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I. INTRODUCTION

If this Court is going to give any weight to the primary reliance upon a cost approach in this case then it is presented with a pivotal, seminal question for the Court's consideration:

Is it permissible to include the value of tangible personal property in a real property tax assessment?

The answer to this question is unquestionably "no." This answer is not only important to Appellant, but also current and future Ohio taxpayers, especially manufacturers with significant business fixtures, because the elimination of the tangible personal property tax was a major component of Ohio's tax reform.

This is, however, what the Ohio Board of Tax Appeals ("BTA") has done by its decision below, and that decision should be reversed. As addressed in detail below, only the Appellant has provided evidence of value which excludes the value of tangible personal property, is based upon sound appraisal practice, and is consistent with years of guidance provided by this Court as to the proper classification of property and appraisal methodologies to be applied. For these reasons, this Court should reverse the BTA and find for the value set forth in the Appellant's appraisal.

The State of Ohio, starting in 2005, began to phase out the tangible personal property tax for general business taxpayers such as the Appellant. (see generally, R.C. 5711.22) At the time, taxpayers were concerned that Ohio's taxation of business fixtures as tangible personal property, discussed below, would be abandoned such that these items, although no longer taxable as tangible personal property, would instead be classified as real estate and still subject to tax. To counsel's knowledge this has not occurred, until now. This should not be allowed to stand.

As demonstrated below, neither the BTA nor the board of education's appraiser made any attempt to address this issue. The BTA, citing an earlier decision for the same taxpayer, found that the value of tangible personal property could lead to an increased real estate tax valuation.

Additionally, the board of education's appraiser failed to demonstrate even a basic understanding of Ohio's property classification standards. This lack of understanding, coupled with the reliance upon a cost approach for a property of this age which has been routinely rejected as a primary approach to valuation, results in an appraisal report lacking in probative value.

There is no basis in Ohio law for the inclusion of the value of tangible personal property in the real property tax valuation and this Court should not create one in this case. The only probative evidence of value in this case is Appellant's appraisal at a value of \$10,420,000.

The Court's analysis and resolution of this matter should be straightforward. For a property of this age, where market transactions are available, the use of a cost approach as the primary method of valuation is not appropriate. This is consistent with the prior decision of the BTA for this property and many other decisions. The BTA's decision in this matter which does so must be overturned. The only reliable evidence in the record is the appraisal provided by the Appellant which has not been rebutted. The Court adopted this valuation.

II. STATEMENT OF FACTS

Appellant, Jefferson Industries Corporation (JIC) sought a reduction in the tax year 2011 value for the subject property, a manufacturing facility that is owner-occupied. As it had before the Madison County Board of Revision ("BOR"), JIC presented to the BTA the only competent and probative evidence of value found in the record to support its requested reduction. This evidence consisted of the appraisal report and testimony of Ronald M. Eberly, Jr., MAI and

CCIM. Mr. Eberly is a respected member of the appraisal community, with years of experience in appraising properties. Much of his practice is focused on appraising industrial facilities like the subject property.

Mr. Eberly's opinions of value are well-supported in this matter. He relied primarily upon the sales comparison approach to value with the cost approach used to support his findings. Both approaches to value adopt a methodology that follows appraisal standards. Mr. Eberly utilized the correct classification of the subject property, further correctly identified the existence of functional obsolescence, and properly calculated the impact of that obsolescence on the subject's value. Additionally, Mr. Eberly properly relied primarily upon the sales comparison approach to support his conclusion of value for a property that was constructed in phases beginning in 1989. Mr. Eberly's appraisal is thorough and complete, and it clearly met JIC's burden of persuasion.

In sharp contrast, the West Jefferson Local School District Board of Education ("BOE") and the Madison County Auditor and Madison County Board of Revision (collectively, "County Appellees") have failed to rebut JIC's appraisal evidence. The BOE offered only the testimony and report of Mr. G. Franklin Hinkle, MAI, who offered an opinion of value primarily relying upon the cost approach to value, with support from a sales comparison approach to value, which included only one Ohio sale from 2002 for a 2011 tax lien date case, with all the other sales being outside of Ohio. Mr. Hinkle's opinion of value is not reliable in this matter. Both his methodology and his selection of data are flawed. Mr. Hinkle's testimony and report also demonstrates a lack of understanding of the key concepts at issue in this appeal. At the very least, he lacks the depth of experience and understanding shown by Mr. Eberly when it comes to industrial properties.

Based upon the evidence and testimony in the record, this Court should find that the BTA erred as a matter of law by utilizing evidence that incorrectly commingled the realty and personalty components of the property, failed to correctly classify the property as light manufacturing, and failed to utilize cost information consistent with the quality of construction utilized to construct large manufacturing facilities. Based upon the evidence and testimony in the record, this Court must reverse the decision of the BTA and find the value of the subject property to be \$10,420,000 for tax year 2011.

A. The subject property is an owner-occupied manufacturing facility built in stages over more than a 20-year period.

The subject property is identified in the Madison County Auditor's records as parcel numbers 10-01999.000, 10-01999.001, and 10-01999.888. The subject consists of 60 acres¹ of land. The land is improved with an owner-occupied manufacturing facility that is 683,415 square feet in size. The building was originally built in 1989, with additions built in 1990, 1993, 1994, 1995, 2001, 2005, 2006, 2007, 2008, and 2010. Eberly at 31 (Supp. at 166). Mr. Eberly concluded that the subject had a weighted chronological age of 11 years, and an effective age of 25 years. *Id.* The subject has five drive-in doors, 34 dock doors, and a ratio of one door per 16,563 square feet. Eberly, Summary of Salient Facts (Supp. at 132). The subject's clear height ranges from 12'8" to 53'1", with a weighted average clear height of 32'0". Eberly at 31 (Supp. at 166). The subject consists of 553,575 square feet of manufacturing space, and 92,400 square feet of warehouse space. Eberly at 34 (Supp. at 169). The subject property also contains 37,440 square feet of office space, along with three ancillary yard buildings which consist of approximately 20,100 square feet. Eberly at 33, 35 (Supp. at 168, 170). The subject is located in

¹ Both appraisers utilized 81.29 acres in their appraisal reports. However, the parcels on the complaint contain only 60 acres. Due to Mr. Hinkle's reliance upon the cost approach, his value would be adjusted to \$27,350,000.

the Village of West Jefferson, in Madison County, and is located approximately two miles south of Interstate 70. Eberly at 24 (Supp. at 159).

B. JIC's appraisal evidence primarily relies upon a sales comparison approach to determine value that is supported by Ohio law and sound appraisal theory. It is then supported by a cost approach that is properly developed under Ohio law.

At the BOR, JIC introduced the testimony and written appraisal report of Mr. Ronald M. Eberly, Jr., an Ohio-certified general appraiser, a Member of the Appraisal Institute ("MAI") and a member of the Certified Commercial Investment Institute ("CCIM"). Mr. Eberly found value using the sales comparison approach (also known as the market data approach). See, generally, Ohio Adm. Code 5703-25-07. He further verified and supported his value using the cost approach as a cross-check.

The sales comparison approach, sometimes referred to as the market data approach, derives an estimate of value by comparing the subject property to the sale prices of similar properties, identifying appropriate units of comparison and making adjustments to the sale prices (or unit prices) based upon relevant, market-derived elements. The sale prices of properties considered most comparable generally establish a range in which the value of the subject will fall. Ohio Adm. Code 5703-25-05(G); The Appraisal of Real Estate (14th Ed. 2013) at 377. Mr. Eberly analyzed sales of five manufacturing facilities that he found to be similar to the subject. All of the sales utilized by Mr. Eberly involve properties located in Ohio. In selecting his sale comparables, Mr. Eberly searched for comparable sales of industrial properties within the subject's immediate competitive market area; however, he then expanded his search to similar locations throughout Ohio. Eberly at 63 (Supp. at 198). He then selected properties that best reflected the characteristics of the subject property, including properties that were specifically constructed for manufacturing.

The sales occurred between August 2006 and January 2011 and ranged in price from a low of \$10.38 per square foot to a high of \$22.63 per square foot. *Id.* Mr. Eberly then made adjustments for age, time of sale, location, market condition, and physical differences, such as the number of available dock doors, size, and clear-height, along with taking numerous other factors into consideration to derive a value for the subject property equivalent to \$15.25 per square foot. Eberly at 75-78 (Supp. at 210-213). This yielded a total value under the sales comparison approach of \$10,420,000. Eberly at 78 (Supp. at 213).

Under the cost approach, real property value is derived by estimating the current cost of replacing the improvements, deducting from that cost the estimated physical depreciation and all forms of obsolescence, if any, and then adding the market value for land. Ohio Adm. Code 5703-25-07(D)(3); *The Appraisal of Real Estate* (14th Ed. 2013) at 561. Given the age of the property, the cost approach requires more speculation, but Mr. Eberly ultimately only used this approach as a check on his primary method, the sale comparison approach.

For Ohio tax purposes, the replacement cost is utilized. Ohio Adm. Code 5703-25-12(A). Mr. Eberly's cost approach began with an estimation of land value. Mr. Eberly utilized four sales of unimproved land. The sales ranged from a low of \$17,226 per acre to a high of \$33,000 per acre. Eberly at 45 (Supp. at 180). After making adjustments for date of sale, size, location, and the interest transferred, Mr. Eberly determined a total land value of \$28,000 per acre, or approximately \$2,250,000.² Eberly at 51-53 (Supp. at 186-188).

Mr. Eberly next determined a replacement cost for the subject's improvements by utilizing the Marshall & Swift Valuation Service. Using the "office/manufacturing/warehouse" classification of the Marshall & Swift Service, Mr. Eberly determined a replacement cost value

² Utilizing 60 acres, the land value would be \$1,680,000.

of \$11,630,000. This amount includes hard costs, soft costs, depreciation, and site improvements, along with the value of the underlying land. Eberly at 60 (Supp. at 195). Because the subject is owner occupied, no entrepreneurial profit was considered. Such profit is usually not realized until the owner sells the property.

Specifically, Mr. Eberly broke the property up into its respective parts, and utilized costs per square foot provided by Marshall Swift to determine the respective costs per square foot for the manufacturing, office, and warehouse spaces within the subject property. *Id.* Mr. Eberly also made adjustments for HVAC, sprinklers, story height and location within his cost approach. *Id.* In valuing the manufacturing space, to determine replacement cost, Mr. Eberly utilized light manufacturing at low cost. *Id.* At the BTA hearing Mr. Eberly explained that the subject property is “low cost all day long, . . . but the general reason is manufacturers will build at minimum state building codes.” H.R. at 64 (Supp. at 64). Mr. Eberly also described the difference between warehouse and distribution space explaining that “it’s the way the building is set up is the placement of dock doors, . . . the number of dock doors, as well as the dock door drive in ratio to the square footage of the building.” *Id.* Mr. Eberly testified that the areas of the subject property are warehouse and not distribution. H.R. at 65 (Supp. at 65).

Under the cost approach, simply adding all of the costs does not reflect the value of an improvement. An appraiser is required to apply depreciation for all sources, both physical and depreciation generated by obsolescence in its various incarnations. See Ohio Adm. Code 5703-25-05(D), defining “cost approach,” and Ohio Adm. Code 5703-25-07(D)(3), setting forth the required steps in the cost approach. See, also, *The Appraisal of Real Estate*, (14th Ed. 2013) at 576. Physical depreciation was calculated using an “effective age” for the subject of 25 years

and a depreciation rate of 71%. Effective economic age and the depreciation rate were calculated using the market extraction method.

Mr. Eberly next determined that functional obsolescence was present at the subject property due to production press pits in place that another user would have to fill in if the property were sold on the open market. He calculated the cost to cure this obsolescence at \$384,822, which he included in his overall depreciation rate.

Applying both his cost to cure and his physical depreciation factor, Mr. Eberly determined a depreciated value for the improvements of \$9,383,960. When added to his \$2,250,000 land value, this resulted in a value for the subject property under the cost approach of approximately \$11,630,000. Eberly at 60-61 (Supp. at 195-196).

In reconciling his approaches to value, Mr. Eberly placed weight on the sales comparison approach. His cost approach, due to the age of the property, was included “primarily to test highest and best use and the reasonableness of the final opinion via the sales comparison approach.” Eberly at 79 (Supp. at 214). Mr. Eberly stated that he did not utilize the income approach because most manufacturing facilities are owner-occupied, making comparable rents extremely difficult to find. Eberly at 43-44 (Supp. at 178-179). Consequently, Mr. Eberly opined to a final true value for the subject property of \$10,420,000 for tax year 2011.

C. The BOE’s appraisal evidence includes the value of tangible personal property, fails to account for all forms of depreciation, relies upon a cost approach for a building originally constructed in 1989 and attempts to support a cost approach on such a building with out-dated or non-Ohio sales.

In contrast to the thorough appraisal of Mr. Eberly, the BOE provided an anemic opinion of value through the testimony and appraisal report of Mr. Hinkle, MAI. Like Mr. Eberly, Mr. Hinkle utilized both the sales comparison and cost approaches to value, however, unlike Mr. Eberly, Mr. Hinkle place primary reliance upon the cost approach to value a property type

that does trade in the open market, as demonstrated by Mr. Eberly's comparables and that ranged in age from 1 to 22 years old.

Mr. Hinkle places primary reliance upon the cost approach for a property which Mr. Hinkle himself estimates has an effective age of between 15 and 20 years. Not only is a cost approach not the primary method to value a property of this age when other methods are clearly available, but Mr. Hinkle's cost approach is severely flawed. An in-depth review of this approach is provided below which highlights these flaws. Mr. Hinkle's cost approach began with an estimation of land value. Mr. Hinkle used four sales of unimproved land. The sales ranged from a low of \$17,226 per acre to a high of \$44,337 per acre. Hinkle at 47 (Supp. at 288). After making adjustments for market conditions and size, while considering other factors, Mr. Hinkle determined a total land value of \$30,000 per acre, or approximately \$2,450,000.³ Hinkle at 57 (Supp. at 298).

Mr. Hinkle next claimed to determine a replacement cost for the subject's improvements although, as detailed below, contrary to how it is labeled, Mr. Hinkle calculated a reproduction cost for the property. In doing so, Mr. Hinkle incorrectly divided the property into Heavy Manufacturing, Warehouse and Shipping and Light Manufacturing. Mr. Hinkle then determined that each of these building areas per Marshall Swift dictate that average cost multipliers should be utilized to determine the overall cost per square foot, even though, as Mr. Eberly noted, this is contrary to the replacement cost approach a large manufacturer would undertake if the entire property were replaced at one time. In doing so, Mr. Hinkle utilized the Distribution Warehouse cost figures, despite referring to the area as "Warehouse and Shipping." As noted above, the space is warehouse utilized for storage of components utilized in the manufacturing process and

³ At 60 acres, the acreage of the associated parcels on the complaint, Mr. Hinkle's land value would be adjusted to \$1,800,000.

for completed parts, not distribution. Mr. Hinkle then arrived at a flawed overall cost per square foot before making further adjustments for current costs, local costs, along with making additional adjustments to physical attributes including ceiling height, cooling systems and sprinkler systems.

Mr. Hinkle then determined that a rate of 5% for entrepreneurial incentive/developer's profit was appropriate for the subject, despite the subject being owner occupied. Hinkle at 59 (Supp. at 300). Mr. Hinkle then determined that the subject had no external depreciation, but then estimated that functional and physical depreciation based upon the effective age of 15 to 20 years was 55%. Although concluding to an over 50% depreciation adjustment for his primary method of valuation, Mr. Hinkle still moved forward apparently not concerned that the valuation was too speculative to place primary reliance upon. Mr. Hinkle then added ancillary site improvements and contributory land value to arrive at a value of approximately \$28,000,000⁴ under the cost approach to value. Hinkle at 61 (Supp. at 302).

Turning to the sales comparison approach, Mr. Hinkle's appraisal included only four sales. Only sale 1 was of a property located in Ohio, however that sale occurred in November 2002. Mr. Hinkle testified that, "this sale was part of a business acquisition by G.E." H.R. at 48 (Supp. at 48). Furthermore, this sale was previously rejected by the BTA in *Jefferson Industries Corp. v. Madison Cty. Bd. of Revision* (June 22, 2007), BTA No. 2005-M-1525, at 8 (finding that the property was part of a business acquisition and the sale price was not corroborated) (hereinafter *Jefferson Industries I*). The three remaining sales were all located out of state. Furthermore, Mr. Hinkle testified that he did not view any of his comparables. H.R. at 47 (Supp. at 47). In searching for comparable sales Mr. Hinkle testified that he searched local markets (not

⁴ After adjusting for the subject property's correct acreage, this value should be \$27,350,000.

finding the comparable sales provided by either Mr. Eberly or the County), and then on a nationwide basis for properties similar to the subject property. H.R. at 36 (Supp. at 36). However, Mr. Hinkle then admitted that despite expanding his search nationwide, none of the properties were utilized as stamping facilities such as the subject. H.R. at 48 (Supp. at 48).

The sales utilized by Mr. Hinkle occurred between November 2002 and October 2013 and ranged in price from a low of \$32.76 per square foot to a high of \$55.66 per square foot. Hinkle at 73 (Supp. at 314). He then made adjustments purportedly considering such factors as property rights conveyed, financing, condition of sale, market conditions, size and age, but did not consider other important physical attributes in making adjustments. *Id.* He then derived a value for the subject property equivalent to \$40.00 to \$42.00 per square foot. In doing so, Mr. Hinkle discounted the physical characteristics of the comparables as they compared to the subject, likely due to the fact that he was not adequately familiar with the comparables he relied upon. This yielded a total value under the sales comparison approach of \$27,400,000 to \$28,770,000.

In reconciling his approaches to value, Mr. Hinkle placed the greatest weight on the cost approach, with the sales comparison approach offering further support. Mr. Hinkle took this unique approach because “these properties do not typically sell.” H.R. at 28 (Supp. at 28). Mr. Hinkle however limited his search to only stamping facilities which focus on the process performed in the property and not the property itself. *Id.* This conclusion is contrary to both the sales provided by Mr. Eberly **and** the sales compiled by the county which are contrary to Mr. Hinkle’s assertion. (see Exhibit C.) Mr. Hinkle’s attempt to treat a manufacturing facility as a special purpose property that is appraised based upon the cost approach regardless of age is simply unsupportable. Based upon this flawed assumption, he then concluded to a value of

\$28,000,000.⁵ Hinkle at 74 (Supp. at 315). As will be discussed in detail below, Mr. Hinkle's appraisal is flawed for many reasons. As a result, the BTA's reliance upon such a flawed approach cannot stand.

D. The County Appellees evidence fails to provide any probative evidence of value.

Madison County Auditor Jennifer Hunter appeared and testified at the BTA hearing. Auditor Hunter testified that the BOR reviewed the evidence submitted by JIC and its appraiser at the BOR hearing, but relied primarily upon the comparables provided by its appraiser. (See Exhibit C.) H.R. at 15 (Supp. at 15). The evidence utilized by the County in rendering its decision at the BOR establishes that there were other comparable sales within Ohio. However, due to the lack of testimony, and ability to explore the adjustments made, the comparables utilized by the County should be disregarded. After the BOR hearing, the BOR Members consulted with a county appraiser to review the valuation of the subject property. As a result, the County appraiser located five sales of properties wherein comparisons could be made to the subject property. These sales occurred from March 2007 to October 2011 and ranged from a low of \$22.05 per square foot to a high of \$50.43 per square foot. At the BTA, Mr. Eberly reviewed each sale and testified based upon the information he obtained when verifying each transaction. H.R. at 80-82 (Supp. at 80-82). Mr. Eberly testified whether the sales were listed on the open market and also described the other characteristics of each sale. Some of the properties were leased, comparable sales 2 and 4 were built to suit for a specific tenant, which then were purchased by the tenants. Sale 3 was multi-tenant and utilized as a warehouse, and sale 5 was a sale-leaseback. Because Mr. Eberly found better comparable transactions he did not review and make adjustments to the county's comparables, but these sales, and those relied upon by

⁵ As stated above, the value conclusion must be adjusted to reflect that the subject consists of only 60 acres. The value utilizing 60 acres of land would be \$27,350,000.

Mr. Eberly, demonstrate that there were ample transactions from which comparable properties could be located within Ohio. However, without the testimony and ability to cross-examine the appraiser that prepared this analysis and the appropriateness of any adjustments which were made, this information is limited in its probative value.

III. LAW AND ARGUMENT

A. **The BOE's appraisal is so flawed that it is unlawful to place any reliance upon it to determine the value of the subject property for real estate taxation purposes. The Appellees have failed to rebut JIC's probative evidence of value.⁶**

The BTA's reliance upon the BOE's appraisal is reversible error. Where an appellant has come forward with competent and probative evidence of value, the appellees have a corresponding burden to present evidence that the BTA must review to determine whether such evidence is competent and probative in rebutting the appellant's evidence. *Westhaven, Inc. v. Wood Cty. Bd. of Revision*, 81 Ohio St.3d 67 (1998), 70; *Springfield and Mentor Exempted*, supra. See, also, *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision*, Summit Cty. App. No. 22238, 2005-Ohio-1951. As JIC will demonstrate below, it has presented substantial evidence of value that is both competent and probative of value. Both the BOE and County Appellees, however, have failed to present anything that competently rebuts Mr. Eberly's expert determination of value. The BTA's reliance upon such evidence must be reversed.

1. **Reliance upon a cost approach as the primary method to value a property for taxation purposes, for a property this age, when other evidence is available, has been consistently rejected.⁷**

The use of the cost approach as a primary method for determining the value of a property, especially when portions of the property were constructed several years prior to the relevant lien

⁶ See Appellant's Assignment of Error 2.

⁷ See Appellant's Assignment of Error 3.

date, has been consistently rejected. This is, however, exactly what the BTA did in this case for a property with initial construction dates 22 years before the tax lien date. See *Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision* (July 14, 2006), BTA No. 2004-R-86 (the older the property the more speculative the value derived under the cost approach is due to the subjectivity of determining the property's depreciation); *Agree L.P. v. Wood Cty. Bd. of Revision* (Sep. 23, 2005), BTA No. 2003-T-1205 ("The subject is also nearly twenty years old as of tax lien date, making the cost approach highly speculative given the amount of obsolescence affecting the property."). The concerns over the speculative nature of a cost approach for a property this age is also specifically noted in the Ohio Administrative Code which notes that "[d]ue to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications." Ohio Adm. Code 5703-25-07(D)(3).

The BTA's reliance upon the cost approach in this case is even more troubling given that in a previous case, for the 2004 lien date for this exact same property, the BTA rejected the use of the cost approach. See *Jefferson Industries I*. Seven years earlier, the BTA rejected the cost approach as being too speculative for a property with initial construction in 1989. There is no basis for the conclusion that seven years later, the cost approach is now somehow reliable.

Given the previous rejection of the cost approach for this specific property in the 2004 tax lien date matter, coupled with the repeated rejection of reliance upon the cost approach for similar-aged properties, the BTA erred by placing primary reliance upon the cost approach to value.

Although no further analysis of Mr. Hinkle's cost approach should be necessary given the age of the property and availability of market-based evidence, even if the cost approach is to be

considered as probative of value for the subject property, the BOE's cost approach is so flawed that it is clear legal error to rely upon Hinkle's cost approach.

2. Even if such an approach is to be considered, the BOE's cost approach is fatally flawed because it fails to comply with Ohio law.⁸

Although the primary reliance upon the cost approach for a property which Mr. Hinkle himself estimates has an effective age of between 15 and 20 years is fatally flawed, even if such an approach is considered, Mr. Hinkle's cost approach is unreliable. Among these flaws are that (a) he clearly includes the value of business fixtures and therefore includes the value of Ohio tangible personal property in his real estate valuation; (b) his classification of the property as heavy manufacturing is not supported by the record resulting in utilization of costs that are not reflective of the subject property; and, (c) regardless of how it is labeled, Mr. Hinkle relies upon reproduction, rather than replacement cost for the property as required under Ohio law.

a. The BTA's determination of value was unreasonable and unlawful because the BTA relied upon appraisal evidence that impermissibly commingled the value of personal property.

Ohio taxes real property, not personal property. R.C. 5713.01, 5713.03. See also, Article XII, Section 2, Ohio Constitution (land and improvements are to be taxed according to value). The BTA, however, erred when it relied upon an earlier decision and, citing it with approval in this case, unmistakably adds the value of personalty to the real property. The BTA's position is that:

"Thus, the argument goes, even though the subject property has installed deeper concrete foundations under certain machinery, the value of thicker floor cannot be considered in this matter... Moreover, under the principle of substitution, while the foundation is taxed as personalty, its utility to a subsequent purchaser may add value. In other words, a subsequent purchaser may take into consideration that it would not have to fortify a floor for heavy

⁸ See Appellant's Assignment of Error 3.

machinery in the subject while it would have to make alterations in a competing property.” *Jefferson Industries I*, at 9, (also cited in the BTA’s 2011 tax year decision).

The BTA, while correctly acknowledging that the subject property contains personalty, incorrectly arrives at the conclusion that these items of personalty somehow increase the taxable value of the real estate. The fact that there is personalty that would be sold at the same time as the real estate does not increase the value of the real property; both forms of property would be transferred and separately valued. Using the total for both to value just the real estate is contrary to Ohio law.

R.C. 5701.02 provides: “‘Real property,’ ‘realty,’ and ‘land’ include land itself * * * with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto.’ R.C. 5701.03 defines “personal property to include “every tangible thing that is the subject of ownership, * * * including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. * * *” The term “business fixture is itself defined in R.C. 5701.03(B):

“(B) ‘Business fixture’ means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. ‘Business fixture’ includes, but is not limited to, machinery, equipment, * * *. ‘Business fixture’ also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, *including, but not limited to, foundations and supports for machinery and equipment.* * * *” (Emphasis added.)

The key to understanding what is a business fixture (and thus personal property) is that business fixtures may be incorporated into the real property, but their purpose is personal in

nature, *i.e.*, they are articles that are “accessory to the business, and have been put on the premises for this purpose, and not as accessions to the real estate.” *Zangerle v. Standard Oil of Ohio*, 144 Ohio St. 506 (1944), at paragraph seven of the syllabus.

Mr. Hinkle clearly fails to understand the concept of a business fixture. When asked to provide how he distinguished between the personalty and the real property, Mr. Hinkle’s response was:

“The way I consider personal property to be is property that’s not attached [*sic*], that would be considered personal. Real estate and fixtures can be attached [*sic*] are considered real property and real estate.” H.R. at 44 (Supp. at 44)

There can be no question that Mr. Hinkle fails to understand the concept of a business fixture and that business fixtures are personalty under Ohio law. This lack of understanding leads to the then critical errors made by Mr. Hinkle in performing his cost approach.

- i. The subject property contains business fixtures that qualify as personal property. The BOE’s appraiser and the BTA failed to separate these items of personal property from the value of the real estate.**

The misclassification of this property as heavy manufacturing by Mr. Hinkle has two separate, but inter-related, impacts on the reliability of Mr. Hinkle’s conclusion. The first, addressed immediately below, is the inclusion of the value of business fixtures, or tangible personal property, in the real estate valuation. The second, addressed subsequently, is the utilization of a higher cost structure to reflect items of realty that are not present with the subject property. Both errors lead to an increased opinion of the value of the real estate by Mr. Hinkle that is not proper in this case.

Common to heavy industrial buildings are foundation pads for equipment, thicker, heavier floors, and additional structural steel to support cranes and other equipment. All of these elements are typically included in the construction cost of a facility. Nevertheless, they

constitute personalty, not real property pursuant to R.C. 5701.03(B), and therefore cannot be utilized in determining the value of the real estate. *See, also, Funtime, Inc. v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890 (amusement park rides, including foundations, and station houses were found to be personal property because they benefitted the business, not the real property).

As it relates to the subject property, such items are present for the use of the specific user in its business. *See* H.R. at 103-108 (Supp. at 103-108). In fact, it is typical for pads to be constructed specifically to place equipment to assist a particular operator in the flow of work and materials. Structural steel for cranes may also be placed in a location defined by the operator's needs. However, such items of personalty are not common or necessary elements that a typical buyer in the marketplace would require to use the property where the flow of work and materials may differ greatly from one operator to the next.

Specifically, for the subject property, the cranes, which in some instances may be supported by the reinforced construction of the building itself are not, in this case, supported by the building. The crane rails are supported by separate step-columns that are not part of the building's structure and are tangible personal property. *H.R. at 56-57 (Supp. at 56-57), Eberly at 34 (Supp. at 169)*. Concrete foundations, heavier floors, and production press pits are items of tangible personal property that are not separately accounted for by Mr. Hinkle when he decided to utilize a heavy manufacturing classification. **Mr. Hinkle's failure to understand Ohio classification rules and account for non-realty items is a fatal flaw in his cost approach.**

In contrast, Mr. Eberly's cost approach correctly valued the subject using "light industrial" costs. Mr. Eberly's approach not only eliminated the risk of including personalty in costs, but also valued the subject as it exists. Here, Mr. Eberly correctly sought to limit the

impact such personal property had on the valuation of the subject property by only valuing the components of the property that are classified as real estate under Ohio law.

- b. **The BTA's conclusion that the subject property is a heavy manufacturing facility was unreasonable and unlawful and results in a cost structure that is not reflective of the subject property.⁹**
 - i. **The BTA's reliance, without explanation, on a prior decision about the subject property for a different tax lien date, violates Ohio law regarding the BTA's role in valuing real property based upon the evidence presented to it in the specific case before it.**

In its decision, the BTA summarily concludes that, because it determined for tax year 2004 that the property was heavy manufacturing, the property still must be heavy manufacturing, citing various portions of the 2004 decision to support its findings. *Jefferson Industries I, supra*. **Other than citing to its decision in the 2004 tax year matter, the BTA provides no explanation for its finding.** The record in this case includes the property record cards for the subject property prepared by the Auditor for the tax lien date. Nowhere in these property record cards is the property classified as heavy manufacturing. This is because, for purposes of valuing the real estate, the classification is not proper. This is a light manufacturing facility with operations that might be considered heavy manufacturing but the assets that support such operations are tangible personal property and should not be included in the real property tax valuation. As Mr. Eberly notes, not even the crane rails are supported by the structure itself, but by independent supports. H.R. at 57-58 (Supp. at 57-58).

In *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 601 (1996), this Court confirmed that the BTA has a statutory duty to weigh and determine the credibility of the evidence before it. Here, the BTA failed to perform this "statutory job." *Id.* It is evident from

⁹ See Appellant's Assignment of Error 1.

its own decision that the BTA ignored the evidence before it. The BTA failed to consider the evidence in the record presented about the correct classification of the property. Moreover, the BTA ignored evidence presented **by both appraisers** that the subject property had materially changed between the 2004 and 2011 tax lien dates.

In *Babcock & Wilcox Co. v. Stark Cty. Bd. of Revision*, 65 Ohio St.3d 603 (1992), this Court reversed a BTA decision because the BTA 1) failed to set forth the basis of its decision and 2) failed to base its determination upon a review of the appraisers' reports and other evidence before it:

“Based upon its review of those reports and other evidence before it, the BTA should determine the true value of appellant’s real property. Manifestly, the BTA has the ultimate responsibility to determine questions of fact, and the value of real property is a question of fact. However, this court cannot perform its responsibility of determining whether a decision of the BTA is reasonable and lawful unless the reasons for its decision, and the evidence upon which it relied in reaching that decision, are set forth. The record before the BTA contained evidence of value submitted by appellant and by appellee. Regardless of whether those opinions of value were consistent with the determination of the board of revision, were supported by the board’s appraiser, or were in conflict with the evidence presented by the appellant, the BTA must explain its decision so this court can determine whether its action was reasonable and lawful.” *Id.*

See, also, Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision, 37 Ohio St.3d 195 (1988), and *Howard v. Cuyahoga Cty. Bd. of Revision*, 37 Ohio St.3d 195 (reversing a BTA decision because it did not state “specific reasons” for its decision, and further held, “it was not enough for the BTA to state that its additional study compelled its conclusion.”). Likewise, it was not enough for the BTA in this case to cite, in the abstract, to a prior decision for a factual determination in this case, when different appraisal evidence was before the BTA, a different tax year was involved, and the property had materially changed after the BTA’s first decision.

It is well settled under Ohio law that the BTA must evaluate the evidence in the record on a case-by-case basis. *Meijer Stores L.P. v. Franklin Cty. Bd. of Revision* (May 27, 2008), BTA Nos. 2005-T-441,443, affirmed, 122 Ohio St.3d 447, 2009-Ohio-3479 (holding that the BTA is responsible for determining factual issues based upon the record before it in each individual case). See, also, *Std. Oil Co. v. Zangerle*, 141 Ohio St. 505 (1943), and *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 36 (1997), (holding that a prior determination of value does not mandate a similar finding as to value for subsequent years under the doctrines of either *res judicata* or collateral estoppel). In *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997), this Court stated that when “the BTA makes a determination of true value for a given year, such determination is to be **based on the evidence presented to it in that case, uncontrolled by the value assessed for prior years.**” *Id.* at 29.

However, in the instant matter **the BTA made no factual determination from the record before it as to the proper classification of the subject property for tax year 2011.** Rather, the BTA improperly yielded its statutory duties to the BOE, which argued that because Mr. Hinkle’s appraisal was previously accepted in the 2004 tax year case, it should be accepted in the 2011 tax year matter. This violates the clear standards set forth in *Freshwater* and *Meijer, supra*.

Additionally, the BTA has failed to follow its own precedent on the matter. In *LaSpina v. Summit Cty. Bd. of Revision* (Jan. 12, 1996), BTA No. 1994-T-1149, the Board addressed an evidentiary situation very similar to the one now before this Court:

“Generally, a decision concerning the weight afforded to the evidence presented and the credibility of witnesses must be made on a case-by-case basis. The Board of Tax Appeals hears testimony from the same appraisers as to the valuation of different properties in literally dozens of cases. In such circumstances, it may be that we find an appraiser’s evidence reliable or testimony

credible in one instance but not in another. Accordingly, we must determine how much weight should be placed upon an expert real estate appraiser's opinion of value, and we must determine whether the appraiser's testimony is entitled to be considered in its entirety, in part, or not at all."

See, also, Seton Square, Inc. v. Franklin Cty. Bd. of Revision, (Mar. 5, 1999), BTA No. 1997-T-126 (holding that an appraiser's use of the same comparable sales to value multiple properties in different BTA cases is permissible because the evidence must be considered as to its relevancy on a case-by-case basis.)

Therefore, it is clear that a prior decision should be accorded no weight upon the a present matter, but, unfortunately, the BTA ignored its own precedent, as well as the precedent of this Court, and placed significant reliance upon a prior decision determined for the subject property when there was different evidence before it and the property's attributes had changed substantially. This was error. *Freshwater* and *Meijer, supra*.

As previously stated, the BTA "makes a determination of true value **for a given year**, such determination is to be based on the evidence presented to it in that case, uncontrolled by the value assessed for prior years." *Freshwater, supra*, at 29. The Court's decision in *Freshwater* was based upon its previous holding in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552 (1996), at 555, in which the Court stated, "the BTA must base its decision on an opinion of true value that expresses a value for the property as of tax lien date of the year in question."

By relying on its 2004 tax year decision, the BTA did not base its finding upon evidence that expressed a value as of tax lien date. Rather, the BTA abandoned its legal duty to classify the property for tax year 2011, ascribing legal precedent to a factual holding that no longer applied to the subject property, if ever.

- ii. **The BTA's determination regarding the classification of the property is erroneous and cannot be supported based upon the facts and evidence in the record for tax year 2011. The subject property has undergone a substantial physical change since the 2004 tax year decision.**

The BTA's reliance upon its 2004 tax year decision to classify the subject property is no minor error; it impacts the essential facts in this matter and, ultimately, the value of the subject property for tax year 2011. The subject property is significantly different than it was in 2004. **In 2004, the property was only 350,000 square feet, as opposed to 685,000 square feet as of lien date 2011. The property was also seven years older, and, as set forth by both appraisers, the property's configuration had changed.** In *Health Care & Retirement Corp. v. Franklin Cty. Bd. of Revision* (Sept. 25, 1998), BTA No. 1997-K-127, the BTA itself recognized that such changes between tax lien dates mandate a new finding of facts:

"Clearly the decision which this Board rendered * * * does not mandate a similar finding as to value for subsequent years under the doctrines of either res judicata or collateral estoppel. *See Std. Oil Co. v. Zangerle* (1943), 141 Ohio St. 505; *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36. *See, also, Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26. *Not only is it two years later, but the property has changed* * * *. Accordingly, we consider our prior decision as having no impact upon the value determination which we must make in the instant appeal." (Emphasis added).

Given all of the foregoing, the BTA's action in classifying the subject property based upon a 2004 tax year decision is clearly unreasonable and unlawful.

- iii. **Mr. Eberly was the only witness before the BTA that clearly understood the factors that determine the proper classification of the subject property. Mr. Eberly, alone, properly classified the subject as "light manufacturing." The BTA's decision to the contrary is erroneous.**

JIC's expert appraiser, Mr. Eberly, demonstrated significant knowledge and understanding of the differences between a light industrial and heavy industrial property.

Mr. Eberly described the differences between light and heavy manufacturing and relied upon Marshall Swift, the same source utilized by the BOE, to articulate the key differences.

Mr. Eberly testified that:

Heavy manufacturing in this definition is throughout the construction industry as well as the cost manuals that we use in our daily practice. Heavy manufacturing encompasses a building that has -- is constructed of heavy steel, both vertical columns as well as trusses, normally not pre-engineered. They have the capacity to have cranes hanging off of them or attached to those -- to that structure. Much heavier duty type of use, steel -- large steel manufacturing, airplanes, tanks, very large construction. Caterpillar plant would be a good example of a heavy manufacturing facility, very, very thick floors, 10 to 12 inch floors all the way throughout." H.R. at 56 (Supp. at 56).

Mr. Eberly then testified that the crane rails were supported by step (separate) columns, and not the real estate itself. H.R. at 56-57 (Supp. at 56-57), Eberly at 34 (Supp. at 169). Mr. Eberly also testified that the concrete flooring is four inches in the office, six inches throughout the manufacturing area, with the exception of eight inches in the stamping area, for the purpose of moving material and dies. H.R. at 57 (Supp. at 57). Mr. Eberly also testified that the only factor that sometimes distinguishes a light facility from a heavy facility present in the subject property might be the high-bay area or area with the largest ceiling height, "but that doesn't necessarily make it heavy manufacturing." *Id.* Mr. Eberly testified that the high-bay area was not fully utilized and was not essential to the building due to "an enormous amount of dead space." *Id.* These conclusions are supported by the actual record in this case and reflect the condition of the subject property as of the tax lien date in question. The BTA's conclusion to the contrary is erroneous.

- iv. **Mr. Hinkle improperly utilized a heavy industrial classification based upon the business being carried out at the property, rather than upon the building's components. The BTA's decision to accept such an approach is erroneous.**

Under Ohio Law, real property is valued based upon its "value-in-exchange," not upon its "value-in-use." *Higbee Co. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 325, 2006-Ohio-2, reconsideration denied, 2006-Ohio-692. Nevertheless, Mr. Hinkle violated this fundamental precept of Ohio law by concluding that the subject was a heavy manufacturing facility based upon the process being performed in the building - not the building itself. H.R. at 40 (Supp. at 40). As Mr. Eberly noted, the use does not dictate heavy versus light manufacturing. H.R. at 104 (Supp. at 104). It is the real property components of the improvement itself that does so. Mr. Hinkle also did not know if the crane ways were supported by the building, which they are not. H.R. at 40 (Supp. at 40); H.R. at 56-57 (Supp. at 56-57), Eberly at 34 (Supp. at 169). Mr. Hinkle identifies approximately 150,640 square feet as being heavy manufacturing area, **but he came to this conclusion by reviewing the processes that take place within this area, not the components of the real estate itself.** H.R. at 30 (Supp. at 30). Finally, as part of the statutory transcript certified by the BOR, property record cards demonstrate that the County, despite classifying the entire property as "0320 FND/HV MFR PLNT" (a classification not supported by either appraiser), does not classify any portion of the property detailed on a specific property record card as 320--heavy manufacturing. Specifically, Card 4 on page 2 of 5 of the portrait property record cards dated 4/3/2012 and also in more detail on page 4 of 11 of the landscape property record cards dated 6/12/12, which is the square footage classified by Mr. Hinkle as heavy manufacturing, is classified as "0350 Industrial Warehouse" by the Auditor.

Therefore, based upon the thoroughness Mr. Eberly employed to evaluate the proper classification, along with the corroboration of the County's property record cards, it is clear that

the property is a light manufacturing facility, along with warehouse and office portions. Furthermore, as discussed in more detail, *supra*, the heavy manufacturing costs utilized by Mr. Hinkle include both real and tangible personal property. This distinction was clearly not understood by Mr. Hinkle (H.R. at 42-44 (Supp. at 42-44)), and therefore he was not able to adjust for this essential difference. As a result, Mr. Hinkle's cost approach must be given no weight.

- c. **Mr. Hinkle's cost approach is also flawed because, regardless of how it's labeled, Mr. Hinkle's cost approach is based upon a reproduction cost, rather than replacement cost, as required under Ohio law.**

Mr. Hinkle's cost approach is further flawed in that he improperly utilizes average costs figures from Marshall Swift when the replacement costs for the realty components would be built using low cost figures. As discussed above, Mr. Hinkle's use of heavy manufacturing costs results both in the inclusion of items of tangible personal property in his real estate valuation and the improper use of cost figures for construction components that are not found in the subject property. These errors are further compounded by reliance upon average costs from Marshall Swift which Mr. Hinkle relies upon in an effort to reproduce the improvement; not replace it. Such an approach results in the inclusion of costs for superadequacies and obsolescence that a replacement cost approach is designed to remove. This is true even though Mr. Hinkle labels his approach as a replacement cost. The label is not controlling, however. As demonstrated below, the approach taken by Mr. Hinkle is to calculate a reproduction, rather than replacement, cost. As Mr. Eberly testified, proper application of a *replacement* cost approach and the theory of substitution requires the use of a low cost approach, because it is based upon what the market would replace the property with—not the cost to reproduce the existing improvements. H.R. at 64 (Supp. at 64).

- i. **The BTA unreasonably and unlawfully relied upon the BOE's cost approach, which improperly utilizes reproduction cost, instead of replacement cost, as dictated by Ohio law.**

The BOE's cost approach also is fatally flawed in that, regardless of what it is labeled, it relies upon reproduction cost approach, rather than a replacement cost approach. Replacement cost is the estimated cost to construct a substitute for the building being appraised using modern materials and current standards, design, and layout. When using this method *some* of the existing obsolescence is cured, but not completely. The Appraisal of Real Estate (14th Ed. 2013) at 570. Reproduction cost, on the other hand, is "the estimated cost to construct . . . an exact duplicate or replica of the building being appraised, . . . using the same materials, construction standards, design, layout, and quality of workmanship, and *embodying all of the deficiencies, superadequacies, and obsolescence of the same building*. The Appraisal of Real Estate (14th Ed. 2013) at 569-570 (emphasis added). It is for this reason that Ohio law requires the use of replacement cost.

There are many difficulties in using reproduction cost in valuing a property unless that property is brand new as of tax lien date. *See, Northern View Apts. v. Cuyahoga Cty. Bd. of Revision* (Oct. 16, 1998), BTA No. 1996-A-1762 (recognizing that differences in construction materials and design limit the applicability of the cost approach on buildings that are not new); *N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-T-1055, 1056 (using reproduction costs is not appropriate to determine the value of older property). Instead, replacement cost is the better, and more accurate, method to employ in the cost approach. Relying upon reproduction costs can be misleading, because the cost may include materials that are no longer available and construction standards may have changed. The Appraisal of Real Estate (14th Ed. 2013) at 570. Here, there is nothing in the record to demonstrate that the BOE took into account differences in materials and standards. Moreover,

reproduction cost, by definition, includes every deficiency, superadequacy (such as the HVAC system on the manufacturing floor) and obsolescence that exists in the actual building.

In other words, reproduction cost also includes the costs associated with every design flaw, with every superadequacy that potential buyers in the market would place no value upon, and the use of materials no longer favored in the market. **The result is that reproduction cost often leads to higher overall costs in the cost approach, and unless properly adjusted, will result in a higher value – a value that is not reflective of the price such a property would bring in the marketplace.** *N. Olmsted, supra* (placing no reliance placed on reproduction cost where it failed to properly consider depreciation.). Cf. *McCormack v. Limbach* (Feb. 3, 1988), BTA No. 1985-A-969 (finding that reproduction cost constitutes “inferior evidence” of value.).

Replacement cost is far better at depicting the true value of improvements in the marketplace:

“The use of replacement cost can eliminate the need to measure many, but not all forms, of functional obsolescence such as superadequacies and poor design. Replacement structures usually cost less than identical structures (i.e., reproductions) because they are constructed with materials and techniques that are more readily available and less expensive in the current market. Also, correcting deficiencies may result in lower costs. Thus, replacement cost figure is usually lower and *may provide a better indication of the existing structure’s contribution to value*. A replacement structure typically does not suffer functional obsolescence resulting from superadequacies. However, if functional problems persist in the hypothetical replacement structure, an amount must be deducted from the replacement cost. Estimating replacement cost generally simplifies the procedure for measuring depreciation in components of superadequate construction.” *The Appraisal of Real Estate* (14th Ed. 2013) at 570 (emphasis added).

Care must be taken to adjust the cost of building to remove the impact of these factors on the value of the property. However, it does not appear that the BOE’s cost approach includes such adjustments. In short, by using a method that would include the cost of design flaws,

superadequacies such as air conditioning for the manufacturing area and quality of construction, the BOE's cost approach overvalues the subject property by including items that would hold no value in the market.

- ii. **The BTA unreasonably accepted an approach that used costs that do not reflect the nature of the subject property and for which no supporting evidence was produced.**

Mr. Hinkle utilized "average costs" in determining the value of the improvements. There is no evidence in the record to support that the property was built using average cost or that a manufacturer would use average costs to determine a replacement cost for the subject. Furthermore, any items Marshall & Swift include under average cost, that could be present in the subject property, a fact not established by the record, would be reflected in the reproduction cost of the property, not its replacement cost. Ohio Adm. Code 5703-25-12(A). As Mr. Eberly indicated, manufacturers or users of industrial buildings build structures at minimal code. H.R. at 64 (Supp. at 64).

Mr. Eberly determined that the property was built using a low cost model based upon discussions with a representative of JIC, along with referencing the cost manuals developed by Marshall Swift. JIC's engineer indicated to Mr. Eberly that low cost construction was utilized because they very cost conscious and the goal is to make money from the manufacturing operation, not the real estate. H.R. at 106 (Supp. at 106). Low cost construction is therefore what should be used for replacement cost estimates.

The cost manual figures in Marshall Swift vary significantly between low cost and average cost. Mr. Eberly testified, "there is no reason to build more than what's necessary to fulfill what they need the use of the building for." H.R. at 64 (Supp. at 64). In contrast, Mr. Hinkle had no real basis for his conclusion to utilize average cost, and his own testimony regarding when low cost is utilized, stating that it is for "buildings that have minimal interior

finish found in rural areas,” directly contradicts using a location adjustment, which was utilized by both appraisers. H.R. at 35 (Supp. at 35).

iii. The property owner presented evidence under the cost approach that properly used replacement cost.

In contrast to the faulty analysis prepared by Mr. Hinkle, by using a true replacement cost approach, Mr. Eberly properly applied the correct techniques in the cost approach to value the subject. He focused on the costs to build a property with the same utility and the market needs of today’s manufacturers. His focus was on (1) the real property components, as noted above, and (2) what the market would rely upon as the costs to replace the subject property; not reproduce it. His replacement cost eliminated superadequacies. For example, Mr. Eberly did not need to include the cost of air conditioning for the manufacturing floor, which is considered to be a superadequacy in the market. By using a reproduction cost approach, again, regardless of what it is labeled, the BOE include the cost of the air conditioning, but then failed to properly adjust for the obsolescence it created. Other components of the structure were also included the BOE’s reproduction cost, although they were not components that the subject requires. *See, e.g., U.S. Postal Service v. Franklin Cty. Bd. of Revision* (Jan. 15, 1999), BTA No. 1995-A-454 (rejecting use of reproduction cost because it failed to take into consideration functional obsolescence caused by “components of the facility which the market does not require.”).

In short, Mr. Eberly is the only appraiser who both properly understood the cost approach and properly applied it correctly as a support for his sales comparison approach—not as a primary method of valuation.

- 3. The significant defects in the BOE's sales comparison approach to value cannot be overcome. As a result, the BTA's reliance upon the BOE's sales comparison approach to support a fatally flawed cost approach was unreasonable. The BTA cannot rely upon the BOE's flawed cost approach to value.¹⁰**

There are also numerous problems with Mr. Hinkle's sales comparison approach. Most significant is the lack of sales within Ohio. Mr. Hinkle only utilized one sale in Ohio and that sale occurred in 2002; for a 2011 lien date case. Additionally, Mr. Hinkle's appraisal notes that "the building was part of a business acquisition," and Mr. Eberly also testified to this fact. Hinkle at 65 (Supp. at 306); H.R. at 73 (Supp. at 73). The use of this sale was also previously rejected by the BTA for the 2004 case. *Jefferson I, supra*. The other three sales utilized in the BOE's appraisal are not sufficiently comparable to the subject property and all three comparable properties are located outside of Ohio. In *The May Dept. Stores Co. v Cuyahoga Cty. Bd. of Revision* (Sept. 30, 2008), BTA No. 2005-T-1256, the BTA held:

"We find that none of these sales should be given significant weight. All but one of the comparable sales take place outside Ohio in markets significantly different from the subject's. The age and size of the structures are also factors that raise questions as to the reliability of the underlying data. Some properties were significantly older, and many appear to vary in condition. In short, we question the comparability of the data itself. *See Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St. 3d 26, at 30 (holding that the background material an appraiser uses in arriving at an opinion of value is one of the factors that the BTA weighs in determining the credibility of an appraiser's opinion of true value).

Furthermore, Mr. Hinkle did not view any of his comparable sales, and also did not have detailed knowledge of their attributes to make meaningful adjustments based upon the different physical characteristics of each comparable. H.R. at 47 (Supp. at 47)

Finally, Mr. Hinkle admitted that his criteria for finding sales to utilize in the sales comparison approach to value was focused on stamping plants or heavy manufacturing facilities,

¹⁰ See Appellant's Assignment of Error 4.

regardless of location. However, as illustrated by the comparables he ultimately utilized, none of which were stamping plants, the comparability of each is debatable. Additionally, some of the four sales utilized by Mr. Hinkle were not listed on the open market. H.R. at 80 (Supp. at 80). The first sale occurred in 2002 and was part of a business acquisition where the allocation between realty and non-realty components is unclear, and was not listed on the open market. Sale 2 is the sale of a multi-tenant property in Michigan that was purchased by a tenant. This property was not listed on the open market and the property was a high-end warehouse distribution facility, not a light manufacturing property such as the subject. Mr. Eberly also testified that this comparable was currently listed for sale at \$37.74 per square foot as opposed to the sale price at \$61.85 per square foot that occurred in October 2005 (a sale date of approximately six years prior to tax lien date January 1, 2011). H.R. at 74 (Supp. at 74). Sale 3, located in Florida, was sold on an investment basis, and it is unclear from the record how this compares to Ohio properties. H.R. at 75 (Supp. at 75). The final sale utilized by Mr. Hinkle was a property located in Tennessee that was purchased by a governmental entity to replace a building that was flooded. *Id.* Although it appears that routine adjustments were contemplated, for age, location, and market conditions, it is difficult, if not impossible, to determine how this affected the unadjusted range. Further, it is unclear how Mr. Hinkle accounted for the significant differences in location. No adjustments were made to reflect the physical characteristics, but instead the adjustments were confined only to size and age. For the properties which were leased, Mr. Hinkle lacked information about the underlying leases to allow the sales to be properly evaluated. H.R. at 49 (Supp. at 49). We are aware of no cases where the Ohio Board of Tax Appeals or the Ohio Supreme Court has relied upon out-of-state sales to value an Ohio

property. These flaws make Mr. Hinkle's sales comparison approach unreliable, and the Court should therefore reject his opinion of value in its entirety.

Due to the significant defects in both the cost and sales comparison approaches to value, it is error as a matter of law to accept this appraisal. In the BTA's decision it states: "The owner argues that Mr. Hinkle improperly relied on a cost approach to value, despite this board's prior statements that such an approach is inappropriate for a property of the subject's age; however Mr. Hinkle's cost approach is well supported by his sales comparison approach." This statement clearly shows the error of the BTA's decision. The BTA acknowledges that its own reliance upon the cost approach for a property that is 22 years old is inappropriate, but somehow finds that a similarly flawed sales comparison approach justifies finding for the BOE appraiser's final opinion of value. This decision cannot stand.

B. JIC has met its burden of persuasion by offering evidence that establishes true value in accordance with Ohio Law. JIC's evidence properly isolated the value of the real estate, properly classified the subject property as light manufacturing, and utilized the proper cost manual to determine the value for real estate taxation purposes.

JIC recognizes that, as the Appellant before the BTA, seeking a decrease in the value of real property, it had the burden of persuasion to prove, through competent and probative evidence, its right to the value it sought. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564 (2001); *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325 (1997). JIC produced overwhelmingly probative evidence of value through Mr. Eberly's appraisal testimony and report. The flawed evidence offered by the BOE lacks the probative value necessary to rebut the evidence produced through Mr. Eberly.

R.C. 5713.03 provides that real property is to be valued at its "true value" in accordance with "the uniform rules and methods of valuing and assessing real property" as prescribed by the Tax Commissioner. Ohio Adm. Code 5703-25-05(A)(1) defines "true value" as "[t]he fair

market value or current market value of property and is the price at which property should change hands on the open market between a willing buyer and a willing seller * * *.” This definition of “true value” is extraordinarily important in Ohio tax law, because it requires consideration of the impact of market forces on the value of real property, market forces which influence the price at which property would change hands. In other words, the “true value” of real property, such as the subject, must be grounded in economic reality. Value must also be based upon what a typical buyer in the marketplace would pay and what a typical seller would accept. True value cannot be based upon the needs of a specific user.

Ohio Adm. Code 5703-25-05 sets forth the three principal methods of valuing property in Ohio: the cost approach, the income approach, and the sales comparison approach. The rule, amplified in Ohio Adm. Code 5703-25-05 with definitions for each method, sets forth more than a mere mechanical, administrative approach to value. The approach is to be dynamic and take into consideration all factors that affect market value. Here, Mr. Eberly carefully considered all factors impacting the subject’s value and quantified those factors in a detailed, thorough and transparent manner.

The BTA had the duty to find value of the real property as of tax lien date January 1, 2011. In this case, the proper valuation methods and the difference between realty and personal property is at the forefront. JIC presented evidence to establish the fee simple value of only the underlying realty, while, as discussed *supra*, the BOE’s evidence erroneously and impermissibly relied upon a cost approach to value an aged property that intermingled personal property components in the value of the realty, determined a replacement rather than a reproduction cost, and considered the process performed rather than the realty components themselves, thereby

inflating the value of the property. Ohio real property tax law is clear on these points and only Mr. Eberly's appraisal is consistent with Ohio law.

There are significant discrepancies between the evidence submitted by the taxpayer and BOE. These differences most significantly relate to the utilization and reliance as primary support upon the cost approach to value. In *Jefferson Industries I, supra*, while the BTA ultimately found the BOE's evidence to be the most persuasive, the BTA, in accepting a sales comparison approach and only looking to the cost approach in support, stated that "[h]is cost approach, while not generally used by this board in a building with portions constructed in 1989, is supportive of his market comparison approach." However, the BTA failed to follow its own precedent and found that the cost approach was reliable to determine value even though the property was seven years older on January 1, 2011. As the property ages, the cost approach, does not suddenly become more reliable.

1. JIC's Sales Comparison Approach is reflective of the subject property's true value for taxation purposes. The data and adjustments utilized properly reflect the value of only the real estate.

Mr. Eberly's reliance upon the sales comparison approach is reasonable, competent, and supported by his testimony and the remainder of the record. Mr. Eberly utilized sales that were: 1) near tax lien date; 2) occurred within the State of Ohio; 3) similar in size, physical characteristics and condition to the subject; 4) available on the open market; and, 5) purchased at arm's length. Adjustments to the sale prices were made where appropriate to determine the value of the real estate.

The Appellees have generally criticized the sales utilized by Mr. Eberly, but the Appellees have offered no specific evidence to rebut the reliability of his data utilized. *See, e.g., Parmalat Bakery Group v. Ashland Cty. Bd. of Revision* (Aug. 12, 2005), BTA No. 2004-M-792, at 9, and *Retail Trust IV, et al. v. Wood Cty. Bd. of Revision* (Jan. 13, 2009), BTA Nos. 2006-T-

1130, 1134. Mr. Eberly's sales comparison approach stands as an unrebutted indication of value. At the BOR, the BOE attempted to discredit Mr. Eberly's sales comparison approach by criticizing him for not utilizing comparable sales located within Madison County. However, the BOE's own expert was not able to locate any sales of comparable properties within Madison County, and only found one sale it deemed comparable within Ohio, that occurred in 2002. Here, Mr. Eberly has submitted competent, probative and uncontroverted sale evidence. Mr. Eberly's testimony fully supports the comparability of his sales to the subject. In the absence of specific evidence challenging Mr. Eberly's sales data, any criticism offered remains mere conjecture and must be afforded no weight. *See Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310. Therefore, the Court should find Mr. Eberly's sales comparison approach value of \$10,420,000 to be a reliable opinion of value.

2. JIC's cost approach supports his primary approach to value and correctly considers all factors to conclude to a value for the real estate as of tax lien date.

Mr. Eberly's cost approach was used to cross-check the reliability of his sales comparison approach. As required by Ohio Adm. Code 5703-25-07(D)(3), Mr. Eberly used the cost approach to calculate the current cost of *replacing* the improvements and then deducted from that cost the estimated physical depreciation and all forms of obsolescence. Mr. Eberly properly evaluated the construction of the building and determined the correct classification of the real estate components to determine the replacement cost of the property; not a reproduction cost. Even more importantly, Mr. Eberly's analysis focused solely on the value of the realty and did not erroneously commingle non-realty components into the cost approach.

After utilizing the cost manual to determine the replacement costs of the realty components, Mr. Eberly then sought to determine the appropriate amount of depreciation for the subject property. To determine depreciation, Mr. Eberly relied upon appropriate data to

determine depreciation and utilized the “Market Extraction Method,” a standard method for determining a depreciation rate based upon effective (economic) age. The Appraisal of Real Estate (14th Ed. 2013) at 605-610. Mr. Eberly performed this calculation because the building was erected in stages over a significant period of time, and estimating depreciation on a straight-line basis fails to take into account the market.

When performing the cost approach, an appraiser does not base physical depreciation upon actual age, *i.e.*, the chronological age of the improvements. Rather, physical depreciation is measured in terms of “effective age.” “Effective age is the age indicated by the condition and utility of a structure and is based on an appraiser’s judgment and interpretation of market perceptions.” The Appraisal of Real Estate (14th Ed. 2013) at 600. Effective age may or may not be the same as actual age, depending upon factors such as maintenance standards. In fact, two identical buildings open the same day in the same city may have different effective ages. *Id.* Finding the effective age of a structure is key to extracting the appropriate depreciation (from all sources) from the building. This is what Mr. Eberly did by employing the market extraction method. It is standard appraisal methodology, and Mr. Eberly correctly calculated and utilized the data and considered all factors to determine depreciation.

In all aspects, from finding land value to calculating replacement costs for a typical manufacturing facility, Mr. Eberly’s cost approach is a textbook calculation via the cost approach to value. Under the cost approach, Mr. Eberly concluded to \$11,630,000, which supports the \$10,420,000 determined by Mr. Eberly under the sales comparison approach.

C. **The evidence in the record and real property tax jurisprudence support a conclusion that JIC's evidence supports a reduction in value to \$10,420,000 for tax lien date January 1, 2011.**¹¹

In weighing conflicting appraisal evidence, JIC recognizes that the BTA generally evaluates a number of factors, including, but not limited to, the appraiser's training, experience, familiarity with the subject property, and underlying theories of valuation as applied to the subject, the methods employed in conducting the appraisal, the testimony before the BTA, and the overall ability to substantiate the basis of the opinion of value. *See Kohl's Dept. Stores, Inc. v. Wood Cty. Bd. of Revision* (Oct. 13, 2009), BTA No. 2006-Z-1338, and *Second Berkshire Properties, LLC v. Cuyahoga Cty. Bd. of Revision* (Aug. 18, 2009), BTA No. 2005-T-1654, each citing *In re Smith* (Bankr. S.D. Ohio 2001), 267 B.R. 568, at 572, and *Buckland v. Household Realty Corp.* (Bankr. S.D. Ohio 1991), 123 B.R.110, at 112.

Here, Mr. Eberly has demonstrated a remarkable understanding of the specific features and attributes of the subject property. It is obvious that he understands manufacturing facilities, how they work, and the characteristics that may benefit or hinder the functionality of a structure, which in turn impacts the value of that property in the market. Not only is Mr. Eberly a qualified MAI appraiser that specializes in industrial facilities, but also he holds the CCIM designation. A CCIM (Certified Commercial Investment Member) is a recognized expert in the commercial and investment real estate industry. CCIMs are proficient not only in theory, but also in practice. CCIMs have completed a designation curriculum that covers essential skill sets including ethics, interest-based negotiation, financial analysis, market analysis, user decision analysis, and investment analysis for commercial investment real estate. In short, Mr. Eberly not only has

¹¹ See Appellant's Assignment of Error 5.

proficiency in appraisal theory but also has training and proficiency in the real world markets of the properties he appraises and with the people who buy and sell those properties.

In contradiction, Mr. Hinkle has demonstrated few of the skills possessed by Mr. Eberly. Mr. Hinkle deviated from standard appraisal methodology, choosing instead to base his opinion on his own, unsupported theory – a theory that results in an improper value that fails to take into consideration the specific property he is appraising. He used poor data or data that was not appropriate. He neither made himself sufficiently familiar with the sale “comparables” he used, nor understood that their characteristics differed from the subject so as to place the “comparables” in a class that is not comparable to the subject. Mr. Hinkle was not adequately familiar with the subject property and missed several key characteristics that were important to understanding the value this property would have on the open market (ceiling height, partitioning, placement of columns, support of the crane by step columns rather than the structure, and work flow issues) and most importantly the appropriate valuation techniques to determine value for Ohio real property tax purposes. His responses to questions asked about these issues not only shows that he missed and did not understand the impact of these characteristics but also that his review of this matter was cursory, casual, and superficial.

The differences between Mr. Eberly’s and Mr. Hinkle’s reports have been discussed at length in this brief. Suffice to say that Mr. Eberly took the time to find data that reflected the subject and its market; Mr. Hinkle did not. Mr. Eberly applied his approaches to value using standard and accepted techniques; Mr. Hinkle did not. Mr. Eberly understood the mechanics and nuances of the approaches to value; Mr. Hinkle did not. Ultimately, it is Mr. Eberly that has been able to substantiate a value for the subject property using probative evidence and appropriate technique.

As discussed at length, *supra*, this Court has made very clear that no weight is placed upon a prior decision for a different tax year. *Freshwater, supra*. In this matter, the previous decision is clearly irrelevant for several reasons. JIC presented the appraisal report of an appraiser that did not appear in the prior case. In fact, there is no evidence in the record about that prior case and as a result any determination is not relevant to the matter before this board—the value of the subject property on January 1, 2011. In its decision, the BTA summarily concludes that because it determined for tax year 2004 the property was heavy manufacturing, the property still must be heavy manufacturing, citing various portions of the 2004 decision to support its findings. *Jefferson Industries I, supra*. This reliance is misplaced and furthermore, other than citing to its decision in the 2004 matter, the BTA provides no explanation for its finding. The BTA's determination regarding the classification of the property is erroneous and cannot be supported based upon the facts and evidence in the record for tax year 2011.

Any review of the evidence in the record and long-standing Ohio real property tax jurisprudence can only support a conclusion that JIC's evidence supports a reduction in value to \$10,420,000 for tax lien date January 1, 2011.

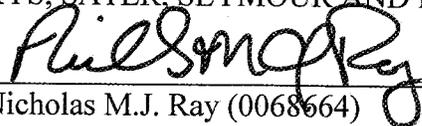
IV. CONCLUSION

Jefferson Industries Corporation presented to the BTA competent evidence supported by significant research and data. Mr. Eberly's final opinion of value is probative of the subject property's value as of tax lien date, and conforms to Ohio law. In contrast, the BOE's appraisal and the County's evidence in this matter are both fundamentally flawed and should be accorded no weight for purposes of rebutting the Appellant's evidence.

Based upon all of the foregoing, therefore, Jefferson Industries Corporation respectfully asks this Court to overturn the decision of the BTA and find a value for the subject property of \$10,420,000 for tax year 2011.

Respectfully submitted,

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IN THE SUPREME COURT OF OHIO

Jefferson Industries Corporation,	:	Case No. 2014-1594
	:	
Appellant,	:	
	:	
v.	:	Appeal from the Ohio
	:	Board of Tax Appeals
	:	
Madison County Board of Revision,	:	
Madison County Auditor, West Jefferson	:	
Local School District,	:	BTA Case No. 2012-3624
and the Ohio Tax Commissioner,	:	
	:	
Appellees.	:	

APPENDIX TO BRIEF OF APPELLANT, JEFFERSON INDUSTRIES CORPORATION

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IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL FROM THE BOARD OF TAX APPEALS

Jefferson Industries Corporation,
Appellant,

v.

Madison County Board of Revision,
Madison County Auditor, Jefferson
Local School District,
and the Ohio Tax Commissioner,
Appellees.

Case No. 14-1594

Appeal from the Ohio
Board of Tax Appeals

BTA Case No. 2012-3624

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FILED
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COLUMBUS, OHIO

FILED
SEP 15 2014
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL FROM THE BOARD OF TAX APPEALS

Jefferson Industries Corporation,	:	Case No. _____
	:	
Appellant,	:	
	:	Appeal from the Ohio
v.	:	Board of Tax Appeals
	:	
Madison County Board of Revision,	:	
Madison County Auditor, Jefferson	:	
Local School District,	:	BTA Case No. 2012-3624
and the Ohio Tax Commissioner,	:	
	:	
Appellees.	:	
	:	

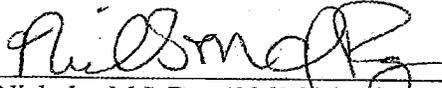
NOTICE OF APPEAL OF JEFFERSON INDUSTRIES CORPORATION

Appellant, Jefferson Industries Corporation, LLC (“Taxpayer”) hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals (“BTA”), journalized on August 15, 2014, in Case No. 2012-3624. A true copy of the BTA’s Decision and Order being appealed is attached hereto as “Exhibit A” and is incorporated herein by reference. The Appellant Taxpayer complains of the following errors in the BTA’s Decision and Order:

1. The BTA erred when it failed to find that the evidence and testimony supported the Madison County Auditor’s and Taxpayer’s appraiser’s classification of the property as light manufacturing for real property tax purposes as it relates to tax lien date January 1, 2011.
2. The BTA erred by finding that the Jefferson Local School District’s appraisal evidence was competent and probative evidence of value.

3. The BTA erred by finding that the cost approach to value was the best method to determine the value of a property that was originally constructed in 1988, with various additions built thereafter.
4. The BTA erred by finding that the Jefferson Local School District's sales comparison approach to value was probative, credible and sufficient evidence of value, when it contained only one Ohio sale, 10 years prior to the valuation date and the additional sales were all from states outside of Ohio.
5. The BTA's decision and order is unreasonable and unlawful because it is arbitrary, an abuse of discretion, and lacks foundation in law and fact.

Respectfully submitted,



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PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

This is to certify that the Notice of Appeal of Jefferson Industries Corporation was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24th Floor, Columbus, Ohio as evidenced by its date stamp as set forth hereon.

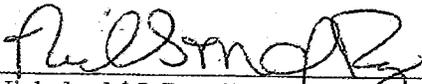


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CERTIFICATE OF SERVICE

This is to certify that on this 15th day of September 2014, a copy of this Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to Jennifer Stiff Tomlin, Esq., Scott, Scriven & Wahoff, LLP, 250 East Broad Street, Suite 900, Columbus, Ohio 43215, Counsel for the Board of Education, Stephen J. Pronai, Madison County Prosecutor, 59 North Main Street, London, Ohio 43140, Counsel for the Madison County Auditor and Madison County Board of Revision, and Mike DeWine, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215-3428, Counsel for the Ohio Tax Commissioner.



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OHIO BOARD OF TAX APPEALS

JEFFERSON INDUSTRIES CORPORATION, (et. al.),

Appellant(s),

vs.

MADISON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2012-3624

(REAL PROPERTY TAX)

DECISION AND ORDER

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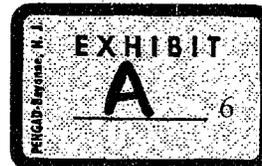
WEST JEFFERSON LOCAL SCHOOL DISTRICT
Represented by:
JENNIFER STIFF
SCOTT, SCRIVEN & WAHOFF LLP
250 EAST BROAD STREET
SUITE 900
COLUMBUS, OH 43215

Entered Friday, August 15, 2014

Mr. Johrendt and Mr. Harbarger concur. Mr. Williamson not participating.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject parcels, i.e., parcel numbers 010-01999.000, 010-01999.001, and 010-01999.888, for tax year 2011. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' briefs.

The subject parcels' total true value was initially assessed at \$34,504,950. A decrease complaint was filed by the appellee owner seeking a total reduction in value to \$18,196,400; the appellant board of education ("BOE") filed a countercomplaint seeking to retain the auditor's values. The BOR issued a decision reducing the total value of the parcels to \$28,000,000 and the present appeal ensued.



When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13.

Here, none of the subject parcels have recently sold in an arm's-length transaction. We therefore turn to the parties' appraisal evidence. See *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62. At the BOR hearing, and again at this board's hearing, the owner presented the appraisal report and testimony of Ronald M. Eberly, Jr., MAI, who opined a total value of \$10,420,000 for the subject parcels as of January 1, 2011, primarily relying on the sales comparison approach to value. At this board's hearing, the BOE presented the appraisal report and testimony of G. Franklin Hinkle, II, MAI, who opined a total value of \$28,000,000 as of January 1, 2011, primarily relying on the cost approach to value.

As the parties note, the subject property was the subject of a previous Board of Tax Appeals decision involving the 2004 tax year. *Jefferson Industries Corp. v. Madison Cty. Bd. of Revision* (June 22, 2007), BTA No. 2005-M-1525, unreported. Therein, this board stated that "[w]hile both appraisers have performed appraisals that support their positions, the decisive issue in this appeal is the classification of the subject property." *Id.* at 9. As in the present case, Mr. Hinkle classified the property as "heavy industrial," while the owner's appraiser (David R. Hatcher, in the 2004 matter) classified it as "light industrial." On this issue, the board stated:

"[W]e must agree with the BOE's appraiser. The market supports a finding that distribution facilities can be built, sold, and should be valued at a mid-\$30.00 per-square-foot price range. However, the subject property is not a distribution facility. It is not used as such and, if sold as such, would not be sold for its highest and best use.

"Its ceiling heights are higher, portions of its cement floor are deeper, and, the most recent expenses to construct the portions built in 2001 were significantly greater than those expended to construct a distribution facility." *Id.* at 9. (Footnote omitted.)

The board further noted the owner's argument that the thicker foundations underlying the stamping equipment in place on the property were personal property:

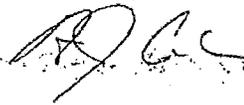
"Thus, the argument goes, even though the subject property has installed deeper concrete foundations under certain machinery, the value of the thicker floor cannot be considered in this matter. There has been no substantiation, other than testimony, as to the manner in which the foundations are taxed. Moreover, under the principle of substitution, while the foundation is taxed as personalty, its utility to a subsequent purchaser may add value. In other words, a subsequent purchaser may take into consideration that it would not have to fortify a floor for heavy machinery in the subject, while it would have to make such alterations in a competing property." *Id.* at 9.

In reviewing the facts relevant to tax year 2011, we agree with our previous finding in this regard and agree that Mr. Hinkle more correctly defined the subject property as "heavy industrial." Accordingly, we find Mr. Hinkle's appraisal to be more persuasive. The owner argues that Mr. Hinkle improperly relied on a cost approach to value, despite this board's prior statements that such an approach is inappropriate for a property of the subject's age; however, Mr. Hinkle's cost approach is well supported by his sales comparison approach.

It is therefore the order of this board that the subject parcels' true and taxable values, as of January 1, 2011, were \$28,000,000. Because there is an indication in the record that one of the subject parcels, i.e. parcel number 010-01999.888, is subject to abatement. We therefore remand this matter to the Madison County Board of Revision for allocation of the \$28,000,000 value among the three subject parcels in accordance with *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt	MOO	
Mr. Harbarger	DA	

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.



A.J. Groeber, Board Secretary

5701.02 Real property definitions.

As used in Title LVII [57] of the Revised Code:

(A) "Real property," "realty," and "land" include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto. "Real property" does not include a manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code or a mobile home, travel trailer, or park trailer, each as defined in section 4501.01 of the Revised Code, that is not a manufactured or mobile home building as defined in division (B)(2) of this section.

(B)

(1) "Building" means a permanent fabrication or construction, attached or affixed to land, consisting of foundations, walls, columns, girders, beams, floors, and a roof, or some combination of these elemental parts, that is intended as a habitation or shelter for people or animals or a shelter for tangible personal property, and that has structural integrity independent of the tangible personal property, if any, it is designed to shelter. "Building" includes a manufactured or mobile home building as defined in division (B)(2) of this section.

(2) "Manufactured or mobile home building" means a mobile home as defined in division (O) of section 4501.01 of the Revised Code or a manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code, if the home meets both of the following conditions:

(a) The home is affixed to a permanent foundation as defined in division (C)(5) of section 3781.06 of the Revised Code and is located on land owned by the owner of the home.

(b) The certificate of title for the home has been inactivated by the clerk of the court of common pleas that issued it pursuant to section 4505.11 of the Revised Code.

(C) "Fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

(D) "Improvement" means, with respect to a building or structure, a permanent addition, enlargement, or alteration that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure.

(E) "Structure" means a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. "Structure" includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls.

Effective Date: 04-09-2001

5701.03 Personal property and business fixture defined.

As used in Title LVII [57] of the Revised Code:

(A) "Personal property" includes every tangible thing that is the subject of ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. "Personal property" also includes every share, portion, right, or interest, either legal or equitable, in and to every ship, vessel, or boat, used or designed to be used in business either exclusively or partially in navigating any of the waters within or bordering on this state, whether such ship, vessel, or boat is within the jurisdiction of this state or elsewhere. "Personal property" does not include money as defined in section 5701.04 of the Revised Code, motor vehicles registered by the owner thereof, electricity, or, for purposes of any tax levied on personal property, patterns, jigs, dies, or drawings that are held for use and not for sale in the ordinary course of business, except to the extent that the value of the electricity, patterns, jigs, dies, or drawings is included in the valuation of inventory produced for sale.

(B) "Business fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. "Business fixture" includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. "Business fixture" does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises.

Effective Date: 10-05-1999

5711.22 Listing and rates of personal property tax.

(A) Deposits not taxed at the source shall be listed and assessed at their amount in dollars on the day they are required to be listed. Moneys shall be listed and assessed at the amount thereof in dollars on hand on the day that they are required to be listed. In listing investments, the amount of the income yield of each for the calendar year next preceding the date of listing shall, except as otherwise provided in this chapter, be stated in dollars and cents and the assessment thereof shall be at the amount of such income yield; but any property defined as investments in either division (A) or (B) of section 5701.06 of the Revised Code that has not been outstanding for the full calendar year next preceding the date of listing, except shares of stock of like kind as other shares of the same corporation outstanding for the full calendar year next preceding the date of listing, or which has yielded no income during such calendar year shall be listed and assessed as unproductive investments, at their true value in money on the day that such investments are required to be listed.

Credits and other taxable intangibles shall be listed and assessed at their true value in money on the day as of which the same are required to be listed.

Shares of stock of a bank holding company, as defined in Title 12 U.S.C.A., section 1841, that are required to be listed for taxation under this division and upon which dividends were paid during the year of their issuance, which dividends are subject to taxation under the provisions of Chapter 5747, of the Revised Code, shall be exempt from the intangibles tax for the year immediately succeeding their issuance. If such shares bear dividends the first calendar year after their issuance, which dividends are subject to taxation under the provisions of Chapter 5747, of the Revised Code, it shall be deemed that the nondelinquent intangible property tax pursuant to division (A) of section 5707.04 of the Revised Code was paid on those dividends paid that first calendar year after the issuance of the shares.

(B) For tax years before tax year 2009, boilers, machinery, equipment, and personal property the true value of which is determined under division (B) of section 5711.21 of the Revised Code shall be listed and assessed at an amount equal to the sum of the products determined under divisions (B)(1), (2), and (3) of this section:

(1) Multiply the portion of the true value determined under division (B)(1) of section 5711.21 of the Revised Code by the assessment rate for the tax year in division (G) of this section;

(2) Multiply the portion of the true value determined under division (B)(2) of section 5711.21 of the Revised Code by the assessment rate in section 5727.111 of the Revised Code that is applicable to the production equipment of an electric company;

(3) Multiply the portion of the true value determined under division (B)(3) of section 5711.21 of the Revised Code by the assessment rate in section 5727.111 of the Revised Code that is applicable to the property of an electric company that is not production equipment.

(C) For tax years before tax year 2009, personal property leased to a public utility or interexchange telecommunications company as defined in section 5727.01 of the Revised Code and used directly in the rendition of a public utility service as defined in division (P) of section 5739.01 of the Revised Code shall be listed and assessed at the same percentage of true value in money that such property is required to be assessed by section 5727.111 of the Revised Code if owned by the public utility or interexchange telecommunications company.

(D)

(1) Merchandise or an agricultural product shipped from outside this state and held in this state in a warehouse or a place of storage without further manufacturing or processing and for storage only and for shipment outside this state, but that does not qualify as "not used in business in this state" under division (B)(1) or (2) of section 5701.08 of the Revised Code, is nevertheless not used in business in this state for property tax purposes.

(2) Merchandise or an agricultural product owned by a qualified out-of-state person shipped from outside this state and held in this state in a public warehouse without further manufacturing or processing and for temporary storage only and for shipment inside this state, but that does not qualify as "not used in business in this state" under division (B)(1) or (2) of section 5701.08 of the Revised Code, is nevertheless not used in business in this state for property tax purposes.

(3) As used in division (D)(2) of this section:

(a) "Qualified out-of-state person" means a person that does not own, lease, or use property, other than merchandise or an agricultural product described in this division, in this state, and does not have employees, agents, or representatives in this state;

(b) "Public warehouse" means a warehouse in this state that is not subject to the control of or under the supervision of the owner of the merchandise or agricultural product stored in it, or staffed by the owner's employees, and from which the property is to be shipped inside this state.

(E) Personal property valued pursuant to section 5711.15 of the Revised Code and personal property required to be listed on the average basis by division (B) of section 5711.16 of the Revised Code, except property described in division (D) of this section, business fixtures, and furniture not held for sale in the course of business, shall be listed and assessed at twenty-three per cent of its true value in money for tax year 2005 and at the percentage of such true value specified in division (G) of this section for tax year 2006 and each tax year thereafter.

(F) All manufacturing equipment as defined in section 5711.16 of the Revised Code shall be listed and assessed at the following percentage of its true value in money:

(1) For all such property not previously used in business in this state by the owner thereof, or by related member or predecessor of the owner, other than as inventory, before January 1, 2005, zero per cent of true value;

(2) For all other such property, at the percentage of true value specified in division (G) of this section for tax year 2005 and each tax year thereafter.

(G) Unless otherwise provided by law, all other personal property used in business that has not been legally regarded as an improvement on land and considered in arriving at the value of the real property assessed for taxation shall be listed and assessed at the following percentages of true value in money:

(1) For tax year 2005, twenty-five per cent of true value;

(2) For tax year 2006, eighteen and three-fourths per cent of true value;

(3) For tax year 2007, twelve and one-half per cent of true value;

(4) For tax year 2008, six and one-fourth per cent of true value;

(5) For tax year 2009 and each tax year thereafter, zero per cent of true value.

(H)

(1) For tax year 2007 and thereafter, all personal property used by a telephone company, telegraph company, or interexchange telecommunications company shall be listed as provided in this chapter and assessed at the following percentages of true value in money:

(a) For tax year 2007, twenty per cent of true value;

(b) For tax year 2008, fifteen per cent of true value;

(c) For tax year 2009, ten per cent of true value;

(d) For tax year 2010, five per cent of true value;

(e) For tax year 2011 and each tax year thereafter, zero per cent of true value.

(2) The property owned by a telephone, telegraph, or telecommunications company shall be apportioned to each appropriate taxing district as provided in section 5727.15 of the Revised Code.

(I) During and after the tax year in which the assessment rate equals zero per cent, the property described in division (E), (F), (G), or (H) of this section shall not be listed for taxation.

(J) Divisions (E), (F), (G), and (H) of this section apply to the property of a person described in divisions (E)(3), (4), and (5) of section 5751.01 of the Revised Code. Division (J) of this section does not prevent the application of the exemption of property from taxation under section 5725.25 or 5725.26 of the Revised Code.

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

Effective Date: 09-26-2003; 06-30-2005

5713.01 County auditor shall be assessor - assessment procedure - employees.

(A) Each county shall be the unit for assessing real estate for taxation purposes. The county auditor shall be the assessor of all the real estate in the auditor's county for purposes of taxation, but this section does not affect the power conferred by Chapter 5727. of the Revised Code upon the tax commissioner regarding the valuation and assessment of real property used in railroad operations.

(B) The auditor shall assess all the real estate situated in the county at its taxable value in accordance with sections 5713.03 , 5713.31 , and 5715.01 of the Revised Code and with the rules and methods applicable to the auditor's county adopted, prescribed, and promulgated by the tax commissioner. The auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate, including land devoted exclusively to agricultural use, and the improvements located thereon at least once in each six-year period and the taxable values required to be derived therefrom shall be placed on the auditor's tax list and the county treasurer's duplicate for the tax year ordered by the commissioner pursuant to section 5715.34 of the Revised Code. The commissioner may grant an extension of one year or less if the commissioner finds that good cause exists for the extension. When the auditor so views and appraises, the auditor may enter each structure located thereon to determine by actual view what improvements have been made therein or additions made thereto since the next preceding valuation. The auditor shall revalue and assess at any time all or any part of the real estate in such county, including land devoted exclusively to agricultural use, where the auditor finds that the true or taxable values thereof have changed, and when a conservation easement is created under sections 5301.67 to 5301.70 of the Revised Code. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with Section 36, Article II, Section 2, Article XII, Ohio Constitution, this section, and sections 5713.03 , 5713.31 , and 5715.01 of the Revised Code.

(C) When the auditor determines to reappraise all the real estate in the county or any class thereof, when the tax commissioner orders an increase in the aggregate true or taxable value of the real estate in any taxing subdivision, or when the taxable value of real estate is increased by the application of a uniform taxable value per cent of true value pursuant to the order of the commissioner, the auditor shall advertise the completion of the reappraisal or equalization action in a newspaper of general circulation in the county once a week for the three consecutive weeks next preceding the issuance of the tax bills, or as provided in section 7.16 of the Revised Code for the two consecutive weeks next preceding the issuance of the tax bills. When the auditor changes the true or taxable value of any individual parcels of real estate, the auditor shall notify the owner of the real estate, or the person in whose name the same stands charged on the duplicate, by mail or in person, of the changes the auditor has made in the assessments of such property. Such notice shall be given at least thirty days prior to the issuance of the tax bills. Failure to receive notice shall not invalidate any proceeding under this section.

(D) The auditor shall make the necessary abstracts from books of the auditor's office containing descriptions of real estate in such county, together with such platbooks and lists of transfers of title to

land as the auditor deems necessary in the performance of the auditor's duties in valuing such property for taxation. Such abstracts, platbooks, and lists shall be in such form and detail as the tax commissioner prescribes.

(E) The auditor, with the approval of the tax commissioner, may appoint and employ such experts, deputies, clerks, or other employees as the auditor deems necessary to the performance of the auditor's duties as assessor, or, with the approval of the tax commissioner, the auditor may enter into a contract with an individual, partnership, firm, company, or corporation to do all or any part of the work; the amount to be expended in the payment of the compensation of such employees shall be fixed by the board of county commissioners. If, in the opinion of the auditor, the board of county commissioners fails to provide a sufficient amount for the compensation of such employees, the auditor may apply to the tax commissioner for an additional allowance, and the additional amount of compensation allowed by the commissioner shall be certified to the board of county commissioners, and the same shall be final. The salaries and compensation of such experts, deputies, clerks, and employees shall be paid upon the warrant of the auditor out of the general fund or the real estate assessment fund of the county, or both. If the salaries and compensation are in whole or in part fixed by the commissioner, they shall constitute a charge against the county regardless of the amount of money in the county treasury levied or appropriated for such purposes.

(F) Any contract for goods or services related to the auditor's duties as assessor, including contracts for mapping, computers, and reproduction on any medium of any documents, records, photographs, microfiche, or magnetic tapes, but not including contracts for the professional services of an appraiser, shall be awarded pursuant to the competitive bidding procedures set forth in sections 307.86 to 307.92 of the Revised Code and shall be paid for, upon the warrant of the auditor, from the real estate assessment fund.

(G) Experts, deputies, clerks, and other employees, in addition to their other duties, shall perform such services as the auditor directs in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and other circumstances reflecting upon the value of real estate as will aid the auditor in fixing its true and taxable value and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value. The auditor may also summon and examine any person under oath in respect to any matter pertaining to the value of any real property within the county.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 08-19-1992; 06-30-2005

Related Legislative Provision: See 129th General Assembly File No.117, HB 508, §757.10.

5713.03 County auditor to determine taxable value of real property.

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of 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:

(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.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

Related Legislative Provision: See 129th General Assembly File No.186, HB 510, §3

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

5703-25-05 Definitions.

As used in rules 5703-25-05 to 5703-25-17 of the Administrative Code:

(A) "True value in money" or "true value" means one of the following:

(1) The fair market value or current market value of property and is the price at which property should change hands on the open market between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a knowledge of all the relevant facts.

(2) The price at which property did change hands under the conditions described in section 5713.03 of the Revised Code, within a reasonable length of time either before or after the tax lien date, unless subsequent to the sale the property loses value due to some casualty or an improvement is added to the property.

(B) In compliance with the provisions of sections 5713.01 , 5713.03 , 5715.01 and 5715.24 of the Revised Code, the "taxable value" of each parcel of real property and the improvements thereon shall be thirty-five per cent of the "true value in money" of said parcel as of tax lien date in the year in which the county's sexennial reappraisal is or was to be effective beginning with the tax year 1978 and thereafter or in the third calendar year following the year in which a sexennial reappraisal is completed beginning with the tax year 1978.

(C) "Computer assisted appraisal systems" - A method in which the value of a property is derived by any or all of the following computerized procedures:

(1) Multiple regression analysis using sales to form the data base for valuation models to be applied to similar properties within the county.

(2) Computerized cost approach using building cost and other factors to value properties by the cost approach as defined in this rule.

(3) Computerized market data approach where a subject property is valued by adjusting comparable sales to subject by adjustments based on regression or other analyses.

(4) Computerized income approach using economic and income factors to estimate value of properties.

(5) Computerized market analysis to provide trend factors used by appraisers as basis of market valuation.

(D) "Cost approach" - A method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements; deducting therefrom the estimated physical depreciation and all forms of obsolescence if any; and then adding the market value of the land. This approach is based upon the assumption that the reproduction cost new normally sets the upper limit of building value provided that the improvement represents the highest and best use of the land.

(E) "Effective tax rate" - Real property taxes actually paid expressed as a percentage rate in terms of actual true or market value rather than the statutory rate expressed as mills levied on taxable or assessed value. In Ohio four factors must be considered in arriving at the effective tax rate:

(1) The statutory rate in mills;

(2) The composite tax reduction factor as calculated and applied under section 319.301 of the Revised Code;

(3) The percentage rollback prescribed by section 319.302 of the Revised Code;

(4) The prescribed assessment level of thirty-five per cent of true or market value.

(F) "Income approach" - An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

(1) The reasonableness of the estimate of the anticipated net annual incomes;

(2) The duration of the net annual income, usually the economic life of the building;

(3) The capitalization (discount) rate;

(4) The method of conversion (income to capital).

(G) "Market data approach" - An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings, the former fixing the lower limit of value in a static or advancing market (price wise), and fixing the higher limit of value in a declining market; and the latter fixing the higher limit in any market. It is a process of correlation and analysis of similar recently sold properties. The reliability of this technique is dependent upon:

(1) The degree of comparability of each property with the property under appraisal;

(2) The time of sale;

(3) The verification of the sale data;

(4) The absence of unusual conditions affecting the sale.

(H) "Qualified project manager" has the same meaning as division (A)(2) of section 5713.012 of the Revised Code.

(I) "Replacement cost"

(1) The cost that would be incurred in acquiring an equally desirable substitute property;

(2) The cost of reproduction new, on the basis of current prices, of a property having a utility equivalent to the one being appraised. It may or may not be the cost of a replica property;

(3) The cost of replacing unit parts of a structure to maintain it in its highest economic operating condition.

Effective: 10/09/2014

Five Year Review (FYR) Dates: 07/25/2014 and 10/09/2019

Promulgated Under: 5703.14

Statutory Authority: 5703.05

Rule Amplifies: 5713.01 , 5715.01

Prior Effective Dates: 10/20/81, 9/18/03

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.

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Promulgated Under: 5703.14

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Rule Amplifies: 5713.01 , 5715.01

Prior Effective Dates: 12-28-73; 11-1-77; 9-18-03

5703-25-12 Valuation of buildings, structures, fixtures and improvements to land.

(A) General - The true value of improvements may be determined by either the market data, income or cost approach. Regardless of the approach used the total of the depreciated value of the improvements to land and the "true value" of the land should be the "true value" of the property as a whole, as defined in rule 5703-25-05 of the Administrative Code. While the cost approach will generally be used one of the other approaches should be used as a check on whether the determination of depreciation or obsolescence is correct.

In arriving at the value of the depreciated improvements by the market data approach the value of the entire property is estimated by the use of comparable sales after allowing for variations. The land value determined according to rule 5703-25-11 of the Administrative Code is then subtracted to arrive at the value of the improvements in their present or depreciated condition.

The building residual technique is used to estimate improvement values by the income approach. After land value is arrived at the value of the improvements is estimated by capitalizing the net income remaining after deduction for all expenses including interest on the land value.

In the use of the cost approach to estimate improvement value the replacement cost new is first estimated. From the cost new deductions are made for depreciation including physical deterioration, functional and economic obsolescence to arrive at the value of the improvements in their present condition.

(B) When a general sexennial reappraisal is being made by the county auditor under the provisions of section 5713.01 of the Revised Code, all prices used in determining the replacement cost of buildings, structures, fixtures and improvements to land shall be prices prevailing during the year immediately preceding the tax lien date of the year the reappraisal is to be effective for tax purposes.

The county auditor is directed and ordered to prepare, or have prepared under the auditor's supervision schedules of all building costs that will be used in appraising buildings, structures, fixtures and improvements to land in the county. The auditor shall prepare separate schedules for residential, commercial, industrial and farm buildings. Building cost schedules shall be based on the prices of labor, materials, architects' or engineers' fees, plus contractors' overhead and profit, and other charges for the class, type or grade of building in the area to be appraised prevailing during the period specified by the preceding paragraph.

Residential building cost schedules shall include at least six grades of construction, ranging from very cheap to very expensive; namely, very cheap, cheap, ordinary or average, good, extra good or expensive, very expensive. Each grade shall be identified by number or letter. Additional grading may be obtained by adding or deducting a percentage for each grade by using a plus or minus sign, followed by the per cent used.

Farm building cost schedules shall include all farm buildings (exclusive of the farm dwelling which shall be priced according to the residential schedule) including general and special type barns, milk houses, machinery sheds, grainaries, corn cribs, silos, hog houses, and other miscellaneous farm buildings.

The various schedules are to be used in estimating the replacement cost of each building, fixture or improvement to land thereto. In the third calendar year following the sexennial reappraisal each value

shall be updated, either by percentage or otherwise so that it accurately reflects current market value in the county as of January of the current tax year. The selection of the method of updating values will depend on the manner in which the triennial update or equalization of true and taxable values required by rule 5703-25-06 of the Administrative Code is performed. The method selected should be one that will insure that the taxable values of new buildings, etc. will equal thirty-five per cent of the current true value in the same uniform manner as all other real property.

One set of all building schedules of every class, type and grade shall be kept on file in the county auditor's office and open for public inspection during the regular office hours

(C) Building inspection - Each building shall be measured to determine the number of square or cubic feet it contains, and a sketch shall be drawn on the property record card. Major buildings such as dwellings and barns shall be sketched on the property record card with other minor buildings to be numbered, the number encircled to appear in the space for the sketch of buildings in its proper relation to the dwelling and barn, etc.

The exterior, and if possible, the interior of each building shall be inspected with notations being made on the record card of construction features, physical conditions, and other factors that would affect value. Each building shall be graded according to quality of construction.

Each county auditor shall describe in detail on the record card or sheet, and shall itemize, the precise industrial and commercial property that the auditor is valuing as "real property" as distinguished from "personal property." In questions of the classification of property as real or personal the county auditor shall be guided by rule 5703-3-01 of the Administrative Code.

(D) Estimation of depreciation and obsolescence - When the cost approach is used in appraising the buildings an estimate shall be made of depreciation including all types of obsolescence that must be deducted from replacement cost new of the improvements so that the total value of depreciated improvements and the land shall be equal to the true value of the entire property as defined in rule 5703-25-05 of the Administrative Code.

(1) In arriving at the true value, among other factors, the utility of the improvements to the land shall be considered. In the appraisal of commercial or investment type property the county auditor is directed to consider the terms of all outstanding leases and the amount, quality, and durability of income that the property would produce under normal management and the actual amounts being currently returned on similar investments, and to reflect these factors in the final determination of true value in money in any uniform logical way that the auditor may see fit.

(2) Depreciation and obsolescence shall depend upon the following three factors:

(a) Physical depreciation is a loss in value resulting from physical deterioration due to age, wear and tear, disintegration, and the action of the elements. The amount deducted for physical depreciation shall reflect loss in value due to general deterioration and the need for rehabilitation.

(b) Functional obsolescence is a loss in value resulting from poor planning, overcapacity or undercapacity, due to age, size, style, technological improvements or other causes within the property. There are two types of functional obsolescence:

(i) Curable functional obsolescence which may be estimated at the amount it would cost to modernize the improvements.

(ii) Incurable functional obsolescence which may be estimated by considering the amount it would cost to replace the improvements with a modern structure suitable for the same purpose, or by the capitalization of the loss of income due to the degree of in-utility or extraordinary operating costs related to the structure.

(c) Economic obsolescence is a loss due to external economic forces, such as changes in the use of land, location, zoning or legislative enactments that might restrict or change property rights and values and other similar factors.

(3) In arriving at the rate of depreciation and obsolescence to be applied to buildings, structures, fixtures, and improvements to land, the auditor shall consider, among other things, the following:

(a) The rental income and sale prices in the current market for properties of similar type and condition.

(b) Type of construction.

(c) Type and extent of replacements, restorations, or modernizations

(d) Type and extent of replacements, restorations, or modernizations.

(e) Age.

(f) Actual use compared to use for which constructed.

(g) Location.

(h) Rapidly changing technological improvements in construction methods.

(i) Rapidly changing technological changes in manufacturing processes.

(j) Changes in consumer demand and other external economic forces.

(k) Any other recognized factor which may have a particular applicability in a given case.

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

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