

value of permanent parcel numbers 515-254556-80 and 515-254556-90 to be \$13,290,000 for tax year 2003 and \$12,949,500 for tax year 2004. Meijer claims that the correct true value should be \$8,800,000.

The subject consists of approximately 32.5080 acres of land. The land is improved with a one-story building of tilt-up concrete construction. Since its opening in July 2002, the 192,977-square foot building is used as a retail discount storeroom. The subject is also improved with a 2,500-square foot concrete block building, which is used as a convenience store with gas pumps (“service station”). Other site improvements include a 934-space parking area, signage, and lighting.

All parties were represented by counsel at this board’s evidentiary hearing. Meijer offered the testimony of an appraiser and his appraisal report into evidence. The board of education also introduced an appraisal for our consideration. The county offered no additional evidence of value.

In support of its contention of value, Meijer relies upon the testimony and written appraisal report of Mr. Robin L. Lorms, an Ohio-certified general appraiser and a member of the Appraisal Institute. Mr. Lorms utilized all three of the traditional approaches to value: (1) the cost approach; (2) the market data approach (also known as the sales comparison approach), and (3) the income approach. See, generally, Ohio Adm. Code 5703-25-07.

In applying the three approaches, Mr. Lorms began his analysis with the knowledge that the subject represented what is commonly known as a “big-box” retail store. Retailers that utilize the big-box concept construct single-use properties that

have a large footprint. These retailers construct buildings of their own design so that they may use them to merchandise their products according to their unique business plan. H.R. at 21. Mr. Lorms testified that the supply of big-box retail space is growing; however, the market demand for such properties is limited. H.R. at 22.

In contrast to the growth in available big-box space, represented Mr. Lorms, the demand for this type of space in the market by potential purchasers is limited. H.R. at 23. Mr. Lorms indicated that other competing retailers capable of operating on such a large scale are typically not interested in another entity's property because of differences in merchandizing plans. H.R. at 23-26. "These retailers *** thrive on efficiency, knowing that their stores are of specific dimensions for purposes of store design, product and display placement and restocking. Costs to retrofit existing big boxes to accommodate the needs of 'first generation' retailers are too high for financial feasibility ***." Appellant's Ex. A at 29. Mr. Lorms further opined, "Big box retail has significant inherent obsolescence because supply continues to outpace demand and the space lacks functionality in both size and design." Appellant's Ex. A at 34.

The result, Mr. Lorms testified, is that big-box properties tend to have an extended marketing period before they sell or rent and, because demand for such space is limited, they tend to sell for less or rent at a lower rate than would be supported by the cost of developing a similar property. H.R. at 79-81.

Mr. Lorms describes the subject as being in what he calls a “1st-tier market,” i.e., one that is considered to be a primary retail destination with a high concentration of national retailers. Appellant’s Ex. A at 35.

Under the cost approach, real property value is derived by estimating the current cost of replacing or reproducing the improvements, deducting from that cost the estimated physical depreciation and all forms of obsolescence, if any, and then adding the market value for land. Ohio Adm. Code 5703-25-07(D)(3); The Appraisal of Real Estate (12th Ed. 2001), at 50. Mr. Lorms’ cost approach began with an estimation of land value. Mr. Lorms divided the subject into three basic areas: a 26.025-acre primary site, a 2.0-acre site for the service station, and a 2.0-acre outparcel.¹ For the primary site, he reviewed the sales of four parcels of unimproved land. For the other two areas, Mr. Lorms looked at three sales of unimproved land, including the sale of the outparcel for \$312,122 per acre on January 29, 2003. After adjustments, Mr. Lorms determined a total land value of approximately \$5,600,000.²

Mr. Lorms next determined a replacement cost for the subject’s improvements by utilizing construction costs from the Marshall Valuation Service. From this service, he determined a replacement cost new of \$8,780,399, including hard and soft costs. Mr. Lorms did not include an entrepreneurial profit in his calculations, as he determined that “sale and lease data support the conclusion that the market value

¹ The outparcel was sold to a regional restaurant chain after the 2003 tax lien date.

² Mr. Lorms valued the primary site at \$3,903,750. Appellant’s Ex. A at 69.

is significantly less than development costs. Therefore, no entrepreneurial incentive would be achieved.” Appellant’s Ex. A at 71.

Under the cost approach, simply adding all of the costs does not necessarily reflect the value of an improvement. “In determining the value of property for the purposes of taxation, the assessing body must take into consideration all factors which affect the value of the property.” *The B.F. Keith Columbus Co. v. Franklin Cty. Bd. of Revision* (1947), 148 Ohio St. 253, at paragraph one of the syllabus. Factors such as depreciation, deficiencies, superadequacies, and other forms of obsolescence may be present. The determination of obsolescence is a two-step inquiry. First, the appraiser must identify the causes of the obsolescence. Second, the appraiser must quantify the amount of obsolescence to be applied. See *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181, 186. See, also, *Clark v. State Bd. of Tax Comm’rs* (Indiana Tax Ct. 1999), 694 N.E.2d 1230.

Using an effective age of two years from a useful life of thirty-five years, Mr. Lorms found the total physical depreciation present to be 5.7 percent for the retail building.³ For the service station, he found a ten percent physical depreciation rate based upon an effective age of two years out of a useful life of ten years. He also found a physical depreciation of ten percent present for other site improvements that have a shorter economic life and depreciate more rapidly.

³ Although Mr. Lorms’ appraisal report utilizes an effective age of two years, he agreed that, given the subject’s opening date, the actual age would be one year. H.R., Vol. I, at 134, 145.

Mr. Lorms then concluded that the subject also suffered from functional and external obsolescence.⁴ He based this conclusion upon the size and design of the big-box property. Mr. Lorms concluded that the size and design of the subject property make it difficult to sell to another user because “few retailers are capable of occupying such a large space and these tenants pay rents which are much lower than rents which would make new construction financially feasible. *** In summary, the market value of the fee simple estate of these properties is substantially lower than replacement costs not only due to physical depreciation but also obsolescence.” Appellant’s Ex. A at 73.

To quantify the amount of obsolescence applicable to the subject, Mr. Lorms relied upon two methods. The first is known as the “capitalization of income loss” approach. The approach requires two steps. First, market rents are analyzed to quantify the income loss. Second, the income loss is capitalized to obtain the value loss affecting the property. The Appraisal of Real Estate, at 414. In his calculations, Mr. Lorms began by limiting his analysis to the primary site and the storeroom, as he did not believe the service station and outparcels to be subject to the same obsolescence factors affecting the retail store. This left a replacement value, including land, of \$12,382,882. He next determined that a rental rate needed to support this value would be 10 percent of value, or \$1,238,288 per year. Next, Mr. Lorms turned

⁴ Functional obsolescence is a flaw in the structure, materials, or design that diminishes the function, utility, and value of an improvement. The Appraisal of Real Estate, at 363. External obsolescence is a loss in value caused by factors outside the property. These factors may be either economic or locational in nature and are not usually considered curable by an owner, landlord, or tenant. The Appraisal of Real Estate, at 412.

to his income approach to value, which demonstrates that market rents for properties similar to the subject produce approximately \$771,908 in rental income. This difference in income is \$466,380. To this figure, he applied the 10 percent overall capitalization rate derived in his income approach to arrive at a total depreciation factor for the subject of \$4,196,624.

The second method applied by Mr. Lorms was the “allocation of market-extracted depreciation” approach. In its simplest terms, the approach compares the sale price (excluding land value) of properties similar to the subject with their estimated reproduction cost to derive a total depreciation factor, including physical deterioration and obsolescence. See *The Appraisal of Real Estate*, at 413. Mr. Lorms compared the sale prices of seven properties to their estimated reproduction costs to derive a total depreciation rate of between 67 percent and 88 percent. Based upon this information, he concluded that a total depreciation of \$4,549,675 would be most applicable to the retail portion. Of this amount, Mr. Lorms allocated \$439,278 to physical depreciation and the remaining \$4,110,397 to obsolescence.

After removing depreciation from all sources, Mr. Lorms determined the depreciated value of the subject’s retail improvements to be \$3,576,973. To this he added the \$983,726 depreciated value of all other site improvements, including the service station, to arrive at a total depreciated replacement cost of \$4,560,699. The \$5,600,000 land value was then added to arrive at a value under the cost approach of approximately \$10,200,000.

The sales comparison approach, often referred to as the market data approach, derives an estimate of value by comparing the subject property to the sale prices of similar properties. The sale prices of properties considered most comparable generally establish a range in which the value of the subject will fall. The Appraisal of Real Estate, at 417; Ohio Adm. Code 5703-25-05(G). Mr. Lorms analyzed sales of eight retail properties that he found to be similar to the subject. The sales occurred between March 2001 and August 2005 and ranged in price from a low of \$34.92 per square foot to a high of \$60.74 per square foot. Noting what he determined to be “the superiority of the other sales and their sale prices,” Mr. Lorms opined a value for the retail space of \$35.00 per square foot, or a total of \$6,754,195. Appellant’s Ex. A at 84. To this, he added a value for the outparcels, as determined in his review of sales under the cost approach. He further added the depreciated value of the service station using the value he determined in the cost approach. This yielded a total value under the market data approach of \$8,800,000.

In employing the income approach, Mr. Lorms found value under the direct capitalization method. Direct capitalization converts a single year’s income expectancy into a value by estimating a net income for the property and dividing it by a market-derived income factor, known as an “overall capitalization rate.” The Appraisal of Real Estate, at 529.

To arrive at income expectancy, an appraiser reviews the subject property’s historical income and expenses. These are then combined with an analysis of typical income and expense levels found for comparable properties. The Appraisal

of Real Estate, at 493. To determine an income, Mr. Lorms estimated a market rent for the subject by surveying rental rates being asked at six properties, which he considered to be comparable to the subject. The leases yielded lease rates between \$3.00 and \$4.80 per square foot. After consideration for size, location, and condition, Mr. Lorms determined that a market rental rate for the subject would be \$4.00 per square foot. To this figure, he added expense reimbursement income of \$1.75 per square foot to arrive at a potential gross income for the subject of \$1,109,241. A ten percent vacancy and credit loss was deducted to arrive at an effective gross income of \$998,317. From this amount, expenses of \$415,527 were deducted to arrive at a net operating income for the subject of \$582,790. Income was capitalized at 10 percent. The overall capitalization rate was derived from investor surveys and the band-of-investment method. When applied to the net operating income, this equated to a value under the income approach of \$7,800,000.

In reconciling his approaches to value, Mr. Lorms placed greatest weight upon the sales comparison approach. Mr. Lorms also placed weight upon the income approach, as he concluded that an investor would be the likely purchaser of the subject property. Thus, he found the income approach to be a “supporting consideration” to his sales comparison approach. Appellant’s Ex. A at 101. He gave the least weight to the cost approach, finding that the significant amount of obsolescence, combined with the obsolescence factors from data contained in the other approaches, limited the reliability of the value conclusion. *Id.* Accordingly, Mr. Lorms opined a final true value for the subject property of \$8,800,000 for tax year 2003.

Also at our evidentiary hearing, the BOE offered into evidence the testimony and written appraisal report of Samuel D. Koon, an Ohio-certified general appraiser and a member of the Appraisal Institute. Mr. Koon also utilized all three of the traditional approaches to derive his opinion of value.

Under his cost approach, Mr. Koon began by dividing the subject into a 24.03-acre main site for the retail space and four outparcels, ranging in size from 1.7 acres to 2.483 acres. For the main site, Mr. Koon reviewed the sale of seven parcels, which sold for a price between \$118,741 per acre and \$280,468 per acre. After adjustments, Mr. Koon determined a value for the main site of \$145,000 per acre, or a total of \$3,480,000. For the outparcels, Mr. Koon looked at five sales of similar outparcels, which sold for a price between \$215,054 per acre and \$515,221 per acre. Mr. Koon varied the value of the subject's outparcels based upon location, noting that frontage upon the main road would be more desirable than frontage along a side road. Next, Mr. Koon adjusted the sale prices to account for the need to divide the outparcels from the subject and place them on the open market. He concluded to a total value of \$1,700,000 for the outparcels.

Mr. Koon next estimated a reproduction cost for the storeroom of \$41.55 per square foot, or \$8,026,479. To this, he added site improvements and miscellaneous costs of \$1,050,000 for a reproduction cost of \$9,080,000. Finally, Mr. Koon added an entrepreneurial profit of ten percent, making a total reproduction cost for the retail storeroom of \$10,332,651. Mr. Koon undertook a similar analysis for the service station improvements, concluding to a total reproduction cost of \$484,697.

To calculate depreciation, Mr. Koon took a 5.7 percent deduction for the storeroom and a 5.0 percent deduction for the service station to account for physical depreciation. Mr. Koon made no adjustments for functional and economic obsolescence. He noted that the “design of the subject property is functional and provides current amenities sought by tenants within the subject’s market.” Appellee’s Ex. 2 at IV-9. As to economic factors, Mr. Koon testified that the subject is located in an area where several retailers are attempting to establish themselves. H.R. Vol. II, at 40. Based upon local rental rates, occupancy rates, and changes occurring within the subject’s market, Mr. Koon concluded that the subject did not suffer any economic obsolescence. Appellee’s Ex. 2 at IV-9. Mr. Koon opined, “Everything is in good shape, and population is coming here to shop.” H.R, Vol. II, at 40.

After depreciation and inclusion of the land value, Mr. Koon determined a total value for the subject under the cost approach of \$16,000,000.

Under the market data approach, Mr. Koon looked at the sales of seven properties he considered to be comparable to the subject’s retail improvements. The sales took place between May 1998 and August 2005. Sale prices ranged from \$47.59 per square foot to \$81.63 per square foot. After adjustments for time, location, condition, age and size, Mr. Koon determined a value for the storeroom of \$62.50 per square foot, or \$12,100,000. Mr. Koon then compared sales of eight service stations. The sales ranged in price from \$416.67 per square foot to \$833.33 per square foot. After adjustments, Mr. Koon determined a value for the service station of \$450 per square foot, or \$1,300,000. To his values for the storeroom and service station, Mr.

Koon added the \$1,700,000 of the outparcels. Based upon all of this information, Mr. Koon concluded to a total value under the market data approach of \$15,100,000.

To derive value under the income approach, Mr. Koon looked at the rental rates of several first-generation properties and second-generation properties. Mr. Koon referred to new or build-to-suit properties leased to big-box retailers as first-generation properties. He reviewed seven properties he considered similar to the subject. These properties rented from a low of \$6.45 per square foot to a high of \$14.50 per square foot. Second-generation properties, generally, were those that had been vacated by their original user and leased to another retailer. These properties rented from \$3.00 per square foot to \$9.00 per square foot.

In reconciling these rental rates, Mr. Koon placed greater reliance on the first-generation comparables:

“The subject property was in excellent physical condition as of the lien date. The date of the appraisal was virtually new. We felt that the first generation lease comparables were much more comparable, being new when they were leased, than the second generation comparables, which have a myriad of ages but substantially older and in lesser physical condition.” H.R., Vol. II, at 19.

After adjustments, Mr. Koon concluded to a rental value for the storeroom of \$6.75 per square foot, which yielded a potential gross income of \$1,303,898. From this, he deducted a vacancy and credit loss of ten percent to derive an effective gross income of \$1,173,508. After deducting expenses of \$70,662, he arrived at a net income for the storeroom of \$1,102,846.

Next, Mr. Koon applied an overall capitalization rate of 9.5 percent to derive a storeroom value of \$11,600,000. To this he added the value of the outparcels and the service station (as found under the market data approach) to opine a value under the income approach of \$14,600,000.

In reconciling his approaches to value, Mr. Koon placed the greatest weight on the income and market data approaches. He found the cost approach to be a “good benchmark,” but determined that it should be a secondary consideration because “the cost approach does not reflect the thought process of a typical purchaser.” H.R., Vol. II, at 27. Thus, after reconciliation, Mr. Koon opined a value for the subject property as of January 1, 2003 of \$14,850,000.

We now begin our review of this matter by noting that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove its right to the value asserted. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564; *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence that demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340; *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47. An appellant must present competent and probative evidence to make its case. *Columbus*, supra, at 566. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

Here, we have been presented with two expert opinions of value, each of which utilizes differing theories as to the forces impacting the subject property. In this regard, we note that the valuation of real property is an inexact science. In addition to specific data, ultimate conclusions involve hearsay, suppositions, and subjective mental impressions. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported, at 6. “Valuations of real property *** are inherently imprecise. Opinions realistically may differ, depending upon the method of

valuation used and the nature of assumptions adopted.” *In re Montgomery Court Apts. of Ingham Cty.* (Bankr. S.D. Ohio 1992), 141 B.R. 324, at 337.

Because the valuation process often involves our analysis of conflicting appraisal evidence, we must assign weight to the opinions based upon our review of the qualifications and credibility of the expert appraisers. *Cardinal Fed.*, supra, at 19. See, also, *Hibschman*, supra, at 48 (holding that the BTA is not required to adopt the valuation fixed by any expert appraiser); *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, at paragraph 3 of the syllabus; and, *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609 (BTA may accept all, part, or none of the offered opinions of value). In weighing conflicting appraisal evidence, we generally evaluate a number of factors, including, but not limited to, the appraiser’s training, experience, familiarity with the subject property, underlying theories of valuation as applied to the subject, the methods employed in conducting the appraisal, the testimony before this board, and the overall ability to substantiate the basis of the opinion of value. See *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.

We find that the appraisers essentially agree on a number of aspects. Their valuation of land is similar, with Mr. Lorms at \$5,643,480 and Mr. Koon at \$5,817,500. Both agree that the highest and best use of the subject property is its continued use as a retail storeroom. Both also agree that the subject’s market area is both vibrant and growing. The key difference between the two opinions of value before us is essentially the impact of obsolescence on the subject property. Mr. Lorms

has taken the view that the subject suffers from significant inherent obsolescence because the supply of big-box retail space continues to outpace demand and because the space lacks functionality in both size and design. As demand for such space is limited, big-box retail space tends to either sell for less or rent at a lower rate than would be supported by the cost of developing a similar property.

The BOE argues that Meijer's appraisal evidence is unreliable because Mr. Lorms' theory that first generation big-box retail properties would sell to or be leased by second generation users, as applied to the subject, is unsupported in the market. We have previously considered Mr. Lorms' theory in other cases involving big-box retail space. For example, in *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported, we held:

“Next, the county argues that, by eliminating other first generation users such as Target, Meijer, and Lowe's from the pool of potential buyers of a property like the subject, Mr. Lorms has been able to lower both the subject's potential gross income and its potential sale price. The county asserts that this is nothing more than unsupported opinion used to artificially lower the value of the subject. We disagree.

“Mr. Lorms testified that his research did not disclose any sales between first generation users. In addition, he testified that discussions with several first generation users suggested that such a user would not be interested in an existing big-box property. Finally, Mr. Lorms gave specific examples of this phenomenon, including the case where one retailer had a recently completed big-box storeroom razed because the building, developed by a competitor, did not meet its marketing strategy. We find Mr. Lorms' evidence to be competent and well corroborated.

“The county may speculate as to the reasons why there are no sales between first generation users. However, these conjectures are without substance. Ultimately, we cannot ignore the fact that the county has not offered into evidence any sale or lease between first generation users that would either impeach Mr. Lorms’ testimony or rebut the evidence presented by Wal-Mart.” *Id.* at 12. (Footnote omitted.)

See, also, *Meijer Stores L.P. v. Wood Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-A-1204, unreported.

We must stress, however, that this theory has not always been accepted by this board where it has been shown that the obsolescence factors advanced by the appraiser do not exist in a particular market. The issue before us in any appeal is the true value of the subject property. We must weigh the evidence on a case-by-case basis, taking into account differences in both the property at issue and the circumstances specific to its place in its market. Thus, in *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 15, 2005), BTA No. 2002-R-1929, unreported, we declined to limit the valuation of a big-box retail storeroom to only second-generation lease and sale comparables where the building continued to be utilized by a first-generation user and where evidence was introduced indicating that comparable first-generation leases and sales existed.

Also germane is *Meijer, Inc. v. Montgomery Cty. Bd. of Revision* (1996), 75 Ohio St.3d 181. Similar to the matter now before us, *Meijer* concerned the valuation of a big-box retail storeroom that was less than a year old as of tax lien date. *Meijer* argued before the court that we had erroneously failed to account for functional

and economic obsolescence in adopting the cost approach advanced by the county's appraiser. The court found, however, that the burden was on Meijer to prove obsolescence. The court reflected that, as the "facts and figures which Meijer needed to prove obsolescence were rejected by the BTA," Meijer "did not meet its burden of proof." *Id.* at 186.

The court's decision in *Meijer*, *supra*, relied heavily upon its earlier pronouncement in *Rollman & Sons Co. v. Hamilton Cty. Bd. of Revision* (1955), 163 Ohio St. 363. In *Rollman*, the court held, "Where a taxpayer asserts that functional depreciation [i.e., obsolescence] should be considered in valuing his property for the purpose of taxation, the burden is upon the taxpayer to prove such depreciation. *** Where the only evidence as to functional depreciation is the opinion of the taxpayer's witness, which opinion the witness fails to substantiate with facts or figures, a decision of the Board of Tax Appeals that the taxpayer failed to sustain his burden of proof as to functional depreciation and excluding such depreciation in valuation for tax purposes is neither unreasonable nor unlawful." *Id.* at paragraphs one and two of the syllabus.

Under *Meijer*, and *Rollman*, *supra*, Meijer now has the burden to present sufficiently probative evidence to support both the existence and the extent of the claimed obsolescence. We are unable to conclude, however, that Meijer has met this burden. Instead, we find that Mr. Lorms' facts and figures have been successfully refuted by the facts and figures presented by the BOE. Mr. Koon testified that he was able to find sales of big-box retail stores that were also leased to the first-generation

tenant. H.R., Vol. II, at 27. He used several of these properties when reaching his opinion of value. In doing so, he noted that the subject was a newer property located in an area where external and functional obsolescence had not developed. Thus, the use of first-generation leases and sales was appropriate:

“Of primary focus in the analysis of market rent for a first-generation user occupied facility such as the subject property is the singular fact that second-generation rents will never adequately reflect market rent for such a property. This is true in the case of the subject property in particular, which was constructed in 2001, is in very good condition, and is located in a neighborhood which is a viable retail corridor and is expected to continue to experience burgeoning growth into the foreseeable future. In addition to these considerations, the fact that the subject facility continues to operate under the auspice of its first generation user indicates that it possesses certain attributes which make it inherently more desirable than second-generation space. Second generation retail properties are available due to circumstances which generally tend to indicate functional or economic deficiencies. The continued operation of the subject property by its first generation user is material proof that it does not suffer from such deficiencies.

“In general, the first generation leases profiled herein all represent leases of new buildings (as of the respective dates of lease) which provide a much better indication of market rent than do the second generation lease comparables. ***” Appellee’s Ex. 2 at V-25.

Upon review, we concur with Mr. Koon that the subject property does not suffer from the same market and obsolescence factors considered in *Wal-Mart*, supra. The subject is a property with nearly new improvements. It is located in a retail corridor that is both flourishing and growing. Moreover, we find that the existence of comparable first-generation sales and leases successfully refutes any

evidence that suggests that the subject is marketable only to second-generation users. While it is possible that such obsolescence could creep in over the life cycle of the subject and its market, we are not persuaded that such factors are present for the tax years before us.

Mr. Lorms' opinion of value is based upon the assumptions that a big-box storeroom is (1) subject to a large amount of obsolescence due to an overabundance of these large properties in a market and (2) is marketable only to smaller, second-generation lessees. While such factors may be proper for consideration in some markets, we find the evidence insufficient to support this approach in the matter now before us. *Meijer and Rollman*, supra. As the application of this theory underlies all three of Mr. Lorms' approaches to value, we must conclude that his opinion of value is not probative of the subject property's value; rather, it undervalues the subject by artificially limiting its market to only second-generation properties. Accordingly, we find that Meijer has not met its burden of persuasion. *Columbus, Cleveland, and Mentor Exempted*, supra.

In reaching this determination, we are cognizant that we have today issued two other decisions involving big-box retail storerooms, in each of which we found that the property owner had established its right to a decrease in value based upon the existence of obsolescence factors similar to those fostered by Meijer in the present appeal. See *Target Corporation v. Greene Cty. Bd. of Revision*, BTA No. 2006-V-751, and *Lowes Home Centers, Inc. v. Fairfield Cty. Bd. of Revision*, BTA No. 2006-R-801.

The Ohio Supreme Court has repeatedly held the determination of fair market value to be a question of fact that is primarily within the province of this board to decide. *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299; *Fawn Lake Apts.*, supra. In making such determinations, we reiterate that we must weigh the evidence before us on a case-by-case basis, taking into account how the evidence relates to the specific property at issue. Thus, our decision in this matter is not inconsistent with our other determinations. Our decision recognizes that there is competent and probative evidence before us that establishes a fair market value for the subject real property specific to the property's characteristics and marketplace.

In both *Target* and *Lowe's*, supra, we considered the valuation of big-box storerooms that were several years old as of the tax lien dates at issue. In *Target*, the improvements were seven years old. In *Lowe's*, the storeroom had been erected eight years prior to tax lien date. In both cases, we were also faced with properties located in smaller markets, where the demand for similar big-box space is significantly more limited when compared to the market in which the subject property competes. Additionally, in *Target*, the only evidence before us was the appraisal submitted by the property owner. The parties had waived hearing before this board. Upon review, we found that the owner's appraisal evidence, being uncontroverted and sufficiently supported by the market, met the owner's burden of proving value. We noted that the appellees had "elected not to provide us with any competing market information that could allow us to come to a different conclusion regarding the subject's value." *Id.* at 12. See *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37

Ohio St.3d 318 (holding that failure of an appellee to present rebuttal evidence may, upon the BTA's finding that the appellant has presented credible and probative evidence, result in the BTA's adoption of the appellant's evidence as the subject property's true value). Cf. *Fairlawn Assoc., Ltd. v. Summit Cty. Bd. of Revision*, Summit Cty. App. No. 22238, 2005-Ohio-1951 ("By not presenting any evidence, the BOR and county auditor do risk that the court will find the appellant's evidence competent and probative, and therefore, determinative of value.").

Our decision in *Lowes*, supra, further differs from the instant matter in that, while both the property owner and the county did present appraisal evidence, we found the county's evidence to be insufficiently competent to rebut the evidence presented by *Lowes*. We noted several deficiencies in the county's evidence, including a lack of detail about the comparable properties used, an over-reliance on the cost approach despite the age of the improvements, and the appraiser's failure to state the basis for his calculations and conclusions. See *Lowes*, supra, at 11.

In the matter now before us, we find that the BOE has presented competent and probative rebuttal evidence. Mr. Koon's appraisal took into consideration first and second generation properties. He carefully considered the market in which the subject is located and used leased properties that are comparable to the subject. We find his income and expense rates to be reasonable, and we further conclude that his capitalization rate is supported by the record. Mr. Koon's appraisal provided a significantly detailed analysis to not only demonstrate the basis of his opinion of value but also to show the limitations in Meijer's evidence. Thus, we find

that the BOE has established the true value of the subject property to be \$14,850,000 for tax year 2003.

Finally, we note that the BOE devoted a great deal of its brief asserting the application of the cost approach to the subject property, given that the improvements were approximately one year old on tax lien date. The BOE's arguments mirror those advanced by its counsel in similar cases before this board, wherein it has been argued that the court's opinion in *Meijer*, supra, establishes that the cost approach is the only valid approach that can be used to determine the true value of a big-box storeroom. Like the real property now before us, *Meijer* considered the valuation of a discount storeroom that was constructed less than one year prior to tax lien date. In that case, the cost approach was indeed found to be the best evidence of that property's value.

However, we disagree with the BOE's inference that *Meijer* stands for the proposition that we are limited to the cost approach whenever we value new improvements. The *Meijer* court made no such finding. At issue in that case was the property owner's claim that we had misapplied the concepts applicable to the cost approach. After reviewing our decision, the court concluded that we had demonstrated a "clear understanding of the theory of substitution." *Id.* at 187. Thus, while accepting our reliance on the cost approach, the court did not direct this board to apply only the cost approach to all new construction. In fact, the *Meijer* court reiterated that the BTA "has wide discretion to determine the weight given to evidence and the credibility of witnesses before it." *Id.* at 185.

Additionally, in *Wal-Mart*, supra, we considered - and rejected - a similar argument:

“[T]he county’s position runs counter to the well-established principles that (a) this board is vested with wide discretion in determining the weight to be given to the evidence that comes before it, (b) this board may accept all, part, or none of the evidence presented, and (c) this board is not required to adopt the valuation fixed by any expert or witness. *Cardinal*, supra, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155, and *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. In *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, the court determined that to require this board to adhere to one particular method of value, as the county now urges us to do in this matter, runs contrary to the above-stated principles. The court stated, ‘We decline to bind the BTA to a particular method of valuation because the imposition of rigid methodological strictures would necessarily impinge upon the BTA’s wide discretion to weigh evidence and assess the credibility of witnesses.’ *Id.* at 402.” *Wal-Mart*, supra, at 18.

While it was determined in *Meijer*, supra, that the best indication of value for that property was found under the cost approach, our review of the evidence in this matter, including a consideration of the market factors introduced, leads us to conclude that Mr. Koon’s market data and income approaches provide a reliable indication of value for the subject property. We also cannot overlook the fact that, in this matter, both appraisers gave the least amount of weight to their cost approaches to value. Mr. Lorms found that the significant amount of obsolescence considered by him limited the reliability of the approach. Appellant’s Ex. A at 101. Mr. Koon determined that the cost approach, while a “good benchmark,” did not reflect the

thought process of a typical purchaser of a property like the subject. H.R., Vol. II, at 27.

In conclusion, we find that Meijer has failed to meet its burden of persuasion and that the BOE has demonstrated through competent and probative evidence that the true value of subject property is \$14,850,000 for tax year 2003. The Board of Tax Appeals therefore finds the true and taxable values of the subject property to be as follows for tax year 2003:

	TRUE VALUE	TAXABLE VALUE
Parcel 515-254556-80		
LAND	\$5,817,500	\$2,036,120
BUILDINGS	<u>\$2,712,900</u>	<u>\$ 949,520</u>
TOTAL	\$8,530,400	\$2,985,640
	TRUE VALUE	TAXABLE VALUE
Parcel 515-254556-90		
LAND	\$ -0-	\$ -0-
BUILDINGS	<u>\$6,319,600</u>	<u>\$2,211,860</u>
TOTAL	\$6,319,600	\$2,211,860
	TRUE VALUE	TAXABLE VALUE
All Parcels, Combined		
LAND	\$ 5,817,500	\$2,036,120
BUILDINGS	<u>\$ 9,032,500</u>	<u>\$3,161,380</u>
TOTAL	\$14,850,000	\$5,197,500

The Board of Tax Appeals further finds that that such values should carry forward to tax year 2004, with one adjustment.⁵ The record establishes that a

⁵ We need not address the propriety of the BOR's decision to find different values for the subject property for tax years 2003 and 2004 where (1) no complaint had been filed on behalf of either Meijer or the board of education for the second of these years and (2) no complainant has presented evidence specific to the January 1, 2004 tax lien date. See *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, 304, at fn. 1 ("We decline to address the issue of whether the BTA has the authority to determine different valuations for succeeding years in the same triennium in this case, where no competent, probative evidence supporting different valuations was offered.").

2.48-acre outparcel was sold after the 2003 tax lien date. The value of this outparcel, which was included in the appraisal evidence submitted to us, should be removed from the subject property's value for tax year 2004. As the outparcel was transferred in an arm's-length sale, its \$775,000 purchase price shall be deducted, resulting a true value for the subject property of \$14,075,000 for tax year 2004. See *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979; *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

The true and taxable values of the subject property shall therefore be as follows for tax year 2004:

	TRUE VALUE	TAXABLE VALUE
Parcel 515-254556-80		
LAND	\$5,042,500	\$1,764,880
BUILDINGS	<u>\$2,712,900</u>	<u>\$ 949,520</u>
TOTAL	\$7,755,400	\$2,714,400
	TRUE VALUE	TAXABLE VALUE
Parcel 515-254556-90		
LAND	\$ -0-	\$ -0-
BUILDINGS	<u>\$6,319,600</u>	<u>\$2,211,860</u>
TOTAL	\$6,319,600	\$2,211,860
	TRUE VALUE	TAXABLE VALUE
All Parcels, Combined		
LAND	\$ 5,042,500	\$1,764,880
BUILDINGS	<u>\$ 9,032,500</u>	<u>\$3,161,380</u>
TOTAL	\$14,075,000	\$4,926,260

The Auditor of Franklin County is hereby ordered to list and assess the subject property in conformity with this board's decision and order and to carry forward the determined values in accordance with law.