

OHIO BOARD OF TAX APPEALS

Wal-Mart Real Estate Business Trust,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Darke County Board of Revision and)
 Darke County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Siegel, Siegel, Johnson & Jennings
 Nicholas M.J. Ray
 3001 Bethel Road, Suite 208
 Columbus, OH 43220

For the County Appellees - Richard M. Howell
 Darke County Prosecuting Attorney
 Darke County Courthouse, 3rd Floor
 504 South Broadway
 Greenville, OH 45331

Entered February 6, 2009

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

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Wal-Mart Real Estate Business Trust (“Wal-Mart”). Wal-Mart appeals a decision of the Darke County Board of Revision (“BOR”), in which the BOR determined the taxable value of the subject property for tax year 2005.

The Darke County Auditor and the BOR determined that the true and taxable values for the subject property for 2005 should be as follows:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-23-02-01-14801		
Land	\$1,187,500	\$ 415,630
Building	\$ 646,000	\$ 226,100
Total	\$1,833,500	\$ 641,730

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10102		
Land	\$ 192,300	\$ 67,310
Building	\$ -0-	\$ -0-
Total	\$ 192,300	\$ 67,310

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10300		
Land	\$ 445,100	\$ 155,790
Building	\$7,305,300	\$2,556,860
Total	\$7,750,400	\$2,712,650

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10505		
Land	\$ 170,700	\$ 59,750
Building	\$ -0-	\$ -0-
Total	\$ 170,700	\$ 59,750

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10600		
Land	\$ 108,700	\$ 38,050
Building	\$ -0-	\$ -0-
Total	\$ 108,700	\$ 38,050

<u>Grand Totals</u>	\$10,055,600	\$3,519,490 ¹
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Wal-Mart, however, according to its notice of appeal, contends that the true and taxable values of the subject property should be reduced for 2005 as follows:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-23-02-01-14801		
Land	\$ 602,290	\$ 210,800
Building	\$ 327,620	\$ 114,670
Total	\$ 939,910	\$ 325,470

¹ These values are as they appear on the Dark County Auditor's certification, DTE Form 3; however, we note that 35% of \$10,055,600 equates to \$3,519,460.

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10102		
Land	\$ 97,540	\$ 34,140
Building	\$ -0-	\$ -0-
Total	\$ 97,540	\$ 34,140

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10300		
Land	\$ 225,740	\$ 79,010
Building	\$3,705,090	\$1,296,780
Total	\$3,930,830	\$1,375,790

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10505		
Land	\$ 86,570	\$ 30,300
Building	\$ -0-	\$ -0-
Total	\$ 86,570	\$ 30,300

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10600		
Land	\$ 55,150	\$ 19,300
Building	\$ -0-	\$ -0-
Total	\$ 55,150	\$ 19,300

<u>Grand Totals</u>	\$5,110,000	\$1,785,000 ²
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The subject property is comprised of five parcels, containing 18.949 acres. S.T., Ex. D-2 at 1, 26. The improvements were constructed in 1993³ and consist of a warehouse/discount retail building containing approximately 205,749 square feet of gross leasable area. S.T., Ex. D-2 at 26, 30; H.R. at 11-12. There is also a paved parking area for about 1,030 automobiles. S.T., Ex. D-2 at 31. The property

² These values are as they appear on appellant's notice of appeal; however, we note that 35% of \$5,110,000 equates to \$1,788,500.

³ Mr. Hannah originally reported that the improvements were built in 1997. However, he subsequently discovered that the building was built in 1993, with an addition in 2002. H.R. at 11-12.

is in “good” condition and has been adequately maintained, with no significant deferred maintenance. S.T., Ex. D-2 at 32, 45.

This property is owned and operated by Wal-Mart Real Estate Business Trust (“Wal-Mart”) as a discount storeroom. S.T., Ex. D-2 at 1, 3. The subject property is located at 1501 Wagner Avenue, Greenville, Darke County, Ohio, in the Greenville Township, Greenville Corporation, Greenville Consolidated School District taxing district. S.T., DTE Form 3.

On March 24, 2006, Wal-Mart filed a complaint against the valuation of real property at the BOR, requesting a reduction in value for tax year 2005. S.T., Ex. A-1. On May 5, 2006, the Board of Education of the Greenville City School District (“BOR”) filed a counter-complaint, seeking to retain the auditor’s values.⁴ S.T., Ex. A-2. After a hearing on May 10, 2006 and due consideration, the BOR mailed a decision to the appellant on May 26, 2006, retaining the auditor’s values for the subject property, from which Wal-Mart appealed on June 22, 2006. S.T., Ex. D-1.

This matter is now submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, and the record of the evidentiary hearing before this board (“H.R.”), including exhibits. Although the parties were given the opportunity to submit briefs in this case, none were filed.

⁴ Although the BOE filed a counter-complaint with the BOR, it has not filed an entry of appearance or participated at this board.

At the hearings before the BOR and this board, the property owner called Curtis P. Hannah, an MAI appraiser, who testified and presented a complete, narrative appraisal report. Before this board, the BOR called no additional witnesses nor presented any documentary evidence 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 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. Hannah, an MAI appraiser with Integra Realty Resources – Columbus, testified before this board on behalf of Wal-Mart that despite a large supply, the demand for big-box space in the market by potential purchasers is limited. S.T., Ex. D-2 at 17-23. Mr. Hannah indicated that other retailers capable of operating on such a large scale are typically not interested in another entity's property because of differences in merchandizing plans. S.T., Ex. D-2 at 20. National retailers, such as Lowes, Meijer's, 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. *Id.* at 23. They would rather own the land and build the building, designed for their specific operating needs. H.R. at 46. They want to determine where the loading docks are, where the entrances are, the depth of the building, and the spacing of the aisles. Therefore, there is only a limited pool of big-box buyers, and they are usually second-generation users. *Id.*

In addition, Mr. Hannah criticized the use of build-to-suit properties as comparables. In his opinion, build-to-suit values are not open market transactions. H.R. at 23, 45-46, 56, 63, 64, 78, 86. He has never seen a big box built on a speculative basis. H.R. at 15.

In his appraisal, Mr. Hannah found that the subject property had above average visibility and highway access. S.T., Ex. D-2 at 28. He determined that the highest and best use of the subject property would be a continuation of its current use as retail. S.T., Ex. D-2 at 36-37. He performed all three approaches to value: cost, sales, and income. S.T., Ex. D-2 at 2, 38.

In his cost approach, Mr. Hannah examined five land sales, ranging from \$65,207 an acre to \$76,651 an acre. S.T., Ex. D-2 at 42. Based on these sales, he derived a cost per acre of \$65,000, for a land value of \$1,231,035, rounded to \$1,200,000. S.T., Ex. D-2 at 43.

He then calculated the direct cost of the replacement of the structure, using Marshall's Valuation Service. S.T., Ex. D-2 at 44. Mr. Hannah classified the property in the warehouse/discount store category, Class C property. S.T., Ex. D-2 at 45. In addition to the actual brick and mortar expenses, direct costs include architectural and engineering fees, and interest on building loan funds during construction. S.T., Ex. D-2 at 44. Mr. Hannah included a five percent allowance for additional 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. Id.

He added the land value, the replacement cost of the building, and the site improvements, then reduced that value for depreciation, 22.85 percent for building improvements and forty percent for site improvements, and obsolescence. S.T., Ex. D-2 at 48; H.R. at 50. He determined that the improvements had an effective age of eight years with a thirty-five year useful life. S.T., Ex. D-2 at 45; H.R. at 12, 16, 51-52. As an alternative, he also calculated depreciation using the depreciation extracted from seven comparable sales found in his sales comparison approach. S.T., Ex. D-2 at 48-51.

His opinion of value for the subject property as of the tax lien date of January 1, 2005, was \$6,497,337, rounded to \$6,500,000, using the cost approach. S.T., Ex. D-2 at 52.

In his sales comparison approach, Mr. Hannah utilized seven comparable sales, ranging from \$14.81 per square foot to \$40.78 per square foot. S.T., Ex. D-2 at 54; H.R. at 55. The sale dates ranged from January 2000 to May 2005. Id. Mr. Hannah testified that these were not distressed sales and the properties were not deed restricted. H.R. at 21, 22.

Comparable sale 1 was formerly a K-Mart store, built in 1976 and located in Westerville, Franklin County, Ohio. S.T., Ex. D-2 at 54. It had 97,328 square feet of gross leasable area. Id. It sold in March 2004 to Iron Pony for \$18.65 a square foot. Id.

Comparable sale 2 was a K-Mart store, built in 1993 and located in Washington Court House, Fayette County, Ohio. Id. It had 94,844 square feet of gross leasable area. Id. At the time of the BOR hearing, it had not sold, but was listed for \$20.56 a square foot. S.T., Ex. D-2 at 54; Appellant's Ex. A at 54. As of the date of the hearing before this board, the asking price of the property had been reduced to \$15.63 a square foot. H.R. at 17, 19; Appellant's Ex. A at 54.

Comparable sale 3 was a K-Mart, built in 1993 and located in Mansfield, Richland County, Ohio, in a strong retail corridor. S.T., Ex. D-2 at 54. It had 177,352 square feet of gross leasable area. Id. As of the date of the BOR hearing, it had not sold, but was listed for sale for \$28.16 a square foot. Id. It subsequently sold after the

BOR hearing but before this board's hearing in June of 2007 for \$3,000,000, or \$16.92 a square foot. H.R. at 17, 19; Appellant's Ex. A at 54.

Comparable sale 4 was also a K-Mart. S.T., Ex. D-2 at 54. This property was built in 1975 and is located in south Columbus, Franklin County, Ohio. Id. It had 94,500 square feet of gross leasable area. Id. It sold in May 2005 for \$14.81 a square foot. Id. The buyer planned to convert the property for multi-tenant use. Id.

Comparable sale 5 was a K-Mart, built in 1970 and located in Akron, Summit County, Ohio. Id. It had 116,320 square feet of gross leasable area. Id. It sold in January 2004 to Kohl's for \$33.10 a square foot. Id.

Comparable sale 6 was a K-Mart in Waverly, Pike County, Ohio. Id. This property was built in 1980 and had 40,316 square feet of gross leasable area. Id. It was purchased in January 2000 by the Pike County Board of County Commissioners for \$32.25 a square foot. Id. The intended use of this building by the purchaser was as a government services facility. Id.

Comparable sale 7 was a new Ames store in Canal Winchester, Franklin County, Ohio. Id. It was built in 2001 and had 83,376 square feet of gross leasable area. It was sold to Home Depot for \$40.78 a square foot. Id. Home Depot tore down the majority of the never-occupied improvements for construction of its own prototype. Id.

Mr. Hannah found comparable "sales" 1, 2, and 3 to be the most comparable to the subject property. S.T., Ex. D-2 at 55. They ranged from \$18.65 a

square foot to \$28.16 a square foot. *Id.* at 54. Comparable sale 4 he found was “inferior” and sold for \$14.81 a square foot. *Id.* at 54, 55. Comparable sales 5, 6, and 7 were “superior” to the subject and sold in a range of \$33.10 a square foot to \$40.78 a square foot. *Id.* After adjusting for location, Mr. Hannah used \$25.00 a square foot for the subject property. *Id.* at 56; H.R. at 64. Based on that, Mr. Hannah opined the value of the subject property to be \$5,143,725, rounded to \$5,100,000, as of January 1, 2005, using the sales comparison approach. *Id.*

Although Mr. Hannah did not find these properties to be strong retail locations, he testified that none of them were failed locations even though the individual tenants may have filed for bankruptcy. H.R. at 21. The bankruptcy of the tenants did not impact the sales of these properties for the owners. H.R. at 57. Mr. Hannah did not use sales of any properties subject to build-to-suit arrangements because they typically are not based on market rent. S.T., Ex. D-2 at 40, 53. Also, Mr. Hannah did not use any sales of properties constructed for occupancy by Wal-Mart, Sam’s Club, and Lowe’s because these properties are usually deed restricted, which may not make them the most comparable. S.T., Ex. D-2 at 53.

In his income approach, Mr. Hannah looked at market rents for six properties, ranging from \$.10 to \$2.76 a square foot. S.T., Ex. D-2 at 59. These properties included five Ames stores and a Discount Storeroom. *Id.* He determined that \$3 per square foot rent would be appropriate for the subject property. S.T., Ex. D-2 at 61; H.R. at 25, 27. This resulted in a gross potential rent of \$617,247. *Id.* To that amount, Mr. Hannah added \$296,509, or \$1.44 a square foot, for reimbursed expenses.

S.T., Ex. D-2 at 61, 63. He subtracted ten percent for vacancy and credit loss. S.T., Ex. D-2 at 62. The result was \$822,380 in effective gross income. S.T., Ex. D-2 at 63. He then subtracted \$372,618 for expenses, which he derived from an expense study of K-Mart stores, for a projected net income of \$449,763. S.T., Ex. D-2 at 62, 63. This included a three percent management fee and \$.15 per square foot reserve for replacements. H.R. at 65-66.

Using a 9.5 percent capitalization rate, which he derived from three sources, including national surveys and talking with brokers, Mr. Hannah derived a value of \$4,596,818, rounded to \$4,600,000, using the income approach. S.T., Ex. D-2 at 66-68, 69.

In reconciling these three methods, Mr. Hannah gave the most weight to the sales comparison approach, supported by the income approach. S.T., Ex. D-2 at 70. He relied least on the cost approach. *Id.* Mr. Hannah determined that the subject property should be valued at \$5,100,000 as of January 1, 2005. S.T., Ex. D-2 at 71; H.R. at 20.

In Mr. Hannah's report, he uses listing prices per square foot for two of his sales.⁵ We do not find listing prices 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*

⁵ Comparable sales #2 and #3 were listed as available in his report at \$20.56 and \$28.16 per square foot, respectively. S.T., Ex. D-2 at 54.

Revision (1997), 79 Ohio St.3d 397, at 400. Therefore, we do not find these properties to be sufficiently comparable.

Through counsel's cross-examination, the county argues that we should reject Mr. Hannah's opinion of value because the appraiser has failed to consider first generation comparable properties. H.R. at 40-41, 44-47, 55-58, 61-63, 86-87.

The issue raised by the county concerns Mr. Hannah's opinion that leased build-to-suit properties should not be relied upon when appraising real property: "[B]uild-to-suit arrangements result in above market rent and leased fee interests which are greater than the market value of the fee simple interest. Thus, leases from build-to-suit arrangements should not be used as an indication of market rent *** and sales of properties subject to build-to-suit arrangements should not be used in the sales comparison approach ***. Sales of properties subject to build-to-suit leases do not reflect the obsolescence of the real estate created by the tenant's design requirements." S.T., Ex. D-2 at 40.

Recently, in *Retail Trust IV v. Wood Cty. Bd. of Revision* (Jan. 13, 2009), BTA Nos. 2006-T-1130, 1334, unreported, this board stated that market data from transactions of comparable leased, build-to-suit properties could be relied upon to determine value. This board's discussion embraces the principles enumerated by the Ohio Supreme Court in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, and *AEI Net*

Lease Income & Growth Fund v. Erie Cty. Bd. of Revision, 119 Ohio St.3d 563, 2008-Ohio-5203.

Specifically, this board held:

“Simply put, if the price paid for a build-to-suit property subject to a long-term lease is the true value of the property, ***, then an appraiser should review such sales. If the sales are otherwise comparable in terms of market, size, condition, etc., they should be considered as part of the appraisal process. Such sales are particularly apropos where, as here, the issue is the valuation of a first-generation user-occupied property. ***

“***

“Ultimately, an appraiser’s decision to reject from consideration such build-to-suit properties not only creates the risk that the appraiser may eliminate a necessary component right that constitutes a part of the value of the property’s fee simple interest, thereby resulting in a value less than market value for taxation purposes, but also contrary to Ohio law. ***”
Retail Trust IV, supra at 16-17, citations omitted.

In other cases, we have nonetheless rejected the appellant’s position where it has been shown that comparable first-generation sales do exist. Thus, in *Meijer Stores L.P. v. Franklin Cty. Bd. of Revision* (May 27, 2008), BTA Nos. 2005-T-441, 443, unreported, on appeal, Sup. Ct. No. 2008-1248, we stated:

“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.” Id. at 17.

In *Meijer*, the appellee board of education presented appraisal evidence, including sales of leased built-to-suit properties. We determined “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.” Id. at 19.

In the instant matter, Mr. Hannah admits that there is at least one sale of a build-to-suit property that he nevertheless rejected from consideration. H.R. at 61-63. The county’s position rests upon the Ohio Supreme Court’s decision in *Berea City School Dist. Bd. of Edn.*, *supra*. There, the court reaffirmed the long-standing proposition that “when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’” Id. at ¶13. In *Berea*, the court rejected the contention that a “below market” lease rendered a sale of the property unreflective of value.

Here, the county asserts that the sale of a big-box property encumbered by a lease, which is made at arm’s length, should nevertheless be within that scope of properties considered for use in the sales comparison and income approaches to value.

In addition to the foregoing, we do not find Mr. Hannah’s reliance on the Columbus Lowe’s and Kmart sales to be compelling support for his opinion that a long-term lease adds value beyond that of the property’s market value. While there is a difference between the sale price of the leased property and the abandoned property,

this difference is consistent with the court's decisions, in that the right to collect rents under the long-term lease is a part of the value of the fee simple interest. *Rhodes*, supra, at ¶6. We also find that the appraiser is operating under the assumption that the sole reason for the price differential is that the build-to-suit property subject to the long-term lease is marketed differently from a property not subject to such a lease. However, no evidence was introduced to support a finding that the leased property was not exposed to the market that ordinarily exists for properties generally offered for lease. We note, too, "Special care must be taken when relying on pairs of adjusted values because the difference measured may not represent the actual difference in value attributable to the characteristic being studied. The difference may include other aspects of the property, not just the one characteristic being studied." *The Appraisal of Real Estate*, at 317.

Turning specifically to Wal-Mart's appraisal evidence, we note that the market data approach was the one most heavily relied upon by Mr. Hannah in reaching his final opinion of value. At hearing, the county advocated that Mr. Hannah intentionally focused on the "worst" of the abandoned properties and further limited the scope of his review by eliminating the sales of leased build-to-suit properties. As we have discussed in detail above, we concur with the county that there is nothing in the sale of build-to-suit properties, in and of itself, that would warrant the summary rejection of such sales. Given that the subject is a build-to-suit user-occupied property, such sales, if otherwise comparable, are appropriate for consideration. However, there is no evidence before us to indicate that there are any such comparable sales available

for consideration. Mr. Hannah has presented sales that he concludes are comparable to the subject.

While it may seem counter-intuitive that we reject Mr. Hannah's purposeful omission of build-to-suit sales while still reviewing the sales he does offer, we must weigh the actual evidence before us, taking into account how the evidence relates to the specific property at issue. Here, we have been presented with uncontroverted evidence that the sales used are indeed appropriate for consideration. The county may, of course, assert that there are better properties available; however, we cannot reject otherwise comparable sales simply based upon the county's speculation as to what may, or may not, exist in the market. If there are other build-to-suit properties that are comparable to the subject, then the county had the opportunity to provide that information to impeach Mr. Hannah's testimony. In the absence of such evidence, the county runs the risk that this board may find the sales information contained in the record sufficiently comparable for valuation purposes. In short, the county's argument that Mr. Hannah focused on the most problematic of properties remains mere conjecture.

Nevertheless, even after removing the listings, we find the remaining sales to be sufficiently comparable to the subject for valuation purposes. The sales utilized were all located in markets similar to the subject's and appear to be sufficiently comparable. Mr. Hannah's consideration of these sales' similarities to and differences from the subject appears to be reasonable and is supported by his testimony and the remainder of the record. While the county has criticized all of the

sales utilized by Mr. Hannah, it has offered no specific evidence to rebut the reliability of the data. See *Parmalat Bakery Group v. Ashland Cty. Bd. of Revision* (Aug. 12, 2005), BTA No. 2004-M-792, unreported, at 9 (holding that “it is common practice for an appraiser who is struggling to find comparable sales to widen his search to adjoining neighborhoods, cities, counties, and at time, states, to assist in arriving at an opinion of value.”).

We agree with Mr. Hannah that the income approach is of limited evidentiary value. We have further concerns about the adjustments made to the rent comparables used by Mr. Hannah. He employed an effective rent analysis in his approach. Effective rent is an analytical tool used to compare leases with different provisions in order to develop an estimate of market rent. *The Appraisal of Real Estate*, at 454. Effective rent is defined as the “total of base rent over the rent term minus rent concession, such as free rent, excessive tenant improvements, moving allowance, or lease buyouts.” *Id.* at 454. See, also, *The Dictionary of Real Estate Appraisal*, at 93. The timing of rent concessions may impact the analysis of effective rent. *The Appraisal of Real Estate*, at 454. In the matter before us, we have insufficient information about the nature and timing of the concessions for which Mr. Hannah has made an adjustment. In some instances, we also are unable to determine whether allowances for tenant improvements are excessive, and therefore subject to adjustment, or nominal.

Next, we question whether all of the rent comparables are truly comparable to the subject property. For example, lease comparable numbers 1, 3, 4

and 5, unlike the subject, all appear to be anchor stores located at regional malls. Finally, we note that one of the lease comparables used in the income approach was an asking rate rather than an actual lease. While we agree that the income approach seeks to consider the anticipated future benefits generated by a property and to estimate their present value, see *The Appraisal of Real Estate*, at 446, the use of asking rents is more speculative than probative. See *Wal-Mart*, supra. Accordingly, we place no weight upon Mr. Hannah's income approach to value.

Upon review of all of Wal-Mart's appraisal evidence, we find that the most reliable evidence is presented by Mr. Hannah's sales comparison approach, which concludes to a value of \$25 per square foot. Thus, we conclude that Wal-Mart has satisfied its burden of persuasion and has come forward with competent and probative evidence that the value for the subject property was \$5,100,000 for tax year 2005. *Cincinnati*, supra.

Where we determine that an appellant has come forward with competent and probative evidence of value, the appellees have a corresponding burden to present evidence that this board must review to determine whether it is competent and probative in rebutting the appellant's evidence. *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67, 70; *Springfield and Mentor Exempted*, supra. Failure of an appellee to present rebuttal evidence may, upon our finding that the appellant has presented credible and probative evidence, result in our adoption of the appellant's evidence as the subject property's true value. *Mentor Exempted*, supra. See, also, *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.”). Here, the county appellees have elected to not provide us with any additional evidence of value. Moreover, our review of the transcript certified to this board by the county auditor discloses no other evidence upon which we may base an opinion of value.

The Board of Tax Appeals therefore finds the true and taxable values⁶ of the subject property to be as follows for tax year 2005:

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-23-02-01-14801		
,Land	\$ 676,800	\$ 236,880
Building	\$ 315,900	\$ 110,570
Total	\$ 992,700	\$ 347,450
<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10102		
Land	\$ 109,200	\$ 38,220
Building	\$ 0	\$ 0
Total	\$ 109,200	\$ 38,220

⁶ In concluding to his ultimate opinion of value of \$5,100,000, Hannah did not specify how the value should be distributed between the parcels or between land and improvements. Within his cost approach to valuation, Hannah did conclude to a land value of \$1,200,000, S.T. Ex. D-2 at 43, which is significantly lower than that reflected on the auditor’s property record cards (\$2,104,300). Previously, we may have been inclined to allocate Hannah’s opinion of value between land and improvements using percentages consistent with the auditor’s distribution of values. However, we recognize the Supreme Court’s admonition in *Polaris Amphitheater Cornerts, Inc. v. Delaware Cty. Bd. of Revision*, Slip Opinion No. 2008-Ohio-2454, wherein it held:

“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 land value by separately valuing the land and improvements.”

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 contained within his cost approach and attribute the remainder of his ultimate opinion of value to the subject’s improvements. Further, we assign values between the five subject parcels based upon the same allocations utilized by the auditor.

<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10300		
Land	\$ 254,400	\$ 89,040
Building	<u>\$3,584,100</u>	<u>\$1,254,430</u>
Total	\$3,838,500	\$1,343,470
<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10505		
Land	\$ 97,200	\$ 34,020
Building	<u>\$ 0</u>	<u>\$ 0</u>
Total	\$ 97,200	\$ 34,020
<u>PARCEL NUMBER</u>	<u>TRUE VALUES</u>	<u>TAXABLE VALUES</u>
F27-2-212-24-03-01-10600		
Land	\$ 62,400	\$ 21,840
Building	<u>\$ 0</u>	<u>\$ 0</u>
Total	\$ 62,400	\$ 21,840
<u>Grand Totals</u>	\$5,100,000	\$1,785,000

The Auditor of Darke 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.

Mr. Eberhart dissents.

I respectfully dissent from the majority's value determination. I do agree wholeheartedly with the majority's conclusion that there is nothing in a build-to-suit property, in and of itself, that would warrant the summary rejection of such a property in an appraisal, and I join the majority in putting all parties before this board on notice of this holding.

However, it is clear from the record that Mr. Hannah's value conclusion purposefully excludes build-to-suit properties from his analysis. See S.T., Ex. D-2 at 53. Given that the subject is a build-to-suit user-occupied property, I would find that his opinion of value is not probative of the subject property's value. Rather, it creates an ambiguity that leaves it to this board to speculate as to whether a component of value has been artificially omitted.

Accordingly, I would affirm the Board of Revision's value of \$10,055,600.

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