimed that the subject properties should be valued at the figures previously determined by the auditor.

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notices of appeal and the statutory transcripts certified by the Franklin County Auditor, as secretary of the BOR. The board also has the record of

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the evidentiary hearing conducted by the BTA on April 23, 2008. FirstCal and the BOFs also submitted legal argument.

The subject properties were purchased on October 12, 2005 by FirstCal for \$34,336,121. Ex. 3. The sale entailed five parcels.<sup>3</sup> These are the parcels listed herein above along with permanent parcel no. 560-191461.<sup>4</sup> There is no evidence in the records of an allocation of values to the parcels by the buyer or seller. It is also not disputed that the sale represents an arm's-length transaction.

On March 24, 2006, the BOFs filed five separate complaints for each of the five parcels pursuant to the subject sale for tax year 2005. Thereafter, the BOR accepted the subject sale as an arm's-length transaction and allocated values to each of the five parcels. S.T., Audio Recording. FirstCal appealed the five cases to the BTA on November 3, 2006. The appeals were assigned case nos. 2006-R-1788, 2006-B-1789, 2006-B-1790, 2006-B-1791, and 2006-B-1792. BTA No. 2006-R-1788 was subsequently voluntarily dismissed. *DZT Zane Trace, LLC v. Franklin Cty. Bd. of Revision* (Mar. 18, 2008), BTA No. 2006-A-1788, unreported.<sup>5</sup>

At the hearing before the BTA, FirstCal did not bring forth any witnesses but presented copies of the limited warranty deed, the agreement for purchase and sale, a conveyance fee statement evidencing the transfer, an Ohio

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<sup>3</sup> The limited warranty deed and conveyance fee statement appear to contain some duplications and/or errors in listing parcel numbers, but it is uncontroverted that the sale entailed five parcels. Parcel no. 040-004140 carries an "80" and "90" designation to reflect the taxable and tax-abated portions.

<sup>4</sup> This parcel is the subject of *DZT Zane Trace, LLC v. Franklin Cty. Bd. of Revision* (Mar. 18, 2008), BTA No. 2006-A-1788, unreported.

<sup>5</sup> That property subsequently transferred from FirstCal to "DCT Zane Trace, LLC" for \$3,200,000 on March 20, 2006 according to the conveyance fee statement. *DZT Zane Trace, LLC, supra*, Ex. 1.

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Supreme Court case, a BTA decision, and a letter from appellant's counsel to the BOE counsel. Exs. 1-6. All were admitted into evidence by the board except for the agreement for purchase and sale. Ex. 2. The board reserved ruling pursuant to an objection by BOEs' counsel that the document was neither part of the record nor authenticated. This board reserved ruling to allow the parties to brief the matter.

R.C. 5715.19 (G) provides:

"A complainant shall provide to the board of revision all information or evidence within his knowledge or possession that affects the real property that is the subject of his complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals \* \* \*, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for his failure to provide the information or evidence to the board of revision."

The record reflects that FirstCal did not file a complaint or counter-complaint before the BOR; therefore R.C. 5715.19(G) is inapplicable in the case before us. See *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, (overruled on other grounds). The BOEs' objection is overruled.

At the BTA hearing, FirstCal argued, as follows:

"Anyhow, with regard to the issue before the [b]oard, the [b]oard of [e]ducation filed a [c]omplaint in which it listed all of the properties involved which parenthetically are in two different taxing districts within Franklin County. All of these properties were listed and then each [c]omplaint said now this one over here is involved. So what you have is \$34 million, an allocation made by counsel for the [b]oard of [e]ducation in filing the [c]omplaints with regard to this \$34 million bulk sale...having been no differentiation in the deed or the

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conveyance forms or the purchase contract with regard to a separate value for each property.

"Then a letter was requested that -- A letter was sent requesting that all of these matters be consolidated. Here's when the [rubbing] begins. The [b]oard of [e]ducation consolidated these matters.

\*\*\*

"The other issue that we intend to raise in our brief and support is the sufficiency of these [c]omplaints with regard to granting jurisdiction, the admixture of eight various parcels in two taxing districts on one bulk purchase, uh, and then trying to call [sic] out from that an allocated value that was essentially allocated by the [b]oard of [e]ducation.

"We also think that the jurisdictional defect is readily apparent with regard to the prohibition about including properties in separate taxing districts." H.R. at 7-9.

In its July 14, 2008 brief, FirstCal contends as follows:

"The properties subject to these appeals are located in *two separate taxing districts of Franklin County and ALL WERE TRANSFERRED AS PART OF THE BULK SALE OF THE PORTFOLIO*. In the complaints filed by the two separate boards of education, (districts 40 and 560), all of the properties were listed and the ONLY EVIDENCE produced by the TWO boards of education was the conveyance form of 9-29-05 listing the following properties: [list omitted herein]

*"The conveyance form listed all of the Franklin County properties transferred and listed the bulk amount of \$34,336,121. NO ALLOCATION WAS MADE EITHER ON THE CONVEYANCE FORM OR IN THE PURCHASE CONTRACT (Exhibit 3). THE ONLY ALLOCATION THAT WAS MADE WAS THE ALLOCATION ON THE BOE'S [sic] COMPLAINTS WHICH HAD GREATER AMOUNT ON PARCEL 560-191461 than the actual subsequent arms-length sale (BTA 06-A-1788).*

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"The properties are all different, and are all located in different locales, and are different in size and construction. No evidence was presented by either BOE other than the conveyance form\*\*\*" Id. at 2-5.

Regarding the jurisdictional argument raised by FirstCal, the BOEs responded, as follows:

"As to Appellant's [jurisdictional] claims, no parcels in two taxing districts were included in a single BOR complaint. Parcel Nos. 040-004140-80 and 040-004140-90 were included in one complaint (BOR 05-091211). The other four parcels were all located in taxing district 560 and they were included in the four other complaints filed by the Board of Education." BOEs' June 18, 2008 brief at 3.

We have reviewed the records and find FirstCal's jurisdictional claim to be without merit. See, also, *Simon DeBartolo Group L.P. v. Cuyahoga Cty. Bd. of Revision*, Cuyahoga App. No. 85052, 2005-Ohio-2621. We now turn to the merits of the cases before us.

FirstCal argued that the subject sale was a bulk sale and that there was no evidence as to the proper allocation of value to each of the subject properties. Appellant directed our attention to *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, in support. Ex. 5.

This board acknowledges that the sale is a bulk sale of five properties. However, sale prices garnered through bulk purchase transactions have been accepted as indicators of fair market value, *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, and rejected as indicators of fair market value. *Elsag-Bailey, Inc. v.*

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*Lake Cty. Bd. of Revision* (1996), 74 Ohio St. 3d 647.

In *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, the Supreme Court had before it a purchase contract which allocated the sale price among various components of the sale. In rejecting the amount allocated by the purchase contract for purposes of valuing the real property for ad valorem tax purposes, the court also reflected on the application of the case law surrounding arm's-length sales:

“\*\*\* The starting point for our analysis is the settled proposition that ‘the best evidence of “true value in money” is the proper allocation of the lump-sum purchase price and not an appraisal ignoring the contemporaneous sale.’ *Conalco, Inc. v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 129, 4 O.O. 3d 309, 363 N.E.2d 722, paragraph two of the syllabus. We believe this principle fully comports with our more recent holding in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, ¶ 13, that ‘when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be “the true value for taxation purposes.”’ *Id.*, quoting R.C. 5713.03. As a result, we view the *Conalco* syllabus as effectuating the *Berea* doctrine in the context of a bulk sale.

“Bulk sales do differ, however. Unlike a simpler transaction where a single parcel of real property is sold individually, a bulk sale may involve the sale of all the assets of a business, whereby a parcel of real property constitutes one of many business assets sold at the same time for an aggregate sale price. Alternatively, a bulk sale may consist of a sale of numerous real estate parcels at an aggregate price as part of a single deal. In all such cases, a question arises beyond the basic pronouncement of *Berea*: whether the proffered allocation of bulk sale

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price to the particular parcel of real property is 'proper,' which is the same as asking whether the amount allocated reflects the true value of the parcel for tax purposes.

"St. Bernard advocates the principle that an allocation presented on the face of a purchase contract, if that contract and that allocation have been negotiated between the parties, should automatically acquire the force of presumptive--if not conclusive--validity. We disagree. While St. Bernard's suggested approach would be simple to apply, it is not appropriate, because there may be various purposes in allocating a purchase price. Even in cases where those purposes are fully legitimate, the amount allocated to a particular parcel does not necessarily reflect the true value in money of the parcel. See *Heimerl v. Lindley* (1980), 63 Ohio St.2d 309, 311, 17 O.O. 3d 200, 408 N.E.2d 685.

"In bulk sale cases, we typically look for corroborating indicia to ensure that the allocation reflects the true value of the property. Where attendant evidence shows reason to doubt such a correspondence, we decline to use the allocation to establish true value. In *Heimerl*, for example, the evidence showed that an allocation of the purchase price of a business to certain personal property on the company's books was performed 'for the sole purpose of reducing the parties' federal income tax liabilities' and accordingly was 'not intended to reflect the true value of the equipment component of the business.' *Id.* at 309-310, 17 O.O.3d 200, 63 Ohio St.2d 309, 408 N.E.2d 685. Instead of using the new allocated book value, the taxpayer continued using the previous cost-depreciation schedule in preparing its personal property tax returns.

"In *Heimerl*, we expressly distinguished the issue of allocation from the situation in which the personal property to be valued was the sole subject of the sale. *Heimerl*, 63 Ohio St.2d at 311, 17 O.O.3d 200, 408 N.E.2d 685, citing *Grabler Mfg. Co. v. Kosydar* (1975), 43 Ohio St.2d 75, 72 O.O.2d 42, 330 N.E.2d 924. In

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*Heimerl*, the value assigned to the property 'was an arbitrary apportionment of the whole for federal tax purposes,' whereas in *Grabler* the 'valuations were direct buy and sell prices of the particular assets.' *Heimerl* at 312.

"In the area of real property valuation, we have not hesitated to authorize a departure from a recent sale price when a bulk sale price cannot properly be allocated. In all of those cases, value was determined without reference to a sale price because no convincing allocation of the sale price was offered. Cf. *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 1999 Ohio 252, 717 N.E.2d 293. Although the present case differs from those cases in that the allocation is presented in the purchase contract itself, we hold that in the context of valuing property for tax purposes, such an allocation is not to be taken as indicative of the value of the real property at issue unless other indicia on the face of the contract, the circumstances attending the allocation, or some other independent evidence establishes the propriety of the allocation. It follows that neither the board of revision nor the Board of Tax Appeals was obligated to presume the validity of the allocation to goodwill." *Id.* at ¶¶14-19. (Footnote omitted.)

Thus, the price garnered through a bulk sale is evidence which may be used to value realty sold. However, in the cases before us, there is no evidence of an allocation except by the BOR.

In *Corporate*, *supra*, the court affirmed the BTA refusal to value two parcels at their total sale price where there was no allocation at the time of sale. FirstCal urges the same finding herein. However, in that case, the court noted that "[a]fter reviewing the evidence, the BTA found that [the appellant therein] 'did not present sufficient competent and probative evidence to this Board to meet their burden

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of proof of establishing a value other than that found by the county board of revision.’ This conclusion was based on the BTA’s finding that ‘no appraisal evidence or testimony was offered to support appellant’s valuation.’” *Id.* at 298. The court went on to state that “[s]ince [the appellant therein] has failed to produce sufficient competent and probative evidence to meet its burden of proof and has not presented evidence to support an independent valuation by the BTA, the BTA may approve the board of revision’s valuation. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, 689 N.E.2d 22, 24.”

In the case before us, the appellant seeks to prove that the BOR’s valuations of the subject properties are incorrect by showing that no allocation of values was made by the buyer or seller. FirstCal argues that a return to the auditor’s original determination of values is warranted thereby.

We disagree. This board notes 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. The Supreme Court, in *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572, 574, stated:

“The BTA was correct in observing \*\*\* that a taxpayer on appeal ‘may successfully challenge a determination of the Board of Revision only where the taxpayer produces competent and probative evidence to establish the correct value of the subject property.’”

Herein, the appellant does not dispute the arm’s-length nature of the sale but only the fact that there was no allocation made by the buyer or seller in the record. We have no evidence from the appellant of another sale-based method of allocation or probative evidence establishing different values than those determined by the BOR. Thus, in the present matter, the board concludes that the property owner did not provide sufficient evidence to rebut the presumption that the sale price was the best evidence of value.

Upon consideration of the existing record and the applicable law, the Board of Tax Appeals finds and determines, upon a preponderance of probative and competent evidence, that the values of the subject properties, as of January 1, 2005, were:

Parcel No. 040-004140-80

	True Value	Taxable Value
Land	\$ 947,900	\$ 331,770
Building	\$ 147,000	\$ 51,450
Total	\$ 1,094,900	\$ 383,220

Parcel No. 040-004140-90

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	True Value	Taxable Value
Land	\$ 0	\$ 0
Building	\$ 9,897,100	\$ 3,463,990
Total	\$ 9,897,100	\$ 3,463,990

Parcel No. 560-112021

	True Value	Taxable Value
Land	\$ 277,900	\$ 97,270
Building	\$2,459,600	\$ 860,860
Total	\$2,737,500	\$ 958,130

Parcel No. 560-189895

	True Value	Taxable Value
Land	\$ 1,682,000	\$ 588,700
Building	\$11,945,900	\$4,181,070
Total	\$13,627,900	\$4,769,770

Parcel No. 560-201732

	True Value	Taxable Value
Land	\$ 416,200	\$ 145,670
Building	\$3,362,500	\$1,176,880
Total	\$ 3,778,700	\$1,322,550

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

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CHAPTER 322 O.R.C. IN THE TOTAL AMOUNT OF \$ 1780 HAS BEEN PAID  
 BY GRANTOR - OR - REPRESENTATIVE AND RECEIVED BY THE FRANKLIN COUNTY AUDITOR  
 CASH  JOSEPH W. TESTA COUNTY AUDITOR  
 COUNTY AUDITOR

(B)

DTE FORM 100 2705 HEAD PROPERTY CONVEYANCE FEE STATEMENT OF VALUE AND RECEIPT  
 If exempt by O.R.C. 319.54(F)(3), Use DTE Form 100 (EX)  
 FOR COUNTY AUDITOR'S USE ONLY

✓ show  
 8/24  
 3:00 PM

TYPE INSTRUMENT SW TAX LIST YEAR 80 COUNTY NUMBER 25 TAX DISTRICT NUMBER 3020 DATE 10-18-05  
 Taxing District 040-004140-90 Map \_\_\_\_\_ Page \_\_\_\_\_  
 DESCRIPTION 560-201702 560-189895 560-112027 560-181461 560-277650 327782  
 PLATTED  UNPLATTED

NUMBER	27059
NO. OF PARCELS	4
DTE CODE NO.	
PARCEL CODE	
NO. OF ACRES	
LAND VALUE	
BLDG. VALUE	
TOTAL VALUE	
DTE USE ONLY	
DTE USE ONLY	
DTE USE ONLY	
CONSIDERATION	34336.121
DTE USE ONLY	
VALID SALE	
1. YES	
2. NO	

ALL QUESTIONS IN THIS SECTION MUST BE COMPLETED BY GRANTEE OR HIS REPRESENTATIVE

1. Grantor's Name (Seller) Duke Realty Ohio

2. Grantee's Name (Buyer) FirstCal Industrial 2 Acquisition, LLC

2. a. Grantee's address 311 S. Wacker Drive #4000, Chicago, IL 60606

3. Address of Property See Attached Various

4. Tax Billing address 311 S. Wacker Drive #4000, Chicago, IL 60606  
(DO NOT USE ANY OF THESE - SAME - SAME AS BEFORE - SAME AS ABOVE)

5. Are there buildings on the land?  YES  NO If yes check type:  
 1, 2, or 3 Family Dwg.  Condominium  Apartment No. of units \_\_\_\_\_  
 Manufactured (mobile) home  Farm buildings  Other: Industrial  
 (If land is vacant, what is intended use?) \_\_\_\_\_

6. Conditions of Sale (Check all that apply):  Grantor is a Relative  Part Interest Transferred  Land Contract  
 Trade  Life Estate  Leased Fee  Leasehold  Mineral Rights Reserved  Gift  
 Grantor is Mortgagee  Other: \_\_\_\_\_

7. a) New Mortgage Amount (if any) \$ \_\_\_\_\_  
 b) Balance Assumed (if any) \$ \_\_\_\_\_  
 c) Cash (if any) \$ \_\_\_\_\_  
 d) Total Consideration (Add Lines 7a, 7b, 7c) \$ 34,336,121.00  
 e) Portion, if any, of total consideration paid for items other than real property \$ \_\_\_\_\_  
 f) Consideration for real property on which fee is to be paid (7d minus 7e) \$ 34,336,121.00  
 g) Name of Mortgagee \_\_\_\_\_  
 h) Type of Mortgage  Conv.  F.K.A.  V.A.  Other: \_\_\_\_\_  
 i) If gift, in whole or part, estimated market value of the real property \$ \_\_\_\_\_

8. Has the grantor indicated that this property is entitled to receive the senior citizen, disabled person, or surviving spouse homestead exemption for the preceding or current tax year?  YES  NO. If yes, complete DTE Form 101.

9. Has the grantor indicated that this property qualified for current agricultural use valuation for the preceding or current tax year?  YES  NO. If yes, complete DTE Form 102.

10. Application For 2 1/2% Reduction (NOTICE: Failure to complete this application prohibits the owner from receiving this reduction until another proper and timely application is filed): Will this property be grantee's principal residence by January 1 of next year?  YES  NO. If yes, is the property a multi-unit dwelling?  YES  NO.

I DECLARE UNDER PENALTIES OF PERJURY THAT THIS STATEMENT HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS A TRUE, CORRECT AND COMPLETE STATEMENT.

[Signature] SIGNATURE OF GRANTEE OR REPRESENTATIVE 9/29/05 DATE

RECEIPT FOR PAYMENT OF CONVEYANCE FEE  
 THE CONVEYANCE FEE REQUIRED BY SECTION 319.54 (F) (3) O.R.C. AND IS APPLICABLE, THE FEE REQUIRED BY CHAPTER 322 O.R.C. IN THE TOTAL AMOUNT OF \$ 34,336.00 HAS BEEN PAID  
 BY GRANTOR - OR - REPRESENTATIVE AND RECEIVED BY THE FRANKLIN COUNTY AUDITOR  
 CASH  JOSEPH W. TESTA COUNTY AUDITOR  
 COUNTY AUDITOR

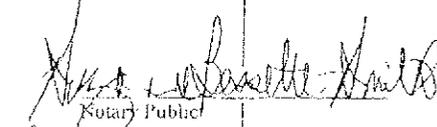
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STATE OF Illinois  
COUNTY OF DuPage ) SS:

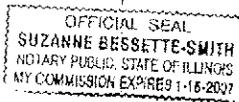
Before me, a Notary Public in and for said County and State, personally appeared Nicholas C. Anthony, by me known to be the Vice President, Acquisitions/Dispositions of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, the Managing Partner of DUKE REALTY OHIO, an Indiana general partnership, who acknowledged execution of the foregoing "Limited Warranty Deed" on behalf of said partnership.

WITNESS my hand and Notarial Seal this 27th day of September, 2005

  
Notary Public  
Suzanne Besette-Smith  
(Printed Signature)

My Commission Expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_



*This instrument is prepared by:* Ann Colussi Dec, Attorney-at-Law, Duke Realty Corporation,  
4225 Naperville Road, Suite 150, Lisle, IL 60532.

*Mail after recording to:* Rondi C. Simmons, Project Manager, Barack Ferrazzano Kirschbaum Perlman & Nagelberg, LLP, 333 W. Wacker Dr., Suite 2700, Chicago, IL 60606

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EXHIBIT A

Asset #503-504 - 3940 & 4000 Gantz Dr.

SITUATED IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF GROVE CITY, IN VIRGINIA MILITARY SURVEY NO. 8231, BEING PART OF THE ORIGINAL 106.044 ACRE TRACT CONVEYED TO OHIO HOLDING COMPANY BY DEED OF RECORD IN DEED BOOK 3036, PAGE 360, RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO, (ALL REFERENCES TO RECORDED DOCUMENTS ARE ON FILE IN SAID RECORDER'S OFFICE, UNLESS OTHERWISE NOTED), AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND CONCRETE POST AT THE NORTHEAST CORNER OF SAID 106.044 ACRE TRACT, NORTHWEST CORNER OF THE OHIO STATE UNIVERSITY FOUNDATION ET. AL. 10.05 ACRE TRACT (OFFICIAL RECORD VOLUME 11015 D-08), NORTHEAST CORNER OF THE SYNTAX REAL ESTATE HOLDINGS, INC. 15.000 ACRE TRACT (OFFICIAL RECORDS VOLUME 19836 1-05) AND IN A SOUTHERLY LINE OF LOT 11 OF "SOUTHPARK", AS SAME IS NUMBERED AND DELINEATED UPON THE RECORDED PLAT THEREOF, OF RECORD IN PLAT BOOK 71, PAGE 31, SAID CORNER POST REFERENCED BY A FOUND SOLID IRON PIN 2.10 FEET NORTHERLY OF AND A FOUND IRON PIN 12.00 FEET EASTERLY OF SAID POST;

THENCE, ALONG PART OF AN EASTERLY LINE OF SAID 106.044 ACRE TRACT, WESTERLY LINE OF SAID 10.05 ACRE TRACT AND PART OF THE WESTERLY LINE OF THE OSBOURNE TRUCKING COMPANY 1.495 ACRE TRACT (DEED BOOK 3661, PAGE 757, PARCEL 2), SOUTH 00 DEGREES 41 MINUTES 11 SECONDS WEST, 809.16 FEET TO A SET IRON PIPE AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE, CONTINUING ALONG PART OF AN EASTERLY LINE OF SAID 106.044 ACRE TRACT, PART OF THE WESTERLY LINE OF SAID 1.495 ACRE TRACT AND THE WESTERLY LINE OF THE OSBOURNE TRUCKING COMPANY 1.616 ACRE TRACT (DEED BOOK 3661, PAGE 757, PARCEL 1), WESTERLY LINE OF THE STORAGE EQUITIES/PS. PARTNERS III - MID-OHIO 3.807 ACRE TRACT (OFFICIAL RECORDS VOLUME 5800 J-07) AND PART OF THE WESTERLY LINE OF THE C & Y CO. 0.784 ACRE TRACT (OFFICIAL RECORD VOLUME 12794 B-15), SOUTH 00 DEGREES 41 MINUTES 11 SECONDS WEST, 948.00 FEET TO A SET IRON PIPE AT THE NORTHEASTERLY TERMINUS OF OHIO DRIVE (60 FEET WIDE);

THENCE, ACROSS SAID 106.044 ACRE TRACT AND ALONG A NORTHERLY LINE OF SAID OHIO DRIVE, NORTH 62 DEGREES 14 MINUTES 28 SECONDS WEST, 5.64 FEET TO A SET IRON PIPE AT A POINT OF CURVATURE;

THENCE, CONTINUING ACROSS SAID 106.044 ACRE TRACT, ALONG SAID NORTHERLY LINE OF OHIO DRIVE AND ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 270.00 FEET, DELTA ANGLE OF 30 DEGREES 00 MINUTES 00 SECONDS, TANGENT OF 72.35 FEET, AND CHORD BEARING AND DISTANCE OF NORTH 47 DEGREES 14 MINUTES 28 SECONDS WEST, 139.76 FEET TO A SET IRON PIPE AT A POINT OF TANGENCY;

THENCE, CONTINUING ACROSS SAID 106.044 ACRE TRACT, AND ALONG SAID

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NORTHERLY LINE OF OHIO DRIVE, NORTH 32 DEGREES 14 MINUTES 28 SECONDS WEST, 136.69 FEET TO A SET IRON PIPE AT A POINT OF CURVATURE;

THENCE, CONTINUING ACROSS SAID 106.044 ACRE TRACT, ALONG SAID NORTHERLY LINE OF OHIO DRIVE AND ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 330.00 FEET, DELTA ANGLE OF 56 DEGREES 41 MINUTES 52 SECONDS, TANGENT OF 178.05 FEET, AND CHORD BEARING AND DISTANCE OF NORTH 60 DEGREES 35 MINUTES 24 SECONDS WEST, 313.39 FEET TO A SET IRON PIPE AT A POINT OF TANGENCY;

THENCE, CONTINUING ACROSS SAID 106.044 ACRE TRACT AND ALONG SAID NORTHERLY LINE OF OHIO DRIVE, NORTH 88 DEGREES 56 MINUTES 20 SECONDS WEST, 306.63 FEET TO A SET IRON PIPE AT A POINT OF CURVATURE;

THENCE, CONTINUING ACROSS SAID 106.044 ACRE TRACT AND ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 50.00 FEET, DELTA ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, TANGENT OF 50.00 FEET, AND CHORD BEARING AND DISTANCE OF NORTH 43 DEGREES 56 MINUTES 20 SECONDS WEST, 70.71 FEET TO A SET IRON PIPE AT A POINT OF TANGENCY IN THE EASTERLY LINE OF GANTZ ROAD (80 FEET WIDE);

THENCE, CONTINUING ACROSS SAID 106.044 ACRE TRACT AND ALONG SAID EASTERLY LINE OF GANTZ ROAD, NORTH 01 DEGREES 03 MINUTES 40 SECONDS EAST, 615.71 FEET TO AN IRON PIPE AT THE SOUTHWEST CORNER OF SAID 15.000 ACRE TRACT;

THENCE, ACROSS SAID 106.044 ACRE TRACT AND ALONG THE SOUTH LINE OF SAID 15.000 ACRE TRACT, SOUTH 83 DEGREES 33 MINUTES 48 SECONDS EAST, 814.24 FEET TO THE PLACE OF BEGINNING, CONTAINING 13.120 ACRES.

0-32-f All of  
(040) 9140

Asset # 505 - 2190-2200 Westbelt Dr.

SITUATE IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF COLUMBUS, BEING IN VIRGINIA MILITARY SURVEY NUMBERS 287, 5239 AND 5241 AND BEING A PART OF THE ORIGINAL 257.553 ACRE TRACT CONVEYED TO THE PRUDENTIAL INSURANCE COMPANY OF AMERICA BY DEED OF RECORD IN DEED BOOK 3462, PAGE 301, RECORDS OF THE RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FOR REFERENCE AT THE POINT OF INTERSECTION OF THE CENTERLINE OF DIPLOMACY DRIVE WITH THE CENTERLINE OF WESTBELT DRIVE:

THENCE SOUTH 11° 52' 49" EAST, A DISTANCE OF 45.00 FEET, ALONG THE CENTERLINE OF WESTBELT DRIVE TO A POINT;

THENCE NORTH 78° 07' 11" EAST, A DISTANCE OF 30.00 FEET TO A POINT IN THE EASTERLY RIGHT-OF-WAY LINE OF WESTBELT DRIVE SAID POINT BEING THE POINT OF TRUE BEGINNING FOR THE HEREIN DESCRIBED TRACT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET A CENTRAL

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ANGLE OF 90° 00' 00" THE CHORD TO WHICH BEARS NORTH 33° 07' 11" EAST A CHORD DISTANCE OF 28.28 FEET, ALONG SAID RIGHT-OF-WAY TO A POINT OF TANGENCY IN THE SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMACY DRIVE;

THENCE THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMACY DRIVE:

1. THENCE NORTH 78° 07' 11" EAST, A DISTANCE OF 108.78 FEET, TO A POINT OF CURVATURE;

2. THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 500.00 FEET A CENTRAL ANGLE OF 13° 52' 42" THE CHORD TO WHICH BEARS NORTH 85° 03' 52" EAST, A CHORD DISTANCE OF 120.82 FEET, TO A POINT OF TANGENCY;

3. THENCE SOUTH 88° 00' 07" EAST, A DISTANCE OF 94.04 FEET, TO A POINT IN THE WESTERLY LINE OF A 26 FOOT STRIP OF LAND (STRIP THREE) CONVEYED TO CONSOLIDATED RAIL CORPORATION BY DEED OF RECORD IN OR4631C16;

THENCE THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE WESTERLY LINE OF SAID 26 FOOT STRIP:

1. THENCE SOUTH 11° 52' 49" EAST, A DISTANCE OF 467.68 FEET, TO A POINT OF CURVATURE;

2. THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1720.00 A CENTRAL ANGLE OF 10° 14' 28" THE CHORD TO WHICH BEARS SOUTH 6° 45' 35" EAST, A CHORD DISTANCE OF 307.03 FEET TO A POINT OF TANGENCY;

3. THENCE SOUTH 1° 38' 21" EAST, A DISTANCE OF 1.653 FEET, TO A POINT AT THE NORTHEASTERLY CORNER OF A 2.913 ACRE TRACT (PARCEL 1) OF RECORD IN OR120C15;

THENCE THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE NORTHERLY LINE OF SAID 2.913 ACRE TRACT (PARCEL 1)

1. THENCE SOUTH 81° 06' 00" WEST, A DISTANCE OF 138.64 FEET;

2. THENCE NORTH 87° 48' 53" WEST, A DISTANCE OF 202.94 FEET, TO A POINT ON A CURVE IN THE EASTERLY RIGHT-OF-WAY LINE OF WESTBELT DRIVE AT THE NORTHWESTERLY CORNER OF SAID 2.913 ACRE TRACT (PARCEL 1);

THENCE THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WESTBELT DRIVE:

1. THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1380.00 A CENTRAL ANGLE OF 10° 28' 32" THE CHORD TO WHICH BEARS NORTH 6° 38' 33" WEST, A CHORD DISTANCE OF 251.96 FEET, TO A POINT OF TANGENCY;

2. THENCE NORTH 11° 52' 49" WEST, A DISTANCE OF 484.83 FEET, TO THE POINT OF TRUE BEGINNING CONTAINING 6.124 ACRES, MORE OR LESS.

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ALL OF (560)  
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BRH Group, Inc.

PPN 560-189985

August 1, 2005

**LEGAL DESCRIPTION OF  
THE REMAINING 21.275 ACRES OUT OF AN ORIGINAL 33.132  
ACRE (CALCULATED) 33.129 ACRE (RECORD) TRACT IN LOT 2,  
WESTBELT BUSINESS PARK WEST IN PLAT BOOK 58, PAGES 75-79,  
DEEDED TO DUKE REALTY OHIO  
IN INSTRUMENT # 200302260056923  
CITY OF COLUMBUS  
COUNTY OF FRANKLIN  
STATE OF OHIO**

Situated in the State of Ohio, County of Franklin, City of Columbus, in Virginia Military Survey No. 217 and being 21.275 acres out of an original 33.132 acre (Calculated) 33.129 acre (Record) tract in part of Lot 2 and part of Lot 8 of Westbelt Business Park West, as found in Plat Book 58, Pages 75-79 and deeded to Duke Realty Ohio, recorded in Instrument #200302260056923 in the Recorder's office, Franklin County, Ohio, (all deed and plat references made being to Franklin County Recorder's Office, unless noted otherwise) and being more particularly described as follows:

Beginning at a monument box with an aluminum cap in a concrete monument, Franklin County Monument FCCS 7746 and being the TRUE POINT OF COMMENCEMENT, also said point being the centerline intersection of Roberts Road (width varies) and Walcutt Road (30 feet), as shown and delineated upon the said record plat of Westbelt Business Park West, a subdivision of record in Plat Book 58, Page 75;

Thence along the centerline of said Walcutt Road, North 08 Degrees 17 Minutes 11 Seconds West, 3077.16 feet to a point on said centerline;

Thence leaving the centerline of said Walcutt Road, North 81 Degrees 42 Minutes 49 Seconds East, 40.00 feet to the Northwest corner of said Duke Realty Ohio land and also being the Southwest corner of land deeded to The Village at Hilliard Green Condominium Community as recorded in plat book 124, page 17, which point also being in the Easterly line of said Walcutt Road (reference by a 1/2" iron pipe found with a cap stamped "ZANDE" West 0.39 feet perpendicular to the Easterly line of said Walcutt Road), which point also being the TRUE POINT OF BEGINNING for the 21.275 acre tract hereinafter described;

Thence along the Northerly line of said Duke Realty Ohio land and along the Southerly line of said Village at Hilliard Green Condominium Community land, North 81 Degrees 42 Minutes 07 Seconds East, 468.01 feet to a 5/8" rebar capped "BRH GROUP" in said Northerly and Southerly line;

Thence running parallel with the westerly line of Charter Street (60' Wide), South 08 Degrees 18 Minutes 04 Seconds East, 562.51 feet to a 5/8" rebar capped "BRH GROUP";

Thence running parallel with the Northerly line of said Duke Realty Ohio land, North 81 Degrees 42 Minutes 07 Seconds East, 918.00 feet to a 5/8" rebar capped "BRH GROUP" in the Westerly line of said Charter Street;

Thence along said Westerly line of Charter Street, South 08 Degrees 18 Minutes 04 Seconds East, 478.58 feet to a point in said Westerly line, which point also being the Southeast corner of herein described land and the Southeast corner of the original 33.132 acre tract (reference a drill hole found, south 0.06 feet, west 0.29 feet);

Thence running parallel with the north line of herein described land along the southerly line of herein described land, and also along the southerly line of the original 33.132 acre tract, South 81 Degrees 42 Minutes 07 Seconds West, 1386.28 feet to a 5/8" rebar capped "BRH GROUP" in the easterly line of said Walcutt Road;

705-F Lakesview Plaza Boulevard, Worthington, Ohio 43085-4778  
Phone: 614-841-9500 Fax: 614-841-0170  
Email: info@brhgroup.com

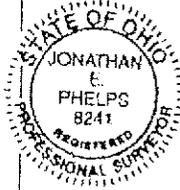
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Thence along said easterly line of Walcutt Road, North 08 Degrees 17 Minutes 11 Seconds West 1041.19 feet to the TRUE POINT OF BEGINNING, containing 21.215 acres subject to all legal easements, restrictions, and right-of-way of record.

Jonathan E. Phelps, Ohio Surveyor No 8241, of BRH Group, Inc. Worthington Ohio, prepared the above description from actual field surveys performed in May 2005 and iron pins set are 5/8"x30" rebar set with yellow plastic cap marked "BRH GROUP". Basis of bearings are based on the same meridian as the Westbelt Business Park West recorded in Plat Book 58, Pages 75 thru 79. Franklin County Monument FCGS 7746 and FCGS 5568 were used to establish the centerline of Walcutt Road.  
Bearing = North 08 Degrees 17 Minutes 11 Seconds West

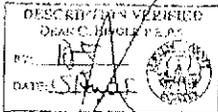
BRH Group, Inc.

*Jonathan E. Phelps* *8/16/05*  
Jonathan E. Phelps, P.S. No. 8241 Date  
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Asset #508 - 3800 Zane Trace Drive

SITUATED IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF COLUMBUS, BEING IN VIRGINIA MILITARY SURVEY NO. 547, CONTAINING 3.977 ACRES OF LAND, MORE OR LESS, 3.940 ACRES OF SAID 3.977 ACRES BEING OUT OF THAT TRACT OF LAND (39.448 ACRES OF LAND, MORE OR LESS, ACCORDING TO A SURVEY BY BAUER, BOROWITZ & MERCHANT, INC.) CONVEYED TO THE SOUTHGATE DEVELOPMENT CORPORATION BY DEED OF RECORD IN DEED BOOK 3321, PAGE 466 AND 0.037 ACRES OF LAND OF SAID 3.977 ACRES BEING OUT OF THAT TRACT OF LAND (70.102 ACRES OF LAND, MORE OR LESS, ACCORDING TO A SURVEY BY BAUER, BOROWITZ & MERCHANT, INC.) CONVEYED TO THE SOUTHGATE DEVELOPMENT CORPORATION BY DEED OF RECORD IN DEED BOOK 3321, PAGE 470, SAID 3.977 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING, FOR REFERENCE, AT AN IRON PIN AT THE EASTERNMOST CORNER OF SAID 70.102 ACRE TRACT, THE SAME BEING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF THE PENN CENTRAL RAILROAD COMPANY RIGHT-OF-WAY WITH A SOUTHEASTERLY LINE OF SAID SURVEY NO. 547, SAID IRON PIN ALSO BEING LOCATED 15.00 FEET NORTHWESTERLY FROM, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF ROBERTS ROAD; THENCE, FROM SAID REFERENCE POINT, NORTH 58° 34' 12" WEST, WITH THE NORTHEASTERLY LINES OF SAID 70.102 AND 39.448 ACRE TRACTS AND WITH THE SOUTHWESTERLY LINE OF SAID PENN CENTRAL RAILROAD COMPANY RIGHT-OF-WAY, A DISTANCE OF 1860.00 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING THE NORTHERNMOST CORNER OF THAT 9.401 ACRE TRACT OF LAND REFERRED TO AS PARCEL TWO AND DESCRIBED IN A DEED TO ECHO TWO, OF RECORD IN DEED BOOK 3380, PAGE 331;

THENCE SOUTH 31° 25' 48" WEST, WITH THE NORTHWESTERLY LINE OF SAID 9.401 ACRE TRACT, A DISTANCE OF 495.00 FEET TO A POINT IN A NORTHEASTERLY RIGHT-OF-WAY OF ZANE TRACE DRIVE (60 FEET IN WIDTH), AS THE SAME IS DESIGNATED AND DELINEATED UPON THE RECORDED PLAT OF ZANE TRACE DRIVE AND ROBERTS ROAD DEDICATION IN COLUMBUS CORPORATE PARK, OF RECORD IN PLAT BOOK 48, PAGE 78;

THENCE NORTH 58° 34' 12" WEST, WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE OF ZANE TRACE DRIVE, A DISTANCE OF 345.10 FEET TO A POINT OF CURVATURE,

THENCE NORTHWESTWARDLY WITH A NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID ZANE TRACE DRIVE, THE SAME BEING THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 430.00 FEET AND A CHORD THAT BEARS NORTH 58° 53' 46" WEST, A CHORD DISTANCE OF 4.89 FEET TO A POINT;

THENCE NORTH 31° 25' 48" EAST, PARALLEL WITH SAID NORTHWESTERLY LINE OF THE 9.401 ACRE TRACT AND 350.00 FEET NORTHWESTERLY THEREFROM (AS MEASURED AT RIGHT ANGLES), A DISTANCE OF 495.03 FEET TO A POINT IN THE NORTHEASTERLY LINE

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OF SAID 39.448 ACRE TRACT, THE SAME BEING IN THE SOUTHWESTERLY LINE OF SAID PENN CENTRAL RAILROAD COMPANY RIGHT-OF-WAY;

THENCE SOUTH 58° 34' 12" EAST, WITH THE NORTHEASTERLY LINE OF SAID 39.448 ACRE TRACT AND WITH THE SOUTHWESTERLY LINE OF SAID PENN CENTRAL RAILROAD COMPANY RIGHT-OF-WAY, A DISTANCE OF 350.00 FEET TO THE TRUE POINT OF BEGINNING AND CONTAINING 3.977 ACRES OF LAND, MORE OR LESS.

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All of (560) 112021

Asset #509 - 3635 Zane Trace Drive

SITUATED IN THE STATE OF OHIO, COUNTY OF FRANKLIN, CITY OF COLUMBUS, BEING IN VIRGINIA MILITARY SURVEY NO. 547, CONTAINING 5.241 ACRES OF LAND, MORE OR LESS, SAID 5.241 ACRES BEING OUT OF THAT TRACT OF LAND (70.102 ACRES OF LAND, MORE OR LESS, ACCORDING TO A SURVEY OF BAUER, BOROWITZ & MERCHANT, INC.) CONVEYED TO THE SOUTHGATE DEVELOPMENT CORPORATION BY DEED OF RECORD IN DEED BOOK 3321, PAGE 47C, RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO, SAID 5.241 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING, FOR REFERENCE, AT AN IRON PIN AT THE EASTERNMOST CORNER OF SAID 70.102 ACRE TRACT, THE SAME BEING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF THE PENN CENTRAL RAILROAD COMPANY RIGHT-OF-WAY WITH A SOUTHEASTERLY LINE OF SAID SURVEY NO. 547, SAID IRON PIN ALSO BEING LOCATED 15.00 FEET NORTHWESTERLY FROM, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF ROBERTS ROAD, THENCE, FROM SAID REFERENCE POINT OF BEGINNING, SOUTH 49°48'20" WEST WITH THE SOUTHWESTERLY LINE OF SAID 70.102 ACRE TRACT AND WITH THE SOUTHEASTERLY LINE OF SAID SURVEY NO. 547, THE SAME BEING PARALLEL WITH AND 15.00 FEET NORTHWESTERLY FROM, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF SAID ROBERTS ROAD, A DISTANCE OF 676.68 FEET TO A POINT; THENCE NORTH 40°11'40" WEST, A DISTANCE OF 15.00 FEET TO THE TRUE POINT OF BEGINNING IN THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID ROBERTS ROAD AS SHOWN AND DELINEATED UPON THE RECORDED PLAT OF ZANE TRACE DRIVE AND ROBERTS ROAD DEDICATION IN COLUMBUS CORPORATE PARK, OF RECORD IN PLAT BOOK 48, PAGE 78, RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO, SAID TRUE POINT OF BEGINNING BEING LOCATED 30.00 FEET NORTHWESTERLY FROM, AS MEASURED AT RIGHT ANGLES THE CENTERLINE OF SAID ROBERTS ROAD:

THENCE, FROM SAID TRUE POINT OF BEGINNING SOUTH 49°48'20" WEST, WITH SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID ROBERTS ROAD AND WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID ROBERTS ROAD AS SHOWN AND DELINEATED UPON THE RECORDED PLAT OF ROBERTS ROAD AND OLD ROBERTS ROAD DEDICATION AND EASEMENTS IN COLUMBUS CORPORATE PARK, OF RECORD IN PLAT BOOK 55, PAGE 15, RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO THE SAME BEING PARALLEL WITH AND 30.00 FEET NORTHWESTERLY FROM, AS MEASURED AT RIGHT ANGLES, THE CENTERLINE OF SAID ROBERTS ROAD, A DISTANCE OF 345.15 FEET TO AN IRON PIN AT THE EASTERNMOST CORNER OF THAT 6.572 ACRE TRACT OF LAND DESCRIBED IN A DEED TO THE FIRST NATIONAL BANK OF BOSTON, TRUSTEE OF THE POOLED REAL ESTATE INVESTMENT FUND, OF RECORD IN DEED BOOK 3760, PAGE 673, RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO;

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THENCE NORTH 58°34'12" WEST, WITH THE NORTHEASTERLY LINE OF SAID 6.572 ACRE TRACT, A DISTANCE OF 501.10 FEET TO AN IRON PIN;

THENCE NORTH 31°25'48" EAST, A DISTANCE OF 410.00 FEET TO AN IRON PIN IN A SOUTHWESTERLY RIGHT-OF-WAY LINE OF ZANE TRACE DRIVE (SIXTY FEET IN WIDTH), AS SAID ZANE TRACE DRIVE IS DESIGNATED AND DELINEATED UPON SAID RECORDED PLAT OF ZANE TRACE DRIVE AND ROBERTS ROAD DEDICATION IN COLUMBUS CORPORATE PARK, OF RECORD IN PLAT BOOK 48, PAGE 78;

THENCE SOUTH 58°34'12" EAST, WITH A SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID ZANE TRACE DRIVE, A DISTANCE OF 437.47 FEET TO AN IRON PIN AT THE POINT OF CURVATURE;

THENCE SOUTHEASTWARDLY, WITH A SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID ZANE TRACE DRIVE, THE SAME BEING THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 120.00 FEET, A CENTRAL ANGLE OF 18°22'37" AND A CHORD THAT BEARS SOUTH 49°22'56" EAST, A CHORD DISTANCE OF 38.32 FEET TO THE POINT OF TANGENCY,

THENCE SOUTH 40°11'40" EAST, WITH A SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID ZANE TRACE DRIVE, A DISTANCE OF 121.81 FEET TO A POINT OF CURVATURE;

THENCE SOUTHWARDLY, WITH THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, A CENTRAL ANGLE OF 90°00'00" AND A CHORD THAT BEARS SOUTH 4°48'20" WEST, A CHORD DISTANCE OF 42.43 FEET TO THE TRUE POINT OF BEGINNING AND CONTAINING 5.241 ACRES OF LAND, MORE OR LESS.

0-63-H ALLOF (560) 191461

**Asset #511 - Land**

Situated in the State of Ohio, County of Franklin, City of Columbus, in Virginia Military Survey No. 287 and being a 11.857 acre tract out of Lot 2 of Westbelt Business Park West, as found in Plat Book 58, Pages 75-79 and also being out of a 33.232 acre (Calculated) 33.129 acre (Record) tract deeded to Duke Realty Ohio, recorded in Instrument #209302260056923 in the Recorder's office, Franklin County, Ohio, (all deed and plat references made being to Franklin County Recorder's Office, unless noted otherwise) and being more particularly described as follows:

Beginning at a monument box with an aluminum cap in a concrete monument, Franklin County Monument FCGS 7746 and being the TRUE POINT OF COMMENCEMENT, also said point being the centerline intersection of Roberts Road (width varies) and Walcutt Road (80 feet), as shown and delineated upon the said record plat of Westbelt Business Park West, a subdivision of record in Plat Book 58, Page 75;

Thence along the centerline of said Walcutt Road, North 08 Degrees 17 Minutes 11 Seconds West, 3077.16 feet to a point on said centerline;

Thence leaving the centerline of said Walcutt Road, North 81 Degrees 42 Minutes 49 Seconds East, 40.00 feet to the Northwest corner of said Duke Realty Ohio land and also being the Southwest corner of land deeded to The Village at Hilliard Green Condominium Community as recorded in plat book 124, page 17,

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which point also being in the Easterly line of said Walcutt Road (reference by a ¼" iron pipe found with a cap stamped "ZANDE" West 0.39 feet perpendicular to the Easterly line of said Walcutt Road);

Thence along the Northerly line of said Duke Realty Ohio land and along the Southerly line of said Village at Hilliard Green Condominium Community land, North 81 Degrees 42 Minutes 07 Seconds East, 468.01 feet to a 5/8" rebar set in said Northerly and Southerly line, which point also being the TRUE POINT OF BEGINNING for the 11.857 acre tract hereinafter described;

Thence continuing along said Northerly line of said Duke Realty Ohio land and along said Southerly line of said Village at Hilliard Green Condominium Community land, North 81 Degrees 42 Minutes 07 Seconds East, 918.00 feet to the Northeast Corner of said Duke Realty Ohio land, which point also being at the Southeast corner of said Village at Hilliard Green Condominium Community land in the Westerly line of Charter Street (60 feet) (reference by a ¼" iron pipe found with a cap stamped "ZANDE" West 0.10 feet perpendicular off said Westerly line of said Charter Street);

Thence along said Westerly line of Charter Street, South 08 Degrees 18 Minutes 04 Seconds East, 562.61 feet to a 5/8" rebar set in said Westerly line;

Thence crossing said Duke Realty Ohio land, running parallel with the Northerly line of said Duke Realty Ohio land and along the Southerly line of said Village at Hilliard Green Condominium Community land, South 81 Degrees 42 Minutes 07 Seconds West, 918.00 feet to a 5/8" rebar set;

Thence continuing across said Duke Realty Ohio land and running parallel with the westerly line of said Charter Street, North 08 Degrees 18 Minutes 04 Seconds West, 562.61 feet to the TRUE POINT OF BEGINNING, containing 11.857 acres subject to all legal easements, restrictions, and right-of-way of record.

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All of (560)  
277650

EXHIBIT B

Asset #503 & 504 - 3940 and 4000 Gantz Rd., Grove City, OH

1. Rights of tenants, as tenants only, under unrecorded leases.
2. Those matters, if any, as may be disclosed by a current and accurate survey of the subject property.
3. All taxes not yet due and payable.
4. Easement, recorded in ORV 15548, Page D05; and re-recorded in ORV 15656, Page B01 of Franklin County Records.
5. Easement from Duke Realty Limited Partnership to The Ohio Bell Telephone Company, dated November 15, 1994, filed for record November 23, 1994 and recorded in ORV 27960, Page 101 of Franklin County Records.
6. Easement & Right of Way from Duke Realty Limited Partnership to Columbus Southern Power Company, dated September 10, 1997, filed for record September 20, 1997 and recorded as Franklin County Recorder's Document No. 199709300106245.

Asset #505 - 2190 2200 Westbelt Dr. Columbus, OH

1. Rights of tenants, as tenants only, under unrecorded leases.
2. Those matters, if any, as may be disclosed by a current and accurate survey of the subject property.
3. All taxes not yet due and payable.
4. Easements as shown on the Dedication Plat of Westbelt Drive recorded in Plat Book 50 pages 61-63 in Franklin County Recorder's Office.
5. Restrictions from Manor Real Estate Company to The Prudential Insurance Company of America, dated May 1, 1975, filed for record May 9, 1975 and recorded in Volume 3462, Page 301 of Franklin County Records.
6. Restrictions from Manor Real Estate Company to Penn Central Transportation Company, dated April 30, 1975, filed for record May 12, 1975 and recorded in Misc. Volume 1164, Page 869 of Franklin County Records.
7. Easement contained in the Deed from The Prudential Insurance Company of America and Vantage Properties, Inc. to Consolidated Rail Corporation, dated May 1, 1984, filed for record August 10, 1984 and recorded in ORV 4631, Page C16 of Franklin County Records.

8. Easement from The Prudential Insurance Company of America to The Ohio Bell Telephone Company, dated October 13, 1978, filed for record December 8, 1978 and recorded in Volume 3698, Page 20 of Franklin County Records.
9. Memorandum of Lease Agreement by and between Duke-Weeks Realty Limited Partnership fka Duke Realty Limited Partnership, Landlord, and DelMonte Fresh Produce N.A., Inc., Tenant, dated May 15, 2000, filed for record May 20, 2000 and recorded as Franklin County Recorder's Document No. 200005190098744.

Asset #506, 507 & 511 - 2787-2805 Charter Street, 2829-2843 Charter Street & Unimproved Land Columbus, OH

1. Rights of tenants, as tenants only, under unrecorded leases.
2. Those matters, if any, as may be disclosed by a current and accurate survey of the subject property.
3. All taxes not yet due and payable.
4. Railroad Maintenance Agreement and Declaration, recorded June 20, 1989, as Instrument Number OR 15873-C15 of Franklin County, Ohio Records.
5. Memorandum of Lease by and between Duke Realty Ohio, Landlord, and SuperConductive Components, Inc., Tenants, dated September 29, 2003, filed for record December 2, 2004 and recorded as Franklin County Recorder's Document No. 200412020274643.
6. Easements, Building Setback and Natural Forest Area as set forth in Plat Book 58, Pages 75 through 79 of Franklin County, Ohio Records; as amended by Vacation of part of Import Street and Dedication of part of Journal Street, recorded in Plat Book 87, Page 21 of Franklin County, Ohio Records; as further amended by Vacation of a portion of Securities Street, Import Street and Easement, recorded in Plat Book 60, Page 30 of Franklin County, Ohio Records.
7. Restrictions contained in the Deed from Ronald A. Huff, Trustee to Vantage Properties, Inc., dated April 1, 1983, filed for record April 1, 1983 in ORV 2636-H15 of Franklin County, Ohio Records; as amended by First Amendment, filed for record September 29, 1988 in ORV 12338-F19 of Franklin County, Ohio Records; Second Amendment, filed for record June 20, 1989 in ORV 13591-D05 of Franklin County, Ohio Records; Third Amendment, filed for record June 30, 1989 in ORV 18120-I17 of Franklin County, Ohio Records; Fourth Amendment, filed for record June 25, 1992 in ORV 19756-C11 of Franklin County, Ohio Records; Fifth Amendment, filed for record October 27, 1994 in OR 27769-G14 of Franklin County, Ohio Records; Sixth Amendment, filed for record in OR 28884-G19 of Franklin County, Ohio Records; Seventh Amendment, filed for record October 27, 1998 as Instrument Number 199810270274149 of Franklin County, Ohio Records; Eighth Amendment, filed for record May 25, 1999 as Instrument Number 199905250132499 of Franklin County, Ohio Records; and Ninth Amendment, filed for record March 11, 2002 as Instrument Number 200203110061868 of Franklin County, Ohio Records.

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8. Easement & Right of Way from Duke Realty Ohio to Columbus Southern Power Company, dated February 12, 2004, filed for record May 4, 2004 and recorded as Franklin County Recorder's Document No. 200405040101748.
9. Deed of Easement from Duke-Weeks Realty Limited Partnership to City of Columbus, Ohio, dated July 22, 1999, filed for record August 6, 1999 and recorded as Franklin County Recorder's Document No. 199908060199860; as affected by the Release of Easement recorded March 28, 2002 as Instrument No. 200203280078557.
10. Non-Exclusive Easement & Right of Way from Duke-Weeks Realty Limited Partnership success to Duke Realty Limited Partnership to Columbus Southern Power Company, dated October 12, 1999, filed for record November 16, 1999 and recorded as Franklin County Recorder's Document No. 199911160286558.
11. Non-Exclusive Easement & Right of Way from Duke-Weeks Realty Limited Partnership to Duke Realty Limited Partnership to Columbus Southern Power Company, dated October 12, 1999, filed for record November 16, 1999 and recorded as Franklin County Recorder's Document No. 199911160286569.
12. Ameritech Non-Exclusive Easement from Duke-Weeks Realty Limited Partnership successor to Duke Realty Limited Partnership to Ohio Bell Telephone Company aka Ameritech Ohio Inc., filed for record December 13, 1999 and recorded as Franklin County Recorder's Document No. 199912130305304.
13. Terms and conditions of Declaration of Easements dated July 22, 2005 by Duke Realty Ohio, recorded September 16, 2005, as Document No. 200509160193045.

Asset #508 - 3800 Zane Trace Drive, Columbus, OH

1. Rights of tenants, as tenants only, under unrecorded leases.
2. Those matters, if any, as may be disclosed by a current and accurate survey of the subject property.
3. All taxes not yet due and payable.
4. Easement from The Southgate Development Corporation to Columbus and Southern Ohio Electric Company, dated March 28, 1974, filed for record April 9, 1974 and recorded in Volume 3404, Page 294 of Franklin County Records.
5. Restrictions and Easements reserved in the Deed from The Southgate Development Corporation to The Central Trust Company, N.A., dated August 22, 1975, filed for record August 27, 1975 and recorded in Volume 3480, Page 66 of Franklin County Records.
6. Matters shown on plat recorded in Plat Book 48, Page 78 of Franklin County Records.

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Asset #509 - 3635 Zane Trace Drive, Columbus, OH

1. Rights of tenants, as tenants only, under unrecorded leases.
2. Those matters, if any, as may be disclosed by a current and accurate survey of the subject property.
3. All taxes not yet due and payable.
4. Declaration of Restrictions from Southgate Development Corporation to Columbus Corporate Park, dated March 2, 1978, filed for record March 6, 1978 and recorded in Misc. Volume 169, Page 361 of Franklin County Records.
5. Easement contained in the Deed from The Southgate Development Corporation to The First National Bank of Boston, et al, dated October 30, 1979, filed for record November 1, 1979 and recorded in Volume 3760, Page 673 of Franklin County Records.
6. Easement from The Southgate Development Corporation to Columbus and Southern Ohio Electric Company, dated November 21, 1979, filed for record December 6, 1979 and recorded in Volume 3767, Page 299 of Franklin County Records.
7. Easement contained in the Deed from The Southgate Development Corporation to Winthrop Partners 81, dated October 14, 1982, filed for record October 14, 1982 and recorded in ORV 2124, Page A01 of Franklin County Records
8. Matters shown on Plat recorded in Plat Book 48, Page 78 of Franklin County Records.

OHIO BOARD OF TAX APPEALS

Trans Healthcare of Ohio, Inc.,	)	
	)	
Appellant,	)	CASE NO. 2002-R-2563
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Cuyahoga County Board of Revision	)	DECISION AND ORDER
Cuyahoga County Auditor, and	)	
Berea City School District	)	
Board of Education,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	- John C. Grundy Co., LPA John C. Grundy P.O. Box 591 Cortland, OH 44410
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, Eighth Floor 1200 Ontario Street Cleveland, OH 44113
For the Appellee Board of Education	- Kadish, Hinkel & Weibel Kevin Hinkel 1717 East Ninth Street, Suite 2112 Cleveland, OH 44114

Entered May 16, 2003

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Trans Healthcare of Ohio, Inc. ("Trans Healthcare"). Trans Healthcare appeals from a

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decision of the Cuyahoga County Board of Revision ("BOR"), in which it determined the taxable value of the subject property for tax year 2000.

The Cuyahoga County Auditor and the BOR determined the true and taxable value of the subject property for 2000 to be:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 646,400	\$ 226,240
Building	<u>\$3,044,000</u>	<u>\$1,065,400</u>
Total	\$3,690,400	\$1,291,640

Trans Healthcare contends that based upon a June 5, 2000 sale of the subject property, the auditor and BOR have overvalued the subject property for 2000 and that the true and taxable values as of the tax lien date should be as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 239,530	\$ 83,830
Building	<u>\$2,358,160</u>	<u>\$ 825,360</u>
Total	\$2,597,690	\$ 909,190

As of tax lien date, the subject property consisted of land improved with a nursing home, located at 570 North Rocky River Road, Berea, Cuyahoga County, Ohio. It is identified on the county's books and records as permanent parcel number 362-04-010.

Trans Healthcare sought a reduction at the BOR, citing a June 5, 2000 sale. The BOE filed a counter-complaint, requesting the BOR to retain the auditor's values. At the BOR hearing, Trans Healthcare presented the testimony of Robert Mellinger, a tax consultant. After considering the record, the BOR affirmed the auditor's valuations. It is from that final determination that Trans Healthcare now appeals.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR (“S.T.”), and briefs of counsel.<sup>1</sup>

### I. A PRELIMINARY MATTER

Before addressing the merits, the board deems it appropriate to address the BOE’s motion to strike affidavit and conveyance fee statement, which were attached to Trans Healthcare’s brief.

First, counsel for the BOE objects to the admission into evidence of the affidavit of Jeffrey A. Barnhill, Trans Healthcare’s chief financial officer. Counsel argues that such witness should have been present to testify at the proceedings before the BOR, since the BOR would logically have been concerned with issues surrounding the sale of the subject property, to which this affidavit pertains. Counsel claims because the witness was not present at the BOR, his affidavit cannot be received into evidence before this board, pursuant to the provisions of R.C. 5715.19(G) and *CASA 94 L.P. v. Franklin Cty. Bd. of Revision* (2000), 89 Ohio St.3d 622.

R.C. 5715.19(G) requires a complainant to provide all existing evidence to the BOR or risk being precluded from introducing it on appeal to this board, and specifically states as follows:

“A complainant shall provide to the board of revision all information or evidence within the complainant’s knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such

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<sup>1</sup> This appeal is a refiling of BTA No. 2001-R-1066, which was dismissed for lack of jurisdiction under *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033. The parties were given the opportunity to object to the board’s use of the prior record established in BTA NO. 2001-R-1066 in an order issued March 21, 2003. To date, neither party has filed an objection. Additionally, the parties originally waived hearing in this matter.

information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision."

In *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio

St.3d 13, the Supreme Court of Ohio stated:

"After the BTA hearing, Nestle submitted a copy of a resolution and quitclaim deed by the Franklin County Commissioners. Because these documents were not part of the original record from the BOR and were submitted after the BTA hearing, they must be disregarded by the BTA."

See, also, *A & J Food Mart Inc. v. Zaino* (Aug. 17, 2001, BTA No. 1999-S-1608, unreported); *ARV Assisted Living, Inc. v. Hamilton Cty. Bd. of Revision* (July 30, 1999), BTA No. 1998-N-168, unreported; *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), BTA No. 1995-T-278, unreported.

In the present matter, the record reflects that Trans Healthcare did not call Mr. Barnhill as a witness before the BOR, although the circumstances surrounding the sale of this property were addressed by the BOR at its hearing. Further, the record shows that Mr. Barnhill's statements were provided to this board in affidavit form after the record was closed.

After reviewing the entire record and the applicable case law, this board concludes that the testimony of Mr. Barnhill should have been presented to the BOR. Further, counsel has not established good cause as to why this affidavit should be

considered by the board. In addition, generally affidavits are not considered reliable, competent, and probative evidence upon which this board can base its decision, as there is no opportunity for cross-examination of the affiant by opposing counsel or inquiry by the board. See *Bd. of Edn. of Hilliard City School Dist. v. Franklin Cty. Bd. of Revision* (Nov. 25, 1992), BTA No. 1190-G-789, unreported.

Accordingly, the affidavit of Mr. Barnhill will not be considered by the board, and the BOE's motion to strike the affidavit is sustained pursuant to R.C. 5715.19(G) and *CASA 94*, supra. See, also, *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; *Bd. of Edn. Upper Arlington City School Dist. v. Franklin Cty. Bd. of Revision* (Oct. 12, 2001), BTA No. 2000-A-1802, unreported; *Chahda v. Cuyahoga Cty. Bd. of Revision* (June 15, 2001), BTA No. 1999-S-1905, unreported; and *F&R Ltd. Partnership v. Hamilton Cty. Bd. of Revision* (Jan. 12, 1996), BTA No. 1994-K-1389, unreported.

Second, counsel for the BOE requests that this board strike the conveyance fee statement also attached to Trans Healthcare's brief. The board notes that copies of public records and reports may be allowed as exceptions to the hearsay rule under Evid.R. 803(8). To be properly authenticated, however, Evid.R. 1005 requires these documents be certified.

The copy of the conveyance fee statement attached to Trans Healthcare's brief is not certified, and it was submitted after the parties waived hearing and the record

was closed in this matter. Therefore, the board finds that the BOE's motion to strike the conveyance fee statement is well taken. *Columbus Bd. of Edn. and A & J Food Mart Inc.*, supra.

## II. THE MERITS

In an appeal from a board of revision valuation, this board must determine the true value of the subject property. R.C. 5717.03. Specifically, R.C. 5717.03 reads:

\*\*\*\*

"In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of \*\*\*\*."  
(Emphasis added.)

While the action of a county board of revision is given a presumption that it was taken in good faith and reflects sound judgment, the decision of a county board of revision regarding the value of property is not to be accorded a presumption of correctness. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. The Board of Tax Appeals must make an independent de novo determination as to a property's true value predicated upon the preponderance of the evidence. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 122.

A party appealing a decision of a county board of revision has the burden of coming forward with evidence in support of the value that it has asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 335; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v.*

*Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

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

In the present appeal, Trans Healthcare relies upon a sale as support for its contention of the subject property's value. This transaction encompassed the sale of 14 properties at various locations in Ohio. The sale occurred on June 5, 2000, five months after the tax lien date. The sale price was approximately \$36,000,000.

It is long established 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, at the syllabus; *State ex rel Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Further, R.C. 5713.03 provides.

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

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

While the sale may be the “best evidence” of value, it is not the only evidence. Consequently, the Supreme Court of Ohio has held that there exists a rebuttable presumption that a recent, arm’s-length sale is reflective of true value. *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, 61. Where the inference is raised that the sale price does not reflect true value, we must at least review and consider other probative evidence of the subject property’s true value. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1998-S-155, unreported, 4.

Since we have excluded the affidavit of Mr. Barnhill and the conveyance fee statement from consideration, Trans Healthcare has presented nothing to this board to establish that the sales price was an accurate indicator of the true value of the subject property. Mr. Mellinger, the only witness Trans Healthcare presented at the board of revision, testified that he was not involved in the sale, that he did not know if the subject property had been listed on the open market, and that no appraisal was done with regard to the sale, so there was no appraisal to support the allocation. Further, Trans Healthcare

waived hearing before this board, where it could have presented evidence in support of the sale and the value it claims.

Therefore, Trans Healthcare failed in its burden of coming forward with evidence in support of the value that it has asserted. *Cleveland Bd. of Edn., Crow, Mentor Exempted Village Bd. of Edn., and Cincinnati Bd. of Edn., supra.* The BOR declined to use the allocated sale price as evidence of value for tax lien date January 1, 2000, and we must agree.

Even if the board considered Mr. Barnhill's affidavit and the conveyance fee statement, Trans Healthcare would still fail in its burden. Although the June 2000 sale is recent compared to the tax lien date and apparently arm's-length, the board finds that the allocated sale price does not represent the true value of the subject property. The sale included 14 properties, several of which received no allocated value because they consisted of vacant land which had no use to Trans Healthcare without buildings. In addition, the purchase contract indicates that some of the properties were leased, but it does not identify which ones. There was no attempt to address how the sale price was allocated based upon the true or fair market value of the differing properties, whether by agreement of the parties or by KMPG appraisal. Although the contract delineates value among land, buildings, certificates of need, and equipment, there is no detail provided, and therefore the board is unable to evaluate whether, the allocated values reflect the differences in location, land size, building size, construction quality, age of improvements,

special financing, and amenities for the various properties. See The Appraisal of Real Estate (12<sup>th</sup> Ed.2001) 441-448.

Trans Healthcare would have the board rely on its holding in *Willoughby-Eastlake Bd. of Edn v. Lake Cty. Bd. of Revision* (Apr. 20, 2001), BTA Nos. 1998-R-509 and 519, unreported. In *Willoughby-Eastlake*, the property owner purchased nine properties of various sizes, ages, and conditions. In the purchase agreement, each property was allocated a price. This board found that the purchase price was the best evidence of value and that the contract reflected the fair market value for the real estate.

Although a bulk sale is not necessarily an unreliable indication of value, it may include factors that indicate that the sale price does not reflect true value. *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62. Some of these factors include lease arrangements, the purchase of ongoing businesses and personal property, as well as the real estate, and properties sited in various locations, where there is no underlying analysis. *Pingue; Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647; *MOA-TI Corp. v. Franklin Cty. Bd. of Revision* (July 20, 2001), BTA No. 1998-E-1445, unreported.

The board finds that there are enough factors present in the instant matter to cast doubt as to whether the allocated sale price is a valid indicator of the subject property's true value.

## II. THE CONCLUSION

Based upon the foregoing, the board finds that Trans Healthcare has failed to establish that the bulk sales price is indicative of the true value for the subject property as of the tax lien date. Therefore, the Board of Tax Appeals finds the true and taxable values of the subject property to be as follows as of January 1, 2000:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 646,400	\$ 226,240
Building	<u>\$3,044,000</u>	<u>\$1,065,400</u>
Total	\$3,690,400	\$1,291,640

Accordingly, the Cuyahoga County Auditor 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

CORPORATE EXCHANGE BUILDINGS IV & V, LIMITED PARTNERSHIP, APPELLANT, v.  
FRANKLIN COUNTY BOARD OF REVISION ET AL., APPELLEES.

[Cite as *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*  
(1998), 82 Ohio St.3d 297.]

*Taxation --- Real property valuation of office buildings on two nonadjacent  
parcels where purchase price was not allocated at time of sale --- Board of  
Tax Appeals may approve board of revision's valuation of each parcel,  
when.*

(No. 97-996 Submitted January 27, 1998 --- Decided July 1, 1998.)

APPEAL from the Board of Tax Appeals, No. 95-A-464.

On February 25, 1994, Corporate Exchange Buildings IV & V, Limited Partnership ("Partnership"), appellant, filed a real estate valuation complaint for tax year 1993 with the Franklin County Board of Revision ("BOR") for parcel number 211627 located in Columbus, Ohio. The valuation of parcel number 211627 is the subject of this opinion. At the same time Partnership also filed a separate real estate valuation complaint for parcel number 183730. While the two parcels are in close proximity to each other, they are not adjacent and are taxed separately. In its complaint for parcel number 211627, Partnership requested that the true value of the property be reduced from the auditor's valuation of \$11,100,000 to \$8,244,700. For parcel number 183730, Partnership requested that the true value of the property be reduced from the auditor's value of \$7,930,000 to \$6,255,300. Partnership's claim for a reduction in true value was based on its recent purchase of the two parcels. In both cases the Board of Education of the Westerville City Schools filed a countercomplaint seeking an increase in value.

Title to both parcels was conveyed to Partnership in a single deed dated November 4, 1993. The conveyance fee statement reported that the consideration

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for the two parcels was \$14,500,000. A four-story office building known as Corporate Exchange Building V is located on parcel number 211627, consisting of 5.103 acres. Corporate Exchange Building V, containing 130,008 net rentable square feet, was constructed in 1989. A three-story office building known as Corporate Exchange Building IV is located on parcel number 183730, consisting of 5.016 acres. Corporate Exchange Building IV, containing 90,891 net rentable square feet, was constructed in 1987. No provision was made in the purchase contract or elsewhere to allocate the purchase price between the two parcels.

The BOR affirmed the auditor's assessment in both cases. Separate appeals for the two parcels were filed with the Board of Tax Appeals ("BTA"). By agreement of the parties, the evidence and testimony presented to the BTA for parcel number 211627 was stipulated as the testimony and evidence for parcel number 183730.

At the BTA, Partnership presented two witnesses. Partnership's first witness, Michael Balakrishnan, is a Partnership limited partner and a vice-president of Partnership's general partner, Joseph Skilken Company. Balakrishnan described the negotiations that culminated in Partnership's purchase of the two parcels. Partnership's second witness, Stephen H. Falor, is a local broker, and testified about his involvement in the sale of the properties on behalf of the sellers. Neither witness testified about the allocation of the purchase price between the two parcels.

After reviewing the evidence, the BTA found that Partnership "did not present sufficient competent and probative evidence to this Board to meet their burden of proof of establishing a value other than that found by the county board of revision." This conclusion was based on the BTA's finding that "no appraisal evidence or testimony was offered to support appellant's valuation."

Partnership filed separate appeals with this court for each parcel. (See case No. 97-997 for parcel number 183730.)

This cause is now before this court upon an appeal as of right.

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*Wayne E. Petkovic*, for appellant.

*Ronald J. O'Brien*, Franklin County Prosecuting Attorney, and *Matthew H. Chafin*, Assistant Prosecuting Attorney, for appellees Franklin County Board of Revision and Franklin County Auditor.

*Teaford, Rich & Wheeler, Jeffrey A. Rich* and *Karol Cassell Fox*, for appellee Board of Education of the Westerville City Schools.

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*Per Curiam.* Partnership contends that the BTA erred in not allocating the purchase price between the two parcels. We disagree.

The amount that the Partnership paid for the two parcels containing Corporate Exchange Buildings IV and V is not in dispute. In addition, the BTA determined that the sale to Partnership was an arm's-length sale; presumably then, the sale price reflects true value. *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, 24, 546 N.E.2d 932, 934. However, the arm's-length sale price was paid for two separate properties.

The two parcels are not identical. While the amount of land contained in each parcel is about the same, the buildings located on the parcels are different in size and age. Partnership set forth an allocation of the purchase price in the complaints it filed with the BOR. However, as the appellant before the BTA, Partnership needed to show that its allocation of the purchase price between the two parcels represented the true value of each parcel. See *Cincinnati School Dist.*

*Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 677 N.E.2d 1197.

Partnership's two witnesses, however, testified only about their involvement with the negotiations that culminated in the purchase of the two parcels. In addition, the voluminous amount of documents presented by Partnership related only to the negotiations, purchase, and transfer of the two parcels.

After hearing this testimony and reviewing these documents, the BTA correctly refused to accept the allocation of the purchase price made by Partnership. The BTA concluded that it could find no basis to "justify reliance upon appellant's suggested valuation allocation."

Partnership argues that the BTA had testimony before it to allocate the purchase price based on rentable square feet. Partnership quotes from the BTA's decision. That quote, however, was taken from the brief Partnership filed with the BTA. Partnership cites no source in the record for the statement.

Moreover, the only reference in the BTA record as to how the allocation could be made is contained in the opening statement of counsel for Partnership. He stated that the purchase price was allocated based on square footage and that he "believe[d] there will be testimony that this is also a reasonable way in this type of property to apportion." However, statements of counsel are not evidence. In *State v. Green* (1998), 81 Ohio St.3d 100, 104, 689 N.E.2d 556, 559, we stated that a "statement of facts by a prosecutor does not constitute evidence." This premise is adopted in VI Wigmore, Evidence (Chadbourn Rev.1976) 349, Section 1806, wherein it is stated that in an argument to the jury by counsel, any representation of fact "must be based solely upon those matters of fact of which evidence has already been introduced or of which no evidence need ever be introduced because of the notoriety as judicially noticed facts."

Partnership further contends that *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, 20 O.O.3d 349, 422 N.E.2d 846, requires the BTA to allocate the purchase price. In *Youngstown*, the BTA adopted a total valuation for a steel production complex situated on approximately four hundred sixteen acres containing some two hundred major structures. The property consisted of fourteen individual parcels located in three taxing districts. We required the BTA, on remand, to break down its aggregate valuation into individual parcel values before certifying its decision and order to the county auditor. The *Youngstown* record, however, contained opinions and documentation from multiple appraisers from each side on which the BTA could base an allocation of total value. Thus, in *Youngstown*, the BTA had before it evidence of value which it could use to allocate the total true value.

In *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120, 18 OBR 151, 480 N.E.2d 412, we acknowledged the authority of the BTA to exercise independent judgment in determining the true value of property. However, such independent judgment must be based upon the evidence presented to it. We have consistently required that the BTA's decisions be supported by sufficient probative evidence. *Hawthorn Melody, Inc. v. Lindley* (1981), 65 Ohio St.2d 47, 19 O.O.3d 234, 417 N.E.2d 1257. Here, the BTA received no evidence on which it independently could allocate the purchase price.

Partnership also cites *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604, 575 N.E.2d 842, as a case where this court ordered the BTA to apply a sale price as true value. In *Zazworsky*, the taxpayer was required to purchase a parcel of real property containing a warehouse he did not want in order to acquire a sublease on a building he did want. He paid \$100,000 for both the

building and the sublease. The only question before the BTA was the value of the purchased warehouse.

The BTA affirmed the board of revision's valuation of \$184,500 for the purchased warehouse, stating that the sale occurred "under peculiar circumstances." We reversed and ordered the BTA to enter a valuation of \$100,000, holding that no evidence supported the BTA's decision.

*Zazvorsky* differs from this case. Only one piece of real property was at issue in *Zazvorsky*, and we did not need to allocate a purchase price between two pieces of real property. Indeed, *Zazvorsky* himself maintained that the true value of the purchased warehouse was \$100,000.

Since Partnership has failed to produce sufficient competent and probative evidence to meet its burden of proof and has not presented evidence to support an independent valuation by the BTA, the BTA may approve the board of revision's valuation. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, 689 N.E.2d 22, 24.

For all the foregoing reasons, the decision of the BTA is reasonable and lawful and it is affirmed.

*Decision affirmed.*

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY and COOK, JJ., concur.

PFEIFER and LUNDBERG STRATTON, JJ., dissent.

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**LUNDBERG STRATTON, J., dissenting.** Because I do not understand how the BTA can insist on taxing these two properties at a combined value of \$19,030,000, while agreeing that the true value is \$14,500,000, I must strongly dissent from the majority's affirmance of the BTA's decision. I would find the decision to be arbitrary, unreasonable, and patently unfair.

A long line of cases in Ohio has held that a recent sale of property that is an arm's-length transaction is the best evidence of the "true value" of the property. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327, 677 N.E.2d 1197, 1199; *Conalco v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 129, 4 O.O.3d 309, 363 N.E.2d 722; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 25 O.O.2d 432, 195 N.E.2d 908. Here, the BTA concluded that the sale of Corporate Exchange Buildings IV and V was an arm's-length transaction. The sole reason for the BTA's rejection of the valuation of Corporate Exchange Buildings IV and V Limited Partnership ("Partnership") was the claimed failure of the Partnership to present an *appraisal* that allocated the purchase price between the two buildings. However, the BTA's position is not supported by the law. To grant Partnership's request for reduction in the tax valuation of the two buildings, the BTA needed only to confront the issue of allocating the single sale price, presumed to be the true value, between the two buildings. In fact, the BTA had a *duty* to allocate the sales price once the true value was established so as to reach a fair and consistent tax assessment.

In *Conalco*, this court held, at the syllabus:

"1. 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. (*State, ex rel. Park Investment Co., v. Bd. of Tax Appeals*, 175 Ohio St. 410 [25 O.O.2d 432, 195 N.E.2d 908], approved and followed.)

"2. In valuing real property sold within three days of the tax lien date in an arm's-length transaction, the best evidence of 'true value in money' is the proper allocation of the lump-sum purchase price and *not an appraisal ignoring the contemporaneous sale.*" (Emphasis added.)

The appellees totally misinterpret *Conalco*. In *Conalco*, the allocation issue was not between two pieces of property, but rather between real estate and other assets, such as accounts receivable, related to the same property. In that case, a sale of the property occurred two days after the tax valuation conducted by the appraiser for the county auditor. The BTA ignored the sale and relied only on the appraiser's value. No appraiser testified for the taxpayer *Conalco* on allocation of the purchase price. Rather, *Conalco* relied on accounting principles for allocation. In rejecting the BTA's position, the court stated:

"The board should have determined, under the specific facts of this case, whether [*Conalco's*] allocation resulted in a distorted valuation of the real property.

" \* \* \* Apparently, the board adopted the fair market value appraisal made by appellee [county auditor], despite testimony by appellee's appraiser that he ignored the contemporaneous sale of the property.

" \* \* \*

"The board's decision in the present case, accepting the appellee's appraisal, despite an arm's-length sale within close proximity to the tax lien date, and rejecting APB 16, thereby avoiding a determination upon [*Conalco's*] allocation of the purchase price, is unreasonable and unlawful." *Id.*, 50 Ohio St.2d at 131-132, 4 O.O.3d at 310-311, 363 N.E.2d at 723-724.

In a subsequent case, also misinterpreted by appellees, this court reaffirmed the best evidence rule of a recent sale:

"We hold that the best evidence of the 'true value in money' of tangible personal property is the proper allocation of the purchase price of an actual, recent sale of the property in an arm's-length transaction.

" \* \* \*

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“ \* \* \* The board is required to arrive at its own valuation in an appeal from the valuation assessed by the Tax Commissioner. *Clark v. Glander* (1949), 151 Ohio St. 229 [39 O.O. 56, 85 N.E.2d 291], paragraph one of the syllabus.” *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284, 287-289, 24 O.O.3d 367, 369-370, 436 N.E.2d 1362, 1365.

In *Tele-Media*, the taxpayer was seeking a valuation *lower* than the actual sale price. The court found that the book value, *properly allocated*, is the best evidence of true value. *Id.* at 286, 24 O.O.3d at 368-369, 436 N.E.2d at 1364. The court placed the burden of allocation on the BTA when a true value was known.

I do not find *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647, 660 N.E.2d 1184, to be on point. *Elsag-Bailey* dealt with a complicated transaction with two competing appraisals that recommended different appraisal methods but involved no sale. *Elsag-Bailey* merely states that the BTA could look at both appraisals and make its *own* determination of the true value.

In this case, the BTA did not fulfill its duty of properly allocating the true value. Instead, it arbitrarily clung to the appraised value and ignored the sale price, contrary to the mandate of *Conalco*. Had the property sold for more than the appraised value, the appellees certainly would have been the ones appealing and making the same arguments Partnership now makes.

In fact, Partnership offered the BTA a reasonable, logical method of allocating the purchase price between the two buildings based upon the rentable square footage of each building. Evidence of the rentable space of each building was before the BTA in the numerous exhibits offered by Partnership related to the sale of the properties. No appraisal was necessary to substantiate the value of each

building or the method of allocation in light of the recent sale. No expert testimony was necessary to explain or substantiate what amounted to a simple mathematical calculation. As in *Conalco*, the BTA needed only to apply an accounting principle to determine the allocation.

The BTA made no determination that allocation of value between the buildings was not possible. Further, BTA made no factual finding that Partnership's proposed method of allocation was improper, unreasonable, or not based upon verifiable information. None of the appellees presented any evidence in rebuttal. No other method of allocation was even suggested. Instead, the BTA summarily rejected Partnership's proposed method of allocation of value without any legal or factual basis, citing only Partnership's failure to have "appraisal evidence or testimony."

Yet the BTA concluded that Partnership did not justify its allocation method, and, therefore, the BTA affirmed the auditor's valuation of the properties. The auditor's assessment of value for both parcels totaled \$19,030,000. The auditor assessed the value of Building IV at \$7,930,000, approximately forty-two percent of the combined values, and assessed the value of Building V at \$11,100,000, approximately fifty-eight percent of the combined values.

Partnership's allocated values closely mirrored those of the auditor. The true value, as evidenced by the recent sale, was \$14,500,000 for both parcels. Partnership requested that a value of \$6,255,300 be placed on Building IV, approximately forty-three percent of the combined sale price. Partnership requested that a value of \$8,244,700 be placed on Building V, approximately fifty-seven percent of the combined sale price.

If the BTA had reason not to adopt the Partnership's proposed allocation, the BTA had before it sufficient information about each building from which to

derive its own allocation of the \$14,500,000 sale price it already accepted as the true value. Exhibits revealed similarities about the buildings. They are in close proximity to each other within the same office park. Both are situated on five acres of land. They were built within a few years of each other. Building IV has three stories with 90,891 rentable square feet, with three hundred forty-one parking spaces and a ninety-six percent occupancy<sup>1</sup>; Building V has four stories with 130,008 rentable square feet, with four hundred fifty-two parking spaces and over ninety-five percent occupancy. Building construction was virtually identical. Commercial tenants were of the same quality. Both were Class A structures with similar rental ranges. The building had been owned and managed by the same partnership. These are non-fluctuating, descriptive factors upon which the BTA could have compared and contrasted the two buildings in order to reach its own independent allocation of the \$14,500,000 value.

The BTA's finding that the purchase of Corporate Exchange Buildings IV and V was an arm's-length transaction reinforces the presumption that the sale price of \$14,500,000 was the true value for the two properties. The BTA's decision to affirm the auditor's separate assessments of value results in both properties being valued, for tax purposes, at \$4,530,000 more than they were valued in an arm's-length transaction. I fail to see how this can be fair or just. Such a decision, without further justification, is inherently arbitrary, capricious, and unreasonable. The BTA had a duty in light of the unrefuted and voluminous evidence before it to fairly and justly allocate the true value between the two buildings. To arbitrarily ignore the purchase price and blindly adhere to the appraisal because the buildings are "independent" is grossly unfair and flies in the face of *Conalco*. If the BTA did not accept the Partnership's allocation, it could perform its own. Yet appellees offer no alternative. It did not matter a great deal

if the allocation differed by some percentage, since the Partnership was the same taxpayer. But what the BTA could *not* do was totally ignore the \$14,500,000 value it already recognized, refuse to allocate the price between the two buildings, and impose a value of \$19,030,000, a \$4,530,000 difference, because the taxpayer did not separately appraise the two buildings. An appraisal is not necessary in light of the best evidence before it which the law *required* the BTA to consider. I cannot condone such a patently outrageous result.

I believe that Partnership met its burden by establishing the arm's-length nature of the sale transaction and by proposing a logical, reasonable, and verifiable method of allocating the sale price between the two buildings for tax purposes. The BTA arbitrarily refused to consider Partnership's allocation or any other allocation. Therefore, I would reverse the decision of the BTA and remand this matter to the BTA with instructions to determine a formula to allocate the \$14,500,000 sale price between the two buildings.

PFEIFER, J., concurs in the foregoing dissenting opinion.

**FOOTNOTE:**

1. Occupancy of Building IV was reported as seventy-six percent in a March 1993 financial statement; however, sales information dated July 1993 reported occupancy at ninety-six percent.

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