

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
038-60-318-38-003		
Land	\$1,272,610	\$ 445,410
Building	<u>\$6,224,410</u>	<u>\$2,178,480</u>
Total	\$7,497,020	\$2,623,890

The BOR reduced the true and taxable values for the subject property for 2005 to:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
038-60-318-38-003		
Land	\$1,272,610	\$ 445,410
Building	<u>\$5,826,540</u>	<u>\$2,039,290</u>
Total	\$7,099,150	\$2,484,700

Meijer, however, according to its notice of appeal, contends that the true and taxable values of the subject property should be further reduced as follows:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
038-60-318-38-003		
Land	\$1,154,310	\$ 404,010
Building	<u>\$5,645,690</u>	<u>\$1,975,990</u>
Total	\$6,800,000 ¹	\$2,380,000

The subject property is comprised of one parcel, containing 34.521 acres. H.R. at 14; Appellant’s Ex. A at 3, 36, 42. The 20-acre main site is improved with a one-story discount storeroom, with 202,127 square feet of gross leasable area, and a one-story gas station/convenience store located on an outparcel, consisting of 1.6 acres and 1,664 square feet. Id. The subject improvements were built in 1993, and are owned and operated by Meijer Stores Limited Partnership. Id. The remaining

¹ Meijer’s notice of appeal provides a claimed market value is \$6,800,000. However, the appraisal provided to the BOR opined a value of \$6,900,000.

14.521 acres are utilized by multiple storm water retention areas. H.R. at 14; Appellant's Ex. A at 36. The subject property is located at 1335 North Lexington-Springmill Road, Mansfield, Richland County, in the Ontario Corporation taxing district. S.T.

On March 28, 2006, Meijer filed a complaint against the valuation of real property at the BOR, requesting a reduction in value for tax year 2005. A counter-complaint was filed by the Ontario Local School District Board of Education on April 27, 2006. After a June 21, 2006 hearing and due consideration, the BOR issued a decision July 21, 2006, reducing the auditor's value for the subject property, from which Meijer appealed on August 16, 2006.

This matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript ("S.T.") certified to this board by the BOR,² the record of the evidentiary hearing before this board ("H.R."), including exhibits, and the briefs of counsel. At the hearing before the board, the property owner called Robin M. Lorms, an MAI appraiser, who testified and presented a complete, narrative appraisal report. See Appellant's Ex. 1. The BOR appeared through counsel but submitted no additional written documentary evidence or called any witnesses aside from cross-examination.

We begin our review of this matter by noting that a party appealing a decision of a county board of revision has the burden of coming forward with

² The BOR supplemented the statutory transcript on February 12, 2007 to include the appraisal by Curtis P. Hannah, which was missing from the statutory transcript originally filed November 15, 2006. The transcript of

evidence in support of the value that it has asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 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. It is not enough to simply come forward with some evidence of value. The burden of persuasion rests with the appellant to convince this board that it is entitled to the value that it seeks. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325.

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

Mr. Lorms, an appraiser with Integra Realty Resources – Columbus, testified before this board on behalf of Meijer that despite a large supply, the demand for big-box space in the market by potential purchasers is limited. Appellant's Ex. A at 19, 21. Mr. Lorms indicated that other retailers capable of operating on such a

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the hearing conducted before the BOR also mistakenly identifies the witness as counsel for Meijer. The witness was Meijer's appraiser, Curtis Hannah. H.R. at 7.

large scale are typically not interested in another entity's property because of differences in merchandizing plans. H.R. at 15; Appellant's Ex. A at 21. National retailers, such as Lowes, Meijer, K-Mart, Wal-Mart, and Sam's Club, thrive on efficiency, knowing that their stores are of identical dimensions for purposes of store design, product placement, and restocking. According to Mr. Lorms, these national retailers are willing to pay for identical structures, designed for their specific operating needs. Because of this business decision, one national retailer is not interested in another's empty store. As a result, there is only a limited pool of buyers of empty, big-box-stores, and these buyers are usually second-generation users. Appellant's Ex. A at 23.

In addition, Mr. Lorms criticized the use of build-to-suit properties as comparables. In his opinion, build-to-suit projects are not open market transactions.³ H.R. at 26; Appellant's Ex. A at 19, 56, 76. Mr. Lorms testified that he has never seen a big box built on a speculative basis. H.R. at 15; Appellant's Ex. A at 19.

As to this particular location, Mr. Lorms testified that the subject property was in average to good condition and located in a very strong retail corridor. H.R. at 15, 16, 40. In his appraisal dated February 4, 2008, Mr. Lorms found that the subject property had above average to high visibility and above average highway

³ At least as it pertains to sales of retail properties which have originally been constructed as "built to suit," the Ohio Supreme Court has found that such sales are indicative of market value. *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595. This board fully considered this issue in *Retail Trust IV, et al. v. Wood Cty Bd. of Revision* (Jan. 13, 2009), BTA No. 2006-T-1130, unreported. Therein, the board concluded that the income and/or sale prices garnered by built-to-suit properties, if comparable to the subject, were proper measures of value. However, the board also concluded that each case must be determined on a case-by-case basis, with due regard to the countervailing evidence presented by opposing parties. Thus, if evidence

access. Appellant's Ex. A at 18, 37, 45. He determined that the highest and best use of the subject property would be a continuation of its current use as retail. Appellant's Ex. A at 48-49. He performed a cost approach with regard to the gas station/convenience store located on the 1.6-acre outparcel and the sales comparison and income approaches on the main site. H.R. at 31. He used the cost approach on the gas station/convenience store because it was a special purpose property. H.R. at 33.

For the outparcel, the appraiser examined three land sales, ranging from \$325,829 an acre to \$427,350 an acre. Appellant's Ex. A at 63. The sale dates ranged from September 2002 to June 2004. Id. Based on these three sales, Mr. Lorms derived a cost per acre of \$425,000 for the 1.6-acre outparcel, or \$680,000. H.R. at 32; Appellant's Ex. A at 65. He then calculated the replacement cost of the structure using Marshall's Valuation Service. Appellant's Ex. A at 65-66. Taking into consideration the direct costs for labor, materials, equipment, and contractor's overhead and profit, as well as the indirect costs, such as planning and zoning fees, soil and lab tests, legal and closing costs, tap fees, appraisal fees, financing fees, accounting fees, administration, leasing commissions and marketing expenses, and a five percent allowance for additional indirect costs, Mr. Lorms estimated that the replacement cost for the gas station/convenience store new would be \$221,110. Appellant's Ex. A at 66. Applying an age/life depreciation of 33.33 percent for

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regarding properties other than those used by one party exists in the marketplace, it is the obligation of the opposing party or parties to present such evidence to this board.

building improvement and 60 percent for site improvements, Mr. Lorms determined a depreciated replacement cost for the gas station/convenience store of \$110,616. H.R. at 32; Appellant's Ex. A at 68. Adding the land value to the depreciated replacement cost of the improvement, he derived a total overall value for the gas station/convenience store of \$790,616, rounded to \$790,000. Id.

Mr. Lorms then turned his attention to the retail structure and appurtenant land. In his sales comparison approach, Mr. Lorms utilized ten comparable "sales," ranging from \$15.63 per square foot to \$50.04 per square foot. H.R. at 35; Appellant's Ex. A at 71-72. The sale dates range from March 2003 to June 2007. Id. One property was listed as available and not yet sold. Id. Two locations were presently in contract, but the sales had not yet closed. Mr. Lorms found these, with the exception of sale comparable 3 in Washington Court House, Ohio, to be good retail locations, although many of these sales were of locations upon which businesses had failed. H.R. at 41; Appellant's Ex. A at 69.

Comparable sale 1 was formerly an Ames store, located in Canal Winchester, Ohio. H.R. at 35; Appellant's Ex. A at 71. The location was sold to Home Depot. Home Depot razed the Ames store and built a new building suited to Home Depot's particular needs. The property, with the empty Ames store in place, sold for \$40.78 a square foot.

Comparable sale 2 was a K-Mart store, located at Lexington-Springville Road in Mansfield, Ohio. The location was described as a strong retail corridor. H.R.

at 36; Appellant's Ex. A at 71. The property was sold to an investor from Wooster, Ohio, in June 2007 for \$18.29 per square foot.

Comparable sale 3 was a K-Mart in Washington Courthouse, Ohio. H.R. at 37; Appellant's Ex. A at 71. It was not sold, but was available at \$15.63 a square foot.

Comparable sale 4 was also a K-Mart. *Id.* This property is located in Hilliard, Ohio. It was sold to an investor in August 2005 for \$47.93 a square foot after two other big box retailers considered but rejected the property. H.R. at 38.

Comparable sale 5 was a K-Mart in Maple Heights, Ohio. H.R. at 38; Appellant's Ex. A at 71. The property was sold for \$35.95 per square foot and redeveloped into a car dealership. The sale took place in March 2003.

Comparable sale 6 was a Flower Factory located in southwestern Cleveland, Ohio. H.R. at 38-39; Appellant's Ex. A at 72. This property is currently under contract for approximately \$50.00 a square foot, and the asking price was \$50.04 a square foot.

Comparable sale 7 was a DIY Home Warehouse located in Medina, Ohio. H.R. at 39; Appellant's Ex. A at 72. The property has been subdivided among Hobby Lobby, Petco, and the Medina Library. It sold in July 2003 for \$28.53 a square foot.

Comparable sale 8 was a K-mart located in Kentucky. *Id.* The property was purchased by Furniture Fair in May 2006 for \$44.04 a square foot.

Comparable sale 9 was a Wal-Mart located in Delaware, Ohio. *Id.* It had not sold, but was in contract and was expected to have closed in about April 2008. The sales price was expected to be approximately \$35.53 a square foot.

Comparable sale 10 is another Wal-Mart. *Id.* It is located in Huber Heights, near Dayton, Ohio. It sold to a redeveloper in December 2004 for \$34.92 a square foot. The property also was encumbered by deed restrictions.

Mr. Lorms found comparable sale 2 to be the most comparable to the subject property. H.R. at 44; Appellant's Ex. A at 74. Both were located in Mansfield, Ohio, in the same retail corridor. H.R. at 44. Both were built in 1993. The subject property is approximately thirty percent larger than the sale comparable, but both were large spaces. Sale comparable 2 sold in 2007 for \$18.29 a square foot. Comparable sale 3, which Mr. Lorms found to be inferior, was available for sale at \$15.63 a square foot. *Id.* Comparable sales 7 and 9 were slightly superior to the subject and sold for between \$28.53 and \$35.53 a square foot. *Id.* Comparable sales 1, 4, 5, 6, 8, and 10 were superior to the subject, in Mr. Lorms' opinion, and sold for a range of \$34.92 a square foot to \$50.04 a square foot. *Id.* After noting the inferiorities and superiorities of the comparables, Mr. Lorms used \$25.00 a square foot for the subject property. Appellant's Ex. A at 74. Adding to that the value of the outparcel, Mr. Lorms opined the value of the subject property to be \$5,843,719, rounded to \$5,800,000, as of January 1, 2005, using the sales comparable approach. *Id.*

In his income approach, Mr. Lorms looked at market rents for ten properties, ranging from \$2.65 to \$4.06 a square foot. Appellant's Ex. A at 77-78. These properties included three Ames stores, a K-mart, two Garden Ridge stores, two Old Time Pottery stores, and a Wal-Mart. Id. He determined that \$3.25 rent would be appropriate for the subject property. Appellant's Ex. A at 80. This resulted in a gross potential rent of \$656,919. Appellant's Ex. A at 80, 81. To that amount, Mr. Lorms added \$448,178 for reimbursed expenses. Appellant's Ex. A at 82. He subtracted ten percent for vacancy and credit loss. Appellant's Ex. A at 81, 82. The result was \$994,587 in effective gross income. Appellant's Ex. A at 82. He then subtracted \$528,548 for expenses, at \$2.61 per square foot, which he derived from an expense study of K-Mart stores, for a projected net income of \$466,040. Appellant's Ex. A at 81, 82, 85. Using a 9.5 percent capitalization rate, which he derived from three sources, including national surveys and talking with brokers, Mr. Lorms arrived at a value of \$5,696,175, rounded to \$5,700,000 using the income approach, including the outparcel. Appellant's Ex. A at 85-87, 88.

In reconciling the methods, Mr. Lorms gave the most weight to the sales comparison approach, supported by the income approach. Appellant's Ex. A at 4, 50, 89. He did not rely on the cost approach, except to cost the outparcel. Id. Mr. Lorms determined that the subject property should be valued at \$5,800,000 as of January 1, 2005. Appellant's Ex. A at 90.

The board finds serious flaws in Mr. Lorms' report, and therefore, it is not representative of value. First, Mr. Lorms repeats an error that has been

consistently identified in his reports. He uses listing prices for some of his sales and rent comparables. It is sales, and not offers to sell, that we find to be persuasive evidence of value. *Meijer Stores L.P. v. Defiance Cty. Bd. of Revision* (Mar. 3, 2006), BTA No. 2003-T-2035, unreported; *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported. Cf. *Gupta v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 397, at 400. Therefore, we do not find these properties to be comparable.

Second, the sale Mr. Lorms testified was most comparable to the subject, comparable sale 2, occurred in June 2007, almost thirty months after tax lien date. Another of Mr. Lorms' comparable sales, comparable sale 8, occurred in May 2006, seventeen months after the tax lien date.

When utilizing a sale as the best indicator of market value, whether a sale is "recent" depends upon the specific circumstances of the sale and market conditions between the tax lien date and the date of sale. *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36 (overruled on other grounds in *Cummins Property Servs., LLC v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d. 516, 2008-Ohio-1473). In that case, the Supreme Court discussed the utility of a sale in determining value, declining to set forth a bright-line test establishing whether a sale may be considered "recent" for purposes of ad valorem taxation:

"The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case. R.C. 5713.03 provides that if there has been 'an arm's-length sale between a willing seller and a willing buyer within a reasonable length of time,

either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.’ *** One of the factors that must be considered in determining what is ‘a reasonable length of time’ is a consideration of the changes that have occurred in the market. If the market is changing rapidly, then the selling price will not be the best evidence of true value for as long a period of time as when the market is not changing or changing very slowly.” Id. at 44.

See, also, *Koskinen v. Ashtabula Cty. Bd. of Revision* (Mar. 31, 1993), Ashtabula App. No. 92-A-1707, unreported.

In considering the surrounding circumstances, this board has examined factors such as the degree of maintenance and economic conditions. In *Griffin v. Fairfield Cty. Bd. of Revision* (Oct. 9, 1992), BTA No. 1990-P-806, unreported, this board determined that a sale that occurred more than two years after the tax lien date was too remote. The board noted that the changing economic, financial, and market conditions were likely to affect the reliability of the sale date over such a prolonged period of time. By way of contrast, in *Gahanna-Jefferson Public Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 17, 1995), BTA No. 1994-T-789, unreported, this board accepted a sale that took place thirty-three months before tax lien date after finding that there were no material changes in the value of the property between the sale date and the tax lien date. See, also, *Warrensville Heights Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 6, 2004), BTA No. 2003-N-762, unreported; *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 23, 2004), BTA No. 2002-V-1736, unreported; *Deane v. Miami Cty. Bd. of Revision* (Dec. 12,

2003), BTA No. 2003-N-560, unreported; *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-J-338, unreported; and *Columbus Associates Ltd. v. Franklin Cty. Bd. of Revision* (June 29, 2001), BTA No. 1997-P-252, unreported.

While in the appeal before us, the issue is whether the sales are truly comparable to the subject property, we still must consider the surrounding circumstances of these sales or market conditions between the tax lien date and the sale dates. In this regard, we question the value of sales so far from the tax lien date when other sales closer to the date are available.⁴

Additionally, at least one of Mr. Lorms' sales may have been subject to deed restrictions. Although a deed-restricted sale could be reflective of the market, it would not be considered to be the best evidence of value. *Tuller Square Northpointe, LLC v. Delaware Cty. Bd. of Revision* (Aug. 18, 2006), BTA No. 2003-H-1549, unreported; *Meijer, supra*; *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (June 30, 2003), BTA Nos. 2002-A-2014, et seq., unreported. Thus, we must disregard that sale included in the sales comparison approach.

Given the issues with Mr. Lorms' sales comparison approach, we do not find his appraisal probative of value. The board finds that his selection of comparables has not provided a true picture of the value of the subject as of tax lien

⁴ Likewise, Mr. Lorms used lease rental rates for 2007 and 2008 in his income approach. These also seem to the board to be too remote in time from the tax lien date to be useful in determining the value of the subject property as of the tax lien date.

date. The board, therefore, finds that the appellant has not carried its burden of proving that the value of the property is other than that assessed by the BOR.

Our review of the entire record supports the actions of the BOR in reducing value. The BOR had before it a full narrative appraisal report, dated April 30, 2006, performed by Curtis P. Hannah, also an appraiser with Integra Realty Resources – Columbus.⁵ Mr. Hannah came to a conclusion of value of \$6,900,000 for the subject property as of January 1, 2005.

Mr. Hannah also performed a cost approach with regard to the gas station/convenience store located on the 1.6-acre outparcel. In his cost analysis, Mr. Hannah used the same three land sales as Mr. Lorms did to arrive at a value for the subject property of \$425,000 an acre. Hannah Appraisal Report at 55. Using the same methodology as Mr. Lorms, Mr. Hannah came to the same conclusion of value for the gas station/convenience store as did Mr. Lorms, \$790,000. Hannah Appraisal Report at 59.

In valuing the retail and appurtenant land under the sales comparison approach, Mr. Hannah examined five sales, and those sales ranged from \$20.56 per square foot to \$47.93 per square foot. Hannah Appraisal Report at 61. The sale dates ranged from March 2003 through August 2005. Two of the five comparables were not sold, but merely available for sale. These sales were the same first five sales that Mr. Lorms utilized. Mr. Hannah concluded that \$30 per square foot should be used

⁵Mr. Lorms testified that he updated the appraisal before the BTA hearing because the conclusions that former appraisal had reached were optimistic. H.R. at 29-30. However, as we have concluded that some of Mr.

for the subject property, which resulted in a value of \$6,854,486, rounded to \$6,900,000, using the sales comparison method. Hannah Appraisal Report at 63.

In his income approach, Mr. Hannah included nine rent comparables. Hannah Appraisal Report at 66. Rent for these comparables ranged from \$0 to \$4.06 per square foot. The lease dates were from 2002 to March 2006. Using several of the same rent comparables as Mr. Lorms, Mr. Hannah also used a Sam's Club in Reynoldsburg, Ohio, and a Winn Dixie in Cincinnati, Ohio. He concluded that a rental rate of \$3.50 per square foot was appropriate for the subject property, for a total potential gross rent of \$707,452. Hannah Appraisal Report at 68, 71. With expense reimbursements of \$470,196, this resulted in a potential gross income of \$1,177,647. Hannah Appraisal Report at 71.

From potential gross income, Mr. Hannah deducted a ten percent vacancy and credit loss, as did Mr. Lorms, to arrive at an effective gross income of \$1,059,883. *Id.* He then calculated expenses using the same K-mart expense survey, at \$2.73 per square foot, for a total of \$552,525. Hannah Appraisal Report at 73. Using the same 9.5 percent capitalization rate as Mr. Lorms, Mr. Hannah arrived at a value of \$6,141,227, rounded to \$6,100,000, including the gas station/convenience store. Hannah Appraisal Report at 76.

In reconciling the approaches to value, Mr. Hannah also relied most heavily on the sales comparison approach. The value arrived at using the sales

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Lorms' comparable sales may be too distant from tax lien date to be a good indicator of value, we find that Mr. Hannah's appraisal more accurately captures the market as it stood as of tax lien date.

comparison approach was “supported” by the income approach. Based on this, Mr. Hannah concluded that the final value of the subject property as of the tax lien date of January 1, 2005 was \$6,900,000. Hannah Appraisal Report at 78.

The board finds that Mr. Hannah’s opinion of value is probative of value. While much of the general information regarding the subject property was the same in both appraisals, we find that Mr. Hannah’s conclusions more accurately captured the market. As the BOR’s determination lacks explanation as to why it adjusted value at a number higher than Mr. Hannah’s appraisal, the board finds that the values found by the BOR should be amended to accept value in accordance with the evidence presented.

We are mindful of the Ohio Supreme’s Court’s decision in *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d 330, 2008-Ohio-2454, in which the court found that this board failed to support its finding regarding land value, as distinct from improvement value. The court specified, “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.” *Id.* at ¶17. While the parties have not presented any evidence concerning the proper allocation of the subject’s value between land and building, we note that the BOR held a hearing in this matter. At the hearing, counsel for Meijer appeared and Mr. Hannah’s appraisal report was presented. The record of the hearing indicates that the BOR discussed the outparcel as well as the retention areas on the main site. In addition, the property record card reflects that the BOR valued the main site and the

outparcel, which includes the retention areas, separately and at differing values. Accordingly, we have allocated land and building values for 2005 in accordance with the allocation made by the BOR.

Consequently the Board of Tax Appeals finds that the value of the subject property as of January 1, 2005 is as follows with Mr. Hannah's overall opinion of value and the BOR's allocation for land:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
038-60-318-38-003		
Land	\$1,272,610	\$ 445,410
Building	<u>\$5,627,390</u>	<u>\$1,969,590</u>
Total	\$6,900,000	\$2,415,000

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

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