OHIO BOARD OF TAX APPEALS

Lowes Home Centers Inc.,	)	CASE NO. 2006-K-1016
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Clinton County Board of Revision, Clinton County Auditor, and Wilmington City School District Board of Education,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	- Siegel, Siegel, Johnson & Jennings Co., L.P.A. Nicholas M. J. Ray 3001 Bethel Road, Suite 208 Columbus, Ohio 43220
For the County Appellees	- Rich, Crites & Dittmer, LLC James R. Gorry Special Assistant Clinton County Prosecuting Attorney 300 East Broad Street, Suite 300 Columbus, Ohio 43215-3704
For the Appellee Wilmington City School District Board of Education	- Means, Bichimer, Burkholder & Baker Co., LPA Robert M. Morrow 2006 Kenney Road Columbus, Ohio 43221-3502

Entered February 6, 2009

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

Through the present appeal, appellant, Lowes Home Centers Inc., challenges a decision of the Clinton County Board of Revision ("BOR") in which it determined the value of certain real property for tax year 2005. The subject property appears in the records of the Clinton County Auditor ("auditor") as parcel number 290-020780-0 and is comprised of 19.769 acres. In addition to a 561-space surface parking lot, and miscellaneous contributory

improvements, the primary development of the property consists of a single-story, 97,636-square foot structure which was constructed in 1995 and used by appellant in its retail operations.

As of tax lien date, i.e., January 1, 2005, the subject property was assessed by the auditor consistent with the following true and taxable values:

	TRUE VALUE		TAXABLE VALUE
Land	$1,149,000	Land	$ 402,150
Building	$4,032,400	Building	$1,411,340
Total	$5,181,400	Total	$1,813,490

On March 22, 2006, appellant filed a complaint with the BOR, requesting that the property's true value be reduced to $3,400,000 and, in accordance with the provisions of R.C. 5715.19(B), on May 8, 2006, the appellee, Wilmington City Schools Board of Education ("BOE"), filed a "counter-complaint" indicating that it supported the auditor's valuation. At a June 14, 2006 hearing convened before the BOR, appellant presented the testimony and written appraisal report of Curtis P. Hannah, a certified general real estate appraiser, who opined to a value of $2,300,000.[1] Although present at hearing, the BOE presented no evidence of value, restricting its participation to a cross-examination of appellant's witness.

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[1] Although the value claimed by appellant in its complaint varies from the appraisal evidence subsequently submitted on its behalf, the latter serving as the basis for its claim on appeal to this board, we note that a value set forth in a complaint filed with a county board of revision "places neither minimum nor maximum limitations on the court's determination of value, and there are none save the judicial requirement that the determination be supported by the evidence." *Jones & Laughlin Steel Corp. v. Lucas Cty. Bd. of Revision* (1974), 40 Ohio St.2d 61, 63. See, also, *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591, 595 ("There is no requirement that the value of the property, as determined by the board of revision, must match the opinion of value set forth in the complaint.").

Initially in his report,[2] Hannah reviewed various factors impacting the general economic environment of Clinton County, finding the outlook to be positive with expected growth likely providing "an economic base that supports demand for real estate in the subject neighborhood." S.T., Ex. 2 at 12. He also considered national and regional trends impacting the development and marketability of "big box" retail stores in Ohio, "submarkets" for anchor storerooms, and large discount stores within the subject's immediate competitive market. Hannah then turned to the specifics of the subject property, setting forth information regarding its location and improvements, concluding that its "highest and best use" remains consistent with its current use, i.e., retail development.

In estimating the subject's value, Hannah considered all three approaches commonly used to appraise real property, i.e., the cost approach, the sales comparison (or market data) approach, and the income approach. See, generally, Ohio Adm. Code 5703-25-07(D) (describing the three approaches approved by the Tax Commissioner for use by county auditors in estimating true value). With respect to his cost approach, Hannah viewed the subject to be dividable, 18.02 acres of which would be used as a discount storeroom site, with the remaining 1.75 acres separately developable as an "outparcel." For the primary acreage, Hannah considered six land sales, all of which were described as having "intended uses" as Wal-Mart Supercenters. These properties transferred between January 2002 and May 2005, had land areas ranging from 19.38 to 27.92 acres, and reflected sale prices per acre between $64,457 and

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[2] We note that this appraisal report was signed and certified to not only by Hannah, but also by Robin M. Lorms and Nathaniel D. Briscoe, neither of whom testified before the BOR, and includes the additional disclosure that Sean Valerio "provided significant real property appraisal assistance to the persons signing this certification in the form of subject property data collection from public sources." S.T., Ex. 2 at 74. Such shared responsibilities among members of the same appraisal firm are not uncommon in the field of real property appraisal. See, e.g., *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 415, 416-417.

$90,272. He ultimately deemed $75,000 per acre to be appropriate for the 18.02-acre portion of the parcel, or rounded, $1,350,000. As for the 1.75-acre "outparcel," two sales of properties having land areas of 1.96 and 1.212 acres, occurring in October 2002 and February 2005, and reflecting sale prices per acre of $172,194 and $119,637, respectively, were relied upon to conclude to a $175,00 per acre value, or rounded, $300,000. Thus, when added together a total of $1,650,000 was opined for the subject's land area. The replacement costs of the subject's improvements were next estimated, with reliance being principally placed on Marshall Valuation Service. Total replacement costs new of $3,773,009 were estimated and then reduced in order to account for depreciation, which included age/life depreciation and obsolescence. When depreciated replacement costs were added to land values, Hannah concluded to a rounded value through the cost approach of $3,200,000.

Hannah next developed an opinion of value by reviewing the sales of four "comparable" properties and two currently being offered for sale, five of which are identified as Kmart stores and a sixth as an Ames store. The properties which had been the subject of sales transferred between January 2000 and May 2005, and reflected sale prices on a price per square foot basis of $14.81 to $40.78, while the other two properties are apparently being offered at $20.56 and $28.16 per square foot. Hannah ultimately concluded that "[t]he comparables sales provide value indications ranging from $14.81 to $40.78 per square foot of gross leasable area. Placing primary emphasis on sales No.1[3] and 2 [the latter not having sold and currently being marketed at $20.56 per square foot],[4] and noting the superiority and inferiority of the other sales

[3] This property sold in March 2004 at a price per square foot of $18.65.

[4] In the addendum to the appraisal report the following additional information is included: "This is the current listing of a retail building originally constructed for Kmart. Kmart has since vacated and the property is available for sale. The property includes 2 drive-in doors. The property is listed by Onno Steger and Jon Leffler at Grubb &

and their sale prices, it is our opinion that the applicable unit value is $20.00 per square foot." S.T., Ex. 2 at 58. Hannah then applied this figure to the subject's gross leasable area, i.e., 97,636 square feet, and concluded to a rounded value, inclusive of the site value attributable to the "outparcel," of $2,300,000.

In his income approach to value, Hannah estimated market rent based upon seven properties comparable in size to the subject, i.e., leasable areas of 80,000 to 102,600 square feet. "The comparable rentals indicate a market range of $0.00[5] to $2.82 per square foot. Placing primary emphasis on comparable No. [sic] 2 and 7 [reflecting rents of $2.65 and $2.82 per square foot, respectively], because of their similarities with the subject, and recognizing the close overall range of rents for slightly superior spaces in various second and third tier Ohio markets, we conclude that a market rental rate of $2.80 per square foot on a net lease basis is appropriate for the subject." Id. at 63. Expenses reimbursement income was estimated at $1.41 per square foot, from which a vacancy/collection loss of 10% was deducted, resulting in an effective gross income of $3.79 per square foot. Expenses, totaling $1.78 per square foot, were then deducted, rendering a net operating income of $2.01, which when capitalized at 9.5% resulted in a value indication of $2,070,647, which when added to the "outparcel" figure of $300,000 and rounded, resulted in an opinion derived through the income approach of

Footnote contd.
Ellis/Adena Realty. They have reportedly had offers as high as within approximately $400,000 or approximately $16.34 per square foot. The property is at the northern end of the city [i.e., Washington Court House], though most of the retail activity is taking place at a new interchange at the south end of town. Interested parties for the property have been sporting goods retailers, speculative investors and a refrigerated warehouse operator. Last updated 2/28/06." S.T., Ex. 2 at Addendum E, page 2.

[5] With respect to this particular comparable, Hannah included the following notation: "Comments: This is an anchor to a regional mall identified as Newtowne Mall that was vacated by Ames during their [sic] bankruptcy in 2001. The space had been available on the open market since March 2002 at an asking rent of $4.00 per SF. The space was re-leased to Kohl's with no base rent for 20 years. The only expense to Kohl's is pass through [sic] expenses. At Kohl's own expense, they [sic] replaced the roof, mechanicals, electrical systems and all of the

$2,400,000. Reflected slightly differently, the following table is representative of Hannah's calculations:

Potential gross income:	$ 273,381
Plus expense reimbursements	$ 138,118
Less vacancy and credit loss @ 10%:	$ 41,150
Effective gross income:	$ 370,349
Less operating expenses:[6]	$ 173,637
Net operating income:	$ 196,712
Value indication (capitalized at 9.5%)	$2,070,647
Plus outparcel value	$ 300,000
Value Opinion (rounded)	$2,400,000

In reconciling the values derived through his use of the three approaches, i.e., cost approach-$3,200,000, sales comparison approach-$2,300,000, income approach-$2,400,000, Hannah determined that greatest reliance should be accorded the sales comparison approach, with the income and cost approaches receiving secondary and least reliance, respectively. As a result, Hannah ultimately opined that the subject property's value was $2,300,000 as of tax lien date.

Included within the statutory transcript, distinct from the transcribed hearing record, are minutes[7] suggesting the BOR had several concerns with Hannah's appraisal:

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interior build-out. The only part of the building utilized was the pad, walls and frame. This was not attributable to the condition of the building, but rather to Kohl's retailing needs." S.T., Ex. 2 at 61.

[6] Hannah identified operating expenses attributable to real estate taxes, insurance, common area maintenance, general/administrative, management fees, and reserves for replacements.

[7] These minutes indicate:

> "The Clinton County Board of Revision met in the auditor's office on July 7, 2006 at 9:00 a.m. Members present were Marilyn Rose for Joyce Atley,

"The complainant's opinion of value rests with an appraisal whose value is the result of the theory that all 'big box' stores suffer from substantial obsolescence due to their size and to an over supply [sic] in the market. Being very familiar with the former Washington C. H. K-Mart, let's take a closer look. The former store is behind a failed Sears appliance store, 2 doors down is a failed hardware store, 4 doors down is a failed sit-down dining lounge (vacant & for sale for approx. 1 yr.), 2 doors down is a failing shopping center with vacancy approaching 50%, on one of the shopping center's outlots is a failed Papa John's Pizza (now a cell phone store), and most importantly across town is a new Wal-mart super center and a new Home Depot home improvement center. This 'comparable' clearly suffers from a substantial amount of external/locational/economic obsolescence due to the stifling competition provided by these market dominators. All the other 'comparables' in the appraisal seem to be in or were in similar economic environs.

"Given the fact that Wal-Mart alone plans to build 1500 new stores (mostly super centers) over the next 5 years and to remodel 1800 existing stores into super centers over the next 18 months, it seems logical that there is no over supply [sic] of 'big boxes', only an over supply [sic] of 'big boxes' in undesirable locations.[8]

"The subject, Lowe's, in Wilmington is not subject to the same overwhelming competition. There is a new Wal-Mart, but there is no newer, better, or better located Home Depot or other home improvement center in the County. Lowe's is clearly the market dominator in this market.

"Given the lack of comparable sales in comparable economic conditions, the appraiser should look to another approach to value.

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Treasurer, Randy Riley, Commissioner and Wanda Armstrong, Auditor. Mark Gineman, appraiser for the county was also present.

"After Mark Gineman made his recommendations to the board and discussion was finished, Randy made a motion with a second from Marilyn to approve the following changes.

"***

"05-015 *Lowe's Home Centers Inc.
The appraisal is not persuasive. See explanation on next page."

[8] A handwritten notation is included adjacent to this paragraph indicating "[f]rom Columbus D ~~paper~~ a week ago."

> "The appraisal's income approach relies not upon rents of properties in similar economic environments, but upon rents of similarly dominated properties as its 'sales comparable'. If the 'big box' users typically lease properties on a build-to-suit basis, they have created the market rents for these desirable locations. To use rents from properties with clearly inferior highest and best use and clearly inferior locations suggests a preconceived notion as to the value.
>
> "The appraisal's cost approach begins as a cost approach but is adjusted to account for external obsolescence derived from the market approach and the income approach which rely on the same inferior 'comparables'.
>
> "In conclusion, the appraisal is not persuasive."

As suggested by the foregoing, through its decision letter the BOR effected no change to the auditor's original assessment of the subject property. From this decision, appellant appealed to this board, asserting the subject should be valued consistent with the appraisal evidence it had previously submitted.[9] The parties elected to waive hearing before this board, with appellant filing an initial brief in support of its position and the auditor and BOE jointly filing a brief in response advocating retention of the BOR's decision.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. An

[9] In its notice of appeal, consistent with an allegation made in its complaint but apparently not pursued, appellant challenged the common level of assessment used to determine taxable value, asserting it was less than 35% percent of true value. Although it was represented that "[e]vidence of the common level of assessment will be presented to the Board on or before hearing," neither evidence nor further argument was forthcoming. Accordingly, this issue is not further addressed herein. See, generally, *Columbus Bd. of Edn. v. J.C. Penney Properties, Inc.* (1984), 11 Ohio St.3d 203; *Wolf v. Cuyahoga Cty. Bd. of Revision* (1984), 11 Ohio St.3d 205, 207. See, also, *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11, 16-17; *J.C. Penney Properties, Inc. v. Franklin Cty. Bd. of Revision* (Aug. 27, 1992), Franklin App. Nos. 91AP-872, et seq., unreported, motion to certify overruled,

appellant "may successfully challenge a determination of a Board of Revision only where [it] produces competent and probative evidence to establish the correct value of the subject property." *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572, 574.

As in the present case, where parties waive the presentation of additional evidence on appeal and elect to rely upon the record developed before a county board of revision, this board must independently review the evidence and render a value determination consistent with such information and not merely "rubber stamp" the finding from which the appeal is taken:

> "The parties herein apparently waived presentation of further evidence and agreed that only the evidence presented to the BOR was to be considered by the BTA. The situation faced by the BTA in this case is analogous to that faced by the common pleas court in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St. 3d 11 ***. The court in *Black* had before it an appeal from a board of revision under R.C. 5717.05, the alternative appeal provision to R.C. 5717.01. The only evidence before the common pleas court was the statutory transcript from the board of revision. We stated in *Black* that the common pleas court was not required to hold an evidentiary hearing or a trial *de novo,* but that the common pleas court 'has a duty on appeal to independently weigh and evaluate all evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court's review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision's determination.' *Id.* at 13-14 ***. Our conclusion in *Black* was that R.C. 5717.05 'contemplates a *decision de novo*.' (Emphasis *sic.*) *Id.* at 14 ***.
>
> "The duty of both the BTA and the common pleas court upon an appeal is to 'determine the taxable value of the property.' See R.C. 5717.03 and 5717.05. We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that

*Footnote contd.*____________________

(1993), 66 Ohio St.3d 1496; *State ex rel. Columbus Bd. of Edn. v. Thompson* (Oct. 19, 1989), Franklin App. No. 89AP-60, unreported.

> transcript." *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15. (Parallel citations omitted.)

As previously pointed out, the only evidence of value presented before the BOR was the appraisal and testimony of appellant's appraiser. While a party which offers evidence of a lesser value is "not entitled to the deduction claimed merely because no evidence is adduced contra his claim," *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, there exists an inherent risk in the election by other parties to the proceedings in opting not to offer any evidence in rebuttal. As pointed out by the Supreme Court in *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67:

> "If the appellee before the BTA in a valuation case does not present any evidence to rebut appellant's evidence, the appellee takes the chance that the BTA may, as in this case, find the valuation evidence presented by the appellant to be competent and probative, and adopt it as the true value. On the other hand, the appellee may present evidence and the BTA may or may not find that evidence to be credible and probative in rebutting the appellant's evidence." Id. at 70-71.

Similar observations have been made by Ohio's appellate courts. For example, in *Am. Tele-Legal Information Servs., Ltd. v. Lucas Cty. Bd. of Revision*, Lucas App. No. L-06-1109, 2006-Ohio-5911, the Sixth District Court of Appeals expounded as follows:

> "Case law on property tax valuation disputes sets forth the evidentiary burden. Appellant, as the taxpayer requesting a reduced tax valuation, bears the burden of submitting determinative proof in support of the lower tax figure. The taxpayer must demonstrate a disparity between the value established by the board of revision and the true value of the property. *Cincinnati v. Hamilton Cty. Bd. of Revision* (1994), 69 Ohio St.3d 301, 303. By contrast, the auditor and board of revision have no such burden of proof. *Restivo v. Bd. of Revision of Ottawa Cty.* (Dec. 30, 1999), 6th Dist. No. OT-99-052, at ¶3.
>
> "There are significant legal ramifications stemming from this unilateral burden of proof structure in tax valuation disputes.

> Although an appellee in a tax valuation dispute has no burden to defend its initial valuation, it bears the risk that the evidence presented by the appellant will be found dispositive when it presents limited or no rebuttal evidence. *Restivo* at ¶3." Id. at ¶¶12-13.

See, also, *Fairlawn Assoc. Ltd. v. Summit Cty. Bd. of Revision*, Summit App. No. 22238, 2005-Ohio-1951, at ¶12 ("While an auditor has no corresponding burden to defend his valuation and a taxpayer is not entitled to a reduction simply because the auditor presents no evidence to rebut his claim, the auditor's duty to defend his valuation is triggered once the taxpayer does present competent, probative evidence to support a right to a reduction. *Murray & Co. Marina*, [*Inc. v. Erie Cty. Bd. of Revision* (1997),] 123 Ohio App.3d [166] at 172-174. 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 the appeal. *Restivo v. Ottawa Cty. Bd. of Revision* (Dec. 30, 1999), 6th Dist. No. 90-OT-052, at *9.").

Electing not to have presented evidence of value, the appellees advance numerous arguments challenging Hannah's approach in general as well as the utility of the data selected or excluded from consideration.[10] Several of these arguments, e.g., "customary second and third

[10] Appellees direct our attention to the aspects of the property record card for the subject property included within the statutory transcript which disclose the subject's land area, improvements, and the values attributed to each. For the land portion, a "unit price" of $65,000 is attributed to 17.296 acres, with a unit price of $10,000 attributed to 2.473 acres, thereby reflecting a total land value of $1,149,000. The value for the improvements to the property appears to have been developed exclusively based upon the cost approach. The subject's primary improvements appear to have been valued at $4,807,000 and then depreciated at 25%, while the other improvements' value, depreciated at 30-50%, amounted to $427,100. When land and improvement values were combined, a final value conclusion of $5,181,400 resulted. While the appellees have expressed numerous criticisms regarding the data selected by Hannah and the extrapolations made, we point out that such criticisms are made possible by virtue of the information disclosed. The information reflected on the property record card is restricted to raw figures which were neither explained nor verified with market data. Further, the subject's improvement values are based exclusively upon an approach which has limited utility as properties age. See discussion, infra. As pointed out by the appellees, the property record card also refers to a sale which occurred in February 1996. However, in the absence of additional information, we cannot find a sale occurring almost nine years removed from the tax lien date sufficiently "recent" for purposes of determining the subject's value. See R.C. 5713.03. See, also, *Conalco v. Bd.*

generation users theory," reliance upon "distressed" properties to extrapolate market data, have been considered and rejected by this board and we find no need to restate our position in this regard. See, e.g., *Target Corp. v. Greene Cty. Bd. of Revision* (May 27, 2008), BTA No. 2006-V-751, unreported. This board has previously rejected the suggestion that because a property is encumbered by a lease when it transfers, such encumbrance must necessarily render the sale other than arm's-length or unrepresentative of the market. See *Retail Trust IV v. Wood Cty. Bd. of Revision* (Jan. 13, 2009), BTA Nos. 2006-T-1130, et al., unreported.[11] While general references are included within the appraisal report under consideration in this appeal, as well as during the appraiser's testimony, regarding the existence of data which *might* have been appropriately considered in the development of an opinion of value, we will not engage in the degree of speculation necessary to conclude that such properties were in all other regard comparable to the subject, i.e., timing/conditions of sale, location, etc., and would have unavoidably dictated a different valuation conclusion than that reached. Cf. *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revis*ion, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26.

Footnote contd.
of Revision (1977), 50 Ohio St.2d 129. While the subject's property record card is entitled to *some* consideration, we view its utility to be limited under the circumstances presented in this case. Cf. *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948.

[11] We recognize that this is not the only "big box" property to be considered by this board, nor is this the only appeal in which an appraisal developed by members of Integra Realty has been presented. While there may exist some initial appeal to do so, as we have previously indicated, this board will not, and practically speaking cannot, undertake an exhaustive review of the work product of any particular appraiser in matters currently pending before or decided previously by this board; rather, such determinations must be made on a case-by-case basis dictated by the evidence therein presented. See, e.g., *Seton Square, Inc. v. Franklin Cty. Bd. of Revision* (Mar. 5, 1999), BTA No. 1997-T-126, unreported, at 8 ("We must decline to accept the appellees' position. The argument suggests that this Board's ability to find value is restricted by the past appraisals of any given appraiser. Thus, the appellees' [sic] would have this Board look to the previous work of a specific appraiser in every other appeal in which that appraiser may have participated to determine the weight which should be given to the appraiser's opinion of value. Aside from the logistical concerns created, the appellees' argument ignores the well established rule that property valuation complaints are to be considered on a case-by-case basis.").

Focusing upon the two approaches[12] to which he accorded greater weight, i.e., principally the sales comparison approach[13] and secondarily the income approach, Hannah identified the properties relied upon, explained what adjustments were made to account for differences between the raw data gathered and the subject property, and how he used such information to opine a value for the subject property. Appellant's evidence of value is uncontroverted by other valuation or specific market data evidence in the record, with mere assertions, suggestions, allegations, and argument having been presented in opposition.

Upon review of the record before us, we conclude appellant has satisfied its assigned burden by offering evidence, which we find both competent and probative, to demonstrate the subject property had a lesser value than that determined by the BOR. While the appellees were clearly entitled to rely upon the examination of appellant's appraiser undertaken at the BOR and the arguments subsequently advanced, efforts which on occasion this board has found sufficient to warrant a finding in a party's favor, see, e.g., *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, as

[12] In considering Hannah's appraisal, we do not find unreasonable his decision to accord limited weight to the cost approach since it "is most applicable in valuing new or proposed construction ***. *** When improvements are considerably older ***, the physical deterioration, functional obsolescence, and external obsolescence of the structure are more difficult to estimate." The Appraisal of Real Estate (12th Ed. 2001), at 354-355. See, generally, Ohio Adm. Code 5703-25-07(D)(3) (in describing the cost approach, limitations inherent in the cost approach are expressly recognized since "[d]ue to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications."). See, also, *Sears Roebuck & Co. v. Franklin Cty. Bd. of Revision* (July 14, 2006), BTA No. 2004-R-86, unreported, at 15-16 ("The cost approach is most appropriately used in valuing property that has been recently completed. The Appraisal of Real Estate (12th Ed[.]), at 354. The older the property, the more speculative the value derived using the cost approach due to the subjectivity of determining the property's depreciation.").

[13] With respect to his sales comparison approach, we again find it inappropriate to accord any weight to those "comparables" which are not themselves sales and are instead properties simply being offered for sale. See, e.g., *Sandelman, Trustee v. Licking Cty. Bd. of Revision* (Sept. 2, 2005), BTA No. 2003-M-1508, unreported ("Listings are not persuasive evidence of value. See *Gupta v. Cuyahoga County Bd. of Revision* (1997), 79 Ohio St. 3d 397."); *Lowes Home Centers, Inc. v. Fairfield Cty. Bd. of Revision* (May 27, 2008), BTA No. 2006-R-801, unreported, at 10. Nevertheless, there are actual sales included within his report which tend to support the conclusions drawn.

previously noted such an election is not without risk. See, e.g., *Westhaven*, supra. Having chosen not to present independent evidence of value which may have warranted a different outcome, compare, e.g., *Meijer Stores L.P. v. Franklin Cty. Bd. of Revision* (May 27, 2008), BTA Nos. 2005-T-441, et al., unreported, we find in appellant's favor.

Accordingly, it is the decision of the Board of Tax Appeals that the best evidence of the subject property's value is the appraisal undertaken by appellant's expert. This board therefore finds the true and taxable values of the subject property,[14] as of January 1, 2005, to be as follows:

	TRUE VALUE		TAXABLE VALUE
Land	$1,650,000	Land	$577,500
Building	$ 650,000	Building	$227,500
Total	$2,300,000	Total	$805,000

[14] In ultimately concluding to his reconciled opinion of value, Hannah did not distribute said opinion between land and improvements. However, he did, as previously noted, conclude to a total land value, i.e., $1,650,000, S.T., Ex. 2 at 43-46, which appears reasonable given the data disclosed and is actually greater than that reflected on the subject property record card for which, as discussed supra, we have been provided no supporting information. We note that under similar circumstances, this board may have previously attributed adjustments exclusively to the improvements on a property or allocated an appraiser's reconciled opinion of value between land and improvements on a percentage basis consistent with either a county auditor's assessment or county board of revision's decision. Yet we must now be mindful of the Supreme Court's decision in *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, Slip Opinion No. 2008-Ohio-2454, wherein the court admonished against attributing a value to the underlying land which cannot be supported:

> "Although the BTA's finding of total value was supported by the BOE's appraisal, its allocation of value to land was not. The allocation of value between land and improvements does not constitute an arbitrary exercise; it relates to the basic method by which county auditors determine value. The Tax Commissioner's administrative rules direct the county auditors to arrive at total value by separately valuing the land and improvements. See Ohio Adm. Code 5703-25-07(B). The commissioner also prescribes two different rules for land valuation and the valuation of improvements. Ohio Adm. Code 5703-25-07(C), 5703-25-11, and 5703-25-12." Id. at ¶17.

See, also, *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948. Accordingly, in allocating value between land and improvements, we rely upon Hannah's land value analysis and attribute the remainder of his total opinion of value to the subject's improvements. In doing so, we acknowledge not only the apparent contradictions presented whereby Hannah expresses an opinion of value of $20 per square foot for improvements through his sales comparison approach, S.T., Ex. 2 at 58, and the total per square foot values set forth in his final reconciliation which suggest higher values should be accorded the improvements, see, generally, S.T., Ex 2 at 72, but also the increased opportunity for absurd results or gamesmanship; however, it appears such result is compelled by *Polaris*.

It is therefore the order of this board that the Clinton County Auditor list and assess the subject property in conformity with our decision as announced herein.

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