

IN THE SUPREME COURT OF OHIO

HIN, LLC)	
)	CASE NO. 2012-0725
Appellant)	
)	
vs.)	
)	
CUYAHOGA COUNTY BOARD)	
OF REVISION, CUYAHOGA)	
COUNTY FISCAL OFFICER,)	Appeal from the Ohio Board of
BEDFORD BOARD OF EDUCATION,)	Tax Appeals
AND TAX COMMISSIONER OF)	
OHIO)	BTA No. 2008-K-2386
)	
Appellees)	

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STATEMENT OF THE FACTS

This case is before the Supreme Court on appeal from a decision by the Ohio Board of Tax Appeals (“BTA”) and concerns the valuation of a parcel of real property for purposes of ad valorem taxation. The property is owned by the appellant, HIN, LLC, is located at 17500 Rockside Road, Bedford, Ohio, and has been identified by the Cuyahoga County Fiscal Officer as permanent parcel number 812-16-005. The relevant tax year is 2006. (Supplement of Appellant, HIN, LLC, page 425 (hereafter “S. ___”)) The issue before the Court is should HIN’s property, a 78,500 square foot single tenant office building, be valued at the price HIN paid for it in April of 2004: \$7,400,000. The board of revision and BTA both answered this question in the affirmative and accepted the sale price. HIN disagrees.

HIN argues that the purchase price was for both the fee simple interest and some separate lease interest. HIN argues that only the price it paid for the fee simple should be taxable. The BOE agrees that the property was leased at the time of sale, and that HIN may have taken the lease into account when determining what it was willing to pay for the property. However, the fact remains that HIN paid \$7,400,000 for the fee simple interest in the subject property. This interest that was purchased included the right of the owner of the fee simple interest to receive the income stream from the tenant. The lease was not a separate item of personal property but rather a method to maximize the value of the property. The \$7,400,000 sale price was a market determination of the property value as developed by the owner. As a result, the BTA correctly valued the subject property at the \$7,400,000 sale price. This decision should be affirmed.

For tax year 2006 the auditor (now fiscal officer) valued the property at \$8,000,000, reflecting a taxable or assessed value of \$2,800,000. HIN, LLC disagreed with this value, and on

April 2, 2007 it filed a complaint with the board of revision requesting a reduction in the market value to \$5,000,000. The Bedford Board of Education (“BOE”) filed a counter-complaint requesting the auditor’s value be retained. (Appendix 2) The complaint and counter-complaint came before the board of revision for hearing, with appearances made by counsel for HIN, LLC and the BOE. No witnesses were called, expert or otherwise, by either party. In particular, no representative of HIN appeared, other than counsel. (Appendix 2, Appellee’s Supplement, page 2 (hereafter “App.S. ___)) The board of revision issued a decision valuing the property at the \$7,400,000 sale price and HIN appealed to the BTA.¹ (Appendix 3)

The particular property at issue consists of 34.5784 acres of land improved with a 78,500 square foot single-tenant office building constructed in 1993. (S. 143) Roger D. Ritley, a real estate appraiser called by HIN at the BTA hearing, stated in his report that the property was in average condition with no major deferred maintenance. (S. 4 (Tr. 11), 147) The entire property had been leased to U.S. Bank under a fifteen year lease agreement that was executed on December 11, 2003, prior to HIN having purchased the property. (S. 148, 244)

The property has twice been sold in the past several years. Both sales have been before the BTA, and before this Court. See, *HIN, LLC v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144.

The first sale was on December 24, 2003 when JBK Cuyahoga Holdings LLC purchased the property from Tops Markets, LLC for \$4,900,000, with the deed recorded on December 30, 2003. (S. 233) After JBK Cuyahoga Holdings LLC purchased the property, US Bank took possession as a tenant under the above referenced fifteen year lease.

¹ The BOE also filed notices of appeal with the BTA. The BOE dismissed its appeals and proceeded as an appellee in this case. (S. 9, lines 21-25)

The second sale occurred on April 29, 2004 when JBK Cuyahoga Holdings LLC sold the property to HIN, LLC for \$7,400,000. (S. 242; App.S. 2) This second sale to HIN occurred after US Bank had executed its lease agreement, after it had taken possession as a tenant, and after it had begun paying rent. There was no relationship between JBK Cuyahoga Holdings LLC and HIN, LLC, other than as buyer and seller, and HIN, LLC had no involvement with the negotiations to lease the property to US Bank. (S. 460-461) HIN, LLC, as the grantee, also completed and filed a "Real Property Statement of Value and Receipt", commonly referred to as the conveyance fee statement. (S. 242) In this conveyance fee statement HIN, LLC swore under penalties of perjury that it paid \$7,400,000 for the real property. It did not contend that any part of the purchase price was for personal property. The statement contains the following language:

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.

The conveyance fee statement was signed by HIN's agent on April 30, 2004. (S. 242) HIN now contends that over \$2,000,000 of the purchase price was for personal property.

There is no dispute between the parties with respect to HIN's purchase of the property. HIN and the seller, JBK Cuyahoga Holdings, LLC, were not related. HIN was not forced to buy the property, JBK was not forced to sell the property. It was established before the BTA that the April 29, 2004 sale, twenty months before the January 1, 2006 tax lien date at issue, was recent and there were no material changes to either the property or the general market from the time of sale to the tax lien date. HIN's real estate appraiser, Roger Ritley, testified on direct examination:

Q. Mr. Ritley, had there been any changes in circumstances involving the subject property between April of 2004, the sale of the subject property, and the January 1, 2006 tax lien date?

A. Nothing of a physical sense that's material.

(S. 5, Tr. 14, line 23 – 15, line 3)

Mr. Ritley also testified that there was no material change to the physical property between the between the April, 2004 sale and the date of his appraisal, nor any change in market conditions during this same time period, stating “[s]pace needs or market conditions did not change in Northern Ohio.” (S. 5, Tr. 16)

The BTA found that the sale for \$7,400,000 was recent with respect to the valuation date, was at arm's length, and was the property's value as of January 1, 2006. (Appendix 8) The BTA stated:

Both this board and the Supreme Court have considered the aforementioned sales of the subject property when establishing its value for tax year 2004, and we need not belabor the point beyond referring to two passages from the court's decision in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687:

“The record here supports the conclusion that an arm's-length sale occurred between a willing seller and a willing buyer in December 2003 and that the higher sale price for the property obtained in April 2004 resulted from the serendipity of HIN's purchase, as HIN contemplated a 1031 exchange and specifically sought a property with a triple net lease. Thus, the facts here are not contrived nor do they suggest any effort by the parties to manipulate the sale to derive a favorable tax result. These are two separate arm's-length transactions, and nothing in the record suggests otherwise.” *Id.* at ¶28.

As a result of the preceding finding, the court reasoned that:

“When a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes.” *Id.* at paragraph one of the syllabus.

(Appendix 5)

Before addressing the merits of the appellant's argument, the BOE would note the following in response to the appellant's statement of the case and facts.

First, HIN discusses the facts and circumstances surrounding the first sale, the 2003 sale for \$4,900,000 that occurred in 2003, and the lease to US Bank. Pages 1-3, Brief of Appellant. However, there is no dispute that HIN, LLC had no involvement with any part of the US Bank lease, nor any dispute that it purchased the property after the lease was in place, after US Bank was paying rent, and after US Bank had taken possession. While it may well be the case, as HIN suggests, that JBK Cuyahoga and US Bank negotiated back and forth over the terms of the lease, there is nothing in the record establishing or even suggesting that the lease was not at arm's length, between unrelated parties, and with both acting in their own best interest. The facts and circumstances surrounding the earlier sale are not relevant to the issue presently before the Court.

Second, and in this same section of its brief, HIN argues that the lease rate was inflated due to a number of factors, including a payment made by JBK to US Bank, grants from the city of Bedford, and adjustments to reflect a decision not to construct a warehouse. Pages 1-2, Brief of Appellant. The BOE disagrees. The lease rate was not inflated. Regardless of the fact that HIN did not participate in the lease negotiations and purchased the property with the lease in place, HIN's own witness testified that the final lease rate was actually at or slightly below his opinion of the market rent. The actual rent being paid by US Bank for the first five years was \$6.65 per square foot, increasing to \$6.85 in year six, and \$7.50 in year eleven. (S. 165) When valuing the property by the income approach, Mr. Ritley selected six rent comparables ranging

from \$6.50 to \$10.94 per square foot; he concluded to an opinion of market rent of \$7.00 per square foot. (S. 169)

It bears repeating that at no stage in these proceedings, not before the board of revision (App. S. 2), not before the BTA, not in the earlier proceedings for tax year 2004, has anyone associated with HIN, LLC ever testified. There is nothing that shows HIN did not believe the real property it bought was worth anything other than the \$7,400,000 it paid, nothing to show why it believed the real property was worth \$7,400,000 when it executed the conveyance fee statement, but now something less. While there have been statements that part of what drove the sale price was the credit-worthiness of the tenant (US Bank), there is nothing in the record establishing US Bank's credit, nor anything showing that HIN based its decision to purchase on the tenant's credit.

In sum, what is before the Court is the same issue that has been repeatedly before the Court in the past: whether the price paid in a recent arm's length sale should be accepted as taxable value. The record shows that the parties were unrelated, acting in their own best interest, and the sale was recent. The board of revision and the BTA correctly applied Ohio law and accepted the sale price, and these decisions should be affirmed.

LAW AND ARGUMENT

Introduction:

HIN, LLC has appealed to this Court and argues that the \$7,400,000 it paid for the property should not be utilized for purposes of determining taxable value. HIN argues that it is not possible for the real property to be worth the \$7,400,000 sale price since the property had previously been purchased for only \$4,900,000, and the difference must be attributed to the lease

which is personal property separate and distinct from the real property being taxed. The BOE submits this argument is incorrect. The real property at issue was purchased by HIN for \$7,400,000. The fact that the property, an office building, was leased at the time of sale did not and does not create a split between real and personal property. Clearly the lease could not exist without the underlying real property, and the lease was simply the owner's attempt to maximize the value of its real property. The sale was recent and at arm's length, between unrelated parties acting in their own best interest, a conveyance fee statement was filed indicating the full \$7,400,000 sale price was for the real property, and the conveyance fee was paid on this amount. While it may, or may not, have been the case that the lease effected the price HIN was willing to pay, the fact remains that HIN purchased the property, a fee simple interest, for \$7,400,000. The board of revision and the BTA correctly found that the sale price controls and valued the property at \$7,400,000.

Further, it is impossible to determine what HIN's thoughts were when it purchased the property as no one associated with this entity has ever testified. It is possible that HIN thought the prior owner had underpaid for the property, and its offer of \$7,400,000 was more in line with what the property was worth, or that HIN did not care about the existing lease when it purchased the property. It is possible that the individuals involved with the prior purchase were better negotiators than the individuals acting on behalf of HIN. Without any evidence from HIN whatsoever, other than the purchase agreement establishing that it agreed to purchase the real property for \$7,400,000 and the executed conveyance fee statement signed under penalty of perjury, all of HIN's arguments to the Court are mere conjecture.

The BOE also submits that HIN's position is not only incorrect but would also be unworkable. HIN's argument is not limited solely to sale cases, but would also apply to the valuation of any leased or income producing property, such as an office building, a retail building, apartments, etc. Under this new theory, income producing property would have two components: the real property consisting of the physical building and the underlying land, and personal property in the form of the lease. Under HIN's argument, only the physical building and land would be subject to ad valorem taxation, and not the lease. When appraising real property the county auditors would have to somehow separate out the values of these two types of property, or somehow extract the lease value from the total value, with only the real property subject to taxation. How this would be done by either the traditional sales comparison approach where the property being appraised is compared to other similar and similarly leased properties, or the income approach where the income generated from leases is capitalized to estimate value, is unclear.

Response to Appellant's Proposition of Law No. 1:

The price obtained from an arm's length sale of real property is the best evidence of the property's value for purposes of ad valorem taxation regardless if the property is subject to a lease when sold. While the lease may have an effect on what a buyer is willing to pay, the buyer is obtaining a fee simple interest in the property.

HIN makes a two part argument in its first proposition of law. First, it argues that based on amendments to R.C. 5713.03, the auditor and by extension the board of revision, the BTA and this Court may, but are not required, consider a recent sale price to be the true value of property. Second, HIN argues that where there is a sale of leased property, the sale is for both real and personal property: the sale of the physical building and land (real property), and the sale of the lease (personal property). HIN argues that the singular sale of these two separate items for

\$7,400,000 cannot be utilized for purposes of determining taxable value. HIN does not deny that the sale was at arm's length, nor deny that it was recent with respect to the January 1, 2006 valuation date. The BOE submits that both arguments are without merit.

Instead of focusing on the price paid, HIN is in essence arguing that the sale price, standing alone, should never be utilized when the property is subject to a lease at the time of sale. HIN argues that the lease is somehow separable from the underlying real property, though how the lease could be separated from the real property when it is simply a contract for one party to use another party's property, is unclear. While HIN's argument is couched in terms of a sale, there is no reason it does not equally apply when there is no sale. It argues that when property is leased, there is one value for the real property, a separate value for the lease itself, and only the real property is taxable. Presumably, and as was the case 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, there would be times where the personal property/lease value could be negative, such as when the lease rate is below market levels. The BOE submits that all of these arguments should be rejected.

HIN is requesting the Court to reverse the line of cases holding that a recent arm's-length sale price is a property's true value for tax purposes regardless if there is a lease in place at the time of sale. This line starts with *Berea City School Dist. Bd. of Edn.*, and includes, among other cases, *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, 885 N.E.2d 934; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236; *AEI Net Lease Income &*

Growth Fund v. Erie Cty. Bd. of Revision, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830; *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, 912 N.E.2d 560; and *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, 929 N.E.2d 426. The Court should reject HIN's request.

- A. R.C. 5713.03 as amended by Am. Sub. H.B. 487 and Am. Sub. H.B. 510 of the 129th General Assembly has no application to the case presently before the Court.

HIN first argues that R.C. 5713.03 as amended by Am. Sub. H.B. 487 and Am. Sub. H.B. 510 supports its argument that real property has a value separate and distinct from the value of the lease. These two bills amended R.C. 5713.03 by changing "the auditor **shall** consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes" to "the auditor **may** consider ..." (Emphasis added) The BOE submits HIN's argument should be rejected.

As an initial matter, the amendments to R.C. 5713.03 were not enacted until 2012, well after the 2006 valuation at issue in this case. The amendments to R.C. 5713.03 in Am. Sub. H.B. No. 487, Section 101.01, 1081, took effect and applied "to the first tax year, after tax year 2012, to which division (A) or (B) of section 5715.24 of the Revised Code applies in the county." Am. Sub. H.B. No. 487, Section 757.51, 1279. Am. Sub. H.B. 510, Section 3, repealed Am. Sub. H.B. 487, Section 757.51. This bill was passed on December 11, 2012, approved on December 20, 2012, and effective on March 27, 2013.

As of the January 1, 2006 valuation date, at the time of the board of revision hearing and decision, at the time of the BTA hearing and decision, and as of the date of this brief, the amendments upon which HIN relies were neither enacted nor effective. There is no indication in the statutory language that the changes are meant to be retroactive and no such intent on the part

of the General Assembly should be implied. *Weil v. Taxicabs of Cincinnati* (1942), 139 Ohio St. 198, 206, 39 N.E.2d 148; R.C. 1.48, 1.54. For this reason alone, HIN's argument that the amended R.C. 5713.03 supports its argument that the sale price should not be utilized is without merit. The amendments are not yet effective and do not apply to this case.

Second, HIN suggests that that these amendments are intended to overrule this Court's decision in *Berea City School District v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, and return to *Ratner v. Stark Cty. Bd. of Revision*, 23 Ohio St.3d 59, 491 N.E.2d 680 (1986) and *Ratner v. Stark Cty. Bd. of Revision*, 35 Ohio St.3d 26, 517 N.E.2d 915 (1988), (often referred to as "*Ratner I*" and "*Ratner II*") which directed the board of revision and BTA to review appraisal evidence that adjusts a sales price. In support of this argument HIN directs the Court to the Ohio Legislative Service, Final Analysis, Am. Sub. H.B. 487, 129th Assembly, pages 400-401.

In response, the BOE first submits that the intent of the General Assembly cannot be determined by looking to a Legislative Service Commission report. *Cleveland Trust Co. v. Eaton*, 21 Ohio St.2d 129, 138, 256 N.E.2d 354 (1970). If the General Assembly intended to reverse the holding of the Court in *Berea*, it could have included its intent in the bill. It did not.

Even if one were to assume that the recent amendments to R.C. 5713.03, amendments that are not effective until March 27, 2013, are effective and apply to this case, and assume that the amendments actually require the Court to reinstate *Ratner I* and *II*, this would not change the fact that the \$7,400,000 sale price determines the subject property's value for purposes of taxation.

The *Ratner* cases involved the purchase of the Mellett Mall through a combination of cash, a note, and assumed mortgages with interest rates that were below market levels. *Ratner*, 23 Ohio St.3d at 59-60, 491 N.E.2d 680. The Court stated in its opinion:

In determining true value for property, the board of revision and the BTA must at least consider and review evidence presented by independent real estate appraisers that adjusts the contract sale price to reflect both the price paid for real estate and the price paid for favorable financing.

Id. at 62.

On remand, the BTA applied this Court's ruling in *Ratner I* and found that "[t]he contract sale price must be adjusted to reflect both the price paid for the property and the price paid for favorable financing," *Ratner v. Stark Cty. Bd. of Revision*, 35 Ohio St.3d 26, 29, 517 N.E.2d 915. The Court affirmed on subsequent appeal. *Id.* Under the Court's holding, this ruling could arguably be expanded to permit boards of revision and the BTA to review appraisal evidence to adjust sale prices for other items, such as below or above market rent, leases, etc., as was done by the BTA in *Bd. of Edn. for the Berea City School District v. Cuyahoga Cty. Bd. of Revision*, BTA Nos. 2003-J-143, 2003-J-144, 2003-J-150, 2003 WL 22848297 (Nov. 21, 2003), later reversed 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.

The extension of *Ratner* to leases by the BTA and *Ratner I* and *Ratner II* were all overruled in *Berea*, ¶13. Even if *Ratner I* and *Ratner II* were to be reinstated, neither case supports a deviation from accepting the \$7,400,000 sale price in the case at hand. Unlike HIN's situation, in *Ratner* there was evidence that the sale price was paid to purchase the physical land and building, i.e., real property, and obtain favorable financing. Financing is clearly not real property. Here, HIN argues the sale price was paid to purchase the land and building, and the

lease interest of the owner. A lease interest is an interest in real property. In this case, everything that was purchased is real estate.

Also, in *Ratner* the financing purchased was at below-market interest rates. In the present case, there is no evidence of over or under market interest rates, and no evidence of over or under market rents. Even HIN's own appraiser was of the opinion that the actual rent being paid was in the range of his rent comparables and slightly below his final estimate of the proper market rate. (S. 165, 169) To reiterate, no one associated with HIN has ever testified at any level or stage of this case, and there is no evidence that the \$7,400,000 sale price was for anything other than real estate.

Unlike the situation in *Ratner I* and *Ratner II*, HIN, is simply arguing that the \$7,400,000 sale price is too high with nothing other than conjecture to explain why. HIN argues that the difference between the 2003 sale price and the 2004 sale price must have been for something other than the taxable real property but has supplied no hard evidence in support of the same. Unlike *Ratner*, there was no evidence that the sale was for anything other than the subject property, no evidence that the rent being paid by the tenant was not at market, and no testimony by the anyone associated with the property owner itself. The fact that the property was generating rent, a fact that HIN must concede is not uncommon for commercial property, does not render the sale price unreliable for purposes of determining taxable value. Neither *Ratner I* nor *Ratner II* hold to the contrary.

In further response to HIN's argument, the BOE would also draw the Court's attention Justice Wright's dissent in *Ratner*, 23 Ohio St.3d 59, 64, 491 N.E.2d 680:

While I manifest concern with the majority opinion giving short shrift to the statute and case law pertinent to this appeal, I take umbrage with today's decision because of an even

greater concern. In reversing the decision of the BTA, the practical effect will be that county auditors, boards of revision, and the BTA will be required to engage in an endless number of subjective adjustments in every sale of real property in order to determine the “cash equivalency” of the sale price. Appraisers will be required, in every sale case, to value the notes and mortgages. Lost in the process would be the only objective criterion for determining market value—an actual sale. Replacing this objective criterion would be the subjective arguments of appraisers as to what value must be placed on the financing that went with the transaction.

As stated by Justice Wright, under HIN’s argument the one objective criterion, the sale price, would be jettisoned and the boards and courts required to instead rely on various subjective statements and opinions by appraisers. This result should not be adopted by the Court.

- B. A sale of real property that is subject to a lease does not include a leased fee interest that is separate or separable from the fee simple interest.

In the second part of HIN’s first proposition of law, HIN argues that the lease on a property has a value separate from the value of the property being leased, and only the real property without the lease is subject to taxation. HIN states on page 10 of its brief:

As such, it is not logical or reasonable to assume, given the lack of market changes, that the value for tax purposes could change by approximately \$2,500,000 in a span of only four months. The only reasonable conclusion that can be derived from this information is that the difference in the two sale prices was due exclusively to the lease contract, which is an intangible asset, and the corresponding existence of a leasehold interest.

As an initial matter, this argument presumes that the first sale for \$4,900,000 was a good value and the second for \$7,400,000 was not. It is just as likely the reverse is true, that the first buyer got a steal when obtaining the property for only \$4,900,000, and HIN believed it was paying the market value. Once again, no one with any firsthand knowledge of HIN’s motivations or beliefs testified at any stage of these proceedings. The only statement in the record by HIN is the conveyance fee statement executed in conjunction with the sale, in which

the sale price for the real property was stated as being \$7,400,000, and the purchase agreement which states the same. (S. 242, App.S. 2)

What is before the Court is simply the sale of commercial property that had a lease in place at the time of purchase. While it may well have been the case that HIN took into consideration the income from the lease when determining the price it was willing to pay for the property, HIN still paid \$7,400,000 for the subject real property. It may also have been the case, and probably was the case, that the prior owner entered into the lease with US Bank so as to maximize the value of his commercial property. Again, this did not somehow change the fee simple that was sold to HIN. Regardless of what appraisers believe, under Ohio law a fee simple is not changed into something else because of a lease. *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, 912 N.E.2d 560, footnote 4. HIN's argument that it paid one price for the fee simple interest and another price for some leasehold interest that is personal property, an interest that would appear to be owned by the tenant, U.S. Bank, and not HIN, is not supported by either the record before the Court or Ohio law.

HIN's argument is a restatement of the argument made to and rejected by the Court in *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236, a case also involving the sale of real property that was subject to a lease at the time of sale. The property owner and the party opposed to the sale price being accepted as value, argued that "the sale price does not establish value of the real property because it reflects not only the value of the underlying realty, but also the value of the Walgreens business." *Rhodes* at ¶5. The Court rejected this argument, properly finding that the purchaser/property owner was not buying the business being operated on the property:

Lorms's testimony, however does not establish the existence of a separate "business value" component of the sale price. Quite simply, the record demonstrates that in April 2003, MA Richter paid \$4,375,000 for a fee simple interest in the property. Thus, it acquired all component rights of that interest, including the rights of the lessor and right to collect payments from Walgreens under the long-term lease. Although the lessee's business may affect the value of the fee simple interest, MA Richter did not purchase any interest in the lessee's business.

Rhodes at ¶6.

HIN is making the same argument that was rejected by the Court in *Rhodes*, namely that the purchase of property subject to a lease is actually the purchase of two separate and distinct items of property: the real property which is taxable and the personal property, whether called a business interest as in *Rhodes* or leasehold interest as in the case at hand. The fact that the property was subject to a lease at time of sale does not mean there were two separate and distinct items of property that were transferred.

HIN is also making the same argument that was rejected in *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 85 N.E.2d 830, where the property owner argued "that the amount of rent provided for in the long-term lease elevates the sale price of the fee interest in the property beyond the worth of the real property itself." *Id.* at ¶11. The Court rejected this argument and affirmed the BTA's decision to accept the sale price, citing to *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, where the Court had based its holding in part on the observation that by leasing its property, the property owner was realizing the full value of the property. *AEI Net Lease Income & Growth Fund* at ¶19. The Court held that the lease is simply the property owner's attempt to maximize the value of the property being leased. While

the price paid for real property reflects the lease on the property, what is being purchased is the real property as it existed at time of sale.

HIN is also making the same argument that was rejected by the Court in *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, 912 N.E.2d 560, a case where the property owner argued:

[T]hat the value of its property should not be determined by comparing it to properties that are subject to long-term leases that are favorable to the owner. According to Meijer, such a comparison involves a valuation of a speculative “leased fee” interest rather than of the fee simple. (Footnote omitted)

Id., ¶21.

The Court rejected this argument, stating:

Although Meijer’s property is currently not encumbered with a lease, Meijer’s contention that its property cannot be compared to build-to-suit properties is mistaken. As recent cases have demonstrated, the possibility of encumbering a property like the one at issue here constitutes – as a purely factual matter – one method of realizing the value of legal ownership. * * * Moreover, by drawing the distinction between “fee simple” and “leased fee,” Meijer predicates its argument on a legal premise that our cases have rejected. [Footnote 4] We have held that a recent arm’s-length sale price should not be adjusted to remove the economic effect of such encumbrances when they exist. *Cummins*, ¶24. And we have also determined that a sale price does not have to be adjusted to remove the effect of above-market rent paid by a credit worthy tenant. *AEI*, ¶12, 26, 30. It follows that an appraiser, when determining the value of Meijer’s store, may take into account the possibility that at some point, the store could be held as a rental property subject to an above-market lease that would enhance its value.

Footnote 4 – The distinction between “fee simple” and “leased fee” is one drawn in the context of appraisal practice. See *Appraisal of Real Estate* (13th Ed.2008) 114. The appraisal industry uses the term “fee simple” to refer to unencumbered property – or to property appraised as if it were unencumbered. *Id.* This distinction is not one recognized by the law, however. A “fee simple” may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple. *Black’s Law Dictionary* (8th Ed.2004) 648-649.

Id., ¶23.

The Colorado Court of Appeals succinctly described the impact of a lease on the value of real property when addressing the same argument being made by HIN, namely whether a sale price should be accepted as taxable value when the property being sold is subject to a lease.

After addressing the various state decisions for and against this argument, the Court stated:

We are more persuaded by this latter line of reasoning and, therefore, reject respondents' contention. The focus of the Colorado Constitution is to require the assessment of property based on its *actual* value, and to that end, market value is a mandated approach. Market value, for taxation purposes, is the price which a willing buyer would pay a willing seller under normal economic conditions. *May Stores Shopping Centers, Inc. v. Shoemaker*, 151 Colo. 100, 376 P.2d 679 (1962)

The sale price of property accurately reflects such a value. Implicit in the sale price of a piece of property is consideration that the property is subject to a lease which is included as part of the interests being transferred. The lessee's interest is therefore accounted for in the sale price as directly bearing upon the value of the property.

Bd. of Assessment Appeals of the State of Colorado v. City and Cty. of Denver, 829 P.2d 1319, 1322 (Colo.App. 1991), *affirmed on appeal*, 848 P.2d 355 (Colo. 1993).

What occurred in the instant matter is that HIN purchased a parcel of commercial property and as is plainly not uncommon, the property was leased when HIN purchased the property. While not relevant under the Court's prior holdings, this was not a situation where the rent was excessively over or under market rates, as HIN's own appraiser testified that the rent being paid by the tenant was only slightly below his opinion of market rent. This was not a sale-leaseback situation, nor a situation where there was any prior relationship between the seller, the buyer, or the tenant. It was a purchase of real property, plain and simple. Based on these facts, the board of revision and the BTA correctly found that the sale price was the property's value as of January 1, 2006. These decisions below should be affirmed.

- C. HIN's proposal that the lease interest be separated out of the fee simple interest is unworkable and was implicitly rejected by HIN's own appraiser.

HIN argues that there is some personal property interest associated with the lease that is separate and distinct from the real property being leased, and that the value associated with the lease is not subject to taxation. While HIN's argument is made in the context of a sale, it is equally applicable to any appraisal of income producing real property. Regardless of the Court's repeated rejection of this argument, HIN's proposal would be unworkable and render the valuation of commercial real property nonsensical. HIN's own appraiser largely rejected this proposal when he valued the subject property.

O.A.C. 5703-25-07 governs the methods by which the county auditors are to appraise real property within each county. This section states:

(D) In arriving at the estimate of true value the county auditor may consider the use of any or all of the recognized three approaches to value:

(1) The market data approach – The value of the property is estimated on the basis of recent sales of comparable properties in the market area after allowance for variation in features or conditions ...

(2) The income approach – the value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses ...

(3) The cost approach – The value is estimated by adding to the land value, as determined by the market value or other approach, the depreciated cost of the improvements to the land ...

Also see Brief of Appellant, page 17.

Looking at these three approaches, both the market data (or sales) approach and the income approach are dependent on the income being generated from property.

In the market data approach, similar properties are compared to the property being appraised; if the property being appraised is leased, so should the comparables. Under HIN's

theory, the only comparable properties that could be utilized would be of completely un-leased buildings since if the property was leased, this would mean there was some personal property or lease value associated with the real property. In the income approach, rental income is capitalized to provide an estimate of the property's value. Under HIN's theory, this approach would also be impossible since it presumes that the property is leased.

Roger Ritley, the real estate appraiser called by HIN at the BTA, agreed that these are the three usual methods for appraising real estate. (S. 151). Mr. Ritley also decided not to utilize the cost approach to value, stating (S. 152):

After consideration of the characteristics of the subject property and its market, we have concluded that developing the Cost Approach to Value would be inappropriate for several reasons:

- 1) Properties of this type are typically valued for their ability to serve as a primary place of business for an owner (i.e., owner-occupied) or to produce income for an investor owner ...

Mr. Ritley valued the property by the sales and income approaches to value (S. 189), placing more weight on the income approach. (S. 190). Central to this valuation is the appraiser's estimate of net income that can be generated from the property, income that would clearly be generated pursuant to a lease. Mr. Ritley estimated rent at \$7.00 per square foot, triple net, deducted ten percent for vacancy and credit loss as well as minimal expenses since the tenant paid most expenses, and arrived at an estimated net income of \$436,750 per year. (S. 167) Mr. Ritley then applied his estimate of the proper capitalization rate to the net income to reach his opinion of value by this approach. (S. 168) Notably, Mr. Ritley did not reduce his valuation by the income approach to separate out some leased fee interest from the real property. HIN's

own appraiser did not adhere to HIN's argument that when real property is leased, there is one (taxable) value of the real property and a second (nontaxable) value of lease.

- D. HIN is collaterally estopped from arguing that its purchase of the property was not at arm's length and not evidence of the value of its real property.

This same property, the same parties, and the same sale for \$7,400,000 (as well as the previous sale for \$4,900,000) were before the Court for tax year 2004 in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144. In this earlier case the Court held that both sales were arm's length transactions setting the value of the real estate as of the date of the sales. The Court further held that for purposes of real estate tax valuation, the sale closest to the tax lien date should set the value of the property as of the tax lien date. The Court held that the \$4,900,000 sale was closer in time to the January 1, 2004 valuation date at issue than was the April 2004 sale to HIN for \$7,400,000. Based on these particular facts, the Court held that the closer arm's-length sale applied. *Id.* at ¶30.

The BOE submits that as a result of this earlier case, HIN is barred by collateral estoppel from re-litigating the issue of whether the \$7,400,000 was at arm's-length. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, 909 N.E.2d 597, ¶17. The \$7,400,000 sale was previously before the BTA and the Court, and both found it to be an arm's length purchase of the subject real estate. HIN is now precluded from re-opening this issue. The BTA in this case also found that the April 2004 sale for \$7,400,000 was recent with respect to the January 1, 2006 tax lien date because there were no material changes to the property or the real estate market between the time of the sale and the tax lien date. Consequently, the April 2004 sale of the property for \$7,400,000 controls the property value for real estate tax purposes for the January 1, 2006 tax lien date.

Response to Appellant's Proposition of Law No. 2:

The Court should not make the initial factual determination that a party has presented probative and credible evidence that supports the value being requested.

HIN argues in its second proposition of law that it presented probative evidence of the subject property's value via Mr. Ritley's appraisal report and testimony. HIN concedes that as the party contesting the auditor's valuation, it has the burden of persuasion, and concedes that it is not entitled to a decrease in value merely because no evidence is presented to the contrary. The BOE does not disagree with HIN's legal argument in its second proposition of law, but it does disagree with HIN's conclusion for two reasons.

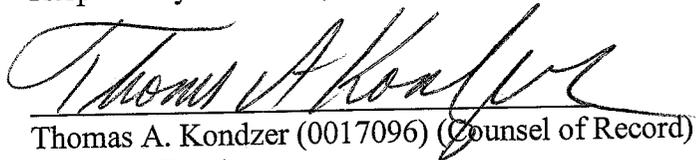
First, since the property was the subject of a recent arm's length sale for \$7,400,000, appraisal evidence is not relevant. *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶13. Second, the question of whether HIN's evidence was sufficient is one of fact, a factual question that has not yet been addressed by either the board of revision or the BTA. At no place in its decision did the BTA address HIN's appraisal evidence, finding that the sale price controlled because current law forbids the BTA from considering appraisal evidence when a recent sale exists. HIN concedes that the BTA did not address its appraisal evidence, requesting "the cause be remanded with instructions for the BTA to consider the appraisal evidence submitted by HIN in support of value. Brief of Appellant, page 19.

The BOE submits that if the Court reverses current law and holds that the sale price must be rejected and appraisal evidence should be considered, this matter should be remanded for further hearings at which both the property owner and the BOE should be permitted to introduce appraisal evidence.

CONCLUSION

This is the second time this property has been before the Court, and the second time this Court has addressed the sale for \$7,400,000. As the Court noted in its earlier decision, there were two sales, the first for \$4,900,000 and the second for \$7,400,000, and both were at arm's length. HIN now argues that the difference between the two sale prices must be because of something extrinsic to the real property. In particular, HIN argues that there is some value that should be applied to the property lease that is separate (and somehow separable) from the underlying real property that is being leased. This argument has, in one form or another, repeatedly been rejected by the Court, was properly rejected by the BTA, and was not even followed by HIN's own appraiser. For the reasons set forth above, the BOE respectfully submits that the decision by the BTA should be affirmed.

Respectfully submitted,



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APPENDIX

sexennial reappraisal.¹ We decide this matter upon the transcript certified by the BOR pursuant to R.C. 5717.01, the evidence presented during this board's hearing, and the written argument submitted on behalf of appellant and the appellee Bedford Board of Education ("BOE").

The subject property is comprised of approximately 34½ acres of land which is improved with a two-story office building with supporting parking, drives, landscaping, etc. The Cuyahoga County Fiscal Officer, formerly the auditor, had originally assessed the property for ad valorem taxation, as of January 1, 2006, as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$1,743,100	Land	\$ 610,100
Building	\$6,256,900	Building	\$2,189,900
Total	\$8,000,000	Total	\$2,800,000

Appellant filed a complaint with the BOR pursuant to R.C. 5715.19(A) seeking a reduction in the property's valuation to \$5,000,000, citing to "[r]ecent sales of comparable properties. Physical economic, functional depreciation or obsolescence. Economic valuation based on gross or net income." The BOE filed a countercomplaint, as permitted by R.C. 5715.19(B), requesting that the assessed values be retained. Before the BOR, the parties did not present the testimony of any witnesses regarding the property or its value, instead offering evidence of two sales, the first having occurred in December 2003 when the subject property,

¹ We note that in both its complaint filed with the BOR and its notice of appeal filed with this board, appellant challenges the common level of assessment used in calculating taxable value, asserting it was less than thirty-five percent of true value. Although it was represented evidence would be presented in support of this contention, no such evidence has been provided and therefore this issue will not be further addressed. See, generally, *Columbus Bd. of Edn. v. J.C. Penney Properties, Inc.* (1984), 11 Ohio St.3d 203; *Wolf v. Cuyahoga Cty. Bd. of Revision* (1984), 11 Ohio St.3d 205, 207. See, also, *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 16-17; *J.C. Penney Properties, Inc. v. Franklin Cty. Bd. of Revision* (Aug. 27, 1992), Franklin App. Nos. 91AP-872, et seq., unreported, motion to certify overruled, (1993), 66 Ohio St.3d 1496; *State ex rel. Columbus Bd. of Edn. v. Thompson* (Oct. 19, 1989), Franklin App. No. 89AP-60, unreported.

along with a 2+ acre parcel, was acquired by JBK Cuyahoga Holdings L.L.C. for \$4,900,000. In April 2004, the subject property was sold to appellant for \$7,400,000. The BOR accepted the latter sale as the basis upon which to reduce the subject's value as of tax lien date:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$1,743,100	Land	\$ 610,100
Building	<u>\$5,656,900</u>	Building	<u>\$1,979,900</u>
Total	\$7,400,000	Total	\$2,590,000

Dissatisfied with the BOR's determination, appellant appealed to this board, arguing that the subject should be granted a further reduction in value, asserting at the time of its appeal that the value should be \$4,900,000.

“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 a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. Pertinent to the facts before us, R.C. 5713.03 recognizes the utility of a sale in establishing the value of real property for purposes of ad valorem taxation:

“The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***. *In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. ****” (Emphasis added.)

This statute reflects the General Assembly's codification of *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412, in which the Supreme Court

held that “[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. This, without question, will usually determine the monetary value of the property.” See, also, *Conalco Inc. v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 129, paragraph one of the syllabus (“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.”); *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶16 (“Pursuant to R.C. 5713.03, the sale price in a recent arm’s-length transaction between a willing seller and a willing buyer shall be considered the true value of the property for taxation purposes.”).

In *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932, the Supreme Court held that this board is “justified in viewing the conveyance-fee statement and the deed that the school board had presented to the BOR as constituting a prima facie showing of value.” *Id.* at ¶28 (citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13). No one has suggested that the April 2003 sale was a “sham transaction,” involved related parties, or was a situation in which either party to the sale was acting under duress. Rather, appellant insists that we disregard the sale upon which the BOR relied in establishing value, asserting that the increase in sale amounts that occurred between December 2003 and April 2004, i.e., \$4,900,000 and \$7,400,000, was exclusively attributable to the occupancy of the property by a long-term, creditworthy tenant, i.e., U.S. Bank. Appellant argues that “[t]he only reasonable conclusion that can be inferred from this information is that the difference in the two sale prices was

due exclusively to the lease contract, which is an intangible asset, and the corresponding existence of a leasehold interest." Appellant's brief at 7. (Emphasis sic.) As a result, appellant advocates that we disregard the April 2004 sale and instead base value upon the appraisal evidence submitted on its behalf at our hearing.

Both this board and the Supreme Court have considered the aforementioned sales of the subject property when establishing its value for tax year 2004, and we need not belabor the point beyond referring to two passages from the court's decision in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687:

"The record here supports the conclusion that an arm's-length sale occurred between a willing seller and a willing buyer in December 2003 and that the higher sale price for the property obtained in April 2004 resulted from the serendipity of HIN's purchase, as HIN contemplated a 1031 exchange and specifically sought a property with a triple net lease. Thus, the facts here are not contrived nor do they suggest any effort by the parties to manipulate the sale to derive a favorable tax result. These are two separate arm's-length transactions, and nothing in the record suggests otherwise." *Id.* at ¶28.

As a result of the preceding finding, the court reasoned that:

"When a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes." *Id.* at paragraph one of the syllabus.

While appellant advocates that the sale amount is actually a reflection of the value of the leasehold interest, the Supreme Court considered and rejected an analogous position in *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203:

“Specifically, the fact that the property is encumbered by a long-term lease does not by itself establish that the sale price must be adjusted to arrive at true value. In *Rhodes [v. Hamilton Cty. Bd. of Revision]*, 117 Ohio St.3d 532, 2008-Ohio-1595], we relied on *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, *** in which we noted that the encumbrance of real property typically reflects an owner’s attempt to realize its value. *Id.* at ¶27. To the extent that an existing long-term lease generates revenue above or below market, the existence of the lease will tend to increase or decrease the value of the fee interest in the property. *Rhodes* exemplifies this principle when the long-term lease is an above-market lease, while the exemplary case for a below-market long-term lease is *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, ***. See *Cummins*, ¶¶16, 27.” *Id.* at ¶13. (Parallel citations omitted.)

The court then proceeded to explain the circumstances to which its decision in *Cummins Property Servs.*, supra, was limited, ultimately “reject[ing] the contention that the existence of a long-term lease resulting from a sale-leaseback makes the subsequent sale price not indicative of true value.” *Id.* at ¶17. In reaching this conclusion, the court commented:

“In *Cummins*, we held as a general matter that the effect of encumbrances on the sale price of the fee interest did not make that sale price unreflective of the true value of the property. We predicated our holding in part on the observation that encumbering the property constituted an owner’s method of realizing the value of the property. *Cummins*, ¶27. In that context, we hypothesized a situation in which a sale price might not be determinative of value if the contract creating the encumbrance was not entered into at arm’s length, and we pointed to a sale-leaseback as having potential to present such a situation. *Cummins*, ¶30.

“But additional language in *Cummins* clarifies that the sale-leaseback situation in this case does not raise such concerns. In *Cummins*, we relied on the Wisconsin Supreme Court’s decision in *Darcel, Inc. v. Manitowoc Bd. of Review* (1987), 137 Wis.2d 623, *** which stated that “[s]ale-leaseback situations, for instance, may be undertaken with terms to avoid property tax and might not be entered at arms-length.” *Cummins*, ¶30, quoting

Darcel, at 631. Thus, the concern associated with sale-leaseback transactions lies in collusion between the parties to depress property value for tax purposes. No evidence in the present case suggests that such collusion existed – indeed, the transaction in this case actually increased the property value by providing for a stream of elevated rent payments.

“***

“Finally, AEI’s citation of footnote 4 in *Cummins* is unavailing. In the footnote, we noted that ‘a sale-leaseback may not furnish an arm’s-length sale price.’ 117 Ohio St.3d 516, 2008-Ohio-1473, *** ¶30. We simply did not address the separate question presented in this case: whether the sale price in a subsequent sale from the purchaser in the sale-leaseback determines the value of the property.

“At oral argument, AEI’s counsel hypothesized a situation in which the parties to a sale-leaseback might artificially lower property value: a property would subsequently sell for less if, in a previous sale-leaseback, the parties had agreed to a low sale price and concomitantly low rent. But the below-market nature of such a sale-leaseback would inevitably raise serious questions about the arm’s-length character of the sale-leaseback as a whole. Agreeing to a low sale price and low rent does not allow either party to that deal to realize the value of the realty, and as a result, the parties to such a transaction would likely not qualify as ‘typically motivated’ for purposes of establishing the sale-leaseback as an arm’s-length transaction. See *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, *** ¶31; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, *** ¶10. Specifically, a purchaser in a sale-leaseback who encumbered the property at a plainly below-market rent would not be looking to realizing an optimal value for the realty. By stark contrast, the purchaser in a sale-leaseback like that at issue in this case is plainly maximizing value for the realty itself.” *Id.* at ¶¶19-20, 24-25. (Parallel citations omitted and emphasis sic.)

Accordingly, in this instance, where there exists an arm's-length sale, recent to the 2006 tax lien date,² it is inappropriate to consider the alternative evidence of value offered by appellant. See, generally, See *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 64 ("It is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate."). Accordingly, we find the best evidence of the subject's value as of January 1, 2006, to be the price for which it transferred eighteen months prior. Although appellant offered additional appraisals for the two subsequent years within the same interim period as the year for which the underlying complaint was filed,³ we are unpersuaded that the value established by the aforementioned April 2004 sale should not apply with equal force throughout the interim period. Indeed, such conclusion is supported by appellant's appraiser's testimony regarding only minor changes in the marketplace during the intervening years and his own reliance upon sales and leases of other properties occurring in, prior to, and after 2004.

Accordingly, it is the decision of the Board of Tax Appeals that the best evidence of the subject's value as of January 1, 2006, as well as the two other years within the interim period, was as the BOR had determined, the amount for which the property transferred

² We acknowledge that whether a sale is sufficiently "recent" or too "remote" from tax lien date to qualify as the "best evidence" of value is not decided exclusively upon temporal proximity. *Worthington City Schools Bd. of Edn.*, at ¶32. However, it remains the burden of a party contesting the utility of a sale to rebut the presumptions to be accorded it. See, e.g., *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. See, generally, *HK New Plan Exchange Property Owner II, L.L.C. v. Hamilton Cty. Bd. of Revision*, 122 Ohio St.3d 438, 2009-Ohio-3546 (value based upon sale occurring twenty-four months prior to tax lien date); *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059 (reversing this board's decision and ordering that the property's taxable value as of January 1, 2002 be based upon its sale which occurred in October 2003, twenty-two months after tax lien date).

³ In *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, 304, fn. 1, the Supreme Court "decline[d] to address the issue of whether the BTA has the authority to determine different values for succeeding years in the same triennium in this case, where no competent, probative evidence supporting different valuations was offered."

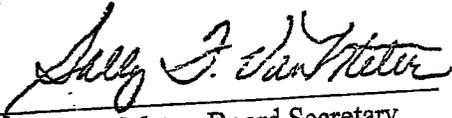
in April 2004. It is therefore the order of this board that the property be valued as follows as of January 1, 2006:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$1,743,100	Land	\$ 610,100
Building	\$5,656,900	Building	\$1,979,900
Total	\$7,400,000	Total	\$2,590,000

It is the order of this board that the Cuyahoga County Fiscal Officer list and assess the subject property in conformity with our decision as announced herein and that such values be carried forward according to law.

ohiosearchkeybta

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary

5703-25-07 Appraisals.

(A) Each general reappraisal of real property in a county shall be initiated by an entry and order of the tax commissioner directed to the county auditor of the county concerned which shall specify the time for beginning and completing the appraisal as provided by section 5715.34 of the Revised Code. In January of each year the commissioner shall adopt a journal entry wherein is set forth the status of reappraisals in the various counties and the tax year upon which the next reappraisal and the next triennial update of real property values in each county shall be completed.

(B) Each lot, tract, or parcel of land, and all buildings, structures, fixtures, and improvements to land shall be appraised by the county auditor according to true value in money, as it or they existed on tax lien date of the year in which the property is appraised. It shall be the duty of the county auditor to so value and appraise the land and improvements to land that when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property.

(C) Land shall be valued in accordance with the provision of rule 5703-25-11 of the Administrative Code. All land shall be valued according to its true value except where the owner has filed an application under section 5713.31 of the Revised Code for such land to be valued for real property tax purposes at the current value the land has for agricultural use, and the land is qualified to be so valued and taxed as provided in section 5713.30 of the Revised Code.

Buildings, structures, fixtures, and improvements to land shall be valued in accordance with the provisions of rule 5703-25-12 of the Administrative Code.

(D) In arriving at the estimate of true value the county auditor may consider the use of any or all of the recognized three approaches to value:

(1) The market data approach - The value of the property is estimated on the basis of recent sales of comparable properties in the market area after allowance for variation in features or conditions. The use of the gross rent multiplier is an adaptation of the market approach useful in appraising rental properties such as apartments. This is most applicable to the types of property that are sold often.

(2) The income approach - The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses. While the contract rental or lease of a given property is to be considered the current economic rent should be given weight. Expenses should be examined for extraordinary items. In making appraisals by the income approach for tax purposes in Ohio provision for expenses for real property taxes should be made by calculating the effective tax rate in the given tax district as defined in paragraph (E) of rule 5703-25-05 of the Administrative Code, and adding the result to the basic interest and capitalization rate. Interest and capitalization rates should be determined from market data allowing for current returns on mortgages and equities. The income approach should be used for any type of property where rental income or income attributed to the real property is a major factor in determining value. The value should consider both the value of the leased fee and the leasehold.

(3) The cost approach - The value is estimated by adding to the land value, as determined by the market data or other approach, the depreciated cost of the improvements to land. In some types of special purpose properties where there is a lack of comparable sales or income information this is the

only approach. Due to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications.

(E) Ideally, all three approaches should be used but due to cost and time limitations, the cost approach as set forth in these rules is generally an appropriate first step in valuation for tax purposes. Values obtained by the cost approach should always be checked by the use of at least one of the other approaches if possible. In the event the auditor uses approaches of estimating true value other than the cost approach appropriate notations shall be shown on the property record.

(F) The appraiser is urged to refer to standard appraisal references as well as the excellent publications by many trade associations, etc., which provide valuable income, expense, and other types of information that may be used as bench marks in making the appraisal.

(G) Nothing set out in these rules shall be construed to prohibit the county auditor from the use of advanced techniques, such as computer assisted appraisals, in the application of the three approaches to the appraisal of real property for tax purposes. However, such programs must be submitted to the tax commissioner for the approval on an individual basis.

Eff 12-28-73; 11-1-77; 9-18-03

Rule promulgated under: RC 5703.14

Rule authorized by: RC 5703.05

Rule amplifies: RC 5713.01, 5715.01

Replaces: 5705-3-03

R.C. 119.032 review dates: 09/18/2008

1.48 Presumption that statute is prospective.

A statute is presumed to be prospective in its operation unless expressly made retrospective.

Effective Date: 01-03-1972

1.54 Reenactment or amendment is continuation of prior statute.

A statute which is reenacted or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute.

Effective Date: 01-03-1972

5713.03 [Effective Until 3/27/2013] County auditor to determine taxable value of real property.

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

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

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

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

Amended by 129th General Assembly File No. 127, HB 487, § 101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

See 129th General Assembly File No. 127, HB 487, § 757.51.

5713.03 [Effective 3/27/2013] County auditor to determine taxable value of real property

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01

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

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

Amended by 129th General Assembly File No. 186, HB 510, § 1, eff. 3/27/2013.

Amended by 129th General Assembly File No. 127, HB 487, § 101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

See 129th General Assembly File No. 186, HB 510, § 3.

See 129th General Assembly File No. 127, HB 487, § 757.51.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Brief of Appellee, Bedford Board of Education has been served upon the following this 25 day of February, 2013 by ordinary

U.S. mail delivery:

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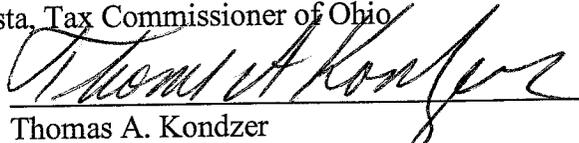
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